

RICHLAND COUNTY
ADMINISTRATION & FINANCE
COMMITTEE AGENDA



Thursday, MAY 23, 2019

6:00 PM

COUNCIL CHAMBERS

The Honorable Joyce Dickerson, Chair

County Council District 2

The Honorable Bill Malinowski

County Council District 1

The Honorable Yvonne McBride

County Council District 3

The Honorable Joe Walker

County Council District 6

The Honorable Dalhi Myers

County Council District 10

RICHLAND COUNTY COUNCIL 2019



Bill Malinowski
District 1
2018-2022



Joyce Dickerson
District 2
2016-2020



Yvonne McBride
District 3
2016-2020



Paul Livingston
District 4
2018-2022



Allison Terracio
District 5
2018-2022



Joe Walker, III
District 6
2018-2022



Gwendolyn Kennedy
District 7
2016-2020



Jim Manning
District 8
2016-2020



Calvin "Chip" Jackson
District 9
2016-2020



Dalhi Myers
District 10
2016-2020



Chakisse Newton
District 11
2018-2022





Richland County Administration & Finance Committee

May 23, 2019 - 6:00:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER** The Honorable Joyce Dickerson

2. **APPROVAL OF MINUTES** The Honorable Joyce Dickerson
 - a. Regular Session: April 23, 2019 [PAGES 7-14]

3. **APPROVAL OF AGENDA** The Honorable Joyce Dickerson

4. **ITEMS FOR ACTION** The Honorable Joyce Dickerson
 - a. I move that all RC contracts must be reviewed & approved by the Office of the County Attorney & that notices under or modifications to RC contracts must be sent to the County Attorney, but may be copied to external counsel, as desired [MYERS] [PAGES 15-19]

 - b. I Move that Richland County remove the salary history question on employment applications in an effort to ensure fair hiring practices. The mandated change should apply to employment applications in print and online and the salary history question should also be removed from verbal interviews and employment screenings. [TERRACIO] [PAGES 20-27]

 - c. I move that Richland County Council pass the resolution to “Ban the Box” and join more than 150 cities and counties and 33 states nationwide that have “Ban the Box” laws to remove questions about convictions from job applications; so that applications could be judged first on their qualifications [McBRIDE] [PAGES 28-331]

 - d. Residential Utilities Assistance Program [PAGES 332-341]

e. Clemson Road Recycling Drop-off Site Lease Renewal [PAGES 342-351]

5. ADJOURN



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.



Richland County Council

ADMINISTRATION AND FINANCE COMMITTEE

April 23, 2019 – 6:00 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29204

COMMITTEE MEMBERS PRESENT: Joyce Dickerson, Chair; Bill Malinowski, Yvonne McBride, Joe Walker and Dalhi Myers

OTHER COUNCIL MEMBERS: Paul Livingston

OTHERS PRESENT: Michelle Onley, Trenia Bowers, Kimberly Williams-Roberts, Larry Smith, Stacey Hamm, Ashiya Myers, Ashley Powell, Jennifer Wladischkin, Valeria Davis, John Thompson, Clayton Voignier, Geo Price, John Hopkins, Donny Phipps, Jeff Ruble, Brian Crooks, Nancy Stone-Collum, Tammy O'Berry, Chris Eversmann and Synithia Williams

1. **CALL TO ORDER** – Ms. Dickerson called the meeting to order at approximately 6:00 PM.
2. **APPROVAL OF MINUTES**
 - a. March 26, 2019 – Ms. McBride moved, seconded by Mr. Walker, to approve the minutes as distributed.

In Favor: Malinowski, Walker, Dickerson and McBride

Present but Not Voting: Myers

The vote in favor was unanimous.

3. **ADOPTION OF AGENDA** – Mr. Malinowski moved, seconded by Ms. McBride, to adopt the agenda as published.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

4. **ITEMS FOR ACTION**
 - a. Explore developing municipal enterprises for economically distressed communities with conservation and other properties owned by Richland County [N. JACKSON] – Mr. Malinowski stated he would like to see a map of the County, which shows the locations of the economically distressed communities, so we know where we need to look.

Mr. Malinowski moved, seconded by Mr. Walker, to forward to Council with a recommendation to direct staff, by way of the Administrator, to explore the mechanics, feasibility and

appropriateness of municipal enterprises for economically distressed communities and determine appropriate and applicable utilization of vacant and other property owned by Richland County, under the direction of a Revivify Richland Task Force as a subsequent element of the Revivify Richland Strategic Framework.

In Favor: Malinowski, Myers, Walker Dickerson and McBride

The vote in favor was unanimous.

- b. Develop incentives and tax credits for Green Economy. This promotes green collar jobs in environmentally focused industries in environmentally sensitive areas [N. JACKSON] – Mr. Ruble stated staff’s recommendation is to direct the Economic Development Department to consider all existing federal, state and local incentives, loans, grants and/or programs available to establish and/or grow green economy in Richland County and apply them when/where appropriate. He stated, as a practical matter, they already do this. In the past couple years, they have recruited and incentivized a company that does wind energy. They are currently negotiated with a company that is hoping to build a solar farm. In addition, they are negotiating with a waste energy type company.

Mr. Malinowski stated in the briefing document it referenced a NACo June 2010 publication about counties growing green. He would hope that we would base any decisions on something a little more recent than that. We also used to have an employee, Anna Lange, that worked in an area for green items in the County. We may want to go back and look at some of her work, and what Council did with her recommendations.

Mr. Malinowski moved, seconded by Ms. Myers, to forward to Council with a recommendation to direct Economic Development, in conjunction with staff, to come up with more recent information than the June 2010 NACO documentation, and have information that was previously provided by Anna Lange reviewed and provided to the Economic Development Director for actions he deems appropriate.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- c. I move that Richland County remove the salary history question on employment applications in an effort to ensure fair hiring practices. The mandated change should apply to employment applications in print and online and the salary history question should also be removed from verbal interviews and employments screenings [TERRACIO] – Ms. Terracio stated one of the key contributing factors to the gender wage gap is salary history information. For example, when women leave the workforce for a period of time to do childcare, they may go to a part-time situation, they may leave the workforce to care for their elderly or ailing family members, and when they re-enter the workforce they are penalized by the salary they may have had 10 years ago. This would serve as both a step toward improving our Human Resources hiring practices, as well as, serve as an example to other employers in the region that this is a step in the right direction to close the gender wage gap.

Mr. Malinowski stated, with all due respect, he disagrees with Ms. Terracio. Based on the information provided on p. 40, where it says, “Many state and local governments have enacted ordinances or policies to ban or limit questions about an applicant’s salary history. However, with all the activity surrounding this issue there has not been any single successful confirmed solution. Based on the results of this study, one may conclude not revealing salary history actually worked against the women, and in favor of the men. At the very least, this study

indicates simply removing the salary history question does not adequately address wage differenced based on gender.

Mr. Malinowski moved, seconded by Mr. Walker, to forward to Council with a recommendation to receive the analysis as information, as well as, support fair hiring practices.

Ms. Myers stated, for clarification, Human Resources based the analysis on one study that there was not enough evidence from that study to suggest that banning that information in the application hiring program did not seem to advance the cause. She inquired if they looked at anything that suggested otherwise.

Ms. O'Berry stated they found studies that had theories one way or the other, but not have not found any definitive proof that there was a positive influence on women. They felt there were a lot more pieces to the puzzle that needed to be added rather than just taking salary history off, if Council wanted to head in this direction.

Ms. Myers stated she knows you have this study that says it does not help, and in some cases, has hurt. Do we have evidence that says having the information has hurt?

Ms. O'Berry stated they have not found any conclusive national studies that would help us to say that it actually helped or hurt at the level they would like to see. One of the major points Mr. Hanna was trying to make was that, if we were to move forward, we would need to do some other things. For example, train our managers on how to figure out a salary, when they do not have a salary history. Banning the box, without putting more investment in to teaching our managers how to determine salaries upfront, we could possibly be hurting/helping people.

Ms. McBride inquired if Ms. O'Berry contacted any other counties or states that are currently not putting the salary on the application.

Ms. O'Berry stated they did not.

Ms. McBride stated it might be good if we could see their perspective, in terms of, we have done it for the last "XXX" number of years, and these are the results that could help us. She requested that this item be held in committee until we receive additional information regarding what other counties are doing.

Ms. Terracio stated she recognizes that there is no one magic bullet that is going to fix the historic wage gap that has persisted over the years. This could be one thing, and perhaps when we look at our Total Rewards Program, we could look more holistically at proactive steps to be an employer that closes the gap.

Mr. Malinowski moved, Ms. McBride, to defer this item until the May committee meeting.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- d. United Way Lease Agreement Renewal – 2000 Hampton St. – Ms. A. Myers stated the lease agreement before you, was signed by a previous Council Chair. The lease agreement was drafted by the Legal Department, and they do not suggest any changes to the document. Nor does the Risk Management Department.

Mr. Malinowski inquired if any audit has been conducted on the Community Partners of the Midlands, LLC.

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Ms. A. Myers stated, to her knowledge, there has not been one.

Mr. Malinowski stated the organization is referenced as “Community Partners of the Midlands, LLC (a corporation of the United Way of the Midlands)” and as “United Way of the Midlands.” He stated it needs to be consistent throughout the document.

Ms. McBride inquired if they are maintaining the space they have, or are they requesting additional space.

Ms. A. Myers stated she did not have a request for additional space. It should be the exact same agreement.

Ms. McBride inquired if all of this space is being utilized.

Ms. A. Myers, to her knowledge, it is. The building has been fitted specifically for the clinics.

Mr. Walker moved, seconded Mr. Malinowski, to forward to Council to renew the lease with Community Partners of the Midlands, LLC, a corporation of the United Way of the Midlands, for use of approximately 7343 sq. ft. as an eye and dental clinic on the third and fourth floor of 2000 Hampton Street.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- e. Corley Construction, LLC Payment Authorization – Mr. Voigner stated staff is recommending authorization of payment in the amount of \$29,456.15 to Corley Construction, LLC for completed demolition work to prevent contractual late fees.

Mr. Malinowski inquired as to when it was known this cost would exceed the \$100,000, and the need to bring it to Council.

Mr. Phipps stated Ms. Kecia Lara resigned and this got overlooked. He stated they can avoid the penalty if we pay it before April 30th. The penalty is \$441.

Mr. Malinowski stated the problem is this has to move to Council, which will be May 7th, so he does not know how we can avoid that.

Mr. Malinowski moved, seconded by Ms. Myers, to forward this to Council with a recommendation to authorize payment of \$29,456.15 to Corley Construction, LLC for completed demolition work.

Ms. Myers offered a friendly amendment that we have the Legal Department to get in touch with Corley Construction and make them aware of the omission and see if they will give us an extension.

Mr. Malinowski accepted the friendly amendment.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- f. Mountainbrook Ditch Stabilization Project – Ms. Wladischkin stated the Mountainbrook Ditch Stabilization Project was issued as a Request for Bid. In the packet is the bid tabulation, and they have identified the award should go to Clearwater Consultants.

Mr. Malinowski stated it shows on the map a channel flowing through the rear of several residential properties. He inquired if the storm drain located on County property or private property.

Ms. Williams stated this is a ditch line that Public Works Department currently maintains. They spray and cutback on the ditch once a year. It is currently under our maintenance easement. It has been eroding severely for several years, and exposing sewer lines and taking away backyards.

Ms. Myers moved, seconded by Mr. Malinowski, to forward to Council to award the Mountainbrook Ditch Stabilization Project to Clearwater Consultants.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- g. Award for Mobile Home Park Demolition – Percival Road – Mr. Voignier stated staff is recommending to award Carolina Wrecking, for their bid of \$244,900, for the demolition of the mobile home park project located at 2311 Percival Road. This was approved under the FY18-19 CDBG Action Plan.

Mr. Malinowski stated, in the past, there was federal funding that could be applied for, and available when we were dealing with asbestos abatement. He inquired if we have attempted to receive any of those funds.

Mr. Voignier stated they have not looked into that, but can certainly do so.

Mr. Malinowski inquired about what happens to the property once it is cleaned up.

Ms. Davis stated the project is a true unsafe housing demolition that is under the “Unsafe Housing Division”. Because of the potential hazards and other issues that may live on the property, it simply clears the blight on the property. It could be redeveloped, at a later date.

Mr. Malinowski stated, for clarification, it stays under the owner of the current owner.

Mr. Smith stated he does not know that demolishing this gives the County any ownership interest in it, so he would say the property would remain with the current owner.

Mr. Malinowski inquired as to where the debris will go.

Mr. Phipps stated the asbestos material should be removed, but if not, it will go to a landfill that handles asbestos material.

Mr. Malinowski moved, seconded by Ms. Myers, to forward to Council with a recommendation to award the contract to Carolina Wrecking for their bid of \$244,900 for the demolition of the mobile home park project located at 2311 Percival Road. In addition, to direct staff to research the possibility of securing federal funding to be utilized to offset the use of CDBG funds.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- h. Total Rewards Implementation – Ms. O’Berry stated this matter was previously discussed at the Council Retreat and a subsequent work session. She stated she believes there were several questions asked about our pay rates compared to minimum, poverty levels, etc. That information is available if anyone would like to review it. Staff is recommending that we adopt the recommendation of the Total Rewards Study and support the actions necessary for Richland County Government to become an Employer of Choice.

Ms. Myers inquired what the schedule for funding.

Ms. O’Berry stated, at this time, they are requesting the \$1.4 million, plus benefits to bring employees to the minimum of the proposed pay structure ranges.

Ms. Myers inquired about the overall schedule for the \$11 million and if this includes all departments, including the Legal Department.

Ms. O’Berry stated it does include all the departments.

Mr. Smith stated he thinks she is correct that it includes the Legal Department. The issue is whether or not the study included the position of the County Attorney.

Ms. O’Berry stated there are currently about 7 positions outstanding for Elected and Appointed Officials that the vendor is finalizing. They do not have the data back on those positions.

Ms. Myers stated she is in favor of the study. She is only asking for the dates for when we plan to implement all of the pieces, and when we plan to have the information for employees not included in this analysis.

Ms. Myers moved, seconded by Ms. McBride, to forward to Council with a recommendation to adopt the recommendation of the Total Rewards Study and support the actions necessary for Richland County Government to become an Employer of Choice. In addition, that the Human Resources Department will provide an implementation schedule and additional information for those positions not include in the original analysis.

Mr. Malinowski inquired as to what will be done for the employees that are already above the minimum and median.

Ms. O’Berry stated they would like to use the fund already dedicated by Council to bring employees to the minimum. Those employees that are above the minimum, we would propose bringing them to an appropriate place within the structure, based on their years of service and performance evaluation.

Mr. Malinowski inquired if that is a part of the proposal, or something that is being added now.

Ms. O’Berry stated it part of the proposal that was presented at the work session, and is included in the packet.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- i. Airport Overnight EAA Camping Event Request – Mr. Eversmann stated the aspect of this that required it to come forward to Council was the issue of a policy, and development of a policy,

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relative to overnight stays or camping at the airport. He stated that is not uncommon in small, rural airports or general aviation events, but our airport rules and regulations are silent on it. So, what the Airport Commission has proposed, and they hope Council will endorse, would be the development of a policy on that for future consideration.

Mr. Malinowski moved, seconded by Ms. Myers, to forward to Council with a recommendation to create a policy for overnight use of County facilities by members of the public, to include Risk Management and Legal weighing in on liability issues.

Mr. Walker inquired if we develop a blanket policy for the overnight use of all County facilities, as opposed to a specific policy for the use of the airport, are we opening the door for a large influx of requests and/or liability.

Mr. Smith stated he thinks that the Risk Manager was alluding to, when she talks about this particular item, and whether or not we would be creating a precedent. He thinks there are certain general things that you can put in a policy; however, each request has to be looked at because you talking about different structures and different events, which may create different kinds of challenges. He does not know if you can have one policy that fits all.

Mr. Eversmann stated what had been requested was the overnight event would be under the supervision of an established airport tenant. The tenant is a local chapter of a national organization, and are covered by the insurance of the national organization.

Mr. Walker made a substitute motion, seconded by Ms. McBride, to forward to Council with a recommendation to approve the movie and camping event subject to the direction and oversight of the Airport General Manager, require execution of a Hold Harmless Agreement, and to request the Airport Commission, working with Airport General Manager, to develop an appropriate policy to adopt regarding overnight stays at the Jim Hamilton-LB Owens Airport.

Mr. Malinowski stated he would still like to see Risk Management and Legal work out something that eliminates our liability exposure.

Mr. Walker accepted Mr. Malinowski's amendment.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- j. City of Columbia: Permission to Survey – SS7462 Verch Locke Sewer Lift Station Area – Mr. Eversmann stated this is a routine request that has been coordinated with Economic Development. Richland County is the owner of these adjacent properties. There is an existing sewer easement that covers this area. They are looking at a facility replacement.

Mr. Walker moved, seconded by Mr. Malinowski, to forward to Council with a recommendation to grant permission for the City of Columbia to perform its survey and soil sampling.

Mr. Malinowski noted the attachment was not included in the agenda packet. In addition, he inquired if we need an IGA since we are dealing with another municipality.

Mr. Smith stated, in terms of restoring the property back to the way it was before they went in, that is what he would suggest.

Mr. Malinowski made a friendly amendment to include an IGA with the City of Columbia when the item goes to Council.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- k. Acquisition and Disposal of County Real Property – Draft Policy – Ms. A. Myers stated before the committee is a proposal of staff’s policy, as developed, in response to a request from the previous Property Distribution Ad Hoc Committee. This policy attempts to address that committee’s concerns regarding why property was purchased.

Mr. Malinowski stated on p. 269, it says, “Surplus real property of by one of the following methods” and it lists four (4) methods, but it does not tell us how it will be determined which method we will use. He would like to have some information on that. Also, on p. 270, it says, “...approved by County Council for sale and shall be sold for: (a) Not less than the purchase price originally paid by Richland County”. He stated that may be difficult to achieve at time, and he does not know that we should have that. He thinks it should be a fair market value. In addition, it states, “Sales of real properties with a value under twenty-five thousand dollars (\$25,000) are exempt.” He inquired why that figure was chosen. He stated any property should be done via public notice, and according to one of the method listed on the previous page. This will eliminate any appearance of impropriety by staff members and/or elected officials. Additionally, it says, “The County Administrator or staff shall provide to the County Council an annual report, no later than the first Council meeting in the month of December.” He thinks we need to move it to January or February, since the first meeting in December will not include newly elected officials, and they will be in the dark when they get on board 30 days later. Lastly, it states, “Proceeds from all sale of surplus real property will be placed in the County’s Capital Project Fund...to be used to finance capital projects.” He thinks we need to indicate, if the properties were bought were with Accommodations or Hospitality Tax Funds, it needs to go back to those funds, and not the General Fund. On p. 271, it says, “When listing the real property with a private broker as appropriate and necessary, the County Administrator will solicit and contract with a real estate broker.” He would like to see some language added that it should be a broker in the area where the property is being sold/purchased, so we have someone with some familiarity with the area. In that same paragraph, it says, “Minor transactions under \$100,000 would not require the professional services of a real estate broker.” He is shocked a minor transition is considered under \$100,000 because he does not consider that a minor transaction. He inquired how the transaction would be done. He would like that spelled out.

Ms. Myers requested that any suggested changes be forwarded to staff, so they can be incorporated.

Mr. Malinowski moved, seconded by Ms. Myers, to defer this item.

In Favor: Malinowski, Myers, Walker, Dickerson and McBride

The vote in favor was unanimous.

- 5 **ADJOURNMENT** – The meeting adjourned at approximately 6:54 p.m.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Agenda Briefing

To: Chair Joyce Dickerson and Honorable Members of the Committee
Prepared by: Staff and the County Attorney’s Office
Department: County Attorney’s Office
Date Prepared: May 14, 2019 **Meeting Date:** May 23, 2019

Referred to the Committee	April 23, 2019 by the Development & Service Committee
Committee	Administration and Finance Committee
Subject:	Legal Review of County Contracts

Recommended Action:

Staff in concurrence with the County Attorney’s Office has developed a policy to review and approve all contracts and amendments thereto.

Motion Requested:

Move to approve the policy for the review and approval of all contracts and amendments thereto.

Request for Council Reconsideration: Yes

Fiscal Impact:

Costs associated with the use of outside counsel may be incurred and will be determined upon engagement thereof.

Motion of Origin:

I move that all RC contracts must be reviewed & approved by the Office of the County Attorney & that notices under or modifications to RC contracts must be sent to the County Attorney, but may be copied to external counsel, as desired.

Council Member	Dalhi Myers
Meeting	Regular Session
Date	December 11, 2018

Discussion:

Contracts and/or modifications thereto which may obligate the County in some manner should be reviewed and approved by the County’s Legal Department prior to signature. Chapter 2; Article 3; Division 5; Section 2095 of the Richland County Code of Ordinances states “[t]he county attorney...shall advise the county administrator and all county officers and department heads in all matters wherein they may seek advice or counsel.” The County’s Legal department has concurred that contract and amendments should come through its office; however, it does not review work orders or similar documents.

At its February 26, 2019 meeting, the committee requested a list of those documents the County's Legal Department would review. The response follows:

- *Exclusions from contractual type items routinely sent to Legal*
 - *Routine work orders, work authorizations, or Notices to Proceed where the master contract has already been reviewed by Legal. Legal will review the "template" of these documents, which may then be used as a guide.*
 - *Notices regarding contract performance. These fall under the Procurement Manager.*
 - *Contract renewals where there are no amendments and Legal has previously reviewed the contract.*

Legal's review is in addition to, not in lieu of, the Department and/or Procurement's review. Legal is not the technical or subject matter expert of your contract. Legal reviews for certain language and contract provisions, in addition to spotting liability and other legal issues with the contract - not substance.

There is not an exhaustive list. Legal will assist anytime there is a question involving the above items, or any other matter.

During its March 23, 2019 meeting, the Development and Services Committee referred the item to the Administration and Finance Committee due to the potential fiscal impact of the contracts and amendments as well as those costs associated with the use of external counsel.

Attachments:

1. Development and Services briefing document as included during the April 23, 2019 committee meeting.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Briefing Document

Agenda Item

During its December 11, 2018 County Council meeting, Councilmember Dalhi Myers made the following motion:

“I move that all RC contracts must be reviewed & approved by the Office of the County Attorney & that notices under or modifications to RC contracts must be sent to the County Attorney, but may be copied to external counsel, as desired”

Background

Contracts and/or modifications thereto which may obligate the County in some manner should be reviewed and approved by the County’s Legal Department prior to signature. Chapter 2; Article 3; Division 5; Section 2095 of the Richland County Code of Ordinances states “[t]he county attorney...shall advise the county administrator and all county officers and department heads in all matters wherein they may seek advice or counsel.” The County’s Legal department has concurred that contract and amendments should come through its office; however, it does not review work orders or similar documents.

At its February 26, 2019 meeting, the committee requested a list of those documents the County’s Legal Department would review. The response follows:

- *Exclusions from contractual type items routinely sent to Legal*
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 - *Notices regarding contract performance. These fall under the Procurement Manager.*
 - *Contract renewals where there are no amendments and Legal has previously reviewed the contract.*

Legal’s review is in addition to, not in lieu of, the Department and/or Procurement’s review. Legal is not the technical or subject matter expert of your contract. Legal reviews for certain language and contract provisions, in addition to spotting liability and other legal issues with the contract - not substance.

There is not an exhaustive list. Legal will assist anytime there is a question involving the above items, or any other matter.

Issues

None.

Fiscal Impact

Costs associated with the use of outside counsel may be incurred and will be determined upon engagement thereof.

Past Legislative Actions

None.

Alternatives/Solutions

None.

Staff Recommendation

This is a Council initiated request. Staff in concurrence with the County's Legal Department will develop a policy and mechanism to track the review and approval of all contracts and amendments thereto.

Contract Review Policy

All contracts, including modifications, must be reviewed by the Richland County Attorney's Office prior to execution; provided, however, the following are exceptions to the rule:

Exclusions from contractual type items routinely sent to Legal

- Routine Work orders, work authorizations or Notices to Proceed where the master contract has already been reviewed by Legal. Legal will review the "template" of these documents, which may then be used as a guide.
- Notices regarding contract performance. These fall under the Procurement Manager.
- Contract renewals where there are no amendments and Legal has previously reviewed the contract.

The County Attorney's review is in addition to, not in lieu of, the Department and/or Procurement's review. Legal reviews for certain language and contract provisions, in addition to spotting liability and other legal issues with the contract - not substance.

There is not an exhaustive list. Legal will assist anytime there is a question involving the above items, or any other matter.



Agenda Briefing

To: Committee Chair Joyce Dickerson and Honorable Members of the Committee
Prepared by: T. Dwight Hanna, Director
Department: Human Resources
Date Prepared: May 15, 2019 **Meeting Date:** May 23, 2019

Legal Review	Elizabeth McLean via email	Date:	April 12, 2019
Budget Review	James Hayes via email	Date:	April 12, 2019
Finance Review	Stacey Hamm via email	Date:	April 10, 2019
Approved for Council consideration:	Assistant County Administrator	Sandra Yúdice, Ph.D.	
Committee	Administration and Finance		
Subject:	Removing Salary History from Applications		

Recommended Action:

Staff recommends receipt of this analysis as information as well as support of fair hiring practices. While removing salary history questions from the applications is simple, reducing and/or eliminating wage disparity is more complex and challenging.

Motion Requested:

N/A

Request for Council Reconsideration: Yes

Fiscal Impact:

Initially, there is a potential for an overall increase in starting pay for all new hires. Usually, applicants attempt to present themselves in the most positive manner and seek the highest salary they feel is appropriate and/or they may successfully secure from the new employer.

In addition to management and process changes, there will also be an initial and ongoing internal investment to develop, present, and attend necessary training to successfully support the objective of the motion.

Motion of Origin:

“I move that Richland County remove the salary history question on employment applications in an effort to ensure fair hiring practices. The mandated change should apply to employment applications in print and online and the salary history question should also be removed from verbal interviews and employment screenings.”

Council Member	Allison Terracio
Meeting	Regular Session
Date	March 05, 2019

Discussion:

A Glassdoor study showed women still earn 76 cents to the dollar men earn. The salary history ban attempts to prevent current or previous pay inequality from following a person throughout his/her career. Determining a candidate's compensation based on his/her salary history can perpetuate existing wage inequalities that are the result of gender bias or discrimination. Removing salary history questions from the applications, the interview forms, and screening forms is a relatively simple process; however, careful planning, training, monitoring, and other steps are necessary to successfully achieve the objective of the change.

There has been much debate, research, articles written, and action taken on the topic of the wage variance between women and men. As with any policy consideration, there are advantages and disadvantages presented by those on both sides of the issue. Many state and local governments (mostly in the northeast and west) have enacted ordinances and/or policies to ban or limit questions about an applicant's salary history. However, with all the activity surrounding this issue, there has not been any single successful confirmed solution. Transparency is generally helpful in achieving fair practices. Fortunately, Richland County Government is ahead of many private sector organizations regarding pay transparency because of SC FOIA laws.

PayScale, a compensation data and software company, recently conducted an employee wages survey of about 15,000 job seekers on whether they disclosed their pay during the interview process at their previous jobs. In summary, this study revealed "...that a woman who was asked about her salary history and refused to disclose was actually offered 1.8% less than a woman who was asked and did disclose. Meanwhile, if a man refused to disclose when asked about salary history, he received an offer that was 1.2% higher than a man who did." Based on the results of this study, one [may] conclude not revealing salary history actually worked against the women and in favor of the men. At the very least, this study indicates simply removing the salary history question does not adequately address wage differences based on gender.

Trends

Many jurisdictions - cities, counties, and states have enacted ordinances and/or policies to ban or limit salary history questions during the application process. Some of these restrictions apply only the government body; however, many apply to all employers in the jurisdiction of the respective government.

Advantages and Disadvantages

Employees, supervisors, employers, advocacy groups, elected officials, HR professionals, and many experts have discussed and on the different perspectives regarding how best to reduce the wage variances (gender and race).

Support for keeping salary history on applications:

- By sharing salary history early in the interview stage, candidates can avoid adding weeks or months to their search by pursuing jobs that do not meet their needs.
- Employers are able to inform candidates about a pay disparity early in the interview process, thus increasing their interview-to-hire ratio and shortening their time to hire.

- Departments have greater power in negotiating salaries for new hires.
- Greater perceived and/or real difficulty for hiring managers discussing and negotiating starting salaries with new hires because of the long-standing common use of historical salaries. Because of historical reliance on salary history vs. value of the job and qualifications of the candidate – this would represent a huge change for management.
- Some have raised a constitutional question regarding being able to ask questions about salary history. A case is currently pending in the court in Pennsylvania
- Transitional hurdles normally experienced by employees, applicants, and management for this type of organizational wide and cultural change.
- Increase in salary cost is a possibility if not a probability. Removing salary history may increase the total cost of [female and/or male] new hires, as departments will not have information to negotiate salaries and thus may respond based on salary expectations rather than actual earnings.
- Removing salary history questions does not adequately address the root cause of wage disparity.+

Support for removing salary history on applications:

- Starting wages are based on the value of the job to the County, relevant experience, qualifications, skills, experience, certifications, and competencies of the applicant
- For those employers insisting on using salary history to determine future compensation, applicants face an uphill battle to prove pay inequality, as this requires knowing the salaries of other employees.
- The theory is women sometimes have begun their careers at a pay disadvantage; therefore if their past salary is used as a marker for future salary offers, their pay will remain behind men's.
- Employers must be able to identify specific reasons for differences in compensation between employees with similar backgrounds performing similar job duties.
- Potentially perpetuates the wage gap disparity between men and women.
- Places too much importance on the pay at a single employer and not the market as a whole.
- Better negotiating power to both gender candidates
- A larger, more diverse pool of candidates. Job candidates are not automatically dismissed because they earn more than the salary range.

The County's current process involves asking salary history questions on the application and during the application process. The salary histories of applicants are used to eliminate candidates who may seek a salary higher than what the County deems appropriate to offer because of internal equity, budget limitations, and/or value the County places on the job. Hiring managers would generally consider removing the salary history question to make their job much more difficult to successfully negotiate with candidates.

The Richland County Government application has a salary history field for each job listed. It is a mandatory field for the most recent employment; however, it is optional for the other employment listed. The application also includes a response optional "salary expectations" question.

Implementation Considerations

Removing salary history information alone from the application process will not erase the wage difference between women and men or men and/or minorities. If the Council's objective is to reduce wage disparity, the County may consider other actions. Proper planning, training, and resources will greatly enhance the acceptance and probability of success for a policy change of this type. Following is a list of recommendations from the Human Resources Department if the Council approves the motion as presented:

1. Get clear total rewards compensation philosophy approved by County Council to guide all actions surrounding employee compensation;
2. Update and maintain all job descriptions to include accurate, ethical, legal, and complete minimum requirements and complete essential functions for each job;
3. Consistently maintain market competitive pay ranges for all jobs;
4. Update electronic and paper application forms;
5. Mandate all departments update all interview questions, applicant screening forms and/or criteria, and internal operating procedures to remove salary history questions;
6. Ensure consistent and proper Performance Management Process for each employee. This becomes essential once the County links pay increases to the employee's job performance;
7. Establish clear career paths;
8. Implement Succession Development Management;
9. Provide negotiation skills training specifically targeted towards female employees;
10. Conduct a comprehensive review of all County policies relating to compensation to ensure equal pay for all genders and demographic groups. Consider adding, revising, and/or deleting policies and/or guidelines that do not support the objectives of County Council;
11. Ensure policies have validity and are defensible;
12. Consistently enforce County policies once implemented. Exceptions to County policy should be rare and documented to be legally defensible;
13. Develop and/or update training and provide for all personnel involved in the hiring process relating to negotiations, respect, procedural justice, unconscious bias, accountability, inclusion, demographic diversity, cognitive diversity, trust, active listening, compensation technology available to employees, compensation program, and compensation discussions with employees, and civility;
14. Developing resources to help supervisors, managers, and directors discuss and negotiate wages with new hires;
15. Monitor compliance with policies approved by County Council;
16. Inform Elected Officials of the County's policy change as they use a different application form.

The Human Resources Department fully endorses equal pay for equal work regardless of gender and/or race. Unfortunately, more factors, including years of experience and education, may contribute to the wage differences between demographic groups other than salary history inquiries. However, if women and/or minorities' salaries are less because of inappropriate reasons, continuing to utilize disparate salaries in salary negotiations perpetuates the problem. Consequently, Human Resources recommends Council consider the recommendations above in addition to the motion.

Attachments:

1. Executive Summary of Research

Summary of Articles and Studies About Banning Salary History Questions

Executive Summary

After researching salary history bans, there were no findings on whether banning salary history increased or decreased salaries. Out of 8 articles found on the ban of salary history and 1 field experiment:

- 4 were for the banning of salary history
- 2 were against the banning of salary history
- 2 were neutral against the banning of salary history
- The field experiment found that when wage history is removed employers take extra time to consider more applicants and ask more in depth questions, but it did not show an increase or decrease in salaries.
- After the passing of a statewide Salary History Ban in California, statewide female-male earnings ratios increased from 0.77 to 0.81 implying that the Salary History ban may help close the wage gap.

Field Experiment: How Do Employers Use Compensation History?: Evidence From a Field Experiment

Article Summaries

Article: Closing the Wage Gap for Women

- For Salary History Ban
- The value of preventing employers from asking about salary history extends beyond women and people of color
- No findings on increase or decrease in salaries

Article: If a Law Bars Asking Your Past Salary, Does It Help or Hurt?

- For Salary History Ban
- Reasons why employers ask a candidate about their salary history
 1. Employers want to minimize payroll expense
 2. Employers may be trying to determine how to pay
 3. Employers may be seeking to gauge productivity
- No findings

Article: Banning the Use of Salary History in Job Offers Proves Less Difficult Than Anticipated

- For Salary History Ban
- Salary history is not heavily used in assessing candidate qualifications and fit for a job
- No findings on increase or decrease in salaries

Summary of Articles and Studies About Banning Salary History Questions

Article: Information and the Persistence of the Gender Wage Gap; Early Evidence from California's Salary History Ban

- For Salary History Ban
- After the passing of a statewide Salary History Ban in California, statewide female-male earnings ratios increased from 0.77 to 0.81 implying that the Salary History ban may help close the wage gap.

Article: Equal Pay Legislation Banning Salary History Questions Is Absolutely Based in Data

- Neutral towards Salary History Ban- Comparison of what could happen
- Applicant
 - Pro- Banning salary history can help older workers who have lost their jobs but were making higher salaries. These applicants sometimes have trouble getting interviews with managers who think they can't afford them, even if the applicant is perfectly willing to take a pay cut for a job. It can also help people who have been out of the workforce for a couple of years due to taking care of an elderly relative or child.
 - Con- If employers are legally barred from asking about salary, they might instead guess at what an applicant earns and guess lower if that person is female.
- Employers
 - Con- Recruiters will often use a previous salary question to help them narrow down a group of hundreds of applicants and they won't be able to do that anymore
- In the end, no matter the legislation, some determined businesses will find ways to continue paying women less than men.

Article: Banning the Salary History Ban: The Pros and Cons for Employer and Applicant

- Neutral towards Salary History Ban- Comparison
- In a recent court decision, U.S. District Judge Mitchell S. Goldberg ruled that the city's salary history ban violates employers' First Amendment right to free speech
- The judge ruled that applicants' salary history could not be used to determine future pay if it exposed salary discrepancies between employees with similar experience and responsibilities
- Applicant
 - Pro- the fact that employers are allowed access to employees' salary history during the hiring process, combined with a heightened awareness of the gender wage gap, now places a heavier burden on employers to be able to show specific reasons for differences in compensation between employees with similar backgrounds performing similar job duties
 - Con- for those employers insisting on using salary history to determine future compensation, applicants face an uphill battle to prove pay inequality, as this requires knowing the salaries of other employees

Summary of Articles and Studies About Banning Salary History Questions

- Con- when employers are forbidden from asking about salary history, candidates may be forced to complete the entire application and interview process, and then wait to receive an offer before learning whether the salary falls within their desired range.
- Con- delaying a salary discussion between employer and job seeker can add both time and frustration to a job search
- Employer
 - Con- difficult to determine whether a candidate is the right fit for the position's pay range
 - Con- employers are unable to let candidates know about a pay disparity early in the interview process decreasing their interview-to-hire ratio and prolonging their time to hire
 - Con- delaying a salary discussion between employer and job seeker can add both time and frustration to a job search

Article: Do Salary-History Bans Help or Hurt Women?

- Against Salary History Ban
- A Korn Ferry survey release in November of 2017 found that 65% of executives believe that the new salary-history laws won't improve gender equity in their organizations or that the laws will only help a little
- No findings on increase or decrease in salaries

Article: Most employers Don't Think Bans on Asking About Salary History Will Work

- Against Salary History Ban
- While more cities and states have banned companies from asking job applicants about their salary history, a survey finds many companies will not comply with the rules if they can find a way around it.
- No findings on increase or decrease in salaries



Agenda Briefing

To: Chair Joyce Dickerson and Honorable Members of the Committee
Prepared by: Ashiya Myers, Assistant to the County Administrator
Department: Administration
Date Prepared: May 14, 2019 **Meeting Date:** May 23, 2019

Legal Review	Elizabeth McLean, Deputy Attorney, via email	Date:	May 16, 2019
Budget Review	James Hayes, Budget and Grants Director, via email	Date:	May 14, 2019
Finance Review	Stacey Hamm, Finance Director, via email	Date:	May 16, 2019
Other Review:	Dwight Hanna, Human Resources Director, via email	Date:	May 16, 2019
Approved for Council consideration:	Assistant County Administrator	Sandra Yúdice, Ph.D.	
Committee	Administration and Finance		
Subject:	Ban the Box		

Recommended Action:

Staff recommends ensuring compliance with all applicable requirements for public safety departments, revising all applicable procedures and forms as well as training departments on the procedure changes and revised documents.

Motion Requested:

Move to authorize staff to revise applicable procedures and forms to enact the resolution.

Request for Council Reconsideration: Yes

Fiscal Impact:

There is no associated fiscal impact.

Motion of Origin:

I move that Richland County Council pass the resolution to “Ban the Box” and join more than 150 cities and counties and 33 states nationwide that have “Ban the Box” laws to remove questions about convictions from job applications, so that applications could be judged first on their qualifications.

Council Member	Yvonne McBride
Meeting	Regular Session
Date	April 16, 2019

Discussion:

In 2004, All of Us or None, a national civil rights movement of formerly incarcerated individuals and their families, began the “Ban the Box” campaign to combat employment and housing discrimination. Such forms of discrimination were cited as barriers to successful reintegration into the community following jail or prison terms. The campaign calls for the removal of the question of and check box to “Have you

been convicted by a court” and similarly worded questions from applications for employment, housing, public benefits, insurance, loans, and other services.

Presently, 34 states, the District of Columbia, and over 150 cities and counties have adopted a ban-the-box policy. The policy provides employment opportunities to those with criminal records by preventing a “blanket ban” on formerly incarcerated individuals. Some policies also require employers to wait until after an interview has been conducted or a conditional offer of employment has been made before asking about criminal history.

While the ban-the-box policy is intended to assist formerly incarcerated individuals with employment, such policies may have unintended consequences. In a paper from the National Bureau of Economic Research, the implementation of ban-the-box policies have decreased the probability of being employed by 5.1% for young, low-skilled black men, and 2.9% for young, low-skilled Hispanic men as employers are more likely to discriminate more broadly against demographic populations that are more likely to have a criminal record. In a paper from the University of Michigan Program in Law and Economy, researchers also found the race gap grows dramatically after employers implement a ban-the-box policy.

Overall, research has confirmed that criminal records are a major barrier to employment, and the removal of such inquiries increases the likelihood of interviews and/or offers of employment for formerly incarcerated individuals. However, employers must also enact policies that mitigate the unintended consequences of racial discrimination as evidenced in the studies cited above.

As with any policy change, adequate training for personnel involved with the hiring process is necessary to ensure the changes approved by County Council are implemented effectively and efficiently.

Presently, the Human Resources Departments conducts a background check during the on-boarding process. Another key point in the process is how a criminal record is evaluated if discovered once an applicant receives a conditional job offer. Richland County Government has many diverse jobs, to include public safety positions, positions which handle cash, as well as those positions which demand a high level of public trust. Consequently, a candidate’s criminal record may directly affect the job and/or the public’s perception of his/her ability to perform the job duties. There are also those positions where certain criminal convictions may disqualify an applicant. Included as an attachment is guidance from the EEOC that is essential to comply with employment law and provide equal opportunity to qualified applicants.

In summary, provided the County implements the necessary processes, policies, training, forms, management monitoring, and/or guidelines to support the resolution, the Human Resources Department fully supports removing the inquiry from the application.

Attachments:

1. Ban the Box campaign timeline
2. NAACP Ban the Box campaign publication
3. “Ban the Box Laws by State and Municipality” by XpertHR.com
4. FACT SHEET: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly- Incarcerated
5. National Employment Law Project – Ban the Box Publication
6. Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment

7. National Bureau of Economic Research: "Does 'Ban The Box' Help Or Hurt Low-Skilled Workers? Statistical Discrimination And Employment Outcomes When Criminal Histories Are Hidden"
8. EEOC Enforcement Guidelines
9. "Ban the Box" doesn't prevent criminal background check
10. Proposed Resolution



Ban the Box Timeline

We are sharing this history of our Ban the Box campaign to publicize our victories, and to move forward together to ending all forms of discrimination based on conviction history. Formerly-incarcerated and convicted people, family members, and allies of All of Us or None joined together nationally to win phenomenal success throughout the United States.

We are the people who identified this campaign and named it. We are experts in how this discrimination affects our lives and families. We have dared to speak in our own voices, and to be innovative and visionary with our demands. We have educated our communities and won their support – otherwise, the broad changes our families need would not be possible.

This fight to end the structural discrimination represented by that box may be long, but we are making great progress – and ultimately we will win full restoration of our human and civil rights.

- 2003** Statewide convening of formerly-incarcerated organizers in Oakland, CA in March; Agreement to organize to end discrimination based on past convictions and to unite our efforts under the name All of Us or None
- National convening of formerly incarcerated organizers at Critical Resistance South conference in New Orleans in April; Agreement to organize nationally to end discrimination based on past convictions under the name All of Us or None
- All of Us or None (AOUON) organizes nationally for a Summit at the Congressional Black Caucus Legislative Weekend in September, mobilizing formerly-incarcerated people from 18 states to attend; Discussion of voting rights, employment rights, and a variety of issues affecting people in prison and after their release
- 2004** AOUON organizes Peace and Justice Community Summits in Oakland, San Francisco, and East Palo Alto to call for community organizing to:
- 1) Ban the Box on applications for public employment
 - 2) End all forms of discrimination against people with criminal records
- 2005** AOUON initiates campaign to Ban the Box in San Francisco city/county hiring, and organizes Peace and Justice Community Summits in Los Angeles and San Bernardino
- Jan. 2006** The San Francisco Board of Supervisors unanimously passes AOUON resolution to Ban the Box on public employment applications
- Apr. 2006** Compton Peace and Justice Community Summit held by AOUON
- June, 2006** San Francisco implements Ban the Box policies, with a new application and hiring process

All of Us or None, LA submits a Ban the Box resolution to the Los Angeles City Council and the Los Angeles County Board of Supervisors

- Oct. 2006** Alameda County Board of Supervisors unanimously adopts a resolution, urging the Civil Service Commission and Department of Human Resources to implement a Ban the Box pilot program for county hiring
- Nov. 2006** AOUON organizes a breakfast discussion with Bay Area Directors of Human Resources. (In collaboration with NELP and East Bay Community Law Center)
- Dec. 2006** At AOUON's request, Oakland City Council Member Nancy Nadel initiates discussions of Ban the Box in December with the Office of Personnel Resource Management (OPRM)
- Jan. 2007** Oakland Mayor Ron Dellums inaugurated, promising to implement AOUON's Ban the Box policy in Oakland
- Mar. 2007** AOUON initiates Ban the Box campaign at City College of San Francisco, the result of a CCSF graduate of a drug counseling program being denied employment based on his past convictions. In collaboration with Women's Employment Rights Clinic at Golden Gate Law School
- Alameda County removes the conviction history question from its application, as a direct result of AOUON advocacy
- June, 2007** AOUON organizes Bay Area convening of public defenders, clean slate legal service providers, and foundations to discuss results of the Peace and Justice Community Summits regarding voting rights, Ban the Box initiatives, and expansion of clean slate services. In collaboration with NELP, East Bay Community Law Clinic, and Women's Employment Rights Clinic at Golden Gate Law School
- Berkeley City Council passes a resolution to Ban the Box for city hiring, after urging by AOUON in meetings with the city of Berkeley's Department of Human Resources (DHR)
- All of Us or None attends the first U.S. Social Forum in Atlanta, participating in the formation of the Excluded Workers Congress (later re-named United Workers Congress)
- July, 2007** National organizing conference in Philadelphia, convened by National Employment Law Project and Legal Aid Services of Philadelphia. First national distribution of AOUON's [Ban the Box campaign toolkits](#)
- Nov. 2007** Berkeley DHR Director implements AOUON's Ban the Box policy

- April 2008** Oakland SpeakOut to Ban the Box in front of Oakland City Hall, co-sponsored by AOUON and Plan for a Safer Oakland
- June 2010** AOUON attends the U.S. Social Forum in Detroit, advocating for Ban the Box and civil and human rights for currently and formerly incarcerated people
- Sept. 2010** California Governor Arnold Schwarzenegger orders the State Personnel Board to remove conviction history questions from employment applications for state agencies, as a result of AOUON advocacy
- Dec. 2010** Final directive to Ban the Box in Oakland public hiring signed by Dan Lindheim, Oakland City Manager, after years of AOUON advocacy with city council members and the Oakland DHR
- Feb. 2011** Inaugural meeting of Formerly Incarcerated and Convicted Peoples' Movement (FICPM), Alabama, formed to advance a national agenda defined by formerly incarcerated and convicted people, including a unified campaign to Ban the Box nationally
- Apr. 2011** City of Compton City Council passes Ban the Box resolution, as a result of a campaign by All of Us or None, Los Angeles
- Oct. 2011** Legal Action Center and HIRE Network present All of Us or None with an award for national work on Ban the Box
- Oct. 2011** AOUON organizes Long Beach Peace and Justice Community Summit
- Nov. 2011** National convening of the Formerly Incarcerated and Convicted Peoples' Movement in Los Angeles; FICPM National Program adopted, including a pledge to organize in our local areas to Ban the Box
- Feb. 2012** All of Us or None co-sponsors AB 1831, which would apply Ban the Box provisions to all city and county hiring in California. Stalled in the California Senate
- Jan. 2013** Launch of bantheboxcampaign.org, an All of Us or None website where non-profit employers can learn about Ban the Box policies and pledge to implement them
- Feb. 2013** AB 218 introduced by Assembly Member Roger Dickinson (D-Sacramento). The bill is co-sponsored by Legal Services for Prisoners with Children, All of Us or None, NELP, and PICO-California

- Oct. 2014** California Governor Jerry Brown signs AB 218, the Fair Chance Act sponsored by Assembly Member Roger Dickinson (D-Sacramento). Requires all state agencies, cities, counties, and special districts to Ban the Box on their public employment applications. Co-sponsored by AOUON in collaboration with over 100 community-based organizations statewide
- Feb. 2014** San Francisco Fair Chance Ordinance unanimously passed by San Francisco Board of Supervisors. Expands SF Ban the Box policies to include private employers with more than 20 employees, and bans the box for all affordable housing providers. Co-sponsored by AOUON in collaboration with NELP, Lawyers' Committee for Civil Rights of the Bay Area (LCCR), and Community Housing Partnership (CHP-SF)
- June, 2014** All of Us or None and LSPC receive Human Rights Hero award from the San Francisco Human Rights Commission for work on the Fair Chance Ordinance, banning the box on private and public employment and affordable housing in San Francisco. In collaboration with Community Housing Project, NELP, and LCCR.
- Sept. 2014** Formerly-incarcerated activists from around the country meet with representatives of the White House, discussing Ban the Box, among other topics
- Oct. 2014** The Federal Interagency Reentry Council, representing over 20 federal agencies, hosts a meeting with formerly-incarcerated leaders who discuss discrimination in Education, Employment, Voting Rights, and other arenas and propose solutions, including Ban the Box
- Jan. 2015** All of Us or None, NELP, and PICO National Network formally launch an initiative urging President Obama to issue an Executive Order to Ban the Box in hiring for all Federal contractors. The initiative has been supported by over 200 national, state, and local organizations, by 27 U.S. Senators and over 70 US Congresspeople
- Aug. 2015** Our Ban the Box campaign has resulted in over 100 cities and counties, and 18 states, removing the question about conviction history from applications for public employment.

The Ban the Box Campaign



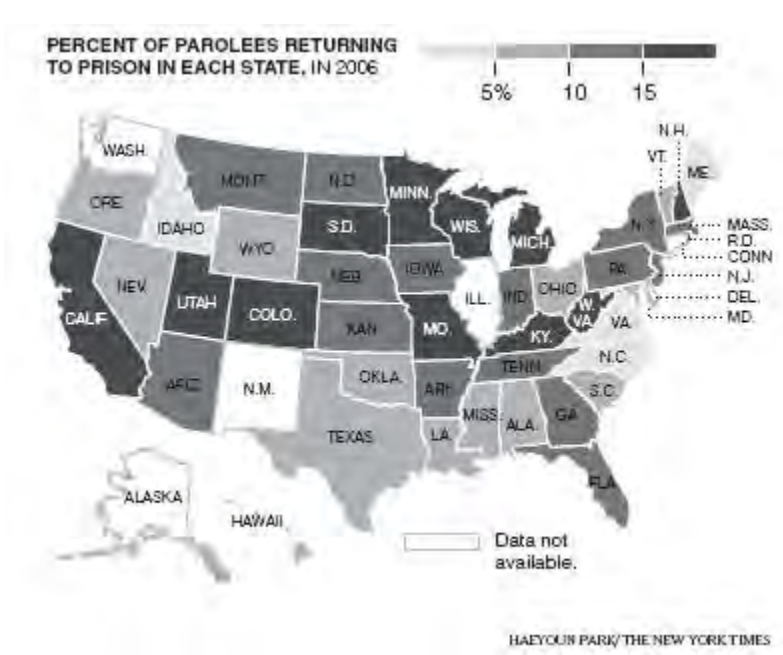
The Problem: Although they have paid their debt and served their time, individuals with a criminal history are too often denied the opportunity at redemption and turned away from legitimate employment, which would help engage them in productive activities that improve the quality of life for everyone and enable them to become productive members of society.

The Facts:

- In 2008, there were an estimated 2.4 million people in U.S. jails and prisons – the disproportionate majority of whom (over 2/3) are people of color.
- African Americans make up roughly 13% of the U.S. population, but are 40% of its prisoners.
- Approximated 95% of incarcerated individuals are eventually released into local communities nationwide.
- More than 600,000 individuals leave U.S. prisons each year.
- Returning citizens who gain employment are more than 1/3 less likely than their counterparts to recidivate (return to crime) and are more capable of turning their lives around permanently.
- According to federal courts, Title VII of the Civil Rights Act of 1964 prohibits employers from imposing blanket bans on employment of individuals with conviction histories.
- Today, in 2010, twenty-one cities and counties have decided to “ban the box,” and not ask about an individual’s criminal record on employment applications. Founded by All of Us or None, a grassroots group from the Bay Area, “ban the box” is a campaign to eliminate the questions about criminal history from employment applications.

- The Federal Work Opportunity Tax Credit allows a company to claim a tax credit of up to \$2,400 for hiring an employee with a felony conviction within one year of the date of his or her conviction or release from incarceration.
- The U.D. Department of Labor offers a free bonding program for “at-risk” job applicants, including people with criminal records, indemnifying employees for loss of money or property due to an employee’s dishonesty or theft.

The Solution: In efforts to eliminate employment barriers for formerly incarcerated people, public entities (local municipalities and state governments), as well as corporations and business, must “ban the box” or remove the question about criminal history from the initial job application forms. This question should be asked during the face to face interview and only in instances where criminal history relates to the job in question. In this way, formerly incarcerated people will have the opportunity to meet and interview for jobs, increasing the applicant’s chances for employment.



Eckholm, Erik. The New York Times. Parolees Who Return to Prison. May 17, 2008: <http://www.nytimes.com/2008/05/17/us/17parole.html? r=2>

Ban the Box Laws by State and Municipality

 shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/xperthr/pages/ban-the-box-laws-by-state-and-municipality.aspx

April 15,
2019

Author: [XpertHR Editorial Team](#)

There is a trend at the state and local levels to protect prospective employees convicted of a crime from automatic disqualification during the selection process. So-called "ban the box" laws prevent an employer from requesting a prospective employee's criminal history information on an employment application.

This chart provides an overview of the ban the box laws in effect at the state and municipal levels affecting the private sector. States that have no requirements regarding a ban the box law are marked N/A in the chart. Additional details are available in many cases by clicking on the relevant state or locality.

Some jurisdictions prohibit an employer from asking whether an applicant has been convicted of a crime until a specified point in the hiring cycle (e.g., the interview stage or after a conditional job offer has been made). Several states also have laws imposing restrictions on an employer's ability to use credit history in making employment decisions. Review variations in credit check requirements by state in [Credit Check Limitations by State and Municipality](#).

In light of these ban the box laws, an employer may wish to ensure their employment application conforms with this trend. See [Employment Application Form](#) for a template that can be used that complies with these requirements.

Alabama	N/A	
Alaska	N/A	
Arizona	N/A	
Arkansas	N/A	
<u>California</u>	Any employer with five or more employees	Criminal background inquiries prohibited until after conditional job offer
	<u>Compton</u>	Contractors doing business with city
		Background check allowed only after conditional job offer

<u>Los Angeles</u>	Any employer in the city with 10 or more employees	Criminal history questions only after conditional job offer
<u>Richmond</u>	Private employers with 10 or more employees that contract with city	Applies regardless of where the employer is based
<u>San Francisco</u>	Effective October 1, 2018, applies to employers with 5 or more employees (replaces prior threshold of 20 or more)	Bans criminal inquiries, or requiring disclosure of conviction history, until conditional job offer has been made
Colorado	N/A	
<u>Connecticut</u>	All employers	Bans criminal history questions on initial job applications with very limited exceptions
Hartford	Contractors doing business with the city	Background checks only after conditional employment offer
New Haven	Contractors doing business with the city	Background checks only after conditional job offer
Delaware	N/A	
<u>District of Columbia</u>	All employers with more than 10 employees	Background check only after conditional employment offer
Florida	N/A	
Georgia	N/A	
<u>Hawaii</u>	Private employers	No criminal history inquiries prior to conditional employment offer
Idaho	N/A	
<u>Illinois</u>	Private employers with 15 or more employees	No criminal history inquiries prior to job interview, or until after conditional job offer if no interview occurs
<u>Chicago</u>	Private employers with less than 15 employees	Bans criminal history questions prior to job interview, or until after conditional job offer if no interview occurs

	Cook County	Private employers with less than 15 employees	Mirrors Chicago's criminal history ordinance
Indiana		N/A	
	Indianapolis	Contractors doing business with the city	No criminal history questions until after first interview
Iowa		N/A	
Kansas		N/A	
Kentucky		N/A	
	Louisville	Contractors doing business with the city	City prefers vendors that ban the box on job applications and may terminate contracts with those that do not
Louisiana		N/A	
	<u>New Orleans</u>	Contractors doing business with the city	Effective March 1, 2019, city contractors may not ask criminal history questions on initial job applications
Maine		N/A	
<u>Maryland</u>		N/A	
	<u>Baltimore</u>	All employers with 10 or more employees	No criminal records checks or inquiries until a conditional job offer has been made
	<u>Montgomery County</u>	Any employer employing 15 or more persons in the county	No criminal history questions or background checks until after first interview
	<u>Prince George's County</u>	Any employer with 25 or more full-time employees in the county	No criminal history questions or background checks until after first interview

<u>Massachusetts</u>		Private employers	Prohibits criminal history questions on initial application form, but also bans inquiries about certain types of crimes later in the hiring process
	Boston	Contractors/vendors doing business with the city	
	Cambridge	Contractors/vendors doing business with the city	
	Worcester	Contractors/vendors doing business with the city	
Michigan		N/A	
	Detroit	Contractors doing business with the city when contract is for \$25,000 or more	No criminal conviction questions until contractor interviews applicant or determines applicant is qualified
	Kalamazoo	Contractors providing services to the city for more than \$25,000 or those seeking tax abatement	Must show commitment that they don't use criminal history to discriminate in employment
<u>Minnesota</u>		Private employers	Bans criminal history inquiries on initial job applications subject to limited exceptions
Mississippi		N/A	
Missouri		N/A	
	<u>Columbia</u>	All employers within city limits	Bans criminal history questions until after conditional job offer
	<u>Kansas City</u>	Private employers with six or more employees	Effective June 9, 2018, no criminal history inquiries until after job interview
Montana		N/A	
Nebraska		N/A	

Nevada		N/A	
New Hampshire		N/A	
<u>New Jersey</u>		Any employer with 15 or more employees over 20 calendar weeks	Includes provision preempting local laws, most notably this supersedes a Newark law which applied to employers with five or more employees
<u>New Mexico</u>		Private employers	May consider an applicant's conviction after reviewing the application and discussing employment with the applicant
<u>New York</u>		N/A	
	<u>Buffalo</u>	Private employers with 15 or more employees/Contractors doing business with the city	Bans criminal history questions on initial job applications
	<u>New York City</u>	All employers with four or more employees	No criminal inquiries prior to conditional job offer
	<u>Rochester</u>	All employers with four or more employees and contractors doing business with city	No criminal history inquiries until after initial job interview or conditional job offer
	<u>Syracuse</u>	City contractors	No criminal history inquiries, background checks until after conditional job offer
North Carolina		N/A	
North Dakota		N/A	
Ohio		N/A	
Oklahoma		N/A	
<u>Oregon</u>		Private Employers	Unlawful to exclude applicant from job interview solely because of a past criminal conviction


	<u>Portland</u>	Employers with six or more employees	No asking about or accessing criminal records before conditional job offer
Pennsylvania		N/A	
	<u>Philadelphia</u>	All employers with at least one employee in the city	No criminal background checks prior to conditional job offer
	<u>Pittsburgh</u>	Contractors/vendors doing business with the city	Bans criminal history inquiries until applicant is deemed otherwise qualified for a position
<u>Rhode Island</u>		Employers with four or more employees	Prohibits criminal history inquiries on initial job applications
South Carolina		N/A	
South Dakota		N/A	
Tennessee		N/A	Preempts cities and counties from extending state ban the box law to private employers
Texas		N/A	
	<u>Austin</u>	Employers with 15 or more employees	No criminal history questions or criminal background checks until conditional job offer has been made
Utah		N/A	
<u>Vermont</u>		Private employers	Bans criminal history questions on an initial job application
Virginia		N/A	
<u>Washington</u>		Private employers	Effective June 6, 2018, no arrest or conviction questions (or criminal background checks) before job applicant is deemed otherwise qualified for a position
	<u>Seattle</u>	Any employer with one or more employees	Need "legitimate business reason" to automatically exclude applicants with arrest or conviction record

	<u>Spokane</u>	Private employers	Effective June 14, 2018, no criminal history questions before a job interview
West Virginia		N/A	
Wisconsin		N/A	
	<u>Madison</u>	Contractors doing business with city on contracts worth more than \$25,000	No criminal history questions, background checks until after conditional offer
Wyoming		N/A	

Provided by



FACT SHEET: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated

 obamawhitehouse.archives.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation

November 1,
2015

This Administration has consistently taken steps to make our criminal justice system fairer and more effective and to address the vicious cycle of poverty, criminality, and incarceration that traps too many Americans and weakens too many communities. Today, in Newark, New Jersey, President Obama will continue to promote these goals by highlighting the reentry process of formerly-incarcerated individuals and announce new actions aimed at helping Americans who've paid their debt to society rehabilitate and reintegrate back into their communities.

Each year, more than 600,000 individuals are released from state and federal prisons. Advancing policies and programs that enable these men and women to put their lives back on track and earn their second chance promotes not only justice and fairness, but also public safety. That is why this Administration has taken a series of concrete actions to reduce the challenges and barriers that the formerly incarcerated confront, including through the work of the Federal Interagency Reentry Council, a cabinet-level working group to support the federal government's efforts to promote public safety and economic opportunity through purposeful cross-agency coordination and collaboration.

The President has also called on Congress to pass meaningful criminal justice reform, including reforms that reduce recidivism for those who have been in prison and are reentering society. The Sentencing Reform and Corrections Act of 2015, which recently received a strong bipartisan vote in the Senate Judiciary Committee, would be an important step forward in this effort, by providing new incentives and opportunities for those incarcerated to participate in the type of evidence-based treatment and training and other programs proven to reduce recidivism, promote successful reentry, and help eliminate barriers to economic opportunity following release. By reducing overlong sentences for nonviolent drug offenses, the bill would also free up additional resources for investments in other public safety initiatives, including reentry services, programs for mental illness and addiction, and state and local law enforcement.

Today, the President is pleased to announce the following measures to help promote rehabilitation and reintegration:

- **Adult Reentry Education Grants.** The Department of Education will award up to \$8 million (over 3 years) to 9 communities for the purpose of supporting educational

attainment and reentry success for individuals who have been incarcerated. This grant program seeks to build evidence on effective reentry education programs and demonstrate that high-quality, appropriately designed, integrated, and well-implemented educational and related services in institutional and community settings are critical in supporting educational attainment and reentry success.

- **Arrests Guidance for Public and other HUD-Assisted Housing.** The Department of Housing and Urban Development (HUD) will release guidance today to Public Housing Authorities and owners of HUD-assisted housing regarding the use of arrests in determining who can live in HUD-assisted properties. This Guidance will also clarify the Department’s position on “one strike” policies and will include best practices from Public Housing Authorities.
- **Banning the Box in Federal Employment.** The President has called on Congress to follow a growing number of states, cities, and private companies that have decided to “ban the box” on job applications. We are encouraged that Congress is considering bipartisan legislation that would “ban the box” for federal hiring and hiring by federal contractors. In the meantime, the President is directing the Office of Personnel Management (OPM) to take action where it can by modifying its rules to delay inquiries into criminal history until later in the hiring process. While most agencies already have taken this step, this action will better ensure that applicants from all segments of society, including those with prior criminal histories, receive a fair opportunity to compete for Federal employment.
- **TechHire: Expanding tech training and jobs for individuals with criminal records.** As a part of President Obama’s TechHire initiative, over 30 communities are taking action – working with each other and national employers – to expand access to tech jobs for more Americans with fast track training like coding boot camps and new recruitment and placement strategies. Today we are announcing the following new commitments:
 - Memphis, TN and New Orleans, LA are expanding TechHire programs to support people with criminal records.
 - Newark, NJ, working with the New Jersey Institute of Technology and employers like Audible, Panasonic, and Prudential, will offer training through the Art of Code program in software development with a focus on training and placement for formerly incarcerated people.
 - New Haven, CT, Justice Education Center, New Haven Works, and others will launch a pilot program to train and place individuals with criminal records, and will start a program to train incarcerated people in tech programming skills.
 - Washington, DC partners will train and place 200 formerly incarcerated people in tech jobs. They will engage IT companies to develop and/or review modifications to hiring processes that can be made for individuals with a criminal record.
- **Establishing a National Clean Slate Clearinghouse.** In the coming weeks, the

Department of Labor and Department of Justice will partner to establish a National Clean Slate Clearinghouse to provide technical assistance to local legal aid programs, public defender offices, and reentry service providers to build capacity for legal services needed to help with record-cleaning, expungement, and related civil legal services.

- **Permanent Supportive Housing for the Reentry Population through Pay for Success.** The Department of Housing and Urban Development and the Bureau of Justice Assistance at the Department of Justice have launched an \$8.7 million demonstration grant to address homelessness and reduce recidivism among the justice-involved population. The Pay for Success (PFS) Permanent Supportive Housing Demonstration will test cost-effective ways to help persons cycling between the criminal justice and homeless service systems, while making new Permanent Supportive Housing available for the reentry population. PFS is an innovative form of performance contracting for the social sector through which government only pays if results are achieved. This grant will support the design and launch of PFS programs to reduce both homelessness and jail days, saving funds to criminal justice and safety net systems.
- **Juvenile Reentry Assistance Program Awards to Support Public Housing Residents.** With funding provided by the Office of Juvenile Justice and Delinquency Prevention at the Department of Justice, the Department of Housing and Urban Development will provide \$1.75 million to aid eligible public housing residents who are under the age of 25 to expunge or seal their records in accordance with their applicable state laws. In addition, the National Bar Association – the nation’s oldest and largest national association of predominantly African-American lawyers and judges – has committed to supplementing this program with 4,000 hours of pro bono legal services. Having a criminal record can result in major barriers to securing a job and other productive opportunities in life, and this program will enable young people whose convictions are expungable to start over.

Many of the announcements being made today stem from the President’s My Brother’s Keeper Task Force, which is charged with addressing persistent opportunity gaps facing boys and young men of color and ensuring all young people can reach their full potential. In May of 2014, the Task Force provided the President with a series of evidence-based recommendations focused on the six key milestones on the path to adulthood that are especially predictive of later success, and where interventions can have the greatest impact, including Reducing Violence and Providing a Second Chance. The Task Force, made up of key agencies across the Federal Government, has made considerable progress towards implementing their recommendations, many times creating partnerships across agencies and sectors. Today’s announcements respond to a wide range of recommendations designed to “eliminate unnecessary barriers to giving justice-involved youth a second chance.”

These announcements mark a continuation of the Obama Administration's commitment to mitigating unnecessary collateral impacts of incarceration. In particular, the Administration has advanced numerous effective reintegration strategies through the work of the Federal Interagency Reentry Council, whose mission is to reduce recidivism and victimization; assist those returning from prison, jail or juvenile facilities to become productive citizens; and save taxpayer dollars by lowering the direct and collateral costs of incarceration.

Through the Reentry Council and other federal agency initiatives, the Administration has improved rehabilitation and reintegration opportunities in meaningful ways, including recent initiatives in the following areas:

Reducing barriers to employment.

Last month, the Department of Justice awarded \$3 million to provide technology-based career training for incarcerated adults and juveniles. These funds will be used to establish and provide career training programs during the 6-24 month period before release from a prison, jail, or juvenile facility with connections to follow-up career services after release in the community.

The Department of Justice also announced the selection of its first-ever Second Chance Fellow, Daryl Atkinson. Recognizing that many of those directly impacted by the criminal justice system hold significant insight into reforming the justice system, this position was designed to bring in a person who is both a leader in the criminal justice field and a formerly incarcerated individual to work as a colleague to the Reentry Council and as an advisor to the Bureau of Justice Assistance Second Chance programs.

In addition, the Department of Labor awarded a series of grants in June that are aimed at reducing employment barriers, including:

- **Face Forward:** The Department awarded \$30.5 million in grants to provide services to youth, aged 14 to 24, who have been involved in the juvenile justice system. Face Forward gives youth a second chance to succeed in the workforce by removing the stigma of having a juvenile record through diversion and/or expungement strategies.
- **Linking to Employment Activities Pre-Release (LEAP):** The Department awarded \$10 million in pilot grants for programs that place One Stop Career Center/American Job Centers services directly in local jails. These specialized services will prepare individuals for employment while they are incarcerated to increase their opportunities for successful reentry.
- **Training to Work:** The Department awarded \$27.5 million in Training to Work grants to help strengthen communities where formerly incarcerated individuals return. Training to Work provides workforce-related reentry opportunities for returning citizens, aged 18 and older, who are participating in state and/or local work-release programs. The program focuses on training opportunities that lead to industry-

recognized credentials and job opportunities along career pathways.

Increasing access to education and enrichment.

High-quality correctional education — including postsecondary correctional education — has been shown to measurably reduce re-incarceration rates. In July, the Departments of Education and Justice announced the Second Chance Pell Pilot Program to allow incarcerated Americans to receive Pell Grants to pursue postsecondary education and trainings that can help them turn their lives around and ultimately, get jobs, and support their families. Since this pilot was announced, over 200 postsecondary institutions across the nation have applied for consideration.

In June, the Small Business Administration published a final rule for the Microloan Program that provides more flexibility to SBA non-profit intermediaries and expands the pool of microloan recipients. The change will make small businesses that have an owner who is currently on probation or parole eligible for microloan programs, aiding individuals who face significant barriers to traditional employment to reenter the workforce.

Expanding opportunities for justice-involved youth to serve their communities.

In October, the Corporation for National and Community Service (CNCS) and the Office of Juvenile Justice and Delinquency Prevention at the Department of Justice announced a new round of Youth Opportunity AmeriCorps grants aimed at enrolling at-risk and formerly incarcerated youth in national service projects. These grants, which include \$1.2 million in AmeriCorps funding, will enable 211 AmeriCorps members to serve through organizations in Washington, D.C. and four states: Maine, Maryland, New York, and Texas.

In addition, the Department of Labor partnered with the Department of Defense's National Guard Youth ChalleNGe program and awarded three \$4 million grants in April of this year to provide court-involved youth with work experiences, mentors, and vocational skills training that prepares them for successful entry into the workforce.

Increasing access to health care and public services.

In October, the Department of Justice announced \$6 million in awards under the Second Chance Act to support reentry programming for adults with co-occurring substance abuse and mental disorders. This funding is aimed at increasing the screening and assessment that takes place during incarceration as well as improving the provision of treatment options.

In September, the Substance Abuse and Mental Health Services Administration (SAMHSA) at HHS announced the winners of its reintegration toolkit challenge to develop software applications aimed at transforming existing resources into user-friendly tools with the potential to promote successful reentry and reduce recidivism. And in October, HHS issued

a “*Guide for Incarcerated Parents with Children in the Child Welfare System*” in order to help incarcerated parents who have children in the child welfare system, including in out-of-home-care, better understand how the child welfare system works so that they can stay in touch.” The information can be found at: <http://youth.gov/youth-topics/children-of-incarcerated-parents>.

The Social Security Administration (SSA) finalized written statewide prerelease agreements in September with the Department of Corrections in Iowa and Kansas. These agreements – now covering the majority of states – ensure continuity of services for returning citizens. SSA also has prisoner SSN replacement card MOUs in place with 39 states and the Federal Bureau of Prisons. A dedicated reentry webpage is accessible at www.socialsecurity.gov/reentry.

Increasing reentry service access to incarcerated veterans.

In September, the Department of Labor's Veterans' Employment and Training Service announced the award of \$1.5 million in grants to help once incarcerated veterans considered "at risk" of becoming homeless. In all, seven grants will serve more than 650 formerly incarcerated veterans in six states.

The Department of Veterans Affairs (VA) also has developed a web-based system – the Veterans Reentry Search Service (VRSS) – that allows prison, jail, and court staff to quickly and accurately identify veterans among their populations. The system also prompts VA field staff – automatically – so that they can efficiently connect veterans with services. As of this summer, more than half of all state prison systems, and a growing number of local jails, are now using VRSS to identify veterans in their populations.

Improving opportunities for children of incarcerated parents and their families.

In October, the Federal Communications Commission (FCC) took action to make it easier for incarcerated individuals to stay in touch with their families by capping all in-state and interstate prison phone rates. The FCC also put an end to most of the fees imposed by inmate calling service providers. Studies have consistently shown that inmates who maintain contact with their families experience better outcomes and are less likely to return to prison after they are released. Reduced phone rates will make calls significantly more affordable for inmates and their families, including children of incarcerated parents, who often live in poverty and were at times charged \$14 per minute phone rates.

In October, the Department of Justice announced new grant awards to fund mentoring services for incarcerated fathers who are returning to their families. These awards will fund mentoring and comprehensive transitional services that emphasize development of parenting skills in incarcerated young fathers.

Moreover, the Office of Juvenile Justice and Delinquency Prevention at the Department of

Justice has awarded \$1 million to promote and expand services to children who have a parent who is incarcerated in a Federal Bureau of Prisons (BOP) correctional facility. This program aims to provide opportunities for positive youth development, and to identify effective strategies and best practices that support children of incarcerated parents, including mentoring and comprehensive services that facilitate healthy and positive relationships. In addition to engaging the parent while he or she is incarcerated, this solicitation also supports the delivery of transitional reentry services upon release.

Private Sector Commitments to Support Reentry.

The Center for Employment Opportunities (CEO), an organization that provides comprehensive employment services to people with recent criminal convictions, has committed to more than double the number of people served from 4,500 to 11,000 across existing geographies and 3-5 new states. This winter, CEO will open in San Jose with support from Google and in the next year, the team will launch in Los Angeles. This growth has been catalyzed by federal investments, including support from the American Recovery and Reinvestment Act, the Social Innovation Fund, and a Department of Labor Pay for Success Project.

In addition, Cengage Learning will roll out Smart Horizons Career Online Education in correctional facilities in up to four new states over the next 12 months, providing over 1,000 new students with the opportunity to earn a high-school diploma and/or career certificate online. Smart Horizons Career Online Education is the world's first accredited online school district, with a focus on reaching underserved populations. The program has been piloted in Florida with 428 students who have received diplomas or certificates.



Fair Chance Employment

Ban the Box

U.S. Cities, Counties, and States Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions

Beth Avery
Phil Hernandez

September 2018

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About NELP

For almost 50 years, the National Employment Law Project (NELP) has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing. For more information, visit us at www.nelp.org.

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Introduction

Nationwide, 33 states and over 150 cities and counties have adopted what is widely known as “ban the box” so that employers consider a job candidate’s qualifications first—without the stigma of a conviction or arrest record. Borne out of the work of [All of Us or None](#), these initiatives 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.

Momentum for these policies has grown exponentially, particularly in recent years. At the national level, President Obama [endorsed](#) ban-the-box by directing federal agencies to delay inquiries into job applicants’ records until later in the hiring process.

33 states,
the District of
Columbia, and over
150 cities and
counties have
adopted a
ban-the-box or
fair-chance policy.

Representing nearly every region of the country, a total of 31 states have adopted statewide laws or policies—Arizona (2017), California (2017, 2013, 2010), Colorado (2012), Connecticut (2016, 2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Indiana (2017), Kansas (2018), Kentucky (2017), Louisiana (2016), Maryland (2013), Massachusetts (2010), Michigan (2018), Minnesota (2013, 2009), Missouri (2016), Nebraska (2014), Nevada (2017), New Jersey (2014), New Mexico (2010), New York (2015), Ohio (2015), Oklahoma (2016), Oregon (2015), Pennsylvania (2017), Rhode Island (2013), Tennessee (2016), Utah (2017), Vermont (2016, 2015), Virginia (2015), Washington (2018), and Wisconsin (2016).

Eleven states—California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington—have also mandated the removal of conviction history questions from job applications for *private* employers, a change that advocates embrace as the next step in the evolution of these policies.

11 states and
17 cities and
counties extend
their fair-chance
laws to private
employment.

In addition to these eleven states with private-sector laws, the District of Columbia and 31 cities and counties now extend their fair-chance hiring policies to government contractors. Seventeen of those localities—Austin, Baltimore, Buffalo, Chicago, Columbia (MO), the District of Columbia, Kansas City (MO), Los Angeles, Montgomery County (MD), New York City, Philadelphia, Portland (OR), Prince George’s County (MD), Rochester, San Francisco, Seattle, and Spokane (WA)—extend their local fair-chance hiring laws to private employers within their jurisdictions.

More jurisdictions are also adopting policies that do more than “ban the box”; many incorporate the best practices set forth in the 2012 U.S. Equal Employment Opportunity Commission (EEOC) [guidance](#) on the use of arrest and conviction records in employment decisions, and others adopt innovative strategies such as [targeted hiring](#). Robust [fair-chance hiring laws](#) delay records-related inquiries until after a [conditional offer](#) of employment and ensure a fairer decision-making process by requiring employers to consider the job-relatedness of a conviction, time passed, and mitigating circumstances or rehabilitation evidence.

Three-fourths of the U.S. population lives in a jurisdiction that has banned the box.

Tallying up the population of the states and localities that have adopted a fair-chance law or policy, now over 249 million people in the United States—approximately three-fourths of the U.S. population—live in a jurisdiction with some form of ban-the-box or fair-chance policy.

Fair-chance policies benefit everyone, not just people with records, because they're good for families, local communities, and the overall economy. At an [event](#) in Oakland for employers to discuss reentry issues, one business owner spoke to the personal benefit of hiring people with records. "I've seen how a job makes all the difference," says Derreck B. Johnson, founder and president of Home of Chicken and Waffles in Oakland. "When I give someone a chance, and he becomes my best employee, I know that I'm doing right by my community."

This resource guide documents the numerous [states](#) and [localities](#) that have taken steps to remove barriers to employment for qualified workers with records. A [chart summarizing all state and local policies nationwide](#) appears at the end of this guide.

To support your state and local efforts to enact a fair-chance policy, check out NELP's [Fair Chance – Ban the Box Toolkit](#), which provides a step-by-step guide for advocates desiring to launch a ban-the-box campaign. Embedded in the Toolkit is a range of resources to help draft a law, build your network, support your outreach, and even develop your media plan. Here are just a few of those resources:

- A [one-page factsheet](#), explains the basics of the policy.
- A [Best Practices and Model Policies guide](#) provides model laws.
- The [Research Summary](#) is a compilation of supportive research.

For additional information, contact staff attorney Beth Avery at bavery@nelp.org

List of All Ban-the-Box & Fair-Chance Laws and Policies by State

ALABAMA

[BIRMINGHAM, AL](#)

ARIZONA (state policy)

[GLENDALE, AZ](#)

[MARICOPA COUNTY, AZ](#)

[PHOENIX, AZ](#)

[PIMA COUNTY, AZ](#)

[TEMPE, AZ](#)

[TUCSON, AZ](#)

ARKANSAS

[PULASKI COUNTY, AR](#)

CALIFORNIA (state law)

[ALAMEDA COUNTY, CA](#)

[BERKELEY, CA](#)

[CARSON, CA](#)

[COMPTON, CA](#)

[EAST PALO ALTO, CA](#)

[LOS ANGELES, CA](#)

[OAKLAND, CA](#)

[PASADENA, CA](#)

[RICHMOND, CA](#)

[SACRAMENTO, CA](#)

[SAN FRANCISCO, CA](#)

[SANTA CLARA COUNTY, CA](#)

COLORADO (state law)

[DENVER, CO](#)

CONNECTICUT (state law)

[BRIDGEPORT, CT](#)

[HARTFORD, CT](#)

[NEW HAVEN, CT](#)

[NORWICH, CT](#)

DELAWARE (state law)

[NEW CASTLE COUNTY, DE](#)

[WILMINGTON, DE](#)

DISTRICT OF COLUMBIA

(WASHINGTON D.C.) (law)

FLORIDA

[BROWARD COUNTY, FL](#)

[CLEARWATER, FL](#)

[DAYTONA BEACH, FL](#)

[FORT MYERS, FL](#)

[GAINESVILLE, FL](#)

[JACKSONVILLE, FL](#)

[MIAMI-DADE COUNTY, FL](#)

[ORLANDO, FL](#)

[POMPAÑO BEACH, FL](#)

[ST. PETERSBURG, FL](#)

[TAMPA, FL](#)

[TALLAHASSEE, FL](#)

[SARASOTA, FL](#)

GEORGIA (state policy)

[ALBANY, GA](#)

[ATLANTA, GA](#)

[AUGUSTA, GA](#)

[CHEROKEE COUNTY, GA](#)

[COLUMBUS, GA](#)

[FULTON COUNTY, GA](#)

[MACON-BIBB COUNTY, GA](#)

HAWAII (state law)

IOWA

[JOHNSON COUNTY, IA](#)

[LINN COUNTY, IA](#)

ILLINOIS (state law)

[CHICAGO, IL](#)

INDIANA (state policy)

[INDIANAPOLIS, IN](#)

KANSAS (state policy)

[JOHNSON COUNTY, KS](#)
[KANSAS CITY, KS](#)
[TOPEKA, KS](#)

KENTUCKY (state policy)

[LOUISVILLE, KY](#)

LOUISIANA (state law)

[BATON ROUGE, LA](#)
[NEW ORLEANS, LA](#)

MARYLAND (state law)

[BALTIMORE, MD](#)
[MONTGOMERY COUNTY, MD](#)
[PRINCE GEORGE'S COUNTY, MD](#)

MASSACHUSETTS (state law)

[BOSTON, MA](#)
[CAMBRIDGE, MA](#)
[WORCESTER, MA](#)

MICHIGAN (state policy)

[ANN ARBOR, MI](#)
[DETROIT, MI](#)
[EAST LANSING, MI](#)
[GENESEE COUNTY, MI](#)
[KALAMAZOO, MI](#)
[MUSKEGON COUNTY, MI](#)

MINNESOTA (state law)

[MINNEAPOLIS, MN](#)
[ST. PAUL, MN](#)

MISSOURI (state policy)

[COLUMBIA, MO](#)
[JACKSON COUNTY, MO](#)
[KANSAS CITY, MO](#)
[ST. LOUIS, MO](#)

NEBRASKA (state law)

NEVADA (state law)

[NORTH LAS VEGAS](#)

NEW JERSEY (state law)

[ATLANTIC CITY, NJ](#)
[NEWARK, NJ](#)

NEW MEXICO (state law)

NEW YORK (state policy)

[ALBANY COUNTY, NY](#)
[BUFFALO, NY](#)
[DUTCHESS COUNTY, NY](#)
[ITHACA, NY](#)
[KINGSTON, NY](#)
[NEWBURGH, NY](#)
[NEW YORK, NY](#)
[ROCHESTER, NY](#)
[SYRACUSE, NY](#)
[TOMPKINS COUNTY, NY](#)
[ULSTER COUNTY, NY](#)
[WESTCHESTER COUNTY, NY](#)
[WOODSTOCK, NY](#)
[YONKERS, NY](#)

NORTH CAROLINA

[ASHEVILLE, NC](#)
[BUNCOMBE COUNTY, NC](#)
[CARRBORO, NC](#)
[CHARLOTTE, NC](#)
[CUMBERLAND COUNTY, NC](#)
[DURHAM CITY, NC](#)
[DURHAM COUNTY, NC](#)
[FORSYTH COUNTY, NC](#)
[MECKLENBURG COUNTY, NC](#)
[NEW HANOVER COUNTY, NC](#)
[SPRING LAKE, NC](#)
[WAKE COUNTY, NC](#)
[WILMINGTON, NC](#)
[WINSTON-SALEM, NC](#)

OHIO (state law)

[ALLIANCE, OH](#)
[AKRON, OH](#)
[CANTON, OH](#)
[CINCINNATI, OH](#)
[CLEVELAND, OH](#)
[CUYAHOGA COUNTY, OH](#)
[DAYTON, OH](#)
[FRANKLIN COUNTY, OH](#)
[HAMILTON COUNTY, OH](#)
[LUCAS COUNTY, OH](#)
[MASSILLON, OH](#)
[NEWARK, OH](#)
[STARK COUNTY, OH](#)
[SUMMIT COUNTY, OH](#)
[WARREN, OH](#)
[YOUNGSTOWN, OH](#)

OKLAHOMA (state policy)

OREGON (state law)

[MULTNOMAH COUNTY, OR](#)
[PORTLAND, OR](#)

PENNSYLVANIA (state policy)

[ALLEGHENY COUNTY, PA](#)
[ALLENTOWN, PA](#)
[BEAVER COUNTY, PA](#)
[BETHLEHEM, PA](#)
[LANCASTER, PA](#)
[NORTHAMPTON COUNTY, PA](#)
[PHILADELPHIA, PA](#)
[PITTSBURGH, PA](#)
[READING, PA](#)
[YORK, PA](#)

RHODE ISLAND (state law)

[PROVIDENCE, RI](#)

SOUTH CAROLINA

[YORK COUNTY, SC](#)

TENNESSEE (state law)

[CHATTANOOGA, TN](#)
[HAMILTON COUNTY, TN](#)
[MEMPHIS, TN](#)
[NASHVILLE, TN](#)

TEXAS

[AUSTIN, TX](#)
[DALLAS COUNTY, TX](#)
[SAN ANTONIO, TX](#)
[TRAVIS COUNTY, TX](#)

UTAH (state law)

VERMONT (state law)

VIRGINIA (state policy)

[ALEXANDRIA, VA](#)
[ARLINGTON COUNTY, VA](#)
[BLACKSBURG, VA](#)
[CHARLOTTESVILLE, VA](#)
[DANVILLE, VA](#)
[FAIRFAX COUNTY, VA](#)
[FREDERICKSBURG, VA](#)
[HARRISONBURG, VA](#)
[HENRY COUNTY, VA](#)
[MONTGOMERY COUNTY, VA](#)
[NEWPORT NEWS, VA](#)
[NORFOLK, VA](#)
[PETERSBURG, VA](#)
[PORTSMOUTH, VA](#)
[PRINCE WILLIAM COUNTY, VA](#)
[RICHMOND, VA](#)
[ROANOKE, VA](#)
[STAUNTON, VA](#)
[VIRGINIA BEACH, VA](#)

WASHINGTON (state law)

[PIERCE COUNTY, WA](#)
[SEATTLE, WA](#)
[SPOKANE, WA](#)
[SPOKANE COUNTY, WA](#)

WISCONSIN (state law)

[DANE COUNTY, WI](#)

[MADISON, WI](#)

[MILWAUKEE, WI](#)

[MILWAUKEE COUNTY, WI](#)

33 Ban-the-Box & Fair-Chance States

(Listed in alphabetical order.)

1. **ARIZONA EXECUTIVE ORDER (2017) (APPLIES TO EMPLOYMENT IN THE EXECUTIVE BRANCH)** On November 6, 2017, Governor Doug Ducey (R) issued [Executive Order 2017-07](#), which prohibits certain state agencies from inquiring into an applicant's conviction or arrest history until after submission of a job application and an initial interview. Exceptions exist, however, for positions for which state or federal law prohibits a person from holding the job because of a past offense. The order also clarifies that convictions of certain crimes may preclude an applicant from holding certain positions. By July 1, 2018, the Department of Administration and Office of Economic Opportunity shall recommend how to measure the success of the executive order.

Commentary: When signing the order, Governor Ducey stated, "All Arizonans—no matter their background or past mistakes—deserve the chance to make a living and a better life for themselves and their families. If you served your time and paid your debt to society, you should have the opportunity at a real second chance. This is not only right, it will mean more people with jobs, and less people returning to prison."

2. **CALIFORNIA ASSEMBLY BILL 1008 (2017) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** [Signed on October 14, 2017](#) by Governor Edmund "Jerry" Brown (D), [AB 1008 \(the "Fair Chance Act"\)](#) requires public- and private-sector employers to delay any conviction background check as well as any questions about or consideration of a job applicant's conviction history until after the employer extends a conditional offer of employment to the applicant. When reviewing any conviction history, 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 (i.e., the EEOC factors). The law also requires written preliminary notice to the job applicant of the employer's intent to rescind the conditional job offer; time for the applicant to respond with evidence of inaccuracies in the record, rehabilitation, or mitigating circumstances; and final written notice rescinding the job offer. With limited exceptions, AB 1008 applies to private and public employers with at least five employees. The bill was sponsored by the [National Employment Law Project](#), [Legal Services for Prisoners with Children](#), [All of Us or None](#), and the [Time for Change Foundation](#). The bill was introduced by Asm. Kevin McCarty (D). For more information, see the [press release](#) and [worker](#) and [employer](#) factsheets issued by the sponsoring organizations.

Commentary: AB 1008 (2017) replaced [AB 218 \(2013\)](#), a law previously signed by Governor Brown that required government employers to remove conviction inquiries from job applications and delay conviction background checks until after the agency determined that the applicant satisfied the "minimum employment qualifications" for the position. The law applied to state agencies, cities, counties, and special districts. AB 218 was initially introduced in 2012 as AB 1831. Sponsoring organizations included the [National Employment Law Project](#), [Legal Services for Prisoners with Children](#), [All of](#)

California became
the 10th state to
adopt a fair-chance
hiring law for
private-sector
employment.

[Us or None](#), and [PICO California](#). More than 100 organizations—spanning labor, interfaith, reentry, civil rights, employment, criminal justice, and others groups—formed a coalition that strongly supported the bill. AB 218 was also endorsed by several major newspapers, including [The New York Times](#), [Los Angeles Times](#), and [Sacramento Bee](#). Introduced by Asm. Roger Dickinson (D), see [bill information](#). The statute became operative on July 1, 2014. On the effective date of the legislation, NELP released a [survey](#) of the largest cities and counties in California, which [revealed statewide implementation of the law](#).

Before AB 218, the administration of Governor Arnold Schwarzenegger (R) adopted a policy in 2010 that removed any conviction question from state job applications.

In addition to these ban-the-box policies, California Labor Code Section 432.7 also prohibits public and private employers from inquiring into, or basing a hiring decision on, any arrest that did not result in conviction (with limited exceptions), diversion program participation, sealed or expunged (i.e., “judicially dismissed”) convictions, and [juvenile court records](#).

The Fair Employment and Housing Council of the California Department of Fair Employment and Housing (DFEH) [issued regulations](#) pertaining to the use of conviction or arrest history in employment decisions, effective July 1, 2017. The regulations, which apply to public and private employers, detail how consideration of criminal history may violate the California Fair Employment and Housing Act and other laws, explain what employers and employees need to demonstrate to show compliance or a violation, and require an individualized assessment—in line with the EEOC factors—when the applicant is a member of a protected class that is adversely impacted by consideration of criminal history.

3. ***COLORADO HOUSE BILL 1263 (2012) (APPLIES TO STATE EMPLOYMENT AND LICENSING)*** Signed on May 29, 2012 by Governor John Hickenlooper (D), [HB 1263](#) prohibits state agencies and licensing agencies from performing a background check until the agency determines that the applicant is a finalist for the position or the applicant receives a conditional offer. In determining whether a conviction disqualifies an applicant from employment or licensing, the agency must consider (1) the nature of the conviction; (2) the direct relationship of the conviction to the job; (3) rehabilitation and good conduct; and (4) the time elapsed since the conviction. The law further prevents agencies from using arrests not leading to conviction in deciding whether to deny or withdraw an offer. An agency may not disqualify an applicant based on an expunged, sealed, or pardoned conviction or charges dismissed pursuant to a deferred judgment, unless the agency first considers the four factors listed above.

This law does not apply when a statute bars licensing based on convictions nor to certain public safety or correction-related jobs. With some exceptions, the law prohibits agencies from issuing job advertisements that include blanket bans stating that a person with a criminal record may not apply. The [Colorado Criminal Justice Reform Coalition](#)

Colorado law
“bans the box”
from occupational
licensing
applications in
addition to public
employment
applications.

supported the legislation. Introduced by Rep. Claire Levy (D), see [bill information](#). The law took effect on August 8, 2012.

Commentary: Prior to the 2012 bill, Colorado state employment applications omitted any inquiries about applicants’ convictions or arrests. Thus, unlike the typical fair hiring legislation, this bill does not include language that requires removing the question about convictions on the application.

For more on “fair chance licensing,” see NELP’s [2016 report](#) and [advocacy toolkit](#).

4. **CONNECTICUT HOUSE BILL 5237 (2016) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** Signed on June 1, 2016 by Governor Dannel P. Malloy (D), [HB 5237](#) prohibits any employers—public or private—from inquiring about arrest and conviction history information on an initial employment application. Employers may not inquire about any erased records at any time. Prior convictions for which the prospective employee received a provisional pardon or certificate of rehabilitation cannot be the sole basis for discharge. The law also established a fair chance employment task force. The law took effect on January 1, 2017.

Commentary: Prior legislation, [HB 5207](#), took effect in 2010 and required state employers to wait until an applicant had been deemed otherwise qualified for the position before obtaining a criminal background report.

5. **DELAWARE HOUSE BILL 167 (2014) (APPLIES TO PUBLIC EMPLOYMENT)** Signed on May 8, 2014 by Governor Jack A. Markell (D), [HB 167](#), applies to the state, its agencies, and political subdivisions, such as cities and counties. This bill prohibits public employers from inquiring into or considering criminal or credit histories of an applicant until after the completion of the first interview. When reviewing a criminal history, the public employer must consider: (1) nature of the offense; (2) time passed; and (3) nature of the job. Police forces and other positions with a statutory mandate for background checks are exempted. Governor Markell [endorsed](#) the bill in his 2014 State of the State address. The bill was introduced by Rep. James (“J.J.”) Johnson (D), see [bill information](#). See [NELP’s press release](#). The law took effect on November 4, 2014 (180 days after enactment).

Commentary: In the initial bill version, the public employer was directed to consider a criminal record using a combination of factors in the [EEOC Guidance](#) and the [1979 Uniform Law Commissioners’ Model Sentencing and Corrections Act](#). These factors clarified the job-relatedness analysis. However, the bill was amended and the EEOC factors above replaced the language. In addition, the provision encouraging state vendors to adopt similar policies was removed.

Georgia was the first state in the Deep South to ban the box.

6. **GEORGIA EXECUTIVE ORDER (2015) (APPLIES TO STATE EMPLOYMENT)** Governor Nathan Deal (R) signed an [executive order](#) on February 23, 2015 which removed questions regarding criminal history from all applications for state employment. Under

the executive order, inquiries into an applicant’s criminal record are postponed until after “the initial stage of the state employment application process.” In addition, the order prohibits the use of an applicant’s criminal record as an automatic bar to employment, and provides applicants an opportunity to dispute the accuracy and relevance of any disqualifying conviction relied upon for rejection. Certain “sensitive governmental positions” are exempt. See [NELP’s press release](#).

Commentary: Georgia is the first state in the Deep South to adopt a fair hiring policy. A broad coalition of advocacy groups, including Atlantans Building Leadership for Empowerment, the Georgia Justice Project, 9to5 Atlanta, and various faith-based organizations, supported the executive order.

In 1998, Hawaii became the first state to delay conviction history inquiries; the law applies to private employers.

7. **HAWAII HOUSE BILL 3528 (1998) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** On July 15, 1998, Hawai’i became the first state to adopt a fair-chance law applicable to both public and private employment. The statute, [Haw. Rev. Stat. § 378-2.5](#), prohibits employers from inquiring into an applicant’s conviction history until after a conditional offer of employment has been made. The offer may be withdrawn if the applicant’s conviction bears a “rational relationship” to the duties and responsibilities of the position sought. Under the law, employers may only consider an employee’s conviction record within the most recent ten years, excluding periods of incarceration. Prior to the passage of HB 3528, the definition of unlawful discriminatory practices (§ 378-2) included “arrest and court record” as an impermissible reason for an employer to “refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual.”

Commentary: Not only was Hawai’i the first state to adopt a law delaying conviction history inquiries, but the state’s law remains one of the strongest in the United States. NELP recommends Hawai’i’s approach of prohibiting employers from inquiring into a conviction until [after a conditional offer](#) as one of the strongest means to change employer behavior of categorically rejecting the job applications of people with records.

8. **ILLINOIS HOUSE BILL 5701 (2014) (APPLIES TO PRIVATE EMPLOYERS); EXECUTIVE ORDER (2013) (APPLIES TO STATE EMPLOYMENT)** Introduced on February 14, 2014, [HB 5701](#) (the “Job Opportunities for Qualified Applicants Act”) applies to employers with 15 or more employees and employment agencies. Employers may not inquire into an applicant’s criminal record until the applicant has been selected for an interview by the employer or until after a conditional offer of employment is made to the applicant. Positions that have state or federal law exclusions based on certain convictions are exempted. The bill authorizes the imposition of warnings and civil penalties against violators. The bill was signed by Governor Pat Quinn on July 19, 2014. Introduced by Rep. Rita Mayfield (D), see [bill information](#). See [NELP’s press release](#). The law took effect on January 1, 2015.

Commentary: The bill applies to only private employers because Governor Pat Quinn issued an executive order in 2013, [Order 1](#), which required the Illinois Bureau of

Personnel in the Department of Central Management Services (CMS) to modify the Application for State Employment (the "[CMS100](#)") for all state employing agencies, boards, and commissions.

9. **INDIANA EXECUTIVE ORDER (2017) (APPLIES TO STATE EMPLOYMENT IN THE EXECUTIVE BRANCH)** On June 29, 2017, Governor Eric J. Holcomb (R) issued [Executive Order 17-15](#), requiring the removal of "questions regarding convictions and criminal history" on job applications for positions within the state's executive branch. As the executive order states, background checks, "including information pertaining to a person's criminal history, typically will be conducted at a later point in the application and hiring process." The executive order became effective on July 1, 2017.

Commentary: Governor Holcomb also signed [Senate Bill 312](#) into law in April 2017. This restrictive law prohibits local governments from adopting legislation preventing employers from "obtaining or using criminal history information during the hiring process to the extent allowed by federal or state law, rules, or regulations."

10. **KANSAS EXECUTIVE ORDER (2018) (APPLIES TO STATE EMPLOYMENT IN EXECUTIVE BRANCH)** On May 2, 2018, Governor Jeff Colyer (R) issued an executive order to ban the box from all executive branch hiring. [Executive Order 18-12](#) instructs all departments, agencies, boards, and commissions under the governor's jurisdiction to ensure that job applicants are not asked about their conviction or arrest records "during the initial stage of a state employment application." The governor further ordered that a conviction record shall not automatically disqualify an applicant from being interviewed. The order includes an exception for positions for which an applicant would be ineligible because of a certain conviction record; such positions are excluded from the prohibitions against conviction record inquiries on the initial application and automatic disqualifications.

Commentary: In a [press release](#), Governor Colyer explained his rationale for the policy change: "Studies have shown that gainful employment is a major factor in reducing recidivism rate[s] . . . This is simply about treating people as individuals and allowing them to explain their circumstances at a later point in the process."

11. **KENTUCKY EXECUTIVE ORDER (2017) (APPLIES TO STATE EMPLOYMENT IN EXECUTIVE BRANCH)** On February 1, 2017, Governor Matt Bevin (R) signed an [executive order](#) removing "questions regarding convictions and criminal history" from applications for jobs within the state executive branch. Instead, such inquiries must be delayed until the state agency contacts the applicant to offer an interview for the position. The executive order took effect immediately upon signing. See Governor Bevin's [press release](#).

Commentary: Governor Bevin cited the need for "leadership by example" upon signing the order and challenged private businesses to remove conviction inquiries from their job applications. "It's fair, it's appropriate, it's even-handed, and it's what we're going to

Kentucky became the 25th state and the first in 2017 to ban the box.

do here in Kentucky. And it is my hope, my sincere hope, that many of our employers in this state will consider doing the same thing.”

- 12. LOUISIANA HOUSE BILL 266 (2016) (APPLIES TO SOME STATE EMPLOYMENT)** Signed on June 8, 2016 by Governor John Bel Edwards (D), [HB 266, now Act 398](#), prohibits many state government employers from inquiring into an applicant’s criminal history until after the applicant has been given an opportunity to interview. If no interview is to take place, employers may not ask about an applicant’s record until after a conditional offer of employment is extended to that applicant. The law applies to only “unclassified” state positions and further exempts law enforcement, corrections, and other positions for which the law requires a background check. The bill was introduced by Reps. C. Denise Marcelle (D) and Patricia Haynes Smith (D). The law took effect on August 1, 2016. See [bill information](#).

On May 3, 2017, following a [public hearing](#), the State Civil Service Commission adopted [Civil Service Rule 22.4.1](#) prohibiting state employers from inquiring about job applicants’ felony history on application forms for positions in the classified service. Instead, state employers may inquire about an applicant’s record during an interview or after a conditional offer of employment. The policy makes an exception for positions for which a legal restriction prohibits hiring an applicant with a particular conviction history.

Commentary: Louisiana was the first state in the Deep South to adopt a fair hiring policy via legislative action. The 2016 bill applied to only unclassified state employment, but a 2017 rule change extended the policy to classified state positions as well.

- 13. MARYLAND SENATE BILL 4 (2013) (APPLIES TO STATE EMPLOYMENT)** [Signed on May 2, 2013](#) by Governor Martin O’Malley (D), [SB 4](#) adds [Article 2-203, Chapter 160](#) to the state code and prohibits state government employers from inquiring into the criminal history of an applicant for employment until the applicant has been provided an opportunity for an interview. Exceptions to the law include positions within the Department of Corrections, the Office of the Sheriff for any county, or where a background check is required by law. Introduced by Sen. Catherine Pugh (D), see [bill information](#). The statute took effect on October 1, 2013.

Commentary: [Job Opportunities Task Force](#) led efforts on the bill for three prior years, which built a strong statewide coalition. The law includes a sunset provision of June 30, 2018.

- 14. MASSACHUSETTS SENATE BILL 2583 (2010) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** Governor Deval Patrick (D) signed [Chapter 256 of the Acts of 2010](#) on August 6, 2010. Under [Senate Bill 2583](#), employers are prohibited from using an initial written employment application to ask whether an applicant has been previously convicted unless there is a legal restriction that applies to the specific job or occupation. The law requires that applicants receive a copy of their criminal history report (i) prior

to being questioned about their history; and (ii) if an adverse decision is made based on the report. As a self-auditing mechanism, individuals are able to determine if the report was run through the state system. With certain exceptions, criminal records provided by the state may only contain (1) felony convictions for 10 years following disposition; (2) misdemeanor convictions for 5 years following disposition; and (3) pending criminal charges. The legislation was supported by a broad coalition (including [Massachusetts Law Reform Institute](#) and [Boston Workers Alliance](#) (BWA)). See [bill information, MCAD factsheet](#), and [BWA factsheet](#). The law took effect on November 4, 2010.

Commentary: The bill uniquely tackles the issue of inaccurate commercial background checks by creating an incentive for employers to use the state’s database, which then limits the length of time that criminal history information is available. It also ensures that a denied applicant receives a copy of his or her record, paralleling one component of the federal consumer protection law, the [Fair Credit Reporting Act](#), which applies to commercially-prepared background checks.

15. MICHIGAN EXECUTIVE ORDER (2018) (APPLIES TO STATE EMPLOYMENT)

On September 7, 2018, Governor Rick Snyder issued [Executive Directive 2018-4](#), regarding the “Use of Criminal History in State Employment Screening.” In short, it prohibits state departments and agencies from including questions about conviction or arrest history on job applications or job postings. The directive explains that, while an applicant’s record may be considered during the “interview stage” of the hiring process, “it should not be used as a reason to automatically exclude an applicant for consideration at the outset of the process.” The directive includes an exception for applications and postings for specific positions into which the department or agency is prohibited by federal or state law from hiring a candidate with a criminal history. Although not binding on the Michigan Department of State and the Michigan Department of the Attorney General, the directive encourages those departments to voluntarily comply with its terms. The directive takes effect October 1, 2018.

Commentary: Upon issuing the executive directive, Governor Snyder also [announced](#) that the Michigan Department of Licensing and Regulatory Affairs (LARA) had recently removed the question about past felony convictions from its applications for certain occupational and construction licenses. (According to its [website](#), the Licensing Division of LARA “regulates 15 occupational professions in Michigan under the Michigan Occupational Code.”)

In 2015, Governor Snyder approved a [new state law](#) that prohibits cities and counties from adopting ban-the-box ordinances that govern private employers.

16. MINNESOTA SENATE BILL 523 (2009, 2013) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT) Signed on May 13, 2013 by Governor Mark Dayton (D), [SF 523](#) amends [Minn. Stat. § 364 et seq.](#) This amendment expands the law from 2009 to cover not only public-sector hiring, but also adds that private employers may not inquire into an applicant’s criminal history until after the applicant has been selected for an interview

Michigan’s was
the 8th
executive order
signed by a
Republican
governor.

or before a conditional offer of employment. It also establishes penalties for private employers including fines for failure to comply. Behind the legislative win, the [Minnesota Second Chance Coalition](#) built on the 2009 success of [HF 1301](#), which added section 364.021 to [Minn. Stat. § 364 et seq.](#) applying ban-the-box to public employment. Longstanding statutory protections preceding that bill, dating back to 1974, include a prohibition against disqualifying applicants from public employment or licensure unless the conviction is “directly related” to the position of employment or occupational license sought, a requirement that job-related factors be considered, and a ban on using records of arrest not followed by valid conviction, annulled or expunged convictions, and misdemeanor convictions for which no jail sentence can be imposed when evaluating applicants for public employment or licensure. Introduced by Sen. Bobby Joe Champion (DFL), see [bill information](#). The law took effect on January 1, 2014.

Commentary: HF 1301 was signed by then-Governor Tim Pawlenty (R). Like HF 1301, SF 523 was an example of bipartisanship. Spurred by the state legislation, the Minneapolis-based retailer [Target announced](#) it would ban the box nationally. To support implementation, the Minnesota Department of Human Rights has provided educational [materials](#) for employers.

17. MISSOURI EXECUTIVE ORDER 16-04 (2016) (APPLIES TO PUBLIC EMPLOYMENT)

Missouri Governor Jay Nixon (D) signed [Executive Order 16-04](#) on April 11, 2016, directing all departments, agencies and boards and commissions in the state’s executive branch to remove questions relating to an individual’s criminal history from initial employment applications. The order exempts applications for positions for which people with convictions would be automatically ineligible. Full implementation of the order was required within 90 days. See Governor Nixon’s [press release](#).

Commentary: When signing the order, Governor Nixon stated, “The action I’m taking today will ensure that state government continues to be a model for increasing economic opportunity, improving public safety, and strengthening communities. This is about fairness. Giving folks a fair chance to redeem their lives, support their families and make a contribution to their communities is a value we share as Missourians and as Americans.”

18. NEBRASKA LEGISLATIVE BILL 907 (2014) (APPLIES TO PUBLIC EMPLOYMENT)

Originally introduced in January 2014 as [LB 932](#), the legislation applies to public employers—the state, counties, and cities. Public employers are prohibited from inquiring into a job applicant’s criminal history until after the employer has determined the applicant meets the minimum job requirements. Law enforcement positions and other positions with mandated background check requirements are exempted, as well as school districts regarding specific information. The language of LB 932 was added as Sec. 12 to the more comprehensive prison reform legislation intended to reduce the inmate population, [LB 907](#). Governor Dave Heineman (R) signed LB 907 on April 16, 2014. Sec. 12 became operative on July 18, 2014 (three months after the 2014 legislative

session adjourned on April 17, 2014). LB 932 was introduced by Sen. Bill Avery (D), and LB 907 was introduced by Sen. Brad Ashford (D), see [bill information](#). See [NELP's press release](#).

Commentary: Although exemptions are generally unnecessary with fair-chance legislation because a background check is delayed, not prevented, exemptions can serve to assuage fears. Supporters include the City of Omaha; in fact, Mayor Jean Stothert (R) cited her support for the legislation in her 2014 [state of the city address](#).

- 19. NEVADA ASSEMBLY BILL 384 (2017) (APPLIES TO PUBLIC EMPLOYMENT)** After initially introducing a similar bill in 2015, Assemblyman Tyrone Thompson (D) reintroduced ban-the-box legislation in 2017 as [Assembly Bill 384](#). Governor Brian Sandoval (R) signed the bill into law on June 3, 2017. In the context of public employment, the law provides—with certain exceptions—that an employer may not consider the particular criminal history of an applicant until after (1) the final in-person interview or (2) a conditional offer of employment has been extended, whichever comes first. The law generally requires employers, when assessing applicants with criminal records, to consider EEOC-type factors, including evidence of the applicant's rehabilitation. The law takes effect January 1, 2018. The law grants enforcement authority to the Nevada Equal Rights Commission (NERC), clarifying that failing to follow the procedural requirements of the act constitutes an unlawful employment practice about which any injured person may complain to NERC.

Commentary: This law—which will benefit the nearly 600,000 Nevadans with an arrest or conviction record—builds on the ban-the-box administrative policy approved by the City of North Las Vegas in 2016. Committee testimony and other input from a city representative helped to garner support for AB 384. Consulting with NERC while designing the enforcement provisions of the bill and obtaining committee testimony from a NERC representative also helped to reduce opposition to AB 384.

- 20. NEW JERSEY ASSEMBLY HOUSE BILL 1999 AND SENATE BILL 1484 (2014) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** Initial versions were introduced in 2013, but were reintroduced in 2014 as A1999 and [S1484](#), known as “The Opportunity to Compete Act” (OTCA). A heavily amended [A1999](#) was signed by Governor Chris Christie (R) on August 11, 2014. The final language is available [here](#). The bill mandates that public and private employers cannot inquire into a candidate's criminal history until the employer has conducted the first interview with the candidate. Employers may not consider expunged or pardoned convictions when making an employment decision. Introduced to Senate by Sens. Sandra B. Cunningham (D), M. Teresa Ruiz (D), and Raymond J. Lesniak (D) and introduced to Assembly by Asms. Bonnie Watson Coleman (D), Jerry Green (D), and L. Grace Spencer (D), see [bill information](#). See [NELP's press release](#). The law took effect on March 1, 2015.

Republican
Governor
Christie signed
New Jersey's
private-sector
law in 2014.

On December 7, 2015, the New Jersey Department of Labor and Workforce Development adopted implementing regulations ([N.J.A.C. 12:68](#)).

On December 20, 2017, Governor Christie signed [S3306](#), amending the state’s ban-the-box law to expressly prohibit both employer inquiries into expunged offenses and online record searches during the initial employment application process.

Commentary: Leading up to the introduction of the legislation, the [New Jersey Institute for Social Justice](#) engaged the private employer community through business roundtables as discussed in [NELP’s webinar](#). The original version of the bill, available [here](#), included numerous strong provisions, such as delaying inquiry until a conditional offer.

21. NEW MEXICO SENATE BILL 254 (2010) (APPLIES TO PUBLIC EMPLOYMENT) On March 8, 2010, Governor Bill Richardson (D) signed [S.B. 254](#) into law adding [N. M. Stat. § 28-2-3](#) to the existing “Criminal Offender Employment Act” (1974). The bipartisan effort resulted in public employers, including cities and counties, being prohibited from inquiring into an applicant’s conviction history on an initial employment application until an applicant has been “selected as a finalist.” The law permits convictions to be considered when determining eligibility for public employment or licensure, but convictions “may not operate as an automatic bar.” The law further prohibits, for employment and licensing, the use of records of arrest not leading to conviction and misdemeanor convictions not involving moral turpitude. [Drug Policy Alliance New Mexico](#) led the efforts on the bill, which was introduced by Sen. Clinton D. Harden (R). See [bill information](#). The statute took effect on May 19, 2010.

Commentary: The bill amended existing law, which permits a “moral turpitude” conviction that “directly relates” to employment to be the basis for denial. The existing law requires a written statement to the applicant of the reasons for denial and provides the parameters for a presumption of rehabilitation (§ 28-2-4).

In 2017, the New Mexico legislature passed [S.B. 78](#), which would have prohibited conviction inquiries on initial job applications for private employers. However, Governor Susana Martinez (R) [vetoed](#) the legislation.

22. NEW YORK (2015) (APPLIES TO STATE EMPLOYMENT) On September 21, 2015, Governor Andrew Cuomo (D) announced that the state would “adopt ‘fair chance hiring’ for New York State agencies.” As explained in a [press release](#) about the policy change: “applicants for competitive positions with New York State agencies will not be required to discuss or disclose information about prior convictions until and unless the agency has interviewed the candidate and is interested in hiring him or her.”

Commentary: The fair-chance hiring policy was part of a package of recommendations made by the state’s Council on Community Re-Entry and Reintegration, created in July 2014 by the governor.

New York law prohibits employers from asking about, or acting adversely in response to, arrests or charges that did not result in conviction and are not currently pending. *See* N.Y. Exec. Law § 296, ¶ 16. New York law also makes it an “unlawful discriminatory practice” for any employer or licensing authority to deny employment or licensure, or take other adverse action, based on conviction history unless either “there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual” or the employment or licensure “would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.” N.Y. Correct. Law § 752; N.Y. Exec. Law § 296, ¶ 15.

- 23. OHIO ADMINISTRATIVE POLICY HR-29 AND HOUSE BILL 56 (2015) (APPLIES TO PUBLIC EMPLOYMENT)** As of June 1, 2015, the Ohio Department of Administrative Services removed questions about conviction and arrest history from the initial application for state employment per [HR-29](#). The Department also required that every hiring decision-maker weigh [factors](#) similar to those found in the EEOC guidance. On December 22, 2015, Governor John Kasich (R) signed into law [HB 56](#), which prohibits all public employers, including cities and counties, from including any questions about criminal records on initial applications for employment. The Ohio Fair Hiring Act also prohibits a felony conviction from being used against certain classes of public employees unless the conviction occurs while that person is employed in the civil service. The law took effect on March 23, 2016.

Commentary: The Ohio Fair Hiring Act arose from the recommendations and advocacy of a strong coalition led by the [Ohio Justice & Policy Center](#) and the [Ohio Organizing Collaborative](#).

- 24. OKLAHOMA (2016) EXECUTIVE ORDER 2016-03 (APPLIES TO STATE EMPLOYMENT)** On February 24, 2016 Governor Mary Fallin (R) signed an [executive order](#) directing all state agencies to remove questions regarding convictions and criminal history from job applications. The executive order does not apply to “sensitive government positions” and positions where a felony conviction would automatically disqualify an applicant. It is intended to allow for an opportunity for applicants to discuss their conviction records and provide rehabilitation information.

Commentary: The Executive Order arose from recommendations by the Oklahoma Justice Reform Steering Committee, a broad-based advisory committee that Governor Fallin created by executive order in 2015. See Governor Fallin’s [press release](#).

- 25. OREGON HOUSE BILL 3025 (2015) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** Signed on June 25, 2015, [HB 3025](#) prohibits an employer from inquiring about an applicant’s prior criminal convictions until the initial interview with the applicant. There are exceptions for positions where an applicant with a conviction history would be automatically disqualified by law, and for law enforcement, criminal justice positions, and volunteers. The law took effect on January 1, 2016.

Commentary: A coalition of community groups and labor championed the fair hiring legislation in Oregon under the campaign [Fair Shot for All](#), which also included minimum wage, wage theft, and racial profiling legislation as part of its agenda.

26. PENNSYLVANIA ADMINISTRATIVE POLICY HR-TM001 (2017) (APPLIES TO STATE EMPLOYMENT) On May 5, 2017, Governor Tom Wolf (D) [announced](#) that state agencies would adopt a [fair-chance hiring human resources policy](#) for non-civil service positions that fall under the governor’s jurisdiction. In addition to removing questions about conviction history from job applications, the policy prohibits consideration of certain record information, including arrests, expunged convictions, and convictions not related to an applicant’s job suitability. Hiring entities are also required to consider the public’s interest in employing individuals with records when making hiring decisions. The policy includes exceptions for security personnel, law enforcement, and those working with vulnerable populations. The HR policy took effect on July 1, 2017. The Pennsylvania Civil Service Commission has announced that it will also implement the same policy for civil service jobs in the Commonwealth.

Commentary: Governor Wolf explained his rationale in a statement: “Banning the box will allow prospective applicants with criminal records to be judged on their skills and qualifications and not solely on their criminal history, while preserving a hiring agency’s ability to appropriately screen applicants as part of the hiring process.”

Existing Pennsylvania law ([18 Pa. Cons. Stat. § 9125](#)) also prohibits public and private employers from considering felony and misdemeanor convictions beyond the “extent to which they relate to the applicant’s suitability for employment in the position for which he has applied.” That statute also requires employers to notify an applicant in writing if he or she is not hired wholly or partly because of his or her criminal history.

27. RHODE ISLAND HOUSE BILL 5507 (2013) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT) Signed into law on July 15, 2013 by Governor Lincoln Chafee (D), [HB 5507](#) prohibits an employer from inquiring about an applicant’s prior criminal convictions until the first interview with the applicant. An employer may inquire about the applicant’s criminal convictions during the first interview. The law includes exceptions for positions from which an applicant with a conviction history would be automatically disqualified by law. Introduced by Reps. Scott Slater (D), Michael W. Chippendale (R), Anastasia Williams (D), Joseph S. Almeida (D), and Grace Diaz (D), see [bill information](#). The statute took effect on January 1, 2014.

Commentary: [Direct Action for Rights and Equality](#) championed the efforts for years, producing the powerful video [Beyond the Box](#).

28. TENNESSEE SENATE BILL 2440 (2016) (APPLIES TO STATE EMPLOYMENT) On April 14, 2016, Governor Bill Haslam (R) signed [SB 2440](#), which prohibits state agencies from inquiring about criminal records on any initial application form. For an applicant with a conviction record, the employer must consider the specific job duties, relationship of the

offense to the job duties, time elapsed since the offense, age of the applicant at the time of the offense, frequency and seriousness of each offense, any submitted evidence of rehabilitation, and any public policy consideration relating to the benefits for employment for applicants with past convictions. The act took effect upon its signing.

Commentary: Senate Bill 2440 is the silver lining of a ban-the-box setback for localities in Tennessee. Despite emphasis on the importance of local government control, Governor Haslam signed SB 2103 in March 2016, which prevents cities and counties in the state from expanding fair-chance laws to local private employers.

Utah's was the 8th
fair-chance law
signed by a
Republican
governor.

- 29. UTAH HOUSE BILL 156 (2017) (APPLIES TO PUBLIC EMPLOYMENT)** On March 22, 2017, Governor Gary Herbert (R) signed [HB 156](#), which prohibits public employers from requiring an applicant to disclose conviction history before an initial interview or, if no interview is conducted, before a conditional job offer. The law provides for exceptions for situations where a law requires consideration of the applicant's conviction history as well as for law enforcement, criminal justice, tax commission, or alcoholic beverage control employers, as well as for applicants that will work with children or vulnerable adults and nonemployee volunteers. The law took effect on May 8, 2017 (60 days after adjournment of the legislature).

Commentary: Sponsor [Rep. Sandra Hollins \(D\)](#), a social worker by training, has sponsored an almost identical bill in at least one prior year. Whereas the bill failed in the House in 2016, it garnered 16 co-sponsors in the 2017 session.

- 30. VERMONT HOUSE BILL 261 (2016) (APPLIES TO PRIVATE AND PUBLIC EMPLOYMENT)** [House Bill 261](#) was signed by Governor Peter Shumlin (D) on May 3, 2016 making Vermont the eighth state to apply "ban the box" to the private sector. Under the law, an employer may not request criminal record information on its initial employment application form, and the prospective employee must be permitted the opportunity to explain the information, including rehabilitation. The law took effect on July 1, 2017. See the [Governor's press release](#).

Commentary: On April 21, 2015, Governor Peter Shumlin (D) signed an [executive order](#) that eliminated all criminal records inquiries from applications for state employment.

- 31. VIRGINIA EXECUTIVE ORDER 41 (2015) (APPLIES TO STATE EMPLOYMENT)** On April 3, 2015, Governor Terry McAuliffe (D) issued [Executive Order 41](#), ordering the removal of questions relating to criminal history from applications for state employment. State employment decisions may not be based on the criminal history of an applicant unless demonstrably job-related and consistent with business necessity. Compliance with the executive order was required within 90 days of its signing. See NELP's [press release](#).

Commentary: Local advocates had been championing legislative action on "ban the box" for several years. After legislation continued to stall, advocates called for executive action.

A 2018 law makes Washington the most recent state to ban the box for the private sector.

32. WASHINGTON (2018) HOUSE BILL 1298 (APPLIES TO PRIVATE AND PUBLIC EMPLOYMENT) On [March 13, 2018](#), Governor Jay Inslee (D) signed [HB 1298 \(second substitute\)](#), banning the box for both public- and private-sector employment across Washington. The law requires employers to delay conviction record inquiries and background checks until after determining that an applicant satisfies the basic criteria for the position and is thus “otherwise qualified” for the job. The law also prohibits employers from implementing any policy that categorically excludes people with records before the determination as to whether the candidates are otherwise qualified. Moreover, employers may not advertise jobs in a way that excludes people with records from applying. The law provides for monetary penalties and grants the state attorney general’s office sole enforcement authority. The statute took effect June 7, 2018.

Commentary: Just two days after signing HB 1298, Governor Inslee signed [SB 6582](#) to also ban the box from student applications for public colleges. Washington became only the third state (after Louisiana and Maryland) to adopt a law to delay questions about conviction records on college applications, thus helping to ensure that people with records have a fair shot at college acceptance.

Even before the state’s ban-the-box law was adopted, [section 162-12-140 of the Washington Administrative Code](#) limited the types of preemployment inquiries that employers could make without running afoul of state antidiscrimination law. Under those regulations, public employers could not ask about arrests without also asking whether charges remain pending, were dismissed, or resulted in a conviction. Moreover, consideration is limited to convictions that occurred within the prior ten years and which relate to the duties of the job sought. These limits do not apply to law enforcement and certain other categories of employment.

33. WISCONSIN (2016) ASSEMBLY BILL 373 (APPLIES TO STATE EMPLOYMENT) Governor Scott Walker (R) signed [legislation](#) on February 12, 2016, which dramatically overhauled the state’s civil service system. A provision of the bill precludes the state from inquiring about a person’s record on the job application and delays inquiries until the applicant is certified for the position. The statute took effect on July 1, 2016.

Commentary: Senator Lena C. Taylor (D) [commented](#) that the law represented “terrible changes in the state civil service system.” Nevertheless, “the new law includes a ray of hope to those with a prior record.”

State (Year law was adopted or policy announced)	Relevant Statutes and Policy	Employers: Private and Public (State: S, Licensing: L, Cities and Counties: C)		Job-Related Screening*	Limits information (Arrests not leading to convictions: "Arrests"; Expunged or similar: "Expunged"; Time limit on record: "Time limit")*	Notification of denial: N; Copy of record: C*
Arizona (2017)	Executive Order 2017-07	—	Public (S)	—	—	—
California (2010, 2013, 2017)	Cal. Gov. Code § 12952; Cal. Lab. Code § 432.9 (2013, repealed 2017); administrative action (2010)	Private	Public (S, C)	Consider whether "direct and adverse relationship with the specific duties of the job"	Arrests, Expunged	N, C
Colorado (2012)	Colo. Rev. Stat. § 24-5-101	—	Public (S, L)	"Direct relationship" between conviction and job	Arrests, Expunged	—
Connecticut (2010, 2016)	Conn. Gen. Stat. § 46a-80 (2010); Conn Gen. Stat. § 31-51i (2016)	Private	Public (S, L**)	—	Arrests, Expunged	—
Delaware (2014)	Del. Code tit. 19, § 711(g); Del. Code tit. 29, § 6909B	—	Public (S, C)	Consider nature of offense and job	—	—
Georgia (2015)	Executive Order	—	Public (S)	—	—	—
Hawai'i (1998)	Haw. Rev. Stat. §§ 378-2, 378-2.5	Private	Public (S, C)	Conviction bears "rational relationship" to position	Time limit	—
Illinois (2013, 2014)	820 Ill. Comp. Stat. § 75 (2014); Executive Order 1 (2013)	Private	Public (S)	—	—	—
Indiana (2017)	Executive Order	—	Public (S)	—	—	—
Kansas (2018)	Executive Order	—	Public (S)	—	—	—
Kentucky (2017)	Executive Order	—	Public (S)	—	—	—
Louisiana (2016)	La. Rev. Stat. Ann. § 42:1701	—	Public (S)	—	—	—
Maryland (2013)	Md. Code Ann., State Pers. & Pens. § 2-203	—	Public (S)	—	—	—

* Some of these components existed prior to the legislation listed here.

**Removal of conviction inquiry from the licensing application is not required.

***Component included only in the Administrative Policy, not the state law.

State (Year reform was adopted)	Relevant Statutes and Policy	Employers: Private and Public (State: S, Licensing: L, Cities and Counties: C)		Job-Related Screening*	Limits information (Arrests not leading to convictions: "Arrests"; Expunged or similar: "Expunged"; Time limit on record: "Time limit")*	Notification of denial: N; Copy of record: C*
Massachusetts (2010)	Mass. Gen. Laws ch. 151B, § 4 (9 ½); ch. 6, §§ 171A, 172	Private	Public (S, L**, C)	—	Time limit	N, C
Michigan (2018)	Executive Directive 2018-4	—	Public (S)	—	—	—
Minnesota (2009, 2013)	Minn. Stat. § 364	Private	Public (S, L**, C)	Conviction "directly relates" to position	Arrests, Expunged	N
Missouri (2016)	Executive Order 16-04	—	Public (S, L)	—	—	—
Nebraska (2014)	Neb. Rev. Stat. § 48-202	—	Public (S, C)	—	—	—
Nevada (2017)	AB 384	—	Public (S, C)	Consider whether conviction "directly relates" to responsibilities of position	Arrests, Expunged	N
New Jersey (2014)	N.J. Stat. Ann. § 34:6B-11 to -19	Private	Public (S, C)	—	Expunged	—
New Mexico (2010)	N.M. Stat. §§ 28-2-1 to 28-2-6	—	Public (S, L**, C)	Conviction "directly relates" to employment	Arrests	N
New York (2015)	Executive action	—	Public (S)	"Direct relationship" to employment or "unreasonable risk" to property, safety, or welfare*	Arrests*	—
Ohio (2015)	HR-29 Administrative Policy; HB 56	—	Public (S, C)	Sufficient nexus between conviction and position***	Sealed or Expunged***	N***
Oklahoma (2016)	Executive Order 2016-03	—	Public (S)	—	—	—
Oregon (2015)	2015 Or. Laws Ch. 559	Private	Public (S, C)	—	—	—
Pennsylvania (2017)	HR-TM001 Administrative Policy	—	Public (S)	Consideration of convictions limited to "extent to which they relate to the applicant's suitability" for the position*	Arrests, Expunged	N

* Some of these components existed prior to the legislation listed here.

**Removal of conviction inquiry from the licensing application is not required.

***Component included only in the Administrative Policy, not the state law.

State (Year reform was adopted)	Relevant Statutes and Policy	Employers: Private and Public (State: S, Licensing: L, Cities and Counties: C)		Job-Related Screening*	Limits information (Arrests not leading to convictions: "Arrests"; Expunged or similar: "Expunged"; Time limit on record: "Time limit")*	Notification of denial: N; Copy of record: C*
Rhode Island (2013)	R.I. Gen. Laws §§ 28-5-6, 28-5-7	Private	Public (S, C)	—	Arrests	—
Tennessee (2016)	SB 2440	—	Public (S)	Consider specific duties and responsibilities of position	—	—
Utah (2017)	HB 156	—	Public (S, C)	—	—	—
Vermont (2015, 2016)	Executive Order 03-15 (2015); 21 V.S.A. § 495j (2016)	Private	Public (S, C)	—	—	—
Virginia (2015)	Executive Order 41	—	Public (S)	Conviction must be job-related	—	—
Washington (2018)	HB 1298	Private	Public (S, C)	—	Time Limit*	—
Wisconsin (2016)	AB 373	—	Public (S)	—	—	—

* Some of these components existed prior to the legislation listed here.

**Removal of conviction inquiry from the licensing application is not required.

***Component included only in the Administrative Policy, not the state law.

Private-Employer Laws

Eleven states &
17 localities
extend their
fair-chance
laws to
private-sector
employment.

Fair-chance laws and policies applicable to public employers are an important step toward ensuring that people with records have a fair chance to work. Achieving widespread opportunities for workers with records, however, necessitates changes in the hiring practices of private employers. As businesses recognize the [many advantages](#) of opening their workforces to talented applicants with records, many—like [Starbucks and Google](#)—adopt internal policies to ban the box and fairly consider an applicant’s record. Lawmakers can take an additional step toward ensuring sufficient opportunities for the approximately [70 million Americans](#) with a record by supplementing employers’ internal policies with fair-chance laws applicable to the private sector.

As summarized in the chart on the following page, eleven states and 17 localities (cities, counties, and the District of Columbia) have adopted laws requiring private employers to ban the box and fairly consider applicants with records. Approximately one-third of the current U.S. population lives in these jurisdictions — that’s over 107 million people. And that tally doesn’t include the many commuters who live outside, yet work within, one of these jurisdictions, and thus also benefit from the laws.

Private-Employer Laws

Location	Ban the Box	Background check only for some positions	Background check only after conditional offer	EEOC-type criteria	Appeal or complaint (A); Copy of record (C); Look-back limit (L); Notice of denial (N);
STATES					
1. California	X		X	X	A, C, N
2. Connecticut	X				A
3. Hawaii	X		X	X	A, L
4. Illinois	X				A
5. Massachusetts	X				A, C, L, N
6. Minnesota	X			X	A
7. New Jersey	X				A
8. Oregon	X				A
9. Rhode Island	X				A
10. Vermont	X				A
11. Washington	X				A
LOCALITIES					
1. Austin, TX	X	X	X	X	A, N
2. Baltimore, MD	X	X	X	X	A
3. Buffalo, NY	X			X	A
4. Chicago, IL	X			X	A
5. Columbia, MO	X		X	X	A
6. District of Columbia	X		X	X	A
7. Kansas City, MO	X			X	
8. Los Angeles, CA	X		X	X	A, C, N
9. Montgomery County, MD	X				A, C, N
10. New York, NY	X		X	X	A, C, N
11. Philadelphia, PA	X		X	X	A, C, N
12. Portland, OR	X		X	X	A, N
13. Prince George's County, MD	X			X	A, C, N
14. Rochester, NY	X			X	A
15. San Francisco, CA	X		X	X	A, C, L, N
16. Seattle, WA	X			X	A, C, N
17. Spokane, WA	X				

Local Ban-the-Box & Fair-Chance Laws and Policies

(Listed in chronological order by date a law or policy was first adopted.)

BOSTON, MA (ORDINANCE APPLIES TO CITY AND VENDORS)

- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In 2004, Boston implemented policies that limit discrimination against people with criminal records in city government positions. In July 2006, Boston expanded those policies by removing the questions about criminal history from the job application and by requiring an estimated 50,000 city vendors to follow the City's hiring standards. The revised job application begins with an anti-discrimination statement listing "ex-offender status" as a protected classification. Background checks are not required for all positions. The ordinance includes an appeal and the right to present information. A broad community coalition, Massachusetts Alliance to Reform CORI (MARC), supported these developments.

Boston Resources

Boston City Council Ordinance (July 1, 2006), [available here](#)

Boston Equal Opportunity Statement, [available here](#)

Boston Contacts

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SAN FRANCISCO, CA (BOARD OF SUPERVISORS RESOLUTION APPLIES TO CITY AND COUNTY (2005))

- Background check only for finalists for positions
- Incorporates EEOC criteria in individualized assessment

SAN FRANCISCO FAIR-CHANCE ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND AFFORDABLE HOUSING (2014, 2018)

- Policy applies to private employers and to affordable housing
- Incorporates EEOC criteria in individualized assessment (jobs and housing)
- Right to appeal denial of employment or housing
- Provides copy of background check report
- Background check only after conditional offer of employment

The campaign to "ban the box" from San Francisco's applications for public employment was led by [All of Us or None](#), a national organizing initiative of formerly incarcerated people. In 2005, the San Francisco Board of Supervisors approved a resolution initiated by All of Us or None calling for San Francisco to eliminate hiring discrimination against people with criminal records by removing the request for

criminal history information from the initial job application for public employment. The resolution was implemented as a municipal hiring policy. An individual's past convictions can only be considered after an applicant has been identified as a finalist for a position. The exception is for those jobs where state or local laws expressly bar people with convictions from employment, in which case the City conducts its background review at an earlier stage of the hiring process.

In 2011, the [San Francisco Human Rights Commission](#) and the [San Francisco Reentry Council recommended](#) expanding the City's policy to all private employers, vendors, and affordable housing providers. After a three-year campaign led by NELP, [All of Us or None](#), and the [Lawyers' Committee for Civil Rights of the San Francisco Bay Area](#) (LCCR), the San Francisco Board of Supervisors unanimously passed the Fair Chance Ordinance (FCO) on February 4, 2014. Private employers may not inquire into an applicant's conviction history until after a live interview or conditional offer.

In 2018, the San Francisco Board of Supervisors amended to the Fair Chance Ordinance to strengthen it and bring it more line with California's new statewide Fair Chance Act. [Changes to the law](#) include reducing the minimum size of employers governed from twenty to five employees; increasing monetary penalties; providing a private right of action; prohibiting employers from inquiring into conviction history until after a conditional offer; and prohibiting questions about, and decisions based on, decriminalized behavior. The amendments are effective October 1, 2018.

San Francisco Resources

San Francisco Board of Supervisors Resolution (Oct. 11, 2005), [available here](#).
San Francisco Fair Chance Ordinance (Feb. 4, 2014), [available here](#).
Fair-Chance Implementation Case Studies for Government Agencies, [available here](#).
San Francisco Fair Chance Ordinance (Apr. 3, 2018), [available here](#).

San Francisco Contacts

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CHICAGO, IL (MAYOR'S INITIATIVE; ORDINANCE APPLIES TO PRIVATE EMPLOYERS)

- Policy applies to private employers
- Incorporates EEOC criteria in individualized assessment

In May 2004, Chicago Mayor Richard Daley created the Mayoral Policy Caucus on Prisoner Reentry, bringing together government and community leaders. In January 2006, the Caucus issued a major report calling for broad reforms of City policy.

Implementing the Mayor's hiring policy, the Chicago Department of Human Resources issued guidelines and removed the question about criminal history from the job application. In November 2014, the City Council passed an ordinance that extended the city policy to all private employers, including those that are exempted from the state law (which covers private employers with more than 15 employees). Conviction history inquiry is permitted after the candidate is selected for an interview or after conditional offer. The ordinance was referred to the Council by Mayor Rahm Emanuel.

Chicago Resources

Mayor Daley's Press Release (Jan. 24, 2006), [available here](#).

Report of the Mayoral Policy Caucus on Prisoner Reentry (Jan. 2006), [available here](#).

Chicago Department of Human Resources Guidelines (June 5, 2007), [available here](#).

City Council Ordinance O2014-8347 (Nov. 5, 2014), [available here](#).

Chicago Contact

Mona Noriega, Chairman and Commissioner

Commission on Human Relations

(312)744-4111

ALAMEDA COUNTY (OAKLAND & BERKELEY, CA AREA; RESOLUTION APPLIES TO COUNTY)

- Incorporates EEOC criteria in individualized assessment

Beginning in March 2007, Alameda County removed the question on the job application that required all applicants to list their criminal convictions. Self-disclosure of criminal history information does not occur until the last step of the examination process and fingerprinting for background checks is performed after a conditional offer. In addition, to protect against potential discrimination, a special unit in the Human Resources Department performs an analysis to determine if the conviction is, in fact, related to the specific functions of the job. As reported by the Interim Director of Human Resources Services in March 2012, the County has not had any problems with the policy and "has benefited from hiring dedicated and hardworking County employees because of the policy change."

Alameda County Resources

Alameda County Board of Supervisors Resolution (Oct. 3, 2006), [available here](#).

Alameda County Letter to Asm. Roger Dickinson (March 28, 2012), [available here](#).

Alameda County Contact

Rodney Brooks, Chief of Staff

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ST. PAUL, MN (MAYOR'S DIRECTIVE AND CITY COUNCIL RESOLUTION APPLY TO CITY)

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In December 2006, Mayor Christopher Coleman of St. Paul directed the City's Human Resources Department to reform its hiring process so that “all applicants have a full and fair opportunity for employment.” The City thus amended its employment application to remove questions regarding criminal history. That same month, the City Council approved a resolution calling on the City to “make a good faith determination as to which specific positions of employment are of such sensitivity and responsibility that a background check is warranted.” The resolution also mandated that background checks be performed only after an applicant is determined to be otherwise qualified for that position.

St. Paul Resources

Mayor Coleman’s Memo to the City Council (Dec. 5, 2006), [available here](#).

Report of the Council on Crime and Justice, [available here](#).

St. Paul City Council Resolution, [available here](#).

St. Paul Employment Application, [available here](#).

St. Paul Contacts

Angie Nalezny, Director

Human Resources Department

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MINNEAPOLIS, MN (RESOLUTION APPLIES TO CITY)

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

Like St. Paul, Minneapolis passed a resolution banning the box in December 2006. The Minneapolis resolution shares many characteristics with the St. Paul resolution, including banning the box, making a “good faith” determination of which positions require background checks, and performing background checks on applicants only after they have been determined to be otherwise qualified. The [Council on Crime and Justice](#), with the support of more than 30 community organizations, was instrumental in getting both the St. Paul and Minneapolis resolutions passed.

Minneapolis Resources

Minneapolis City Council Resolution, [available here](#).

Minneapolis Contacts

Councilmember Elizabeth Glidden

Minneapolis City Council

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EAST PALO ALTO, CA (ADMINISTRATIVE POLICY APPLIES TO CITY)

Inquiries regarding criminal histories are delayed until the applicant is a finalist.

East Palo Alto Resource

Application, [available here](#).

East Palo Alto Contact

[All of Us or None](#)

OAKLAND, CA (CITY ADMINISTRATOR HIRING POLICY APPLIES TO CITY)

- Background check only after conditional offer of employment
- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

Oakland changed its job application in 2007 to eliminate questions about conviction histories. The new process did not require additional resources. Since implementing this practice, only a small number of applicants have been screened out from employment due to their criminal histories. Working with [All of Us or None](#), the City improved its policy in 2010. The City conducts background checks on applicants after a conditional offer, but only for those positions required by law or the City has made a “good faith determination” that the position warrants it. The City also notifies the applicant of the potential adverse employment action, provides a copy of the background report, and provides the applicant an opportunity to rebut the accuracy or relevancy of the background report. Final decisions are based on job-relatedness and other EEOC factors.

Oakland Resources

City Administrator memo (Dec. 28, 2010), [available here](#).

Letter of support to Asm. Dickinson regarding state legislation (March 28, 2012), [available here](#).

Oakland Contact

Andrea Gourdine

Director, Human Resources Management

(510) 238-3112

MULTNOMAH COUNTY (PORTLAND, OR AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)

- Incorporates EEOC criteria in individualized assessment

In October 2007, Multnomah County removed the question about criminal history from both on-line and hard-copy applications. The Multnomah County policy is similar to the policy implemented in the City and County of San Francisco. The

Portland-based group, [Partnership for Safety and Justice](#), was instrumental in the adoption of the county hiring policy as part of their "Think Outside of the Box" campaign.

When an applicant's criminal history is considered, at a later stage of the hiring process, the Multnomah County policy requires an individualized determination of whether the conviction bears a rational relationship to the job. According to the policy, important factors to consider include the nature of the crime for which the applicant was convicted; any positive changes demonstrated since the conviction; the age at time of arrest; and the amount of time that has elapsed since the arrest occurred.

Multnomah County Resource

Multnomah County Human Resources Memo (Oct. 10, 2007), [available here](#).

Multnomah County Contact

Human Resources Department
(503) 988-5015 x85015

CAMBRIDGE, MA (ORDINANCE APPLIES TO CITY AND VENDORS)

- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal prior to adverse determination
- Provides copy of background check report

In May 2007, Cambridge implemented policies limiting discrimination against people with criminal records in city government positions. In January 2008, the City Council passed an ordinance extending the requirements of the hiring policy to city vendors. Consistent with the City's hiring policy, vendors contracting with Cambridge wait to conduct a criminal background check until the job applicant is found to be "otherwise qualified" for the position.

Cambridge Resource

Cambridge City Council Ordinance (Jan. 28, 2008), [available here](#).

Cambridge Contact

Oman Bandar, Former Special Assistant to the Mayor
bandar_omar@hotmail.com

BALTIMORE, MD (HIRING POLICY APPLIES TO CITY, ORDINANCE APPLIES TO PUBLIC AND PRIVATE EMPLOYERS)

- Background check only after conditional offer of employment
- Background checks only required for some positions

-
- Ordinance applies to public and private employers

In December 2007, with the backing of Mayor Sheila Dixon, the City of Baltimore's Board of Estimates unanimously approved changes to the City's administrative hiring policy. In accordance with the policy, the City removed the criminal history question from its job application. The City also implemented a policy to determine which positions qualified as "Positions of Trust" and thus require a background check. Employment applications for positions that are not positions of trust do not require applicants to disclose prior convictions or any other criminal history information. Where applicable, the applicant's criminal history is reviewed at the final stages in the hiring process.

In April 2014, the City Council approved an updated fair-chance ordinance that applies to all employers with 10 or more employees. The new ordinance prohibits inquiry into a job applicant's conviction history until after a conditional offer of employment and provides administrative and judicial review of and remedial relief for violations. Uniquely, the ordinance provides for misdemeanor criminal charges and a fine to be levied against employers who violate the law.

Baltimore Resources

Baltimore Policy on Positions of Trust (Feb. 3, 2008), [available here](#).
Baltimore Employment Application, [available here](#).
Baltimore Ordinance (2014), [available here](#).

TRAVIS COUNTY (AUSTIN, TX AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)

- Background check only after applicant selected for hire
- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In April 2008, acting upon the recommendation of Justice and Public Safety and the Director of Human Resources for Travis County, the Travis County Commissioner's Court voted to remove the question about an applicant's criminal history from county job applications. The Travis County Reentry Roundtable Report, which was completed in 2007, recommended changes to the county's hiring practice as a key way to increase employment opportunities for people reentering the community. The Human Resources Department trains hiring managers to consider "circumstances such as length of time since offense, seriousness of the offense, frequency of criminal incidents, and other mitigating factors."

Travis County Resources

Memo, Travis County Director of Human Resources (April 15, 2008), [available here](#).
Travis County Guidelines for Hiring Ex-Offenders (April 21, 2008), [available here](#).
Travis County Employment Application, [available here](#).

Travis County Contact

Steven Huerta, Chairman

All of Us or None Texas

tac_allofusornone@yahoo.com

AUSTIN, TX (ORDINANCE APPLIES TO CITY AND PRIVATE EMPLOYERS)

- Background check only after conditional offer of employment
- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment
- Ordinance applies to public and private employers

The City approved a ban-the-box resolution in October 2008. The criminal background investigation questions were removed from the online employment application.

On March 24, 2016, Austin's mayor signed a city council ordinance to cover private employers with at least 15 employees whose primary working location is in the city. The ordinance delays inquiries into an applicant's conviction record until after a conditional offer of employment and requires an individualized assessment of a candidate's record that considers, at a minimum, the nature of any offense, the length of time since the offense, and the nature and duties of the job. The new law also creates a civil penalty of up to \$500 for each position for which an employer's hiring practices violate the ordinance.

Austin Resources

Austin Ban the Box Resolution (Oct. 16, 2008), [available here](#).

Director of Human Resources and Civil Services featured in [HR Magazine](#).

Austin Ordinance No. 20160324-019 (Mar. 24, 2016), [available here](#).

Austin Contacts

[Council Member Gregorio Casar](#)

(512) 978-2104

Mark Washington, Director of Human Resources and Civil Services

(512) 974-3400

BERKELEY, CA (HUMAN RESOURCE DEPARTMENT HIRING POLICY APPLIES TO CITY)

- Background check only after conditional offer of employment
- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In October 2008, the City of Berkeley's Human Resources Department eliminated disclosure of conviction history information from the City's job application at the request of City Council. Berkeley does not require disclosure of conviction history

information until an applicant is selected for the position and has received a conditional offer of employment. The Human Resources Department then reviews conviction history information, which is kept confidential. The evaluation includes “an assessment of the relationship between a conviction and the functions of the position; number of convictions; time elapsed since the conviction, evidence of rehabilitation, and any other mitigating circumstances.” The City obtains conviction history from the California Department of Justice for identified public safety, recreation, and cash-handling/asset management positions only; for all other positions, conviction history self-disclosure is required. Police Department hires are exempted.

Berkeley Resources

Berkeley Hiring Policy Memo (Nov. 18, 2008), [available here](#).
Berkeley Employment Application, [available here](#).

Berkeley Contacts

David Abel
Human Resources Manager
(510) 981-6807

NORWICH, CT (ORDINANCE APPLIES TO CITY)

- Background check only after conditional offer of employment

In December 2008, Norwich’s City Council voted to move “Beyond the Box” and reduce barriers to employment for people with criminal records. A large group of advocates including [Connecticut Pardon Team](#), [A Better Way Foundation](#), Evergreen Family Oriented Tree/Clean Slate of New Haven, CABHN, [Legal Assistance Resource Center](#) and [Greater Hartford Legal Aid](#) worked together to ensure the City Council passed the ordinance, the first of its kind in Connecticut at that time, paving the way for other cities and the State to follow suit.

Norwich Resource

Norwich Ordinance Section 16-11 (Dec. 1, 2008), [available here](#).

Norwich Contact

[Connecticut Pardon Team, Inc.](#)
info@connecticutpardonteam.com

NEW HAVEN, CT (ORDINANCE APPLIES TO CITY AND VENDORS)

- Background check only after conditional offer of employment
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

In February 2009, the City of New Haven’s Board of Alderman approved an ordinance that requires the City and its vendors to wait to conduct a criminal background check until the job applicant is selected for the position and has received a conditional offer of employment. The City’s Human Resources Department then evaluates the applicant’s criminal history, keeping all information confidential within the Department. The ordinance also provides applicants with a copy of their conviction history report and the opportunity to appeal adverse employment decisions based upon a past conviction within ten days of receiving notice of the decision not to hire.

New Haven Resources

New Haven Ordinance, [available here](#).

New Haven Release of Information, [available here](#).

New Haven Contacts

Eric Rey, Reentry Coordinator
Mayor’s Office, [Prison Reentry Initiative](#)
ERey@newhavenct.net

Michael Fumiatti, Director of Purchasing
City of New Haven
mfumiatti@newhavenct.net

SEATTLE, WA (ORDINANCE APPLIES TO CITY AND PRIVATE EMPLOYERS)

- Background checks only required for some positions
- Applies to public and private employers
- Right to appeal denial of employment
- Provides copy of background check report

In April 2009, the Personnel Director for the City of Seattle issued a memo to all department heads announcing the completion and implementation of the Citywide Personnel Rule for Criminal Background Checks. On November 13, 2013, Seattle’s Fair Chance Employment Ordinance went into effect. Adding to the state law that prohibits public agencies from refusing to hire someone or grant a license based solely on a criminal conviction, the new policy applies to both the City of Seattle and private employers.

The ordinance prohibits employers from inquiring into an applicant’s criminal history until after the employer has identified qualified applicants. Employers are permitted to conduct criminal history investigations and may exclude individuals from employment based on the applicant’s criminal history if there is a legitimate business reason for doing so. Before an employer takes a negative employment decision based on an applicant’s criminal history, the employer must identify to the applicant what information they are using to make the decision and provide the applicant with a minimum of two days in which to correct or explain that information.

Seattle Resources

Seattle Personnel Director McDermott's Memo (April 24, 2009), [available here](#).

Seattle's website for Fair Chance Employment Ordinance, [available here](#).

Fair-Chance Implementation Case Studies for Government Agencies, [available here](#).

Seattle Contact

Karina Bull

[Seattle Office for Civil Rights](#)

Karina.Bull@seattle.gov

PROVIDENCE, RI (ADMINISTRATIVE POLICY APPLIES TO CITY)

In 2008, the Mayor's Policy Office began investigating the City's hiring practices and their impact on the ability of people with criminal convictions to successfully transition back into the workforce. After consulting with NELP and HR representatives from three cities that had already successfully "banned the box," the City agreed to change the hiring policies. In April 2009, the HR department removed the language relating to information on criminal charges from its applications. In addition, the applicant only signs a waiver for a background check once it has been determined that the candidate satisfies the minimum criteria for the position based on qualifications and ability.

Providence Resource

Providence Employment Application, [available here](#).

Providence Contact

Margareta Wingate, Deputy Director

Human Resources

(401) 421-7740 ext. 616

mwingate@providenceri.com

HARTFORD, CT (ORDINANCE APPLIES TO CITY AND VENDORS)

- Background check only after conditional offer of employment
- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In May 2009, Hartford's City Council recognized that barriers to employment for people with criminal records "creat[e] permanent members of an underclass that threatens the health of the community and undermines public safety." In response, the City Council passed an ordinance to change the hiring policy of the City and its vendors. It offers important protections to workers, including prohibiting the consideration of arrests that did not lead to conviction; delaying background checks

in the hiring process; limiting background checks to specific positions; and providing applicants the opportunity to appeal adverse employment decisions.

Hartford Resources

Hartford City Ban the Box Policy (April 13, 2009), [available here](#).

Hartford Vendor Ban the Box Policy (April 13, 2009), [available here](#).

Hartford Contact

Sarah Diamond

Clean Slate Committee

sdiamond193@gmail.com

WORCESTER, MA (ORDINANCE APPLIES TO CITY AND VENDORS)

- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report upon request

In June 2009, Worcester’s City Council passed the Fair CORI Practices Ordinance. This ordinance applies to “all persons and businesses supplying goods and/or services to the city of Worcester.” Background checks may only be performed when mandated by law, or when the city or vendor “determines that the position in question is of such sensitivity” that a review of the applicant’s criminal history is warranted. The comprehensive law also requires that the person reviewing the background report be trained to do so, and that they apply a list of factors to be considered. Finally, applicants may appeal if an adverse decision is made based on the criminal history.

Worcester Resource

Worcester City Ordinance (June 23, 2009), [available here](#).

Worcester Contact

Steve O’Neill, Executive Director for Inter-state Organizing

[Ex-Prisoners and Prisoners Organizing for Community Advancement](#)

(508) 410-7676

steve@exprisoners.org

JACKSONVILLE, FL (ORDINANCE APPLIES TO CITY)

- Background check only after applicant selected for hire
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In 2008, the City Council adopted an ordinance reforming both its hiring procedures and its contractor bidding policies. In July 2009, the City’s Human Resources

Department released the revised standard. The directive states that department heads will “not inquire about or consider criminal background check information in making a hiring decision.” Instead, “criminal information disclosure is required as part of the post-offer new hire process.” (emphasis in original). The application instructions even encourage people with a criminal record to apply for city jobs. The criminal background check screening is centralized in the Human Resources Department. Moreover, the screening process requires taking into account the specific duties of the job, the age of the offense, and rehabilitation. Denied applicants may appeal to Human Resources. Contractors are required to tally job opportunities for people with criminal records and report back to the City.

Jacksonville Resources

Jacksonville City Council Ordinance (Nov. 10, 2008), [available here](#).

Jacksonville Human Resources Directive (July 8, 2009), [available here](#).

Jacksonville Background Screening Summary (May 10, 2010), [available here](#).

Jacksonville Contact

Employee Services Department
(904) 630-1287

BRIDGEPORT, CT (CIVIL SERVICE RULES APPLY TO CITY)

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In October 2009, Bridgeport’s City Council ratified changes to the City’s civil service rules regarding criminal history investigations of applicants. Under the rules, the personnel director will seek information about applicants’ criminal histories only after the applicant has been found “otherwise eligible” to take the civil service examination. The initial employment application includes a disclaimer that criminal history information will be sought later in the application or examination process. When considering an applicant’s record, the personnel director will consider individualized factors such as the nature, job-relatedness, and age of an offense. Candidates who are disqualified because of their criminal record have the right to appeal the personnel director’s decision to the Civil Service Commission, which has the authority to “grant the appellant such relief as the Commission deems appropriate or to deny the appeal.”

Bridgeport Resource

Bridgeport Resolution Amending Civil Service Rules (Oct. 5, 2009), [available here](#).

Bridgeport Contact

Nadine Nevins, Managing Attorney
[Connecticut Legal Services](#)
nnevins@connlegalservices.org

KALAMAZOO, MI (HIRING POLICY APPLIES TO CITY AND VENDORS)

- Policies apply to vendors/contractors doing business with the City

In January 2010 the city manager announced that the city would no longer ask about prior criminal history on its applications for employment. This decision came after months of pressure from a newly formed coalition, spearheaded by the Community Workers Center of Kalamazoo and convened by the Michigan Organizing Project. On May 16, 2016, the Kalamazoo City Commission unanimously passed Resolution 16-20, requiring certain entities—those seeking (1) to provide goods and services to the City in the amount of more than \$25,000; (2) a tax abatement; or (3) an Economic Opportunity Fund (EOF) loan—to demonstrate a commitment that they do not use past criminal histories to discriminate when hiring. More specifically, such entities must remove from initial job applications any questions about prior arrests or convictions. Applicants must also be provided with an opportunity to review and respond to any potentially disqualifying record. Implementing the resolution required amendments to at least three city policies, as explained in a report from the city attorney.

Kalamazoo Resource

Kalamazoo City Commission Minutes (May 16, 2016), [available here](#) (page 106).

Kalamazoo Resolution No. 16-20 (May 16, 2016), [available here](#).

Commission Agenda Report from City Attorney (May 6, 2016), [available here](#).

Amendments to Kalamazoo Economic Opportunity Fund Guidelines, [available here](#).

Amendments to Kalamazoo Tax Abatement Policy Amendments, [available here](#).

Amendments to Kalamazoo Ex-Offender Purchasing Policy, [available here](#).

Kalamazoo Contact

[Michigan Organizing Project](#)

(269) 344-2423

MEMPHIS, TN (ORDINANCE APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

In June 2010, the Memphis City Council passed an ordinance to reduce barriers to employment for the City’s estimated 8,915 citizens on probation or parole. The ordinance bans the box and, “except as otherwise dictated by state and federal law,” permits inquiry into an applicant’s criminal history only after the applicant has been determined to be otherwise qualified. However, the ordinance still requires applicants to complete a form listing their entire criminal history prior to the City conducting a background check.

Memphis Resource

Memphis City Ordinance (May 18, 2010), [available here](#).

Memphis Contact

DeAndre Brown, Executive Director

[Lifeline to Success](#)

dbrown@lifeline2success.org

CINCINNATI, OH (CITY COUNCIL MOTION APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment
- Background check only after conditional offer of employment
- Right to appeal denial of employment
- Provides copy of background check report

In August 2010, the City Council passed a motion in support of fair hiring. The City’s employment applications no longer request information on an applicant’s criminal history and background checks are conducted only after a contingent offer of employment has been made. If a criminal background check is the basis for denying employment, the applicant receives a copy and is given at least 10 business days to dispute the information. When considering an applicant’s criminal history in making an employment decision, the Human Resources Department must consider whether the past offense(s) directly relate to the job responsibilities, the age of the person at the time of the offense(s), and any evidence of rehabilitation.

Cincinnati Resource

Cincinnati Motion in Support of Fair Hiring (June 9, 2010), [available here](#).

Cincinnati Contact

Stephen Johnson Grove, Deputy Director for Policy

[Ohio Justice & Policy Center](#)

sjohnsongrove@ohiojp.org

DETROIT, MI (ORDINANCE APPLIES TO CITY AND VENDORS)

- Policies apply to vendors/contractors doing business with the City

In September 2010, Detroit’s City Council voted unanimously to ban the box on City applications. The amendments to the Detroit City Code prohibit inquires or consideration concerning criminal convictions for City employees until an applicant is interviewed or is found to be otherwise qualified for employment by the City. The ordinance further revises the City’s job application to include a statement that “criminal convictions are not a bar to City employment, provided, that the prior criminal activity is not directly related to the position being sought.” As of July 1, 2012, the City has required business vendors and contractors to remove the conviction history question from job applications.

Detroit Resource

Detroit City Ordinance (Sept. 13, 2010), [available here](#).

Detroit Contractor Ordinance (July 1, 2012), [available here](#).

PHILADELPHIA, PA (ORDINANCE APPLIES TO CITY AND PRIVATE EMPLOYERS)

- Policies apply to public and private employers in the City
- Incorporates EEOC criteria in individualized assessment
- Background check only after conditional offer of employment
- Right to appeal denial of employment
- Provides copy of background check report

On March 31, 2011, Philadelphia became the first city to ban the box for both public and private positions. On December 15, 2015, Philadelphia Mayor Michael Nutter signed an amended version of the ordinance into law that prohibits all employers from inquiring into applicants' conviction histories any time before conditional offers are made. The amendment also restricts inquiries to the last seven years of applicants' records; requires employers to determine whether a connection exists between an applicant's convicted offense and the particular position before disqualifying the applicant; requires employers to notify applicants in writing of rejections and to provide the applicant a copy of the criminal history report; and allows applicants 10 business days following a rejection to provide the employer an explanation or evidence of an inaccuracy in the criminal history report.

Philadelphia Resource

Philadelphia City Council Ordinance (Feb. 17, 2011), [available here](#).

Philadelphia Office of Human Resources Report - Criminal Records Background Screening and Hiring Policy (Nov. 10, 2015), [available here](#).

Philadelphia City Council Ordinance (Dec. 15, 2015), [available here](#).

Philadelphia Mayor Executive Order (Dec. 15, 2015), [available here](#).

Philadelphia Contact

Brendan Lynch, Staff Attorney

[Community Legal Services of Philadelphia](#)

blynch@clsphila.org

DISTRICT OF COLUMBIA (WASHINGTON D.C.) (ORDINANCE APPLIES TO DISTRICT AND PRIVATE EMPLOYERS)

- Background check only after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment
- Policies apply to public and private employers in the District

In December 2010, the nation's capital joined the fair-chance movement by passing the Returning Citizens Public Employment Inclusion Act of 2010, which went into effect in 2011 for public employers. On July 14, 2014, the Council of the District of Columbia voted unanimously to pass the Fair Criminal Records Screening Act of

2014, which applies to private employers. Under the new law, an employer that employs 11 or more employees in the District cannot make any inquiry into an applicant's conviction until after making a conditional offer of employment. A conditional offer can only be withdrawn for a "legitimate business reason," which must consider job-relatedness of the offense, time passed, rehabilitation and other factors. A complaint process may be initiated with the Office of Human Rights and violation of the act may result in fines, of which half shall be awarded to the complainant. Reporting requirements are also included in the law such as voluntarily provided data on the hiring of applicants with records.

District of Columbia Resources

Fair Criminal Record Screening Amendment Act of 2014, [available here](#).
Fair-Chance Implementation Case Studies for Government Agencies, [available here](#).

District of Columbia Contact

Elliot Imse, Director of Policy & Communications
District of Columbia Office of Human Rights
(202) 727-4559

DURHAM, NC (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background check only after conditional offer

In February 2011, the City removed questions about criminal history from all employment applications. Potential employees who have been given a conditional offer of employment are subject to a background check.

Durham Resources

City Application, [available here](#).
Human Resource Management Memo (April 18, 2011), [available here](#).
"The Benefits of Ban the Box: A Case Study of Durham, NC", [available here](#).

Durham Contact

[Southern Coalition for Social Justice](#)

COMPTON, CA (RESOLUTION AND HIRING POLICY APPLIES TO CITY AND CONTRACTORS)

- Background check only after conditional offer
- Policies applies to contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment

On April 5, 2011, the City of Compton passed a resolution to provide equal employment opportunities for people with criminal records, effective July 1, 2011. A criminal background check is delayed until after a conditional offer of employment is made. The city prohibits the consideration of any convictions that are not job-related in the course of an employment decision. Factors to consider

include: (1) whether the position provides the opportunity for the commission of a similar offense; (2) whether the individual has committed other offenses since the conviction; (3) the nature and gravity of the offense and; (4) time since the offense. In order to promote model hiring policies, the City requires employers that receive local government contracts to adopt the same hiring policies.

Compton Resources

Compton Resolution (April 5, 2011), [available here](#).

Compton Standard Operating Manual (July 1, 2011), [available here](#).

Compton Contact

[A New Way of Life](#)

(323) 563-3575

NEW YORK CITY, NY (APPLIES TO CITY, PRIVATE EMPLOYERS, AND LICENSING)

- Background check only after conditional offer.
- Policy applies to public and private employers in New York City that have more than four employees
- Incorporates EEOC criteria in individualized assessment

On June 10, 2015, the New York City Council passed the Fair Chance Act, prohibiting employers in New York City from asking about a job applicant's conviction record until the end of the hiring process. Under current state law, a candidate may only be denied if the conviction history is directly related to the job or poses an unreasonable risk based on certain factors, such as the time passed since the offense and its severity. Prior to a denial, an applicant is provided the employer's analysis and a copy of any background report. The job is then held open for three days for the employee to respond and the employer to weigh the candidate's evidence of rehabilitation. The law includes a private right of action with attorneys' fees for violations. The law took effect on October 27, 2015. The agency charged with enforcing the law, the New York City Commission on Human Rights, finalized rules implementing the law, effective August 5, 2017.

Prior to the Fair Chance Act's passage, applications for public employment in New York City did not include inquiries about criminal history under an August 2011 executive order from then-Mayor Michael Bloomberg.

New York City Resources

NYC Commission on Human Rights Rules (Aug. 5, 2017), [available here](#).

New York City Fair Chance Act (June 10, 2015), [available here](#).

Executive Order No. 151 (Aug. 4, 2011), [available here](#).

Article 23-A of the New York Correction Law, [available here](#).

New York City Contact

Paul Keefe, Supervising Attorney

New York City Commission on Human Rights
pkeefe@cchr.nyc.gov

CUMBERLAND COUNTY (FAYETTEVILLE, NC AREA; APPLIES TO COUNTY)

On September 6, 2011, the Cumberland County Commissioners unanimously voted to ban the box and implement a new pre-employment background check policy.

Cumberland County Contact

Julean Self
Assistant Human Resources Director
jself@co.cumberland.nc.us

CLEVELAND, OH POLICY (ADMINISTRATIVE POLICY APPLIES TO CITY)

On September 26, 2011, the City of Cleveland announced its ban the box policy. Developed in collaboration with the [Ohio Justice & Policy Center](#), the policy removes the checkbox on city job and civil service testing applications that asks whether the applicant has a felony conviction. Background checks will now be performed only on finalists for a position.

Cleveland Contacts

Natoya Walker Minor, Chief of Public Affairs
Director for Policy
Mayor's Office
nwalker@city.cleveland.oh.us

Stephen Johnson Grove, Deputy
[Ohio Justice & Policy Center](#)
sjohnsongrove@ohiojpc.org

MILWAUKEE COUNTY, WI (RESOLUTION APPLIES TO COUNTY)

On October 7, 2011, the Milwaukee County Board of Supervisors voted to remove questions about conviction history from the county initial employment application. The resolution further called on the county director of intergovernmental relations to convey to the governor and Wisconsin legislature that the State of Wisconsin should follow the lead of Milwaukee County and adopt ban-the-box legislation applicable to all public and private employers in the state.

Milwaukee County Resource

Milwaukee County Resolution No. 11-581, [available here](#).

Milwaukee County Contact

Carol Rubin, President
MOSES
carolrubin3@gmail.com

RICHMOND, CA (RESOLUTION APPLIES TO CITY AND VENDORS)

- Background checks only required for some positions
- Policy applies to vendors/contractors doing business with the City

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- Incorporates EEOC criteria in individualized assessment

On November 22, 2011, the Richmond City Council passed a measure to ban the box for city applications, spurred by the [Safe Return Project-Pacific Institute](#), which [researched](#) the status of formerly incarcerated Richmond residents and is led by formerly incarcerated advocates. In July 2013, the City Council voted to broadly expand the policy to companies with more than 10 employees who do business with the city, as well as their subcontractors. The new ordinance prohibits inquiry into an applicant's criminal history at any time unless a background investigation is required by State or Federal law or the position has been defined as "sensitive."

Richmond, CA Resources

Richmond City Resolution 110-11 (Nov. 22, 2011), [available here](#).

Richmond City Council Ordinance (July 30, 2013), [available here](#).

Memo from Councilmember Beckles (July 30, 2013), [available here](#).

Richmond, CA Contacts

Safe Return Project

group@safereturnproject.org

ATLANTIC CITY, NJ (ORDINANCE APPLIES TO CITY AND VENDORS)

- Background check only after conditional offer
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

Approved by Mayor Langford on December 23, 2011, Atlantic City, NJ banned the box for city positions. The ordinance also requires all vendors doing business with the City to have practices, policies and standards that are consistent with the City's, and makes consideration of vendors' hiring policies, practices and standards part of the criteria to be considered when awarding contracts. However, with the adoption of the New Jersey Opportunity to Compete Act, effective March 1, 2015, which applies to all public and private employers with 15 or more employees, this local ordinance is superseded by the state law.

Atlantic City Resource

City of Atlantic City Ordinance (Dec. 7, 2011), [available here](#).

MUSKEGON COUNTY (NORTHWEST OF GRAND RAPIDS, MI AREA; APPLIES TO COUNTY)

Recognizing the need to prioritize employment opportunities for successful re-entry, the Muskegon County Board of Commissioners voted to remove inquiry into criminal history from the written application for all opportunities unless required by local, state, or federal law.

Muskegon County Resource

Muskegon County Resolution (Jan. 12, 2012), [available here](#).

Muskegon County Contact

Chairman Mahoney

commissioners@co.muskegon.mi.us

CARSON, CA (RESOLUTION APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment
- Background check only after conditional offer of employment

On March 6, 2012, the City Council of Carson passed a resolution to support ban the box efforts. The resolution describes ban the box as delaying disclosure of past convictions until after an offer of employment is made. At that point, a separate conviction history form is collected and investigated for an individualized assessment that considers the length of time since the conviction, relevance to the position, and evidence of rehabilitation.

Carson Resource

Carson City Council Resolution (March 6, 2012), [available here](#).

Carson Contact

[A New Way of Life](#)

(323) 563-3575

HAMILTON COUNTY, OH (CINCINNATI AREA; APPLIES TO COUNTY)

- Background check only after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

In March 2012, the County modified its application for county jobs in order to remove criminal record inquiries from the job application. After a conditional job offer has been made, the county then evaluates criminal history based on the requirements of the job and the nature of the offense. This assessment does not apply to positions where there are statutory prohibitions on hiring people with certain kinds of convictions. If a person is denied, he or she is provided with an explanation of the rejection and may request a copy of the background check that shows the disqualifying offense.

Hamilton Resource

Hamilton Human Resources Policy Manual, [available here](#).

Hamilton Contacts

David Helm, Assistant Director
Human Resources Department
david.helm@hamilton-co.org

Lori Chaney, Manager
Human Resources Department
lori.chaney@hamilton-co.org

DAYTON, OH (APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

The City lacks a formal policy, but has removed the conviction history question from the job application. The City conducts a background check before the candidate list is sent to the relevant hiring department, but after the candidate list has been narrowed. For non-sensitive positions the City considers the age of the offense and the nature of the conviction. If individuals are denied after this assessment, they have the right to appeal the decision to the Civil Service Board and are also provided a written explanation of the denial.

Dayton Contact

Ken Thomas, Senior Employment Manager
Civil Service Department
ken.thomas@daytonohio.gov

PIERCE COUNTY (TACOMA, WA AREA; APPLIES TO COUNTY)

- Incorporates EEOC criteria in individualized assessment

The County does not have a formal policy, but has removed the question about criminal history from its application for employment with the County, and follows the EEOC guidance regarding the consideration of criminal records. With the exception of law enforcement positions, the County generally conducts background checks on the final candidate only and often after a conditional offer of employment has been made. If a conviction disqualifies the applicant, the County provides a pre-adverse action notice and explains how the applicant can obtain the record used in the decision. The applicant normally has time to review the record and correct inaccuracies before a final decision is made.

SANTA CLARA COUNTY (SAN JOSE, CA AREA; APPLIES TO COUNTY)

On May 1, 2012, the County adopted a procedure to remove the question on the job application that requires candidates to disclose criminal conviction histories. Once candidates have been tentatively selected, Human Resources will evaluate the conviction history. The Board of Supervisors supported this reform to eliminate the unnecessary disqualification of job applicants and increase the county's hiring pool of candidates.

Santa Clara County Resource

Santa Clara Employment Application, [available here](#).

Santa Clara County Contacts

Supervisor Dave Cortese
dave.cortese@bos.sccgov.org

Reverend Jeff Moore
President of NAACP San Jose Chapter
info@sanjosenaacp.org

FRANKLIN COUNTY, OHIO (APPLIES TO COUNTY)

- Background check only after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

Effective June 19, 2012, Franklin County’s Resolution 45712 removed questions about criminal background from its application for public employment. While all employees are subject to a background check at the time of hire, any offenses are reviewed to determine if the offense was “egregious or directly germane to the position.” Positions at the Sheriff’s office are exempt from the policy.

Franklin County Contact

Robert Young, Human Resources Director
rjyoung@franklincountyohio.gov

SPRING LAKE, NC (ADMINISTRATIVE POLICY APPLIES TO TOWN)

- Incorporates EEOC criteria in individualized assessment

Effective June 25, 2012, the Town of Spring Lake adopted a comprehensive statement of policy regarding criminal background checks for positions with the Town. According to the policy, an applicant’s conviction will be reviewed on a case-by-case basis. The policy offers one of the most comprehensive lists of factors to determine whether there is a “substantial relationship between the conviction and the position” and whether the applicant should be excluded.

Spring Lake Resources

Spring Lake Job Application, [available here](#).
Administrative Policies and Procedures (July 16, 2012), [available here](#).

Spring Lake Contact

[Southern Coalition for Social Justice](#)

NEWPORT NEWS, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

In a memo dated July 13, 2012 from the City Manager, the administration outlines a plan to remove the question about conviction histories from city job applications by October 1, 2012. Exempted positions include those in public safety, child welfare, and elder care departments. The memo specifically references the EEOC guidance and the City’s policy of complying with the guidance. The City was petitioned to consider ban the box in May by [Good Seed, Good Ground](#), a local non-profit group whose mission is to rebuild the lives of youth. Newport News is the first city in Virginia to ban the box.

Newport News Resource

City Manager and Human Resources Manager Memo (July 13, 2012), [available here](#).

Newport News Contact

Good Seed Good Ground

(757) 244-0199

info@goodseedgoodground.org

HAMILTON COUNTY, TN (CHATTANOOGA, TN AREA; APPLIES TO COUNTY)

- Background check only after conditional offer of employment

The County removed all questions relating to criminal history from the county job application in 2012. The procedure was changed to ensure that the application process would be unbiased. The county now runs a background check after selecting a candidate for an open position. If the background check reveals a history, the candidate is allowed to explain the circumstances.

Hamilton County Contact

Mike Dunne, External Communications Manager

Hamilton County Mayor's Office

michaeld@hamiltontn.gov

CUYAHOGA COUNTY, OH (CLEVELAND, OH AREA; ORDINANCE APPLIES TO COUNTY)

- Background check only after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

In August 2012, the County Council passed an ordinance that prohibits the County from inquiring about convictions on job applications. The Council recognized that only considering conviction history after a conditional job offer “promotes the fair consideration of all applicants for employment and contributes to the County’s reentry efforts.” The ordinance requires the following factors to be considered: the nature of the conviction, the length of time since the conviction, the specific job duties of the position, and any evidence of rehabilitation. The ordinance went into effect on September 30, 2012.

Cuyahoga County Resources

Cuyahoga County Ordinance No. 02012-0005 (Aug. 28, 2012), [available here](#).

Cuyahoga County Code Section 306, [available here](#).

NEWARK, NJ (ORDINANCE APPLIES TO CITY, PRIVATE EMPLOYERS, LICENSING, AND HOUSING)

- Background check only after conditional offer
- Background checks only required for some positions
- Applies to private employers, licensing, and housing
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

On September 19, 2012, the Municipal Council passed a comprehensive ordinance. The ordinance applies to the City, private employers, local licensing, and to housing as well. Inquiries into an applicant’s criminal history are delayed until a conditional offer of employment is made by the employer, and there is a limited “lookback” period for offenses, ranging from eight years for indictable offenses and five years for disorderly persons convictions or municipal ordinance convictions. However, with the adoption of the New Jersey Opportunity to Compete Act, effective March 1, 2015, which applies to all public and private employers that employ 15 or more employees, this local ordinance is superseded by the state law.

Newark Resources

Newark Ordinance #12-1630 (Sept. 19, 2012), [available here](#).

Newark Contact

[New Jersey Institute for Social Justice](#)
(973) 624-9400

SUMMIT COUNTY, OH (AKRON, OH AREA; APPLIES TO COUNTY)

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In September 2012, based on the recommendation of the Human Resources Department, the Summit County Executive, Russell M. Pry, authorized the removal of conviction history questions from the job application. Background checks are only required for security-sensitive positions and are conducted after the interview. If an applicant has a conviction, then the County considers the age and nature of the offense and the duties of the relevant job position.

Summit County Contact

Christine Higham, Deputy Director
Human Resources Department
chigham@summitoh.net

DURHAM COUNTY (DURHAM, NC AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)

- Background check only after applicant selected for hire
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

Effective October 1, 2012, the County does not inquire into an applicant’s criminal history on an initial employment application form, unless explicitly mandated by law. The threshold for inquiry is after an applicant’s credentials have been reviewed, it has been determined that the applicant is otherwise qualified for a position, and the applicant has been recommended for hire by the department

where the vacancy exists. Records of criminal arrests, dismissals, or convictions which have been expunged may not be used. The policy explicitly incorporates language from the 2012 updated EEOC guidance—for example, applicants are provided the opportunity for an individualized assessment.

Durham County Resources

Durham County Administrative Procedure (effective Oct. 1, 2012), [available here](#).
“The Benefits of Ban the Box: A Case Study of Durham, NC”, [available here](#).

Durham County Contact

[Southern Coalition for Social Justice](#)

CARRBORO, NC (APPLIES TO TOWN)

- Incorporates EEOC criteria in individualized assessment

On October 16, 2012, the Carrboro Board of Aldermen voted unanimously to ban the box on Town of Carrboro job applications. The [Orange County Partnership to End Homelessness](#) initially proposed the measure.

Carrboro Resources

Carrboro Employment Application, [available here](#).
Human Resources Memo (Oct. 16, 2012), [available here](#).

WILMINGTON, DE (MAYORAL EXECUTIVE ORDER AND CITY COUNCIL RESOLUTION APPLY TO CITY)

- Background check only after conditional offer

On December 6, 2012, the Wilmington City Council passed a resolution urging the City’s Administration to ban the box on City employment applications. In response, Mayor Baker signed Executive Order 2012-3 on December 10, 2012, banning the box on initial job applications with the City. Wilmington will now conduct criminal background checks on applicants for non-uniformed positions after a conditional offer of employment has been provided.

Wilmington Resources

Wilmington Executive Order 2013-3, [available here](#).
Wilmington City Council Resolution 12-086, [available here](#).

PITTSBURGH, PA (ORDINANCE APPLIES TO CITY AND CONTRACTORS)

- Policies applies to vendors/contractors doing business with the City
- Right to appeal denial of employment

On December 17, 2012, the Pittsburgh City Council passed two ban the box ordinances; one that applies to city employment and one that applies to contractors. The [Formerly Convicted Citizens Project](#) worked on the campaign for two years.

Pittsburgh Resources

Pittsburgh Ordinance 2012-0013, applies to city positions, [available here](#).

Pittsburgh Ordinance 2012-0015, applies to contractors, [available here](#).

Pittsburgh Contact

Dean Williams, Director, [Formerly Convicted Citizens Project](#)

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fccpitt@gmail.com

ATLANTA, GA (ORDINANCE APPLIES TO CITY)

- Provides copy of background check

On January 1, 2013, the City removed the conviction history question from its job application with mayoral support. In October 2014, the City Council unanimously voted to codify the policy in ordinance. Under the ordinance, the City may only inquire into an applicant's conviction history once it has determined that the applicant is otherwise qualified for the position. If the City then makes an adverse employment action based on the results of the background check, the City must notify the applicant of the decision within 30 days and provide the applicant with a copy of the background check highlighting the disqualifying convictions.

Atlanta Resource

Atlanta Ordinance No. 14-0-1399 (Oct. 6, 2014), [available here](#).

Atlanta Contact

Charmaine Davis, Georgia State Director & Shannan Reaze, Organizer

[9to5](#) and [9to5 Atlanta](#)

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Marilynn Winn

Women on the Rise

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TAMPA, FL (ORDINANCE APPLIES TO CITY)

- Background check after conditional offer

On January 14, 2013, the Mayor of Tampa signed the ban the box ordinance approved by the City Council. Advocates in Tampa continue to work on expanding the ordinance to include contractors.

Tampa Resource

Tampa Ordinance 2013-3 (Jan. 14, 2013), [available here](#).

Tampa Contact

Sharon Streater, HOPE Lead Organizer

[HOPE](#)
hopeinc@fdn.com

CANTON, OH (CIVIL SERVICE COMMISSION RULES APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

The Canton Civil Service Commission has amended the civil service examination rules. Under the new amendment, the Civil Service Commission will now examine applicants and may certify as eligible a person convicted of a felony or misdemeanor who is not precluded from holding a specific position under federal or state law, provided the conviction does not bear a direct and substantial relationship to the position. To determine whether a conviction bears a direct and substantial relationship to the position, the Human Resources Director will consider a list of factors, including EEOC-type factors.

Canton Resource

Canton Rule IV, Examinations, Section 15, Amendment, [available here](#).

Canton Contact

Joseph Martuccio, Law Director
[City of Canton](#)
joe.martuccio@cantonohio.gov

RICHMOND, VA (RESOLUTION APPLIES TO CITY)

On March 25, 2013, the Richmond City Council unanimously passed a resolution to ban the box on City job applications. Except when required by federal or state law or for positions that the City Council, by resolution, has determined should be exempt, initial job applications may no longer inquire into an applicant's criminal conviction history. Attached to the resolution is a document that includes those positions determined by the City Council to be exempt from the ban the box ordinance.

Richmond Resource

Richmond Resolution No. 2013-R, 87-85 (March 25, 2013), [available here](#).

Richmond Contact

Richard Walker, Founder & CEO
[Bridging the Gap in Virginia](#)
rwalker@bridgingthegapinvirginia.org

KANSAS CITY, MO (ORDINANCE APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

Recognizing the role of employment in reducing recidivism, Kansas City joined the movement to ban the box on April 4, 2013. The ordinance amended Rule IV,

Examinations, Section 15, and delayed conviction inquiries until after the applicant has been determined “otherwise qualified” and interviewed for the position. The ordinance further prohibited the City from using or accessing the following criminal records information: records of arrests not followed by valid conviction; convictions which have been annulled or expunged; pleas of guilty without conviction; and misdemeanor convictions for which no jail sentence can be imposed. Further, suspended imposition of sentence is not considered a conviction for purposes of the ordinance. The ordinance was limited to City hiring, but it urged private employers to adopt fair hiring practices.

On February 1, 2018, the Kansas City Council adopted an ordinance applicable to private employers. Similar to the 2013 ordinance, it requires employers to delay inquiries about a job applicant’s criminal history until after the applicant is interviewed and determined to be otherwise qualified for the position. The ordinance also prohibits employers from basing hiring or promotional decisions on criminal history unless the conviction is “reasonably related to the duties and responsibilities of the position” and the employer has considered all information available, including the severity of the record, time passed since the offense, and whether the person has been convicted of multiple offenses. The ordinance excludes positions for which employers are barred by local, state, or federal law or regulation from hiring a person with certain past convictions. The ordinance is effective as of June 9, 2018.

Kansas City Resources

Kansas City Ordinance 130230 (Apr. 4, 2013)R, [available here](#).

Kansas City Ordinance 180034 (Feb. 1, 2018), [available here](#).

Kansas City Contact

[Kansas City Human Relations Department](#)

(816) 513-1836

hrdgeneral.inquiries@kcmo.org

STARK COUNTY, OH (ADMINISTRATIVE POLICY APPLIES TO COUNTY)

In May 2013, County Commissioners amended the employee handbook and employment application forms to remove language that prohibits them from hiring anyone convicted of a felony.

PORTSMOUTH, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

On June 2013, the Portsmouth City Manager made the administrative decision to ban the box. The City Manager notified the City Council that City employment applications would no longer request criminal history information from job applicants.

Portsmouth Resource

Letter from Portsmouth Human Resources Director (July 2013), [available here](#).

Portsmouth Contact

James Bailey, Regional Director
[CURE Virginia, Inc.](#)
jbailey383@aol.com

BUFFALO, NY (ORDINANCE APPLIES TO CITY, VENDORS, AND PRIVATE EMPLOYERS)

- Applies to public and private employers and vendors

On June 11, 2013, the Common Council of Buffalo banned the box for public and private employers within the city of Buffalo as well as for vendors who do business with the city. The ordinance permits consideration of a candidate's criminal history only after an application has been submitted and not before the initial interview.

Buffalo Resource

Buffalo Ordinance Amendment (June 2013), [available here](#).

Buffalo Contact

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[Center for Employment Opportunities](#)
(716) 842-6320 ext 501
jconrad@ceoworks.org

NORFOLK, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

On July 23, 2013, the Norfolk Assistant City Manager made a presentation to the City Council informing the Council that the City had decided to administratively ban the box on all City applications except for those positions that are deemed sensitive in nature. The City will continue with the current practice of reviewing the criminal history of all applicants by weighing the gravity of the offense, the length of time since conviction, and whether the conviction is applicable to the job.

Norfolk Resources

Administrative policy announcement (July 2013, begins at 37:38), [available here](#).
Presentation by Assistant City Manager (July 2013), [available here](#).

Norfolk Contact

James Bailey, Regional Director
[CURE Virginia, Inc.](#)
(713) 582-1316
jbailey383@aol.com

PASADENA, CA (ADMINISTRATIVE POLICY APPLIES TO CITY)

In July 2013, the City Manager removed the conviction history question from the city job application.

Pasadena Contacts

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Tiffany Jacobs-Quinn, Human Resources Manager
City of Pasadena Human Resources Department
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PETERSBURG, VA (RESOLUTION APPLIES TO CITY)

- Background check only after conditional offer of employment

On September 3, 2013, the Petersburg City Council adopted a resolution to amend the City's job applications to remove inquiry into an applicant's criminal history. The Council had directed the Human Resources department to provide information on ban the box. The Director of Human Resources submitted a memo that recommended the Council adopt the ban the box resolution. The City continues to use a supplemental questionnaire to obtain criminal history information from applicants applying to safety sensitive and/or security related positions.

Petersburg Resources

Petersburg Memo and Resolution, [available here](#).
Petersburg Employment Application, [available here](#).
Petersburg Supplemental Questionnaire, [available here](#).

VIRGINIA BEACH, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background check after conditional offer of employment

The City removed the conviction history inquiry from its general job application in November 2013. The Human Resources Department proposed the change, which was then reviewed by the City Attorney and approved by the City Manager. According to the policy, background checks are conducted on all applicants who are conditionally offered employment with the City. The inquiry takes into account the nature of the offense and its relation to the work sought. If an applicant is denied a position because of information on their background check, the applicant may ask about the information that contributed to the rejection.

Virginia Beach Resources

Virginia Beach Job Application, [available here](#).
Human Resources Memorandum (Oct. 16, 2013), [available here](#).
Announcement to Employees, [available here](#).

Virginia Beach Contact

Bill Edwards, Manager of Staffing & Compensation
Department of Human Resources

wedwards@vbgov.com

AKRON, OH (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

On October 29, 2013, the Civil Service Commission adopted several policy changes for the city's approximately 1,800 jobs. Under the revised policy, applicants to non-safety-sensitive positions need not check the box asking about convictions. The policy requires a background check before applicants are certified for an interview. If the background check reveals a conviction, then a committee evaluates a candidate's suitability for the job based on factors including job-relatedness and time passed since the conviction. A candidate who is rejected may appeal the decision to the personnel director. An appeal allows the applicant an opportunity to present rehabilitation or relevant evidence.

Akron Resource

Akron Conviction Records Policy for Classified Positions, [available here](#).

Akron Contact

Kris Rininger, Personnel Analyst II
Personnel Department
krininger@akronohio.gov

LUCAS COUNTY, OH (TOLEDO AREA, POLICY APPLIES TO COUNTY)

On October 29, 2013, Lucas County Commissioners voted unanimously to remove all questions about an applicant's criminal background from applications for employment with any department under the Commissioners' authority. The county only conducts a background check after an applicant is selected as a finalist.

Lucas County Resource

Lucas County Press Release (Oct. 28, 2013), [available here](#).

CLEARWATER, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Incorporates EEOC criteria in an individualized assessment

At the recommendation of the City Attorney, the City removed the conviction record inquiry from its employment application in 2013 to comply with the related EEOC guidance. Criminal background checks are required for all applicants, but are not conducted until after the City narrows down its list of qualified candidates. In addition, the City follows the EEOC's guidance when determining whether a conviction relates to the position for which an applicant has applied. The background check is limited to convictions and the City does not consider arrests.

Clearwater Resource

Employment Application [available here](#).

Clearwater Contact

Dina Hyson, Human Resources Manager

(727) 562-4871

dina.hyson@myclearwater.com

MASSILLON, OH (CIVIL SERVICE REQUIREMENT APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

On January 3, 2014, the Massillon Civil Service Commission voted to adopt a “ban the box” policy and disclosure requirement for the City. The City will no longer seek criminal history information from applicants on initial job applications. After the City determines the best candidates for the position, it will ask about criminal history information during the interview. The City will also continue to perform criminal background checks. While the City will consider specific factors, no appeal or waiver process is outlined in the memo explaining the policy.

Massillon Resource

Massillon Civil Service Commission Letter (Jan. 17, 2014), [available here](#).

NEW ORLEANS, LA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment
- Provides copy of background check report

On January 10, 2014, the City of New Orleans Chief Administrative Office released a policy memorandum announcing the City’s new Policy for Review of Employment Candidates’ Criminal History (Ban the Box). Wishing to safely remove barriers that impede otherwise qualified individuals from obtaining employment with the City, New Orleans will no longer request criminal history information from job applicants until after they have been interviewed and found to be otherwise qualified for the position. In addition, the applicant will receive a copy of his or her background check and has an opportunity to comment on the record prior to a final employment decision.

New Orleans Resource

New Orleans Policy Memorandum No. 129 (Jan. 10, 2014), [available here](#).

NEW CASTLE COUNTY (WILMINGTON, DE AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)

- Background check only after conditional offer of employment

At the encouragement of the County Council Pro Tempore, New Castle County Executive Gordon signed an executive order removing criminal conviction history information from the County’s non-uniformed employment applications on January

28, 2014, saying, “When people have paid their debt to society, they are ready to work and become contributing members of the community once again.”

New Castle County Resource

New Castle County Executive Order Press Release (Feb. 14, 2014), [available here](#).

DANE COUNTY (MADISON, WI AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)

When approached by Madison Organizing in Strength, Equity and Solidarity (MOSES) about banning the box for county job applications, Dane County Executive Joe Parisi needed no convincing. As a state legislator in 2009, Parisi had unsuccessfully pushed a bill to ban the box at the state level. After speaking with MOSES, Parisi removed questions of criminal history from the county application in February 2014 saying, “We don’t have to condone what they did to get in trouble, but I, personally, want people who’ve served their debt to society to get back into the workforce.”

Dane County Resource

Dane County Application, [available here](#).

Dane County Contact

Carol Rubin, President
MOSES
carolrubin3@gmail.com

INDIANAPOLIS, IN (ORDINANCE APPLIES TO CITY, COUNTY, LICENSING, AND VENDORS)

- Policies apply to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment

On February 24, 2014, the Consolidated City of Indianapolis and Marion County (City) passed a fair-chance ordinance by 26-2 with the support of Republican Mayor Greg Ballard. The ordinance prohibits City or County agencies and vendors from inquiring into an applicant’s conviction history until after the first interview. If no interview is conducted, the employer is prohibited from making inquiries or gathering any information regarding the applicant’s criminal convictions.

Indianapolis Resource

Indianapolis Ordinance (March 7, 2014), [available here](#).

Indianapolis Contacts

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shoshanna@indycan.org

Councilmember Vop Osili
City of Indianapolis, City Council
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CHARLOTTE, NC (ADMINISTRATIVE POLICY APPLIES TO CITY)

On February 28, 2014, Charlotte City Manager Ron Carlee announced that the City had “banned the box” for City applications. The Charlotte Human Resources director said she expected the number of applications for city jobs to increase as a result of the decision.

Charlotte Resource

Charlotte Human Resources Pre-Employment Background Check Policy, [available here](#).

Charlotte Contact

[Southern Coalition for Social Justice](#)

CHARLOTTESVILLE, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

In March 2014, the City removed the question about conviction history from the city job application. “This is another example of our commitment to being a City of Second Chances for ex-offenders who are searching for meaningful employment,” said the mayor. The City will continue to conduct background checks before making final employment offers.

Charlottesville Resources

Press Release (March 24, 2014), [available here](#).

City Council Minutes (April 7, 2014), [available here](#).

Charlottesville Contact

Galloway Beck, Director

beck@charlottesville.org

LOUISVILLE, KY (ORDINANCE APPLIES TO CITY AND VENDORS)

- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment

On March 13, 2014, the Louisville Metro Council unanimously passed a fair-chance ordinance. The bipartisan victory was praised by Mayor Fischer as “compassionate legislation.” The ordinance prohibits City agencies from inquiring into an applicant’s conviction history until after the applicant has been found “otherwise qualified.” The ordinance states that the City prefers to do business with vendors who have adopted policies that are consistent with the City, and that consideration of vendors’ criminal history policies will be part of the performance criteria used by the City when awarding contracts.

Louisville Resource

Louisville Metro Council Ordinance (March 13, 2014), [available here](#).

Louisville Contact

Robert Owens, Lead Organizer

[CLOUT](#)

clout@bellsouth.net

ALEXANDRIA, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background check after conditional offer of employment

On March 19, 2014, the City Manager of Alexandria released a policy memorandum announcing the City's new ban the box policy. Pursuant to the new policy, inquiries regarding prior criminal history will only be made after a conditional offer of employment has been issued. The City Manager notes that implementation of this policy is likely to increase equity in the recruitment process, broaden the pool of candidates seeking City employment, and provide Alexandrians with records a better chance at achieving gainful employment.

Alexandria Resource

Alexandria Policy Memorandum (March 19, 2014), [available here](#).

YOUNGSTOWN, OH (RESOLUTION APPLIES TO CITY)

- Background check after conditional offer of employment

On March 19, 2014, the city council voted unanimously to support a resolution to “ban the box” from city employment applications with the support of the mayor. Under the resolution, background checks are conducted only after the city is prepared to make an offer of employment.

Youngstown Resource

Youngstown Resolution (March 19, 2014), [available here](#).

Youngstown Contact

Rebecca Soldan, Community Organizer

Rebecca@mvorganizing.org

[Mahoning Valley Organizing Collaborative \(MVOC\)](#)

EAST LANSING, MI (RESOLUTION APPLIES TO CITY)

Passed unanimously by the City Council on April 15, 2014, East Lansing's ban the box policy was introduced by Mayor Nathan Triplett. During discussion, Mayor Triplett noted his support of the policy was motivated by the need to “remove unnecessary bias from the pre-screening stage of the [hiring] process” and to make East Lansing a model employer in the state.

East Lansing Resources

East Lansing Resolution (April 15, 2014), [available here](#).

Recording of East Lansing City Council meeting, [available here](#).

East Lansing Contact

Nathan Triplett, Mayor
ntriplett@gmail.com

ANN ARBOR, MI (RESOLUTION APPLIES TO CITY)

- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

On May 5, 2014 the Ann Arbor City Council voted unanimously to ban the box for city employment. The new resolution declares the City’s policy of not barring employment based on conviction history unless the exclusion is job-related for the position in question and consistent with business necessity. If the City seeks to deny an applicant based on conviction history, the City must perform an individualized assessment that takes into account the factors recommended by the EEOC.

Ann Arbor Resource

Ann Arbor Resolution (May 5, 2014) [available here](#).

ROCHESTER, NY (ORDINANCE APPLIES TO CITY, VENDORS, AND PRIVATE EMPLOYERS)

- Applies to public and private employers and vendors

On May 20, 2014, the Rochester City Council unanimously passed an ordinance for fair employment screening. It was signed by the mayor two days later. Modeled on the Buffalo ordinance, all public and private employers within the City of Rochester are prohibited from inquiring into an applicant’s conviction history on an initial job application and must wait until after the first interview.

Rochester Resource

Rochester Ordinance (May 22, 2014), [available here](#).

Rochester Contacts

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Mike Blegg, Coordinator
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Reyna Ramolete Hayashi, Workers’ Rights Attorney

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GENESEE COUNTY (FLINT, MI AREA; RESOLUTION APPLIES TO COUNTY)

- Background check after conditional offer of employment

Recognizing that asking about conviction history on job applicants may introduce bias into the hiring process, Genesee County Commissioners voted unanimously to “ban the box.” The new policy, which went into effect on June 1, 2014, requires the County to wait until a conditional offer of employment is to be made before conducting a background check and ensures that applicants be provided an opportunity to discuss the circumstances of his or her conviction history.

Genesee County Resource

Genesee County Resolution, [available here](#).

DANVILLE, VA (RESOLUTION APPLIES TO CITY)

- Background check after conditional offer of employment
- Incorporates EEOC criteria in an individualized assessment

On June 3, 2014, the Danville Chapter of Virginia Organizing wrote a letter supporting a “ban the box” initiative in Danville. In response, Mayor Sherman Saunders signed a resolution that amended the city employment application to omit questions about conviction history. Under the new policy, background checks are conducted only after there has been a conditional offer of employment. The nature and age of the offense and the nature of the job are considered. Applicants are also given the opportunity to explain their conviction history.

Danville Resource

Danville Resolution (June 17, 2014), [available here](#).

Danville Contacts

Marty Jackson	Sara Weller, Director
Danville Chapter, Virginia Organizing	Department of Human Resources
(434) 429-8109	sara.weller@danvilleva.gov

PORTLAND, OR (ORDINANCE APPLIES TO CITY AND PRIVATE EMPLOYERS)

- Policies apply to public and private employers in the city
- Background check after conditional offer of employment
- Incorporates EEOC criteria in an individualized assessment
- Complaint process

In July 2014, the City of Portland removed from its employment application language informing applicants that they may be required to sign a criminal history statement.

Portland expanded its policy on November 25, 2015, when the city council unanimously approved an ordinance requiring that any conviction history inquiry by private employers be delayed until a conditional offer is extended to the job

applicant. Rescinding a conditional offer requires an employer to determine in good faith that a specific offense is job-related after performing an individualized assessment that considers (i) the nature of the offense, (ii) time elapsed, and (iii) the specific job sought by the applicant. The ordinance applies to private employers with at least six employees as well as city employers, with the exception of law enforcement and criminal justice positions. A separate procedure is used for certain “sensitive positions.” The city is contracting with the Oregon Bureau of Labor and Industries to enforce the new restrictions through a complaint process; the ordinance allows for civil penalties. The ordinance took effect on July 1, 2016, and the city has issued administrative rules further explaining the ordinance.

Portland Resources

Portland Press Release after administrative action (July 9, 2014), [available here](#).

Ordinance (Nov. 25, 2015), [available here](#).

Administrative Rules (2016), [available here](#).

Frequently Asked Questions (FAQs) from the Portland mayor’s office, [available here](#).

FULTON COUNTY (ATLANTA, GA AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment
- Provides copy of background check report

On July 16, 2014, Fulton County issued a policy and procedure for fair criminal record screening. The policy explicitly incorporates the EEOC guidance. The Personnel Department is directed to remove questions about convictions from job application forms. The County is prohibited from inquiring into criminal history during the application process or before or during the first interview. An applicant need not disclose any arrests not leading to convictions, erased convictions, or juvenile adjudications. Background checks are limited to sensitive job positions. Applicants are notified of any adverse action and are provided a copy of the background check and notified of the conviction that is deemed job-related.

Fulton County Resource

Fair Criminal Record Screening Policy and Procedure (July 16, 2014), [available here](#).

Fulton County Contact

Charmaine Davis, Georgia State Director & Shannan Reaze, Organizer

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Marilynn Winn

Women on the Rise

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CITY OF SPOKANE, WA (ORDINANCE APPLIES TO CITY & PRIVATE EMPLOYERS)

On November 27, 2017, the Spokane City Council passed a fair chance ordinance. Mayor David Condon declined to sign the ordinance, which was enacted without his signature or veto on December 14, 2017. The ordinance is divided into two parts: one applies to private employers (effective June 14, 2018) and the second applies to employment with the City (effective January 13, 2018).

Sections 1 & 3 — Applies to Private Employers

The ordinance bars private employers from stating that people with arrest or conviction records will be automatically precluded from consideration for employment. Employers may not inquire about a job applicant's record until after an in-person, telephonic, or video interview (or a conditional offer of employment). An employer violation is categorized as a class 1 civil infraction, and carries civil penalties. Employers required (or expressly permitted) by law to conduct background checks are exempted, as are positions that have unsupervised access to children, vulnerable adults, or vulnerable persons.

Section 2 — Applies to City Government Employers

- Incorporates EEOC criteria in individualized assessment

The City may consider a job applicant's record only to the extent that it is directly related to the position sought and any potential risk to city residents, customers, or other employees. The ordinance exempts certain employers and types of employment, such as the police department and certain positions with the fire department. The ordinance also mandates that offers of employment for certain positions be made contingent on the completion of a conviction background check and permits such conditional offers for certain other positions.

The Spokane ordinance supplements an earlier administrative policy applicable to city hiring. On July 31, 2014, Mayor Condon directed (by letter) the Human Resources Department to draft policies and procedures that would delay a background check inquiry until after determining that the applicant meets the minimum qualifications for the job. In accordance with that directive, Administrative Policy and Procedure 0620-15-65 took effect March 6, 2015.

City of Spokane Resource

City of Spokane Ordinance C35564 (Nov. 27, 2017), [available here](#).

Letter from Mayor of Spokane (Dec. 18, 2017), [available here](#).

Spokane Administrative Policy & Procedure 0620-15-65 (2015), [available here](#).

Letter from Mayor of Spokane (July 31, 2014), [available here](#).

Spokane Contact

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Layne Pavey, Organizer

[I Did the Time](#)

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FREDERICKSBURG, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

In 2014, the Human Resources Department and the City Attorney recommended a “ban the box” policy to the City Manager, who approved the new process. The City only conducts a background check after a conditional offer of employment has been made. If potentially negative information is identified, the City considers the age and nature of the offense in relation to the job position. If an applicant is denied, he or she will receive written notice that includes a description of the disqualifying information as well as the name of the company that ran the background check. The applicant has the opportunity to correct any misreported information.

Fredericksburg Contact

Robert F. Bell, Director

Department of Human Resources

(540) 372-1028

HARRISONBURG, VA (CITY COUNCIL DECISION APPLIES TO CITY)

- Background check after conditional offer of employment
- Right to appeal prior to adverse determination

On August 26, 2014, the Harrisonburg City Council unanimously moved to remove criminal history questions from the city’s employment application. According to the city manager, the city maintains a policy of conducting criminal history background checks after a conditional offer of employment. If an offer of employment is rescinded based on the results of a background check, applicants are informed and given the opportunity to explain or correct any erroneous information.

Harrisonburg Resource

City Council Meeting Minutes (Aug. 26, 2014), [available here](#) (pages 5-6).

TUCSON, AZ (RESOLUTION APPLIES TO CITY)

- Background checks only required for some positions
- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

On August 27, 2014, the City of Tucson committed to removing the question about conviction history from the city job application. On March 17, 2015, a resolution was adopted by the mayor and city council directing the city to identify positions that require background checks and performing them after a contingent offer. The policy is directed to be consistent with the EEOC guidance.

Tucson Resources

Tucson Job Application, [available here](#).

Tucson Resolution No. 22373 (March 17, 2015), [available here](#).

Tucson Administrative Directive, [available here](#).

Tucson Contact

Ellen Katz

William E. Morris Institute for Justice

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MADISON, WI (RESOLUTION APPLIES TO CITY; ORDINANCE APPLIES TO CITY CONTRACTORS)

- Background check after conditional offer of employment
- Complaint process (for city contractors, pursuant to ordinance)

On September 2, 2014, the Common Council of the City of Madison adopted a resolution requiring the removal of criminal history inquiries from applications for city jobs (with limited exceptions). The resolution prohibits criminal background checks until after a conditional offer of employment and requires specific notice be provided to an applicant disqualified because of his/her background check. The resolution took effect on September 5, 2014.

On November 25, 2015, the Common Council also adopted an ordinance extending ban the box to city contractors (with certain exceptions). It prohibits criminal history inquiries or background checks until after a conditional offer of employment. It requires contractors to post a city-provided notice informing job applicants about the ordinance's requirements. Job applicants may file complaints with the City of Madison Department of Civil Rights. The ordinance allows for monetary penalties for violations. The ordinance applies to contracts worth over \$25,000 awarded or renewed on January 1, 2016 or later.

Madison Resources

Resolution No. 14-00679 (Sept. 2, 2014), [available here](#).

Report to Common Council on impact of ban the box (July 16, 2014), [available here](#).

Ordinance No. 15-00128 (Nov. 25, 2015), [available here](#).

Notice that contractors must prominently post, [available here](#).

FAIRFAX COUNTY, VA (WASHINGTON, D.C. METRO AREA; APPLIES TO COUNTY)

- Background check after conditional offer of employment

Fairfax County does not inquire about criminal records on its job applications. Public safety jobs and "certain sensitive positions" are the exceptions. Background checks are conducted after a conditional offer. The goal of the policy change was to

“increas[e] the chances that an applicant will be judged more holistically, reach the interview stage, and hopefully be more likely to be hired.”

Fairfax County Resource

Statement of Supervisor Catherine M. Hudgins (Sept. 23, 2014), [available here](#).

Fairfax County Contact

Susan Woodruff, Director

Fairfax County Department of Human Resources

susan.woodruff@fairfaxcounty.gov

ST. PETERSBURG, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)

On October 21, 2014, St. Petersburg Mayor Rick Kriseman announced his “City of Opportunity” initiatives related to fair hiring practices. Effective January 1, 2015, the city will remove the question asking city job applicants if they have a criminal record.

St. Petersburg Contacts

[Pinellas County Ex-Offender Re-Entry Coalition \(PERC\)](#)

[Faith in Florida](#)

ST. LOUIS, MO (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background checks only required for some positions
- Incorporates EEOC criteria in an individualized assessment

As of March 2013, the City no longer automatically disqualified city job applicants with prior felonies. In October 2014, the City removed all questions about conviction history from its job application. The City now only screens later in the hiring process and only for certain sensitive positions. Missouri Senator Jamilah Nasheed stated in support, “Ban the box gives people with records a fair chance to re-enter the workforce and make positive contributions to society.”

St. Louis Resources

St. Louis Job Application, [available here](#).

St. Louis Mayoral Press Release, [available here](#).

St. Louis Contact

Richard R. Frank, Director

Personnel Department

(314) 622-4308

LANCASTER, PA (RESOLUTION APPLIES TO CITY)

- Background check for finalists
- Incorporates EEOC criteria in an individualized assessment

By resolution, the City approved a new hiring policy effective October 1, 2014. Applicants will not be asked about a criminal record. Criminal background checks will be performed on finalists. If a finalist has a criminal record, human resources shall consider the nature of the position, accessibility to youth and the elderly, nature of the offense as related to the job duties, time passed, age of the applicant at the time of offense, and facts surrounding the offense.

Lancaster Resources

Lancaster City Council approval of resolution, [available here](#).
Lancaster Policy Memo, [available here](#).

ROANOKE, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)

On October 9, 2014, the City Manager indicated at a city council meeting that the question about a job applicant's conviction history would be removed from the initial application for most city positions. By January 2015, the city will have developed a new hiring process intended to provide people with records a fair opportunity at employment.

Roanoke Resource

Roanoke City Council Agenda (Oct. 9, 2014), [available here](#).

YONKERS, NY (ADMINISTRATIVE POLICY APPLIES TO CITY)

In November 2014, Community Voices Heard worked with the Mayor's office to remove the box asking an application to disclose his or her criminal history.

Yonkers Resources

Statement from Yonkers Mayor's Office, [available here](#).
Yonkers Job Application, [available here](#).

Yonkers Contact

Juanita Lewis
Community Voices Heard
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ARLINGTON COUNTY, VA (ADMINISTRATIVE POLICY APPLIES TO COUNTY)

In November 2014, the County eliminated questions about convictions from its employment application. "Taking this step reinforces our commitment to fair hiring practices," said the director of the human resources department. Exceptions are for positions related to public safety. Conviction inquiries are delayed until the applicant has an interview. The County conducts background checks on all

applicants before confirming employment. Applicants with records are given the opportunity to provide a written explanation of their record. The County explains, “Allowing these candidates to proceed further into the process creates opportunities that may otherwise have been lost, and provides candidates with a more level playing field during the application process.”

Arlington County Resources

Arlington County Press Release (Nov. 3, 2014), [available here](#).

Arlington County Contact

Marcy Foster, Director
Department of Human Resources
mfoste@arlingtonva.us

MONTGOMERY COUNTY, MD (WASHINGTON, D.C. METRO AREA; ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND COUNTY)

- Applies to private employers and county
- Provides copy of background check
- Complaint process

Consideration of the legislation entailed extensive analysis by the county. The county found that “when people with criminal histories are denied a fair chance at employment, the entire community pays the cost in the form of diminished public safety, increased government spending on law enforcement and social services, and reduced government revenue in the form of lost income and sales taxes.”

The law covers employers in the county with 15 or more full-time employees. Employers may not conduct an investigation of an applicant’s conviction history until after the conclusion of the first interview. If the employer intends to rescind a conditional offer, the employer must provide the applicant with a copy of the background check and specify the disqualifying information and give the applicant seven days to review the information. Applicants may file a complaint with the director of the human rights commission. County Executive Ike Leggett signed the legislation on November 10th and the law took effect on January 1, 2015.

Montgomery County Resources

Action Packet (Oct. 21, 2014), [available here](#).

Legislation (Oct. 28, 2014), [available here](#).

Press Release (Oct. 28, 2014), [available here](#).

Montgomery County Contact

Neil Greenberger, Legislative Information Officer
neil.greenberger@montgomerycountymd.gov

KANSAS CITY AND WYANDOTTE COUNTY, KANSAS (“KCK”) (ORDINANCE APPLIES TO CITY)

- Incorporates EEOC criteria in an individualized assessment

On November 6, 2014, the Unified Government (UG) Board of Commissioners unanimously voted to pass an ordinance in “KCK” (Kansas City, Kansas) that will eliminate the field requesting disclosure of criminal convictions from the UG employment application. A petition for the change, with over 300 signers, was submitted in September 2014, stating: “We believe that just as all Citizens must pay taxes, all Citizens should have a fair chance at employment that is sustained by those same tax dollars.”

KCK Resources

KCK Agenda and Ordinance (Nov. 6, 2014), [available here](#).

WOODSTOCK, NY (ADMINISTRATIVE POLICY APPLIES TO CITY)

On November 18, 2014, the Town Board voted unanimously to remove questions regarding criminal history from applications for employment with the town.

Woodstock Resources

Woodstock Resolution, [available here](#).

PRINCE GEORGE’S COUNTY, MD (WASHINGTON D.C. METRO AREA; ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND COUNTY)

- Applies to private employers and county
- Incorporates EEOC criteria in an individualized assessment
- Provides copy of background check report
- Complaint process

On November 19, 2014, the county council unanimously passed a bill that sets fair standards for screening criminal records during the hiring process. The bill is intended to “enhance the health and safety of the community by assisting individuals with criminal records to lawfully provide for themselves and their families.” Under the legislation, an employer is not permitted to inquire about a job applicant’s arrest or conviction record until after a first job interview. In making an employment decision based on a person’s record, employers are only allowed to consider offenses that specifically demonstrate unfitness for the desired position. If an employer decides to rescind a job offer based on a record, they must notify the applicant of that decision, specify the information on which the decision is based, and provide a copy of the background check to the applicant. The county executive signed the bill on December 4, 2014. On April 14, 2015, the county council approved a resolution adopting rules and regulations further interpreting the ordinance.

Prince George’s County Resource

Prince George’s County Ordinance (Nov. 19, 2014), [available here](#).

Prince George's County Resolution (Apr. 14, 2015), [available here](#).

ALLEGHENY COUNTY, PA (PITTSBURGH, PA AREA; APPLIES TO COUNTY)

- Background checks only for some positions
- Background checks after conditional offer of employment
- Incorporates EEOC criteria in an individualized assessment

On November 24, 2014, the county executive announced that the county will remove questions regarding criminal history from its employment application. For the positions that do require a background check, it will be conducted only after a conditional offer of employment has been made. A candidate's criminal history will be evaluated on a case-by-case basis that includes consideration of the age of the offense and the nature of the position sought. The human resources director stated that "[the policy will] increase the diversity of our employees and ensure that we reach a greater audience in our efforts to attract the most qualified candidates."

Allegheny County Resource

Allegheny County Press Release (Nov. 24, 2014), [available here](#).

COLUMBIA, MO (ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND CITY)

- Applies to private employers and city
- Background checks after conditional offer of employment
- Complaint process

On December 1, 2014, the city council unanimously approved a fair-chance ordinance that prohibits employers from inquiring into an applicant's criminal history until after a conditional offer of employment. Under the ordinance, employers are allowed to notify applicants in writing of specific offenses that would disqualify them from a position. Employers are also encouraged to consider the nature of the offense, the time since the offense, and any rehabilitation measures taken since the offense. The city's Human Rights Commission wrote a letter of support. The Mayor's Task Force on Community Violence made the initial, formal recommendation to the council.

Columbia Resource

Columbia Ordinance and supporting documents (Dec. 1, 2014), [available here](#).

POMPANO BEACH, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Incorporates EEOC criteria in an individualized assessment
- Provides copy of background check report

The City eliminated all questions regarding criminal records from its employment applications in December 2014. Criminal background checks are conducted after an initial interview. According to the Human Resources Director, applicants are notified of the reasons for denial and provided a copy of the background check report.

Pompano Beach Resource

Pompano Beach City Manager’s Memorandum (Dec. 1, 2014), [available here](#).

Pompano Beach Contact

Vincent Marchione, Human Resources Analyst

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vincent.marchione@copbfl.com

ULSTER COUNTY, NY (KINGSTON, NY AREA; EXECUTIVE ORDER APPLIES TO COUNTY)

On December 16, 2014, the county executive signed the executive order to remove the conviction history question from the county’s job application. Instead, the personnel department will consider convictions only after the first interview. In the press release, the county executive commented that “if we are serious about fighting discrimination and bias, it is simply the right thing to do.” The order is effective on January 1, 2015.

Ulster County Resources

Ulster County Executive Order No. 2-2014 (Dec. 16, 2014), [available here](#).

Press Release (Dec. 16, 2014), [available here](#).

SYRACUSE, NY (ORDINANCE APPLIES TO CITY, LICENSURE, AND CONTRACTORS)

- Applies to city employment and licensure; and applies to city contractors
- Background checks after conditional offer of employment
- Incorporates EEOC criteria in an individualized assessment

On December 8, 2014 the city council resoundingly voted 8-1 to enact the ordinance. Under the ordinance, the city and its contractors shall not inquire into an applicant’s criminal history until an applicant is extended a conditional offer of employment. A conditional offer may be withdrawn if there is a direct relationship between a conviction and the job position or if there is a finding of unreasonable risk. Prior to an adverse action, the applicant is provided with a copy of the criminal history report, which also identifies disqualifying information. The applicant has the opportunity to provide countervailing evidence prior to a final adverse action. As a component of enforcement, the city is required to audit the hiring practices of the city and its contractors. The ordinance is effective March 22, 2015.

Syracuse Resources

Syracuse Fair Employment and Licensure Ordinance (Dec. 8, 2014), [available here](#).

Center for Community Alternatives Press Release (Dec. 8, 2014), [available here](#).

Syracuse Contacts

Alan Rosenthal and Patricia Worth

[Center for Community Alternatives](#)

arosenthal@communityalternatives.org and pwarth@communityalternatives.org

ALLIANCE, OH (POLICY APPLIES TO CITY)

- Background checks only required for some positions
- Provides copy of background check report upon request

The City eliminated all questions regarding criminal records from its employment applications around December 2014, but did not pass an ordinance requiring this change. According to the Safety Service Coordinator, criminal background checks are conducted for public safety positions and for positions where an individual would come into contact with money, once the finalists for the position are selected. The past crimes that are considered are those directly related to the position. Applicants are notified of the reasons for denial, and provided a copy of the background check report upon request.

Alliance Resource

Barbara J. Sferra, Safety Service Coordinator
(330) 821-3110

WARREN, OH (RESOLUTION APPLIES TO CITY)

- Background checks only required for some positions
- Background checks after conditional offer of employment

On January 14, 2015 the City Council passed a resolution to express support for the Ban the Box campaign, commend similar initiatives in other communities, and to encourage the Mayor of the City of Warren to submit a Ban the Box policy so that the City of Warren can implement the policy. The policy has not yet been implemented.

Warren Resource

Warren Resolution, [available here](#).

Warren Contact

David Daugherty, Personnel Supervisor
330-841-2608
dougherty@warren.org

TALLAHASSEE, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)

Based on the City Manager's recommendation, on January 28, 2015 the City Commission approved a measure to remove any questions regarding criminal history from applications for employment with the City. The City will conduct a background check after selecting the top candidate(s). The measure supplements the existing policy requiring the City to consider how the conviction relates to the job. Arrests are not considered.

Tallahassee Resource

Tallahassee City Commission Meeting Memorandum, [available here](#).

Tallahassee Contact

Ellen Blair, Human Resources Director
(850) 891-8538

MACON-BIBB COUNTY, GA (ORDINANCE APPLIES TO COUNTY)

- Provides copy of background check report

On February 17, 2015, county commissioners voted 6-3 to remove any questions from the county application that ask about criminal records. The policy applies to applications for professional licenses as well. Background checks are still required for all applicants for employment, but if an applicant is rejected because of her criminal record, the County must provide the applicant with a copy of the record used and indicate the portions of the record that resulted in disqualification.

Macon-Bibb County Resource

Macon-Bibb County Commissioners' Ordinance, [available here](#).

Macon-Bibb County Contacts

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Marilynn Winn
Women on the Rise
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Charmaine Davis, Georgia State Director & Shannan Reaze, Organizer
[9to5](#) and [9to5 Atlanta](#)
Charmaine@9to5.org; Shannan@9to5.org

READING, PA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background checks after conditional offer of employment

As of March 9, 2015, applications for employment with the City no longer include any questions relating to an applicant's criminal history. The City still conducts background checks on all applicants, but only after a conditional offer is made.

ALBANY, GA (RESOLUTION APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

Albany's City Commissioners passed a resolution on March 24, 2015 that directs the Human Resources Department to remove from the City's employment application any questions about an applicant's criminal record. The City still conducts background checks on all applicants for City employment once they are selected for an interview. According to the Human Resources Director, the City follows the EEOC guidance and does not generally consider an arrest record. If an application is denied because of an applicant's criminal record, the applicant is notified of the

reason for denial and provided an opportunity to dispute inaccuracies and/or present evidence of rehabilitation.

Albany Resource

Albany City Commissioners’ Resolution [available here](#).

ALLENTOWN, PA (ORDINANCE APPLIES TO CITY)

- Background checks after conditional offer of employment

On April 1, 2015, Allentown’s City Council voted unanimously to eliminate the criminal history inquiry from applications for City employment. The City will not conduct a background check until after making a conditional offer of employment. Applications for a position as a police officer, firefighter, or 911 operator will still include the criminal conviction inquiry.

ORLANDO, FL (POLICY APPLIES TO CITY)

- Background checks after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

On May 15, 2015, the City of Orlando announced a new policy that eliminates the criminal history inquiry from applications for City employment. The City does not conduct a background check until making a conditional offer of employment. For applicants to the police and fire department and to summer seasonal employees who work with children and people with disabilities, the criminal history inquiry will remain on the application. Applicants who are rejected due to criminal history are provided notification of the reason for the denial.

Orlando Contacts

John Kinloch, Employment Supervisor
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State Director, Live Free Campaign,
Faith in Florida
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Mykal Tairu
Program Coordinator
Vincentian Reentry Organizing Project
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COLUMBUS, GA (ORDINANCE APPLIES TO CITY)

- Background check after hiring process is complete
- Incorporates EEOC criteria in individualized assessment

On May 29, 2015, the mayor of Columbus signed an ordinance removing the criminal history inquiry from applications to non-public safety Department positions. The City does not conduct a background check until a candidate has been selected. Candidates may request a copy of the record. If an application is denied because of an applicant’s criminal record, the applicant is notified of the reason for

denial and, on a case-by-case basis, may be provided an opportunity to dispute inaccuracies.

Columbus Resource

Columbus Ordinance (May 29, 2015), [available here](#)

Columbus Administrative Policy (May 12, 2015), [available here](#)

DAYTONA BEACH, FL (POLICY APPLIES TO CITY)

On June 1, 2015, the City announced in a press conference that it would enact a ban-the-box policy, effective on July 1st. A job applicant with the city will not disclose conviction information until the City has expressed a “desire to hire the individual.”

Daytona Beach Resource

Daytona Beach Implementation of Fair Chance Policy and Procedure, [available here](#)

Daytona Beach Contacts

Desmond Meade

State Director, Live Free Campaign

Faith in Florida

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Mykal Tairu

Program Coordinator

Vincentian Reentry Organizing Project

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TACOMA, WA (RESOLUTION APPLIES TO CITY)

- Background check after hiring process is complete
- Incorporates EEOC criteria in individualized assessment
- Provides copy of background check report

On June 30, 2015, the Tacoma City Council voted unanimously to remove any inquiry into conviction history from its job applications for city applications. The City will continue to run background checks on all employees, but will consider whether the offense relates to the position and will only consider conviction history after extending a conditional offer. The inquiry will remain for applications for police officers and positions that work directly with children.

Tacoma Resource

Tacoma Resolution, [available here](#)

Tacoma Background and Reference Check Guidelines, [available here](#)

Tacoma Contact

Mary McDougal

Human Resources Director

253-502-8781

mmcdougal@cityoftacoma.org

WICHITA, KS (POLICY APPLIES TO CITY)

- Background check after hiring process is complete

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- Incorporates EEOC criteria in individualized assessment

As of July 9, 2015, the City of Wichita no longer inquires about criminal history for city jobs. With the exception of law enforcement positions, which still requires a background check before an offer is made, Wichita now considers conviction history only after a conditional offer has been made, and considers factors like the nature and severity of the offense, how much time has passed, and whether the offense is related to the job.

Wichita Contact

Chris Bezruki
Human Resources Director
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TOPEKA, KS (ADMINISTRATIVE DECISION APPLIES TO CITY)

- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

As of July 2015, applications for employment with the City of Topeka no longer include questions about criminal records. The City conducts background checks for all positions after extending a conditional offer of employment, with some exceptions. The City also considers the time elapsed since the conviction, the nature of the conviction, and how it relates to the duties of the job. If the conditional offer is withdrawn, the City first notifies the applicant and provides the applicant with a copy of the record. The applicant has the opportunity to correct inaccuracies and explain the circumstances of a conviction before a final decision is made.

NEWARK, OH (RESOLUTION APPLIES TO CITY)

On July 20, 2015, the Newark City Council unanimously passed a resolution removing the conviction history inquiry from its applications. The Newark Think Tank on Poverty led the initiative to pass the resolution, with the help of Councilmember Jeremy Blake.

NEWBURGH, NY (RESOLUTION APPLIES TO CITY)

The Newburgh City Council unanimously approved a resolution removing a question about convictions from city applications on August 10, 2015, with exceptions. The city can still ask applicants about their conviction history during the interview and will conduct background checks thereafter.

Newburgh Resource

City Council Resolution No. 199-2015, [available here](#)

GLENDALE, AZ (ADMINISTRATIVE DECISION APPLIES TO CITY)

- Background check after conditional offer of employment

In September 2015, the City of Glendale removed the question about criminal records from the City's application for employment. The City only conducts a background check after extending a conditional offer of employment, and limits the criminal record inquiry to convictions that occurred within the last seven years.

KINGSTON, NY (RESOLUTION APPLIES TO CITY)

In September, 2015, the Kingston City Council passed a resolution to remove questions related to criminal convictions and charges from City employment applications. City employers can still ask questions regarding criminal records during job interviews and conduct background checks on applicants.

Kingston Resource

City Council Resolution No. 186 of 2015, [available here](#) (page 7).

MIAMI-DADE COUNTY, FL (ORDINANCE APPLIES TO COUNTY)

- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

On October 6, 2015, the Miami-Dade Board of County Commissioners passed an ordinance regarding county employment. The county may not conduct a background check until after an applicant is selected as a finalist and receives a conditional offer of employment. The ordinance also prohibits the consideration of arrests that did not result in conviction and sealed, expunged, and pardoned convictions. It further mandates that the county consider how a conviction relates to the job and how much time has elapsed since the applicant was convicted, and requires that the applicant be given five days to respond to a potential withdrawal of the conditional offer before a final decision is made.

Miami-Dade Resource

Miami-Dade County Ordinance, [available here](#).

PRINCE WILLIAM COUNTY, VA (RESOLUTION APPLIES TO COUNTY)

On October 13, 2015, the Prince William Board of County Supervisors adopted a resolution directing the county executive to remove conviction questions from initial county employment applications. Applicants are now asked about their criminal conviction history only after they have completed the interview process (with exceptions for certain law enforcement positions). The policy took effect on November 1, 2015.

Prince William Resource

Resolution 15-672 (Oct. 13, 2015), [available here](#).

NASHVILLE, TN (ADMINISTRATIVE POLICY APPLIES TO CITY)

On November 10, 2015, the Metro Civil Service Commission voted unanimously to remove questions regarding criminal history from the application for employment

with the City. The policy took effect by January 1, 2016 and included exceptions for police and fire departments.

PIMA COUNTY, AZ (TUSCON AREA; RESOLUTION APPLIES TO COUNTY)

On November 10, 2015, the Pima County Board of Supervisors passed a resolution that removes the inquiry about an applicant’s criminal record from the application for County employment. The County will still conduct background checks later in the hiring process, and the resolution will not apply to certain professions.

Pima Resource

Pima County Press Release, [available here](#).

BATON ROUGE, LA (RESOLUTION APPLIES TO CITY)

On November 10, 2015, the East Baton Rouge Parish Metro Council eliminated questions regarding criminal history from the application for employment with the City. The resolution does not apply to certain positions.

DALLAS COUNTY, TX (ADMINISTRATIVE POLICY APPLIES TO COUNTY)

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

The Dallas County Commissioners voted unanimously on November 17, 2015 on a policy for the County. The County will delay requesting criminal history until later in the hiring process, consider how an offense relates to the position sought, the time elapsed since conviction, and evidence of rehabilitation in deciding whether a conviction is disqualifying. The policy also provides that applicants should be given the opportunity to review the background check and challenge its relevance and accuracy.

Dallas Resource

Dallas Guidelines for Hiring Applicants with Records, [available here](#).

Dallas Contact

Josh Gravens
Organize Justice
josh@organizejustice.org

GAINESVILLE, FL (APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

City commissioners voted on November 19, 2015 to remove the criminal history inquiry from the city’s employment application. Human Resources reviews the criminal history information received, and when negative information is obtained, makes individual assessments, considering the age of the offense and its relevance to the job in making hiring decisions.

Gainesville Resource

Gainesville Legislative Information, [available here](#).

CHATTANOOGA, TN (RESOLUTION & ORDINANCE APPLY TO CITY)

On December 1, 2015, the Chattanooga City Council adopted a resolution to prohibit city departments from inquiring into a job applicant's conviction history on "any preliminary employment application documents." City employers may only inquire into and consider an applicant's conviction record as part of a normal background check after an application is submitted.

On December 15, 2015, the city council approved Ordinance No. 13007 to amend the Chattanooga City Charter to remove the requirement that all employees of the city be eligible to vote in Tennessee and replace it with a Tennessee residency requirement. Voters of Chattanooga overwhelmingly approved Ordinance No. 13007 on November 8, 2016, and the ordinance takes effect 60 days later (January 7, 2017).

Chattanooga Resource

Chattanooga City Council Resolution, [available here](#).

Chattanooga Ordinance No. 13007, [available here](#).

Chattanooga Contact

Nicole Gwyn, Clerk to the City Council

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FORT MYERS, FL (RESOLUTION APPLIES TO CITY)

On December 7, 2015, the Fort Myers City Council unanimously adopted Resolution No. 2015-61, which removes questions about felony convictions from city job applications and requires that the review of conviction records later in the hiring process must include consideration of "legitimate business necessity." City hiring managers were to receive training within 90 days after the resolution was adopted. The resolution made exceptions for police and fire department applications.

Fort Myers Resources

City Council Meeting Minutes (Dec. 7, 2015), [available here](#).

Fort Myers Resolution No. 2015-61, [available here](#).

ITHACA, NY (ADMINISTRATIVE POLICY APPILES TO CITY)

On December 23, 2015, the City of Ithaca announced that it will be implementing a ban the box policy for public employers. Ithaca's Director of Human Resources stated to the media, "[T]his community cannot afford to pass up talented, capable people in search of a second chance. At the very least, banning the box may

eliminate unconscious bias or the perception of it. We are excited to model, through this initiative, what the city believes and practices.”

Ithaca Resource

City of Ithaca News Release, [available here](#).

BLACKSBURG, VA (RESOLUTION APPLIES TO CITY)

- Background check only for finalists for positions
- Incorporates EEOC criteria in individualized assessment

On January 19, 2016, the Blacksburg Town Council directed Town staff to remove questions about criminal history from applications for employment with the Town. In a press release, the Town Attorney stated that under the new policy, background checks will be conducted only after the best candidate for a position is identified, and that any consideration of criminal history at that stage should take into account the details of the conviction along with the job requirements.

Blacksburg Resource

Blacksburg Town Press Release, [available here](#).

ASHEVILLE, NC (RESOLUTION APPLIES TO CITY)

The Asheville City Council passed a resolution on January 26, 2016 expressing its commitment to the Ban the Box movement and its support for the City amending its employment application so as not to require disclosure of an applicant’s criminal record during the initial job application process, except for certain sensitive positions.

Asheville Resource

Asheville City Council Resolution 16-29, [available here](#) (page 5).

MONTGOMERY COUNTY, VA (RESOLUTION APPLIES TO COUNTY)

On January 26, 2016, the Montgomery County Board of Supervisors passed a unanimous resolution to ban the box for County jobs, removing a question about conviction history from the County employment application.

Montgomery County Resource

Montgomery County Board of Supervisors Resolution R-FY-15-76, [available here](#).

DUTCHESS COUNTY, NY (ADMINISTRATIVE POLICY APPLIES TO COUNTY)

Effective February 1, 2016, questions regarding criminal convictions, dishonorable military discharges, and firings from previous jobs will be removed from all Dutchess County exams, recruitments and employment applications. County Executive Marcus Molinaro issued the ban the box policy as part of a broader initiative to advance diversity which also included appointing a new Equal Employment/Human Rights Officer, reconstituting the County’s Human Rights

Commission, and launching a workforce diversity taskforce to develop recommendations to diversify the pool of applicants for County jobs.

Dutchess County Resource

Dutchess County News Release, [available here](#).

BIRMINGHAM, AL (EXECUTIVE ORDER APPLIES TO CITY)

- Right to contest content of record

On February 4, 2016, Birmingham Mayor William A. Bell, Sr., signed an executive order directing the City’s Human Resources Department to implement hiring policies for City jobs intended to “encourage the full participation of motivated and qualified persons with criminal histories in the workforce.” The Mayor’s hiring policy goals include prohibiting the use of a criminal record as an automatic bar to employment, removing questions related to criminal history from the initial stages of the application process, and providing applicants the opportunity to discuss inaccuracies or contest the content of their record and to provide any information that demonstrates rehabilitation.

Birmingham Resources

Birmingham Executive Order, [available here](#).

U.S Department of Justice Press Release, [available here](#).

STAUNTON, VA (CITY COUNCIL DECISION APPLIES TO CITY)

On February 25, 2016, the Staunton City Council decided to remove the criminal history question from the city’s employment application. All interviewed candidates instead complete a criminal conviction disclosure form after interviewing.

Staunton Resource

Staunton City Council Minutes (Feb. 25, 2016), [available here](#).

CHEROKEE COUNTY, GA (RESOLUTION APPLIES TO COUNTY)

- Incorporates EEOC criteria in individualized assessment
- Right to appeal prior to adverse determination

On March 1, 2016, the Cherokee County Board of Supervisors unanimously passed a resolution removing questions or checkboxes about conviction records from County employment applications, and delaying disclosure of records and background checks until after an interview has been conducted. Any candidate with a conviction will be given the opportunity to demonstrate that the conviction should not be disqualifying for the position. Before making a decision based on conviction records, the employer must consider the nature and gravity of the offense, the time passed since the offense, and the nature of the job.

Cherokee County Resource

Cherokee County Resolution, [available here](#).

BETHLEHEM, PA (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background check only for finalists for positions
- Incorporates EEOC criteria in individualized assessment

On March 1, 2016, Bethlehem Mayor Robert Donchez directed the city's human resources personnel and department heads to delay inquiries about criminal history until the final stage of the hiring process (with exceptions for certain law enforcement positions). After the city determines that an individual is qualified and a finalist for a position, a criminal history background check will be performed. If the individual has a record, human resources will coordinate with the solicitor's office to conduct an individual assessment according to EEOC guidelines. Upon receiving a conditional offer of employment, all applicants are further required to provide the city with a Pennsylvania Child Abuse History Clearance, Federal Criminal History Background Check, and a Pennsylvania State Police Clearance. The policy took effect on March 14, 2016.

Bethlehem Resource

Mayor's Office Memorandum, [available here](#).

MECKLENBURG COUNTY, NC (RESOLUTION APPLIES TO COUNTY)

On March 16, 2016, the Mecklenburg County Board of Commissioners passed a motion directing the county manager to modify the County's application for employment by removing the question about criminal convictions.

Mecklenburg County Resource

BOCC Meeting Minutes (Mar. 16, 2016), [available here](#) (page 18-21).

PHOENIX, AZ (ADMINISTRATIVE REGULATION APPLIES TO CITY)

- Background check only for finalists for positions
- Incorporates EEOC criteria in individualized assessment
- Right to appeal prior to adverse determination

Effective April 18, 2016, the City of Phoenix moved the process of disclosure of prior convictions from the employment application stage to the finalist interview stage for most city positions. The hiring authority reviews any disclosed convictions and works with the department's human resources supervisor to evaluate applicants' records in accordance with the EEOC guidance. Only convictions within the past seven years may be considered. If the hiring authority finds a conviction to be disqualifying, the applicant shall be provided a pre-adverse action disclosure letter and given 10 calendar days to dispute the record or provide any mitigating information with the background check vendor.

Phoenix Resource

Phoenix Administrative Regulation 2.81 Revised, [available here](#).

WAKE COUNTY, NC (ORDINANCE APPLIES TO COUNTY)

- Background check only for finalists for positions
- Incorporates EEOC criteria in individualized assessment
- Provides copy of background check report
- Right to appeal denial of employment

On April 18, 2016 the Board of Supervisors approved an ordinance to require that the initial application form not inquire about prior convictions. Background checks will be conducted only after the applicant has been recommended for hire. An applicant's record cannot be used as a basis for denial unless a conviction is job-related as determined by an individualized assessment incorporating EEOC guidelines. Before taking an adverse action, hiring departments must obtain concurrence from human resources and provide the applicant with a pre-adverse action disclosure form, a copy of the background report, and notice of the applicant's right to dispute the information in the report.

Wake County Resources

Wake County Ordinance, [available here](#).

Wake County Human Resources Policy, [available here](#).

BUNCOMBE COUNTY, NC (RESOLUTION APPLIES TO COUNTY)

On April 19, 2016, the Buncombe County Board of Commissioners adopted a resolution to remove criminal history questions from the county's initial job application.

Buncombe County Resources

Board of Commissioners Meeting Minutes (April 19, 2016), [available here](#).

Buncombe County Resolution (April 19, 2016), [available here](#).

SARASOTA, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)

- Background check only for finalists for positions
- Incorporates EEOC criteria

Effective May 1, 2016, the City of Sarasota delayed when in the hiring process criminal history information is disclosed and reviewed. Near the final phase of the selection process, applicants' records are reviewed and considered along with the nature and age of the offense as well as the nature of the job sought.

Sarasota Resource

City of Sarasota Press Release (May 13, 2016), [available here](#).

JOHNSON COUNTY, KS (ADMINISTRATIVE POLICY APPLIES TO COUNTY)

-
- Background check after conditional offer of employment

On May 19, 2016, the Johnson County Board of County Commissioners approved a motion endorsing the county manager’s decision to remove criminal history questions from the beginning of the application process (except for certain positions related to public safety). The applicant’s background check is conducted after an offer of employment is extended.

Johnson County Resources

BOCC Meeting Transcript (May 12, 2016), [available here](#) (page 11).

BOCC Meeting Transcript (May 19, 2016), [available here](#) (page 29).

BROWARD COUNTY, FL (ORDINANCE APPLIES TO COUNTY)

- Background check only for finalists for positions
- Provides copy of background check report
- Right to appeal prior to adverse determination

On June 14, 2016, the Broward County Board of County Commissioners approved an ordinance delaying inquiries about county job applicants’ criminal histories until the final phase of the hiring process. After reviewing a finalist’s criminal history, the county determines whether any convictions or pending charges are job-related and whether business necessity prevents hiring the individual. If the county declines to offer employment because of a finalist’s criminal history, the county must provide the individual with a copy of the record and an explanation of its assessment of that record. Within five business days, the applicant may contest the accuracy of the reported information or provide evidence of mitigating circumstances or rehabilitation. The ordinance took effect on June 16, 2016, and the county administrator was allowed an additional 90 days to implement it.

Broward County Resource

Ordinance No. 2016-18 (June 15, 2016), [available here](#).

PULASKI COUNTY, AR (ORDINANCE APPLIES TO COUNTY)

- Background check after conditional offer of employment
- Provides copy of background check report
- Right to appeal prior to adverse determination
- Incorporates EEOC criteria in individualized assessment

On June 28, 2016, the Pulaski County Quorum Court unanimously passed an ordinance removing criminal history questions from the county’s initial employment applications. Such inquiries are delayed until after a conditional offer of employment. The county employer is required to conduct an individualized assessment and consider the nature and gravity of the offense, the time passed since the offense, and the nature of the job. If the county rescinds an offer employment based on a finalist’s criminal history, the county must provide the applicant with an adverse-action letter that specifies the deadline by which the individual may contest

the accuracy of the reported information or provide evidence of rehabilitation. The background check report will be provided upon request. The ordinance took effect within 60 days after adopted.

Pulaski County Resources

County Ordinance 16-I-29A (June 28, 2016), [available here](#).

County Quorum Court Meeting Minutes (June 28, 2016), [available here](#).

HENRY COUNTY, VA (ADMINISTRATIVE ACTION APPLIES TO COUNTY)

Effective July 1, 2016, Henry County removed the criminal history inquiry that had previously appeared on its initial employment application. Following a request from the Martinsville/Henry County Chapter of Virginia Organizing, the change to the employment application was announced and the new application distributed at a meeting of county managers.

Henry County Resource

Employment application with question omitted, [available here](#).

Henry County Contact

Nik Belanger, Southside Organizer

Virginia Organizing

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NEW HANOVER COUNTY, NC (POLICY APPLIES TO COUNTY)

- Background check only for finalist
- Right to appeal prior to adverse determination
- Incorporates EEOC criteria in individualized assessment

On July 1, 2016, the New Hanover city manager issued an administrative memorandum titled, "Ban the Box - Ensuring Equal Hiring Opportunity to All Qualified Individuals." Pursuant to the policy, the County will remove all conviction inquiries from job applications; the County will conduct a background check after the applicant is determined to be otherwise qualified and the hiring department recommends offering the job to the applicant. The policy bars consideration of expunged records. Before rejecting an applicant based on his or her record, the County will consider a number of factors, including the nature and job-relatedness of the conviction, time passed, and efforts at rehabilitation. When the County intends to deny an applicant a job because of his or her record, the County will first provide the applicant with an initial determination notice and an opportunity to respond with evidence of mitigation or rehabilitation. The policy applies to all county departments and agencies, with the exception of the Sheriff's Office and the Register of Deeds Office, both of which may but need not comply with the policy. The policy took effect immediately.

New Hanover County Resource

New Hanover County Administrative Memorandum No. 16-001 (July 1, 2016), [available here](#).

TOMPKINS COUNTY, NY (RESOLUTION APPLIES TO COUNTY)

On July 5, 2016, the Tompkins County Legislature unanimously adopted a resolution of support for the commissioner of personnel to implement procedures to remove criminal conviction questions from the county's employment application. Criminal conviction disclosures and subsequent inquiries are now delayed until later in the hiring process. The personnel department considers whether an individual's conviction is related to the position.

Tompkins County Resource

County Legislature Meeting Highlights (July 5, 2016), [available here](#).

DENVER, CO (EXECUTIVE ORDER APPLIES TO CITY)

- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

On July 11, 2016, Mayor Michael B. Hancock [announced](#) that the City and County of Denver would ban the box from job applications, beginning in August 2016. On July 25, 2016, the mayor amended Executive Order No. 135 "The Use of Background Checks in Hiring and Employment Decisions," adding Section 3.1.1, which prohibits conviction history inquiries until the applicant has been extended a conditional offer of employment (with certain exceptions). Even before the July 2016 update, Sections 3.1.7 and 3.1.8 of Executive Order No. 135 already limited agency consideration of arrests and required agencies to consider (i) the nature of the conviction, (ii) existence of a "strong correlation" between the conviction and job sought, (iii) the number of convictions, (iv) the recentness of convictions, and (v) any evidence of rehabilitation.

Denver Resource

Executive Order No. 135 (July 25, 2016), [available here](#).

Denver Contact

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TEMPE, AZ (ADMINISTRATIVE ACTION APPLIES TO CITY)

On August 29, 2016, the Tempe Merit System Board approved changes to the City of Tempe Personnel Rules that removed criminal history questions from city job applications. Instead, applicants are asked about their conviction histories after completing the first interview and being selected as a finalist for the position. At that point, finalists must complete a "criminal background questionnaire," and later,

successful applicants will undergo fingerprint background checks as a condition of accepting employment. The Personnel Rules were revised to incorporate these changes on September 22, 2016.

Tempe Resources

Tempe Merit System Board Meeting Minutes (Aug. 29, 2016), [available here](#).
City of Tempe Personnel Rules (Sept. 22, 2016), [available here](#).

Tempe Contact

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SACRAMENTO, CA (ORDINANCE APPLIES TO CITY CONTRACTORS)

On September 6, 2016, the Sacramento City Council adopted a ban-the-box ordinance applicable to city contractors with at least 20 employees. Covered city contractors are prohibited from inquiring into a job applicant’s conviction history until determining that he or she meets the minimum qualifications for the position sought. A violation of that prohibition would constitute a material breach of the city contract and authorize the city to terminate the contract. The ordinance makes exceptions for (i) positions for which the employer is required to conduct a background check, and (ii) positions that will not involve work on a city contract. The ordinance applies to contracts of at least \$100,000 awarded after January 1, 2017.

Sacramento Resources

City Ordinance No. 2016-0036 (Sept. 6, 2016), [available here](#).
City Council Meeting Minutes (Sept. 6, 2016), [available here](#).

MILWAUKEE, WI (RESOLUTION APPLIES TO CITY)

On October 11, 2016, the Common Council of the City of Milwaukee voted 13-to-2 to adopt a resolution requiring the Department of Employee Relations not to ask about an applicant’s criminal history on the initial city employment application. Instead, background checks are only to be conducted when the applicant is placed on an “employee eligibility list.” Although city officials already delayed conviction inquiries pursuant to a practice instituted by the mayor several years previously, the Common Council resolution renders this change permanent. The resolution expressly applies to all civilian positions within the police and fire departments to the fullest extent permitted by law. The Common Council resolution further encourages all Milwaukee employers to ban the box.

Milwaukee Resource

Resolution No. 120663 (Oct. 11, 2016), [available here](#).

Common Council Meeting Minutes (Oct. 11, 2016), [available here](#) (pages 11-12).

Milwaukee Contact

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JACKSON COUNTY, MO (ADMINISTRATIVE ACTION APPLIES TO COUNTY)

On November 6, 2016, Jackson County Executive Frank White, Jr. promulgated Executive Order 16-16, which prohibits criminal history inquiries from appearing on initial applications for county jobs.

Jackson County Resource

Executive Order 16-16 (Nov. 7, 2016), [available here](#).

SAN ANTONIO, TX (ADMINISTRATIVE ACTION APPLIES TO CITY)

On December 7, 2016, the San Antonio City Council Governance Committee supported a staff recommendation to remove all questions about criminal history from the civilian job application. (Councilman Rey Saldaña had previously urged the adoption of a fair chance hiring ordinance.) City Manager Sheryl Sculley then issued a memorandum indicating that inquiries into criminal history would be delayed until after a conditional job offer. After receiving the background check results, human resources staff conduct an individualized assessment, considering (i) job relatedness of a conviction, (ii) offense level, (iii) time elapsed, (iv) mitigating circumstances, and (v) rehabilitation evidence. Human resources staff consult with the City Attorney’s Office when questions arise regarding job relatedness. The policy applies to the civilian job application, which excludes the fire and police departments.

San Antonio Resource

City Manager Fair Chance Hiring Memorandum (Dec. 7, 2016), [available here](#).

San Antonio Contact

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LOS ANGELES, CA (ORDINANCE APPLIES TO CITY & PRIVATE EMPLOYERS)

- Background check after conditional offer of employment
- Provides copy of background check report
- Right to appeal prior to adverse determination
- Incorporates EEOC criteria in individualized assessment

On December 9, 2016, Mayor Eric Garcetti approved an ordinance delaying public and private employer inquiries into job applicants' conviction histories. The ordinance applies broadly to businesses in the city that employ at least 10 people, with certain exceptions. Employers may not ask about an applicant's record until a conditional offer of employment has been extended. After learning of an applicant's record, employers must consider factors including (i) age of the offense, (ii) nature of the offense, and (iii) specific duties of the job sought. Written notice must be provided to applicants. The ordinance provides for a private right of action for aggrieved job applicants.

Also on December 9, 2016, Mayor Garcetti approved an ordinance governing city contractors' consideration of criminal history information during their hiring processes. The ordinance prohibits city contractors (and subcontractors) from inquiring into a job applicant's record until after extending that applicant a conditional offer of employment. Before revoking any such offer, the contractor must conduct a written assessment, explaining the job-relatedness of the applicant's record and examining the factors set forth in the 2012 EEOC Guidance. When taking adverse action on the basis of the applicant's record, the contractor must provide a written notice, including a copy of that written assessment and any supporting materials, such as the applicant's background check report. The employer may not fill the position for five business days, during which the applicant may submit additional information. Violation of the ordinance constitutes a material breach of the city contract, and the ordinance also provides for monetary penalties.

The Los Angeles Department of Public Works, Bureau of Contract Administration is tasked with enforcing the ordinances and collecting civil monetary penalties (effective July 1, 2017). Both ordinances took effect on January 22, 2017.

Los Angeles Resources

City of Los Angeles Ordinance No. 184652 (Dec. 9, 2016), [available here](#).

City of Los Angeles Ordinance No. 184653 (Dec. 9, 2016), [available here](#).

Rules and Regulations Implementing Los Angeles Ordinance, [available here](#).

Los Angeles Contacts

[A New Way of Life](#)

(323) 563-3575

[LA Voice](#)

(213) 384-7404

AUGUSTA, GA (ADMINISTRATIVE POLICY APPLIES TO CITY/COUNTY)

- Incorporates EEOC criteria in individualized assessment

On December 20, 2016, the Augusta Commission voted in favor of banning the box from Augusta job applications but sent the policy to the Administrative Services Committee to determine the details. On January 17, 2017, the Augusta Commission voted to approve the policy revisions that were approved by the committee on

January 10, 2017. The policy bans the box from Augusta job applications, except applications for positions requiring that the worker not have a record. Pursuant to the policy, a job applicant is not asked about his or her record until he or she is selected as a finalist for the position sought. After the applicant's record is received, the human resources department conducts an individualized assessment, considering the age, nature, and job-relatedness of the offense(s) and affording the applicant an opportunity to explain any mitigating circumstances. If human resources recommends rejecting an applicant because of his/her record, that determination is reviewed by the Augusta EEOC/Compliance Department (and the Augusta Administrator, as needed).

Note: Augusta-Richmond County is a consolidated city-county government.

Augusta Resources

Augusta Fair Chance Policy (dated Jan. 5, 2017), [available here](#).

Augusta Commission Meeting Minutes (Jan. 17, 2017), [available here](#).

Augusta Commission Meeting Minutes (Dec. 20, 2016), [available here](#).

YORK COUNTY, SC (RESOLUTION APPLIES TO COUNTY)

- Background check after conditional offer of employment

On January 17, 2017, the York County Council unanimously approved a fair chance resolution applicable to hiring for county jobs. Although confusingly structured, the resolution appears to delay record-related inquiries until after a conditional offer has been extended to the applicant.

York County Resource

York County Commission Resolution (Jan. 17, 2017), [available here](#).

ALBANY COUNTY, NY (LOCAL LAW APPLIES TO COUNTY)

- Background check after conditional offer of employment
- Provides copy of background check report
- Right to appeal prior to adverse determination

The Albany County Legislature approved the Albany County Fair Chance Act in a 32 to 3 vote on February 13, 2017. The act prohibits the County of Albany from inquiring into a job applicant's conviction record until after a conditional offer of employment is extended, and then, only if the employer makes a good faith determination that a background check is warranted or required for the position sought. Furthermore, the county may not inquire about an applicant's arrest history at any time during the application process.

Albany County Resource

Albany County Fair Chance Act, [available here](#).

NORTH LAS VEGAS, NV (ADMINISTRATIVE ACTION APPLIES TO CITY)

- Incorporates EEOC criteria in individualized assessment

On October 14, 2016, Mayor Pro Tem Isaac Barron announced that the City of North Las Vegas would ban the box. City Manager Qiong X. Liu approved the city’s ban-the-box administrative policy (dated February 9, 2017). Conviction inquiries are delayed until the interview phase of the application process. When considering an applicant’s record, city personnel conduct an individualized assessment, taking into account such factors as the nature and age of the offense, nature of the job sought, as well as mitigating circumstances, evidence of rehabilitation.

North Las Vegas Resource

North Las Vegas Ban the Box Policy (Feb. 9, 2017), [available here](#).

SPOKANE COUNTY, WA (RESOLUTION APPLIES TO COUNTY)

- Background check after the applicant is found to be otherwise qualified
- Incorporates EEOC criteria in individualized assessment
- Provides copy of background check report
- Right to appeal prior to adverse determination

On October 27, 2017, the Board of County Commissioners voted to approve a new hiring policy that removes questions about past convictions from county job applications and delays background checks until the applicant is determined to be otherwise qualified for the position, which typically means that the applicant meets the minimum requirements for the position. The County limits background checks to convictions from within the past ten years, pursuant to state regulations (Washington Administrative Code 162-12-140). The applicant has ten business days to respond to a proposed adverse action before that action becomes final; an applicant may respond by challenging the accuracy of the record or providing evidence of rehabilitation or mitigating circumstances.

Spokane County Resource

Spokane County Resolution and Background Check Policy (Oct. 24, 2017), [available here](#).

WINSTON-SALEM, NC (RESOLUTION APPLIES TO CITY)

On November 20, 2017, the Winston-Salem City Council [unanimously](#) approved a resolution reaffirming support for removing conviction inquiries from city job applications. The resolution also urges private employers to follow suit and ban the box from their job applications. Council Member Derwin L. Montgomery further requested information about city vendor policies on ban the box and expressed interest in revisiting that topic in the future.

Winston-Salem Resources

City of Winston-Salem Resolution No. 17-925 (Nov. 20, 2017), [available here](#).

MARICOPA COUNTY, AZ (ADMINISTRATIVE POLICY APPLIES TO COUNTY)

- Background check after conditional offer of employment

On December 13, 2017, the Maricopa County Board of Supervisors unanimously voted to approve a new human resources (HR) policy (HR2435) that delays conviction record inquiries and background checks. With certain exceptions, the policy requires the county to postpone such inquiries until after the applicant accepts a conditional offer of employment. The applicant may not begin work until after a background check, however. If the county decides not to hire the person after a background check, the HR department will satisfy all Fair Credit Reporting Act (FCRA) requirements (which typically means that the employer must provide written notice and a copy of the background check report to the applicant). The policy took effect January 1, 2018.

Maricopa County Resource

Maricopa County Human Resources Policy HR2435 (Dec. 13, 2017), [available here](#).

BEAVER COUNTY, PA (RESOLUTION APPLIES TO COUNTY)

On January 25, 2018, the Beaver County Board of Commissioners passed Resolution 012518-30, which banned the box from applications for county jobs. Except for “public-safety-sensitive positions,” the County will not inquire about a job applicant’s record until after he or she is interviewed for the position. Furthermore, an applicant with a conviction record will have an opportunity to provide clarifying information, which the County must consider before making a hiring decision. The policy took effect immediately.

Beaver County Resource

Beaver County Resolution No. 012518-30 (Jan. 25, 2018), [available here](#).

WESTCHESTER COUNTY, NY (EXECUTIVE ORDER APPLIES TO COUNTY)

On April 9, 2018, Westchester County Executive George Latimer signed an executive order to prohibit questions about conviction history during the initial application process. The policy took effect immediately.

Westchester County Resources

Executive Order No. 5 of 2018 (Apr. 6, 2018), [available here](#).

Westchester County Press Release (Apr. 9, 2018), [available here](#).

FORSYTH COUNTY, NC (RESOLUTION APPLIES TO COUNTY)

On April 12, 2018, the Forsyth County Board of Commissioners unanimously approved a resolution to remove conviction inquiries from most county job applications. The short resolution did not include many details, and instead “authorize[d] the creation of a Fair Chance Employment Policy to ensure that the

hiring practices of the County do not unfairly deny employment to people with criminal conviction records which are not job related.” That policy will be developed by the county human resources department and added to the county employee handbook.

Forsyth County Resource

Forsyth County Resolution (Apr. 12, 2018), [available here](#).

NORTHAMPTON COUNTY, PA (EXECUTIVE ORDER APPLIES TO COUNTY)

On April 27, 2018, County Executive Lamont McClure signed an executive order to ban the box from applications for county jobs. The policy allows for exceptions for “certain positions,” such as law enforcement and positions involving contact with vulnerable populations. The policy took effect April 27, 2018.

Northampton County Resources

Executive Order 18-54 (Apr. 27, 2018), [available here](#).

Northampton County Press Release (Apr. 30, 2018), [available here](#).

WILMINGTON, NC (ORDINANCE APPLIES TO CITY)

On May 1, 2018, the Wilmington City Council unanimously approved a resolution and ordinance to both limit the positions for which background checks are conducted and delay such checks until later in the hiring process. The resolution to ban the box sets forth the city’s policy of conducting background checks only when “necessary to prevent conduct which might be detrimental to the health, safety, or welfare of the public, or to protect the city from conduct which might be detrimental to the city and its property.” For those positions for which background checks are required, the resolution states that no inquiry or check will occur until after a decision to extend a conditional offer to the applicant. If a background check reveals a conviction that potentially endangers public health, safety, or welfare or that of the city, the human resources department will notify the applicant and allow the submission of evidence of inaccuracies in the record, mitigating circumstances, or rehabilitation.

The ordinance describes for which positions a background check is required as well as which past convictions would prevent a person from holding those positions. (NELP recommends eliminating all such automatic, blanket bans from the law and replacing them with individualized, case-by-case assessments.) The ordinance provides that background checks for the positions described would be performed on all “final applicants” for those positions. The ordinance provides that a person with a record that includes one of the listed, related offenses will be given an opportunity to provide evidence of inaccuracy, rehabilitation, and mitigating circumstances. Thereafter, the city manager may in his/her discretion, allow an applicant to continue in the hiring process despite a misdemeanor or a felony

conviction where the last date of incarceration/probation/parole occurred over seven years previously.

Wilmington Resource

Wilmington Resolution to Ban the Box (May 1, 2018), [available here](#).
Wilmington Ordinance adding Sec. 8.5 (May 1, 2018), [available here](#).
Wilmington Code of Ordinances, Sec. 8, Art. I, [available here](#).
Wilmington City Council May 1, 2018 Meeting Minutes, [available here](#).

LINN COUNTY, IA (RESOLUTION APPLIES TO COUNTY)

On May 16, 2018, the Linn County Board of Supervisors adopted a resolution on “Inclusive Hiring Practices Concerning People with a Prior Criminal Conviction.” to. The resolution removes conviction history inquiries from the county’s initial employment application and provides that the county must wait until after selecting an applicant for an interview before asking about his or her conviction record or conducting a background check. The resolution further provides for the individualized consideration of conviction history and urges those making hiring decisions to do so without regard for conviction history whenever possible.

Linn County Resource

Linn County Resolution No. 2018-5-73 (May 16, 2018), [available here](#).

YORK, PA (ORDINANCE APPLIES TO CITY)

On May 22, 2018, York Mayor Michael Ray Helfrich signed an ordinance to codify the city’s fair chance hiring policy. The York City Council unanimously approved the ordinance on May 16, 2018. The policy removes conviction inquiries from the city employment application and requires the city to consider the public interest in ensuring access to employment for people with records when making hiring decisions. The ordinance also encourages private businesses to follow suit by removing conviction inquiries from their job applications. The ordinance took effect twenty days after the mayor signed it (i.e., June 11, 2018).

York Resources

City of York Ordinance No. 5 of 2018 (May 22, 2018), [available here](#).
Article 165 of the York City Codified Ordinances, [available here](#).

JOHNSON COUNTY, IA (RESOLUTION APPLIES TO COUNTY)

On June 14, 2018, the Johnson County Board of Supervisors approved a resolution to ban the box from county job applications. The resolution committed the County to remove conviction inquiries from initial employment applications for county jobs, with the exception of positions requiring a full background check because of the nature of the work (e.g., law enforcement or positions working with vulnerable populations). The resolution further committed to requiring that an applicant is selected for an interview before the County asks about conviction history or

conducts a required background check. Moreover, the resolution encouraged selecting applicants without consideration of past convictions, when possible, as well as considering individualized circumstances when evaluating an applicant's record.

Johnson County Resources

Johnson County Resolution 06-14-18-05 (June 14, 2018), [available here](#).

Johnson County Board of Supervisors June 14, 2018 Meeting Minutes, [available here](#).

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
ALABAMA							
1. Birmingham			X				A
2. ARIZONA (state policy)			X				
3. Glendale			X		X		
4. Maricopa County			X		X		
5. Phoenix			X		X	X	N, C, A
6. Pima County			X				
7. Tempe			X		X		
8. Tucson			X	X	X	X	A
ARKANSAS							
9. Pulaski County			X		X	X	N, A
10. CALIFORNIA (state law)	X		X		X	X	N, C, A
11. Alameda County			X				
12. Berkeley			X	X		X	
13. Carson			X				
14. Compton		X	X			X	
15. East Palo Alto			X				
16. Los Angeles	X	X	X		X	X	N, C, A
17. Oakland			X	X	X	X	N, C, A
18. Pasadena			X				
19. Richmond		X	X	X			
20. Sacramento		X					
21. San Francisco	X ¹	X ¹	X		X	X	N, C, A
22. Santa Clara County			X				
23. COLORADO (state law)			X			X	A
24. Denver			X		X	X	
25. CONNECTICUT (state law)	X	X	X				A
26. Bridgeport			X			X	N, A
27. Hartford		X	X	X	X	X	N, A
28. New Haven		X	X		X	X	N, C, A
29. Norwich			X		X		
30. DELAWARE (state law)			X			X	
31. New Castle County			X				
32. Wilmington			X		X		
33. District of Columbia	X	X	X		X	X	A
FLORIDA							
34. Broward County			X		X	X	N, C, A

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
35. Clearwater			X			X	
36. Daytona Beach			X		X		
37. Gainesville			X			X	
38. Fort Myers			X				
39. Jacksonville			X		X	X	N, A
40. Miami-Dade County			X		X	X	N
41. Orlando			X		X	X	N, C
42. Pompano Beach			X				N, C
43. Sarasota			X		X	X	
44. St. Petersburg			X				
45. Tampa			X		X		N
46. Tallahassee			X			X	
47. GEORGIA (state policy)			X				
48. Albany			X			X	N, A
49. Atlanta			X				N, C
50. Augusta			X		X	X	
51. Cherokee County			X			X	A
52. Columbus			X		X	X	N, A
53. Fulton County			X	X		X	N, C
54. Macon-Bibb County			X				N, C
55. HAWAII (state law)	X	X	X		X	X	A
56. ILLINOIS (state law)	X	X	X				A
57. Chicago	X	X	X			X	A
58. INDIANA (state policy)			X				
59. Indianapolis		X	X			X	
IOWA							
60. Johnson County			X			X	
61. Linn County			X			X	
62. KANSAS (state policy)			X				
63. Johnson County			X		X		
64. Kansas City			X			X	
65. Wichita			X		X	X	N,C, A
66. Topeka			X		X	X	N, C, A
KENTUCKY							
67. Louisville		X	X			X	
68. LOUISIANA (state law)			X				
69. Baton Rouge			X				
70. New Orleans			X	X			C

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
71. MARYLAND (state law)			X				
72. Baltimore	X	X	X	X	X	X	A
73. Montgomery County	X	X	X				N, C, A
74. Prince George's County	X	X	X			X	N, C, A
75. MASSACHUSETTS (state law)	X	X	X				N, C, A
76. Boston		X	X	X			N, A
77. Cambridge		X	X			X	N, C, A
78. Worcester		X	X	X		X	N, C, A
79. MICHIGAN (state policy)			X				
80. Ann Arbor			X		X	X	
81. Detroit		X	X				
82. East Lansing			X				
83. Genesee County			X		X		
84. Kalamazoo		X	X				C
85. Muskegon County			X				
86. MINNESOTA (state law)	X	X	X			X ²	N ² , A
87. Minneapolis			X	X		X	
88. St. Paul			X	X		X	
89. MISSOURI (state policy)			X				
90. Columbia	X	X	X		X	X	A
91. Jackson County			X				
92. Kansas City	X	X	X		X	X	
93. St. Louis			X	X			
94. NEBRASKA (state law)			X				
95. NEVADA (state law)			X			X	N, A
96. North Las Vegas			X			X	
97. NEW JERSEY (state law)	X	X	X				A
98. Atlantic City ⁴		X ⁴	X ⁴		X ⁴	X ⁴	N ⁴
99. Newark ⁴	X ⁴	X ⁴	X ⁴	X ⁴	X ⁴	X ⁴	N ⁴ , C ⁴
100. NEW MEXICO (state law)			X			X	N
101. NEW YORK (state policy)			X				
102. Albany County			X	X	X		N, C, A

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
103. Buffalo	X	X	X			X	A
104. Dutchess County			X				
105. Ithaca			X				
106. Kingston			X				
107. Westchester County			X				
108. Newburgh			X				
109. New York City	X	X	X		X	X	N, C, A
110. Rochester	X	X	X			X	A
111. Syracuse		X	X		X	X	N, C, A
112. Tompkins County			X				
113. Ulster County			X				
114. Woodstock			X				
115. Yonkers			X				
NORTH CAROLINA							
116. Asheville			X				
117. Buncombe County			X				
118. Carrboro			X			X	
119. Charlotte			X				
120. Cumberland County			X	X			
121. Durham City			X	X		X	
122. Durham County			X	X		X	N, C, A
123. Forsyth County			X				
124. Mecklenburg County			X				
125. New Hanover County			X		X	X	N, A
126. Spring Lake			X	X			N
127. Wake County			X		X	X	N, C, A
128. Wilmington			X	X	X		N, A
129. Winston-Salem			X				
130. OHIO (state law)							
131. Alliance			X	X			N, C
132. Akron			X			X	A
133. Canton			X		X	X	
134. Cincinnati			X			X	N, C, A
135. Cleveland			X				
136. Cuyahoga County			X		X	X	
137. Dayton			X			X	N
138. Franklin County			X		X	X	N
139. Hamilton County			X				
140. Lucas County			X				
141. Massillon			X			X	

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
142. Newark			X				
143. Stark County			X				
144. Summit County			X	X		X	
145. Warren			X	X	X		N
146. Youngstown			X		X		
147. OKLAHOMA (state policy)			X				
148. OREGON (state law)	X	X	X				A
149. Multnomah County			X			X	
150. Portland	X	X	X		X	X	N, A
151. PENNSYLVANIA (state policy)			X				
152. Allegheny County			X	X	X	X	
153. Allentown			X		X		
154. Beaver County			X				
155. Bethlehem			X		X	X	
156. Lancaster			X		X	X	
157. Northampton County			X				
158. Philadelphia	X	X	X		X	X	N, C, A
159. Pittsburgh		X	X		X		N
160. Reading			X		X		
161. York			X				
162. RHODE ISLAND (state law)			X				A
163. Providence			X				
SOUTH CAROLINA							
164. York County			X		X		
165. TENNESSEE (state law)			X			X	A
166. Chattanooga			X				
167. Hamilton County			X		X		
168. Memphis			X			X	N, C, A
169. Nashville			X				
TEXAS							
170. Austin	X	X	X	X	X	X	N, A
171. Dallas County			X			X	A
172. San Antonio			X		X	X	
173. Travis County			X	X	X	X	
174. UTAH (state law)			X				
175. VERMONT (state law)			X				A

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
176. VIRGINIA (state policy)			X			X	
177. Alexandria			X		X		
178. Arlington County			X				
179. Blacksburg			X		X	X	
180. Charlottesville			X				
181. Danville			X		X	X	
182. Fairfax County			X		X		
183. Fredericksburg			X		X	X	N
184. Harrisonburg			X		X		N, A
185. Henry County			X				
186. Montgomery County			X				
187. Newport News			X			X	
188. Norfolk			X			X	
189. Petersburg			X				
190. Portsmouth			X				
191. Prince William County			X				
192. Richmond			X				
193. Roanoke			X				
194. Staunton			X				
195. Virginia Beach			X		X	X	
196. WASHINGTON (state law)	X	X	X				A
197. Seattle	X	X	X			X	N, C, A
198. Spokane	X	X	X			X ⁸	
199. Spokane County			X			X	N, C, A
200. Tacoma			X		X	X	N, C
201. Pierce County			X			X	N
202. WISCONSIN (state law)			X				
203. Dane County			X				
204. Madison		X ⁵	X ⁵		X		N ⁶ , A ⁷
205. Milwaukee			X				
206. Milwaukee County			X				

¹ San Francisco Fair Chance Ordinance applies to private employers, not the City and County. The City and County has a separate policy.

² Applies only to public employers.

³ Applies only to state agencies.

⁴ Superseded by state law.

⁵ Madison ordinance applies to vendors, and separate resolution applies to public city hiring.

⁶ The Madison resolution requires public entities provide notice to disqualified applicants.

⁷ The Madison ordinance allows job applicants to file complaints with the city alleging contractor violations.

⁸ Applies only to city employees.



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DISCRIMINATION: A FIELD EXPERIMENT**

AMANDA AGAN
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Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment

Amanda Agan and Sonja Starr¹

June 14, 2016

ABSTRACT

“Ban-the-Box” (BTB) policies restrict employers from asking about applicants’ criminal histories on job applications and are often presented as a means of reducing unemployment among black men, who disproportionately have criminal records. However, withholding information about criminal records could risk encouraging statistical discrimination: employers may make assumptions about criminality based on the applicant’s race. To investigate this possibility as well as the effects of race and criminal records on employer callback rates, we sent approximately 15,000 fictitious online job applications to employers in New Jersey and New York City, in waves before and after each jurisdiction’s adoption of BTB policies. Our causal effect estimates are based on a triple-differences design, which exploits the fact that many businesses’ applications did not ask about records even before BTB and were thus unaffected by the law.

Our results confirm that criminal records are a major barrier to employment, but they also support the concern that BTB policies encourage statistical discrimination on the basis of race. Overall, white applicants received 23% more callbacks than similar black applicants (38% more in New Jersey; 6% more in New York City; we also find that the white advantage is much larger in whiter neighborhoods). Employers that ask about criminal records are 62% more likely to call back an applicant if he has no record (45% in New Jersey; 78% in New York City)—an effect that BTB compliance necessarily eliminates. However, we find that the race gap in callbacks grows dramatically at the BTB-affected companies after the policy goes into effect. Before BTB, white applicants to BTB-affected employers received about 7% more callbacks than similar black applicants, but BTB increases this gap to 45%.

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1. Introduction

In an effort to reduce barriers to employment for people with criminal records, more than 100 jurisdictions and 23 states have passed “Ban-the-Box” (BTB) policies (Rodriguez and Avery 2016). Although the details vary, these policies all prohibit employers from asking about criminal history on the initial job application and in job interviews; employers may still conduct criminal background checks, but only at or near the end of the employment process. Most BTB policies apply to public employers only, but seven states (including New Jersey) and a number of cities (including New York City) have now also extended these restrictions to private employers.

These laws seek to increase employment opportunities for people with criminal records. They are often also presented as a strategy for reducing unemployment among black men, who in recent years have faced unemployment rates approximately double the national average (Bureau of Labor Statistics 2015).² The theory underlying this strategy is straightforward: black men are more likely to have criminal convictions than other groups (Shannon et al. 2011), and having a criminal record is a substantial barrier to employment (Pager 2003; Holzer, Raphael, and Stoll 2006; Holzer 2007; Pager, Western, & Bonikowski 2009). Thus, a policy that increases the employment of people with records should disproportionately help minority men.

This effort could have unintended consequences, however. In the absence of individual information about which applicants have criminal convictions, employers might statistically discriminate against applicants with characteristics correlated with criminal records, such as race. In this scenario, applicants with no criminal records who belong to groups with higher conviction rates, such as young black males, would be adversely affected by BTB policies. While some observational research provides support for this theory (see, for example, Finlay 2009; Freeman 2008; Holzer, Raphael, and Stoll 2006), it has never been tested experimentally. Moreover, whether statistical discrimination will occur in the context of BTB (which merely delays employer access to criminal convictions, rather than precluding it entirely) has never been tested at all.

We investigate the effects of BTB laws via a field experiment. We submitted nearly 15,000 fictitious online job applications to entry-level positions before and after BTB laws went into effect

² See for example Minnesota Department of Human Rights (2015): “The Ban the Box law can mitigate disparate impact based on race and national origin in the job applicant pool, and is one tool to help reduce these inequalities.” New York City’s public Ban the Box law was passed as part of the Young Men’s Initiative, an initiative designed to address disparities faced by young Black and Latino men (City of New York 2016). Civil rights organizations are also major supporters of Ban the Box movements (NAACP 2014, Color of Change 2015).

in New Jersey (March 1, 2015) and New York City (October 27, 2015). We sent these applications in pairs matched on race (black and white), which was our primary variable of interest. We also randomly varied whether our applicants had a felony conviction as well as two other characteristics that could also potentially signal criminal history to employers: whether the applicant has a GED, and whether the applicant has a one-year employment gap.³

Our study explores several key questions. First, we investigate whether employer callback rates vary by race and by felony conviction status, and whether there is an interaction between these effects. Second, we estimate how the availability of information about job applicants' criminal records changes the racial gap in callback rates. Many employers, even absent BTB, choose not to ask about criminal convictions on employment applications, so we are able to draw cross-sectional comparisons between askers and non-askers in the pre-BTB period, as well as pre- and post-comparisons for the same employers before and after BTB. Our estimates of BTB's effects exploit this cross-sectional and temporal variation in a triple-differences design. We estimate post-BTB changes in racial disparity after differencing out changes over the same time period among similar companies whose applications were unaffected by BTB. We also estimate the effects of having a GED and of a one-year employment gap. Finally, we assessed whether racial discrimination patterns vary based on the racial composition of the neighborhood employers are located in.

Our experiment supports several key findings. First, white applicants overall received about 23% more callbacks compared to similar black applicants (a statistically significant difference of about 2.5 percentage points over a baseline of 10.6%, averaged across periods and criminal record statuses). Second, among employers that asked about criminal convictions in the pre-period, the effect of having a felony conviction is also significant and large: applicants without a felony conviction are 62% (5.2 percentage points over a baseline of 8.4%) more likely to be called back than those with a conviction, averaged across races. Third, in contrast to prior research (Pager 2003; Pager, Western, and Bonikowski 2009), we find no significant interaction between the effects of race and felony convictions. Fourth, although one might have expected that a GED (versus a high school diploma) or a 1-year gap in employment might have been disfavored or used by employers as a proxy for a criminal record, neither characteristic significantly affects callback rates.

³ We use "criminal record" and "felony conviction" interchangeably here; our experimental design varies whether employers have a felony conviction. Employers that ask about records on initial job applications overwhelmingly limit their questions to convictions (not arrests), and most limit them to felony convictions specifically.

Our estimates of BTB's effects on callback rates imply that BTB substantially increases racial disparities in employer callbacks. We find that BTB expands the black-white gap by about 4 percentage points, multiplying the gap at affected businesses by a factor of about six. In our main specification, before BTB, white applicants to BTB-affected employers received 7% more callbacks than similar black applicants, but after BTB this gap grew to 45%.

This increase in racial inequality in callback rates could come from a combination of two sources. First, there could be a reduction in callbacks to black applicants with no criminal record, i.e. employers statistically discriminate against black applicants when they cannot see information about criminal history. In addition, there could be an increase in callback rates to white applicants with criminal records if employers statistically generalize that white applicants do not have records. Our results suggest some support for both of these mechanisms. Both explanations for the increasing gap involve forms of statistical discrimination, and provide reason to question the idea that BTB will reduce racial disparity in employment.

When our results are broken down by jurisdiction, some interesting differences emerge. The overall effects of having a criminal record are larger in New York City than in New Jersey, where people without records receive 78% more callbacks (versus 45% in New Jersey). On the other hand, the main effects of race are much larger in New Jersey, where white applicants are 38% more likely to receive a callback (vs. a not statistically significant 6% in New York City). Further analysis suggests that this difference may be partly, but not mostly, explained by the city's greater racial diversity. Businesses in whiter neighborhoods much more strongly favor white applicants, but even accounting for these differences, New York's race gap in callback rates is considerably smaller. Meanwhile, the effects of BTB are fairly similar in both jurisdictions—favoring white applicants relative to black applicants—albeit operating on different pre-BTB baselines.

This study makes several distinct contributions to the literature. First, this is the first empirical study of BTB's statistical discrimination effects,⁴ and we hope it will inform ongoing legislative debates about BTB throughout the country. Second, removing information about criminal history on job applications allows us to use field-experimental methodology to contribute to the literature on statistical discrimination in employment, which has not generally used such methods.⁵ Although

⁴ One of the authors is currently carrying out observational research on BTB's effects on *public* employers, detailed further below (Starr 2015).

⁵ See List (2004) for an experimental approach to statistical discrimination in another context, sports card trading.

our study is not a pure experiment (a key variable, whether the application asks about records, is not manipulated), our ability to perfectly observe and randomize all of our fictional applicants' characteristics allows us to avoid many of the most likely threats to causal inference that affect purely observational research, and leaves us better equipped than are purely observational researchers to tease out the mechanisms underlying the effects we observe. Third, our assessment of geographic differences adds another dimension to the experimental literature on racial discrimination in employment; to our knowledge, no prior auditing study has assessed how differences in employer behavior vary based on neighborhood racial composition.

Finally, we make a methodological contribution to the literature on auditing, which has for decades been a central tool for empirical research on discrimination in employment, housing, lending, and other areas. To our knowledge, this is the first study to use auditing to assess the effects of a policy, rather than to obtain a static picture of discrimination patterns. Because researchers cannot randomize the application of the policy itself, using auditing to assess policies requires combining the field-experimental approach with additional methods of causal inference—in this case, differences-in-differences analysis. We believe that combining auditing with quasi-experimental analysis of policy changes enriches the study of discrimination.

2. Background and Literature Review

2.1 Ban-the-Box Policies and their Motivations

The “box” referred to in “Ban the Box” (and hereinafter in this paper) is the question on a job application form asking whether the applicant has been convicted of a crime – which is often accompanied by yes and no checkboxes. While BTB policies vary, all of them ban employers from asking such questions on application forms. The policies typically also bar employers from asking about records during an initial job interview. They do not, however, permanently bar them from performing criminal records checks. Instead, employers must delay these checks until a later stage in the hiring process: in New Jersey, that stage is anytime after the first interview, and in New York City it is after a conditional job offer is made. Some BTB laws also substantively restrict the role that criminal records can play in employers' ultimate decisions (roughly paralleling existing federal anti-discrimination guidelines), but New Jersey's and New York's do not.⁶

⁶ New Jersey's law affects only the “initial employment application process” (N.J. P.L. 2014, Ch. 32). Meanwhile, New York already had, long before the beginning of this study, a substantive restriction requiring employers to consider

BTB is often presented as an important tool for reducing racial disparity in employment, and especially for improving access to employment for black men (Pinard 2014, Southern Coalition for Social Justice 2013, Clarke 2012, and Community Catalyst 2013). Black unemployment levels are generally about twice those of whites (DeSilver 2013), so expanding black male employment is a priority for many policymakers and civil rights advocates (see, for example, NAACP 2014). This argument for BTB proceeds in several steps. First, black individuals are much more likely to have criminal records than are other groups. Brame et al (2014) find that by age 23, 49% of black men have experienced an arrest versus 38% of white men; Shannon et al. (2011) estimate that 25% of the U.S. black population has a felony conviction, compared with only 6% of the non-black population. Second, having a criminal record, especially a felony conviction, is a substantial barrier to employment (Holzer, Raphael, and Stoll 2006; Pager 2003; see Holzer 2007 for a review of studies). One can expect this employment hurdle to have a disparate impact on black men because they are more likely to have records.⁷

Finally, advocates argue that BTB will effectively improve access to employment for people with records. This step in the reasoning may not be so obvious, since BTB only delays rather than prevents employer access to criminal records. But BTB's motivations are premised on a psychological claim: "Rejection is harder once a personal relationship has been formed" (Love 2011). The goal is to stop employers from making the premature judgment to throw out everyone with a record, and instead to encourage more nuanced consideration, which is believed to be more likely if employers have already met with the candidate (Pinard 2010). In short, the objective is to enable candidates with records to get their foot in the door.

2.2 The Potential for Statistical Discrimination

There is, however, a plausible counterargument to the view that BTB will improve black male employment prospects. Economists have frequently suggested that in the absence of specific information about individuals (or where obtaining such information is costly), employers and other

whether a conviction is job-relevant; this restriction is unchanged by BTB. N.Y. Correction Law Sec. 752. In any event, employers in all U.S. jurisdictions are subject to similar substantive restrictions at the federal level. The Equal Employment Opportunity Commission has for decades interpreted the Civil Rights Act of 1964 to bar employers from blanket bans on persons with criminal records, to avoid racially disparate impacts. According to EEOC, employers must consider "the nature and gravity of the offense or conduct; the time that has passed since the offense, conduct, and/or completion of the sentence; and the nature of the job sought" (EEOC 2012).

⁷ This is why EEOC interprets race discrimination law to constrain employers' treatment of criminal records (EEOC 2012).

decision-makers are more likely to rely on statistical generalizations about groups (Phelps 1972; Arrow 1973; Aigner and Cain 1977; Fang and Moro 2011). In our context, this theory implies that if employers cannot ascertain at the outset which applicants have criminal records, they may use observable characteristics such as race to infer the probability an applicant has a criminal history, and this may trigger discriminatory treatment (Finlay 2009; Freeman 2008; Holzer, Raphael, and Stoll 2006). Thus, for example, young black men without criminal records could be hurt by BTB if employers assume that they are likely to have a record, based on assumptions about young black men generally.

Of course, BTB does not *permanently* bar employers from obtaining record information, which could reduce the incentive to rely on demographic proxies. Still, employers may want to avoid the costs associated with interviewing and making tentative offers to candidates that they fear will ultimately be disqualified after the background check, especially if those search costs are high. The premise of the theory of statistical discrimination relies on the idea that the unobservable information is costly to obtain, not necessarily inaccessible (Phelps 1972; see also Stoll (2009) for an argument that BTB might trigger statistical discrimination).

If BTB does trigger statistical discrimination against black men, it would subvert the policy objective of expanding their access to employment. Moreover, although statistical discrimination on the basis of race is sometimes defended as rational (if employers' generalizations are accurate), it is plainly unlawful in the employment context. This prohibition reflects a policy judgment disfavoring racial generalizations and favoring expansion of workplace opportunities for historically excluded groups. Title VII of the Civil Rights Act of 1964 prohibits hiring discrimination on the basis of race as well as gender, and does not permit otherwise-illegal treatment to be based on statistical generalizations about groups, even if there is empirical support for the generalization.⁸ But these restrictions are famously difficult to enforce, and the fact that statistical discrimination would be an unlawful response to BTB does not mean it is impossible, or even unlikely.

No prior study has yet assessed the potential statistical discrimination effect of BTB, although one of this study's authors is currently conducting a parallel observational study focusing

⁸ For example, in *City of Los Angeles Department of Water and Power v Manhart*, 435 U.S. 702 (1978), the Supreme Court held that an employer could not rely, in formulating terms of a pension plan, on the well-founded actuarial prediction that women live longer.

on public employers.⁹ Outside the BTB context, several observational studies have suggested that lack of employer access to criminal records may encourage statistical discrimination (Bushway 2004; Holzer, Raphael, and Stoll 2006; Stoll 2006; and Finlay 2014). Holzer, Raphael, and Stoll (2006) and Stoll (2009) use survey data from establishments in four cities to show that employers who perform criminal records checks are more likely to hire African-Americans; the researchers interpret this finding as evidence of statistical discrimination. Bushway (2004) studies cross-state variation in accessibility of criminal records databases and finds that states with greater accessibility have smaller race gaps in employment. Finlay (2014) exploits temporal variation in states' expansion of Internet criminal records databases and uses individual longitudinal data that includes criminal history; he finds that blacks without records have better employment outcomes under open records policies. However, Finlay (2014) also finds that the net employment effect of open records on young black men appears to be negative, suggesting that the benefits of open records to non-offenders within that group may be outweighed by harms to offenders.

Statistical discrimination has also been studied in contexts other than criminal records. For example, Wozniak (2015), relying on a similar theory, shows that legislation that allows drug-testing increases black employment, with the largest increases among low-skill black men. Autor and Scarborough (2008) find that a retail chain's adoption of a pre-employment personality test did not hurt black employment success even though black candidates had lower scores; they interpret this as evidence that employers were statistically discriminating before they used the test. Clifford and Shoag (2016) show that bans on the use of credit checks by employers reduce black employment and employment of young people.

2.3 Auditing Research

“Auditing” or “audit” studies are field experiments in which researchers randomly vary the characteristics of interest about a person with whom a subject interacts (for example, a job applicant). While some audit studies use actors for in-person communications, many use written or online communications (such as resumes and cover letters) in which the “person” in question does

⁹ Starr (2015, unpublished draft on file with author) uses the Current Population Survey and American Community Survey, exploiting temporal variation in the dates of cities' and states' adoption of BTB. Preliminary results using the CPS show a substantial increase in racial disparity in rates of being employed by local governments, but the analysis of the ACS shows no significant change. Both datasets have some limitations that might explain the differences, but it is not clear whether one or the other result is “right” (Starr 2015). In addition, we are also aware of a forthcoming working paper by Doleac and Hansen (2016) that will study the effects of BTB laws using CPS data; however, the draft was not available at the time of this posting.

not exist, so researchers can directly manipulate characteristics of interest. Such designs have been used to test employment discrimination on the basis of characteristics such as race, gender, length of unemployment spell, age, and type of postsecondary education (Neumark 1996; Bertrand and Mullainathan 2004; Lahey 2008; Oreopoulos 2011; Kroft, Lange, and Notowidigdo 2013; Deming et al. 2014; Farber et al 2015; Neumark et al 2015). In-person audits have been used by Pager (2003) and Pager, Western, and Bonikowski (2009) to explore the effects of criminal records on employment outcomes and its interaction with race, finding that criminal records have a heightened adverse effect on black applicants. For a review of auditing methods, see Riach and Rich (2002). Auditing can provide a stronger basis for causal inference than observational methods, because only the variables of interest are varied. Additionally, compared to lab experiments, audit studies provide stronger external validity, since they test real employer reactions.

Despite its prominent role in discrimination research, auditing has to our knowledge never been used to study the effects of a policy on discrimination. Instead, it has been used to obtain a one-time snapshot of discrimination in a particular decision process. In our view, auditing holds considerable untapped potential as a tool of policy analysis, and we hope to demonstrate that potential. The principal challenge in auditing for policy analysis is that it is no longer a pure experiment. Applicant characteristics are randomized, but the policy variable is determined by nature, not by the researchers, and its applicability may be correlated with unobserved confounding variables (such as seasonal variations). Obtaining causal identification in this context requires combining the field-experimental method with another econometric method to filter out these potential confounds. We do so using triple-differences analysis. Because this approach involves estimating three-way interactions, it requires a larger sample than most auditing studies require, making it relatively resource intensive. However, it is otherwise quite straightforward.

3. Experimental Design

We submitted online job applications on behalf of fictitious job applicants to low-skill, entry-level job openings both before and after BTB went into effect in New Jersey and New York City. New Jersey's version of BTB, the "Opportunity to Compete Act", was passed on August 11, 2014 and became effective March 1, 2015. We submitted applications in New Jersey in the pre-BTB period between January 31 and February 28, 2015 and in the post-BTB period between May 4 and June 12, 2015. New York City's BTB law went into effect on October 27, 2015. We submitted

applications in New York City between June 10 and August 30, 2015 (the pre-BTB period) and between November 30, 2015 and March 31, 2016 (the post-BTB period).

3.1 Choosing Employers and Job Postings

Our subjects were exclusively private, for-profit employers. We principally targeted chain businesses because such businesses are likely to have online job applications and to be subject to the NJ BTB policy, which exempts employers with fewer than 15 employees. We rely on two main sources for locating job openings. First, we searched snagajob.com and indeed.com, two large online job boards; snagajob.com focuses specifically on hourly employment. Second, with certain exceptions, we also directly searched the employment websites of chain businesses meeting certain size criteria in certain industries: restaurants, department stores, home centers, grocery and convenience stores, pharmacies, miscellaneous retail, service stations, and hotels/motels.¹⁰

We hired a large team of University of Michigan student research assistants to search for jobs using these methods, apply to them, and record information about the job applications. We directed them to look for jobs that were suitable for candidates with limited work experience, no post-secondary education, and no specialized skills. Such jobs are predominantly non-supervisory team-member jobs at fast food and other restaurants, grocery and convenience stores, and other retail establishments. We focus on these sectors because they almost universally use job applications (particularly online applications) rather than resumes as an initial screen of job applicants; employers that do not use applications do not have a “box” that can be banned. In addition, these sorts of jobs are likely to attract applicants with criminal records, who disproportionately tend to have relatively little work experience or post-secondary education.

¹⁰ In New Jersey, we applied to businesses with at least 30 locations and 300 employees in the state. In New York City, we applied to chains with at least 20 locations in the city, plus smaller chains if we had also applied to them in New Jersey. Employers that did not use online job applications were excluded, although the vast majority of chains meeting those size criteria do use them, as well as virtually all employers that advertise postings on Snagajob or Indeed. We also excluded a few chains due to extremely arduous online application processes (e.g., those that took our RAs more than an hour to complete). We excluded employers targeting an overwhelmingly female clientele, such as cosmetics companies. Finally, some employers required full SSNs on job applications. For ethical reasons, we wanted to avoid using potentially real SSNs, and thus assigned our applicants invalid SSNs (beginning with 9xx or 666). Some employers we initially tried to apply to had systems that automatically detected these invalid SSNs, and we excluded those businesses from further applications. It is possible that setting up such a system could be correlated with special interest in criminal records, such that excluding this pool means that our estimates of the effect of a criminal record will be lower than they would otherwise be. However, within the pool we did apply to, there was no correlation between whether employers asked for an SSN at all and whether they asked about criminal records.

3.2 Applicant Profiles

Our fictitious applicants are all male and approximately 21 to 22 years old.¹¹ We created applicant profiles that included answers to a wide range of questions that employers could potentially ask, using the Resume Randomizer program created by Lahey and Beasley (2009). Our research assistants then filled out the applications based on those profiles. Each applicant profile included a name, a phone number, an address, an employment history, a unique email address, two references with phone numbers, information on high school diploma or GED receipt, a felony conviction status and information about the criminal charge, a formatted resume, and answers to many other routine application questions concerning job requirements, availability, and pay sought (minimum wage).¹²

The profiles were created in pairs, each consisting of one black and one white applicant. These pairs were assigned to the same store in the same time period. Our applicants were all similar on all but our randomly assigned treatment dimensions. In addition to race, those dimensions are:

- (1) Has felony criminal conviction or not
 - a. (Conditional on conviction): convicted of property crime or drug crime
- (2) Has 1-year employment gap versus a 0- to 2-month gap (referred to as “no gap” below)
- (3) GED or High School Diploma

These characteristics were randomized with equal (50%) probability. In addition to race, we chose to vary the employment gap and high school diploma status because they are also characteristics that hiring managers might perceive as correlated with criminal history.¹³ Race is indicated via the name of the applicant, as discussed further in Section 3.3 below. The crimes our applicants were

¹¹ Due to legal restrictions on age discrimination, age and high school graduation year are rarely requested on job applications, so age can only loosely be inferred by the length of work history.

¹² It was not possible for the applicant profiles to anticipate *every* question asked on the applications of all of the businesses to which we applied, especially as many applications require an extensive online personality or skills assessments. For this reason, we relied on the RAs’ judgment, but provided detailed training about what employers would likely ask and what they are generally looking for; we are confident that our RAs were capable of filling out these assessments in a satisfactory manner that would “clear the bar” and allow the applicant to be considered.

¹³ As of 2005, 13.6% of GEDs were issued in state and federal Prisons (Heckman and LaFontaine 2010). The relationship between GED, race, and criminal records is further addressed in the Discussion. The one-year employment gap is meant to signal potential time spent incarcerated or dealing with the criminal justice process. That an applicant may have a felony conviction and no employment gap is not implausible: of individuals charged with felonies in state courts, 62% are not detained before trial; 27% of those convicted receive no incarceration, and of those incarcerated 48% receive sentences of 1-3 months (Reaves 2013). In addition, the felonies we chose were relatively minor.

convicted of were relatively minor felonies – either property crimes (e.g., shoplifting, receiving stolen property, theft) or drug crimes (e.g., controlled substances possession).

We chose 40 geographically distributed cities/towns in New Jersey and 44 neighborhoods throughout New York City’s boroughs to serve as “centers” where the applicants’ addresses would be located; each center then served as a base for application to nearby employers.¹⁴ All applicant addresses were in racially diverse, lower- to-middle-class neighborhoods. Other job applicant characteristics such as work history, address within center, high school name or GED program, and names of references were designed to have similar connotations, although they were randomly varied among a set of similar options (e.g., different high schools with similar demographic and academic profiles; employment history at different fast food restaurants) and forced to differ within pairs so as to disguise the similarity of the applications. Each applicant received a unique email account with the address format randomly varied. Phone numbers were assigned at the center/race/crime level and thus shared by multiple applicants, but in a way that almost entirely avoided using the same number more than once within any chain. For more details on profile contents and applicant characteristics, see Appendix A1.

3.3. Indicating Applicant Race

Race is a central characteristic of interest in our study, and we signal race by the name of the applicant.¹⁵ To identify racially distinctive names, we used birth certificate data for babies born between 1989 and 1996 from the New Jersey Department of Health (NJDOH), which encompasses the cohort that would include our applicants. We then chose a set of first and last names that were racially distinctive (meeting threshold requirements for the percentages of babies given that name who were black or non-Hispanic white) and common (meeting threshold requirements for the total number of babies born with that name and race).¹⁶ Each applicant was then assigned a random first

¹⁴ This assignment method differed somewhat from New Jersey to New York City, due to differing geographic concerns. In New Jersey, we assigned each municipality in the state to its nearest center. For example, applicants from Princeton, NJ (one of our centers) applied to jobs in Princeton as well as in the nearby towns of East Windsor, Hightstown, Monmouth Junction, Plainsboro, Princeton Junction, and Skillman. These towns are all within 15 miles of Princeton. In New York City, because distances are much smaller generally, we prioritized distributing chain locations across centers (so that no chain received too many applications from the same neighborhood) and minimized distance within equal-distribution constraints, rather than in absolute terms.

¹⁵ This is a common strategy in auditing studies (Bertrand and Mullainathan 2004).

¹⁶ Because blacks are a much smaller fraction of the population, these thresholds varied by race: the minimum percentages were 80% for white first names, 85% for white last names, and 70% for black first and last names, while the minimum frequencies were 450 for white first names, 150 for white last names, 150 for black first names, and 100 for black last names. The white first names we used averaged 84% non-Hispanic white and 5% black, and the white last

name and random last name from the appropriate list. We expect that the combination of racially distinctive first *and* last names will produce a very strong racial signal: according to the birth certificate data, 96% of persons with first and last names on our “black” list are black, and 91% of persons with first and last names on our “white” list are white. A list of the names we used is provided in Appendix A2.

One critique of using racially distinctive names to signify race in audit studies is that such names could also signal socioeconomic status, which employers may also believe to be correlated with productivity (Fryer and Levitt 2004). We note first that our applications provided a great deal of concrete SES-related information to employers, including complete work histories, education, current neighborhood, high school location, and wage sought. Employers thus hardly need to rely on names to draw SES inferences—whereas no other application characteristics signaled race, because those characteristics were randomized and were designed to be race-neutral.

Nevertheless, to mitigate this concern we used only names falling below the socioeconomic median for whites (as measured by maternal education recorded on the birth certificate, the best available indicator), reducing the implied-SES gap between our white and black names.¹⁷ In addition, because the names we chose were common, we avoided any perceived socioeconomic connotations that may be associated with the choice of unusual names or spellings. Although some SES gap remains, it is very similar to the overall SES gap between black and white citizens—that is, choosing distinctive names did not amplify the gap.¹⁸ Distinctively white or black names do not point to an individual being a high- or low-SES outlier within their race; in fact, such names are very common. In our birth certificate sample, 47% of black children have a racially distinct first name and 36% have a racially distinct last name (as we define distinctiveness, see footnote 17), while 35% of white children have a racially distinct first name and 65% have a racially distinct last

names averaged 90% non-Hispanic white and 3% black. The black first names we used averaged 88% black and 3% non-Hispanic white; the black last names averaged 77% black and 17% non-Hispanic white. We eliminated a few first names that either were not distinctively male or that had strong associations with Islam or Judaism, so as to avoid confounding the effects of race with those of perceived gender or religion. A heavily overlapping name list would have been chosen had we classified names in the manner of Bertrand and Mullainathan (2004) or Fryer and Levitt (2004).

¹⁷ It was not possible to create a list of racially distinct names that are completely balanced on SES indicia, because virtually every distinctively white name averages higher than virtually every distinctively black name, due to socioeconomic stratification by race.

¹⁸ According to the birth certificate data, persons with first and last names that were both on our “black” lists had an average maternal education level that was nearly identical to the overall black average; persons with first and last names that were both on our “white” lists had nearly the same average maternal education as the overall white average.

name. Thus, to the extent employers make assumptions about SES based on racially distinctive names, these are assumptions that would affect a large fraction of real-world job applicants.

3.4 The Job Application Process

Each RA was randomly assigned one or more of our geographic centers in which to search for jobs via the above-described methods, and applied for those jobs using profiles from that center; the profile order within and between pairs was random. While submitting the job application, they filled out a spreadsheet that indicated, among other things, which profile was used, the date and time of the submission, the name of the chain being applied to, the name of the position, address of the location, and whether the application asked about criminal history. With some time lag, a second application was submitted to each store.

Most applicant profiles (approximately 59%) were sent to only one business. However, we sometimes used the same profile pairs to apply to multiple nearby locations of the same chain, as real-world applicants might do; our criteria for grouping the applications in this way differed between New Jersey and New York City, producing more grouping in New Jersey.¹⁹

The post-BTB application procedure was essentially the same, except that we began with the chains that we had already identified and applied to in the pre-period. Each specific store that we applied to at least once in the pre-period was assigned a new pair of profiles. The RAs were assigned to submit applications to these stores in an order that was designed to make the length of time between members of each pair roughly mirror what occurred in the pre-period. Stores thus received up to four applications total, one pair in each period.

It was sometimes not possible to send a complete set of four applications to an establishment. The primary reason for this was that the store was hiring in one period but not the other. In addition, a few RA assignments were not completed before BTB's effective date, leaving some applications unsent; this especially occurred in the New Jersey pre-period, our first wave of applications, which had to be completed relatively quickly. In New Jersey, we filled in these gaps

¹⁹ In New Jersey, we were concerned that the same hiring managers might cover multiple locations of chains and might become suspicious upon noticing groups of applicants coming within a short time from the same nearby town. Accordingly, we used the same applicant profiles for all locations that were assigned to a given center. In New York, our concerns were different: the centers are not towns and likely appear less distinctive to managers, and we had more available time before BTB's effective date, so we were able to space out the timing of our applications. Thus, in New York we chose to increase power by sending each application to only one location, except for the largest five chains (in which we sent each applications to up to two or three stores). We forced addresses and phone numbers to differ within chains, such that chains would not receive multiple applications from the same ones.

in the post-period whenever possible, and identified some new opportunities on snagajob.com. In New York City, our pre-period wave represented a quite comprehensive search, so we limited the post-period wave to the same locations that we had sent at least one application to in the pre-period; there was some attrition due to unavailable jobs in the post-period. As a result, while the pre-and post-period samples are almost identical in size, the percentage of applications that are from New York City was higher in the pre-period (60% versus 52%), and moreover, the composition of chains and stores is not identical across periods. We address these concerns below.

3.5 Measuring Outcomes

The main outcome of interest is whether an application receives a voicemail or email from an employer requesting that the applicant contact them or requesting an interview. We refer to this outcome as a callback (although it includes emails). For some alternative specifications, we focus on responses that specifically requested an interview. However, this outcome variable is subject to measurement error because employer messages often do not specifically mention an interview even if they are seeking to interview the applicant. Thus, our preferred specification uses the callback as the outcome. Phone calls and emails were tracked for eight weeks from the application date. In New Jersey, our pre-BTB data collection ended on April 25, 2015 (for the last applications sent);²⁰ our post-BTB data collection ended on August 6, 2015.²¹ In New York City, our pre-BTB data collection ended on October 26, 2015, and our post-BTB data collection ended on May 26, 2016.

4. Summary Statistics and Main Effects of Applicant Characteristics on Employer Callbacks

We submitted a total of 15,220 applications, of which 14,640 are included in our analysis sample.²² These include 6,401 applications in New Jersey and 8,239 in New York City. The

²⁰ Note that although this is considerably after BTB went into effect, all of the applications were submitted before it went into effect, which meant that the applications did contain the criminal records question (except for businesses that voluntarily omitted the question even prior to BTB). Because our outcome of interest is the employer response to the initial application (not subsequent stages of employer decision-making, such as ultimate hiring decisions), consideration of these applicants should therefore not be affected by BTB.

²¹ RAs posing as the applicants responded to employer messages by leaving brief messages thanking them but stating that the applicant was no longer available. We had no further communications with the businesses and, per IRB constraints, did not collect any information about the individuals we interacted with.

²² The remaining 580 observations (3.8% of those we sent) were dropped for several reasons. First, when an entire chain was applied to only in the pre-period or only in the post-period, we had no way to code whether the application had the criminal record “box” in the other period, so the treatment variable could not be coded.

Second, some stores had inconsistencies *within* one or both rounds as to whether the box was present. The most common reason for these inconsistencies was early precompliance with BTB (which in both jurisdictions was announced several months before it went into effect), occurring before we sent the second application but after the first. Another reason was RA mistakes in interpreting the job application form—usually answering the criminal history

summary statistics and results presented in the tables and figures below combine both jurisdictions; in Appendix A3, we replicate several of the tables and figures for New Jersey and New York separately. The applications were sent to 4,292 stores (that is, establishments) in 296 chains. We begin with summary statistics and then analyze the main effects of our randomly varied characteristics on employer callbacks.

4.1 Summary Statistics

Summary statistics are presented in Table 1a, by period and overall. As expected, approximately 50% of our applications had each of our randomized characteristics of interest. However, the prevalence of our other variable of interest—whether the application asked about criminal records—was determined by nature (that is, by the chains), not by randomization. Among our pre-period applications, 36.6% had a required criminal record question (the “box”). In the post-period, 3.6% still had the box (“noncompliers”), leaving approximately 33% of the sample as “treated” observations: employers that had the box before BTB, but not after.

Overall, 1,715 applications received callbacks, a rate of 11.7% overall. This rate was slightly higher in the post-period (12.5% vs. 10.9%), and lower in NYC than in NJ (9.4% vs 14.7%; see Appendix Tables A4 and A5). Among the callbacks, about 55% specifically mentioned an interview. The overall callback rate for white applicants was 12.9%, and 10.5% for black applicants. In both periods, callback rates were much more similar across the other randomized characteristics (GED/H.S. diploma and employment gap). Although the race gaps appear fairly similar across time periods (2.1 percentage points in the pre-period and 2.8 percentage points in the post-period), they represent averages that do not differentiate treated and untreated observations, and mask large changes occurring at treated stores, as discussed below.

4.2. Effects of Applicant Characteristics on Callback Rates

We begin by assessing the underlying employment patterns that BTB is principally designed to address. How much of an effect does having a criminal record have on employer callback rates?

question even when they were not required to because they missed a disclaimer telling New Jersey or New York City applicants not to answer the question. In either event, when the two observations from the same store and round were in conflict, we discarded the observation that was an outlier from the overall chain norm. The effect was to drop RA-mistake observations, and in the precompliance cases, to drop the later, non-box observation.

Third, we also dropped some businesses (about 1% of the sample) that appeared, mysteriously but presumably due to an administrative mistake, to *add* the box after BTB, and therefore could not be coded as 0 or 1 on the *Treated* variable. We add these back in in a robustness check below, with the coding of -1.

How much does this vary by race? Table 1a did not show a breakdown of callback rates by criminal record status, because criminal record is unobserved by employers for 63% of our applications even in the pre-period, making that breakdown not very informative for the full sample. Instead, we show separate summary statistics in Table 1b limited only to pre-BTB period observations where the application had the box. Among companies with the box, callback rates are about 60% higher for applicants without criminal records (about 5.1 percentage points, over a base rate of about 8.5%). Applicants with drug convictions had similar callback rates to those with property crime convictions—perhaps surprisingly, as one might have expected employers to be particularly concerned about potential employee theft. However, all the crimes we used were of similar legal severity—relatively low-level felonies.

As Table 1b further shows, for employers with the box in the pre-period, the callback rate advantage for applicants without records is slightly larger for white applicants (5.7 percentage points, or 69% higher than the base rate of 8.3%) than for black applicants (4.5 percentage points, or 52% higher than the base rate of 8.6%). Overall, when employers ask about records, we see essentially no race gap in callback rates: the white average is 11.1% and the black average is 10.9%.

Figure 1 puts those numbers into perspective by comparing them to the callback rates for white and black applicants to employers *without* the box in the pre-period. Among these employers, white applicants have a 3.1-percentage-point (or 33%) callback rate advantage (12.5% vs. 9.4%; $p < 0.001$). The overall callback rates at both groups of employers are essentially identical (11%), but the separation between white and black applicants is seen only at the employers who do not ask about criminal records. This is suggestive evidence for the statistical discrimination theory, although other differences between these employers could potentially underlie these cross-sectional differences; the triple-differences results below provides a stronger basis for causal inference.

Table 2 provides multivariate regression estimates of the main effects of race, record, GED status, and employment gap on callback rates. These estimates closely parallel what we see in the summary statistics, which is not surprising given that all the applicant characteristics were distributed randomly. All the results shown in Table 2 are for both periods combined (unlike Table 1b and Figure 1, which were for the pre-period only), but the regression results look similar if only the pre-period observations are used. Columns 1 and 2 show the results of regressions run in the full sample of 14,640 cases. They differ in that the Column 2 regression adds chain fixed effects (with the smallest chains grouped by business category) and center fixed effects, which make little

difference. Both imply that white applicants are on average about 2.4 percentage points more likely to receive a callback from an employer, which corresponds to a statistically significant 23% increase in callbacks over the 10.5% black baseline ($p < 0.001$). Note that the estimated criminal record effect in these regressions (about 1.5 percentage points) substantially understates the magnitude of the real criminal record effect, because in four-fifths of the sample, criminal record was not actually conveyed to the employer.

Columns 3 and 4 parallel the regression in Column 2, but they are limited to observations without and with the box, respectively. (Although the time periods remain combined, the Column 4 regression's observations are almost entirely from the pre-period, since only 3.6% of businesses retained the box after BTB.) The criminal record variable is removed from the non-box Column 3 regression because no criminal record information was conveyed. The advantage to white applicants appears only in the non-box sample, in which it is about three percentage points (Col. 3); there is no race gap at stores with the box (Col. 4). Column 4 also shows a statistically significant 5.2-percentage-point criminal record effect in the box sample ($p < 0.001$). This represents a 63% higher callback rate for persons without records, compared to the 8.2% baseline for persons with records in this sample. Column 5, which is also limited to observations with the box, shows that this effect is similar for property crimes and drug crimes.

Finally, Column 6 adds an interaction of the race and criminal record variables, within the box sample only. The negative criminal record effect is 1.5 percentage points larger for white applicants—among applicants without criminal records, whites have a slightly higher callback rate, but among applicants *with* criminal records, they have a slightly *lower* callback rate. This interaction is not statistically significant, but its sign is nonetheless interesting given that earlier, smaller auditing studies (Pager 2003; Pager, Western, and Bonikowski 2009) had found a strong interaction in the opposite direction.

In every specification and sample, having a one-year employment gap and obtaining a GED rather than a high school diploma have little effect on employer responses. Point estimates for both are close to zero, and the GED coefficient varies in sign across the specifications and samples.

4.3 Alternative Specifications and Samples: Race and Criminal Record Effect

In Table 3A, we show the race effect from several alternative specifications and samples. All combine “box” and “non-box” observations from both time periods, and all include chain and

center fixed effects. They are variants on the Table 2, Column 2 main effects regression, the “white” coefficient of which is reproduced in Column 1 of Table 3 for comparison purposes. In Column 2, we use interview request as the dependent variable rather than callback, which identifies observations in which a voicemail or email specifically mentioned an interview. Although the effect appears superficially smaller (1.4 percentage points), it is actually very slightly larger as a percentage of the (lower) black baseline rate: whites receive 24% more messages specifically mentioning interviews than blacks do (and 23% more callbacks). In Column 3, we alter the company fixed effect. The main specification grouped chains with fewer than 3 locations (or 12 observations) according to business type (such as fast food restaurants or clothing stores). Column 3 shows that the estimate is robust to using an ungrouped company fixed effect.

In Columns 4 and 5, we show the race effect separately estimated for the New Jersey and New York City subsamples, respectively. Here we see a dramatic difference: the “white” effect is far larger in New Jersey (4.5 percentage points versus 0.7 percentage points), and is statistically insignificant in New York City. The overall callback rate is considerably higher in New Jersey (14.7% compared to 9.4%), but not nearly enough so to explain this difference: in New York City, whites receive about 8% more callbacks than equivalent black applicants, while in New Jersey they receive about 37% more. In the Appendix A3 and A4, we reproduce in full Table 2 and the other main tables and figures for New Jersey and New York separately, and we discuss the geographic differences further below.

In Table 3B, we show an analogous of alternative analyses of the main effect of having a criminal record within the box sample, paralleling the estimate from Table 2, Column 4, which is reproduced in Column 1 of Table 3B. As with the “white” effect, the criminal record effect appears smaller in percentage-point terms when interview request is used as the outcome (Table 3B, Col. 2), but this effect is actually larger in relative terms. Applicants without records receive 67% more messages specifically mentioning interviews, and 61% more callbacks overall. Column 3 shows that the effect estimate is essentially unchanged by substituting the ungrouped company fixed effects. Finally, Columns 4 and 5 show that the criminal record effect is just slightly larger in percentage-point terms in New York City than in New Jersey—but in light of the city’s lower callback rate, it is much larger in relative terms. Applicants without records receive 45% more callbacks than those with records in New Jersey; in New York City, applicants without records receive 78% more callbacks.

Note that clustering in all regressions is on the chain, for reasons discussed further in Section 5.5 below. Standard errors on the race and criminal record effect estimates are not substantially affected by clustering on the store or the geographic center instead ($p < 0.001$ in all specifications).

4.4 Further Investigation of Geographic Differences in Callback Rates by Race

The difference in the *White* effect between the New Jersey and New York City subsamples, shown in Table 3A, is quite striking, and motivates further analysis. One plausible explanation is that New York City is more racially diverse than New Jersey. Per Census data, it has a larger black population share (22%, vs. 15% in New Jersey), a smaller non-Hispanic white population share (32%, vs. 57% in New Jersey), and larger populations of other ethnicities, especially Hispanic (29%, vs. 19% in New Jersey) and Asian (14%, vs. 9% in New Jersey). New Jersey is itself a fairly diverse state, and its racial composition far more closely tracks the country as a whole, so if racial composition explains the differences in observed disparities, the New Jersey results might be more representative of broader patterns.

In Table 4, we directly test whether local racial composition at a more localized level—the census block group of the business address²³—influences the *White* effect, and whether this in turn can explain the different patterns in New York City and New Jersey. The racial composition of the neighborhood population could potentially influence employer racial discrimination in various ways. Employers could seek to appeal to local customers’ own-group preference, or perhaps to pick applicants who “fit in” based on the racial composition of current staff. Hiring managers could themselves be of different races in different neighborhoods, and this might influence their perceptions of applicants. We lack data on managers’ or staff members’ race, so we cannot differentiate these mechanisms, but we can test their cumulative effect.

The regressions in Table 4 add various interactions to the main-effects regression. The center fixed effects are omitted because other geographic variables are included instead. The other variables from Table 2, Column 2 are all included in the regressions, although only the coefficients on the *White* variable, the geographic variables, and their interactions are shown in the table. Before incorporating the racial composition data, Column 1 of Table 4 first shows that the *White* x

²³ When job postings were not specific to a location with an identifiable address, we used the averages for the city or town instead in New Jersey or the zip code or borough (depending on the detail given in the posting) if in New York City.

NJ interaction is significant ($p < 0.001$) and large (3.8 percentage points), while the estimated *White* effect in New York is only an insignificant 0.7 percentage points, consistent with the split-sample results above. It also shows that overall callback rates for New Jersey, as noted above, were higher.

Column 2 drops the *NJ* variables, and instead includes the non-Hispanic white population share of the census block group where the store is located, and interacts that share with *White*. (The racial composition variables are labeled *Store CBG %White* and *Store CBG %Black* in the tables to reflect this precise definition, but for simplicity in this text, we refer to them as *PercentWhite* and *PercentBlack*.) The interaction effect is very strong, indicating that employers in whiter neighborhoods are much more likely to discriminate based on race. Its coefficient (4.9 percentage points, $p < 0.01$) represents the increased advantage of white applicants when one goes from an entirely nonwhite neighborhood to an entirely white neighborhood (both of which are found in our sample). The true effect, of course, may be nonlinear. Note that white neighborhoods have higher callback rates as well: the main effect of *PercentWhite* is 3.4 percentage points ($p < 0.01$).

Column 3 shows an analogous analysis of the effects of the black population share (*PercentBlack*). Its interaction with *White* is even larger (6 percent, $p < 0.001$). This regression suggests that in entirely nonblack neighborhoods the *White* effect is large and positive (3.2 percentage points, $p < 0.001$), while in entirely black neighborhoods, the *White* effect is about the same size but negative (about -2.8 percentage points). Of course, these effects do not in practice offset one another in the overall employment market, because (given the lower black population share), there are many more white (and nonblack) neighborhoods than there are black neighborhoods. The median employer neighborhood in our sample is 5% black, and only 8% of employer neighborhoods are more than half black.

In Columns 4 and 5, we add back the *NJ* and *White x NJ* terms to the regressions from Columns 2 and 3 respectively, to assess whether racial composition differences can explain the *White x NJ* interaction. For the most part, they do not—and nor does the *NJ* effect explain away the racial composition effect. In each of the combined regressions, the *White x NJ* interaction is almost as large as it was in Column 1 (3.3 and 3.6 percentage points, respectively). In Column 4, the *PercentWhite x White* interaction is 3.3 percentage points, and in Column 5 the *PercentBlack x White* interaction is -4.9 percentage points. Column 6 shows that the *White x NJ* interaction persists when *both* sets of racial composition interactions are added to the regression. It appears that the *PercentWhite*White* interaction disappears--however, because *PercentBlack* and *PercentWhite* are

strongly collinear, the distinct effect of each (and their interactions) may be difficult to estimate meaningfully when both are included.

The effect of local racial composition on racial discrimination patterns is important in its own right, and has not been investigated by prior auditing studies. It suggests that at least one of the mechanisms described above is at play—all forms of own-group preference. Still, it does not appear to explain most of the difference between New York and New Jersey. This is likely because, as it turns out, the racial compositions of employer neighborhoods in our New Jersey and New York samples are much less different from one another than one might have expected based on the jurisdictions' overall demographics. For example, the median percent black for *both* jurisdictions is 5% (far lower than either jurisdiction's black population share) although the mean differs (16% for New York, 11% for New Jersey). Employers in both jurisdictions, especially New York City, appear to be very disproportionately concentrated in whiter (and less black) neighborhoods. Note that we test these effects only at the census block group level, but the city's overall greater diversity might nonetheless influence racial discrimination patterns, even if employers are not located in especially diverse neighborhoods—for example, existing staff and managers need not be drawn from the immediate neighborhood.

5. Effects of Ban-the-Box on Racial Discrimination

In this section we turn to our policy-effects analysis: what is the causal effect of BTB on racial discrimination in employer callbacks? In order to answer this question we combine our field experiment with a difference-in-difference-in-differences strategy. This strategy exploits the two sources of variation in employer knowledge about criminal records before the callback: cross-sectional variation in the pre-period between applications with the box and those without, and time-series variation caused by the law change which required companies that asked about criminal records to stop doing so.

5.1 Difference-in-Difference-in-Differences Estimation Strategy

One problem with comparing callback rates in two different time periods is that seasonal variation, other state- or city-level policy changes, and general economic trends could all effect callback rates in different periods, differences unrelated to the BTB policy itself. To account for this possibility, we employ a difference-in-differences-in-differences approach. This method exploits the fact that not all employers ask about criminal records even in the pre-BTB period

(indeed, the majority do not). We treat such stores as a control group, comparing whether changes in the effects of race after BTB goes into effect differ between stores that have the box in the pre-period and those that do not. This will “difference out” effects of seasonal variation or other temporal differences unrelated to BTB, leaving us with an estimate of the causal effect of the BTB policy on employer callback difference by race or other characteristics of interest. Similarly, purely cross-sectional comparisons between employers with and without the box could be confounded by unobserved differences between those employers unrelated to the presence of the box. But the triple-differences analysis will difference out those unrelated differences as well, so long as they are time-invariant over the period in question.

This method implies the following general difference-in-difference-in-differences estimating equation:

$$\begin{aligned}
 \text{callback} = & \alpha + \beta_1 \text{White} + \beta_2 \text{Post} + \beta_3 \text{Treated} + \beta_4 \text{White} \times \text{Post} \\
 & + \beta_5 \text{White} \times \text{Treated} + \beta_6 \text{Post} \times \text{Treated} \\
 & + \beta_7 \text{Treated} \times \text{White} \times \text{Post} + \epsilon
 \end{aligned} \tag{1}$$

Post is an indicator for the post-BTB period, *callback* is an indicator for whether the applicant received a positive-response callback from the employer, *Treated* is an indicator for whether the criminal record question on the store’s job application form changed after BTB. *Treated* is coded at the individual store level. Observations from a given store are coded as not treated (*Treated* = 0) if the store never had “the box,” and also in the rarer case of stores that had the box and failed to remove it after BTB. Observations are coded as treated if the store had the box but removed it after BTB.²⁴ In most specifications, we also add a vector of control variables that accounts for the possibility of random imbalances in other applicant or application characteristics (GED, employment gap, criminal record, and geographic center).

In Equation (1) above, the main effect of interest is the triple-difference coefficient, β_7 , which tells us how the employer callback gap for whites versus blacks changes differentially after BTB for treated versus non-treated stores. A positive coefficient implies that BTB favors white

²⁴ The sample used for this analysis is slightly smaller than the sample for the main-effects analysis above because we dropped a small number of observations—about 1% of the sample—for which *Treated* could not be coded as either 0 or 1, because the chain moved from *not* having the box to having it after BTB (the opposite of the expected direction of change, seemingly due to administrative mistakes).

applicants relative to black applicants, that is, that treated employers become relatively more likely to call back white applicants after the box is removed.

An additional issue is that we did not apply to exactly the same set of stores or chains in the pre- and post-period—as discussed above, it was not always possible to send all four intended applications to each store. If the employers that we applied to in the post-period happened to have different patterns of discrimination from those in the pre-period (in a way that differed across treated and untreated employers), we could mistakenly interpret a compositional effect as an effect of BTB.

We have two approaches for addressing these compositional differences across periods. First, in some specifications, we substitute interacted chain fixed effects instead of some of the “Treated” terms in the equation above, as follows:

$$\begin{aligned}
 \text{callback} = & \alpha + \beta_1 \text{White} + \beta_2 \text{Post} + \sum_{i=1}^N \beta_{3i} \text{Chain}_i + \beta_4 \text{White} \times \text{Post} \\
 & + \text{White} \times \sum_{i=1}^N \beta_{5i} \text{Chain}_i + \text{Post} \times \sum_{i=1}^N \beta_{6i} \text{Chain}_i \\
 & + \beta_7 \text{Treated} \times \text{White} \times \text{Post} + \epsilon
 \end{aligned} \tag{2}$$

where i indexes chains, and Chain_i represents a series of dummy variables for the chains in our sample.²⁵ Because “treated” status occasionally varies between stores (usually because some chains give franchisees a choice of application platforms, or because a chain’s BTB compliance differed between New Jersey and New York City), we assign separate *Chain* fixed effects to treated and untreated subsets of such chains. The result is that the *Chain* fixed effects perfectly parallel the Treated variable: *Treated* status follows directly from the *Chain*. The equation above substitutes the main effect of *Treated* with *Chain* fixed effects, and likewise substitutes *Treated* \times *White* \times *Post* with parallel sets of interacted fixed effects. However, it keeps the main effect of interest, the triple-differences estimate, in its easier-to-interpret form of *Treated* \times *White* \times *Post*. This term represents the average change in racial disparity due to BTB: in effect, a weighted average of what the coefficients would be if *White* and *Post* were instead triply interacted with *Chain*, completing the substitution.

²⁵ The smallest chains (fewer than three locations or 12 total observations) are combined into industry-category groups; these chains represent about 9% of the sample. Original coding is used in a robustness check below.

The chain-fixed-effects specifications account for differences in composition across periods by chain, but not by individual store (or by the geographic distribution of stores). Moreover, they do not provide easy-to-interpret coefficients on the main effects of *White*, *Treated*, and *Post* or their two-way interactions. We thus also offer a simpler approach for confronting the compositional differences: we conduct the analysis within the subset of stores to which we *did* send exactly four applications: one white/black pair in each period. Fortunately, we were usually able to do so, and so this “perfect quad” sample contains 11,118 observations, or 76% of our full sample. When using the perfect quad sample, the concerns about different distributions across chains, stores, or jurisdictions disappear (and no controls for these variables are necessary), because the sample is perfectly balanced between the pre- and post-periods. The simple triple-differences analysis can thus be used, and all the coefficients are easy to interpret; the disadvantage is some loss of power.

In any of these analyses, identification of β_7 as a causal effect relies on the assumption that, absent BTB, trends in employer callback differences by race would have been the same for treated and untreated stores (stores that had the box in the pre-period and those that did not). Unfortunately, our data are not long enough to compare pre-period trends. However, we believe the assumption is plausible. For a vast majority of stores in our sample (even those that are franchised), the job applications are standardized nationally at the chain level, with built-in variations accommodating local differences in BTB laws.²⁶ Thus, the decision to include or not include the box on the application is made at the chain level, whereas callback decisions are made at the individual store level by store managers, or in some chains by local managers who supervise a small subset of locations. In that sense, whether a store has the box should be exogenous to the decision-makers we are studying. Moreover, there is no qualitative reason to believe that these chains differ in any way that would affect hiring trends in a racially disparate way. After all, to pose a threat to identification, hiring differences would have to be racially disparate in a way that differs over the time between our pre- and post-period applications (about four months on average). Note that not having the box does not generally reflect lack of interest in criminal records; chains with and

²⁶ To comply with BTB laws, applications that normally have the “box” will usually ask a question similar to “Are you applying in Rhode Island, Hawaii, Massachusetts, California, or Minnesota?” If one clicks “yes,” the criminal conviction question will not appear. Alternatively, the conviction question will be preceded by instructions telling the applicant not to answer if applying in certain jurisdictions. So the treatment we are studying generally takes the form of the national chain adding New Jersey or New York City to these lists of BTB jurisdictions on the applications.

without the box, before and after BTB, routinely do back-end background checks (and their applications usually warn applicants of this fact).

5.2 Temporal Differences in Racial Disparity at Treated Stores

We start descriptively with Figure 2, which compares pre- and post-BTB call back rates among treated employers—that is, those that had the box in the pre-period but then removed it to comply with BTB.²⁷ Just as with Figure 1 (the cross-sectional comparison), Figure 2 (the temporal comparison) suggests that when companies don't see applicants' criminal records, they are more likely to discriminate based on race. In this sample, in the pre-period, white applicants both with and without records have a slightly higher callback rate than equivalent black applicants do: for applicants without records, the white and black rates are 13.8% and 12.7% respectively, and for those with records, the white and black rates are 8.8% and 8.4%, respectively (Figure 2). Averaging these subgroups together, the overall pre-period callback rates in this sample were 11.3% for whites and 10.5% for blacks. However, in the post-period, this quintuples in size, and white applicants receive 36% more callbacks than blacks do: the white callback rate is 15.0%, and the black callback rate is 11%.

This figure does not, however, take into account potential seasonal or temporal variation between the pre- and post-period. The difference-in-difference-in-differences results below will “difference out” temporal variation in racial discrimination among employers whose applications never had the box and thus were unaffected by BTB, as discussed above. As we will see, this differencing out only strengthens the implication that BTB encourages racial discrimination.

5.3 Differences-in-Differences-in-Differences: Raw Percentages

Before showing regression estimates, we start with raw percentage differences. Table 5 summarizes the changes in callback rates by race for treated and untreated stores before and after BTB went into effect. Each cell in Table 5 is itself a difference: the callback rate for black applicants minus the callback rate for white applicants. The “treated” column replicates what we already saw in Figure 2: at treated stores, the “white” advantage grew by 3.2 percentage points (from 0.7 percentage point to 4.0 percentage points) after BTB. The “not treated” column shows what happened at the same time at other stores whose applications were unaffected by BTB (mostly

²⁷ The figure looks very similar if done only within the “perfect quad” sample.

because they did not have the box to begin with). At these stores, the “white” advantage declined very slightly, from 2.7 percentage points to 2.2 percentage points.

When we further difference out the temporal differences in racial differences at untreated stores, we get a difference-in-differences-in differences figure of 3.7 percentage points. That is, the black-white gap grew by 3.7 percentage points more at the treated stores after BTB, relative to the untreated stores. This is a large increase, given that baseline callback rates are low; the average callback rate for black applicants in this sample is 10%. Below the line, we show a the triple-differences calculation for treated and untreated observations in the perfect quad sample which is balanced on the chains and stores we applied to in the pre- and post-period 4.2 percentage points, a similarly large effect.

5.4 Triple-Differences Regressions

Table 6 shows regression-adjusted triple-differences estimates across several specifications and samples. The effect of principal interest is on the top line, Post x Treated x White. Across specification, the estimates are economically large and significant (ranging from 3.6 to 4.1 percentage points, which amounts to a multifold increase in the underlying race gap). Our estimates here are somewhat less precise than the main-effects estimates discussed in Section 4, because triple-differences analyses demand much larger samples than analyses of main effects or even two-way interactions do in order to provide equivalent statistical power to estimate effects of a given size. Even so, all of these estimates are statistically significant ($p < 0.05$), with p-values generally around 0.04. All of our regression estimates are quite similar to the basic difference-in-difference-in-differences analysis in Table 5, which is unsurprising given that the applicant characteristics are randomized.

Columns 1 and 2 show the simple triple-differences regression with the *Treated*, *Post*, and *White* variables interacted (per Equation 1), with and without controls for the other randomized applicant characteristics (GED, employment gap, and criminal record) as well as center fixed effects. Adding these controls increases the triple-differences coefficient slightly, from 3.7 to 4.1 percentage points. This analysis does not, however, account for the above-discussed differences in composition of the sample across time periods. We begin to address these in Column 3, which parallels Column 2 but substitutes interacted chain fixed effects for the *Treated* variable and its two-way interactions (per Equation 2). This analysis accounts for differences in the representation of the various chains in the pre- and post-period, and the main effect of interest declines slightly, to 3.6

percentage points. It bears noting that the *White*, *Post*, and *Post*White* estimates do not have a meaningful interpretation in this regression because the total effects of those variables are diffused among the interacted fixed effects.

Column 4 then further account for differences in the individual stores represented in the pre- and post-period samples by limiting the analysis to the “perfect quad” sample. In this sample chains and centers are perfectly balanced across time periods and race, so there is no reason to include the chain or center fixed effects. Accordingly, we can use the simple triple differences specification, retaining from Column 2 only the controls for GED status, criminal record, and employment gap, since these might have randomly been slightly imbalanced even among the “perfect quads.” The effect estimate remains similar: 4 percentage points. In this sample, the estimated race gap at the treated stores goes from 0.7 percentage points before BTB to 4.7 points after, after differencing out changes at untreated stores. Again, to put this estimate in perspective, one must compare it to the baseline callback rate: other things equal, whites receive 6.7% more callbacks than similar black candidates do when employers are able to observe criminal records, but they receive about 45.2% more callbacks than similar black candidates when employers cannot observe records.

In short, these analyses provide evidence that BTB increases racial discrimination in employer callbacks. Prior to the adoption of BTB, racial disparities are somewhat larger among the stores that do not have the box. After BTB, that difference flips. The growth in the “white” effect after BTB appears to multiply the race gap at affected stores by a factor of between five and seven; this factor varies slightly across specifications and samples, mainly because of variations in the small estimated pre-BTB race gap.

In Appendix A5, we recreate the above analysis substituting GED or employment gap for White to explore whether employer responses to these characteristics, which are also correlated with a criminal record, change after BTB. The triple differences coefficients for both GED and employment gap are not significant. For the employment gap, however, the point estimates are nontrivial (around 2.5 percentage points; Table A5.2), albeit imprecise, and their signs go in the anticipated direction that statistical discrimination theory would predict: the negative effect of the employment gap increases when employers lose criminal record information. In the GED analysis, the point estimates are also negative but smaller, and very close to zero in the full-sample fixed-effect analysis (Table A5.1, Col. 3). So we cannot characterize this as even suggestive evidence of statistical discrimination on the basis of the GED.

5.5 *Alternative Specifications and Samples: Effects of BTB*

Our results are quite robust to alternate specifications. Table 7, Panels A and B, shows robustness checks and alternative samples corresponding to our estimates for the full sample and the “perfect quad” sample respectively. Only the triple-differences coefficient is shown. We base these variations on what we consider the main specifications for each sample, which are found in Columns 3 and 4 of Table 6. For the full sample, because of our concern about compositional differences between periods, we prefer the specification that includes the interacted chain fixed effects, and use that as the basis for the robustness checks. The triple-differences coefficient from Table 6, Column 3 is accordingly reproduced in Column 1 of Table 7A for comparison purposes. Meanwhile, the robustness checks for the “perfect quad” sample are based on the Table 5, Column 4 specification, and its triple-differences coefficient is reproduced in Column 1 of Table 7B. Columns 1 through 6 of both panels parallel one another, while Columns 7 and 8 of Panel A show additional checks that are not relevant to the “perfect quad” sample.

Note at the outset that the coefficients and p-values are fairly similar for all variants except for columns 5 and 6 of each panel, which show results for New Jersey and New York City separately and are much less precise. In a few of the other specifications the p-values are above 0.05, but barely, representing only a small loss of precision or slightly reduced effect size; all p-values are between 0.04 and 0.06, other than in the NJ-only and NYC-only regressions.

Column 2 in both panels replaces the callback outcome variable with the interview variable. In percentage point terms, the estimate becomes slightly smaller (but still significant) in the full sample, and is essentially unchanged in the “perfect quad” sample. Again, however, the recorded “interview” rate was much lower (6.3% overall in the full sample, versus a “callback” rate of 11.7%)—so the effect on “interview” rates was actually quite a bit more dramatic in relative terms. That said, because we suspect that the vast majority of callbacks were in fact seeking interviews (even if they did not specifically say so), we consider the callback variable the better measure.

Columns 3 and 4 in both panels alter subjective choices that we made about whether to exclude certain problematic observations. In Column 3, we add back in a group that we excluded from the main triple-differences analyses: “reverse complier” stores that had no box before BTB, but mysteriously (apparently due to administrative mistakes) *added* it after BTB. “Treated” cannot

be coded as 0 or 1 for these observations, but here we code it as -1, reflecting the reversal of the usual treatment direction.²⁸ The effect size is slightly smaller in both samples and the p-value is slightly above 0.05 in the perfect-quad specification. In Column 4, we exclude a small number of observations or quads (about 0.4% of each sample) in which an RA made a mistake and answered a “box” question that she was not required to answer, or vice versa.²⁹ Excluding them leaves both samples’ estimates virtually unchanged, though the perfect quad sample p-value again rises slightly above 0.05.

Columns 5 and 6 in both panels divide the sample between New Jersey and New York City, respectively. The large reduction in sample size renders these analyses underpowered for the purpose of estimating triple differences, and thus these estimates are quite imprecise. The New Jersey point estimate is larger in percentage-point terms, but not much so in relative terms, once one accounts for New Jersey’s substantially higher callback rate (14.9% in the full sample, versus 9.4% in New York City). As a proportion of the respective samples’ callback rates, New Jersey’s full-sample point estimate is only slightly higher than New York’s, and New Jersey’s “perfect quad” point estimate is slightly *lower* than New York’s. In any event, because of their imprecision, one ought not to give much interpretive weight to the jurisdictional differences in the point estimates (whereas the jurisdictional differences in the *main* effects of race, discussed above, are clear).

In Panel A, Columns 7 and 8 show two additional variants on the full sample analysis that alter the chain fixed effects and their interactions. In the main sample, the smallest chains (with under 12 observations total, or three stores) had been grouped based on business-type category (such as fast food restaurants or clothing stores). Column 7 instead uses individual chain fixed effects regardless of company size. Column 8, meanwhile, divides the chain fixed effects into New York and New Jersey subsets of each chain. Both changes add a large number of fixed-effect indicators to each regression and reduce precision slightly, but the point estimates remain similar.

Clustering in all regressions shown in the tables is on the chain, because whole chains are likely susceptible to serially correlated shocks. We observed quite different callback rates by chain,

²⁸ Note that the relationship between treatment and the passage of time is inverted for these observations, making this specification diverge from a standard triple-differences analysis. This is the main reason we excluded them.

²⁹ The main sample had already dropped RA-error cases when they created inconsistencies in the coding of the treatment variable within stores, but kept them when the same error was made consistently within the store; we then coded the treatment variable according to how the RA interpreted the application, since that tracked the information about criminal records that the RA provided or did not provide to the employer.

as well as some chains that had distinct increases or reductions in callback rates or in job-posting availability in one or more of the four time periods in which we sent applications. The chain also encompasses the smaller units according to which the applications we sent were grouped. That is, we sometimes sent the same set of four applications to multiple locations of the same chain (especially in New Jersey, where we did so for *all* locations within the same center), but never to different chains. If one clusters on the geographic center instead (another dimension along which one could anticipate possible correlated shocks), the p-values for our main specifications are slightly higher in the full sample (0.054) and slightly lower in the perfect quad sample (0.024), and if one clusters on the individual store (ignoring correlations between chains), they are slightly higher in both samples (0.05 and 0.06, respectively).

6. Discussion and Conclusion

Our results support BTB's basic premise: when employers ask about them, criminal records pose an obstacle to employment. However, our findings also provide evidence of a serious apparent unintended consequence of BTB: increased racial discrimination against black men. These findings suggest a difficult dilemma for policymakers. Here, we discuss their limitations and implications further, as well as those of our results on the main effects of race.

6.1 *BTB and the Effect of Criminal Records*

The key premise of BTB is that when employers ask about criminal records, people with records will have a much harder time getting their foot in the door. Although this seems intuitive, it can be difficult to quantify with observational research—but our field experiment provides very clear evidence of the serious obstacle to employment that criminal records pose. Applicants without records received 61% more callbacks than identical applicants without records did when employers had the box. And this is despite two facts that may have mitigated this effect. First, our applicants with records had *minor* records (a single conviction of a nonviolent drug or property crime, more than two years prior, with no incarceration history). Second, we applied mainly to positions that one might expect, in general, to be comparatively welcoming to people with records—for example, crew member jobs in restaurants.

The practical effect of the criminal-record penalty might be offset to some degree by the fact that most employers in the sectors we studied do not have the criminal-records box even absent BTB. However, even when employers do not have the box on their applications, they are free

(absent BTB) to ask about records at an interview and to check records at any time; even with BTB, they are free to do so later in the application process. So if employers disfavor people with records, this effect may be present to some degree at later stages of the process even among non-BTB employers—stages our study does not assess.

For BTB’s advocates, the good news in our findings is that employers comply with it, and thus BTB effectively eliminates criminal-record effects on employer callback rates for identical applicants. Fewer than 5% of employers retained the box in the post-period, a few months after BTB’s effective date. This means that for our applicants with records, BTB worked: those records were never conveyed to employers before the callback decision was made.

Note, however, that we were unable to study the effect of BTB (or of criminal record or race) on *actually getting* a job, only initial employer responses. Perhaps BTB might not change employment rates after all, if firms are reluctant to hire applicants with a record even after they “get their foot in the door” (for a similar point on discrimination against the long-term unemployed, see Jarosch and Pilossoph (2015)). Still, while this is a substantial limitation, BTB is meant precisely to impact the initial stage of the hiring process, and so it is an important question whether doors do, indeed, open—and whether BTB brings about unintended consequences at the same initial stage.

6.2 *Main Effects of Race*

Our results also confirm a clear advantage of white applicants, who receive 23% more callbacks compared to otherwise identical black applicants. This finding is consistent with those of nearly all prior auditing studies, so it should not surprise readers, although it is useful to confirm it in a newer sample and a setting (online job applications) which has hardly been studied but is central to the modern job market. Our estimate of white applicants’ advantage is somewhat less dramatic than most prior auditing studies have found, but as with the criminal record, our setting is one in which lesser race effects might have been expected. Online applications involve no personal interactions (and indeed may be initially narrowed down by software before a hiring manager ever sees them), and our applications gave no racial signals other than the name. Moreover, the job categories to which we applied are ones in which young black men are relatively well represented; one might expect black applicants to face lesser hurdles there than in fields where they would be a smaller minority.

This apparent racial discrimination could reflect a number of specific mechanisms: (1) statistical discrimination based on expectations concerning criminality (for companies that do not have the box, or in the post-BTB period); (2) statistical discrimination based on expectations concerning other productivity-related factors; (3) attempts to appeal to the discriminatory tastes of a customer base; and (4) pure taste-based discrimination unrelated to job performance expectations. A critique of auditing studies has been that they usually do not allow researchers to distinguish taste-based and statistical mechanisms of discrimination (Neumark 2011; Heckman and Siegelman 1993). Our research design offers some traction on this question, in that it helps to disentangle the first mechanism from the others, but we cannot disentangle the other three mechanisms. However, all four of these mechanisms amount to illegal racial discrimination, and all four conflict with the policy objective of expanding black male unemployment. Regardless of the specific causal pathway, then, our findings should be troubling to many policymakers, and are a reminder of the very substantial persistence of racial discrimination in hiring despite its legal prohibition.

Given the prior literature, one surprise in our analysis is that the main effect of race does not pervade all segments of our sample. The advantage of white applicants is quite small when employers have the box, and it is quite small overall in New York City. Among employers *with* the box in New York City, the black callback rate was actually higher (10.2% versus 8.4% for whites, though this difference is not statistically significant). Moreover, our findings demonstrating a strong interaction of applicant race and neighborhood racial composition also indicate that racial discrimination is less prevalent (or may even be reversed in direction) in neighborhoods that are less white—although it also suggests larger degrees of racial discrimination in whiter neighborhoods. All of this variation suggests that racial discrimination in hiring, while prevalent, is not ubiquitous and may be avoidable—although we cannot yet fully explain why New York City is more successful than New Jersey in avoiding it, as demographic differences do not entirely explain the difference.

6.3. *Effects of BTB on Racial Discrimination*

BTB appears to substantially increase racial discrimination against black men—indeed, by more than a factor of six in our main specifications. At BTB-affected employers, white applicants went from being 7% more likely to receive a callback than similar black applicants to being 45% more likely. This consequence is clearly unintended, as BTB is often presented as a strategy for *increasing* access to employment for black men.

We believe that the randomized experimental design, in combination with the triple-differences analysis, provides a strong basis for interpreting our estimates as causal effects of BTB. The randomization means that we avoid most of the potential interpretive challenges that observational researchers encounter: our black and white applicants to all business types in all locations and periods have the same qualifications and characteristics. Any remaining threats to identification would have to come from unobserved differences that (1) affect applicants to treated and untreated businesses differently (2) in ways that differ by race and (3) this difference must differ across time periods as well. Although it is of course possible that (independent of BTB) some such difference might exist, there is no obvious candidate for what it might be. This is especially so because the time period between the pre- and post-periods is short—the two groups of quite similar businesses are unlikely to have greatly diverged from one another in their racial discrimination patterns in just a few months—and because we see approximately the same triple-differences effect in New Jersey and New York City, even though the pre- and post-periods in those two jurisdictions were seasonally nearly opposite to one another.³⁰

We note that there are at least two plausible mechanisms that would explain this result. The first is statistical discrimination against black men: although black men with records could be helped by BTB, this effect could be swamped by negative effects for black men without records because absent the information employers treat them as if they have a high probability of having a record (Finlay (2014) concluded similarly in his research about the availability of online criminal records). Indeed, given that we gave our applicants fairly minor criminal records, it is even possible that some of our black candidates *with* records would have been better off revealing them (so that a more serious record was not assumed).

A second mechanism focuses on BTB's benefits for white applicants. Perhaps for some subset of employers, *either* black race *or* a criminal record are enough to push marginal candidates out of consideration. Such employers would be expected to treat white applicants with records more favorably after BTB, but their treatment of black applicants with records would not change, because black applicants *without* records already were not getting callbacks. The mechanism for these employers' racial discrimination need not primarily relate to expectations about criminal records—it could be based on the other reasons identified above: pure prejudice with no statistical

³⁰ In New Jersey we went from winter to late spring/early summer; in New York we went from summer to winter.

basis, appeals to a discriminatory customer base, or perhaps statistical discrimination on the basis of some other factor besides criminal record. This theory suggests that BTB could allow white applicants with records, in essence, to take advantage of the racial advantage that other white candidates have. It is a statistical discrimination theory as well, insofar as it requires employers to assume that white applicants likely do *not* have criminal records. But it suggests a more complicated story, implying that other mechanisms of discrimination may also play a role.

These mechanisms are not mutually exclusive, and our results suggest that both likely contribute. At BTB-affected employers, after differencing out trends at unaffected employers, black applicants see their callback rates fall by two percentage points after BTB, while white applicants see theirs rise by two percentage points. These estimates are suggestive that both mechanisms are at work, although we lack the statistical power to disentangle them completely. (To truly tease out these pathways, we would need to add a fourth difference to our triple-differences analysis—that is, whether applicants have a record—which would require an enormous sample to do precisely.) And in any event, regardless of which explanation primarily drives our result, both suggest that BTB may not do the job that many of its advocates are hoping it will do: expanding access to employment for black men.

One alternative causal theory is that BTB might affect treated businesses' applicant pools, by encouraging more applicants with records to apply. If this is so, then even though our fictional applicants are the same in both periods, their competition is not, potentially affecting callback rates. But to explain our triple-differences estimates, changes in the competition have to affect our black and white applicants differently—and it is not obvious why this would be the case. If the mechanism involves statistical discrimination based on assumptions about records, then it is simply a variant on the theories we have already proposed. Indeed, whatever employers' reasoning, if the theory is that BTB causes changes in the applicant pool that somehow cause employers to treat black applicants more adversely than identical whites, then it does not threaten our causal inference that BTB increases racial discrimination—it simply provides another mechanism by which it might do so.

A variant of this concern is that BTB might affect *untreated* businesses' applicant pools in some way (presumably reducing the number of applicants with records, as they apply to treated businesses instead) that leads them to increase callbacks of black applicants relative to whites. This possibility is more of a threat to causal identification because it would mean the control is not really

untreated. But changes to the untreated employers' applicant pool are likely to be relatively subtle, because for many (probably most) applicants there is no necessary tradeoff between applying to treated and untreated businesses. In addition, given that the untreated employers lack the box both before and after BTB (and after BTB cannot ask about records even at interviews), it seems that many would be unlikely to notice changes in the percentage of their applicants with records, especially if those changes are not drastic. Employers would have to notice or anticipate such a change, and update their race-specific expectations and decision-making accordingly, very quickly in order to affect our results; our post-period applications were sent an average of less than three months after BTB's effective date. Moreover, again, the change in competition would have to affect our black and white applicants differently, and it is not clear that it would. Nor is there empirical reason to suspect that it does: the estimates in Table 5 strongly suggest that the triple-differences effect is being driven by an increase in racial disparity among treated employers, not a reduction among untreated employers.

In any event, the effect of BTB on applicant pools (of either set of employer) may well be mitigated if applicants do not know what employers have the box before they are nearly done with the application (the box usually appears as one of the last screens). Some applicants with records might well gain such information before applying, but we suspect that this knowledge is at least not ubiquitous, in part due to the challenges we faced finding it. Despite considerable effort, we were unable to find resources listing employers with and without the box prior to conducting our resource-intensive data collection, and we were ourselves surprised to learn what a large share of employers did not have it. Applicants would also have to know about BTB, as well as its effective date (actual passage of BTB in both jurisdictions came months earlier, before our pre-period).

There is a more direct way in which BTB might affect untreated employers, however: we identified employers as untreated based on their job applications, but BTB also governs the interview. So it is possible that it could encourage even untreated employers to statistically discriminate as well: knowing that they cannot ask records questions in the interview might make them less likely to interview candidates that they think might have records. However, if anything this possibility should mean our triple-differences estimate is *downward* biased, because BTB encourages statistical discrimination at both sets of employers, while we are measuring only the difference. In addition, in New Jersey employers are permitted to do background checks immediately after the interview (and even in New York City, where a conditional job offer must be

made, this could potentially occur in quite short sequence), so this concern for subsequent delay seems relatively minor—it is not a dramatic difference to find out about a record shortly after the interview rather than during it, since the time spent on the interview would already have been invested.

We therefore think the best explanation for the triple-differences estimate is that BTB encourages statistical discrimination against black applicants and/or in favor of white applicants. Although such discrimination is illegal and against public policy, one could still be interested in asking: is it rational, in the sense of reflecting accurate expectations by employers about who is likely to have a criminal record? Or are employers relying on inaccurate stereotypes about black criminality? It is difficult to assess the rationality of employer decisions because there is much we do not know: for example, the costs to employers of interviewing an applicant who turns out to have a disqualifying criminal record, and on the other hand the costs of inadvertently failing to interview a candidate (due to assumptions about his record) who would have been the best choice.

That said, there is good reason to believe that employers are relying on assumptions that exaggerate real-world racial differences in conviction rates. It is difficult to find useful statistics on the percent of specific populations with felony convictions – the National Longitudinal Survey of Youth 1997 (NLSY97) offers one data source, albeit with a fairly small sample size for this purpose. An initial point is that although *absolute* black/white differences in felony conviction rates are large (Shannon et al. 2011), they are much smaller once one conditions on other applicant characteristics that employers can observe. Indeed, this is so even once one simply limits the pool to young men with relatively limited education. Our calculations from the NLSY97 show that amongst men between the ages of 18 and 25 without any higher education degrees, 29.4% of black men had a criminal conviction between the ages of 18 and 25, whereas 24.7% of white men did. Our black and white applicants are identical on a range of other characteristics as well—work history, neighborhood, and so forth—which one would expect to narrow the gap further. And yet employers who are provided with a great deal of individualized information about our applicants appear to nonetheless be giving considerable weight to race as a predictor of criminality.

One possibility is that employers engage in statistical discrimination in a far less nuanced way than rational-choice economic theory would predict—they may rely on a general impression that black rates of involvement with the criminal justice system are higher in absolute terms, without any specific sense of whether these differences persist after conditioning on the relevant set

of observed characteristics. It would not be surprising if employers made assumptions about black applicants' likely criminality, even if those assumptions are not well founded in fact. Lab experiments on implicit biases have consistently found that most Americans make such assumptions subconsciously (see, for example, Eberhardt 2004; Nosek et al. 2007), and such mechanisms may not involve an accurate comparison of conditional probabilities.

Further support for this theory comes from the contrast with our results on the GED versus high school diploma distinction; we did not find that BTB significantly increased the weight employers placed on that distinction. Nor, indeed, do employers place significant weight on this variable at all, even at non-box stores. And yet having a GED in lieu of a diploma is actually a *much* stronger predictor of criminal convictions than race is, conditional on the same observables. In the NYLS97, among young men with no college degrees, 43% of those with a GED have a conviction by age 25, whereas only 18% of those with a high school diploma have one. This contrast suggests that whatever employers' cost-benefit calculus about interviewing people with records, they must either be irrationally overweighting race as a signal, underweighting education, or both. Employers also give no apparent weight (before or after BTB) to year-long employment gaps, despite the possibility that this might be associated with arrest or incarceration (or might otherwise signal that the applicant is a less appealing job prospect).

6.4. Policy Implications

BTB may open doors to some applicants with records, but this gain comes at the expense of another group that faces serious employment challenges: black men. BTB is often presented as a way of *increasing* black male employment, but most black men do not have criminal convictions, and BTB risks harming black men without records by preventing them from signaling that fact to employers. This is a serious unintended consequence, but it is not necessarily dispositive as to BTB's merits. Policymakers will have to evaluate how to weigh this risk versus BTB's potential benefits, and also to consider whether there are strategies that could simultaneously be pursued that might successfully mitigate this disadvantage.

Even if one simply wishes to evaluate BTB's race-related effects (setting aside other policy concerns), the picture is somewhat complex. While in our sample BTB's apparent effect on the race gap was fairly dramatic, an important unanswered question is how large an effect this phenomenon will have on real world job applicants. One limitation of auditing studies generally is that they do not directly provide estimates of changes in actual markets (Heckman 1998). In the real world,

applicants are not divided 50/50 between identical black male and white male candidates (and no other groups), with 50% of each group having a record. Our study suggests that BTB should be expected to substantially help applicants with records, at least at the initial callback stage, and in the real world black men have records at higher rates. This point means that even if BTB increases racial *discrimination* by employers, it does not necessarily follow that it will increase racial *disparity* in employment on balance. It could simultaneously be true that BTB helps black men with records (by eliminating record-based discrimination in callbacks), while hurting black men without records (by increasing racial discrimination), and the net effect on black male employment would depend on the size of each effect and the size of the respective groups they affect. And this calculus may vary as BTB is applied to different markets and places—employers’ treatment of both race and criminal records may vary considerably, as our comparisons of New Jersey and New York City illustrate.

That said, some back-of-the-envelope calculations suggest that at least in contexts similar to the one we studied, the net effect may be to enlarge the black-white employment gap. Consider again 25-year-old men without college degrees: per the NLSY97, the black and white conviction rates are 29.4% and 24.7%, respectively. Suppose all such men were subject to changes in employer callback rates paralleling the pattern in Figure 2 (the raw pre- to post-period changes at treated employers)—a pattern that actually slightly understates the growth in racial discrimination that our triple-differences regression analyses found. Callback rates increased by 2.6 percentage points for black men with records, and declined by 1.7 percentage points for black men without records. Meanwhile, for white men with records, callback rates increased by 7.2 percentage points, and for white men *without* records they actually rose also, by 1.2 percentage points. (Callback rates increased at all stores in this period—an effect differenced out in the triple-differences analysis—so this preponderance of gains does not tell us anything about BTB’s effects. The relative rates are the focus of this calculation.) Applying these changes to the real-world distribution of records among young men without college degrees implies that overall black callback rates would fall by 0.4 points, while overall white callback rates would rise by 2.8 points—a net rise of 3.2 percentage points in the black-white callback rate gap (more than a quarter of the overall callback rate for the sample).

This example suggests that even after offsetting the effect of eliminating criminal-record-based discrimination, the increase in racial disparity due to BTB could be considerable. In addition

to the differential effects on white and black applicants *without* records, part of the reason for this is that it is *white* applicants with records who appear to benefit more substantially from BTB than black applicants with records do.³¹ Of course, a full analysis of real world effects would have to account for the fact that white and black men are not the only groups competing for jobs. We chose to focus on white and black men only because further subdividing the sample would have presented challenges in terms of statistical power. But women and men of other racial groups could be affected, and such effects could be avenues of future research. Moreover, while auditing studies point to a mechanism, observational studies can help to further explore how that mechanism plays out given the actual distribution of candidates.

Policymakers might also consider whether there are other interventions that BTB could be combined with to reduce its adverse effects on black candidates. Race-based statistical discrimination in hiring is unlawful, and if the hiring discrimination laws were effectively enforced or operated as an effective deterrent, BTB could not have this unintended consequence. This, to be sure, is easier said than done, but the intuition behind BTB perhaps suggests one plausible innovation: asking employers to blind themselves to *names* in addition to records.

The racial-disparity implications are not the only policy consideration surrounding BTB and whether our results imply that the policy is unsuccessful depends, of course, on what policymakers seek to maximize. To the extent that advocates and policymakers hoped this BTB would reduce racial inequality in employment opportunities, it appears to be doing quite the opposite. However, policymakers might reasonably endorse it on the ground that people with records are a group in acute need of a leg up, regardless of race. If jobs discourage crime, society may also have a special interest in providing that help for public safety reasons. Our study does not seek to inform every aspect of the policy debate surrounding BTB, but we do find that as a racial-disparity-reduction strategy, it appears to have unintended consequences.

³¹ One complicating factor is that not every applicant in the real world has a racially distinctive name (only about half do), perhaps reducing the relative impact of the racial-discrimination effect in comparison to the record-discrimination effect. However, this point may be offset by the fact that real-world applicants may also have other signals of likely race on their job applications, such as their neighborhood of residence or high school; our fictional applications included no such signals, as everything was randomized among a set of fairly race-neutral options.

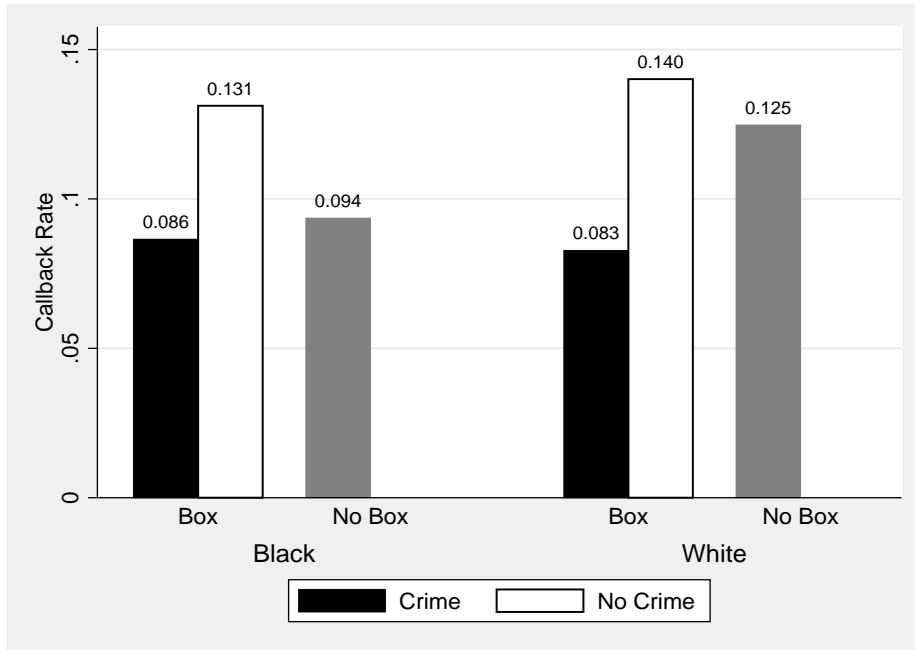
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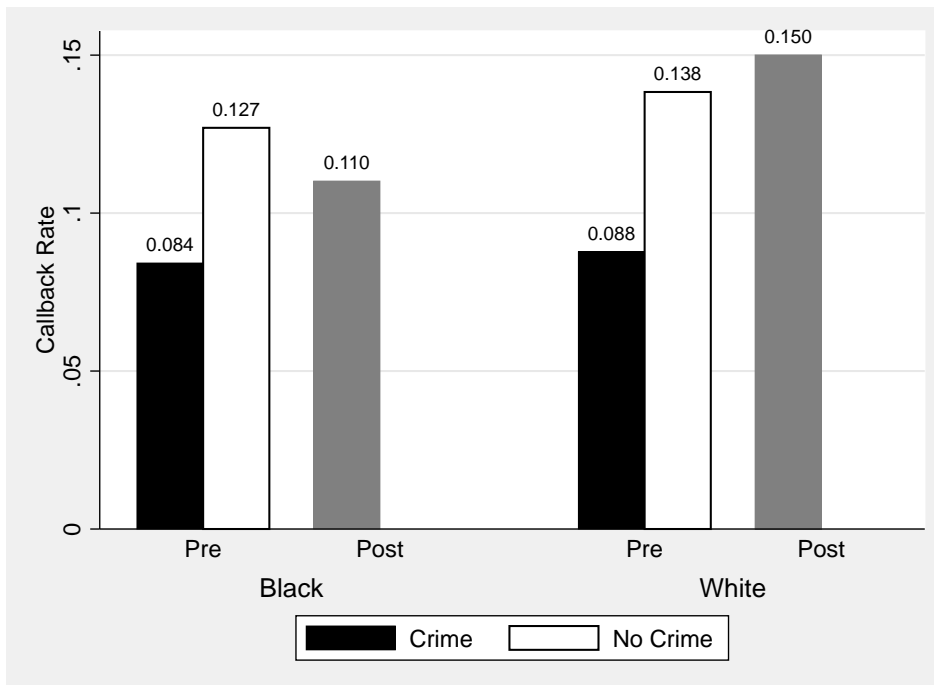
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Figure 1: Callback Rates by Race, Crime, and Box: Pre-Period Applications Only



Notes: This figure compares callback rates *within* the pre-period before Ban the Box goes into effect, comparing applications with the box (application which ask about criminal records) and those without (applications that do not ask about criminal records). A callback is a personalized phone call or e-mail to the applicant requesting follow-up contact or an interview.

Figure 2: Callback Rates by Race, Criminal Record, and Period: Treated Only



Notes: This figure compares callback rates *within* treated companies, i.e. those companies that asked the criminal record question in the pre-period, before and after Ban the Box goes into effect. A callback is a personalized phone call or e-mail to the applicant requesting follow-up contact or an interview.

Table 1a: Means of Applicant and Application Characteristics and Callback Rates by Period

	Pre-Period	Post-Period	Combined
Characteristics:			
White	0.502	0.497	0.500
Crime	0.497	0.513	0.505
GED	0.498	0.502	0.500
Employment Gap	0.492	0.504	0.498
Application has Box	0.366	0.036	0.199
Results:			
Callback Rate	0.109	0.125	0.117
Interview Req	0.060	0.067	0.063
Callback Rate by Chars:			
Black	0.099	0.111	0.105
White	0.120	0.139	0.129
GED	0.106	0.127	0.117
HSD	0.113	0.122	0.118
Emp Gap	0.110	0.126	0.118
No Emp Gap	0.109	0.124	0.116
Observations	7246	7394	14640

Notes: Callback implies application received a personalized positive response from the employer (either via phone or e-mail). Interview request means the positive response specifically mentioned an interview. Application has box means that the application asked about criminal records. Employment (emp) gap is a 11-13 month employment gap in work history, no emp gap is a 0-2 month gap.

Table 1b: Callback Rates by Crime Status for Stores with the Box in the Pre-Period

	No Crime	Crime	Property	Drug	Combined
Callback Rate	0.136	0.085	0.084	0.085	0.110
Callback Black	0.131	0.086	0.091	0.081	0.109
Callback White	0.140	0.083	0.077	0.089	0.111
Observations	1319	1336	703	633	2655

Notes: Sample restricted to pre-period applications where the application asked about criminal records. Callback implies application received a personalized positive response from the employer.

Table 2: Effects of Applicant Characteristics on Callback Rates

	(1)	(2)	(3)	(4)	(5)	(6)
White	0.0244*** (0.0057)	0.0239*** (0.0054)	0.0297*** (0.0070)	-0.0010 (0.0093)	-0.0012 (0.0093)	0.0065 (0.0149)
Crime	-0.0161*** (0.0053)	-0.0136** (0.0054)		-0.0520*** (0.0121)		-0.0444*** (0.0134)
GED	-0.0014 (0.0052)	-0.0041 (0.0048)	-0.0076 (0.0056)	0.0096 (0.0134)	0.0097 (0.0132)	0.0097 (0.0134)
Emp. Gap	0.0012 (0.0048)	0.0017 (0.0046)	0.0005 (0.0050)	0.0103 (0.0101)	0.0104 (0.0100)	0.0102 (0.0101)
Pre-Period		-0.0149 (0.0096)				
Drug Crime					-0.0501*** (0.0133)	
Property Crime					-0.0536*** (0.0143)	
White x Crime						-0.0149 (0.0171)
Constant	0.1132*** (0.0156)	-0.0069 (0.0261)	0.0016 (0.0291)	-0.0134 (0.0538)	-0.0133 (0.0539)	-0.0184 (0.0537)
Observations	14640	14640	11722	2918	2918	2918
Sample	All	All	Non-Box	Box	Box	Box
Chain FE	No	Yes	Yes	Yes	Yes	Yes
Center FE	No	Yes	Yes	Yes	Yes	Yes

Notes: Dependent variable is whether the application received a callback. Standard errors clustered on company in parentheses. The non-box sample includes only applications that did not ask about criminal history; the box sample includes only those applications that asked about criminal records. Company and center fixed effects are included in Columns (2) – (6) as indicated. White is as compared to black applicants, crime is as compared to no-crime, GED is as compared to a HS Diploma and Emp. Gap is a 11-13 month gap in work history as compared to a 0-2 month gap.

Table 3A: Robustness Checks on Main Effect of White

	(1)	(2)	(3)	(4)	(5)
White	0.0239 ^{***} (0.0054)	0.0136 ^{***} (0.0045)	0.0242 ^{***} (0.0054)	0.0454 ^{***} (0.0097)	0.0073 (0.0050)
Observations	14640	14640	14640	6401	8239
Specification	Main	Interview	Ungroup Chain FE	Main	Main
Sample	All	All	All	NJ-All	NYC-All

Notes: Dependent variable is whether the application received a callback. Standard errors clustered on company in parentheses. Column (1) reproduces the White coefficient from Column 2 of Table 2, and the remaining columns show the White coefficient from different specifications. Column (2) uses interview as the dependent variable rather callback. Column (3) uses ungrouped chain FE rather than grouped. Columns (4) and (5) separate the sample in the NJ sample and the NYC sample.

Table 3B: Robustness Checks on Main Effect of Crime in the Box Sample Only

	(1)	(2)	(3)	(4)	(5)
Crime	-0.0520 ^{***} (0.0121)	-0.0353 ^{***} (0.0062)	-0.0522 ^{***} (0.0123)	-0.0535 ^{**} (0.0220)	-0.0513 ^{***} (0.0160)
Observations	2918	2918	2918	1156	1762
Specification	Main	Interview	Ungroup Chain FE	Main	Main
Sample	All	All	All	NJ-All	NYC-All

Notes: All regressions are conditional on the application having the box. Dependent variable is whether the application received a callback. Standard errors clustered on company in parentheses. Column (1) reproduces the Crime coefficient from Column 4 of Table 2, and the remaining columns show the Crime coefficient from different specifications. Column (2) uses interview as the dependent variable rather callback. Column (3) uses ungrouped chain FE rather than grouped. Columns (4) and (5) separate the sample in the NJ sample and the NYC sample.

Table 4: Local Racial Composition and the Impact of Race on Callback Rates

	(1)	(2)	(3)	(4)	(5)	(6)
White	0.00717 (0.00495)	-0.00603 (0.00844)	0.0322*** (0.00664)	-0.0108 (0.00856)	0.0153*** (0.00589)	0.00994 (0.0164)
White x NJ	0.0380*** (0.0106)			0.0335*** (0.0103)	0.0350*** (0.0104)	0.0345*** (0.0103)
NJ	0.0109 (0.0172)			0.00589 (0.0171)	0.00982 (0.0175)	0.00531 (0.0168)
Store CBG %White x White		0.0489*** (0.0170)		0.0326** (0.0164)		0.00770 (0.0248)
Store CBG %White		0.0342*** (0.0124)		0.0334*** (0.0111)		0.0471*** (0.0171)
Store CBG %Black x White			-0.0597*** (0.0154)		-0.0485*** (0.0148)	-0.0425* (0.0229)
Store CBG %Black			-0.0175 (0.0146)		-0.0161 (0.0156)	0.0233 (0.0233)
Constant	-0.00246 (0.00976)	-0.0173* (0.00889)	0.00675 (0.00588)	-0.0213* (0.0113)	-0.000223 (0.0107)	-0.0325* (0.0177)
Observations	14640	14634	14635	14634	14635	14634
Sample	All	All	All	All	All	All
Chain FE	Yes	Yes	Yes	Yes	Yes	Yes
Center FE	No	No	No	No	No	No
Other Controls	Yes	Yes	Yes	Yes	Yes	Yes

Notes: Standard errors in parenthesis clustered on chain. Dependent variable is whether the application received a callback. All columns include controls for GED, employment gap, criminal record, and pre-period. Center or company FE included as indicated. Store CBG %White(Black) is the %White (Black) in the Census Block Group that the individual store is located (or sometimes in the town/city/borough if the address was not specified).

Table 5: Average Black-White Response Rate Differences by Race and Treated, Before and After BTB Goes into Effect in NJ

	Treated	Not Treated	Diff
Black - White Callback Rate, Pre	-0.008	-0.027	0.019
Black - White Callback Rate, Post	-0.040	-0.022	-0.018
Diff	0.032	-0.005	0.037
Diff, Perfect Quad Sample	0.038	-0.004	0.042

Notes: Each cell is a black-white response rate differential, measured in percentage points. The last line restricts analysis to only those stores in the “perfect quad” sample, that is, stores for which we sent two applications in the pre- and two in the post. The two outlined cells represent the raw difference-in-differences in-differences in the full sample and the perfect quad sample.

Table 6: Effects of Ban the Box on Racial Discrimination, Triple Difference Specification

	(1)	(2)	(3)	(4)
Post x Treated x White	0.0371** (0.0180)	0.0409** (0.0184)	0.0358** (0.0180)	0.0399** (0.0200)
Post x White	-0.00530 (0.0125)	-0.00627 (0.0123)	-0.00618 (0.0128)	-0.00236 (0.0136)
Post x Treated	-0.0102 (0.0177)	-0.0115 (0.0177)		-0.0198 (0.0214)
White x Treated	-0.0187 (0.0140)	-0.0213 (0.0140)		-0.0175 (0.0146)
Treated	0.00893 (0.0262)	0.00954 (0.0239)		0.0167 (0.0276)
White	0.0268** (0.0108)	0.0281*** (0.0107)	0.106 (0.130)	0.0247** (0.0116)
Post	0.0153 (0.0131)	0.0127 (0.0137)	0.340** (0.140)	0.0163 (0.0158)
Crime		-0.0155*** (0.00544)	-0.0152*** (0.00548)	-0.0174*** (0.00666)
GED		-0.00261 (0.00514)	-0.00567 (0.00492)	-0.00307 (0.00656)
Employment Gap		0.000232 (0.00466)	0.00131 (0.00456)	0.00366 (0.00577)
Constant	0.0962*** (0.0199)	0.108*** (0.0267)	-0.0101 (0.0256)	0.0986*** (0.0216)
Observations	14640	14640	14640	11188
R ²	0.002	0.027	0.193	0.003
Chain FE	No	No	Yes	No
Post x Chain FE	No	No	Yes	No
White x Chain FE	No	No	Yes	No
Center FE	Yes	Yes	Yes	Yes
Sample	All	All	All	Quad

Notes: Standard errors in parenthesis clustered on chain. Dependent variable is whether the application received a callback. The Quad sample indicates the “perfect quad” sample of 11,118 observations where we sent exactly 4 applications, one white/black pair in each period. Fixed effects can include, chain, post x chain, white x chain, or center, and are included as indicated.

Table 7A: Robustness Checks: Triple Difference Specification

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Post x Treated x White	0.0358**	0.0326**	0.0328**	0.0361**	0.0464	0.0266	0.0349*	0.0348*
	(0.018)	(0.016)	(0.017)	(0.018)	(0.037)	(0.020)	(0.018)	(0.018)
Observations	14640	14640	14816	14581	6401	8239	14640	14640
R ²	0.193	0.171	0.197	0.191	0.216	0.228	0.236	0.226
Specification	Main	Interview	Main	Main	Main	Main	Ungroup Chain	Chain x NJ FE
Sample	All	All	Add Rev Compliers	Drop RA Errors	NJ	NYC	All	All

Notes: Standard errors clustered on chain in parenthesis. Dependent variable is whether the application received a positive call back, except in column (2) where it is whether the application received a specific request for an interview. All regressions include controls for, crime, GED, emp. gap, and fixed effects for center, chain, chain x white and chain x post. Column (1) recreates Table 6 Column (3). The remaining columns are each different modifications of this specification. Column (2) uses interview as the dependent variable, Column (3) adds in the reverse compliers, Column (4) drops instances where RA erred and answered a box question they weren't required to answer or did not answer one they should have, Column (5) is restricted to only NJ, Column (6) is only NYC, Column (7) uses individual chain fixed effects regardless of size, and Column (8) divides chain fixed effects into NJ and NYC.

Table 7B: Robustness Checks: Triple Difference Specification in Perfect Quad Sample

	(1)	(2)	(3)	(4)	(5)	(6)
Post x Treated x White	0.0399**	0.0394**	0.0351*	0.0387*	0.0500	0.0335
	(0.020)	(0.020)	(0.019)	(0.020)	(0.040)	(0.021)
Observations	11188	11188	11324	11128	4376	6812
R ²	0.003	0.004	0.003	0.003	0.007	0.003
Specification	Main	Interview	Main	Main	Main	Main
Sample	Quad	Quad	Quad + Rev. Compliers	Quad-Drop RA Errors	Quad NJ	Quad NYC

Notes: Observations restricted to the “perfect quad” sample of 11,118 observations where we sent exactly 4 applications, one white/black pair in each period. Standard errors clustered on chain in parenthesis. Dependent variable is whether the application received a positive call back, except in column (2) where it is whether the application received a specific request for an interview. All regressions include controls for center FE, crime, GED, emp. gap. Panel A Column (1) recreates Table 6 Column (4). The remaining columns are each different modifications of this specification. Column (2) uses interview as the dependent variable, Column (3) adds in the reverse compliers, Column (4) drops instances where RA erred and answered a box question they weren't required to answer or did not answer one they should have, Column (5) is restricted to only NJ, Column (6) is only NYC.

Appendix

A1. Applicant Profile Details

Applicant profiles consist of all information that our RAs might need in order to fill out a given job application. In addition to the characteristics we randomly varied, many other types of information were necessary to include such as previous job titles and descriptions, home addresses, names of high schools, references, and e-mail addresses. We wanted to keep these additional characteristics as similar as possible while still introducing slight (random) variation so as not to arouse employer suspicion.

- (1) *Work history*: All job applicants have about 3.5 years of work experience: about 2 years as crew members at fast-food chains or convenience stores and about 1.5 years in manual labor jobs such as home improvement, landscaping, or moving. The fast-food chains or convenience stores were real companies that we were not applying to. Each applicant was randomly assigned a company from that list of fast-food chains or convenience stores. They were given crew member or team member positions and assigned relatively generic job duties meant to imply they held basic entry-level cashier-type positions at the establishments.

The manual labor jobs were randomly assigned to be in landscaping, paving, moving, home improvement, or lawn care and were not given real company names. Company names were made up but based on names standard to the industries involved (e.g., A1 Best Landscaping, [Reference Last Name] Contracting LLC, or Newark Home Improvement Inc.). Applicants were similarly assigned generic job duties meant to imply entry-level, unskilled crew-member or assistant positions in the fictitious companies.

All applicants are unemployed at the time of the job application, having ended their most recent job 2 or 3 months before the application is submitted. Descriptions of previous job duties and reasons for leaving jobs varied slightly. Applicants with employment gaps have 11 to 13 months of unemployment between the two jobs; those without employment gaps have only 0- to 2-month gaps.

- (2) *Address and center city*: Because it is likely that employers would be concerned about employees being able to travel to work, we wanted applicants to live near the jobs they

apply to. As described in the text, to achieve that, we chose 40 geographically distributed cities or towns in New Jersey and 44 in New York City to serve as centers where the applicants' addresses would be located; each center then served as the base for applications to jobs located nearby. To choose the centers, we first narrowed down the entire list of New Jersey cities and towns as well as community districts in New York City to those that were at least 6% black, were at least 20% white, and had median annual incomes less than \$100,000. We then used an optimization tool in the ArcGIS software package to select among those possibilities the 40 centers that would minimize distance to jobs; in New Jersey this was based on the distribution of postings then found (in January 2015) on snagajob.com, and in New York City it was based on the locations of employers that we located in a BusinessUSA database. In New Jersey, we assigned every municipality in the state to its nearest center, excluding only a few small towns that were more than 20 miles from any center. In New York City, we minimized distances subject to a constraint of equal distribution of chains across centers—for example, all chains with 44 or fewer locations were distributed such that no more than one location was assigned to each center, while a chain with 45 to 88 locations would be distributed with one to two locations per center, and so forth.

Within each center, eight qualifying addresses were located within census blocks that were at least 10% black and 20% white and that had a median annual income less than \$100,000. All addresses came from different streets, and Google Street View was consulted to ensure that the choices were appropriate residential or mixed-use blocks and that they did not notably differ from one another. Addresses were then slightly changed so as not to represent real addresses, and they were then randomly assigned to applicants.

- (3) *High school or GED program:* For diploma earners, high schools for the New Jersey study were chosen to be in New Jersey cities or towns at least 30 miles away from the center to reduce the probability that the high school could send any unobservable signals to the employer. High schools for the New York City study were divided equally between New Jersey and upstate New York schools, since similar geographic separation could not be achieved within the city. The high schools used were all at least 10% black, are at least 20% white, have at least 25,000 people, and do not have median incomes more than

\$100,000. In addition, the high schools do not have median test scores above the 90th or below the 10th percentile in the state. Applicants with GEDs were randomly assigned descriptions and names of New Jersey or New York GED training programs.

- (4) *References*: Two fictitious references with phone numbers were created, representing the applicant's supervisors for each of two previous jobs. To complement and strengthen the racial signal provided by our applicant names, the previous supervisor from the manual labor job was also given a racially distinctive name suggesting the same race as the applicant. The previous supervisor of the retail or restaurant job was given a race-neutral name. However, no employers ever called the phone numbers that we purchased and provided for the references, suggesting that little attention was likely paid to them.
- (5) *Phone number*: Each applicant was assigned a phone number based on center, race, criminal history, and time period. (Thus, each center has at least four potential phone numbers during each phase of the study; in New York City, because we were sending a larger number of distinct applications per center, we bought two numbers for each combination of characteristics and varied them randomly.) The result of that division is that no store received two applications using the same phone number. That method also helps us identify which application a voice mail belongs to, because hiring managers would not always leave all pertinent information on the voice mail. The information left, combined with the phone number being called, was sufficient to uniquely assign responses to applications. We purchased these phone numbers from www.callfire.com, which enabled us to create voicemails for our applicants using one of several available robotic voices. The wording and voice on the outgoing voice mail greeting were randomized across several options and designed to sound like a generic cell phone voice mail greeting for someone who has not recorded a personalized one.
- (6) *E-mail address*: A unique e-mail address was created for each applicant, with the format randomly varied. All e-mail addresses were created with the same domain, and the format always included the applicant's first and last names but could also include numbers, a middle initial, periods, or underscores so as to differentiate the format across applicants to the same store.

(7) *Criminal record*: Applicants with felony convictions were randomly assigned either a property crime or a drug crime. Within those two categories, several potential crimes were chosen—all of them meant to imply similar levels of seriousness. In addition, many applications with the box ask the applicant to “Please explain.” For that, specific language was given as part of the profiles, with sentences randomly generated to indicate when the crime occurred, a potential expression of remorse, and a potential expression of desire to discuss the matter further in person.

Each of the profiles were randomly generated using the Resume Randomizer program of Lahey and Beasley (2009). Applicant pairs were always of opposite race, and were otherwise created so that the details of the aforementioned characteristics were randomly varied among the pair. For example, both members of the pair could have high school diplomas, but never from the same high school or the same town; no two applicants in the same pair had the same address; none worked for the exact same former employers; if both had a criminal record, it did not involve the same criminal charge, and so forth. For examples of profiles, which are several pages in length, please e-mail the authors.

A2. Names Used

Table A2.1: White and Black Names Used for Applicants

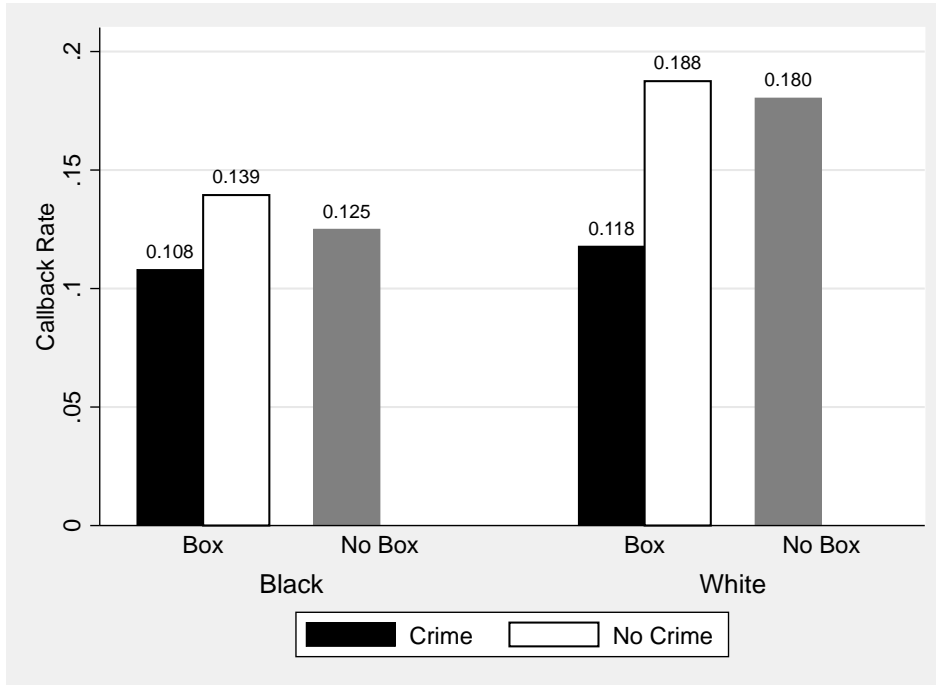
White Names				Black Names			
First	%White	Last	%White	First	%Black	Last	%Black
SCOTT	88.87	WEBER	94.37	TYREE	97.94	PIERRE	97.78
THOMAS	86.92	ESPOSITO	93.30	TERRELL	96.23	WASHINGTON	90.28
CODY	86.71	SCHMIDT	92.63	DAQUAN	96.04	ALSTON	88.96
RYAN	85.37	BRENNAN	92.45	JAQUAN	95.03	BYRD	85.50
NICHOLAS	84.99	MEYER	92.27	DARNELL	93.43	INGRAM	78.63
DYLAN	84.70	KANE	91.75	JAMAL	91.36	JACKSON	76.32
MATTHEW	83.97	HOFFMAN	91.38	MARQUIS	91.36	BANKS	75.68
JACOB	83.37	RYAN	89.98	JERMAINE	89.45	FIELDS	74.83
KYLE	82.93	WAGNER	89.96	DENZEL	89.27	BRYANT	74.49
TYLER	82.82	HANSEN	89.60	DWAYNE	88.89	WILLIAMS	74.22
SEAN	82.41	SNYDER	88.84	REGINALD	88.41	SIMMONS	72.45
DOUGLAS	81.93	ROMANO	88.84	TYRONE	86.75	CHARLES	72.33
SHANE	81.11	O'NEILL	88.72	MALCOLM	86.06	HAWKINS	70.81
JOHN	80.36	RUSSO	88.67	DARRYL	84.78	ROBINSON	70.70
STEPHEN	80.12	FOX	86.43	TERRANCE	84.12	JENKINS	70.50
		SWEENEY	86.03	MAURICE	82.47	FRANKLIN	70.45
		SULLIVAN	85.08	ISAIAH	74.06	JOSEPH	70.42
				ELIJAH	72.35		

Notes: The %race columns indicate the percentage of babies born in NJ between 1989 and 1996 with that first or last name that were of that race (i.e. 88.87% of babies with the first name Scott are White).

A3. Analysis Tables for NJ Only

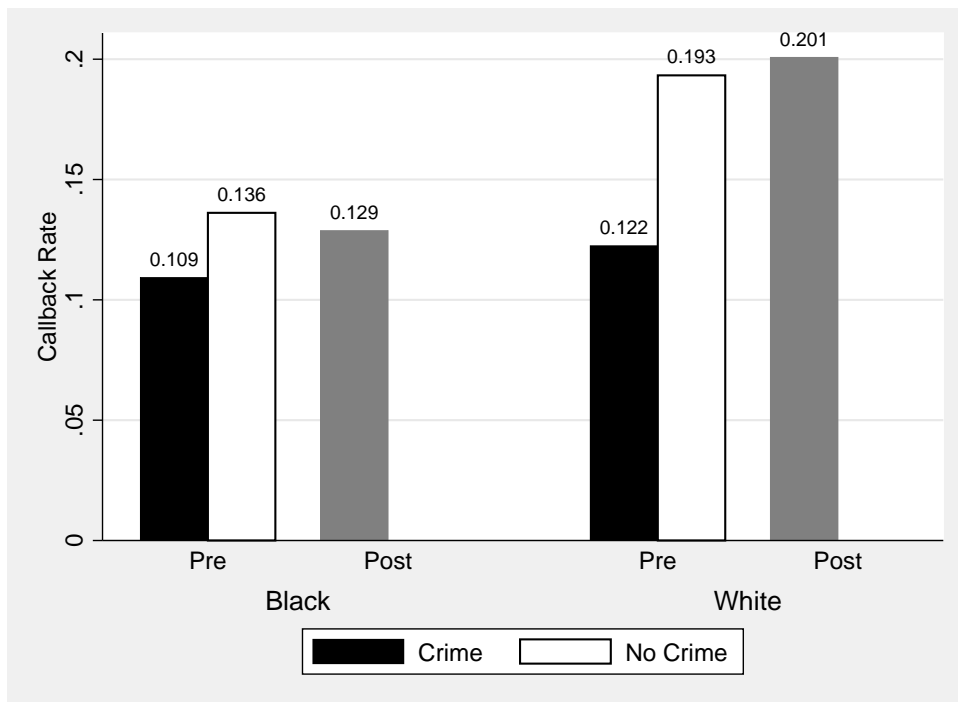
This appendix recreates Figures 1 and 2 as well as Table 1a and 1b, Table 2 and 5 for only NJ only.

Figure A3.1: Callback Rates by Race, Crime, and Box: Pre-Period NJ Applications Only



Notes: Limited to only NJ applications. This figure compares callback rates *within* the pre-period before Ban the Box goes into effect, comparing applications with the box (application which ask about criminal records) and those without (applications that do not ask about criminal records). A callback is a personalized phone call or e-mail to the applicant requesting follow-up contact or an interview.

Figure A3.2: Callback Rates by Race, Criminal Record, and Period: NJ Treated Only



Notes: Limited to only NJ applications. This figure compares callback rates *within* treated companies, i.e. those companies that asked the criminal record question in the pre-period, before and after Ban the Box goes into effect. A callback is a personalized phone call or e-mail to the applicant requesting follow-up contact or an interview.

Table A3.1a: Means of Applicant and Application Characteristics and Callback Rates by Period, NJ Only

	Pre-Period	Post-Period	Combined
Characteristics:			
White	0.507	0.495	0.500
Crime	0.498	0.504	0.501
GED	0.506	0.513	0.510
Employment Gap	0.503	0.504	0.504
Application has Box	0.362	0.034	0.181
Results:			
Callback Rate	0.147	0.146	0.147
Interview Req	0.081	0.076	0.078
Callback Rate by Chars:			
Black	0.125	0.124	0.124
White	0.170	0.170	0.170
GED	0.139	0.143	0.142
HSD	0.156	0.150	0.152
Emp Gap	0.145	0.149	0.147
No Emp Gap	0.150	0.144	0.146
Observations	2864	3537	6401

Notes: Sample limited to NJ applications. Callback implies application received a personalized positive response from the employer (either via phone or e-mail). Interview request means the positive response specifically mentioned an interview. Application has box means that the application asked about criminal records. Employment (emp) gap is a 11-13 month employment gap in work history, no emp gap is a 0-2 month gap.

Table A3.1b: Callback Rates by Crime Status for Stores with the Box in the Pre-Period, NJ Only

	No Crime	Crime	Property	Drug	Combined
Callback Rate	0.164	0.113	0.102	0.127	0.138
Callback Black	0.139	0.108	0.087	0.139	0.124
Callback White	0.188	0.118	0.118	0.118	0.151
Observations	507	530	293	237	1037

Notes: Sample restricted to pre-period applications in NJ where the application asked about criminal records. Callback implies application received a personalized positive response from the employer.

Table A3.2: Effects of Applicant Characteristics on Callback Rates NJ ONLY

	(1)	(2)	(3)	(4)	(5)	(6)
White	0.0466*** (0.0100)	0.0454*** (0.0097)	0.0500*** (0.0116)	0.0260 (0.0213)	0.0251 (0.0210)	0.0515 (0.0360)
Crime	-0.0157** (0.0070)	-0.0153** (0.0071)		-0.0535** (0.0220)		-0.0280 (0.0326)
GED	-0.0120 (0.0089)	-0.0161** (0.0078)	-0.0210** (0.0087)	-0.0026 (0.0285)	-0.0016 (0.0281)	-0.0000 (0.0273)
Employment Gap	0.0008 (0.0073)	0.0011 (0.0071)	0.0024 (0.0080)	-0.0065 (0.0123)	-0.0057 (0.0123)	-0.0062 (0.0125)
Pre-Period		-0.0034 (0.0138)				
Drug Crime					-0.0423 (0.0305)	
Property Crime					-0.0626** (0.0250)	
White x Crime						-0.0499 (0.0368)
Constant	0.1372*** (0.0192)	0.0392 (0.0380)	0.0333 (0.0368)	0.0137 (0.0958)	0.0128 (0.0971)	0.0021 (0.1002)
Observations	6401	6401	5245	1156	1156	1156
Sample	All	All	Non-Box	Box	Box	Box
Chain FE	No	Yes	Yes	Yes	Yes	Yes
Center FE	No	Yes	Yes	Yes	Yes	Yes

Notes: This table recreates Table 2 for NJ only. Dependent variable is whether the application received a callback. Standard errors clustered on company in parentheses. The non-box sample includes only applications that did not ask about criminal history; the box sample includes only those applications that asked about criminal records. Chain and center fixed effects are included in Columns (2) – (6) as indicated. White is as compared to black applicants, crime is as compared to no-crime, GED is as compared to a HS Diploma and Emp. Gap is a 11-13 month gap in work history as compared to a 0-2 month gap.

Table A3.3: Effects of Ban the Box on Racial Discrimination, Triple Difference Specification NJ ONLY

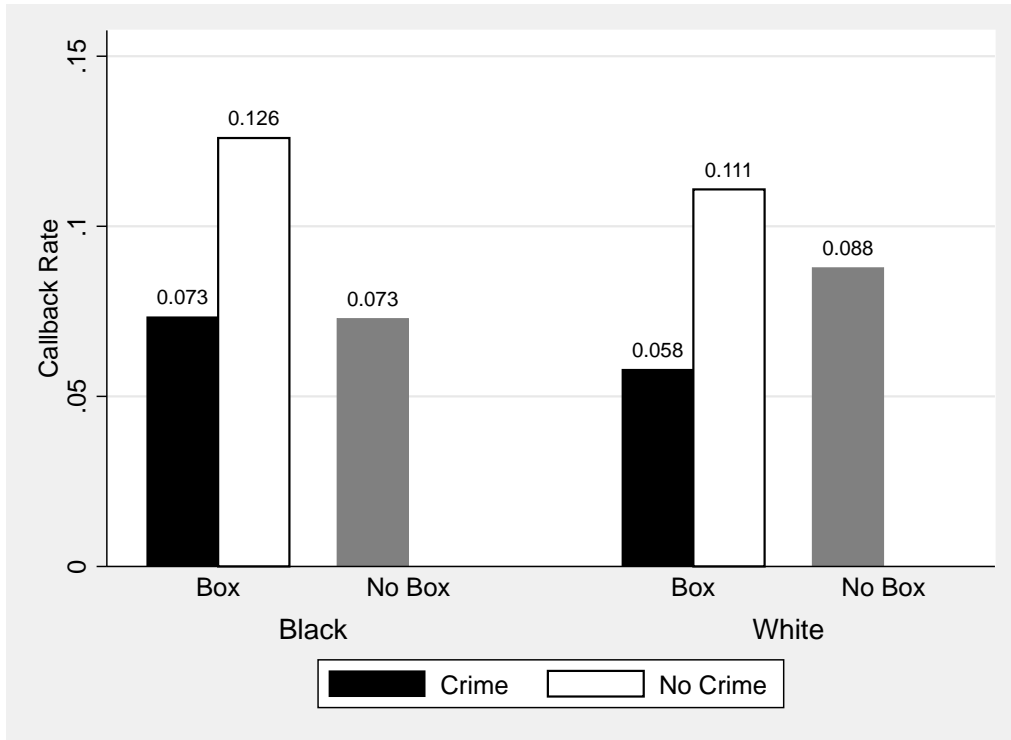
	(1)	(2)	(3)	(4)
Post x Treated x White	0.0523 (0.0380)	0.0587 (0.0381)	0.0464 (0.0371)	0.0500 (0.0395)
Post x White	-0.0158 (0.0234)	-0.0184 (0.0232)	-0.0106 (0.0227)	0.00152 (0.0289)
Post x Treated	0.0113 (0.0280)	0.00765 (0.0273)		0.00413 (0.0373)
White x Treated	-0.0144 (0.0307)	-0.0195 (0.0307)		-0.00442 (0.0314)
Treated	-0.00383 (0.0335)	-0.00290 (0.0325)		0.00344 (0.0396)
White	0.0498** (0.0206)	0.0536** (0.0205)	0.0188 (0.0348)	0.0405* (0.0204)
Post	-0.00447 (0.0214)	-0.000530 (0.0213)	1.019*** (0.0348)	-0.00828 (0.0286)
Crime		-0.0158** (0.00678)	-0.0151** (0.00709)	-0.0165** (0.00788)
GED		-0.0126 (0.00846)	-0.0174** (0.00758)	-0.0133 (0.0123)
Employment Gap		0.00108 (0.00718)	0.00146 (0.00667)	0.00544 (0.0100)
Constant	0.126*** (0.0277)	0.183*** (0.0478)	0.0489 (0.0360)	0.138*** (0.0354)
Observations	6401	6401	6401	4376
R ²	0.005	0.031	0.216	0.007
Chain FE	No	No	Yes	No
Post x Chain FE	No	No	Yes	No
White x Chain FE	No	No	Yes	No
Center FE	Yes	Yes	Yes	Yes
Sample	All	All	All	Quad

Notes: This table recreates Table 5 for NJ only. Standard errors in parenthesis clustered on chain. Dependent variable is whether the application received a callback. The Quad sample indicates the “perfect quad” sample of observations where we sent exactly 4 applications, one white/black pair in each period. Fixed effects can include, chain, post x chain, white x chain, or center, and are included as indicated.

A4. Analysis Tables for NYC Only

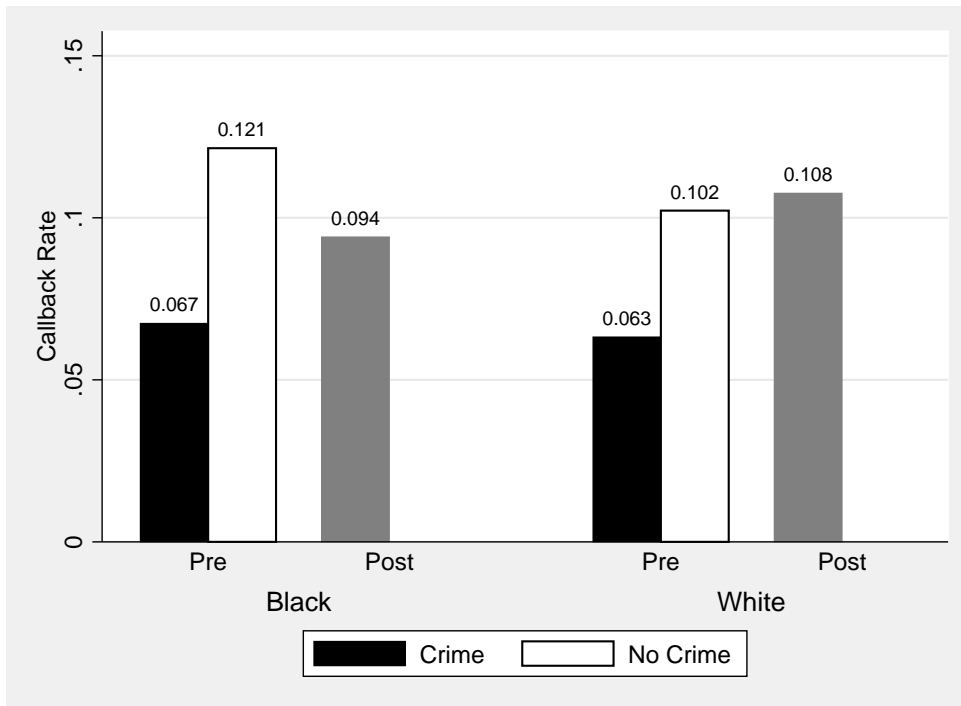
This appendix recreates Figures 1 and 2 as well as Table 1a and 1b, Table 2 and 5 for only NJ only.

Figure A3.1: Callback Rates by Race, Crime, and Box: Pre-Period NYC Applications Only



Notes: Limited to only NYC applications. This figure compares callback rates *within* the pre-period before Ban the Box goes into effect, comparing applications with the box (application which ask about criminal records) and those without (applications that do not ask about criminal records). A callback is a personalized phone call or e-mail to the applicant requesting follow-up contact or an interview.

Figure A3.2: Callback Rates by Race, Criminal Record, and Period: NYC Treated Only



Notes: Limited to only NYC applications. This figure compares callback rates *within* treated companies, i.e. those companies that asked the criminal record question in the pre-period, before and after Ban the Box goes into effect. A callback is a personalized phone call or e-mail to the applicant requesting follow-up contact or an interview.

Table A3.1a: Means of Applicant and Application Characteristics and Callback Rates by Period, NYC Only

	Pre-Period	Post-Period	Combined
Characteristics:			
White	0.500	0.499	0.499
Crime	0.496	0.521	0.508
GED	0.492	0.492	0.492
Employment Gap	0.485	0.505	0.494
Application has Box	0.369	0.037	0.214
Results:			
Callback Rate	0.085	0.105	0.094
Interview Req	0.046	0.059	0.052
Callback Rate by Chars:			
Black	0.083	0.099	0.090
White	0.087	0.110	0.098
GED	0.083	0.112	0.097
HSD	0.086	0.098	0.092
Emp Gap	0.086	0.104	0.095
No Emp Gap	0.084	0.105	0.094
Observations	4382	3857	8239

Notes: Sample limited to NYC applications. Callback implies application received a personalized positive response from the employer (either via phone or e-mail). Interview request means the positive response specifically mentioned an interview. Application has box means that the application asked about criminal records. Employment (emp) gap is a 11-13 month employment gap in work history, no emp gap is a 0-2 month gap.

Table A3.1b: Callback Rates by Crime Status for Stores with the Box in the Pre-Period, NYC Only

	No Crime	Crime	Property	Drug	Combined
Callback Rate	0.118	0.066	0.071	0.061	0.092
Callback Black	0.126	0.073	0.093	0.052	0.099
Callback White	0.111	0.058	0.046	0.069	0.085
Observations	812	806	410	396	1618

Notes: Sample restricted to pre-period applications in NYC where the application asked about criminal records. Callback implies application received a personalized positive response from the employer.

Table A4.2: Effects of Applicant Characteristics on Callback Rates: NYC Only

	(1)	(2)	(3)	(4)	(5)	(6)
White	0.0073 (0.0050)	0.0073 (0.0050)	0.0139** (0.0060)	-0.0182** (0.0087)	-0.0179** (0.0087)	-0.0239 (0.0146)
Crime	-0.0168** (0.0082)	-0.0137* (0.0079)		-0.0513*** (0.0160)		-0.0571*** (0.0184)
GED	0.0049 (0.0064)	0.0044 (0.0059)	0.0018 (0.0066)	0.0141 (0.0105)	0.0136 (0.0104)	0.0143 (0.0104)
Employment Gap	0.0007 (0.0057)	0.0012 (0.0055)	-0.0033 (0.0055)	0.0213* (0.0117)	0.0214* (0.0118)	0.0215* (0.0117)
Pre-Period		-0.0238 (0.0169)				
Drug Crime					-0.0577*** (0.0170)	
Property Crime					-0.0453*** (0.0164)	
White x Crime						0.0115 (0.0192)
Constant	0.0961*** (0.0176)	0.0192 (0.0242)	0.0168 (0.0277)	0.0296 (0.0575)	0.0293 (0.0572)	0.0329 (0.0567)
Observations	8239	8239	6477	1762	1762	1762
Sample	All	All	Non-Box	Box	Box	Box
Chain FE	No	Yes	Yes	Yes	Yes	Yes
Center FE	No	Yes	Yes	Yes	Yes	Yes

Notes: This table recreates Table 2 for NYC only. Dependent variable is whether the application received a callback. Standard errors clustered on company in parentheses. The non-box sample includes only applications that did not ask about criminal history; the box sample includes only those applications that asked about criminal records. Chain and center fixed effects are included in Columns (2) – (6) as indicated. White is as compared to black applicants, crime is as compared to no-crime, GED is as compared to a HS Diploma and Emp. Gap is a 11-13 month gap in work history as compared to a 0-2 month gap.

Table A4.3: Effects of BTB on Racial Discrimination, Triple Difference Analysis: NYC ONLY

	(1)	(2)	(3)	(4)
Post x Treated x White	0.0267 (0.0196)	0.0275 (0.0198)	0.0266 (0.0203)	0.0335 (0.0212)
Post x White	-0.00191 (0.0112)	-0.00165 (0.0112)	-0.00402 (0.0113)	-0.00380 (0.0103)
Post x Treated	-0.0253 (0.0344)	-0.0268 (0.0342)		-0.0353 (0.0360)
White x Treated	-0.0229* (0.0119)	-0.0228* (0.0118)		-0.0244* (0.0134)
Treated	0.0174 (0.0289)	0.0173 (0.0283)		0.0265 (0.0292)
White	0.0116 (0.00839)	0.0112 (0.00832)	0.240*** (0.0542)	0.0139 (0.0103)
Post	0.0250 (0.0220)	0.0259 (0.0220)	0.192*** (0.0162)	0.0320 (0.0231)
Crime		-0.0166** (0.00831)	-0.0143* (0.00810)	-0.0175* (0.00971)
GED		0.00485 (0.00628)	0.00276 (0.00622)	0.00136 (0.00737)
Employment Gap		-0.000253 (0.00560)	0.000362 (0.00561)	0.00234 (0.00607)
Constant	0.0769*** (0.0186)	0.108*** (0.0274)	0.000804 (0.0254)	0.0739*** (0.0177)
Observations	8239	8239	8239	6812
R ²	0.002	0.011	0.228	0.003
Chain FE	No	No	Yes	No
Post x Chain FE	No	No	Yes	No
White x Chain FE	No	No	Yes	No
Center FE	Yes	Yes	Yes	Yes
Sample	All	All	All	Quad

Notes: This table recreates Table 5 for NYC only. Standard errors in parenthesis clustered on chain. Dependent variable is whether the application received a callback. The Quad sample indicates the “perfect quad” sample of observations where we sent exactly 4 applications, one white/black pair in each period. Fixed effects can include, chain, post x chain, white x chain, or center, and are included as indicated.

A5. Triple Differences with GED and Emp Gap

Table A5.1: Effects of Ban the Box on GED vs High School Diploma, Triple Differences

	(1)	(2)	(3)	(4)
Post x Treated x GED	-0.0108 (0.0183)	-0.0103 (0.0192)	-0.00360 (0.0190)	-0.0123 (0.0255)
Post x GED	0.0155 (0.00971)	0.00981 (0.00962)	0.00186 (0.00969)	0.0218* (0.0127)
Post x Treated	0.0137 (0.0223)	0.0142 (0.0233)		0.00619 (0.0300)
Treated x GED	0.0186 (0.0155)	0.0203 (0.0150)		0.0213 (0.0219)
Treated	-0.00967 (0.0278)	-0.0114 (0.0263)		-0.00269 (0.0294)
GED	-0.0131 (0.00868)	-0.0124 (0.00824)	0.410*** (0.131)	-0.0189* (0.0110)
Post	0.00478 (0.0132)	0.00469 (0.0137)	0.476*** (0.176)	0.00421 (0.0157)
Crime		-0.0153*** (0.00546)	-0.0143*** (0.00549)	-0.0174** (0.00673)
Employment Gap		0.000270 (0.00466)	0.00176 (0.00475)	0.00361 (0.00583)
White		0.0248*** (0.00572)	0.0236*** (0.00549)	0.0243*** (0.00613)
Constant	0.116*** (0.0237)	0.115*** (0.0280)	-0.0214 (0.0270)	0.107*** (0.0244)
Observations	14640	14640	14640	11188
R ²	0.001	0.027	0.196	0.003
Chain FE	No	No	Yes	No
Post x Chain FE	No	No	Yes	No
GED x Chain FE	No	No	Yes	No
Center FE	Yes	Yes	Yes	Yes
Sample	All	All	All	Quad

Notes: This table recreates Table 5, substituting GED for White. Standard errors in parenthesis clustered on chain. Dependent variable is whether the application received a callback. The Quad sample indicates the “perfect quad” sample of observations where we sent exactly 4 applications, one white/black pair in each period. Fixed effects can include, chain, post x chain, white x chain, or center, and are included as indicated.

Table A5.2: Effects of Ban the Box on Emp Gap vs No Emp Gap, Triple Differences

	(1)	(2)	(3)	(4)
Post x Treated x Emp Gap	-0.0248 (0.0204)	-0.0262 (0.0194)	-0.0221 (0.0200)	-0.0267 (0.0231)
Post x Emp Gap	0.00996 (0.0132)	0.0116 (0.0129)	0.00907 (0.0121)	0.0150 (0.0137)
Post x Treated	0.0205 (0.0179)	0.0220 (0.0179)		0.0134 (0.0223)
Treated x Emp Gap	0.0180 (0.0148)	0.0197 (0.0142)		0.0129 (0.0150)
Treated	-0.00920 (0.0297)	-0.0109 (0.0274)		0.00167 (0.0300)
Employment Gap	-0.00549 (0.00969)	-0.00775 (0.00941)	0.586*** (0.103)	-0.00377 (0.00995)
Post	0.00756 (0.0150)	0.00383 (0.0154)	0.633*** (0.154)	0.00764 (0.0171)
Crime		-0.0154*** (0.00541)	-0.0150*** (0.00556)	-0.0173** (0.00667)
GED		-0.00247 (0.00521)	-0.00537 (0.00491)	-0.00303 (0.00663)
White		0.0247*** (0.00569)	0.0235*** (0.00529)	0.0243*** (0.00605)
Constant	0.112*** (0.0233)	0.113*** (0.0277)	-0.0133 (0.0251)	0.102*** (0.0231)
Observations	14640	14640	14640	11188
R ²	0.001	0.026	0.194	0.003
Chain FE	No	No	Yes	No
Post x Chain FE	No	No	Yes	No
Emp Gap x Chain FE	No	No	Yes	No
Center FE	Yes	Yes	Yes	Yes
Sample	All	All	All	Quad

Notes: This table recreates Table 5, substituting Emp Gap for White. Standard errors in parenthesis clustered on chain. Dependent variable is whether the application received a callback. The Quad sample indicates the “perfect quad” sample of observations where we sent exactly 4 applications, one white/black pair in each period. Fixed effects can include, chain, post x chain, white x chain, or center, and are included as indicated.

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DOES “BAN THE BOX” HELP OR HURT LOW-SKILLED WORKERS? STATISTICAL
DISCRIMINATION AND EMPLOYMENT OUTCOMES WHEN CRIMINAL HISTORIES
ARE HIDDEN

Jennifer L. Doleac
Benjamin Hansen

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Does “Ban the Box” Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Histories are Hidden

Jennifer L. Doleac and Benjamin Hansen

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ABSTRACT

Jurisdictions across the United States have adopted "ban the box" (BTB) policies preventing employers from conducting criminal background checks until late in the job application process. Their goal is to improve employment outcomes for those with criminal records, with a secondary goal of reducing racial disparities in employment. However, removing information about job applicants' criminal histories could lead employers who don't want to hire ex-offenders to try to guess who the ex-offenders are, and avoid interviewing them. In particular, employers might avoid interviewing young, low-skilled, black and Hispanic men when criminal records are not observable. This would worsen employment outcomes for these already-disadvantaged groups. In this paper, we use variation in the details and timing of state and local BTB policies to test BTB's effects on employment for various demographic groups. We find that BTB policies decrease the probability of being employed by 3.4 percentage points (5.1%) for young, low-skilled black men, and by 2.3 percentage points (2.9%) for young, low-skilled Hispanic men. These findings support the hypothesis that when an applicant's criminal history is unavailable, employers statistically discriminate against demographic groups that are likely to have a criminal record.

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1 Introduction

Mass incarceration was an important crime reduction policy during the past several decades, but it has come under intense scrutiny due to its high financial cost, diminishing public-safety returns, and collateral damage to the families and communities of those who are incarcerated. There is substantial interest in reallocating public resources to more cost-effective strategies, with greater emphasis on rehabilitating offenders. Due in part to this change in focus, individuals are now being released from state and federal prisons more quickly than they are being admitted. According to the most recent data, over 637,000 people are released each year (Carson and Golinelli, 2014). However, recent data also suggest that approximately two-thirds of those released will be re-arrested within three years (Cooper et al., 2014). This cycle signals our failure to help re-entering offenders transition to civilian life, and limits our ability to reduce incarceration rates. Breaking this cycle is a top policy priority.

Connecting ex-offenders with jobs is often considered a necessary – though not sufficient – step toward successful re-entry outcomes. The classic Becker (1968) model of criminal behavior suggests that better employment options for would-be offenders reduce crime. Individuals who have been convicted of a crime often have difficulty finding employment, which does appear to increase their likelihood of committing another crime (Schnepel, 2015; Yang, 2016). Part of the reason that finding employment is difficult for this group is that ex-offenders, on average, have less education and job experience than non-offenders. However, there is evidence that employers discriminate against those with criminal records, even when other observable characteristics are identical (Pager, 2003). This is likely due to statistical discrimination.¹ On average, ex-offenders are more likely than non-offenders to have engaged in violent, dishonest, or otherwise antisocial behavior, and – based on current recidivism rates – are more likely to engage in similar behavior in the future.² Ex-offenders also have higher rates of untreated mental illness, addiction, and emotional trauma (Justice Center, 2016; Wolff and Shi, 2012). These are all valid concerns for employers seeking reliable, productive

¹Some employers' discrimination could be taste-based – that is, they simply don't like ex-offenders, and no additional information about individuals with records could change their feelings. This distinction does not alter the predicted effects of "ban the box", but does matter when considering alternative policies.

²This not only affects an individual's expected tenure on the job, but increases potential financial costs to the employer. For instance, employers might worry about theft, or that future violent behavior could result in a negligent-hiring lawsuit.

employees. However, this reasoning is little comfort to someone coming out of prison and hoping to find gainful legal employment, but willing to revert to illegal activity if none can be found. In addition, since black and Hispanic men are more likely to have criminal records, making a clean record a condition for employment could exacerbate racial disparities in employment.³

If even a few ex-offenders are more job-ready than some non-offenders, then employers' statistical discrimination against those with criminal records hurts the most job-ready ex-offenders. This has motivated the "ban the box" (BTB) movement, which calls for employers to delay asking about an applicant's criminal record until late in the hiring process. Advocates of BTB believe that if employers can't tell who has a criminal record, job-ready ex-offenders will have a better chance at getting an interview. During that interview, they will be able to signal their otherwise-unobservable job-readiness to the employer. This could increase employment rates for ex-offenders, and thereby decrease racial disparities in employment outcomes.

However, this policy does nothing to address the average job-readiness of ex-offenders. A criminal record is still correlated with lack of job-readiness⁴. For this reason, employers will still seek to avoid hiring individuals with criminal records. When BTB removes information about a criminal record from job applications, employers will likely respond by using the remaining observable information to try to guess who the ex-offenders are, and avoid interviewing them. Surveys by Holzer et al. (2006) show that employers are most concerned about hiring those who were recently incarcerated. Since young, low-skilled, black and Hispanic men are the most likely to fall in this category (Bonczar, 2003; Yang, 2016), employers may respond to BTB by avoiding interviews with these groups. As a result, racial disparities could increase rather than decrease.

This paper asks whether BTB is a net positive or negative for racial minorities. To answer this question, we exploit variation in the adoption and timing of state and local BTB policies to test BTB's effects on employment outcomes for various demographic groups, using individual-level data from the 2004-2014 Current Population Survey (CPS). We focus on the probability of employment for black and Hispanic men who are relatively young (age 25-34)⁵ and low-skilled (no college degree),

³The best data available suggest that a black man born in 2001 has a 32% chance of serving time in prison at some point during his lifetime, compared with 17% for Hispanic men and 6% for white men (Bonczar, 2003).

⁴We use "job-readiness" to refer to a range of characteristics that make someone an appealing employee, including reliability and productivity.

⁵We follow the literature and focus on individuals age 25 and over because most individuals have completed their

as they are the ones most likely to be recently-incarcerated. This group contains the most intended beneficiaries of BTB as well as the most people who could be unintentionally hurt by the policy. If BTB enables some re-entering offenders to get their foot in the door and communicate their job-readiness to employers, we might see a positive effect on employment for this group. However, if young, low-skilled black and Hispanic men as a whole are now less likely to be called in for interviews, then the net effect on employment could be negative.

Indeed, we find net negative effects on employment for these groups: On average, young, low-skilled black men are 3.4 percentage points (5.1%) less likely to be employed after BTB than before. This effect is statistically significant ($p < 0.05$) and robust to a variety of alternative specifications and sample definitions. We also find that BTB reduces employment by 2.3 percentage points (2.9%) for young, low-skilled Hispanic men. This effect is only marginally significant ($p < 0.10$) but also fairly robust. Both effects are unexplained by pre-existing trends in employment, and – for black men – persist long after the policy change. The effects are larger for the least skilled in this group (those with no high school diploma or GED), for whom a recent incarceration is more likely.

We expect BTB's effects on employment to vary with the local labor market context. For instance, it would be difficult for an employer to discriminate against all young, low-skilled black men if the local low-skilled labor market consists primarily of black men, or if there are very few applicants for any open position. We find evidence that such differential effects exist. BTB reduces black male employment significantly everywhere but in the South (where a larger share of the population is black). Similarly, BTB reduces Hispanic male employment everywhere but in the West (where a larger share of the population is Hispanic). This suggests that employers are less likely to use race as a proxy for criminality in areas where the minority population of interest is larger – perhaps because discriminating against that entire set of job applicants is simply infeasible. In addition, we find evidence that statistical discrimination based on race is less prevalent in tighter labor markets: BTB's negative effects on black and Hispanic men are larger when national unemployment is higher. In other words, employers are more able to exclude broad categories of job applicants in order to avoid ex-offenders when applicants far outnumber available positions.

education by that age. In our sample, only about 1% of low-skilled men ages 25-34 are enrolled in school. Since we are using education level as a proxy for skill level, using final education increases the precision of our estimates (relative to, for instance, considering all 19 year olds "low-skilled" because they don't yet have a college degree).

Our hypothesis is that employers are less likely to interview young, low-skilled black and Hispanic men because these groups include a lot of ex-offenders. This hypothesis suggests that employers will instead interview and hire individuals from demographic groups unlikely to include recent offenders. We find some evidence suggesting that this does indeed happen. Older, low-skilled black men and highly-educated black women are significantly more likely to be employed after BTB.⁶ Effects on white men and women are also positive, though statistically insignificant. However, total employment might go down when employers are not able to see which applicants have criminal records. BTB increases the expected cost of interviewing job applicants, because there's a higher chance that any interview could end in a failed criminal background check. In addition, while employers might be willing to substitute college graduates or others who are clearly job-ready, those individuals might not be willing to accept a low-skilled job at the wage the employer is willing to pay.⁷ Indeed, we find no effect on employment for men with college degrees.

We are not the only researchers interested in the effects of BTB on employment. Three other current papers study the effect of this policy: all find effects consistent with statistical discrimination. However, ours is the only one to focus on employment outcomes for young, low-skilled men – the group with the most to gain or lose from BTB.⁸

Agan and Starr (2016) exploited the recent adoption of BTB in New Jersey and New York to conduct a field experiment on the effect of the policy on the likelihood of getting an interview. They submitted thousands of fake job applications from young, low-skilled men, randomizing the race and criminal history of the applicant. They found that before BTB white applicants were called back slightly more often than black applicants were. That gap became six times larger after BTB went into effect. White ex-offenders benefited the most from the policy change: after BTB, employers seem to assume that all white applicants are non-offenders. After BTB, black applicants were called back at a rate between the ex-offender and non-offender callback rates from before BTB – that is, those with records were helped, but those without records were hurt. Since the researchers

⁶The effect on black women could represent intrahousehold substitution, rather than substitution by employers. That is, women might be more likely to work when their partners are unable to find jobs.

⁷This is similar to the well-known "lemons problem" in economics, where asymmetric information between a buyer and seller causes a market to unravel and no transactions to be made (Akerlof, 1970).

⁸This distinction can potentially matter in quantifying the effects of policies in labor markets. For instance, Borjas (2015) finds that Mariel boatlift substantially reduced wages for low-skill prime working age males while Card (1990) found limited evidence of the labor supply shock affected the overall population.

create the applications themselves, they kept other factors like education constant. The differences in interview rates before and after the policy change are therefore solely due to the changing factors – race and criminal history. The limitation of this approach is that fake applicants can't do real interviews that lead to real jobs. It's possible that the few ex-offenders granted interviews would be more likely to get the job after BTB implementation than before. However, if employers are reluctant to hire ex-offenders, those applicants might be rejected once their criminal history is revealed late in the process (between the interview and the job offer). These later steps are critical in determining the true social welfare consequences of BTB. Overall, our results are consistent with these changes in callback rates: young, low-skilled black men without records were hurt by BTB, and young, low-skilled white men might have been helped.

Starr (2015), available in early draft form, uses CPS data from 2004 to 2014 to measure the effect of BTB on government employment rates for black men ages 18 to 64. Preliminary results suggest that BTB reduced public employment for this group. There are several differences from our study: Starr limited her sample to specific cities that adopt BTB at some point, so non-BTB cities are not used as controls, and the analysis does not consider county or state BTB policies. She also does not consider effects of BTB policies on the full metro area, though that entire labor market is potentially treated. She focuses only on employment in government jobs, which are directly affected by public BTB policies. Finally, she does not consider effects on other demographic subgroups. Despite these different methods and samples, her findings are similar to ours.

Shoag and Veuger (2016) use annual 2005-2014 data from the American Community Survey (ACS) along with a difference-in-difference strategy, to consider the effects of BTB on residents of high-crime neighborhoods (a proxy for those with criminal records), using those living in low-crime neighborhoods (a proxy for those without criminal records) as a control group. They find that low-skilled black men ages 19-65 who live in high-crime neighborhoods do better after BTB, relative to those in low-crime neighborhoods, and interpret this as evidence that BTB has a beneficial effect on ex-offenders. However, using low-crime neighborhood residents as controls is problematic because they are also treated by the policy: if employers use race as a proxy for criminality in the absence of information about criminal histories, BTB will make those without criminal records worse off. BTB should shrink the employment gap between those with and without records, because they now look

identical to employers. This is what the study finds. These effects are consistent with the theory described above and with our results.

Ban the box policies seek to limit employers' access to criminal histories. This access itself is relatively new. Before the internet and inexpensive computer storage became available in the 1990s, it was not easy to check job applicants' criminal histories. This is the world that BTB advocates would like to recreate. Of course this world differs from our own in many other respects, but nevertheless it is helpful to consider how employment outcomes changed as criminal records became more widely available during the 1990s and early 2000s. A number of studies address this, and their findings foreshadow our own: when information on criminal records is available, firms are more likely to hire low-skilled black men (Bushway, 2004; Holzer et al., 2006; Finlay, 2009; Stoll, 2009). In fact, many of those studies explicitly predicted that limiting information on criminal records, via BTB or similar policies, would negatively affect low-skilled black men as a group.⁹

There is plenty of evidence that statistical discrimination increases when information about employees is less precise. Autor and Scarborough (2008) measure the effects of personality testing by employers on hiring outcomes. Conditioning hiring on good performance on personality tests (such as popular Myers-Briggs tests) was generally viewed as disadvantaging minority job candidates because minorities tend to score lower on these tests. However, the authors note that this will only happen if employers' assumptions about applicants in the absence of information about test scores are more positive than the information that test scores provide. If, in contrast, minorities score better on these tests than employers would have thought, adding accurate information about a job

⁹A few striking quotes from that literature:

[S]ome advocates seek to suppress the information to which employers have access regarding criminal records. But it is possible that the provision of more information to these firms will increase their general willingness to hire young black men, as we show here and since we have previously found evidence that employers who do not have such information often engage in statistical discrimination against this demographic group. (Holzer et al., 2004)

Employers have imperfect information about the criminal records of applicants, so rational employers may use observable correlates of criminality as proxies for criminality and statistically discriminate against groups with high rates of criminal activity or incarceration. (Finlay, 2009)

[Ban the box] may in fact have limited positive impacts on the employment of ex-offenders....More worrisome is the likelihood that these bans will have large negative impacts on the employment of those whom we should also be concerned about in the labor market, namely minority – especially black – men without criminal records, whose employment prospects are already poor for a variety of other reasons. (Stoll, 2009)

applicant's abilities will help minority applicants. They find that in a national firm that was rolling out personality testing, the use of these tests had no effect on the racial composition of employees, though they did allow the firm to choose employees who were more productive.

Wozniak (2015) found that when employers required drug tests for employees, black employment rates increased by 7-30%, with the largest effects on low-skilled black men. As in the personality test context, the popular assumption was that if black men are more likely to use drugs, employers' use of drug tests when making hiring decisions would disproportionately hurt this group. It turned out that a drug test requirement allowed non-using black men to prove their status when employers would otherwise have used race as a proxy for drug use.

In another related paper, Bartik and Nelson (2016) hypothesize that banning employers from checking job applicants' credit histories will negatively affect employment outcomes for groups that have lower credit scores on average (particularly black individuals). The reasoning is as above: in the absence of information about credit histories, employers will use race as a proxy for credit scores. They find that, consistent with statistical discrimination, credit check bans reduce job-finding rates by 7-16% for black job-seekers. As with BTB policies, one goal of banning credit checks was to reduce racial disparities in employment, so this policy was counterproductive.

Our study therefore contributes to a growing literature showing that well-intentioned policies that remove information about negative characteristics can do more harm than good.¹⁰ Advocates for these policies seem to think that in the absence of information, employers will assume the best about all job applicants. This is often not the case. In all of the above examples, providing information about characteristics that are less favorable, on average, among black job-seekers – criminal records, personality tests, drug tests, and credit histories – actually helped black men and black women find jobs. These outcomes are what we would expect from standard statistical discrimination models. More information helps the best job candidates avoid discrimination.

The availability of criminal records is just one facet of an ongoing debate about data availability. Improvements in data storage and internet access have made a vast array of information about our

¹⁰An additional study focuses on a different population but its findings are consistent with the same statistical discrimination theory as those described above: Thomas (2016) finds that when the Family and Medical Leave Act limited employers' information about female employees' future work plans, it decreased employers' investment in female employees as a group. After the FMLA, women were promoted at lower rates than before the law.

pasts readily available to those in our present, including to potential employers, love interests, advertisers, and fraudsters. This often seems unfair to those who – like many ex-offenders – are trying to put their pasts behind them. The policy debate about whether and how to limit this data availability is complicated both by free speech concerns and logistical issues – once information is distributed publicly, what are the chances of being able to make it private again? Even so, a great deal of effort has gone into defining who should have access to particular data, often with the goal of improving the economic outcomes of disadvantaged groups.¹¹ As this and related studies have shown, well-intentioned policies of this sort often have unintended consequences, and providing more information is often a better strategy.

This paper proceeds as follows: Section 2 provides background on BTB policies. Section 3 describes our data. Section 4 presents our empirical strategy. Section 5 describes our results. Section 6 presents robustness checks. Section 7 discusses and concludes.

2 Background on BTB policies

The first BTB law was implemented in Hawaii in 1998, and – as of December 2015 – similar policies exist in 34 states and the District of Columbia. In addition, President Obama "banned the box" on employment applications for federal government jobs in late 2015. Without BTB, it is common for employment applications to include a box that the applicant must check if he or she has been convicted of a crime, along with a question about the nature and date(s) of any convictions. Anecdotally, many employers simply discard the application of anyone who checks this box. BTB policies prevent employers from asking about criminal records until late in the hiring process, when they are preparing to make a job offer.

BTB policies fall into three broad categories: (1) those that affect public employers (that is, government jobs only), (2) those that affect private employers with government contracts, and (3) those that affect all private employers. We'll refer to these as "public BTB", "contract BTB", and "private BTB" policies, respectively. In practice, public BTB policies are the most common, and are

¹¹See for example, the "right to be forgotten" movement in Europe, which included a ruling that – at a person's request – search engines must "remove results for queries that include the person's name" (Google, 2016). See also the White House's recent recommendations on consumer data privacy, available at <https://www.whitehouse.gov/sites/default/files/privacy-final.pdf>.

passed first. Contract BTB policies are typically the next step. Private BTB policies are typically the final step a jurisdiction takes. Every jurisdiction in our sample with a contract BTB policy also has a public BTB policy. Similarly, every jurisdiction in our sample with a private BTB policy also has a contract BTB policy. Due to the relatively limited adoption of contract and private BTB policies to date, our analysis focuses primarily on the effects of having at least a public BTB policy.

There's reason to expect public BTB laws to affect both public and private sector jobs. Most importantly, these policies were typically implemented due to public campaigns aimed at convincing employers to give ex-offenders a second chance. Public BTB policies were intended in part to model the best practice in hiring, and there is anecdotal evidence that this model – in combination with public pressure – pushed private firms to adopt BTB even before they were legally required to. Indeed, several national private firms such as Wal-Mart, Target, and Koch Industries, voluntarily "banned the box" on their employment applications during this period, in response to the BTB social movement.¹²

Public BTB laws might also affect private sector jobs because workers are mobile between the two sectors, and likely sort themselves based on where they feel most welcome. Because BTB likely affected jobs in both sectors, we will focus on the net effect of BTB policies on the probability that individuals work at all.

3 Data

Our analysis considers BTB policies effective by December 2014. Figure 1 maps the cities, counties, and states with BTB policies by that date.¹³ Information on the timing and details of BTB policies comes primarily from NELP (2016). The details of local policies used in this analysis are listed in Table 3. When information about a policy's effective date was available, we used that date as the start date of the policy; otherwise we used the date the policy was announced or passed by the legislature. If only the year (month) of implementation was available, we used January 1 of that year (the first of that month) as the start date.

¹²We do not consider the effects of those voluntary bans here, but do note that a principal-agent problem could lead to the same effects as for government bans. A CEO might be inclined to hire ex-offenders, but the managers who are actually making the hiring decisions might still want to avoid supervising individuals with criminal records.

¹³Appendix Figure A-1 shows maps of BTB policies by year, for 2004 through 2014.

Information on individual characteristics and employment outcomes comes from monthly Current Population Survey (CPS) data for 2004 through 2014.¹⁴ The CPS is a repeated cross-section that targets those eligible to work. It excludes anyone under age 15 as well as those in the Armed Forces or in an institution such as a prison. Each monthly sample consists of about 60,000 occupied households; the response rate averages 90 percent (CPS, 2016). Excluding those who are incarcerated could affect our analysis: If BTB increases recidivism and incarceration by making it more difficult to find a job, some of the people now unemployed because of the policy will be excluded from the CPS sample. Any such sample selection will bias our estimates upward, so that BTB policies look more helpful than they are.

The CPS provides information on age, sex, race, ethnicity, education level, and current employment (if employed, and employer type). Since our hypotheses center on statistical discrimination by race and ethnicity, we limit our analysis to individuals who are white non-Hispanic, black non-Hispanic, or Hispanic (hereafter referred to as white, black, and Hispanic, respectively). We consider three levels of educational achievement: no high school diploma, no college degree, and college degree.¹⁵ We code someone as "employed" if they answer yes to the question, "Last week, did you do any work for pay?" This should be the most reliable measure of employment for our population of interest, for whom temporary, seasonal, or informal jobs are common. We restrict our sample to those who are U.S. citizens, and who do not consider themselves retired.¹⁶

Our goal is to measure the effect of BTB on individuals in the local labor market, so we assign treatment at the level of Metropolitan Statistical Areas (MSAs). All individuals are matched to states, and about three-quarters are matched to MSAs.¹⁷ We consider individuals treated by BTB

¹⁴We use the public-use CPS files available from the National Bureau of Economic Research (NBER). These raw data contain item non-response codes when a respondent did not answer a question, rather than imputed responses. Many studies use CPS data from the Integrated Public Use Microdata Series (IPUMS); in those files, all responses are fully cleaned and imputations replace non-responses. In light of increasing evidence of widespread non-response in surveys like the CPS, and the effect that imputations have on the accuracy and precision of empirical estimates (Meyer et al., 2015), we prefer the raw data, particularly for the relatively disadvantaged population of interest here.

¹⁵In the CPS, these are determined using the "highest level of school completed or degree received" variable. For our purposes, no high school diploma means the respondent has up to 12 years of high school but no diploma or GED; no college degree means the respondent has up through some college but did not earn an associate degree or bachelor degree; college means the person has an associate degree or higher. Note that the no high school diploma category is a subset of the "no college degree" category; these are two ways to define low-skilled and we focus on the latter to maximize statistical power.

¹⁶The data also include whether the respondent reports being disabled and/or unable to work, but we use these variables with caution as they could be endogenous to local labor market conditions and individuals' employment prospects.

¹⁷About half of respondents are matched to counties. Running our analysis at the county-level yields qualitatively

if their state has a BTB policy, or if any jurisdiction in their MSA has a BTB policy. For individuals living outside of an MSA, only state-level policies matter.

Our primary group of interest is young (ages 25-34), low-skilled (no college degree) men. We focus on this group for several reasons: (1) The age profile of criminal offenders is such that most crimes are committed by young men. In 2012, 60% of criminal offenders were age 30 or younger (Kearney et al., 2014). So, employers concerned about job applicants' future criminal behavior should be most concerned about younger individuals. (2) Employers report the most reluctance to hire individuals who were recently incarcerated (Holzer et al., 2004), and those who are recently released tend to be young because they were young when they were convicted.¹⁸ (3) The vast majority of ex-offenders have a high school diploma (or GED) or less.¹⁹

There are 855,772 men ages 25-34 in our sample; 503,419 of those have no college degree. In that subset, 11.9% are black, 14.0% are Hispanic, and the remaining 74.1% are white. Forty-six percent of the young, low-skilled men in our sample lived in areas that were treated by BTB as of December 2014.

Summary statistics for the full working-age male population (ages 25-64) in the CPS are shown in Table 1. Summary statistics for our primary population of interest – low-skilled men ages 25-34 – are presented in Table 2.

Individuals affected by BTB policies are not randomly distributed across the U.S. As Table 2 shows, those affected by BTB are much more likely to live in metro areas. Appendix Table A-1 shows the effect of state characteristics on the likelihood of at least one jurisdiction in that state adopting a BTB policy by December 2014. States with BTB policies are more urban, have more black residents, have more college-educated residents, and have residents with higher earnings. When all of these characteristics are considered together, the strongest predictor of having a BTB policy is having a larger black population. (The remaining characteristics are statistically insignificant.)

For the subset of states affected by a BTB policy²⁰, Appendix Table A-2 shows the effect of state

similar but less precise results.

¹⁸Individuals released from state prison between 2000 and 2013 were 35 years old, on average, and the standard deviation was 11 years (Yang, 2016).

¹⁹Fifty-two percent of those released from state prison between 2000 and 2013 had less than a high school degree, and 41 percent had a high school degree but no college degree. Only 1% of released offenders had a college degree (Yang, 2016). This is partly because many inmates have the opportunity to earn a GED while incarcerated, but college classes are typically unavailable.

²⁰This includes states with residents affected by BTB policies adopted in neighboring states, because they live in

characteristics on the date of the first BTB policy adopted in the state. States that are more urban tend to adopt BTB policies earlier, as do states with higher-earning residents. States with larger black populations tend to adopt BTB policies later, as do states with higher rates of poverty. When these characteristics are combined into a single regression, none of them are statistically significant, and the correlation between local poverty rates and BTB date reverses. However, the coefficients are still somewhat large.

Overall, this is a policy that has, so far, been adopted by urban areas. Those with larger black populations – and so presumably where black male employment is a more salient policy issue – are more likely to adopt BTB policies, although it appears that they were not the earliest adopters. The effects of BTB found in this paper should be considered in light of these associations: the results of this study speak to the effects of BTB in the types of jurisdictions that adopted the policy by December 2014. Given that areas that don't adopt BTB look different from those that do adopt BTB, we conduct robustness checks that use only similar jurisdictions as control groups. We also pay close attention to the "parallel trends" assumption of our difference-in-difference identification strategy.

4 Empirical Strategy

We consider the effect of BTB policies on the probability that individuals are employed, based on a linear probability model. We use the following specification:

$$Employed_i = \alpha + \beta_1 BTB_{m,t} + \beta_2 \delta_{MSA} + \beta_3 D_i + \beta_4 \lambda_{time*region} + \beta_5 \delta_{MSA} * f(time)_t + e_i, \quad (1)$$

where i indexes individuals. δ_{MSA} are MSA fixed effects. D_i is a vector of individual characteristics that help explain variation in employment, including race, ethnicity, age fixed effects, fixed effects for years of education, and an indicator for whether the individual is currently enrolled in school. $\lambda_{time*region}$ are time-by-region fixed effects (where time is the month of the sample, 0 to 132, and region is the Census region).²¹ $\delta_{MSA} * f(time)_t$ are MSA-specific time trends, using a linear

MSAs that span state borders.

²¹Using Census division instead of region yields nearly identical results but is far more computationally intensive.

function of time. BTB is equal to 1 if any BTB policy (affecting government employers and possibly government contractors and/or private firms) is in effect in the individual's MSA. Standard errors are clustered by state. The coefficient of interest, β_1 , tells us the effect that a BTB policy has on the probability that an individual is employed.

To test for differential policy effects by race, we add $BTB * Black$ and $BTB * Hispanic$ terms to equation 1. Since low-skilled white men are not a control group – they could be helped or hurt by the policy – the differential effect is not the primary outcome of interest. We also compute the total effect of BTB on black men and Hispanic men ($BTB + BTB * Black$ and $BTB + BTB * Hispanic$, respectively) to estimate the impact on each of these subgroups.

Our preferred specification fully interacts all of the control variables with race. This is equivalent to running the regressions separately by race, but still allows us to directly test for differential policy effects. Allowing this additional flexibility (where the effect of all controls can vary with race) reduces our statistical power and often has little effect on the estimates. However, for some subgroups it makes a difference. We view this fully-interacted specification as the most conservative approach. For the sake of transparency we will show how the main results change as each set of controls is added.

For each 25- to 34-year-old man in our sample, the full set of controls adjusts for: the average employment probability for men of the same race/ethnicity within his MSA, the employment trend for that race/ethnicity group in his MSA, monthly region-specific employment shocks (such as the housing crash), and his individual characteristics. Any remaining variation in his likelihood of employment would come from idiosyncratic, individual-level factors (for instance, an illness or a fight with a supervisor), or MSA-specific shocks that don't affect nearby MSAs – such as adoption of a BTB policy. Our identifying assumption is that the adoption and timing of BTB policies are exogenous to other interventions or local job market changes that might affect employment, so that – in the absence of BTB – employment probabilities would evolve similarly to those in nearby MSAs without the policy. The most likely threat to identification is that BTB policies were voluntarily adopted by areas that were motivated to help ex-offenders find jobs. The timing of these policies likely coincides with new, local interest in hiring those with criminal records. This should bias our estimated effects upwards, toward finding positive effects on young, low-skilled, black and Hispanic

men.

5 Results

Figure 2 shows a local linear graph of the residuals from equation 1, for young, low-skilled black men. Time is recentered so that 0 is the effective date of a jurisdiction's BTB policy. For places without BTB, we recenter using the average effective date – October 2010.²² Based on the pre-BTB period, the identifying assumption that BTB and non-BTB jurisdictions would evolve similarly in the absence of BTB – that is, that the treatment and control groups exhibit parallel trends – looks reasonable: the two lines follow each other closely before the date-zero threshold. After that date, however, the lines quickly diverge, with employment outcomes worsening in BTB-adopting places and improving slightly elsewhere. When we consider individuals who live in non-BTB places as a counterfactual for those who live in BTB-adopting places, it appears that BTB dramatically hurt employment outcomes for this group.

Figures 3 and 4 show equivalent graphs for Hispanic and white men, respectively. BTB appears to have a negative effect on Hispanic men, though the pre-trends for BTB and non-BTB areas are not as similar as they were for black men. That said, residuals hover around zero for both sets of jurisdictions before the policy change. They then fall for individuals treated by BTB, while they increase for those living in non-BTB locations. There is no apparent effect on white men.

To consider these outcomes more rigorously, Table 4 presents our main results for men ages 25-34 with no college degree. We consider the overall effect of BTB, and test for differential effects by race and ethnicity (black and Hispanic). We also present the total effect of BTB on these subgroups. Each column adds control variables from equation 1 and/or restricts the sample of analysis.

Column 1 shows the effects of BTB in the full sample, controlling only for MSA fixed effects. With no additional information about the individual or the time period, it appears that BTB reduces the average probability that low-skilled men are employed, by 5.0 percentage points. This effect is larger for black men, by 2.2 percentage points, and that difference is marginally significant. There

²²To allow sufficient time on either side of the threshold in the graph, we use only jurisdictions where at least 18 months of data were available before and after the date of the policy change. This excludes approximately 20% of our sample, as a large number of jurisdictions adopted BTB in 2013 and 2014. However, the full sample is included in all regressions.

is no differential effect on Hispanic men.

Column 2 adds detailed information about the individual, including age fixed effects, fixed effects for precise years of education, and whether they are currently enrolled in school. This reduces the magnitude of the above effects slightly, but qualitatively they are very similar.

Column 3 begins to add information about labor market trends, with time-by-region fixed effects; time is the month of the sample and region is the Census region. Controlling flexibly for labor market shocks is important, as our sample period (2004 through 2014) includes the Great Recession. Many BTB policies are implemented at the state-level, so we cannot control for month-specific state-level shocks. However, most of the non-BTB labor market shocks we are worried about, such as the housing crash, affected MSAs throughout the Census region. These fixed effects should absorb that type of variation.²³

Controlling for time-by-region fixed effects wipes out the overall effect of BTB, reducing that coefficient to a small and statistically-insignificant negative 1 percentage point. However, the differentially-negative effect of BTB on black men remains: 2.2 percentage points (relative to a pre-BTB employment baseline for black men of 67.7%). Combined with the coefficient on *BTB*, the total negative effect on black male employment is a statistically significant 3.2 percentage points ($p < 0.01$). There is no significant effect on Hispanic men in this specification.

Column 4 further controls for non-BTB labor market trends with MSA-specific linear time trends. This makes the estimate slightly more precise but has little effect on the estimates.

The effects of the controls and time trends might vary with race – for instance, the employment trend for black men in a particular MSA might be different from the trend for white men. Column 5 presents the results of a fully-interacted model, where the effects of all of the control variables in equation 1 are allowed to differ across race/ethnicity groups (white, black, and Hispanic). This reduces our statistical power substantially, but is the most conservative approach to isolating the effect of BTB. It is equivalent to running the regressions separately by race. Based on these estimates, BTB reduced employment for black men by a statistically-significant 3.4 percentage points (5.1%), and for Hispanic men by a marginally-significant 2.3 percentage points (2.9%). This is our preferred specification.

²³Using (smaller) Census divisions instead of Census regions yields nearly identical results.

One concern about using non-BTB jurisdictions as controls is that they tend to be less urban and have smaller black populations than places that adopt BTB. Even after controlling for pre-existing trends, they might not be good counterfactuals for the places likely to adopt BTB. Columns 6 and 7 restrict the sample to places that are similar to BTB-adopting labor markets.

Column 6 considers only individuals living in MSAs – that is, it excludes individuals living in more rural areas. (In our dataset, those individuals could still have been affected by state-level policies.) Since BTB-adopting jurisdictions tend to be more urban, perhaps it makes the most sense to compare them only with similarly-urban places. Under this restriction, we lose about one-third of our original sample. When we limit attention to individuals in or near cities, we lose some statistical power but the total effect on black and Hispanic men is similar to before: BTB reduces employment for black men by 2.9 percentage points ($p < 0.05$) and by 2.3 percentage points ($p < 0.10$) for Hispanic men.

Column 7 restricts attention to only jurisdictions that adopted BTB by December 2014. If some types of places are more motivated to help ex-offenders or reduce racial disparities in employment, and thus to adopt BTB, labor market trends might be fundamentally different than they are in other places. This compares apples with apples, so to speak – we consider only individuals who live in places that eventually adopt BTB, and rely only on variation in the timing of policy adoption to identify BTB’s effect. This reduces our sample to under half of what it was originally, so we again lose statistical power, but the magnitudes of the estimates are very similar to those in column 5. BTB has no significant effect on white male employment, but reduces the probability of employment by 3.1 percentage points for black men ($p < 0.05$), and by 2.0 percentage points for Hispanic men (not statistically significant).

Overall, these results tell the same story as the graphs described above. It is reassuring to find such similar effects across most specifications and samples. In particular, our robustness samples including only metro areas or only BTB-adopting places show extremely similar effects. The fully-interacted model is required to detect BTB’s effect on Hispanic men, but that effect is also robust to different sample definitions. We see no significant effect of BTB on white men without college degrees in this age group.

5.1 Differential effects by region

Given differences in racial composition and labor markets across the country, we might expect BTB to have different effects in different places. Table 5 separately considers the effects of BTB by Census region. To simplify presentation, we show the results separately by race, so the coefficients are comparable to the total effects (by race) in the fully-interacted model from column 5 above.

We see that young, low-skilled white men are not affected by BTB anywhere. However, the employment probabilities of their black peers are significantly reduced in three regions: the Northeast (7.4%), the Midwest (7.5%), and the West (8.8%). The negative effect on black men is much smaller (2.3%) and not statistically significant in the South, where a larger share of the population is black.²⁴

Similarly, we see evidence of differential effects for Hispanic men, though limited statistical power means that none of the coefficients are statistically significant. The coefficients are negative across all four regions, but are much larger in the Northeast (3.5%), the Midwest (5.7%), and the South (3.6%). The estimated effect for Hispanic men living in the West – where a larger share of the population is Hispanic – is near zero.²⁵

These results suggest that the larger the black or Hispanic population, the less likely employers are to use race/ethnicity as a proxy for criminality.

5.2 BTB in weak vs. strong labor markets

Employers might be quicker to exclude large categories of job applicants – such as those with criminal records, or young black men – when they have many applicants to choose from than when it is relatively difficult to find qualified employees. We therefore might expect a policy like BTB to have larger negative effects on the employment of young, low-skilled black and Hispanic men when the unemployment rate is high than when it is low. Table 6 adds terms that allow the effect of BTB to vary with the national unemployment rate. (We use the national unemployment rate rather than state or local unemployment rates to limit concerns about reverse causality.) Effects

²⁴Based on 2010 Census data, 19% of the population in the South is black, compared with 12% in the Northeast, 10% in the Midwest, and 5% in the West (Rastogi et al., 2011).

²⁵Based on 2010 Census data, 29% of the population in the West is Hispanic, compared with 13% in the Northeast, 7% in the Midwest, and 16% in the South (Ennis et al., 2011).

are shown separately by race (equivalent to the total effects estimated in column 5 in Table 4).

Columns 1 and 2 show the effect on white men, including linear and quadratic functions of the unemployment rate, respectively. The total effects of BTB are calculated at 5%, 6%, 7%, 8% and 9% national unemployment. (During this period, the unemployment rate ranged from 4.4% to 10.0%.) The effect of the policy is slightly positive when unemployment is low, and slightly negative when unemployment is high, but at all unemployment rates the effect of BTB on white men is near-zero and statistically insignificant.

Columns 3 and 4 show the effect on black men. Again the effect of BTB is more negative when unemployment is high, but now the estimated total effects are relatively large and negative even at low unemployment. The negative total effect becomes statistically significant at 7% or 8% unemployment, and at 9% unemployment the total effect of BTB on black men is over 3.6 percentage points and statistically significant ($p < 0.05$).

Columns 5 and 6 show the effect on Hispanic men. The same pattern emerges: the total effect of the policy is more negative as the unemployment rate rises, and that effect becomes statistically significant when unemployment reaches 7% or 8%. With the quadratic term included, the total effect of BTB on Hispanic men is near-zero and statistically insignificant at 5% unemployment, but reaches -3.2% ($p < 0.05$) at 9% unemployment.

These results confirm that employers are more likely to statistically discriminate when the supply of labor greatly exceeds the demand for it. They also suggest that BTB policies may have worsened the effect of the recent recession for these disadvantaged groups.

5.3 Substitution to other groups

BTB has the predicted effects on the group most directly affected by the policy, decreasing the probability of employment for young, low-skilled black and Hispanic men. Other groups might also be affected, as the beneficiaries of statistical discrimination. In particular, we might expect employers to prefer groups that are less likely to include recently-incarcerated offenders, such as older applicants, those with college degrees, women, and/or white applicants. However, it is also possible that increasing the asymmetric information problem in this labor market could reduce total employment.

Table 7 presents the results of a fully-interacted model (equivalent to column 5 in Table 4 above) for other demographic groups.

Column 1 considers men ages 25-34 with college degrees. This group is far less likely to include individuals with criminal records, so employers might be more willing to interview them after BTB removes criminal history information from job applications. However, college-educated men are unlikely to be interested in low-skilled jobs. We see that the effect of BTB on employment in this group is very small and statistically insignificant.

Column 2 considers the effect of BTB on older working-age men, ages 35-64, with no high school diploma. These men are still more likely to have a criminal record, but are much less likely than younger men to have been recently incarcerated and/or to still be actively engaged in criminal behavior or associating with people who are. A previous criminal conviction might therefore be less worrisome for a potential employer. We see that this is the case with respect to black men: on average, BTB increases their employment by 4.3 percentage points (9.4%), though this effect is not statistically significant. However, the effect on Hispanic men is negative and about as large as before: 2.8 percentage points (3.9%).

Column 3 considers the effect for older men (age 35-64) with no college degree – our preferred definition of "low-skilled". Here we see that BTB increases black male employment by a statistically significant 2.8 percentage points (4.3%). The effect on Hispanic men is also positive (1.5 percentage points, which is 1.9% of the pre-BTB baseline) but not statistically significant. This suggests that employers are weighting age more heavily when they consider job applicants, substituting away from young black and Hispanic men and toward older black (and possibly Hispanic) men of the same educational level, to avoid hiring the more worrisome ex-offenders.

Column 4 considers the effect on older men with a college degree. As for highly-educated younger men, we see no effects here.

Column 5 considers young (age 25-34) women with no high school diploma. Women are less likely than men to have a criminal record, and particularly less likely to commit violent crime. If violent behavior is a primary concern for employers, we might see substitution into this group. However, female employment might also respond to male partners' inability to find a job, so an increase in employment might tell us more about intrahousehold responses than employers' pref-

erence. There is some evidence that white women are more likely to work when BTB is in effect (employment increases by 1.2 percentage points, 2.6% of the baseline), and that black women work less (employment decreases by 2.9 percentage points, 6.4% of the baseline), but neither effect is statistically significant.

Column 6 considers young women with no college degree. There are no significant effects here, although Hispanic women in this group seem to benefit slightly, on average.

Column 7 considers young women with a college degree. BTB increases employment by a statistically significant 3.2 percentage points (3.9%) for black women in this group. Given that college-educated women and men without college degrees are likely working in different labor markets, this probably reflects intrahousehold substitution of labor rather than employers' preference for hiring women due to BTB.

5.4 Persistence of effects over time

It's possible that BTB increases the expected cost of hiring low-skilled black and Hispanic men such that the policy permanently lowers employment for these groups. Alternatively, we might expect BTB to have a temporary effect if employers and workers eventually adapt to the policy and return to the pre-BTB equilibrium. For instance, employers might figure out new ways to screen job applicants, and workers might learn new ways to signal their job-readiness to employers.

Table 8 shows the cumulative effects of BTB on employment over time, for young, low-skilled white, black, and Hispanic men, respectively. The coefficients show the effect of BTB during the first year, the second year, the third year, and four or more years after the policy went into effect.

Across all years, BTB's effect on white men is near-zero and statistically insignificant. However, BTB's effect on black men is large and grows over time. BTB reduces employment for black men by 2.7 percentage points (not statistically significant) during the first year, 5.1 percentage points ($p < 0.01$) during the second year, 4.1 percentage points ($p < 0.10$) during the third year, 8.4 percentage points ($p < 0.01$) during the fourth year, and an average of 7.7 percentage points ($p < 0.05$) during the fifth and later years. This suggests that BTB has a permanent effect on employment for black men.

Effects on Hispanic men tell a slightly different story: BTB reduces employment for this group

by 1.6 percentage points (not statistically significant) during the first year after the policy goes into effect, by 3.0 percentage points ($p < 0.10$) during the second year, and by 2.6 percentage points (not statistically significant) during the third year. However, after the third year the effect declines to near-zero. It appears that young Hispanic men adapt to the policy over time, perhaps by using their networks to find jobs and signal their job-readiness to employers. This is consistent with previous evidence that labor market networks play a particularly important role in hiring for low-skilled Hispanics (Hellerstein et al., 2011).

6 Robustness

6.1 Effects on young men without a high school diploma

In the above analyses, we define "low-skilled" as having no college degree, for two reasons: (1) this group includes the vast majority of ex-offenders, and (2) it provides sufficient sample size to draw sound conclusions. However, we expect effects to be larger in magnitude for the subset of that population with less education.

Table A-3 presents the main results for those without a high school diploma or GED. The total effects of BTB on black and Hispanic men are indeed larger in magnitude, but imprecisely estimated due to the relatively small sample. Our preferred specification (column 5) estimates that BTB reduces employment for black men by 14.9 percentage points (33% of the baseline); the 95% confidence interval suggests that this negative effect could range from 7.2 percentage points (16%) to 22.5 percentage points (50%). For Hispanic men we estimate that BTB reduces employment by 9.5 percentage points (13%); the 95% confidence interval suggests this negative effect could range from 4.2 percentage points (5.8%) to 14.8 percentage points (20%).

We also find suggestive evidence that BTB has a positive effect on white men with no high school diploma. On average, white men in this group are 3.9 percentage points (5.6%) more likely to be employed after BTB than before, but this effect is not statistically significant.

6.2 Effects of individual states on the main estimates

The implementation and effects of BTB could vary across states, and particular states might be driving our main results. Looking at effects by region provides some evidence on this issue, but we now focus on the effects of individual states. Tables A-4 and A-5 reproduce column 5 from Table 4, dropping each state, in turn. Across the board, the results are qualitatively consistent with our main results, but there are some states that have particularly strong effects on the estimates. Excluding Colorado or New Jersey, for instance, increases the magnitude and statistical significance of the effect on Hispanic men, suggesting those states are outliers. Dropping Virginia increases the magnitude and statistical significance of the effect on black men, while dropping DC or South Carolina reduces the magnitude of that effect slightly.

7 Discussion

"Ban the box" has arisen as a popular policy aimed at helping ex-offenders find jobs, with a related goal of decreasing racial disparities in employment. However, BTB does not address employers' concerns about hiring those with criminal records, and so could increase discrimination against groups that are more likely to include recently-incarcerated ex-offenders – particularly young, low-skilled black and Hispanic men.

In this paper, we exploit the variation in adoption and timing of state and local BTB policies to estimate BTB's effects on employment for these groups. We find that BTB reduces the probability of employment for young black men without a college degree by 3.4 percentage points (5.1%), and for young Hispanic men without a college degree by 2.3 percentage points (2.9%). The effect on black men is particularly robust across different specifications and samples.

These effect sizes may seem large but they are consistent with those found in related studies. Holzer et al. (2006) found that the last hire was 37% more likely to be a black man when firms conducted criminal background checks, while Bartik and Nelson (2016) found that banning credit history checks reduced the likelihood of finding a job by 7-16% for black job-seekers. Given relatively high turnover rates in the low-skilled labor market,²⁶ it does not take long for increases or decreases

²⁶Based on data from the Job Openings and Labor Turnover Survey (JOLTS), industries with high proportions of low-skilled jobs, such as construction, retail trade, and hospitality services, have monthly separations hovering around

in hiring rates to result in a large change in employment. For instance, in a similar context Wozniak (2015) found that allowing drug testing by employers increased employment for black men by 7-30%.

In light of these other studies and estimated turnover rates, our estimates are plausible and may actually be somewhat small. Indeed, our effects are likely biased upwards (toward finding positive effects of BTB) for two reasons: (1) Jurisdictions that adopt BTB are typically more motivated to help ex-offenders find jobs, and this motivation alone should increase employment for those with criminal records. (2) The CPS excludes individuals who are incarcerated, so if some of the men who are unemployed as a result of BTB commit crime and are sent to prison, they will end up not being included in our sample.

This is the first paper to consider the effects of BTB on the employment of young, low-skilled black and Hispanic men, but our findings are consistent with theory and other research about statistical discrimination in employment. There is rapidly-increasing evidence that BTB has unintentionally done more harm than good when it comes to helping disadvantaged job-seekers find jobs. Increasing employment rates for ex-offenders is a top policy priority, for good reason, but policy-makers cannot simply wish away employers' concerns about hiring those with criminal records. Policies that directly address those concerns – for instance, by providing more information about job applicants with records, or improving the average ex-offender's job-readiness – could have greater benefits without the unintended consequences found here.

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5-6% of total employment. (Data are unavailable by age and skill level, so this likely underestimates the degree of turnover for our population of interest.) If we conservatively assume (1) a 5.5% monthly separation rate for the jobs held by young, low-skilled black men, and (2) that BTB reduces hiring rates for this population by 7%, then we would expect a 5% reduction in employment within 14 months. This is in line with our results from Table 8.

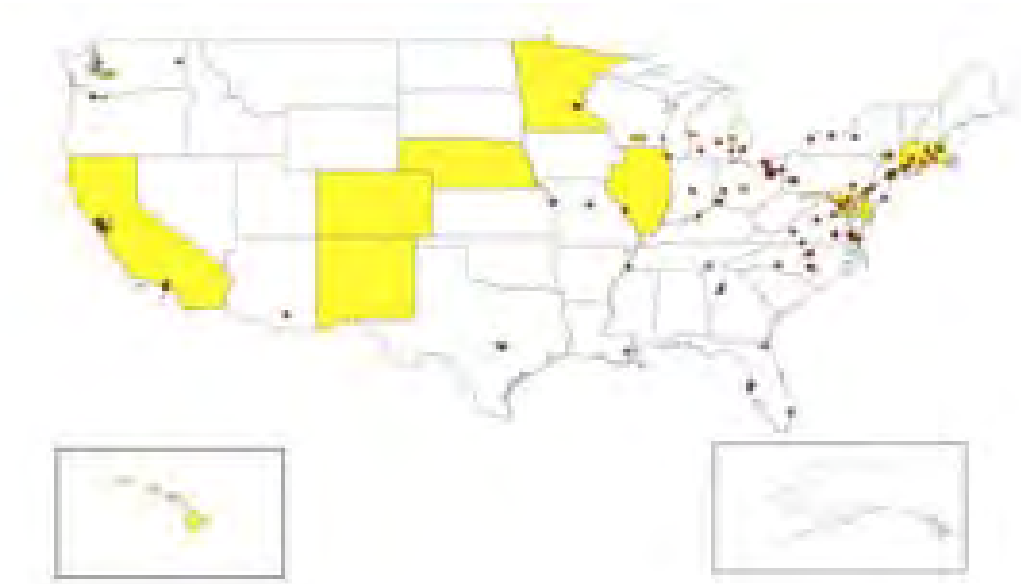
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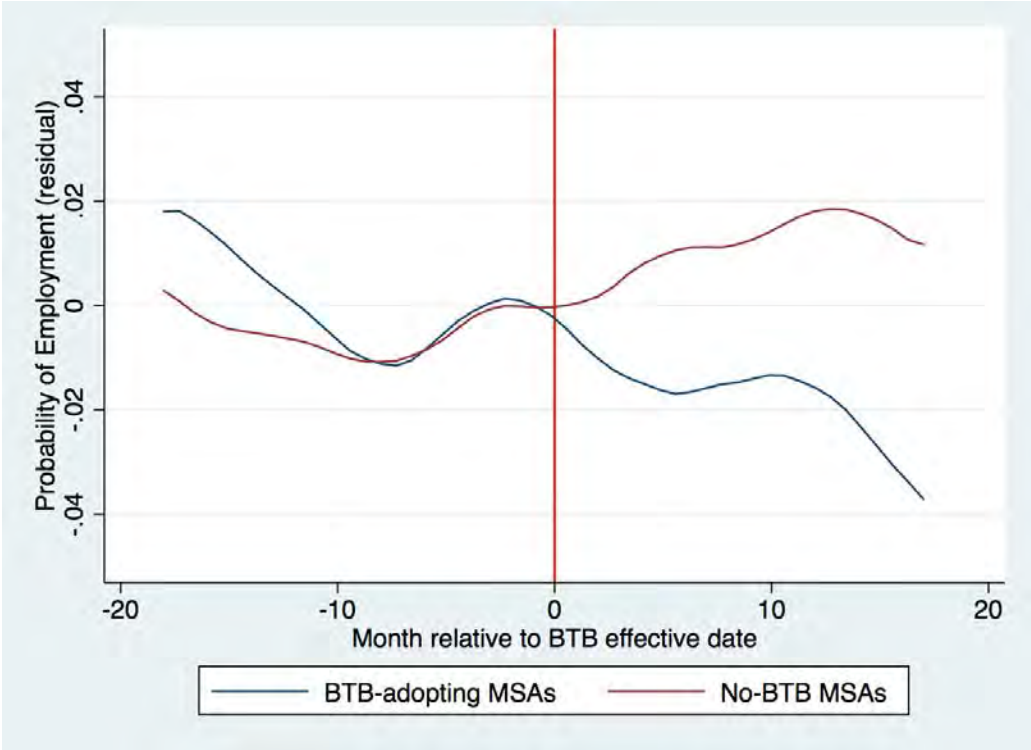
8 Figures and Tables

Figure 1: Jurisdictions with BTB policies by December 2014



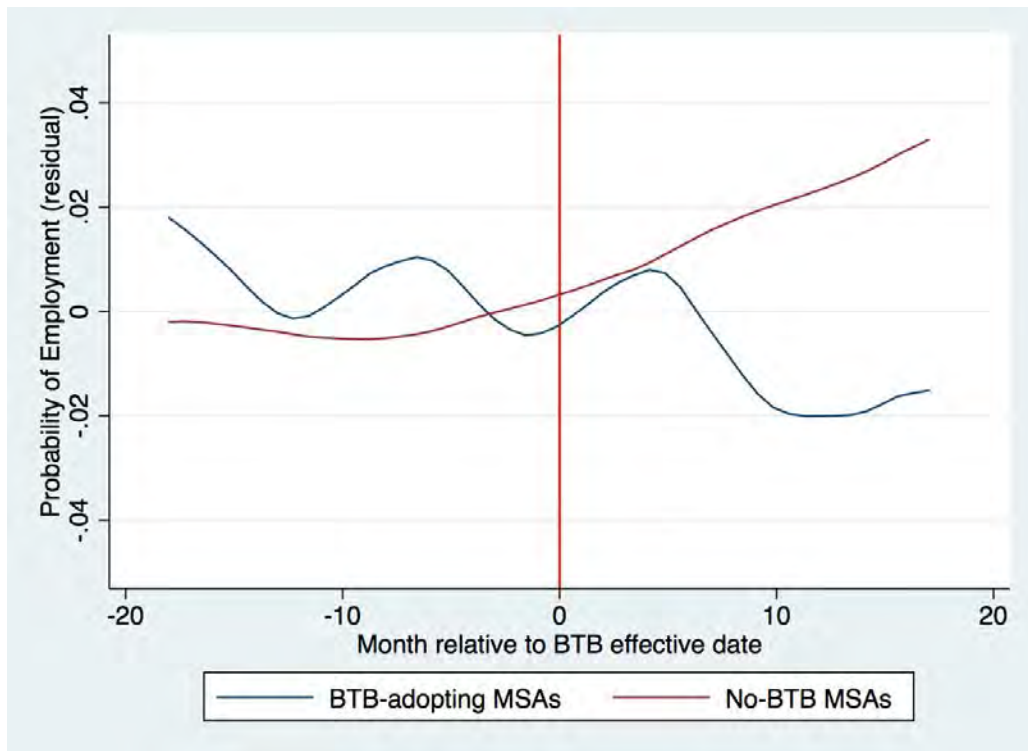
Jurisdictions with BTB policies are represented by yellow shading (state-level policies), orange shading (county-level policies), and red dots (city-level policies.)

Figure 2: Effect of BTB on probability of employment for black men ages 25-34, no college degree



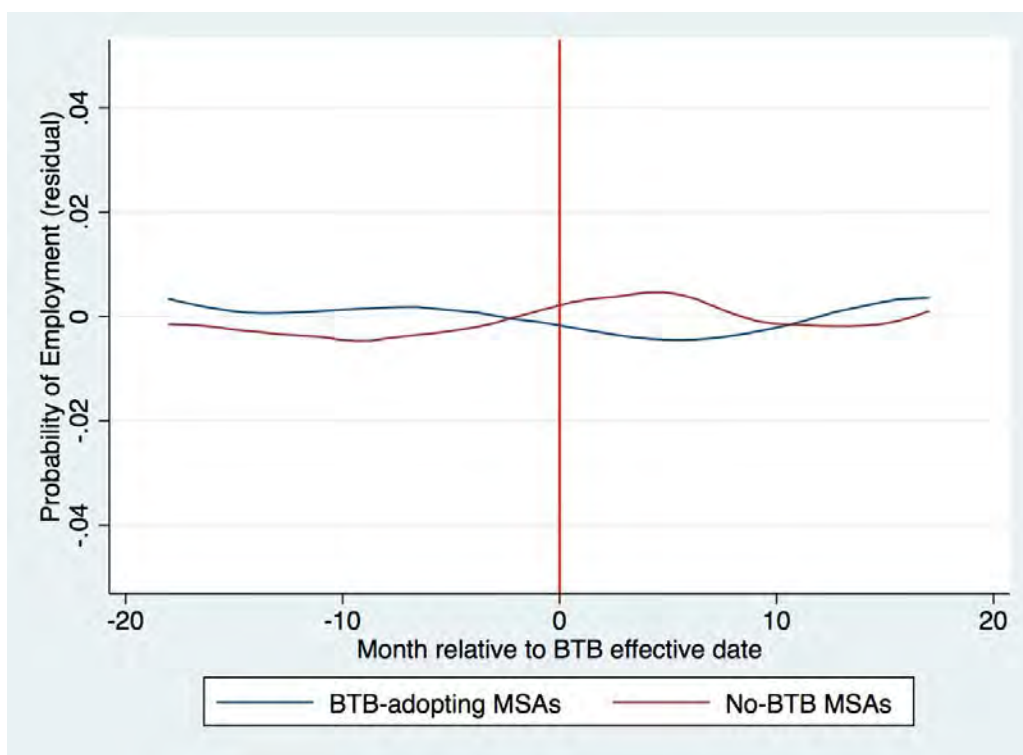
Data source: CPS 2004-2014. Sample includes black men ages 25-34 who do not have a college degree. To allow at least 18 months of data before and after the effective date, this graph is limited to jurisdictions that implemented BTB between June 2005 and July 2013. The mean of the effective dates applying to this group for BTB-adopting jurisdictions in this window – October 2010 – is used as the "effective date" for the no-BTB jurisdictions.

Figure 3: Effect of BTB on probability of employment for Hispanic men ages 25-34, no college degree



Data source: CPS 2004-2014. Sample includes Hispanic men ages 25-34 who do not have a college degree. To allow at least 18 months of data before and after the effective date, this graph is limited to jurisdictions that implemented BTB between June 2005 and July 2013. The mean of the effective dates applying to this group for BTB-adopting jurisdictions in this window – May 2010 – is used as the "effective date" for the no-BTB jurisdictions.

Figure 4: Effect of BTB on probability of employment for white men ages 25-34, no college degree



Data source: CPS 2004-2014. Sample includes white, non-Hispanic men ages 25-34 who do not have a college degree. To allow at least 18 months of data before and after the effective date, this graph is limited to jurisdictions that implemented BTB between June 2005 and July 2013. The mean of the effective dates applying to this group in BTB-adopting jurisdictions in this window – May 2010 – is used as the "effective date" for the no-BTB jurisdictions.

Table 1: Summary Statistics

	Men ages 25-34		Men ages 35-64	
	Mean	(SD)	Mean	(SD)
BTB	0.1930	(0.3946)	0.1870	(0.3899)
Employed	0.8335	(0.3725)	0.8026	(0.3981)
No HS diploma or GED	0.0769	(0.2665)	0.0847	(0.2784)
No college degree	0.5883	(0.4921)	0.5804	(0.4935)
College degree or more	0.4117	(0.4921)	0.4196	(0.4935)
Enrolled in school	0.0145	(0.1196)	0.0023	(0.0478)
Age	29.492	(2.8835)	48.930	(8.0649)
White	0.7934	(0.4048)	0.8399	(0.3667)
Black	0.0965	(0.2953)	0.0893	(0.2851)
Hispanic	0.1100	(0.3129)	0.0709	(0.2566)
Northeast	0.1881	(0.3908)	0.2154	(0.4111)
Midwest	0.2563	(0.4366)	0.2526	(0.4345)
South	0.3155	(0.4647)	0.3118	(0.4632)
West	0.2401	(0.4271)	0.2202	(0.4144)
Metro area	0.7089	(0.4543)	0.6819	(0.4657)
N	855,772		2,873,182	

Data source: 2004-2014 Current Population Survey.

Table 2: Summary Statistics: Men ages 25-34 with no college degree

	All	Never adopted BTB	Adopted BTB
White Non-Hispanic			
BTB	0.1414 (0.3484)	0 (0)	0.3408 (0.4740)
Employed	0.8087 (0.3933)	0.8110 (0.3915)	0.8055 (0.3958)
No HS diploma or GED	0.1094 (0.3121)	0.1198 (0.3247)	0.0947 (0.2927)
Enrolled in school	0.0115 (0.1068)	0.0099 (0.0989)	0.0139 (0.1169)
Age	29.424 (2.8935)	29.433 (2.8886)	29.411 (2.9003)
Northeast	0.1883 (0.3910)	0.1583 (0.3651)	0.2307 (0.4213)
Midwest	0.2873 (0.4525)	0.2513 (0.4338)	0.3380 (0.4730)
South	0.2909 (0.4542)	0.3541 (0.4782)	0.2017 (0.4013)
West	0.2335 (0.4231)	0.2362 (0.4248)	0.2297 (0.4206)
Metro area	0.6127 (0.4871)	0.4261 (0.4945)	0.8760 (0.3295)
N	373,237	218,413	154,824
Black Non-Hispanic			
BTB	0.2006 (0.4005)	0 (0)	0.3481 (0.4764)
Employed	0.6564 (0.4749)	0.6588 (0.4741)	0.6547 (0.4755)
No HS diploma or GED	0.1498 (0.3569)	0.1659 (0.3720)	0.1380 (0.3449)
Enrolled in school	0.0132 (0.1143)	0.0122 (0.1097)	0.0140 (0.1175)
Age	29.371 (2.9194)	29.419 (2.8761)	29.336 (2.9504)
Northeast	0.1228 (0.3283)	0.0405 (0.1971)	0.1834 (0.3870)
Midwest	0.1898 (0.3921)	0.0930 (0.2905)	0.2609 (0.4392)
South	0.5916 (0.4915)	0.7943 (0.4042)	0.4427 (0.4967)
West	0.0957 (0.2942)	0.0722 (0.2587)	0.1130 (0.3166)
Metro area	0.8174 (0.3864)	0.6110 (0.4875)	0.9690 (0.1733)
N	59,872	25,363	34,509
Hispanic			
BTB	0.2687 (0.4433)	0 (0)	0.4435 (0.4968)
Employed	0.7921 (0.4058)	0.8138 (0.3893)	0.7779 (0.4156)
No HS diploma or GED	0.2283 (0.4198)	0.2481 (0.4319)	0.2154 (0.4111)
Enrolled in school	0.0149 (0.1211)	0.0141 (0.1178)	0.0154 (0.1232)
Age	29.303 (2.8739)	29.251 (2.8762)	29.338 (2.8719)
Northeast	0.1376 (0.3445)	0.0394 (0.1946)	0.2014 (0.4011)
Midwest	0.1065 (0.3084)	0.0856 (0.2798)	0.1200 (0.3250)
South	0.2983 (0.4575)	0.5669 (0.4955)	0.1236 (0.3291)
West	0.4577 (0.4982)	0.3081 (0.4617)	0.5550 (0.4970)
Metro area	0.8394 (0.3672)	0.7058 (0.4557)	0.9262 (0.2614)
N	70,310	27,710	42,600

Data source: 2004-2014 Current Population Survey. Standard errors in parentheses.

Table 3: Ban the Box policies implemented by December 2014

State	Jurisdiction	Law Type	Start Date
California	State	Public	June 25, 2010
	Alameda County	Public	March 1, 2007
	Berkeley	Public	October 1, 2008
	Carson City	Public	March 6, 2012
	Compton	Public	July 1, 2011
	Compton	Contract	July 1, 2011
	East Palo Alto	Public	January 1, 2005
	Oakland	Public	January 1, 2007
	Pasadena	Public	July 1, 2013
	Richmond	Public	November 22, 2011
	Richmond	Contract	July 30, 2013
	Santa Clara	Public	May 1, 2012
	San Francisco	Public	October 11, 2005
	San Francisco	Contract	April 4, 2014
San Francisco	Private	April 4, 2014	
Colorado	State	Public	August 8, 2012
Connecticut	State	Public	October 1, 2010
	Bridgeport	Public	October 5, 2009
	Hartford	Public	June 12, 2009
	New Haven	Public	February 1, 2009
	Norwich	Public	December 1, 2008
District of Columbia	Washington	Public	January 1, 2011
Delaware	State	Public	May 8, 2014
	Wilmington	Public	December 10, 2012
	New Castle County	Public	January 28, 2014
Florida	Jacksonville	Public	November 10, 2008
	Pompano Beach	Public	December 1, 2014
	Tampa	Public	January 14, 2013
Georgia	Atlanta	Public	January 1, 2013
	Fulton County	Public	July 16, 2014
Hawaii	State	Public	January 1, 1998
	State	Contract	January 1, 1998
	State	Private	January 1, 1998
Illinois	State	Public	January 1, 2014
	State	Contract	July 19, 2014
	State	Private	July 19, 2014
	Chicago	Public	June 6, 2007
	Chicago	Contract	November 5, 2014
	Chicago	Private	November 5, 2014
Indiana	Indianapolis	Public	May 25, 2014
Kentucky	Louisville	Public	March 13, 2014
Kansas	Kansas City	Public	November 6, 2014
	Wyandotte County	Public	November 6, 2014
Louisiana	New Orleans	Public	January 10, 2014
Maryland	State	Public	October 1, 2013
	Baltimore	Public	December 1, 2007
	Baltimore	Contract	April 1, 2014
	Baltimore	Private	April 1, 2014
	Prince George's County	Public	December 4, 2014
	State	Public	August 6, 2010
Massachusetts	Boston	Public	July 1, 2006
	Cambridge	Public	May 1, 2007
	Cambridge	Contract	January 28, 2008
	Worcester	Public	June 23, 2009
Michigan	Ann Arbor	Public	May 5, 2014
	Detroit	Public	September 13, 2010

Table 3: (continued)

State	Jurisdiction	Law Type	Start Date
	Detroit	Contract	June 1, 2012
	East Lansing	Public	April 15, 2014
	Genesee County	Public	June 1, 2014
	Kalamazoo	Public	January 1, 2010
	Muskegon	Public	January 12, 2012
Minnesota	State	Public	January 1, 2009
	State	Contract	January 1, 2009
	State	Private	May 13, 2013
	Minneapolis	Public	December 1, 2006
	St. Paul	Public	December 5, 2006
Missouri	Columbia	Public	December 1, 2014
	Columbia	Contract	December 1, 2014
	Columbia	Private	December 1, 2014
	Kansas City	Public	April 4, 2013
	St. Louis	Public	October 1, 2014
Nebraska	State	Public	April 16, 2014
New Jersey	Atlantic City	Public	December 23, 2011
	Atlantic City	Contact	December 23, 2011
	Newark	Public	September 19, 2012
	Newark	Contract	September 19, 2012
	Newark	Private	September 19, 2012
New Mexico	State	Public	March 8, 2010
New York	New York City	Public	October 3, 2011
	New York City	Contract	October 3, 2011
	Buffalo	Public	June 11, 2013
	Buffalo	Contract	June 11, 2013
	Buffalo	Private	June 11, 2013
	Rochester	Public	May 20, 2014
	Rochester	Contract	May 20, 2014
	Rochester	Private	May 20, 2014
	Woodstock	Public	November 18, 2014
	Yonkers	Public	November 1, 2014
North Carolina	Carrboro	Public	October 16, 2012
	Charlotte	Public	February 28, 2014
	Cumberland County	Public	September 6, 2011
	Durham	Public	February 1, 2011
	Durham County	Public	October 1, 2012
	Spring Lake	Public	June 25, 2012
Ohio	Alliance	Public	December 1, 2014
	Akron	Public	October 29, 2013
	Cincinnati	Public	August 1, 2010
	Cleveland	Public	September 26, 2011
	Canton	Public	May 15, 2013
	Cuyahoga County	Public	September 30, 2012
	Franklin County	Public	June 19, 2012
	Hamilton County	Public	March 1, 2012
	Lucas County	Public	October 29, 2013
	Massillon	Public	January 3, 2014
	Stark County	Public	May 1, 2013
	Summit County	Public	September 1, 2012
	Youngstown	Public	March 19, 2014
Oregon	Multnomah County	Public	October 10, 2007
	Portland	Public	July 9, 2014
Pennsylvania	Allegheny County	Public	November 24, 2014
	Lancaster	Public	October 1, 2014
	Philadelphia	Public	June 29, 2011

Table 3: (continued)

State	Jurisdiction	Law Type	Start Date
	Philadelphia	Contract	June 29, 2011
	Philadelphia	Private	June 29, 2011
	Pittsburgh	Public	December 17, 2012
Rhode Island	State	Public	July 15, 2013
	State	Contract	July 15, 2013
	State	Private	July 15, 2013
	Providence	Public	April 1, 2009
Tennessee	Memphis	Public	July 9, 2010
	Hamilton County	Public	January 1, 2012
Texas	Austin	Public	October 16, 2008
	Travis County	Public	April 15, 2008
Virginia	Newport News	Public	October 1, 2012
	Richmond	Public	March 25, 2013
	Portsmouth	Public	April 1, 2013
	Norfolk	Public	July 23, 2013
	Petersburg	Public	September 3, 2013
	Alexandria	Public	March 19, 2014
	Arlington County	Public	November 3, 2014
	Charlottesville	Public	March 1, 2014
	Danville	Public	June 3, 2014
	Fredericksburg	Public	January 1, 2014
	Virginia Beach	Public	November 1, 2013
Washington	Seattle	Public	April 24, 2009
	Seattle	Contract	January 1, 2013
	Spokane	Public	July 31, 2014
	Pierce County	Public	January 1, 2012
Wisconsin	Dane County	Public	February 1, 2014
	Milwaukee	Public	October 7, 2011

Source: National Employment Law Project (2016) and local legislation.

Table 4: Effects on employment for men ages 25-34 with no college degree

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
BTB	-0.0501*** (0.0088)	-0.0420*** (0.0088)	-0.0100 (0.0073)	-0.0072 (0.0058)	-0.0028 (0.0061)	-0.0091 (0.0064)	-0.0048 (0.0077)
BTB * Black	-0.0215* (0.0126)	-0.0186 (0.0120)	-0.0220* (0.0114)	-0.0225** (0.0107)	-0.0314* (0.0173)	-0.0200 (0.0166)	-0.0263 (0.0161)
BTB * Hispanic	0.0013 (0.0138)	-0.0057 (0.0141)	-0.0020 (0.0146)	0.0026 (0.0151)	-0.0206 (0.0154)	-0.0136 (0.0144)	-0.0148 (0.0180)
Total effect of BTB on:							
Black men	-0.0716***	-0.0606***	-0.0320***	-0.0322***	-0.0342**	-0.0291**	-0.0311**
Hispanic men	-0.0488 ***	-0.0477***	-0.0120	-0.0038	-0.0234*	-0.0227*	-0.0196
N	503,419	503,419	503,419	503,419	503,419	336,641	231,933
Pre-BTB baseline							
<i>White</i>	0.8219	0.8219	0.8219	0.8219	0.8219	0.8226	0.8219
<i>Black</i>	0.6770	0.6770	0.6770	0.6770	0.6770	0.6770	0.6770
<i>Hispanic</i>	0.7994	0.7994	0.7994	0.7994	0.7994	0.7985	0.7994
Controls:							
MSA FEs	X	X	X	X	X	X	X
Demographics		X	X	X	X	X	X
Time * Region FEs			X	X	X	X	X
MSA-specific trends				X	X	X	X
Fully-interacted with race					X	X	X
Sample:							
Full sample	X	X	X	X	X		
MSAs only						X	
BTB-adopting only							X

* p < 0.10, ** p < 0.05, *** p < 0.01. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

Table 5: Effects on Employment for Men ages 25-34 with no college degree

	White	Black	Hispanic
Northeast			
BTB	-0.0163 (0.0096)	-0.0476** (0.0185)	-0.0266 (0.0170)
<i>N</i>	70,298	7,355	9,673
Pre-BTB baseline	0.8193	0.6447	0.7605
Midwest			
BTB	0.0140 (0.0081)	-0.0492** (0.0195)	-0.0464 (0.0271)
<i>N</i>	107,215	11,364	7,485
Pre-BTB baseline	0.8192	0.6390	0.8170
South			
BTB	0.0098 (0.0144)	-0.0164 (0.0302)	-0.0302 (0.0368)
<i>N</i>	108,565	35,423	20,974
Pre-BTB baseline	0.8328	0.7094	0.8357
West			
BTB	-0.0184 (0.0104)	-0.0598** (0.0245)	-0.0086 (0.0243)
<i>N</i>	87,159	5,730	32,178
Pre-BTB baseline	0.8171	0.6780	0.7978
Controls:			
MSA FEs	X	X	X
Demographics	X	X	X
Time FEs	X	X	X
MSA-specific trends	X	X	X

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

Table 6: Effects on Employment for Men ages 25-34 with no college degree

	White		Black		Hispanic	
	(1)	(2)	(3)	(4)	(5)	(6)
BTB	0.0213 (0.0226)	0.0456 (0.0896)	-0.0170 (0.0540)	0.1194 (0.2927)	0.0054 (0.0355)	0.3147* (0.1873)
BTB * Unemp. Rate	-0.0031 (0.0030)	-0.0100 (0.0268)	-0.0022 (0.0064)	-0.0407 (0.0831)	-0.0036 (0.0043)	-0.0934 (0.0562)
BTB * (Unemp. Rate) ²		0.0005 (0.0019)		0.0026 (0.0056)		0.0061 (0.0039)
Total effect of BTB:						
5% Unemployment	0.0058	0.0081	-0.0280	-0.0191	-0.0126	0.0002
6% Unemployment	0.0027	0.0036	-0.0302	-0.0312	-0.0162	-0.0261
7% Unemployment	-0.0004	0.0001	-0.0324*	-0.0381	-0.0198	-0.0402*
8% Unemployment	-0.0035	-0.0024	-0.0346**	-0.0398*	-0.0234*	-0.0421**
9% Unemployment	-0.0066	-0.0039	-0.0368**	-0.0363**	-0.0270*	-0.0318**
<i>N</i>	373,237	373,237	59,872	59,872	70,310	70,310
Pre-BTB baseline	0.8219	0.8219	0.6770	0.6770	0.7994	0.7994
Controls:						
MSA FEs	X	X	X	X	X	X
Demographics	X	X	X	X	X	X
Time * Region FEs	X	X	X	X	X	X
MSA-specific trends	X	X	X	X	X	X

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

Table 7: Effects on employment for other groups

	Men				Women			
	Ages 25-34		Ages 35-64		Ages 25-34		Ages 35-64	
	College degree	No HS diploma	No college degree	No college degree	No college degree	No HS diploma	No college degree	College degree
BTB	0.0044 (0.0043)	0.0141 (0.0140)	0.0003 (0.0043)	0.0045 (0.0032)	0.0115 (0.0291)	0.0006 (0.0092)	0.0005 (0.0045)	0.0310*
BTB * Black	0.0034 (0.0166)	0.0287 (0.0307)	0.0277*** (0.0095)	-0.0013 (0.0145)	-0.0400 (0.0382)	0.0011 (0.0158)	0.0310* (0.0171)	0.0022 (0.0198)
BTB * Hispanic	-0.0062 (0.0165)	-0.0421** (0.0191)	0.0145 (0.0090)	0.0059 (0.0093)	-0.0085 (0.0507)	0.0186 (0.0213)	0.0022 (0.0198)	
Total effect of BTB on:								
Black men/women	0.0078	0.0428	0.0280***	0.0032	-0.0285	0.0017	0.0315**	
Hispanic men/women	-0.0018	-0.0280**	0.0148	0.0104	0.0030	0.0192	0.0027	
<i>N</i>	352,353	243,267	1,667,573	1,205,609	60,110	477,531	458,692	
Pre-BTB baseline:								
<i>White</i>	0.9052	0.6184	0.7875	0.8862	0.4438	0.6485	0.7921	
<i>Black</i>	0.8495	0.4552	0.6538	0.8235	0.4228	0.6226	0.8030	
<i>Hispanic</i>	0.8826	0.7126	0.7673	0.8726	0.4819	0.6273	0.7838	
Controls:								
MSA FEs	X	X	X	X	X	X	X	X
Demographics	X	X	X	X	X	X	X	X
Time * Region FEs	X	X	X	X	X	X	X	X
MSA-specific trends	X	X	X	X	X	X	X	X
Fully-interacted with race	X	X	X	X	X	X	X	X
Sample:								
Full sample	X	X	X	X	X	X	X	X

* p < 0.10, ** p < 0.05, *** p < 0.01. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

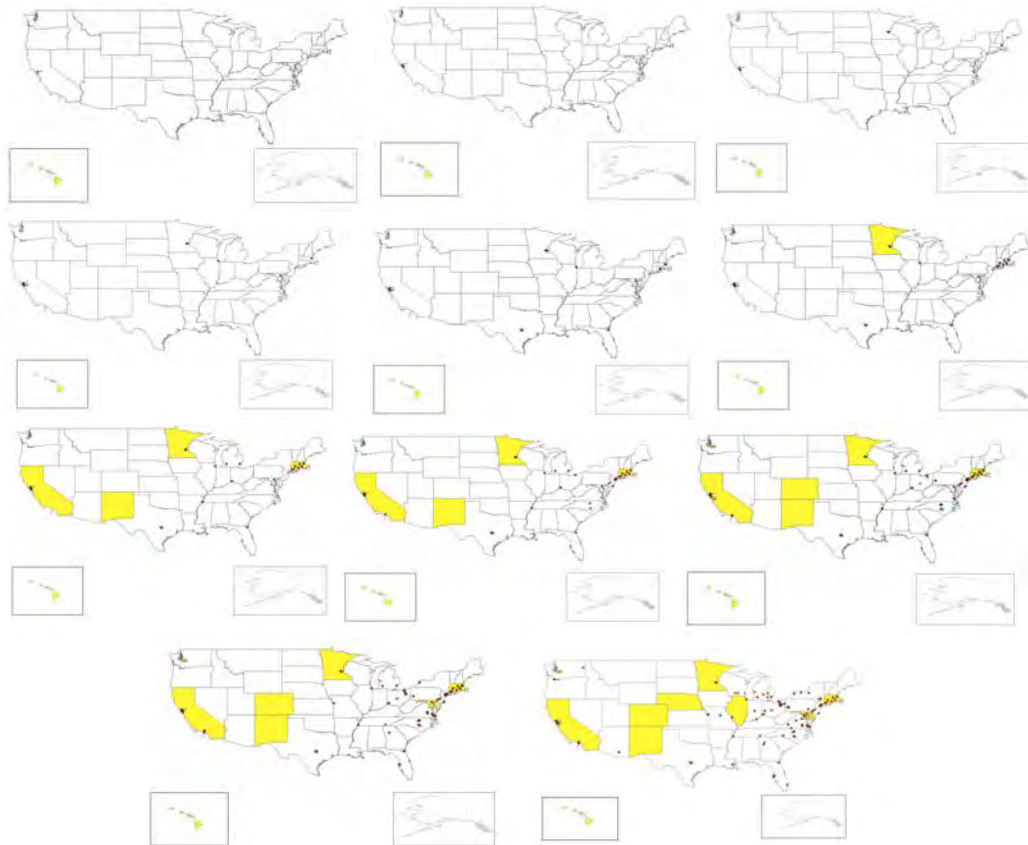
Table 8: Effects on Employment for Men ages 25-34 with no college degree

	White	Black	Hispanic
BTB – 0 to 1 year	-0.0079 (0.0063)	-0.0265 (0.0167)	-0.0161 (0.0144)
BTB – 1 to 2 years	0.0006 (0.0088)	-0.0514*** (0.0182)	-0.0301* (0.0154)
BTB – 2 to 3 years	0.0089 (0.0121)	-0.0406* (0.0216)	-0.0257 (0.0176)
BTB – 3 to 4 years	0.0083 (0.0150)	-0.0839*** (0.0261)	-0.0017 (0.0315)
BTB – 4+ years	-0.0004 (0.0157)	-0.0772** (0.0328)	-0.0039 (0.0352)
<i>N</i>	373,237	59,872	70,310
Pre-BTB baseline	0.8219	0.6770	0.7994
Controls:			
MSA FEs	X	X	X
Demographics	X	X	X
Time FEs	X	X	X
MSA-specific trends	X	X	X

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

A Appendix Figures and Tables

Figure A-1: Jurisdictions with BTB policies, 2004 to 2014



Maps are by year, beginning with 2004 in the top left corner, 2005 at the top center, 2006 at the top right, and continuing sequentially by row. Jurisdictions with BTB policies are represented by yellow shading (state-level policies), orange shading (county-level policies), and red dots (city-level policies.)

Table A-1: Effect of state characteristics on BTB adoption

	(1)	(2)	(3)	(4)	(5)	(6)
Percent Urban	0.0146*** (0.0039)					0.0062 (0.0067)
Percent Black		0.0146*** (00053)				0.0175** (0.0073)
Percent Hispanic			0.0083 (0.0075)			0.0063 (0.0098)
Percent Poverty				-0.0116 (0.0202)		-0.0296 (0.0301)
Percent Bachelor's Degree or More					0.0327** (0.0133)	-0.0073 (0.0168)
Median FT Earnings (Male)						0.0001*** (0.0000)
<i>N</i>	51	51	51	51	51	51

Notes: Outcome variable is whether any MSA in that state adopted BTB by December 2014.

Table A-2: Effect of state characteristics on date of first BTB policy in the state

	(1)	(2)	(3)	(4)	(5)	(6)
Percent Urban	-38.278** (15.694)					-28.994 (26.417)
Percent Black		33.686** (15.702)				36.493 (26.313)
Percent Hispanic			-24.210 (21.671)			5.5919 (31.106)
Percent Poverty				98.132* (56.339)		-23.346 (107.03)
Percent Bachelor's Degree or More					-65.698 (41.242)	-0.3367 (65.684)
Median FT Earnings (Male)						-0.1076** (0.0471)
<i>N</i>	35	35	35	35	35	35

Notes: Outcome variable is the date of the first BTB policy adopted within the state, conditional on adopting at least one such policy by December 2014.

Table A-3: Effects on Employment for Men ages 25-34 with no high school diploma or GED

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
BTB	-0.0683*** (0.0187)	-0.0559*** (0.0184)	-0.0083 (0.0163)	0.0073 (0.0216)	0.0386 (0.0262)	0.0261 (0.0273)	0.0244 (0.0296)
BTB * Black	-0.0605* (0.0327)	-0.0671** (0.0317)	-0.0773** (0.0307)	-0.0994*** (0.0331)	-0.1874*** (0.0453)	-0.1607*** (0.0475)	-0.1610*** (0.0459)
BTB * Hispanic	-0.0263 (0.0322)	-0.0314 (0.0326)	-0.0243 (0.0323)	-0.0385 (0.0312)	-0.1335*** (0.0417)	-0.1338*** (0.0465)	-0.1190** (0.0470)
Total effect of BTB on:							
Black men	-0.1288***	-0.1230***	-0.0856***	-0.0921***	-0.1488***	-0.1346***	-0.1366***
Hispanic men	-0.0946***	-0.0873***	-0.0326	-0.0312	-0.0949***	-0.1077***	-0.0946***
<i>N</i>	65,846	65,846	65,846	65,846	65,846	43,075	28,595
Pre-BTB baseline							
<i>White</i>	0.6844	0.6844	0.6844	0.6844	0.6844	0.6879	0.6844
<i>Black</i>	0.4541	0.4541	0.4541	0.4541	0.4541	0.4504	0.4541
<i>Hispanic</i>	0.7287	0.7287	0.7287	0.7287	0.7287	0.7219	0.7287
Controls:							
MSA FEs	X	X	X	X	X	X	X
Demographics		X	X	X	X	X	X
Time * Region FEs			X	X	X	X	X
MSA-specific trends				X	X	X	X
Fully-interacted with race					X	X	X
Sample:							
Full sample	X	X	X	X	X		
MSAs only						X	
BTB-adopting only							X

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

Table A-4: Effects on employment for men ages 25-34 with no college degree (Dropping AL-NE)

	Drop AL	Drop AK	Drop AZ	Drop AR	Drop CA	Drop CO	Drop CT
BTB	-0.0025 (0.0061)	-0.0026 (0.0061)	-0.0028 (0.0061)	-0.0025 (0.0061)	-0.0016 (0.0067)	-0.0014 (0.0064)	-0.0030 (0.0063)
BTB * Black	-0.0314* (0.0174)	-0.0307* (0.0173)	-0.0320* (0.0174)	-0.0325* (0.0174)	-0.0290 (0.0184)	-0.0309* (0.0179)	-0.0306* (0.0179)
BTB * Hispanic	-0.0209 (0.0154)	-0.0207 (0.0156)	-0.0211 (0.0158)	-0.0210 (0.0154)	-0.0222 (0.0150)	-0.0330** (0.0142)	-0.0183 (0.0164)
Total effect of BTB on:							
Black men	-0.0339**	-0.0333**	-0.0348**	-0.0350**	-0.0306*	-0.0323**	-0.0336**
Hispanic men	-0.0234*	-0.0233*	-0.0239*	-0.0235*	-0.0238*	-0.0344***	-0.0213
N	496,481	496,711	496,576	495,676	467,052	492,347	495,400

	Drop DE	Drop DC	Drop FL	Drop GA	Drop HI	Drop ID	Drop IL
BTB	-0.0030 (0.0063)	-0.0033 (0.0061)	-0.0034 (0.0062)	-0.0032 (0.0063)	-0.0027 (0.0061)	-0.0029 (0.0061)	-0.0040 (0.0063)
BTB * Black	-0.0336* (0.0177)	-0.0246 (0.0157)	-0.0352** (0.0172)	-0.0296* (0.0177)	-0.0316* (0.0173)	-0.0311* (0.0174)	-0.0284 (0.0194)
BTB * Hispanic	-0.0226 (0.0158)	-0.0195 (0.0154)	-0.0195 (0.0156)	-0.0224 (0.0158)	-0.0225 (0.0161)	-0.0204 (0.0154)	-0.0204 (0.0166)
Total effect of BTB on:							
Black men	-0.0366**	-0.0279**	-0.0386**	-0.0328**	-0.0343**	-0.0340**	-0.0324*
Hispanic men	-0.0256*	-0.0228*	-0.0229*	-0.0256*	-0.0252*	-0.0233*	-0.0244*
N	495,456	499,741	485,197	492,170	501,213	496,261	488,433

	Drop IN	Drop IA	Drop KS	Drop KY	Drop LA	Drop ME	Drop MD
BTB	-0.0022 (0.0061)	-0.0033 (0.0061)	-0.0027 (0.0062)	-0.0032 (0.0061)	-0.0028 (0.0061)	-0.0030 (0.0061)	-0.0030 (0.0063)
BTB * Black	-0.0308* (0.0175)	-0.0307* (0.0173)	-0.0329* (0.0174)	-0.0306* (0.0175)	-0.0322* (0.0178)	-0.0308* (0.0173)	-0.0354* (0.0198)
BTB * Hispanic	-0.0205 (0.0154)	-0.0205 (0.0155)	-0.0192 (0.0154)	-0.0199 (0.0154)	-0.0196 (0.0153)	-0.0204 (0.0154)	-0.0212 (0.0158)
Total effect of BTB on:							
Black men	-0.0330**	-0.0340**	-0.0356**	-0.0338**	-0.0350**	-0.0338**	-0.0384**
Hispanic men	-0.0227*	-0.0238*	-0.0219*	-0.0231*	-0.0224*	-0.0234*	-0.0242*
N	493,901	493,365	495,607	494,402	497,026	493,945	494,161

	Drop MA	Drop MI	Drop MN	Drop MS	Drop MO	Drop MT	Drop NE
BTB	-0.0020 (0.0062)	-0.0051 (0.0056)	-0.0049 (0.0060)	-0.0036 (0.0060)	-0.0026 (0.0062)	-0.0030 (0.0061)	-0.0033 (0.0063)
BTB * Black	-0.0325* (0.0174)	-0.0272 (0.0177)	-0.0277 (0.0179)	-0.0290 (0.0174)	-0.0294* (0.0172)	-0.0309* (0.0173)	-0.0306* (0.0174)
BTB * Hispanic	-0.0218 (0.0161)	-0.0187 (0.0156)	-0.0179 (0.0154)	-0.0196 (0.0154)	-0.0205 (0.0155)	-0.0192 (0.0151)	-0.0194 (0.0157)
Total effect of BTB on:							
Black men	-0.0345**	-0.0323**	-0.0326**	-0.0326**	-0.0320**	-0.0339**	-0.0339**
Hispanic men	-0.0238*	-0.0238*	-0.0228*	-0.0232*	-0.0231*	-0.0222*	-0.0227*
N	497,858	490,480	492,456	497,803	492,912	497,540	495,664

* p < 0.10, ** p < 0.05, *** p < 0.01. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

Table A-5: Effects on employment for men ages 25-34 with no college degree (Dropping NV-WY)

	Drop NV	Drop NH	Drop NJ	Drop NM	Drop NY	Drop NC	Drop ND
BTB	-0.0028 (0.0061)	-0.0041 (0.0061)	0.0009 (0.0059)	-0.0021 (0.0061)	-0.0013 (0.0062)	-0.0031 (0.0061)	-0.0030 (0.0062)
BTB * Black	-0.0307* (0.0175)	-0.0294* (0.0173)	-0.0350* (0.0195)	-0.0322* (0.0174)	-0.0337* (0.0191)	-0.0315* (0.0179)	-0.0312* (0.0174)
BTB * Hispanic	-0.0196 (0.0162)	-0.0201 (0.0155)	-0.0348* (0.0177)	-0.0200 (0.0156)	-0.0268 (0.0167)	-0.0192 (0.0153)	-0.0204 (0.0154)
Total effect of BTB on:							
Black men	-0.0335**	-0.0335**	-0.0341**	-0.0343**	-0.0350**	-0.0346**	-0.0342**
Hispanic men	-0.0224	-0.0242*	-0.0339**	-0.0221*	-0.0281*	-0.0223*	-0.0234*
<i>N</i>	494,556	493,914	496,140	498,281	486,414	493,827	496,685

	Drop OH	Drop OK	Drop OR	Drop PA	Drop RI	Drop SC	Drop SD
BTB	-0.0024 (0.0065)	-0.0029 (0.0061)	-0.0009 (0.0060)	-0.0007 (0.0061)	-0.0031 (0.0064)	-0.0033 (0.0061)	-0.0028 (0.0061)
BTB * Black	-0.0335* (0.0179)	-0.0312* (0.0173)	-0.0337* (0.0174)	-0.0318* (0.0181)	-0.0343** (0.0176)	-0.0257 (0.0163)	-0.0311* (0.0173)
BTB * Hispanic	-0.0188 (0.0155)	-0.0204 (0.0154)	-0.0236 (0.0156)	-0.0276* (0.0151)	-0.0177 (0.0153)	-0.0203 (0.0154)	-0.0209 (0.0155)
Total effect of BTB on:							
Black men	-0.0359**	-0.0341**	-0.0346**	-0.0325**	-0.0374**	-0.0290**	-0.0339**
Hispanic men	-0.0212	-0.0233*	-0.0245*	-0.0283**	-0.0208	-0.0236*	-0.0237*
<i>N</i>	486,450	496,983	495,592	487,592	496,056	496,134	495,479

	Drop TN	Drop TX	Drop UT	Drop VT	Drop VA	Drop WA	Drop WV
BTB	-0.0028 (0.0061)	-0.0020 (0.0061)	-0.0025 (0.0061)	-0.0027 (0.0062)	-0.0009 (0.0060)	-0.0039 (0.0062)	-0.0033 (0.0061)
BTB * Black	-0.0325* (0.0176)	-0.0347* (0.0173)	-0.0315* (0.0174)	-0.0314* (0.0173)	-0.0417*** (0.0148)	-0.0311* (0.0175)	-0.0313* (0.0173)
BTB * Hispanic	-0.0206 (0.0154)	-0.0195 (0.0155)	-0.0203 (0.0155)	-0.0206 (0.0156)	-0.0212 (0.0156)	-0.0206 (0.0160)	-0.0201 (0.0154)
Total effect of BTB on:							
Black men	-0.0353**	-0.0367**	-0.0340**	-0.0341**	-0.0426***	-0.0350**	-0.0346**
Hispanic men	-0.0234*	-0.0215	-0.0228*	-0.0233*	-0.0221*	-0.0245*	-0.0234*
<i>N</i>	495,074	473,775	494,033	496,126	493,967	494,843	495,288

	Drop WI	Drop WY
BTB	-0.0027 (0.0063)	-0.0026 (0.0062)
BTB * Black	-0.0329* (0.0175)	-0.0319* (0.0174)
BTB * Hispanic	-0.0187 (0.0153)	-0.0185 (0.0155)
Total effect of BTB on:		
Black men	-0.0356**	-0.0345**
Hispanic men	-0.0214	-0.0211
<i>N</i>	493,532	494,375

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. Data source: CPS 2004-2014. Coefficients show the effect (in percentage points) of BTB on the probability of employment.

<i>EEOC Enforcement Guidance</i>	Number 915.002 Date 4/25/2012
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1. **SUBJECT:** Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.*
2. **PURPOSE:** The purpose of this Enforcement Guidance is to consolidate and update the U.S. Equal Employment Opportunity Commission's guidance documents regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*
3. **EFFECTIVE DATE:** Upon receipt.
4. **EXPIRATION DATE:** This Notice will remain in effect until rescinded or superseded.
5. **ORIGINATOR:** Office of Legal Counsel.

**Consideration of Arrest and Conviction Records in Employment Decisions Under
Title VII of the Civil Rights Act of 1964**

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I. Summary

- An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended.
- The Guidance builds on longstanding court decisions and existing guidance documents that the U.S. Equal Employment Opportunity Commission (Commission or EEOC) issued over twenty years ago.
- The Guidance focuses on employment discrimination based on race and national origin. The Introduction provides information about criminal records, employer practices, and Title VII.
- The Guidance discusses the differences between arrest and conviction records.
 - The fact of an arrest does not establish that criminal conduct has occurred, and an exclusion based on an arrest, in itself, is not job related and consistent with business necessity. However, an employer may make an employment decision based on the conduct underlying an arrest if the conduct makes the individual unfit for the position in question.
 - In contrast, a conviction record will usually serve as sufficient evidence that a person engaged in particular conduct. In certain circumstances, however, there may be reasons for an employer not to rely on the conviction record alone when making an employment decision.
- The Guidance discusses disparate treatment and disparate impact analysis under Title VII.
 - A violation may occur when an employer treats criminal history information differently for different applicants or employees, based on their race or national origin (disparate treatment liability).
 - An employer's neutral policy (e.g., excluding applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title VII, and may violate the law if not job related and consistent with business necessity (disparate impact liability).
 - National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.

- Two circumstances in which the Commission believes employers will consistently meet the “job related and consistent with business necessity” defense are as follows:
 - The employer validates the criminal conduct exclusion for the position in question in light of the Uniform Guidelines on Employee Selection Procedures (if there is data or analysis about criminal conduct as related to subsequent work performance or behaviors); or
 - The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three factors identified by the court in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977)). The employer’s policy then provides an opportunity for an individualized assessment for those people identified by the screen, to determine if the policy as applied is job related and consistent with business necessity. (Although Title VII does not require individualized assessment in all circumstances, the use of a screen that does not include individualized assessment is more likely to violate Title VII).
- Compliance with other federal laws and/or regulations that conflict with Title VII is a defense to a charge of discrimination under Title VII.
- State and local laws or regulations are preempted by Title VII if they “purport[] to require or permit the doing of any act which would be an unlawful employment practice” under Title VII. 42 U.S.C. § 2000e-7.
- The Guidance concludes with best practices for employers.

II. Introduction

The EEOC enforces Title VII of the Civil Rights Act of 1964 (Title VII) which prohibits employment discrimination based on race, color, religion, sex, or national origin.¹ This Enforcement Guidance is issued as part of the Commission's efforts to eliminate unlawful discrimination in employment screening, for hiring or retention, by entities covered by Title VII, including private employers as well as federal, state, and local governments.²

In the last twenty years, there has been a significant increase in the number of Americans who have had contact³ with the criminal justice system⁴ and, concomitantly, a major increase in the number of people with criminal records in the working-age population.⁵ In 1991, only 1.8% of the adult population had served time in prison.⁶ After ten years, in 2001, the percentage rose to 2.7% (1 in 37 adults).⁷ By the end of 2007, 3.2% of all adults in the United States (1 in every 31) were under some form of correctional control involving probation, parole, prison, or jail.⁸ The Department of Justice's Bureau of Justice Statistics (DOJ/BJS) has concluded that, if incarceration rates do not decrease, approximately 6.6% of all persons born in the United States in 2001 will serve time in state or federal prison during their lifetimes.⁹

Arrest and incarceration rates are particularly high for African American and Hispanic men.¹⁰ African Americans and Hispanics¹¹ are arrested at a rate that is 2 to 3 times their proportion of the general population.¹² Assuming that current incarceration rates remain unchanged, about 1 in 17 White men are expected to serve time in prison during their lifetime;¹³ by contrast, this rate climbs to 1 in 6 for Hispanic men; and to 1 in 3 for African American men.¹⁴

The Commission, which has enforced Title VII since it became effective in 1965, has well-established guidance applying Title VII principles to employers' use of criminal records to screen for employment.¹⁵ This Enforcement Guidance builds on longstanding court decisions and policy documents that were issued over twenty years ago. In light of employers' increased access to criminal history information, case law analyzing Title VII requirements for criminal record exclusions, and other developments,¹⁶ the Commission has decided to update and consolidate in this document all of its prior policy statements about Title VII and the use of criminal records in employment decisions. Thus, this Enforcement Guidance will supersede the Commission's previous policy statements on this issue.

The Commission intends this document for use by employers considering the use of criminal records in their selection and retention processes; by individuals who suspect that they have been denied jobs or promotions, or have been discharged because of their criminal records; and by EEOC staff who are investigating discrimination charges involving the use of criminal records in employment decisions.

III. Background

The contextual framework for the Title VII analysis in this Enforcement Guidance includes how criminal record information is collected and recorded, why employers use criminal records, and the EEOC's interest in such criminal record screening.

A. Criminal History Records

Criminal history information can be obtained from a wide variety of sources including, but not limited to, the following:

- Court Records. Courthouses maintain records relating to criminal charges and convictions, including arraignments, trials, pleas, and other dispositions.¹⁷ Searching county courthouse records typically provides the most complete criminal history.¹⁸ Many county courthouse records must be retrieved on-site,¹⁹ but some courthouses offer their records online.²⁰ Information about federal crimes such as interstate drug trafficking, financial fraud, bank robbery, and crimes against the government may be found online in federal court records by searching the federal courts' Public Access to Court Electronic Records or Case Management/Electronic Case Files.²¹
- Law Enforcement and Corrections Agency Records. Law enforcement agencies such as state police agencies and corrections agencies may allow the public to access their records, including records of complaints, investigations, arrests, indictments, and periods of incarceration, probation, and parole.²² Each agency may differ with respect to how and where the records may be searched, and whether they are indexed.²³
- Registries or Watch Lists. Some government entities maintain publicly available lists of individuals who have been convicted of, or are suspected of having committed, a certain type of crime. Examples of such lists include state and federal sex offender registries and lists of individuals with outstanding warrants.²⁴
- State Criminal Record Repositories. Most states maintain their own centralized repositories of criminal records, which include records that are submitted by most or all of their criminal justice agencies, including their county courthouses.²⁵ States differ with respect to the types of records included in the repository,²⁶ the completeness of the records,²⁷ the frequency with which they are updated,²⁸ and whether they permit the public to search the records by name, by fingerprint, or both.²⁹ Some states permit employers (or third-parties acting on their behalf) to access these records, often for a fee.³⁰ Others limit access to certain types of records,³¹ and still others deny access altogether.³²
- The Interstate Identification Index (III). The Federal Bureau of Investigation (FBI) maintains the most comprehensive collection of criminal records in the nation, called the "Interstate Identification Index" (III). The III database compiles

records from each of the state repositories, as well as records from federal and international criminal justice agencies.³³

The FBI's III database may be accessed for employment purposes by:

- the federal government;³⁴
- employers in certain industries that are regulated by the federal government, such as “the banking, nursing home, securities, nuclear energy, and private security guard industries; as well as required security screenings by federal agencies of airport workers, HAZMAT truck drivers and other transportation workers”;³⁵ and
- employers in certain industries “that the state has sought to regulate, such as persons employed as civil servants, day care, school, or nursing home workers, taxi drivers, private security guards, or members of regulated professions.”³⁶

Recent studies have found that a significant number of state and federal criminal record databases include incomplete criminal records.

- A 2011 study by the DOJ/BJA reported that, as of 2010, many state criminal history record repositories still had not recorded the final dispositions for a significant number of arrests.³⁷
- A 2006 study by the DOJ/BJA found that only 50% of arrest records in the FBI's III database were associated with a final disposition.³⁸

Additionally, reports have documented that criminal records may be inaccurate.

- One report found that even if public access to criminal records has been restricted by a court order to seal and/or expunge such records, this does not guarantee that private companies also will purge the information from their systems or that the event will be erased from media archives.³⁹
- Another report found that criminal background checks may produce inaccurate results because criminal records may lack “unique” information or because of “misspellings, clerical errors or intentionally inaccurate identification information provided by search subjects who wish to avoid discovery of their prior criminal activities.”⁴⁰

Employers performing background checks to screen applicants or employees may attempt to search these governmental sources themselves or conduct a simple Internet search, but they often rely on third-party background screening businesses.⁴¹ Businesses that sell criminal history information to employers are “consumer reporting agencies” (CRAs)⁴² if they provide the information in “consumer reports”⁴³ under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (FCRA). Under FCRA, a CRA generally may not report records of arrests that did not result in entry of a judgment of conviction, where the arrests occurred more than seven years ago.⁴⁴

However, they may report convictions indefinitely.⁴⁵

CRA's often maintain their own proprietary databases that compile information from various sources, such as those described above, depending on the extent to which the business has purchased or otherwise obtained access to data.⁴⁶ Such databases vary with respect to the geographic area covered, the type of information included (e.g., information about arrests, convictions, prison terms, or specialized information for a subset of employers such as information about workplace theft or shoplifting cases for retail employers⁴⁷), the sources of information used (e.g., county databases, law enforcement agency records, sex offender registries), and the frequency with which they are updated. They also may be missing certain types of disposition information, such as updated convictions, sealing or expungement orders, or orders for entry into a diversion program.⁴⁸

B. Employers' Use of Criminal History Information

In one survey, a total of 92% of responding employers stated that they subjected all or some of their job candidates to criminal background checks.⁴⁹ Employers have reported that their use of criminal history information is related to ongoing efforts to combat theft and fraud,⁵⁰ as well as heightened concerns about workplace violence⁵¹ and potential liability for negligent hiring.⁵² Employers also cite federal laws as well as state and local laws⁵³ as reasons for using criminal background checks.

C. The EEOC's Interest in Employers' Use of Criminal Records in Employment Screening

The EEOC enforces Title VII, which prohibits employment discrimination based on race, color, religion, sex, or national origin. Having a criminal record is not listed as a protected basis in Title VII. Therefore, whether a covered employer's reliance on a criminal record to deny employment violates Title VII depends on whether it is part of a claim of employment discrimination based on race, color, religion, sex, or national origin. Title VII liability for employment discrimination is determined using two analytic frameworks: "disparate treatment" and "disparate impact." Disparate treatment is discussed in Section IV and disparate impact is discussed in Section V.

IV. Disparate Treatment Discrimination and Criminal Records

A covered employer is liable for violating Title VII when the plaintiff demonstrates that it treated him differently because of his race, national origin, or another protected basis.⁵⁴ For example, there is Title VII disparate treatment liability where the evidence shows that a covered employer rejected an African American applicant based on his criminal record but hired a similarly situated White applicant with a comparable criminal record.⁵⁵

Example 1: Disparate Treatment Based on Race. John, who is White, and Robert, who is African American, are both recent graduates of State University. They have similar educational backgrounds, skills, and work experience. They each pled guilty to charges of possessing and

distributing marijuana as high school students, and neither of them had any subsequent contact with the criminal justice system.

After college, they both apply for employment with Office Jobs, Inc., which, after short intake interviews, obtains their consent to conduct a background check. Based on the outcome of the background check, which reveals their drug convictions, an Office Jobs, Inc., representative decides not to refer Robert for a follow-up interview. The representative remarked to a co-worker that Office Jobs, Inc., cannot afford to refer “these drug dealer types” to client companies. However, the same representative refers John for an interview, asserting that John’s youth at the time of the conviction and his subsequent lack of contact with the criminal justice system make the conviction unimportant. Office Jobs, Inc., has treated John and Robert differently based on race, in violation of Title VII.

Title VII prohibits “not only decisions driven by racial [or ethnic] animosity, but also decisions infected by stereotyped thinking”⁵⁶ Thus, an employer’s decision to reject a job applicant based on racial or ethnic stereotypes about criminality—rather than qualifications and suitability for the position—is unlawful disparate treatment that violates Title VII.⁵⁷

Example 2: Disparate Treatment Based on National Origin. Tad, who is White, and Nelson, who is Latino, are both recent high school graduates with grade point averages above 4.0 and college plans. While Nelson has successfully worked full-time for a landscaping company during the summers, Tad only held occasional lawn-mowing and camp-counselor jobs. In an interview for a research job with Meaningful and Paid Internships, Inc. (MPII), Tad discloses that he pled guilty to a felony at age 16 for accessing his school’s computer system over the course of several months without authorization and changing his classmates’ grades. Nelson, in an interview with MPII, emphasizes his successful prior work experience, from which he has good references, but also discloses that, at age 16, he pled guilty to breaking and entering into his high school as part of a class prank that caused little damage to school property. Neither Tad nor Nelson had subsequent contact with the criminal justice system.

The hiring manager at MPII invites Tad for a second interview, despite his record of criminal conduct. However, the same hiring manager sends Nelson a rejection notice, saying to a colleague that Nelson is only qualified to do manual labor and, moreover, that he has a criminal record. In light of the evidence showing that Nelson’s and Tad’s educational backgrounds are similar, that Nelson’s work experience is more extensive, and that Tad’s criminal conduct is more indicative of untrustworthiness, MPII has failed to state a legitimate, nondiscriminatory reason for rejecting Nelson. If Nelson filed a Title VII charge alleging disparate treatment based on national origin and the EEOC’s investigation

confirmed these facts, the EEOC would find reasonable cause to believe that discrimination occurred.

There are several kinds of evidence that may be used to establish that race, national origin, or other protected characteristics motivated an employer's use of criminal records in a selection decision, including, but not limited to:

- Biased statements. Comments by the employer or decisionmaker that are derogatory with respect to the charging party's protected group, or that express group-related stereotypes about criminality, might be evidence that such biases affected the evaluation of the applicant's or employee's criminal record.
- Inconsistencies in the hiring process. Evidence that the employer requested criminal history information more often for individuals with certain racial or ethnic backgrounds, or gave Whites but not racial minorities the opportunity to explain their criminal history, would support a showing of disparate treatment.
- Similarly situated comparators (individuals who are similar to the charging party in relevant respects, except for membership in the protected group). Comparators may include people in similar positions, former employees, and people chosen for a position over the charging party. The fact that a charging party was treated differently than individuals who are not in the charging party's protected group by, for example, being subjected to more or different criminal background checks or to different standards for evaluating criminal history, would be evidence of disparate treatment.
- Employment testing. Matched-pair testing may reveal that candidates are being treated differently because of a protected status.⁵⁸
- Statistical evidence. Statistical analysis derived from an examination of the employer's applicant data, workforce data, and/or third party criminal background history data may help to determine if the employer counts criminal history information more heavily against members of a protected group.

V. Disparate Impact Discrimination and Criminal Records

A covered employer is liable for violating Title VII when the plaintiff demonstrates that the employer's neutral policy or practice has the effect of disproportionately screening out a Title VII-protected group and the employer fails to demonstrate that the policy or practice is job related for the position in question and consistent with business necessity.⁵⁹

In its 1971 *Griggs v. Duke Power Company* decision, the Supreme Court first recognized that Title VII permits disparate impact claims.⁶⁰ The *Griggs* Court explained that "[Title VII] proscribes . . . practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude [African Americans] cannot be shown to be related to job performance, the practice is prohibited."⁶¹ In 1991,

Congress amended Title VII to codify this analysis of discrimination and its burdens of proof.⁶² Title VII, as amended, states:

An unlawful employment practice based on disparate impact is established . . . if a complaining party demonstrates that an employer uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity. . . .⁶³

With respect to criminal records, there is Title VII disparate impact liability where the evidence shows that a covered employer's criminal record screening policy or practice disproportionately screens out a Title VII-protected group and the employer does not demonstrate that the policy or practice is job related for the positions in question and consistent with business necessity.

A. Determining Disparate Impact of Policies or Practices that Screen Individuals Based on Records of Criminal Conduct

1. Identifying the Policy or Practice

The first step in disparate impact analysis is to identify the particular policy or practice that causes the unlawful disparate impact. For criminal conduct exclusions, relevant information includes the text of the policy or practice, associated documentation, and information about how the policy or practice was actually implemented. More specifically, such information also includes which offenses or classes of offenses were reported to the employer (e.g., all felonies, all drug offenses); whether convictions (including sealed and/or expunged convictions), arrests, charges, or other criminal incidents were reported; how far back in time the reports reached (e.g., the last five, ten, or twenty years); and the jobs for which the criminal background screening was conducted.⁶⁴ Training or guidance documents used by the employer also are relevant, because they may specify which types of criminal history information to gather for particular jobs, how to gather the data, and how to evaluate the information after it is obtained.

2. Determining Disparate Impact

Nationally, African Americans and Hispanics are arrested in numbers disproportionate to their representation in the general population. In 2010, 28% of all arrests were of African Americans,⁶⁵ even though African Americans only comprised approximately 14% of the general population.⁶⁶ In 2008, Hispanics were arrested for federal drug charges at a rate of approximately three times their proportion of the general population.⁶⁷ Moreover, African Americans and Hispanics were more likely than Whites to be arrested, convicted, or sentenced for drug offenses even though their rate of drug use is similar to the rate of drug use for Whites.⁶⁸

African Americans and Hispanics also are incarcerated at rates disproportionate to their numbers in the general population. Based on national incarceration data, the U.S. Department of Justice estimated in 2001 that 1 out of every 17 White men (5.9% of the White men in the U.S.)

is expected to go to prison at some point during his lifetime, assuming that current incarceration rates remain unchanged.⁶⁹ This rate climbs to 1 in 6 (or 17.2%) for Hispanic men.⁷⁰ For African American men, the rate of expected incarceration rises to 1 in 3 (or 32.2%).⁷¹ Based on a state-by-state examination of incarceration rates in 2005, African Americans were incarcerated at a rate 5.6 times higher than Whites,⁷² and 7 states had a Black-to-White ratio of incarceration that was 10 to 1.⁷³ In 2010, Black men had an imprisonment rate that was nearly 7 times higher than White men and almost 3 times higher than Hispanic men.⁷⁴

National data, such as that cited above, supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to further investigate such Title VII disparate impact charges. During an EEOC investigation, the employer also has an opportunity to show, with relevant evidence, that its employment policy or practice does not cause a disparate impact on the protected group(s). For example, an employer may present regional or local data showing that African American and/or Hispanic men are not arrested or convicted at disproportionately higher rates in the employer's particular geographic area. An employer also may use its own applicant data to demonstrate that its policy or practice did not cause a disparate impact. The Commission will assess relevant evidence when making a determination of disparate impact, including applicant flow information maintained pursuant to the Uniform Guidelines on Employee Selection Procedures,⁷⁵ workforce data, criminal history background check data, demographic availability statistics, incarceration/conviction data, and/or relevant labor market statistics.⁷⁶

An employer's evidence of a racially balanced workforce will not be enough to disprove disparate impact. In *Connecticut v. Teal*, the Supreme Court held that a "bottom line" racial balance in the workforce does not preclude employees from establishing a prima facie case of disparate impact; nor does it provide employers with a defense.⁷⁷ The issue is whether the policy or practice deprives a disproportionate number of Title VII-protected individuals of employment opportunities.⁷⁸

Finally, in determining disparate impact, the Commission will assess the probative value of an employer's applicant data. As the Supreme Court stated in *Dothard v. Rawlinson*, an employer's "application process might itself not adequately reflect the actual potential applicant pool since otherwise qualified people might be discouraged from applying" because of an alleged discriminatory policy or practice.⁷⁹ Therefore, the Commission will closely consider whether an employer has a reputation in the community for excluding individuals with criminal records. Relevant evidence may come from ex-offender employment programs, individual testimony, employer statements, evidence of employer recruitment practices, or publicly posted notices, among other sources.⁸⁰ The Commission will determine the persuasiveness of such evidence on a case-by-case basis.

B. Job Related For the Position in Question and Consistent with Business Necessity

1. Generally

After the plaintiff in litigation establishes disparate impact, Title VII shifts the burdens of

production and persuasion to the employer to “demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.”⁸¹ In the legislative history of the 1991 Civil Rights Act, Congress referred to *Griggs* and its progeny such as *Albemarle Paper Company v. Moody*⁸² and *Dothard*⁸³ to explain how this standard should be construed.⁸⁴ The *Griggs* Court stated that the employer’s burden was to show that the policy or practice is one that “bear[s] a demonstrable relationship to successful performance of the jobs for which it was used” and “measures the person for the job and not the person in the abstract.”⁸⁵ In both *Albemarle*⁸⁶ and *Dothard*,⁸⁷ the Court emphasized the factual nature of the business necessity inquiry. The Court further stated in *Dothard* that the terms of the exclusionary policy must “be shown to be necessary to safe and efficient job performance.”⁸⁸

In a case involving a criminal record exclusion, the Eighth Circuit in its 1975 *Green v. Missouri Pacific Railroad* decision, held that it was discriminatory under Title VII for an employer to “follow[] the policy of disqualifying for employment any applicant with a conviction for any crime other than a minor traffic offense.”⁸⁹ The Eighth Circuit identified three factors (the “*Green* factors”) that were relevant to assessing whether an exclusion is job related for the position in question and consistent with business necessity:

- The nature and gravity of the offense or conduct;⁹⁰
- The time that has passed since the offense or conduct and/or completion of the sentence;⁹¹ and
- The nature of the job held or sought.⁹²

In 2007, the Third Circuit in *El v. Southeastern Pennsylvania Transportation Authority*⁹³ developed the statutory analysis in greater depth. Douglas El challenged SEPTA’s policy of excluding everyone ever convicted of a violent crime from the job of paratransit driver.⁹⁴ El, a 55 year-old African American paratransit driver-trainee, was terminated from employment when SEPTA learned of his conviction for second-degree murder 40 years earlier; the conviction involved a gang fight when he was 15 years old and was his only disqualifying offense under SEPTA’s policy.⁹⁵ The Third Circuit expressed “reservations” about a policy such as SEPTA’s (exclusion for all violent crimes, no matter how long ago they were committed) “in the abstract.”⁹⁶

Applying Supreme Court precedent, the *El* court observed that some level of risk is inevitable in all hiring, and that, “[i]n a broad sense, hiring policies . . . ultimately concern the management of risk.”⁹⁷ Recognizing that assessing such risk is at the heart of criminal record exclusions, the Third Circuit concluded that Title VII requires employers to justify criminal record exclusions by demonstrating that they “accurately distinguish between applicants [who] pose an unacceptable level of risk and those [who] do not.”⁹⁸

The Third Circuit affirmed summary judgment for SEPTA, but stated that the outcome of the case might have been different if Mr. El had, “for example, hired an expert who testified that there is a time at which a former criminal is no longer any more likely to recidivate than the average person, . . . [so] there would be a factual question for the jury to resolve.”⁹⁹ The Third Circuit reasoned, however, that the recidivism evidence presented by SEPTA’s experts, in

conjunction with the nature of the position at issue—paratransit driver-trainee with unsupervised access to vulnerable adults—required the employer to exercise the utmost care.¹⁰⁰

In the subsections below, the Commission discusses considerations that are relevant to assessing whether criminal record exclusion policies or practices are job related and consistent with business necessity. First, we emphasize that arrests and convictions are treated differently.

2. Arrests

The fact of an arrest does not establish that criminal conduct has occurred.¹⁰¹ Arrests are not proof of criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed.¹⁰² Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.¹⁰³

An arrest, however, may in some circumstances trigger an inquiry into whether the conduct underlying the arrest justifies an adverse employment action. Title VII calls for a fact-based analysis to determine if an exclusionary policy or practice is job related and consistent with business necessity. Therefore, an exclusion based on an arrest, in itself, is not job related and consistent with business necessity.

Another reason for employers not to rely on arrest records is that they may not report the final disposition of the arrest (e.g., not prosecuted, convicted, or acquitted). As documented in Section III.A., *supra*, the DOJ/BJIS reported that many arrest records in the FBI's III database and state criminal record repositories are not associated with final dispositions.¹⁰⁴ Arrest records also may include inaccuracies or may continue to be reported even if expunged or sealed.¹⁰⁵

Example 3: Arrest Record Is Not Grounds for Exclusion. Mervin and Karen, a middle-aged African American couple, are driving to church in a predominantly white town. An officer stops them and interrogates them about their destination. When Mervin becomes annoyed and comments that his offense is simply “driving while Black,” the officer arrests him for disorderly conduct. The prosecutor decides not to file charges against Mervin, but the arrest remains in the police department's database and is reported in a background check when Mervin applies with his employer of fifteen years for a promotion to an executive position. The employer's practice is to deny such promotions to individuals with arrest records, even without a conviction, because it views an arrest record as an indicator of untrustworthiness and irresponsibility. If Mervin filed a Title VII charge based on these facts, and disparate impact based on race were established, the EEOC would find reasonable cause to believe that his employer violated Title VII.

Although an arrest record standing alone may not be used to deny an employment opportunity, an employer may make an employment decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question. The conduct, not the arrest, is relevant for employment purposes.

Example 4: Employer's Inquiry into Conduct Underlying Arrest.

Andrew, a Latino man, worked as an assistant principal in Elementary School for several years. After several ten and eleven-year-old girls attending the school accused him of touching them inappropriately on the chest, Andrew was arrested and charged with several counts of endangering the welfare of children and sexual abuse. Elementary School has a policy that requires suspension or termination of any employee who the school believes engaged in conduct that impacts the health or safety of the students. After learning of the accusations, the school immediately places Andrew on unpaid administrative leave pending an investigation. In the course of its investigation, the school provides Andrew a chance to explain the events and circumstances that led to his arrest. Andrew denies the allegations, saying that he may have brushed up against the girls in the crowded hallways or lunchroom, but that he doesn't really remember the incidents and does not have regular contact with any of the girls. The school also talks with the girls, and several of them recount touching in crowded situations. The school does not find Andrew's explanation credible. Based on Andrew's conduct, the school terminates his employment pursuant to its policy.

Andrew challenges the policy as discriminatory under Title VII. He asserts that it has a disparate impact based on national origin and that his employer may not suspend or terminate him based solely on an arrest without a conviction because he is innocent until proven guilty. After confirming that an arrest policy would have a disparate impact based on national origin, the EEOC concludes that no discrimination occurred. The school's policy is linked to conduct that is relevant to the particular jobs at issue, and the exclusion is made based on descriptions of the underlying conduct, not the fact of the arrest. The Commission finds no reasonable cause to believe Title VII was violated.

3. Convictions

By contrast, a record of a conviction will usually serve as sufficient evidence that a person engaged in particular conduct, given the procedural safeguards associated with trials and guilty pleas.¹⁰⁶ However, there may be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged, or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor.¹⁰⁷

Some states require employers to wait until late in the selection process to ask about convictions.¹⁰⁸ The policy rationale is that an employer is more likely to objectively assess the relevance of an applicant's conviction if it becomes known when the employer is already knowledgeable about the applicant's qualifications and experience.¹⁰⁹ As a best practice, and consistent with applicable laws,¹¹⁰ the Commission recommends that employers not ask about

convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.

4. Determining Whether a Criminal Conduct Exclusion Is Job Related and Consistent with Business Necessity

To establish that a criminal conduct exclusion that has a disparate impact is job related and consistent with business necessity under Title VII, the employer needs to show that the policy operates to effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of a particular position.

Two circumstances in which the Commission believes employers will consistently meet the “job related and consistent with business necessity” defense are as follows:

- The employer validates the criminal conduct screen for the position in question per the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines) standards (if data about criminal conduct as related to subsequent work performance is available and such validation is possible);¹¹¹ or
- The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three *Green* factors), and then provides an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job related and consistent with business necessity.

The individualized assessment would consist of notice to the individual that he has been screened out because of a criminal conviction; an opportunity for the individual to demonstrate that the exclusion should not be applied due to his particular circumstances; and consideration by the employer as to whether the additional information provided by the individual warrants an exception to the exclusion and shows that the policy as applied is not job related and consistent with business necessity. *See* Section V.B.9, *infra* (examples of relevant considerations in individualized assessments).

Depending on the facts and circumstances, an employer may be able to justify a targeted criminal records screen solely under the *Green* factors. Such a screen would need to be narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question. Title VII thus does not necessarily require individualized assessment in all circumstances. However, the use of individualized assessments can help employers avoid Title VII liability by allowing them to consider more complete information on individual applicants or employees, as part of a policy that is job related and consistent with business necessity.

5. Validation

The Uniform Guidelines describe three different approaches to validating employment screens.¹¹² However, they recognize that “[t]here are circumstances in which a user cannot or

need not utilize” formal validation techniques and that in such circumstances an employer “should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact as set forth [in the following subsections].”¹¹³ Although there may be social science studies that assess whether convictions are linked to future behaviors, traits, or conduct with workplace ramifications,¹¹⁴ and thereby provide a framework for validating some employment exclusions, such studies are rare at the time of this drafting.

6. Detailed Discussion of the *Green* Factors and Criminal Conduct Screens

Absent a validation study that meets the Uniform Guidelines’ standards, the *Green* factors provide the starting point for analyzing how specific criminal conduct may be linked to particular positions. The three *Green* factors are:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense, conduct and/or completion of the sentence; and
- The nature of the job held or sought.

a. The Nature and Gravity of the Offense or Conduct

Careful consideration of the nature and gravity of the offense or conduct is the first step in determining whether a specific crime may be relevant to concerns about risks in a particular position. The nature of the offense or conduct may be assessed with reference to the harm caused by the crime (e.g., theft causes property loss). The legal elements of a crime also may be instructive. For example, a conviction for felony theft may involve deception, threat, or intimidation.¹¹⁵ With respect to the gravity of the crime, offenses identified as misdemeanors may be less severe than those identified as felonies.

b. The Time that Has Passed Since the Offense, Conduct and/or Completion of the Sentence

Employer policies typically specify the duration of a criminal conduct exclusion. While the *Green* court did not endorse a specific timeframe for criminal conduct exclusions, it did acknowledge that permanent exclusions from all employment based on any and all offenses were not consistent with the business necessity standard.¹¹⁶ Subsequently, in *El*, the court noted that the plaintiff might have survived summary judgment if he had presented evidence that “there is a time at which a former criminal is no longer any more likely to recidivate than the average person”¹¹⁷ Thus, the court recognized that the amount of time that had passed since the plaintiff’s criminal conduct occurred was probative of the risk he posed in the position in question.

Whether the duration of an exclusion will be sufficiently tailored to satisfy the business necessity standard will depend on the particular facts and circumstances of each case. Relevant and available information to make this assessment includes, for example, studies demonstrating how much the risk of recidivism declines over a specified time.¹¹⁸

c. The Nature of the Job Held or Sought

Finally, it is important to identify the particular job(s) subject to the exclusion. While a factual inquiry may begin with identifying the job title, it also encompasses the nature of the job's duties (e.g., data entry, lifting boxes), identification of the job's essential functions, the circumstances under which the job is performed (e.g., the level of supervision, oversight, and interaction with co-workers or vulnerable individuals), and the environment in which the job's duties are performed (e.g., out of doors, in a warehouse, in a private home). Linking the criminal conduct to the essential functions of the position in question may assist an employer in demonstrating that its policy or practice is job related and consistent with business necessity because it "bear[s] a demonstrable relationship to successful performance of the jobs for which it was used."¹¹⁹

7. Examples of Criminal Conduct Exclusions that Do Not Consider the *Green* Factors

A policy or practice requiring an automatic, across-the-board exclusion from all employment opportunities because of any criminal conduct is inconsistent with the *Green* factors because it does not focus on the dangers of particular crimes and the risks in particular positions. As the court recognized in *Green*, "[w]e cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed."¹²⁰

Example 5: Exclusion Is Not Job Related and Consistent with Business Necessity. The National Equipment Rental Company uses the Internet to accept job applications for all positions. All applicants must answer certain questions before they are permitted to submit their online application, including "have you ever been convicted of a crime?" If the applicant answers "yes," the online application process automatically terminates, and the applicant sees a screen that simply says "Thank you for your interest. We cannot continue to process your application at this time."

The Company does not have a record of the reasons why it adopted this exclusion, and it does not have information to show that convictions for all offenses render all applicants unacceptable risks in all of its jobs, which range from warehouse work, to delivery, to management positions. If a Title VII charge were filed based on these facts, and there was a disparate impact on a Title VII-protected basis, the EEOC would find reasonable cause to believe that the blanket exclusion was not job related and consistent with business necessity because the risks associated with all convictions are not pertinent to all of the Company's jobs.

Example 6: Exclusion Is Not Job Related and Consistent with Business Necessity. Leo, an African American man, has worked

successfully at PR Agency as an account executive for three years. After a change of ownership, the new owners adopt a policy under which it will not employ anyone with a conviction. The policy does not allow for any individualized assessment before exclusion. The new owners, who are highly respected in the industry, pride themselves on employing only the “best of the best” for every position. The owners assert that a quality workforce is a key driver of profitability.

Twenty years earlier, as a teenager, Leo pled guilty to a misdemeanor assault charge. During the intervening twenty years, Leo graduated from college and worked successfully in advertising and public relations without further contact with the criminal justice system. At PR Agency, all of Leo’s supervisors assessed him as a talented, reliable, and trustworthy employee, and he has never posed a risk to people or property at work. However, once the new ownership of PR Agency learns about Leo’s conviction record through a background check, it terminates his employment. It refuses to reconsider its decision despite Leo’s positive employment history at PR Agency.

Leo files a Title VII charge alleging that PR Agency’s conviction policy has a disparate impact based on race and is not job related for the position in question and consistent with business necessity. After confirming disparate impact, the EEOC considers PR Agency’s defense that it employs only the “best of the best” for every position, and that this necessitates excluding everyone with a conviction. PR Agency does not show that all convictions are indicative of risk or danger in all its jobs for all time, under the *Green* factors. Nor does PR Agency provide any factual support for its assertion that having a conviction is necessarily indicative of poor work or a lack of professionalism. The EEOC concludes that there is reasonable cause to believe that the Agency’s policy is not job related for the position in question and consistent with business necessity.¹²¹

8. Targeted Exclusions that Are Guided by the *Green* Factors

An employer policy or practice of excluding individuals from particular positions for specified criminal conduct within a defined time period, as guided by the *Green* factors, is a targeted exclusion. Targeted exclusions are tailored to the rationale for their adoption, in light of the particular criminal conduct and jobs involved, taking into consideration fact-based evidence, legal requirements, and/or relevant and available studies.

As discussed above in Section V.B.4, depending on the facts and circumstances, an employer may be able to justify a targeted criminal records screen solely under the *Green* factors. Such a screen would need to be narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question. Title VII thus does not necessarily require individualized assessment in all circumstances. However, the use of individualized assessments can help employers avoid Title VII liability by allowing them to consider more complete information on individual applicants or employees, as part of a policy that is job related and consistent with business necessity.

9. Individualized Assessment

Individualized assessment generally means that an employer informs the individual that he may be excluded because of past criminal conduct; provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and considers whether the individual's additional information shows that the policy as applied is not job related and consistent with business necessity.

The individual's showing may include information that he was not correctly identified in the criminal record, or that the record is otherwise inaccurate. Other relevant individualized evidence includes, for example:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison;¹²²
- Evidence that the individual performed the same type of work, post conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;¹²³
- Rehabilitation efforts, e.g., education/training;¹²⁴
- Employment or character references and any other information regarding fitness for the particular position;¹²⁵ and
- Whether the individual is bonded under a federal, state, or local bonding program.¹²⁶

If the individual does not respond to the employer's attempt to gather additional information about his background, the employer may make its employment decision without the information.

Example 7: Targeted Screen with Individualized Assessment Is Job Related and Consistent with Business Necessity. County Community Center rents meeting rooms to civic organizations and small businesses, party rooms to families and social groups, and athletic facilities to local recreational sports leagues. The County has a targeted rule prohibiting anyone with a conviction for theft crimes (e.g., burglary, robbery, larceny, identity theft) from working in a position with access to personal financial

information for at least four years after the conviction or release from incarceration. This rule was adopted by the County's Human Resources Department based on data from the County Corrections Department, national criminal data, and recent recidivism research for theft crimes. The Community Center also offers an opportunity for individuals identified for exclusion to provide information showing that the exclusion should not be applied to them.

Isaac, who is Hispanic, applies to the Community Center for a full-time position as an administrative assistant, which involves accepting credit card payments for room rentals, in addition to having unsupervised access to the personal belongings of people using the facilities. After conducting a background check, the County learns that Isaac pled guilty eighteen months earlier, at age twenty, to credit card fraud, and that he did not serve time in prison. Isaac confirms these facts, provides a reference from the restaurant where he now works on Saturday nights, and asks the County for a "second chance" to show that he is trustworthy. The County tells Isaac that it is still rejecting his employment application because his criminal conduct occurred eighteen months ago and is directly pertinent to the job in question. The information he provided did nothing to dispel the County's concerns.

Isaac challenges this rejection under Title VII, alleging that the policy has a disparate impact on Hispanics and is not job related and consistent with business necessity. After confirming disparate impact, the EEOC finds that this screen was carefully tailored to assess unacceptable risk in relevant positions, for a limited time period, consistent with the evidence, and that the policy avoided overbroad exclusions by allowing individuals an opportunity to explain special circumstances regarding their criminal conduct. Thus, even though the policy has a disparate impact on Hispanics, the EEOC does not find reasonable cause to believe that discrimination occurred because the policy is job related and consistent with business necessity.¹²⁷

Example 8: Targeted Exclusion Without Individualized Assessment Is Not Job Related and Consistent with Business Necessity. "Shred 4 You" employs over 100 people to pick up discarded files and sensitive materials from offices, transport the materials to a secure facility, and shred and recycle them. The owner of "Shred 4 You" sells the company to a competitor, known as "We Shred." Employees of "Shred 4 You" must reapply for employment with "We Shred" and undergo a background check. "We Shred" has a targeted criminal conduct exclusion policy that prohibits the employment of anyone who has been convicted of any crime related to theft or fraud in the past five years, and the policy does not provide for any individualized consideration. The company explains that its clients entrust it with handling sensitive and confidential information

and materials; therefore, it cannot risk employing people who pose an above-average risk of stealing information.

Jamie, who is African American, worked successfully for “Shred 4 You” for five years before the company changed ownership. Jamie applies for his old job, and “We Shred” reviews Jamie’s performance appraisals, which include high marks for his reliability, trustworthiness, and honesty. However, when “We Shred” does a background check, it finds that Jamie pled guilty to misdemeanor insurance fraud five years ago, because he exaggerated the costs of several home repairs after a winter storm. “We Shred” management informs Jamie that his guilty plea is evidence of criminal conduct and that his employment will be terminated. Jamie asks management to consider his reliable and honest performance in the same job at “Shred 4 You,” but “We Shred” refuses to do so. The employer’s conclusion that Jamie’s guilty plea demonstrates that he poses an elevated risk of dishonesty is not factually based given Jamie’s history of trustworthiness in the same job. After confirming disparate impact based on race (African American), the EEOC finds reasonable cause to believe that Title VII was violated because the targeted exclusion was not job related and consistent with business necessity based on these facts.

C. Less Discriminatory Alternatives

If an employer successfully demonstrates that its policy or practice is job related for the position in question and consistent with business necessity, a Title VII plaintiff may still prevail by demonstrating that there is a less discriminatory “alternative employment practice” that serves the employer’s legitimate goals as effectively as the challenged practice but that the employer refused to adopt.¹²⁸

VI. Positions Subject to Federal Prohibitions or Restrictions on Individuals with Records of Certain Criminal Conduct

In some industries, employers are subject to federal statutory and/or regulatory requirements that prohibit individuals with certain criminal records from holding particular positions or engaging in certain occupations. Compliance with federal laws and/or regulations is a defense to a charge of discrimination. However, the EEOC will continue to coordinate with other federal departments and agencies with the goal of maximizing federal regulatory consistency with respect to the use of criminal history information in employment decisions.¹²⁹

A. Hiring in Certain Industries

Federal laws and regulations govern the employment of individuals with specific convictions in certain industries or positions in both the private and public sectors. For example, federal law excludes an individual who was convicted in the previous ten years of specified crimes from working as a security screener or otherwise having unescorted access to the secure areas of an airport.¹³⁰ There are equivalent requirements for federal law enforcement officers,¹³¹

child care workers in federal agencies or facilities,¹³² bank employees,¹³³ and port workers,¹³⁴ among other positions.¹³⁵ Title VII does not preempt these federally imposed restrictions. However, if an employer decides to impose an exclusion that goes beyond the scope of a federally imposed restriction, the discretionary aspect of the policy would be subject to Title VII analysis.

Example 9: Exclusion Is Not Job Related and Consistent with Business Necessity. Your Bank has a rule prohibiting anyone with convictions for any type of financial or fraud-related crimes within the last twenty years from working in positions with access to customer financial information, even though the federal ban is ten years for individuals who are convicted of any criminal offense involving dishonesty, breach of trust, or money laundering from serving in such positions.

Sam, who is Latino, applies to Your Bank to work as a customer service representative. A background check reveals that Sam was convicted of a misdemeanor for misrepresenting his income on a loan application fifteen years earlier. Your Bank therefore rejects Sam, and he files a Title VII charge with the EEOC, alleging that the Bank's policy has a disparate impact based on national origin and is not job related and consistent with business necessity. Your Bank asserts that its policy does not cause a disparate impact and that, even if it does, it is job related for the position in question because customer service representatives have regular access to financial information and depositors must have "100% confidence" that their funds are safe. However, Your Bank does not offer evidence showing that there is an elevated likelihood of committing financial crimes for someone who has been crime-free for more than ten years. After establishing that the Bank's policy has a disparate impact based on national origin, the EEOC finds that the policy is not job related for the position in question and consistent with business necessity. The Bank's justification for adding ten years to the federally mandated exclusion is insufficient because it is only a generalized concern about security, without proof.

B. Obtaining Occupational Licenses

Title VII also does not preempt federal statutes and regulations that govern eligibility for occupational licenses and registrations. These restrictions cover diverse sectors of the economy including the transportation industry,¹³⁶ the financial industry,¹³⁷ and import/export activities,¹³⁸ among others.¹³⁹

C. Waiving or Appealing Federally Imposed Occupational Restrictions

Several federal statutes and regulations provide a mechanism for employers or individuals to appeal or apply for waivers of federally imposed occupational restrictions. For example, unless a bank receives prior written consent from the Federal Deposit Insurance

Corporation (FDIC), an individual convicted of a criminal offense involving dishonesty, breach of trust, money laundering, or another financially related crime may not work in, own, or control “an insured depository institution” (e.g., bank) for ten years under the Federal Deposit Insurance Act.¹⁴⁰ To obtain such FDIC consent, the insured institution must file an application for a waiver on behalf of the particular individual.¹⁴¹ Alternatively, if the insured institution does not apply for the waiver on the individual’s behalf, the individual may file a request directly with the FDIC for a waiver of the institution filing requirement, demonstrating “substantial good cause” to grant the waiver.¹⁴² If the FDIC grants the individual’s waiver request, the individual can then file an application directly with the FDIC for consent to work for the insured institution in question.¹⁴³ Once the institution, or the individual, submits the application, the FDIC’s criminal record waiver review process requires consideration of mitigating factors that are consistent with Title VII, including evidence of rehabilitation, and the nature and circumstances of the crime.¹⁴⁴

Additionally, port workers who are denied the Transportation Workers Identification Credential (TWIC) based on their conviction record may seek a waiver for certain permanently disqualifying offenses or interim disqualifying offenses, and also may file an individualized appeal from the Transportation Security Administration’s initial determination of threat assessment based on the conviction.¹⁴⁵ The Maritime Transportation Security Act, which requires all port workers to undergo a criminal background check to obtain a TWIC,¹⁴⁶ provides that individuals with convictions for offenses such as espionage, treason, murder, and a federal crime of terrorism are permanently disqualified from obtaining credentials, but those with convictions for firearms violations and distribution of controlled substances may be temporarily disqualified.¹⁴⁷ Most offenses related to dishonesty are only temporarily disqualifying.¹⁴⁸

Example 10: Consideration of Federally Imposed Occupational Restrictions. John Doe applies for a position as a truck driver for Truckers USA. John’s duties will involve transporting cargo to, from, and around ports, and Truckers USA requires all of its port truck drivers to have a TWIC. The Transportation Security Administration (TSA) conducts a criminal background check and may deny the credential to applicants who have permanently disqualifying criminal offenses in their background as defined by federal law. After conducting the background check for John Doe, TSA discovers that he was convicted nine years earlier for conspiracy to use weapons of mass destruction. TSA denies John a security card because this is a permanently disqualifying criminal offense under federal law.¹⁴⁹ John, who points out that he was a minor at the time of the conviction, requests a waiver by TSA because he had limited involvement and no direct knowledge of the underlying crime at the time of the offense. John explains that he helped a friend transport some chemical materials that the friend later tried to use to damage government property. TSA refuses to grant John’s waiver request because a conviction for conspiracy to use weapons of mass destruction is not subject to the TSA’s waiver procedures.¹⁵⁰ Based on this denial, Truckers USA rejects John’s application for the port truck driver position. Title VII does not override Truckers USA’s policy because the policy is consistent with another federal law.

While Title VII does not mandate that an employer seek such waivers, where an employer does seek waivers it must do so in a nondiscriminatory manner.

D. Security Clearances

The existence of a criminal record may result in the denial of a federal security clearance, which is a prerequisite for a variety of positions with the federal government and federal government contractors.¹⁵¹ A federal security clearance is used to ensure employees' trustworthiness, reliability, and loyalty before providing them with access to sensitive national security information.¹⁵² Under Title VII's national security exception, it is not unlawful for an employer to "fail or refuse to hire and employ" an individual because "such individual has not fulfilled or has ceased to fulfill" the federal security requirements.¹⁵³ This exception focuses on whether the position in question is, in fact, subject to national security requirements that are imposed by federal statute or Executive Order, and whether the adverse employment action actually resulted from the denial or revocation of a security clearance.¹⁵⁴ Procedural requirements related to security clearances must be followed without regard to an individual's race, color, religion, sex, or national origin.¹⁵⁵

E. Working for the Federal Government

Title VII provides that, with limited coverage exceptions, "[a]ll personnel actions affecting employees or applicants for employment . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin."¹⁵⁶ The principles discussed above in this Guidance apply in the federal employment context. In most circumstances, individuals with criminal records are not automatically barred from working for the federal government.¹⁵⁷ However, the federal government imposes criminal record restrictions on its workforce through "suitability" requirements for certain positions.¹⁵⁸ The federal government's Office of Personnel Management (OPM) defines suitability as "determinations based on a person's character or conduct that may have an impact on the integrity or efficiency of the service."¹⁵⁹ Under OPM's rules, agencies may bar individuals from federal employment for up to three years if they are found unsuitable based on criminal or dishonest conduct, among other factors.¹⁶⁰ OPM gives federal agencies the discretion to consider relevant mitigating criteria when deciding whether an individual is suitable for a federal position.¹⁶¹ These mitigating criteria, which are consistent with the three *Green* factors and also provide an individualized assessment of the applicant's background, allow consideration of: (1) the nature of the position for which the person is applying or in which the person is employed; (2) the nature and seriousness of the conduct; (3) the circumstances surrounding the conduct; (4) the recency of the conduct; (5) the age of the person involved at the time of the conduct; (6) contributing societal conditions; and (7) the absence or presence of rehabilitation or efforts toward rehabilitation.¹⁶² In general, OPM requires federal agencies and departments to consider hiring an individual with a criminal record if he is the best candidate for the position in question and can comply with relevant job requirements.¹⁶³ The EEOC continues to coordinate with OPM to achieve employer best practices in the federal sector.¹⁶⁴

VII. Positions Subject to State and Local Prohibitions or Restrictions on Individuals with Records of Certain Criminal Conduct

States and local jurisdictions also have laws and/or regulations that restrict or prohibit the employment of individuals with records of certain criminal conduct.¹⁶⁵ Unlike federal laws or regulations, however, state and local laws or regulations are preempted by Title VII if they “purport[] to require or permit the doing of any act which would be an unlawful employment practice” under Title VII.¹⁶⁶ Therefore, if an employer’s exclusionary policy or practice is *not* job related and consistent with business necessity, the fact that it was adopted to comply with a state or local law or regulation does not shield the employer from Title VII liability.¹⁶⁷

Example 11: State Law Exclusion Is Job Related and Consistent with Business Necessity. Elijah, who is African American, applies for a position as an office assistant at Pre-School, which is in a state that imposes criminal record restrictions on school employees. Pre-School, which employs twenty-five full- and part-time employees, uses all of its workers to help with the children. Pre-School performs a background check and learns that Elijah pled guilty to charges of indecent exposure two years ago. After being rejected for the position because of his conviction, Elijah files a Title VII disparate impact charge based on race to challenge Pre-School’s policy. The EEOC conducts an investigation and finds that the policy has a disparate impact and that the exclusion is job related for the position in question and consistent with business necessity because it addresses serious safety risks of employment in a position involving regular contact with children. As a result, the EEOC would not find reasonable cause to believe that discrimination occurred.

Example 12: State Law Exclusion Is Not Consistent with Title VII. County Y enforces a law that prohibits all individuals with a criminal conviction from working for it. Chris, an African American man, was convicted of felony welfare fraud fifteen years ago, and has not had subsequent contact with the criminal justice system. Chris applies to County Y for a job as an animal control officer trainee, a position that involves learning how to respond to citizen complaints and handle animals. The County rejects Chris’s application as soon as it learns that he has a felony conviction. Chris files a Title VII charge, and the EEOC investigates, finding disparate impact based on race and also that the exclusionary policy is not job related and consistent with business necessity. The County cannot justify rejecting everyone with any conviction from all jobs. Based on these facts, County Y’s law “purports to require or permit the doing of an[] act which would be an unlawful employment practice” under Title VII.

VIII. Employer Best Practices

The following are examples of best practices for employers who are considering criminal record information when making employment decisions.

General

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decisionmakers about Title VII and its prohibition on employment discrimination.

Developing a Policy

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
 - Identify essential job requirements and the actual circumstances under which the jobs are performed.
 - Determine the specific offenses that may demonstrate unfitness for performing such jobs.
 - Identify the criminal offenses based on all available evidence.
 - Determine the duration of exclusions for criminal conduct based on all available evidence.
 - Include an individualized assessment.
 - Record the justification for the policy and procedures.
 - Note and keep a record of consultations and research considered in crafting the policy and procedures.
- Train managers, hiring officials, and decisionmakers on how to implement the policy and procedures consistent with Title VII.

Questions about Criminal Records

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.

Confidentiality

- Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.

Approved by the Commission:

Chair Jacqueline A. Berrien

Date

ENDNOTES

¹ 42 U.S.C. § 2000e *et seq.* The EEOC also enforces other anti-discrimination laws including: Title I of the Americans with Disabilities Act of 1990, as amended (ADA), and Section 501 of the Rehabilitation Act, as amended, which prohibit employment discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended (ADEA), which prohibits discrimination on the basis of age 40 or above; Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits discrimination on the basis of genetic information; and the Equal Pay Act of 1963, as amended (EPA), which requires employers to pay male and female employees at the same establishment equal wages for equal work.

² All entities covered by Title VII are subject to this analysis. *See* 42 U.S.C. § 2000e-2 (anti-discrimination provisions); 42 U.S.C. § 2000e(b)–(e) (defining “employer,” “employment agency,” and “labor organization”); 42 U.S.C. § 2000e-16(a) (prohibiting discriminatory employment practices by federal departments and agencies). For purposes of this Guidance, the term “employer” is used in lieu of listing all Title VII-covered entities. The Commission considers other coverage questions that arise in particular charges involving, for example, joint employment or third party interference in *Compliance Manual Section 2: Threshold Issues*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, § 2-III B., *Covered Entities*, <http://www.eeoc.gov/policy/docs/threshold.html#2-III-B> (last visited April 23, 2012).

³ For the purposes of this Guidance, references to “contact” with the criminal justice system may include, for example, an arrest, charge, indictment, citation, conviction, incarceration, probation, or parole.

⁴ *See* THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974–2001, at 3 (2003), <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf> [hereinafter PREVALENCE OF IMPRISONMENT] (“Between 1974 and 2001 the number of former prisoners living in the United States more than doubled, from 1,603,000 to 4,299,000.”); SEAN ROSENMERKEL ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 2006 – STATISTICAL TABLES 1 (2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf> (reporting that between 1990 and 2006, there has been a 37% increase in the number of felony offenders sentenced in state courts); *see also* PEW CTR. ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 4 (2009), http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf [hereinafter ONE IN 31] (“During the past quarter-century, the number of prison and jail inmates has grown by 274 percent . . . [bringing] the total population in custody to 2.3 million. During the same period, the number under community supervision grew by a staggering 3,535,660 to a total of 5.1 million.”); PEW CTR. ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, at 3 (2008), http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf (“[M]ore than one in every 100 adults is now confined in an American jail or

prison.”); Robert Brame, Michael G. Turner, Raymond Paternoster, & Shawn D. Bushway, *Cumulative Prevalence of Arrest From Ages 8 to 23 in a National Sample*, 129 PEDIATRICS 21, 25, 26 (2012) (finding that approximately 1 out of 3 of all American youth will experience at least 1 arrest for a nontraffic offense by the age of 23).

⁵ See JOHN SCHMITT & KRIS WARNER, CTR. FOR ECON. & POLICY RESEARCH, EX-OFFENDERS AND THE LABOR MARKET 12 (2010), www.cepr.net/documents/publications/ex-offenders-2010-11.pdf (“In 2008, ex-prisoners were 2.9 to 3.2 percent of the total working-age population (excluding those currently in prison or jail) or about one in 33 working-age adults. Ex-felons were a larger share of the total working-age population: 6.6 to 7.4 percent, or about one in 15 working-age adults [not all felons serve prison terms].”); see *id.* at 3 (concluding that “in the absence of some reform of the criminal justice system, the share of ex-offenders in the working-age population will rise substantially in coming decades”).

⁶ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 4, Table 3.

⁷ *Id.*

⁸ ONE IN 31, *supra* note 4, at 5 (noting that when all of the individuals who are probationers, parolees, prisoners or jail inmates are added up, the total is more than 7.3 million adults; this is more than the populations of Chicago, Philadelphia, San Diego, and Dallas combined, and larger than the populations of 38 states and the District of Columbia).

⁹ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 7.

¹⁰ *Id.* at 5, Table 5; cf. PEW CTR. ON THE STATES, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY 6 (2010), http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653 (“Simply stated, incarceration in America is concentrated among African American men. While 1 in every 87 white males ages 18 to 64 is incarcerated and the number for similarly-aged Hispanic males is 1 in 36, for black men it is 1 in 12.”). Incarceration rates are even starker for 20-to-34-year-old men without a high school diploma or GED: 1 in 8 White males in this demographic group is incarcerated, compared to 1 in 14 Hispanic males, and 1 in 3 Black males. PEW CTR. ON THE STATES, *supra*, at 8, Figure 2.

¹¹ This document uses the terms “Black” and “African American,” and the terms “Hispanic” and “Latino,” interchangeably.

¹² See *infra* notes 65–67 (citing data for the arrest rates and population statistics for African Americans and Hispanics).

¹³ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 1.

¹⁴ *Id.* at 8.

¹⁵ See *Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (Feb. 4, 1987), <http://www.eeoc.gov/policy/docs/convict1.html>; *EEOC Policy Statement on the Use of Statistics in Charges Involving the Exclusion of Individuals with Conviction Records from Employment*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (July 29, 1987), <http://www.eeoc.gov/policy/docs/convict2.html>; *Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (Sept. 7, 1990), http://www.eeoc.gov/policy/docs/arrest_records.html; *Compliance Manual Section 15: Race & Color Discrimination*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, § 15-VI.B.2 (April 19, 2006), <http://www.eeoc.gov/policy/docs/race-color.pdf>. See also EEOC Decision No. 72-1497 (1972) (challenging a criminal record exclusion policy based on “serious crimes”); EEOC Decision No. 74-89 (1974) (challenging a policy where a felony conviction was considered an adverse factor that would lead to disqualification); EEOC Decision No. 78-03 (1977) (challenging an exclusion policy based on felony or misdemeanor convictions involving moral turpitude or the use of drugs); EEOC Decision No. 78-35 (1978) (concluding that an employee’s discharge was reasonable given his pattern of criminal behavior and the severity and recentness of his criminal conduct).

¹⁶ In 2011, U.S. Attorney General Eric Holder assembled a Cabinet-level interagency Reentry Council to support the federal government’s efforts to promote the successful reintegration of ex-offenders back into their communities. *National Reentry Resource Center – Federal Interagency Reentry Council*, <http://www.nationalreentryresourcecenter.org/reentry-council> (last visited April 23, 2012). As a part of the Council’s efforts, it has focused on removing barriers to employment for ex-offenders to reduce recidivism by publishing several fact sheets on employing individuals with criminal records. See, e.g., FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! ON FEDERAL HIRING POLICIES (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1083/Reentry_Council_Mythbuster_Fed_Employment.pdf; FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! ON HIRING/CRIMINAL RECORDS GUIDANCE (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry_Council_Mythbuster_Employment.pdf; FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! CRIMINAL HISTORIES AND EMPLOYMENT BACKGROUND CHECKS (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1176/Reentry_Council_Mythbuster_FCRA_Employment.pdf; FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! ON FEDERAL BONDING PROGRAM (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1061/Reentry_Council_Mythbuster_Federal_Bonding.pdf.

In addition to these federal efforts, several state law enforcement agencies have embraced initiatives and programs that encourage the employment of ex-offenders. For example, Texas’ Department of Criminal Justice has a Reentry and Integration Division and within that Division, a Reentry Task Force Workgroup. See *Reentry and Integration Division-Reentry Task Force*, TEX. DEP’T OF CRIMINAL JUSTICE, http://www.tdcj.state.tx.us/divisions/rid/rid_texas_reentry_task_force.html (last visited April 23, 2012). One of the Workgroups in this Task Force specifically focuses on identifying

employment opportunities for ex-offenders and barriers that affect ex-offenders' access to employment or vocational training programs. *Reentry and Integration Division – Reentry Task Force Workgroups*, TEX. DEP'T OF CRIMINAL JUSTICE, http://www.tdcj.state.tx.us/divisions/rid/r_workgroup/rid_workgroup_employment.html (last visited April 23, 2012). Similarly, Ohio's Department of Rehabilitation and Correction has an Offender Workforce Development Office that “works with departmental staff and correctional institutions within the Ohio Department of Rehabilitation and Correction to prepare offenders for employment and the job search process.” *Jobs for Ohio Offenders*, OHIO DEP'T OF REHAB. AND CORR. OFFENDER WORKFORCE DEV., <http://www.drc.ohio.gov/web/JOBOFFEN.HTM> (last updated Aug. 9, 2010). Law enforcement agencies in other states such as Indiana and Florida have also recognized the importance of encouraging ex-offender employment. *See, e.g., IDOC: Road to Re-Entry*, IND. DEP'T OF CORR., <http://www.in.gov/idoc/reentry/index.htm> (last visited April 23, 2012) (describing various services and programs that are available to ex-offenders to help them to obtain employment); FLA. DEP'T OF CORRS., *RECIDIVISM REDUCTION STRATEGIC PLAN: FISCAL YEAR 2009-2014*, at 11, 12 (2009), <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (identifying the lack of employment as one of the barriers to successful ex-offender reentry).

¹⁷ CARL R. ERNST & LES ROSEN, “NATIONAL” CRIMINAL HISTORY DATABASES 1 (2002), <http://www.brbbpub.com/articles/CriminalHistoryDB.pdf>.

¹⁸ LEXISNEXIS, *CRIMINAL BACKGROUND CHECKS: WHAT NON-PROFITS NEED TO KNOW ABOUT CRIMINAL RECORDS* 4 (2009), http://www.lexisnexis.com/risk/nonprofit/documents/Volunteer_Screening_White_Paper.pdf.

¹⁹ *Id.*

²⁰ ERNST & ROSEN, *supra* note 17, at 1; NAT'L ASS'N OF PROF'L BACKGROUND SCREENER, *CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT PURPOSES* 5, http://www.napbs.com/files/public/Learn_More/White_Papers/CriminalBackgroundChecks.pdf.

²¹ LEXISNEXIS, *supra* note 18, at 6. *See also* NAT'L ASS'N OF PROF'L BACKGROUND SCREENER, *supra* note 20 at 5.

²² ERNST & ROSEN, *supra* note 17, at 1.

²³ *Id.*

²⁴ *See* SEARCH, *THE NATIONAL TASK FORCE ON THE CRIMINAL BACKGROUNDING OF AMERICA* 3, 4 (2005), <http://www.search.org/files/pdf/ReportofNTFCBA.pdf>. Registries and watch lists can also include federal and international terrorist watch lists, and registries of individuals who are being investigated for certain types of crimes, such as gang-related crimes. *Id.* *See also* LEXISNEXIS, *supra* note 18, at 5 (reporting that “all 50 states currently have a publicly available sex offender registry”).

²⁵ *See* U.S. DEP'T OF JUSTICE, *THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY*

BACKGROUND CHECKS 4 (2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf [hereinafter BACKGROUND CHECKS]. *See also* ERNST & ROSEN, *supra* note 17, at 2.

²⁶ *See* NAT'L ASS'N OF PROF'L BACKGROUND SCREENER, *supra* note 20, at 5. *See also* LEXISNEXIS, *supra* note 18, at 5.

²⁷ LEXISNEXIS, *supra* note 18, at 5. *See also* AM. ASS'N OF COLLS. OF PHARMACY, REPORT OF THE AACP CRIMINAL BACKGROUND CHECK ADVISORY PANEL 6-7 (2006), <http://www.aacp.org/resources/academicpolicies/admissionguidelines/Documents/AACPBackgroundChkRpt.pdf>.

²⁸ AM. ASS'N OF COLLS. OF PHARMACY, *supra* note 27, at 6-7.

²⁹ BACKGROUND CHECKS, *supra* note 25, at 4.

³⁰ *Id.*

³¹ NAT'L ASS'N OF PROF'L BACKGROUND SCREENER, *supra* note 20, at 5.

³² BACKGROUND CHECKS, *supra* note 25, at 4.

³³ *Id.* at 3.

³⁴ *See id.* (“Non-criminal justice screening using FBI criminal history records is typically done by a government agency applying suitability criteria that have been established by law or the responsible agency.”).

³⁵ *Id.* at 5.

³⁶ *Id.* at 4.

³⁷ DENNIS A. DEBACCO & OWEN M. GREENSPAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2010, at 2 (2011), <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf> [hereinafter STATE CRIMINAL HISTORY].

³⁸ *See* BACKGROUND CHECKS, *supra* note 25, at 17.

³⁹ SEARCH, REPORT OF THE NATIONAL TASK FORCE ON THE COMMERCIAL SALE OF CRIMINAL JUSTICE RECORD INFORMATION 83 (2005), www.search.org/files/pdf/RNTFCSCJRI.pdf; *see also* Douglas Belkin, *More Job Seekers Scramble to Erase Their Criminal Past*, WALL ST. J., Nov. 11, 2009, at A1, available at <http://online.wsj.com/article/SB125789494126242343.html?KEYWORDS=Douglas+Belkin> (“Arrests that have been legally expunged may remain on databases that data-harvesting companies offer to prospective employers; such background companies are under no legal obligation to erase them.”).

If applicants deny the existence of expunged or sealed records, as they are permitted to do in several states, they may appear dishonest if such records are reported in a criminal background check. *See generally* Debbie A. Mukamal & Paul N. Samuels, *Statutory Limitations on Civil Rights of People with Criminal Records*, 30 *FORDHAM URB. L.J.* 1501, 1509–10 (2003) (noting that 29 of the 40 states that allow expungement/sealing of arrest records permit the subject of the record to deny its existence if asked about it on employment applications or similar forms, and 13 of the 16 states that allow the expungement/sealing of adult conviction records permit the subject of the record to deny its existence under similar circumstances).

⁴⁰ *See* SEARCH, INTERSTATE IDENTIFICATION NAME CHECK EFFICACY: REPORT OF THE NATIONAL TASK FORCE TO THE U.S. ATTORNEY GENERAL 21–22 (1999), www.search.org/files/pdf/III_Name_Check.pdf (“A so-called ‘name check’ is based not only on an individual’s name, but also on other personal identifiers such as sex, race, date of birth and Social Security Number. . . . [N]ame checks are known to produce inaccurate results as a consequence of identical or similar names and other identifiers.”); *id.* at 7 (finding that in a sample of 82,601 employment applicants, 4,562 of these individuals were *inaccurately* indicated by a “name check” to have criminal records, which represents approximately 5.5% of the overall sample).

⁴¹ BACKGROUND CHECKS, *supra* note 25, at 2.

⁴² A “consumer reporting agency” is defined by FCRA as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information *or other information* on consumers for the purposes of furnishing consumer reports to third parties” 15 U.S.C. § 1681a(f) (emphasis added); *see also* BACKGROUND CHECKS, *supra* note 25, at 43 (stating that the records that CRAs collect include “criminal history information, such as arrest and conviction information”).

⁴³ A “consumer report” is defined by FCRA as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, *character, general reputation, personal characteristics*, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for . . . employment purposes” 15 U.S.C. § 1681a(d)(1) (emphasis added).

⁴⁴ *See* 15 U.S.C. § 1681c(a)(2) (“[N]o consumer reporting agency may make any consumer report containing . . . records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.”). *But see id.* §1681c(b)(3) (stating that the reporting restrictions for arrest records do not apply to individuals who will earn “an annual salary which equals, or which may reasonably be expected to equal \$75,000 or more”).

⁴⁵ 15 U.S.C. § 1681c(a)(5) (“[N]o consumer reporting agency may make any consumer report containing . . . [a]ny other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.”).

⁴⁶ BACKGROUND CHECKS, *supra* note 25, at 2.

⁴⁷ See Adam Klein, *Written Testimony of Adam Klein*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/klein.cfm> (last visited April 23, 2012) (describing how “several data-collection agencies also market and sell a retail-theft contributory database that is used by prospective employers to screen applicants”). See also *Retail Theft Database, ESTEEM, Workplace Theft Contributory Database*, LEXISNEXIS, <http://www.lexisnexis.com/risk/solutions/retail-theft-contributory-database.aspx> (last visited April 23, 2012) (stating that their database has “[t]heft and shoplifting cases supplied by more than 75,000 business locations across the country”). These databases may contain inaccurate and/or misleading information about applicants and/or employees. See generally *Goode v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 2:11-CV-2950-JD, 2012 WL 975043 (E.D. Pa. Mar. 22, 2012) (unpublished).

⁴⁸ BACKGROUND CHECKS, *supra* note 25, at 2.

⁴⁹ SOC'Y FOR HUMAN RES. MGMT., BACKGROUND CHECKING: CONDUCTING CRIMINAL BACKGROUND CHECKS, slide 3 (Jan. 22, 2010), http://www.slideshare.net/shrm/background-check-criminal?from=share_email [hereinafter CONDUCTING CRIMINAL BACKGROUND CHECKS] (73% of the responding employers reported that they conducted criminal background checks on all of their job candidates, 19% reported that they conducted criminal background checks on selected job candidates, and a mere 7% reported that they did not conduct criminal background checks on any of their candidates). The survey excluded the “not sure” responses from its analysis, which may account for the 1% gap in the total number of employer responses. *Id.*

⁵⁰ CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 7 (39% of the surveyed employers reported that they conducted criminal background checks “[t]o reduce/prevent theft and embezzlement, other criminal activity”); see also Sarah E. Needleman, *Businesses Say Theft by Their Workers is Up*, WALL ST. J., Dec. 11, 2008, at B8, available at <http://online.wsj.com/article/SB122896381748896999.html>.

⁵¹ CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 7 (61% of the surveyed employers reported that they conducted criminal background checks “[to] ensure a safe work environment for employees”); see also ERIKA HARRELL, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, WORKPLACE VIOLENCE, 1993–2009, at 1 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/wv09.pdf> (reporting that in 2009, “[n]onfatal violence in the workplace was about 15% of all nonfatal violent crime against persons age 16 or older”). *But see id.* (noting that from “2002 to 2009, the rate of nonfatal workplace violence has declined by 35%, following a 62% decline in the rate from 1993 to 2002”). Studies indicate that most workplace violence is committed by individuals with no relationship to the business or its employees. See *id.* at 6 (reporting that between 2005 and 2009, strangers committed the majority of workplace violence against individuals (53% for males and 41% for females) while violence committed by co-workers accounted for a much smaller percentage (16.3% for males and 14.3% for females)); see also NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH, CTR. FOR DISEASE CONTROL & PREVENTION, WORKPLACE VIOLENCE PREVENTION STRATEGIES AND RESEARCH

NEEDS 4, Table 1 (2006), <http://www.cdc.gov/niosh/docs/2006-144/pdfs/2006-144.pdf> (reporting that approximately 85% of the workplace homicides examined were perpetrated in furtherance of a crime by persons with no relationship to the business or its employees; approximately 7% were perpetrated by employees or former employees, 5% were committed by persons with a personal relationship to an employee, and 3% were perpetrated by persons with a customer-client relationship to the business).

⁵² CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 7 (55% percent of the surveyed employers reported that they conducted criminal background checks “[t]o reduce legal liability for negligent hiring”). Employers have a common law duty to exercise reasonable care in hiring to avoid foreseeable risks of harm to employees, customers, and the public. If an employee engages in harmful misconduct on the job, and the employer has not exercised such care in selecting the employee, the employer may be subject to liability for negligent hiring. *See, e.g., Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313, 1318 (M.D. Fla. 2002) (“[N]egligent hiring occurs when . . . the employer knew or should have known of the employee’s unfitness, and the issue of liability primarily focuses upon the adequacy of the employer’s pre-employment investigation into the employee’s background.”).

⁵³ CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 4 (40% of the surveyed employers reported that they conducted criminal background checks for “[j]ob candidates for positions for which state law requires a background check (e.g., day care teachers, licensed medical practitioners, etc.)”); *see id.* at slide 7 (20% of the employers reported that they conducted criminal background checks “[t]o comply with the applicable State law requiring a background check (e.g., day care teachers, licensed medical practitioners, etc.) for a particular position”). The study did not report the exact percentage of employers that conducted criminal background checks to comply with applicable federal laws or regulations, but it did report that 25% of the employers conducted background checks for “[j]ob candidates for positions involving national defense or homeland security.” *Id.* at slide 4.

⁵⁴ *See* 42 U.S.C. § 2000e-2(a).

⁵⁵ Disparate treatment based on the race or national origin of job applicants with the same qualifications and criminal records has been documented. For example, a 2003 study demonstrated that White applicants with the same qualifications and criminal records as Black applicants were three times more likely to be invited for interviews than the Black applicants. *See* Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 958, Figure 6 (2003), www.princeton.edu/~pager/pager_ajs.pdf. Pager matched pairs of young Black and White men as “testers” for her study. The “testers” in Pager’s study were college students who applied for 350 low-skilled jobs advertised in Milwaukee-area classified advertisements, to test the degree to which a criminal record affects subsequent employment opportunities. The same study showed that White job applicants with a criminal record were called back for interviews more often than equally-qualified Black applicants who *did not have* a criminal record. *Id.* at 958. *See also* Devah Pager et al., *Sequencing Disadvantage: The Effects of Race and Criminal Background for Low Wage Job Seekers*, 623 ANNALS AM. ACAD. POL. & SOC. SCI., 199 (2009), www.princeton.edu/~pager/annals_sequencingdisadvantage.pdf (finding that among Black and

White testers with similar backgrounds and criminal records, “the negative effect of a criminal conviction is substantially larger for blacks than whites. . . . the magnitude of the criminal record penalty suffered by black applicants (60 percent) is roughly double the size of the penalty for whites with a record (30 percent)”); *see id.* at 200–201 (finding that personal contact plays an important role in mediating the effects of a criminal stigma in the hiring process, and that Black applicants are less often invited to interview, thereby having fewer opportunities to counteract the stigma by establishing rapport with the hiring official); Devah Pager, *Statement of Devah Pager, Professor of Sociology at Princeton University*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, <http://www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm> (last visited April 23, 2012) (discussing the results of the *Sequencing Disadvantage* study); DEVAH PAGER & BRUCE WESTERN, NYC COMMISSION ON HUMAN RIGHTS, RACE AT WORK, REALITIES OF RACE AND CRIMINAL RECORD IN THE NYC JOB MARKET 6, Figure 2 (2006), http://www.nyc.gov/html/cchr/pdf/race_report_web.pdf (finding that White testers *with* a felony conviction were called back 13% of the time, Hispanic testers *without* a criminal record were called back 14% of the time, and Black testers *without* a criminal record were called back 10% of the time).

⁵⁶ *Race & Color Discrimination*, *supra* note 15, § V.A.1.

⁵⁷ A 2006 study demonstrated that employers who are averse to hiring people with criminal records sometimes presumed, in the absence of evidence to the contrary, that African American men applying for jobs have disqualifying criminal records. Harry J. Holzer et al., *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J.L. & ECON. 451 (2006), <http://www.jstor.org/stable/pdfplus/10.1086/501089.pdf>; *see also* HARRY HOLZER ET AL., URBAN INST., EMPLOYER DEMAND FOR EX-OFFENDERS: RECENT EVIDENCE FROM LOS ANGELES 6–7 (2003), http://www.urban.org/UploadedPDF/410779_ExOffenders.pdf (describing the results of an employer survey where over 40% of the employers indicated that they would “probably not” or “definitely not” be willing to hire an applicant with a criminal record).

⁵⁸ The Commission has not done matched-pair testing to investigate alleged discriminatory employment practices. However, it has issued an Enforcement Guidance that discusses situations where individuals or organizations file charges on the basis of matched-pair testing, among other practices. *See generally* *Enforcement Guidance: Whether “Testers” Can File Charges and Litigate Claims of Employment Discrimination*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N (May 22, 1996), <http://www.eeoc.gov/policy/docs/testers.html>.

⁵⁹ 42 U.S.C. § 2000e-2(k)(1)(A)(i). If an employer successfully demonstrates that its policy or practice is job related for the position in question and consistent with business necessity, a Title VII plaintiff may still prevail by demonstrating that there is a less discriminatory “alternative employment practice” that serves the employer’s legitimate goals as effectively as the challenged practice but that the employer refused to adopt. *Id.* § 2000e-2(k)(1)(A)(ii).

⁶⁰ 401 U.S. 424, 431–32 (1971).

⁶¹ *Id.* at 431.

⁶² The Civil Rights Act of 1991, Pub. L. No. 102-166, § 105; *see also* *Lewis v. City of Chicago*, 130 S. Ct. 2191 (2010) (reaffirming disparate impact analysis); *Ricci v. DeStefano*, 557 U.S. 557 (2009) (same).

⁶³ 42 U.S.C. § 2000e-2(k)(1)(A)(i).

⁶⁴ The Commission presumes that employers use the information sought and obtained from its applicants and others in making an employment decision. *See* *Gregory v. Litton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal.1970). If an employer asserts that it did not factor the applicant's or employee's known criminal record into an employment decision, the EEOC will seek evidence supporting this assertion. For example, evidence that the employer has other employees from the same protected group with roughly comparable criminal records may support the conclusion that the employer did not use the applicant's or employee's criminal record to exclude him from employment.

⁶⁵ UNIF. CRIME REPORTING PROGRAM, FED. BUREAU OF INVESTIGATION, CRIME IN THE U.S. 2010, at Table 43a (2011), <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-43/10tbl43a.xls>.

⁶⁶ U.S. CENSUS BUREAU, THE BLACK POPULATION: 2010, at 3 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf> (reporting that in 2010, “14 percent of all people in the United States identified as Black, either alone, or in combination with one or more races”).

⁶⁷ Accurate data on the number of Hispanics arrested and convicted in the United States is limited. *See* NANCY E. WALKER ET AL., NAT'L COUNCIL OF LA RAZA, LOST OPPORTUNITIES: THE REALITY OF LATINOS IN THE U.S. CRIMINAL JUSTICE SYSTEM 17–18 (2004), <http://www.policyarchive.org/handle/10207/bitstreams/20279.pdf> (explaining why “[i]t is very difficult to find any information – let alone accurate information – on the number of Latinos arrested in the United States”). The Department of Justice's Bureau of Justice Statistics' (BJS) *Sourcebook of Criminal Justice Statistics* and the FBI's Crime Information Services Division do not provide data for arrests by ethnicity. *Id.* at 17. However, the U.S. Drug Enforcement Administration (DEA) disaggregates data by Hispanic and non-Hispanic ethnicity. *Id.* at 18. According to DOJ/BJS, from October 1, 2008 to September 30, 2009, 45.5% of drug arrests made by the DEA were of Hispanics or Latinos. MARK MOTIVANS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FEDERAL JUSTICE STATISTICS, 2009 – STATISTICAL TABLES, at 6, Table 1.4 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fjs09.pdf>. Accordingly, Hispanics were arrested for drug offenses by the DEA at a rate of three times their numbers in the general population. *See* U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010, at 3 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf> (reporting that in 2010, “there were 50.5 million Hispanics in the United States, composing 16 percent of the total population”). However, national statistics indicate that Hispanics have similar or lower drug usage rates compared to Whites. *See, e.g.*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS.

ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2010 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 21, Figure 2.10 (2011), <http://oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf> (reporting, for example, that the usage rate for Hispanics in 2009 was 7.9% compared to 8.8% for Whites).

⁶⁸ See, e.g., HUMAN RIGHTS WATCH, DECADES OF DISPARITY: DRUG ARRESTS AND RACE IN THE UNITED STATES 1 (2009), http://www.hrw.org/sites/default/files/reports/us0309web_1.pdf (noting that the "[t]he higher rates of black drug arrests do not reflect higher rates of black drug offending . . . blacks and whites engage in drug offenses - possession and sales - at roughly comparable rates"); SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2010 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 21 (2011), <http://oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf> (reporting that in 2010, the rates of illicit drug use in the United States among persons aged 12 or older were 10.7% for African Americans, 9.1% for Whites, and 8.1% for Hispanics); HARRY LEVINE & DEBORAH SMALL, N.Y. CIVIL LIBERTIES UNION, MARIJUANA ARREST CRUSADE: RACIAL BIAS AND POLICE POLICY IN NEW YORK CITY, 1997–2007, at 13–16 (2008), www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf (citing U.S. Government surveys showing that Whites use marijuana at higher rates than African Americans and Hispanics; however, the marijuana arrest rate of Hispanics is nearly three times the arrest rate of Whites, and the marijuana arrest rate of African Americans is five times the arrest rate of Whites).

⁶⁹ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 1, 8. Due to the nature of available data, the Commission is using incarceration data as a proxy for conviction data.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² MARC MAUER & RYAN S. KING, THE SENTENCING PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 10 (2007), www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Crd_stateratesofincbyraceandethnicity.pdf.

⁷³ *Id.*

⁷⁴ PAUL GUERINO ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2010, at 27, Table 14 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf> (reporting that as of December 31, 2010, Black men were imprisoned at a rate of 3,074 per 100,000 Black male residents, Hispanic men were imprisoned at a rate of 1,258 per 100,000 Hispanic male residents, and White men were imprisoned at a rate of 459 per 100,000 White male residents); *cf.* ONE IN 31, *supra* note 4, at 5 (“Black adults are four times as likely as whites and nearly 2.5 times as likely as Hispanics to be under correctional control. One in 11 black adults -- 9.2 percent -- was under correctional control [probation, parole, prison, or jail] at year end 2007.”).

⁷⁵ The Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. part 1607, provide that “[employers] should maintain and have available . . . information on [the] adverse impact of [their employment selection procedures].” 29 C.F.R. § 1607.15A. “Where [an employer] has not maintained [such records, the EEOC] may draw an inference of adverse impact of the selection process from the failure of [the employer] to maintain such data” *Id.* § 1607.4D.

⁷⁶ *See, e.g.,* *El v. SEPTA*, 418 F. Supp. 2d 659, 668–69 (E.D. Pa. 2005) (finding that the plaintiff established a prima facie case of disparate impact with evidence from the defendant’s personnel records and national data sources from the U.S. Bureau of Justice Statistics and the Statistical Abstract of the U.S.), *aff’d on other grounds*, 479 F.3d 232 (3d Cir. 2007); *Green v. Mo. Pac. R.R.*, 523 F.2d 1290, 1294–95 (8th Cir. 1975) (concluding that the defendant’s criminal record exclusion policy had a disparate impact based on race by evaluating local population statistics and applicant data), *appeal after remand*, 549 F.2d 1158, 1160 (8th Cir. 1977).

⁷⁷ 457 U.S. 440, 442 (1982).

⁷⁸ *Id.* at 453–54

⁷⁹ 433 U.S. 321, 330 (1977).

⁸⁰ *See, e.g.,* *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) (stating that “[a] consistently enforced discriminatory policy can surely deter job applications from those who are aware of it and are unwilling to subject themselves to the humiliation of explicit and certain rejection”).

⁸¹ 42 U.S.C. § 2000e-2(k)(1)(A)(i). *See* *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). *See also* 42 U.S.C. § 2000e(m) (defining the term “demonstrates” to mean “meets the burdens of production and persuasion”).

⁸² 422 U.S. 405 (1975).

⁸³ 433 U.S. 321 (1977).

⁸⁴ 137 CONG. REC. 15273 (1991) (statement of Sen. Danforth) (“[T]he terms ‘business necessity’ and ‘job related’ are intended to reflect the concepts enunciated by the Supreme Court in *Griggs v. Duke Power Co.*, and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio.*” (citations omitted)). Section 105(b) of the Civil Rights Act of 1991 provides that only the interpretive memorandum read by Senator Danforth in the Congressional Record may be considered legislative history or relied upon in construing or applying the business necessity standard.

⁸⁵ 401 U.S. at 431, 436.

⁸⁶ 422 U.S. at 430–31 (endorsing the EEOC’s position that discriminatory tests are impermissible unless shown, by professionally acceptable methods, to predict or correlate with “‘important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated’” (quoting 29 C.F.R. § 1607.4(c))).

⁸⁷ 433 U.S. at 331–32 (concluding that using height and weight as proxies for strength did not satisfy the business necessity defense because the employer failed to establish a correlation between height and weight and the necessary strength, and also did not specify the amount of strength necessary to perform the job safely and efficiently).

⁸⁸ *Id.* at 331 n.14.

⁸⁹ 523 F.2d 1290, 1293 (8th Cir. 1975). “In response to a question on an application form, Green [a 29-year-old African American man] disclosed that he had been convicted in December 1967 for refusing military induction. He stated that he had served 21 months in prison until paroled on July 24, 1970.” *Id.* at 1292–93.

⁹⁰ *Green v. Mo. Pac. R.R.*, 549 F.2d 1158, 1160 (8th Cir. 1977) (upholding the district court’s injunction prohibiting the employer from using an applicant’s conviction record as an absolute bar to employment but allowing it to consider a prior criminal record as a factor in making individual hiring decisions, as long as the defendant took these three factors into account).

⁹¹ *Id.* (referring to completion of the sentence rather than completion of parole).

⁹² *Id.*

⁹³ 479 F.3d 232 (3d Cir. 2007).

⁹⁴ *Id.* at 235.

⁹⁵ *Id.* at 235, 236.

⁹⁶ *Id.* at 235.

⁹⁷ *Id.* at 244.

⁹⁸ *Id.* at 244–45.

⁹⁹ *Id.* at 247. *Cf.* Shawn Bushway et al., *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?*, 49 *CRIMINOLOGY* 27, 52 (2011) [hereinafter *The Predictive Value of Criminal Background Checks*] (“Given the results of the current as well as previous [recidivism] studies, the 40-year period put forward in *El v. SEPTA* (2007) . . . seems too old of a score to be still in need of settlement.”).

¹⁰⁰ *El*, 479 F.3d at 248.

¹⁰¹ Some states have enacted laws to limit employer inquiries concerning all or some arrest records. *See* BACKGROUND CHECKS, *supra* note 25, at 48–49. At least 13 states have statutes explicitly prohibiting arrest record inquiries and/or dissemination subject to certain exceptions. *See, e.g.*, Alaska (ALASKA STAT. § 12.62.160(b)(8)); Arkansas (ARK. CODE ANN. § 12-12-1009(c)); California (CAL. LAB. CODE § 432.7(a)); Connecticut (CONN. GEN. STAT. § 46a-80(e)); Illinois (775 ILL. COMP. STAT. § 5/2-103(A)) (dealing with arrest records that have been ordered expunged, sealed, or impounded); Massachusetts (MASS. GEN. LAWS ch. 151B § 4(9)); Michigan (MICH COMP. LAWS § 37.2205a(1) (applying to misdemeanor arrests only)); Nebraska (NEB. REV. STAT. § 29-3523(2)) (ordering no dissemination of arrest records under certain conditions and specified time periods)); New York (N.Y. EXEC. LAW § 296(16)); North Dakota (N.D. CENT. CODE § 12-60-16.6(2)); Pennsylvania (18 PA. CONS. STAT. § 9121(b)(2)); Rhode Island (R.I. GEN. LAWS § 28-5-7(7)), and Wisconsin (WIS. STAT. §§ 111.321, 111.335a).

¹⁰² *See* United States v. Armstrong, 517 U.S. 456, 464 (1996) (discussing federal prosecutors’ broad discretionary authority to determine whether to prosecute cases and whether to bring charges before a grand jury); Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) (explaining same for state prosecutors); *see also* THOMAS H. COHEN & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2006, at 10, Table 11 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf> (reporting that in the 75 largest counties in the country, nearly one-third of the felony arrests did not result in a conviction because the charges against the defendants were dismissed).

¹⁰³ *Schwartz v. Bd. of Bar Exam’rs*, 353 U.S. 232, 241 (1957) (“The mere fact that a [person] has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.”); *United States v. Hynes*, 467 F.3d 951, 957 (6th Cir. 2006) (upholding a preliminary jury instruction that stated that a “defendant is presumed to be innocent unless proven guilty. The indictment against the Defendant is only an accusation, nothing more. It’s not proof of guilt or anything else.”); *see* *Gregory v. Litton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (“[I]nformation concerning a prospective employee’s record of arrests without convictions, is irrelevant to [an applicant’s] suitability or qualification for employment.”), *modified on other grounds*, 472 F.2d 631 (9th Cir. 1972); *Dozier v. Chupka*, 395 F. Supp. 836, 850 n.10 (S.D. Ohio 1975) (stating that the use of arrest records was too crude a predictor of an employee’s predilection for theft where there were no procedural safeguards to prevent reliance on unwarranted arrests); *City of Cairo v. Ill. Fair Empl. Prac. Comm.*, 8 Empl. Prac. Dec. (CCH) ¶ 9682 (Ill. App. Ct. 1974) (concluding that, where applicants sought to become police officers, they could not be absolutely barred from appointment solely because they had been arrested, as distinguished from convicted); *see also* EEOC Dec. 74-83, ¶ 6424 (CCH) (1983) (finding no business justification for an employer’s unconditional termination of all employees with arrest records (all five employees terminated were Black), purportedly to reduce thefts in the workplace; the employer produced no evidence that these particular employees had been involved in any of the thefts, or that all people who are arrested but not convicted are prone towards crime in the future); EEOC Dec. 76-87, ¶ 6665 (CCH) (1983) (holding that an applicant who sought to become a police officer could not be rejected based on one arrest five years earlier

for riding in a stolen car when he asserted that he did not know that the car was stolen and the charge was dismissed).

¹⁰⁴ See STATE CRIMINAL HISTORY, *supra* note 37, at 2; see also BACKGROUND CHECKS, *supra* note 25, at 17.

¹⁰⁵ See *supra* notes 39–40.

¹⁰⁶ See *Clark v. Arizona*, 548 U.S. 735, 766 (2006) (“The first presumption [in a criminal case] is that a defendant is innocent unless and until the government proves beyond a reasonable doubt each element of the offense charged. . . .”). See also FED. R. CRIM P 11 (criminal procedure rule governing pleas). The Supreme Court has concluded that criminal defendants have a Sixth Amendment right to effective assistance of counsel during plea negotiations. See generally *Lafler v. Cooper*, 132 S. Ct. 1376 (2012); *Missouri v. Frye*, 132 S. Ct. 1399 (2012).

¹⁰⁷ See *supra* text accompanying note 39.

¹⁰⁸ See e.g., HAW. REV. STAT. § 378-2.5(b). Under this provision, the employer may withdraw the offer of employment if the prospective employee has a conviction record “that bears a rational relationship to the duties and responsibilities of the position.” *Id.* See also CONN. GEN. STAT. § 46a-80(b) (“[N]o employer . . . shall inquire about a prospective employee’s past convictions until such prospective employee has been deemed otherwise qualified for the position.”); MINN. STAT. § 364.021(a) (“[A] public employer may not inquire or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.”). State fair employment practices agencies have information about applicable state law.

¹⁰⁹ See generally NAT’L LEAGUE OF CITIES & NAT’L EMP’T LAW PROJECT, CITIES PAVE THE WAY: PROMISING REENTRY POLICIES THAT PROMOTE LOCAL HIRING OF PEOPLE WITH CRIMINAL RECORDS (2010), www.nelp.org/page/-/SCLP/2010/CitiesPavetheWay.pdf?nocdn=1 (identifying local initiatives that address ways to increase employment opportunities for individuals with criminal records, including delaying a background check until the final stages of the hiring process, leveraging development funds, and expanding bid incentive programs to promote local hiring priorities); NAT’L EMP’T LAW PROJECT, CITY AND COUNTY HIRING INITIATIVES (2010), www.nelp.org/page/-/SCLP/CityandCountyHiringInitiatives.pdf (discussing the various city and county initiatives that have removed questions regarding criminal history from the job application and have waited until after a conditional offer of employment has been made to conduct a background check and inquire about the applicant’s criminal background).

¹¹⁰ Several federal laws automatically prohibit employing individuals with certain felony convictions or, in some cases, misdemeanor convictions. See, e.g., 5 U.S.C. § 7371(b) (requiring the mandatory removal of any federal law enforcement officer who is convicted of a felony); 46 U.S.C. § 70105(c)(1)(A) (mandating that individuals who have been convicted of espionage, sedition, treason or terrorism be permanently disqualified from receiving a biometric transportation security card and thereby excluded from port work employment); 42 U.S.C.

§ 13726(b)(1) (disqualifying persons with felony convictions or domestic violence convictions from working for a private prisoner transport company); 25 U.S.C. § 3207(b) (prohibiting individuals with a felony conviction, or any of two or more misdemeanor convictions, from working with Indian children if their convictions involved crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons, or offenses committed against children); 18 U.S.C. § 922(g)(1), (9) (prohibiting an individual convicted of a felony or a misdemeanor for domestic violence from possessing a firearm, thereby excluding such individual from a wide range of jobs that require such possession); 18 U.S.C. § 2381 (prohibiting individuals convicted of treason from “holding any office under the United States”). Other federal laws prohibit employing individuals with certain convictions for a defined time period. *See, e.g.*, 5 U.S.C. § 7313(a) (prohibiting individuals convicted of a felony for inciting a riot or civil disorder from holding any position in the federal government for five years after the date of the conviction); 12 U.S.C. § 1829 (requiring a ten-year ban on employing individuals in banks if they have certain financial-related convictions); 49 U.S.C. § 44936(b)(1)(B) (imposing a ten-year ban on employing an individual as a security screener for an air carrier if that individual has been convicted of specified crimes).

111 *See* 29 C.F.R. § 1607.5 (describing the general standards for validity studies).

112 *Id.*

113 *Id.* § 1607.6B. The following subsections state:

(1) *Where informal or unscored procedures are used.* When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) *Where formal and scored procedures are used.* When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

Id. § 1607.6A, B(1)–(2).

114 *See, e.g.*, Brent W. Roberts et al., *Predicting the Counterproductive Employee in a Child-to-Adult Prospective Study*, 92 J. APPLIED PSYCHOL. 1427, 1430 (2007), <http://internal.psychology.illinois.edu/~broberts/Roberts,%20Harms,%20Caspi,%20&%20Moffitt,%202007.pdf> (finding that in a study of New Zealand residents from birth to age 26, “[a]dolescent criminal convictions were unrelated to committing counterproductive activities at work [such as tardiness, absenteeism, disciplinary problems, etc.]. In fact, according to the

[results of the study], people with an adolescent criminal conviction record were less likely to get in a fight with their supervisor or steal things from work.”).

115 *See* OHIO REV. CODE ANN. § 2913.02.

116 523 F.2d at 1298 (stating that “[w]e cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed”).

117 479 F.3d at 247.

118 *See, e.g.,* Keith Soothill & Brian Francis, *When do Ex-Offenders Become Like Non-Offenders?*, 48 HOWARD J. OF CRIM. JUST., 373, 380–81 (2009) (examining conviction data from Britain and Wales, a 2009 study found that the risk of recidivism declined for the groups with prior records and eventually converged within 10 to 15 years with the risk of those of the nonoffending comparison groups); Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 CRIMINOLOGY 327 (2009) (concluding that there may be a “point of redemption” (i.e., a point in time where an individual’s risk of re-offending or re-arrest is reasonably comparable to individuals with no prior criminal record) for individuals arrested for certain offenses if they remain crime free for a certain number of years); Megan C. Kurlychek, Robert Brame & Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53 CRIME & DELINQUENCY 64 (2007) (analyzing juvenile police contacts and Racine, Wisconsin police contacts for an aggregate of crimes for 670 males born in 1942 and concluding that, after seven years, the risk of a new offense approximates that of a person without a criminal record); Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL’Y 483 (2006) (evaluating juvenile police contacts and arrest dates from Philadelphia police records for an aggregate of crimes for individuals born in 1958, a 2006 study concluded that the risk of recidivism decreases over time and that, six or seven years after an arrest, an individual’s risk of re-arrest approximates that of an individual who has never been arrested).

119 *Griggs*, 401 U.S. at 431.

120 523 F.2d at 1298; *see also* *Field v. Orkin Extermination Co.*, No. Civ. A. 00-5913, 2002 WL 32345739, at *1 (E.D. Pa. Feb. 21, 2002) (unpublished) (“[A] blanket policy of denying employment to any person having a criminal conviction is a [*per se*] violation of Title VII.”). The only exception would be if such an exclusion were required by federal law or regulation. *See, e.g., supra* note 110.

121 *Cf. Field*, 2002 WL 32345739, at *1. In *Field*, an employee of ten years was fired after a new company that acquired her former employer discovered her 6-year-old felony conviction. The new company had a blanket policy of firing anyone with a felony conviction less than 10 years old. The court granted summary judgment for the employee because the employer’s argument that her conviction was related to her job qualifications was “weak at best,” especially

given her positive employment history with her former employer. *Id.*

¹²² Recidivism rates tend to decline as ex-offenders' ages increase. A 2011 study found that an individual's age at conviction is a variable that has a "substantial and significant impact on recidivism." *The Predictive Value of Criminal Background Checks*, *supra* note 99, at 43. For example, the 26-year-olds in the study, with no prior criminal convictions, had a 19.6% chance of reoffending in their first year after their first conviction, compared to the 36-year-olds who had an 8.8% chance of reoffending during the same time period, and the 46-year-olds who had a 5.3% of reoffending. *Id.* at 46. See also PATRICK A. LANGAN & DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: RECIDIVISM OF PRISONERS RELEASED IN 1994, at 7 (2002), <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf> (finding that, although 55.7% of ex-offenders aged 14–17 released in 1994 were reconvicted within three years, the percentage declined to 29.7% for ex-offenders aged 45 and older who were released the same year).

Consideration of an applicant's age at the time the offense occurred or at his release from prison would benefit older individuals and, therefore, would not violate the Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. § 621 *et seq.* See Age Discrimination in Employment Act, 29 C.F.R. § 1625.2 ("Favoring an older individual over a younger individual because of age is not unlawful discrimination under the ADEA, even if the younger individual is at least 40 years old."); see also *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 600 (2004) (concluding that the ADEA does not preclude an employer from favoring an older employee over a younger one within the protected age group).

¹²³ See Laura Moskowitz, *Statement of Laura Moskowitz, Staff Attorney, National Employment Law Project's Second Chance Labor Project*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/11-20-08/moskowitz.cfm> (last visited April 23, 2012) (stating that one of the factors that is relevant to the assessment of an ex-offender's risk to a workplace and to the business necessity analysis, is the "length and consistency of the person's work history, including whether the person has been recently employed"; also noting that various studies have "shown a strong relationship between employment and decreases in crime and recidivism"). *But see* Stephen J. Tripodi et al., *Is Employment Associated With Reduced Recidivism?: The Complex Relationship Between Employment and Crime*, 54 INT'L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 716, 716 (2010) (finding that "[b]ecoming employed after incarceration, although apparently providing initial motivation to desist from crime, does not seem to be on its own sufficient to prevent recidivism for many parolees").

¹²⁴ See WENDY ERISMAN & JEANNE BAYER CONTARDO, INST. FOR HIGHER EDUC. POLICY, LEARNING TO REDUCE RECIDIVISM: A 50 STATE ANALYSIS OF POSTSECONDARY CORRECTIONAL EDUCATION 5 (2005), <http://www.ihep.org/assets/files/publications/g-1/LearningReduceRecidivism.pdf> (finding that increasing higher education for prisoners enhances their prospects for employment and serves as a cost-effective approach to reducing recidivism); see also John H. Laud & Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIME & JUST. 1, 17–24 (2001), <http://www.ncjrs.gov/pdffiles1/Digitization/192542-192549NCJRS.pdf> (stating that factors associated with personal rehabilitation and social

stability, such as stable employment, family and community involvement, and recovery from substance abuse, are correlated with a decreased risk of recidivism).

¹²⁵ Some employers have expressed a greater willingness to hire ex-offenders who have had an ongoing relationship with third party intermediary agencies that provide supportive services such as drug testing, referrals for social services, transportation, child care, clothing, and food. See Amy L. Solomon et al., *From Prison to Work: The Employment Dimensions of Prisoner Reentry*, 2004 URBAN INST. 20, http://www.urban.org/UploadedPDF/411097_From_Prison_to_Work.pdf. These types of services can help ex-offenders avoid problems that may interfere with their ability to obtain and maintain employment. *Id.*; see generally Victoria Kane, *Transcript of 7-26-11 Meeting*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/transcript.cfm#kane> (last visited April 23, 2012) (describing why employers should partner with organizations that provide supportive services to ex-offenders).

¹²⁶ See generally REENTRY MYTHBUSTER! ON FEDERAL BONDING PROGRAM, *supra* note 16; *Work Opportunity Tax Credit (WOTC)*, EMP'T & TRAINING ADMIN., U.S. DEP'T OF LABOR, <http://www.doleta.gov/business/incentives/opptax/> (last visited April 3, 2012); *Directory of State Bonding Coordinators*, EMP'T & TRAINING ADMIN., U.S. DEP'T OF LABOR, <http://www.doleta.gov/usworkforce/onestop/FBPCcontact.cfm> (last visited April 3, 2012); *Federal Bonding Program - Background*, U.S. DEP'T OF LABOR, <http://www.bonds4jobs.com/program-background.html> (last visited April 3, 2012); *Bureau of Prisons: UNICOR's Federal Bonding Program*, http://www.bop.gov/inmate_programs/itb_bonding.jsp (last visited April 3, 2012).

¹²⁷ This example is loosely based on a study conducted by Alfred Blumstein and Kiminori Nakamura measuring the risk of recidivism for individuals who have committed burglary, robbery, or aggravated assault. See Blumstein & Nakamura, *supra* note 118.

¹²⁸ 42 U.S.C. § 2000e-2(k)(1)(A)(ii), (C). See also *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 998 (1988).

¹²⁹ See Exec. Order No. 12,067, 3 C.F.R. 206 (1978 Comp.).

¹³⁰ See 49 U.S.C. §§ 44935(e)(2)(B), 44936(a)(1), (b)(1). The statute mandates a criminal background check.

¹³¹ See 5 U.S.C. § 7371(b) (requiring mandatory removal from employment of law enforcement officers convicted of felonies).

¹³² See 42 U.S.C. § 13041(c) (“Any conviction for a sex crime, an offense involving a child victim, or a drug felony may be grounds for denying employment or for dismissal of an employee. . . .”).

¹³³ 12 U.S.C. § 1829.

¹³⁴ 46 U.S.C. § 70105(c).

¹³⁵ Other jobs and programs subject to federally-imposed restrictions based on criminal convictions include the business of insurance (18 U.S.C. § 1033(e)), employee benefits employee (29 U.S.C. § 1111(a)), participation in Medicare and state health care programs (42 U.S.C. § 1320a-7(a)–(b)), defense contractor (10 U.S.C. § 2408(a)), prisoner transportation (42 U.S.C. § 13726b(b)(1)), and court-imposed occupational restrictions (18 U.S.C. §§ 3563(b)(5), 3583(d)). This list is not meant to be exhaustive.

¹³⁶ *See, e.g.*, federal statutes governing commercial motor vehicle operator’s licenses (49 U.S.C. § 31310(b)–(h)), locomotive operator licenses (49 U.S.C. § 20135(b)(4)(B)), and certificates, ratings, and authorizations for pilots, flight instructors, and ground instructors (49 U.S.C. §§ 44709(b)(2), 44710(b), 4711(c); 14 C.F.R. § 61.15).

¹³⁷ *See, e.g.*, federal statutes governing loan originator licensing/registration (12 U.S.C. § 5104(b)(2)), registration of brokers and dealers (15 U.S.C. § 78o(b)(4)(B)), registration of commodity dealers (7 U.S.C. § 12a(2)(D), (3)(D), (E), (H)), and registration of investment advisers (15 U.S.C. § 80b-3(e)(2)–(3), (f)).

¹³⁸ *See, e.g.*, custom broker’s licenses (19 U.S.C. § 1641(d)(1)(B)), export licenses (50 U.S.C. App. § 2410(h)), and arms export (22 U.S.C. § 2778(g)).

¹³⁹ *See, e.g.*, grain inspector’s licenses (7 U.S.C. § 85), merchant mariner’s documents, licenses, or certificates of registry (46 U.S.C. § 7503(b)), licenses to import, manufacture, or deal in explosives or permits to use explosives (18 U.S.C. § 843(d)), and farm labor contractor’s certificates of registration (29 U.S.C. § 1813(a)(5)). This list of federally-imposed restrictions on occupational licenses and registrations for individuals with certain criminal convictions is not meant to be exhaustive. For additional information, please consult the relevant federal agency or department.

¹⁴⁰ *See* 12 U.S.C. § 1829(a)(1). The statute imposes a ten-year ban for individuals who have been convicted of certain financial crimes such as corruption involving the receipt of commissions or gifts for procuring loans (18 U.S.C. § 215), embezzlement or theft by an officer/employee of a lending, credit, or insurance institution (18 U.S.C. § 657), false or fraudulent statements by an officer/employee of the federal reserve or a depository institution (18 U.S.C. § 1005), or fraud by wire, radio, or television that affects a financial institution (18 U.S.C. § 1343), among other crimes. *See* 12 U.S.C. § 1829(a)(2)(A)(i)(I), (II). Individuals who have either been convicted of the crimes listed in § 1829(a)(2)(A), or conspiracy to commit those crimes, will not receive an exception to the application of the 10-year ban from the FDIC. 12 U.S.C. § 1829(a)(2)(A).

¹⁴¹ *See* FED. DEPOSIT INS. CORP., FDIC STATEMENT OF POLICY FOR SECTION 19 OF THE FDI ACT, § C, “PROCEDURES” (amended May 13, 2011), <http://www.fdic.gov/regulations/laws/rules/5000-1300.html> [hereinafter FDIC POLICY]; *see also*

Statement of Policy, 63 Fed. Reg. 66,177, 66,184 (Dec. 1, 1998); Clarification of Statement of Policy, 76 Fed. Reg. 28,031 (May 13, 2011) (clarifying the FDIC’s Statement of Policy for Section 19 of the FDI Act).

“Approval is automatically granted and an application [for a waiver] will not be required where [an individual who has been convicted of] the covered offense [criminal offenses involving dishonesty, breach of trust, or money laundering] . . . meets all of the [“*de minimis*”] criteria” set forth in the FDIC’s Statement of Policy. FDIC POLICY, *supra*, § B (5). These criteria include the following: (1) there is only one conviction or program of record for a covered offense; (2) the offense was punishable by imprisonment for a term of one year or less and/or a fine of \$1,000 or less, and the individual did not serve time in jail; (3) the conviction or program was entered at least five years prior to the date an application would otherwise be required; and (4) the offense did not involve an insured depository institution or insured credit union. *Id.* Additionally, an individual’s conviction for writing a “bad” check will be considered a *de minimis* offense, even if it involved an insured depository institution or insured credit union, if: (1) all other requirements of the *de minimis* offense provisions are met; (2) the aggregate total face value of the bad or insufficient funds check(s) cited in the conviction was \$1000 or less; and (3) no insured depository institution or insured credit union was a payee on any of the bad or insufficient funds checks that were the basis of the conviction. *Id.*

¹⁴² See FDIC POLICY, *supra* note 141, § C, “PROCEDURES.”

¹⁴³ *Id.* *But cf.* NAT’L H.I.R.E. NETWORK, PEOPLE WITH CRIMINAL RECORDS WORKING IN FINANCIAL INSTITUTIONS: THE RULES ON FDIC WAIVERS, <http://www.hirenetwork.org/FDIC.html> (“Institutions rarely seek a waiver, except for higher level positions when the candidate is someone the institution wants to hire. Individuals can only seek FDIC approval themselves if they ask the FDIC to waive the usual requirement. Most individuals probably are unaware that they have this right.”); FED. DEPOSIT INSUR. CORP. 2010 ANNUAL REPORT, § VI.A: KEY STATISTICS, FDIC ACTIONS ON FINANCIAL INSTITUTION APPLICATIONS 2008–2010 (2011), <http://www.fdic.gov/about/strategic/report/2010annualreport/chpt6-01.html> (reporting that between 2008 and 2010, the FDIC approved a total of 38 requests for consent to employ individuals with covered offenses in their background; the agency did not deny any requests during this time period).

¹⁴⁴ FDIC POLICY, *supra* note 141, § D, “EVALUATION OF SECTION 19 APPLICATIONS” (listing the factors that are considered in this waiver review process, which include: (1) the nature and circumstances underlying the offense; (2) “[e]vidence of rehabilitation including the person’s reputation since the conviction . . . the person’s age at the time of conviction . . . and the time which has elapsed since the conviction”; (3) the position to be held in the insured institution; (4) the amount of influence/control the individual will be able to exercise over management affairs; (5) management’s ability to control and supervise the individual’s activities; (6) the degree of ownership the individual will have in the insured institution; (7) whether the institution’s fidelity bond coverage applies to the individual; (8) the opinion of the applicable federal and/or state regulators; and (9) any other relevant factors).

¹⁴⁵ See 49 C.F.R. §§ 1515.7 (describing the procedures for waiver of criminal offenses, among other standards), 1515.5 (explaining how to appeal the Initial Determination of Threat Assessment based on a criminal conviction). In practice, some worker advocacy groups have criticized the TWIC appeal process due to prolonged delays, which leaves many workers jobless; especially workers of color. See generally MAURICE Emsellem et al., NAT'L EMP'T LAW PROJECT, A SCORECARD ON THE POST-9/11 PORT WORKER BACKGROUND CHECKS: MODEL WORKER PROTECTIONS PROVIDE A LIFELINE FOR PEOPLE OF COLOR, WHILE MAJOR TSA DELAYS LEAVE THOUSANDS JOBLESS DURING THE RECESSION (2009), http://nelp.3cdn.net/2d5508b4cec6e13da6_upm6b20e5.pdf.

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6201, 124 Stat. 721 (2010) (the Act) includes a process to appeal or dispute the accuracy of information obtained from criminal records. The Act requires participating states to perform background checks on applicants and current employees who have direct access to patients in long-term care facilities, such as nursing homes, to determine if they have been convicted of an offense or have other disqualifying information in their background, such as a finding of patient or resident abuse, that would disqualify them from employment under the Social Security Act or as specified by state law. See 42 U.S.C. § 1320a-7l(a)(3)(A), (a)(4)(B), (6)(A)–(E). The background check involves an individualized assessment of the relevance of a conviction or other disqualifying information. The Act protects applicants and employees in several ways, for example, by: (1) providing a 60-day provisional period of employment for the prospective employee, pending the completion of the criminal records check; (2) providing an independent process to appeal or dispute the accuracy of the information obtained in the criminal records check; and (3) allowing the employee to remain employed (subject to direct on-site supervision) during the appeals process. 42 U.S.C. § 1320a-7l(a)(4)(B)(iii), (iv).

¹⁴⁶ See 46 U.S.C. § 70105(d); see generally TWIC Program, 49 C.F.R. § 1572.103 (listing the disqualifying offenses for maritime and land transportation security credentials, such as convictions and findings of not guilty by reason of insanity for espionage, murder, or unlawful possession of an explosive; also listing temporarily disqualifying offenses, within seven years of conviction or five years of release from incarceration, including dishonesty, fraud, or misrepresentation (expressly excluding welfare fraud and passing bad checks), firearms violations, and distribution, intent to distribute, or importation of controlled substances).

¹⁴⁷ 46 U.S.C. § 70105(c)(1)(A)–(B).

¹⁴⁸ 46 U.S.C. § 70105(c)(1)(B)(iii).

¹⁴⁹ See 46 U.S.C. § 70105(c)(1)(A)(iv) (listing “Federal crime of terrorism” as a permanent disqualifying offense); see also 18 U.S.C. § 2332b(g)(5)(B) (defining “Federal crime of terrorism” to include the use of weapons of mass destruction under § 2332a).

¹⁵⁰ See 49 C.F.R. § 1515.7(a)(i) (explaining that only certain applicants with disqualifying crimes in their backgrounds may apply for a waiver; these applicants do not include individuals

who have been convicted of a Federal crime of terrorism as defined by 18 U.S.C. § 2332b(g)).

¹⁵¹ These positions are defined as “national security positions” and include positions that “involve activities of the Government that are concerned with the protection of the nation from foreign aggression or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of the military strength of the United States” or “require regular use of, or access to, classified information.” 5 C.F.R. § 732.102(a)(1)–(2). The requirements for “national security positions” apply to competitive service positions, Senior Executive Service positions filled by career appointment within the Executive Branch, and excepted service positions within the Executive Branch. *Id.* § 732.102(b). The head of each Federal agency can designate any position within that department or agency as a “sensitive position” if the position “could bring about, by virtue of the nature of the position, a material adverse effect on the national security.” *Id.* § 732.201(a). Designation of a position as a “sensitive position” will fall under one of three sensitivity levels: Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive. *Id.*

¹⁵² See Exec. Order No. 12,968, § 3.1(b), 3 C.F.R. 391 (1995 Comp.):

[E]ligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

¹⁵³ 42 U.S.C. § 2000e-2(g); see, e.g., *Bennett v. Chertoff*, 425 F.3d 999, 1001 (D.C. Cir. 2005) (“[E]mployment actions based on denial of a security clearance are not subject to judicial review, including under Title VII.”); *Ryan v. Reno*, 168 F.3d 520, 524 (D.C. Cir. 1999) (“[A]n adverse employment action based on denial or revocation of a security clearance is not actionable under Title VII.”).

¹⁵⁴ See *Policy Guidance on the use of the national security exception contained in § 703(g) of Title VII of the Civil Rights Act of 1964, as amended*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, § II, *Legislative History* (May 1, 1989), http://www.eeoc.gov/policy/docs/national_security_exemption.html (“[N]ational security requirements must be applied equally without regard to race, sex, color, religion or national origin.”); see also *Jones v. Ashcroft*, 321 F. Supp. 2d 1, 8 (D.D.C. 2004) (indicating that the

national security exception did not apply because there was no evidence that the government considered national security as a basis for its decision not to hire the plaintiff at any time before the commencement of the plaintiff's lawsuit, where the plaintiff had not been forthright about an arrest).

¹⁵⁵ Federal contractor employees may challenge the denial of a security clearance with the EEOC or the Office of Contract Compliance Programs when the denial is based on race, color, religion, sex, or national origin. *See generally* Exec. Order No. 11,246, 3 C.F.R. 339 (1964–1965 Comp.).

¹⁵⁶ 42 U.S.C. § 2000e-16(a).

¹⁵⁷ Robert H. Shriver, III, *Written Testimony of Robert H. Shriver, III, Senior Policy Counsel for the U.S. Office of Personnel Management*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/shriver.cfm> (last visited April 23, 2012) (stating that “with just a few exceptions, criminal convictions do not automatically disqualify an applicant from employment in the competitive civil service”); *see also* REENTRY MYTHBUSTER! ON FEDERAL HIRING POLICIES, *supra* note 16 (“The Federal Government employs people with criminal records with the requisite knowledge, skills and abilities.”). *But see supra* note 110, listing several federal statutes that prohibit individuals with certain convictions from working as federal law enforcement officers or port workers, or with private prisoner transport companies.

¹⁵⁸ OPM has jurisdiction to establish the federal government's suitability policy for competitive service positions, certain excepted service positions, and career appointments in the Senior Executive Service. *See* 5 C.F.R. §§ 731.101(a) (stating that OPM has been directed “to examine ‘suitability’ for competitive Federal employment”), 731.101(b) (defining the covered positions within OPM's jurisdiction); *see also* Shriver, *supra* note 157.

OPM is also responsible for establishing standards that help agencies decide whether to grant their employees and contractor personnel long-term access to federal facilities and information systems. *See* Homeland Security Presidential Directive 12: Policy for a Common Identification Standard for Federal Employees and Contractors, 2 PUB. PAPERS 1765 (Aug. 27, 2004) (“establishing a mandatory, Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors [including contractor employees]”); *see also* Exec. Order No. 13,467, § 2.3(b), 3 C.F.R. 196 (2009 Comp.) (“[T]he Director of [OPM] . . . [is] responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of suitability and eligibility for logical and physical access.”); *see generally* Shriver, *supra* note 157.

¹⁵⁹ 5 C.F.R. § 731.101(a).

¹⁶⁰ *See* 5 C.F.R. §§ 731.205(a) (stating that if an agency finds applicants unsuitable based on the factors listed in 5 C.F.R. § 731.202, it may, in its discretion, bar those applicants from federal employment for three years), § 731.202(b) (disqualifying factors from federal civilian

employment may include: misconduct or negligence in employment; material, intentional false statement, or deception or fraud in examination or appointment; refusal to furnish testimony as required by 5 C.F.R. § 5.4; alcohol abuse without evidence of substantial rehabilitation; illegal use of narcotics, drugs, or other controlled substances; and knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force).

¹⁶¹ See *id.* § 731.202(c).

¹⁶² *Id.*

¹⁶³ See generally Shriver, *supra* note 157. See also REENTRY MYTHBUSTER! ON FEDERAL HIRING POLICIES, *supra* note 16 (“Consistent with Merit System Principles, [federal] agencies [and departments] are required to consider people with criminal records when filling positions if they are the best candidates and can comply with requirements.”).

¹⁶⁴ See generally EEOC Informal Discussion Letter (March 19, 2007), http://www.eeoc.gov/eeoc/foia/letters/2007/arrest_and_conviction_records.html#N1 (discussing the EEOC’s concerns with changes to OPM’s suitability regulations at 5 CFR part 731).

¹⁶⁵ See Stephen Saltzburg, *Transcript of 7-26-11 Meeting*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/transcript.cfm#saltzburg> (last visited April 23, 2012) (discussing the findings from the American Bar Association’s (ABA) Collateral Consequences of Conviction Project, which found that in 17 states that it has examined to date, 84% of the collateral sanctions against ex-offenders relate to employment). For more information about the ABA’s project, visit: Janet Levine, *ABA Criminal Justice Section Collateral Consequences Project*, INST. FOR SURVEY RESEARCH, TEMPLE UNIV., <http://isrweb.isr.temple.edu/projects/accproject/> (last visited April 20, 2012). In April 2011, Attorney General Holder sent a letter to every state Attorney General, with a copy to every Governor, asking them to “evaluate the collateral consequences” of criminal convictions in their state, such as employment-related restrictions on ex-offenders, and “to determine whether those [consequences] that impose burdens on individuals . . . without increasing public safety should be eliminated.” Letter from Eric H. Holder, Jr., Att’y Gen., Dep’t of Justice, to state Attorney Generals and Governors (April 18, 2011), http://www.nationalreentryresourcecenter.org/documents/0000/1088/Reentry_Council_AG_Letter.pdf.

Most states regulate occupations that involve responsibility for vulnerable citizens such as the elderly and children. See STATE CRIMINAL HISTORY, *supra* note 37, at 10 (“Fifty states and the District of Columbia reported that criminal history background checks are legally required” for several occupations such as nurses/elder caregivers, daycare providers, caregivers in residential facilities, school teachers, and nonteaching school employees). For example, Hawaii’s Department of Human Services may deny applicants licensing privileges to operate a childcare facility if: (1) the applicant or any prospective employee has been convicted of a crime other than a minor traffic violation or has been confirmed to have abused or neglected a child or threatened harm; and (2) the department finds that the criminal history or child abuse record of

the applicant or prospective employee may pose a risk to the health, safety, or well-being of children. *See* HAW. REV. STAT. § 346-154(e)(1)–(2).

¹⁶⁶ 42 U.S.C. § 2000e-7.

¹⁶⁷ *See* Int'l Union v. Johnson Controls, Inc., 499 U.S. 187, 210 (1991) (noting that “[i]f state tort law furthers discrimination in the workplace and prevents employers from hiring women who are capable of manufacturing the product as efficiently as men, then it will impede the accomplishment of Congress’ goals in enacting Title VII”); *Gulino v. N.Y. State Educ. Dep’t*, 460 F.3d 361, 380 (2d Cir. 2006) (affirming the district court’s conclusion that “the mandates of state law are no defense to Title VII liability”).

"Ban the Box" doesn't prevent criminal background check

sfmic.com/criminal-background-check

July 24,
2018

During the hiring process, there are many tools you can use to ensure you get the best possible candidate. In some cases, one of these tools is a criminal background check. But before you can ask applicants about their criminal history, there are a few stipulations to keep in mind.

"Ban the box" is a national movement, with over 30 states as well as many cities and counties enacting laws governing the issue. Minnesota is one of nine states with a law that makes it unlawful for both public and private employers to ask on application forms whether job candidates have criminal histories. Nebraska and Wisconsin have similar laws for public employers only. Iowa and South Dakota have no ban the box law for either public or private employers.

The law doesn't prevent employers from asking whether applicants have a criminal history, but it requires that they wait until a job interview to do so. In cases where the company doesn't conduct interviews, they can't ask about criminal histories until they extend a conditional offer of employment.

Typically, employers are still allowed to conduct a criminal background check and exclude applicants if a crime is relevant to the job duties, or if otherwise required by law.

The U.S. Equal Employment Opportunity Commission lays out three factors to help analyze whether criminal conduct is relevant to a job:

The nature and gravity of the offense

The harm caused by the crime and the elements that went into perpetrating the crime such as deception or intimidation.

The time that has passed since the offense and/or completion of the sentence

The EEOC doesn't lay out a specific timeframe, but notes that the risk of recidivism can decline over time.

The nature of the job held or sought

The job duties, performance circumstances (level of supervision, interaction with vulnerable individuals, etc.) and environment (outside, in a school, etc.).

Pre-employment criminal background checks can be an important tool in certain industries and types of jobs. Use them as part of your hiring process when appropriate, but consult with your employment attorney first.

There are many other tools to consider including in your hiring process:

Drug and alcohol testing

Especially in trades where drug and alcohol use correlates with increased work injuries, consider making job offers contingent on drug testing. Consult with your employment attorney before starting a testing program.

Pre-employment physicals

You can conduct a pre-employment physical after making a conditional job offer as long as you require it of all applicants in the same category and only tests for essential job-related capabilities. Consult with an attorney if you decide to withdraw an offer.

College degree verification

Consider calling schools to verify educational credentials.

Driving record check

Checking an applicant's driving record when driving is a job requirement can reveal red flags such as DUI convictions or driving without a license. Motor vehicle records are available through your state's licensing department.

Reference checks

In Minnesota, you might find that reference checks are more fruitful now. Statutory changes in Minn. Stat. Sec. 181.967 relieved employers of liability when giving certain reference information in good faith.

Social Security numbers

Make employment contingent on verification of eligibility to work in the United States. E-Verify is a voluntary system (except for certain employers with federal contracts, where it is mandatory) operated by the U.S. Department of Homeland Security that enables you to check free of charge. If undocumented workers are injured, their employer could potentially pay benefits for years because they will not be allowed to return to work.

A thorough hiring process can prevent costly workers' compensation claims, and resulting increases in premiums. It's worth doing your due diligence early so that a new hire doesn't become a problem employee.

This is not intended to serve as legal advice for individual fact-specific legal cases or as a legal basis for your employment practices.

Resolution : “Ban The Box “

I move that Richland County Council pass the resolution to “Ban the Box” and join more than 150 cities and counties and 33 states nationwide that have “Ban the Box” laws to remove questions about convictions from job applications; so that applicants could be judged first on their qualifications.

Yvonne McBride

Whereas, a criminal record is frequently a barrier to employment for a person with a prior criminal conviction; and

Whereas, one in three South Carolinians has a criminal record and, as a result, face pervasive and open-ended employment discrimination; and

Whereas, banning the box laws do not eliminate background checks but delays job applicants from having to disclose their criminal record early in the application process which increases discrimination and decreases employment; and

Whereas, “Banning the box” gives applicants an opportunity to be evaluated on qualifications and skill set; and

Whereas, the lack of employment for a person with a prior criminal conviction is a significant barrier to successful return to the community and has a major influence on the person’s likelihood to offend; and

Whereas, Richland County Council is committed both to public safety and economic opportunity; and

Whereas, Richland County Council believes that people who have successfully completed their sentences deserve a second chance and a possibility for successful community reintegration; and

Whereas, Richland County Council believes treatment and rehabilitation can be effective, and that a past offense should not solely determine future employment opportunity; and

Whereas, removing barriers to employment results in improved economic opportunity, increased civic engagement, less reliance on public benefits, and a workforce with more diverse experiences and perspectives; and

Whereas, Richland County Council wishes to help otherwise qualified citizens with a prior criminal history by providing an opportunity to compete equally for Richland County employment.

Be It Therefore Resolved by the Richland County Council that Richland County will demonstrate its commitment to equal employment opportunity for otherwise qualified individuals with a prior criminal conviction by:

- Eliminating the requirement to disclose past criminal history on the County’s initial employment application, except for positions that require a full background check due to the nature of the work.
- Requiring that a job applicant be selected for an interview before being asked about a criminal record, or before performing a background check, due to the nature of the work, on the applicant.
- Providing for individualized consideration of criminal history circumstances, where applicable.
- Encouraging the selection of applicants based on job skills and qualifications, without consideration of past convictions, whenever possible.



Agenda Briefing

To: Chair Joyce Dickerson and Honorable Members of the Committee
Prepared by: Stacey Hamm, Director, Finance Department
Sandra Yúdice, Ph.D., Assistant County Administrator
Department: Utilities
Date Prepared: May 8, 2019 **Meeting Date:** May 23, 2019

Legal Review	Elizabeth McLean, Deputy Attorney, via email	Date:	May 16, 2019
Budget Review	James Hayes, Budget and Grants Director, via email	Date:	May 15, 2019
Other Review:	Shahid Khan, Director, Utilities	Date:	May 9, 2019
Committee	Administration and Finance		
Subject:	Residential Utilities Assistance Program		

Recommended Action:

Accept staff's recommendation as presented or with revisions from the A&F Committee.

Motion Requested:

Create the Residential Utilities Assistance Program Fund (APF) as Special Revenue Fund to implement the Residential Utilities Assistance Program (RUAP). The RUAP will assist low-income households with a \$10.00 monthly credit using private donations. These donations may be made to the Residential Utilities Assistance Program Fund to implement the RUAP and provide financial assistance (i.e., \$10 per month) on a first come, first served basis to eligible and qualified low-income households. The fund will be subject to County Council's annual appropriations, and funds will be available each fiscal year until the appropriation is exhausted.

Request for Council Reconsideration: Yes

Fiscal Impact:

The cost of administering the program and program publicity is yet to be determined.

Motion of Origin:

This item did not originate from a motion.

Council Member	
Meeting	
Date	

Discussion:

The South Carolina Attorney General Office issued a draft opinion (Attachment 1) to Richland County's question on "whether the subsidy [in the form of a 'discount' or 'credit' paid out of the General Fund on each utility bill] would violate the prohibition against using public funds for a private purpose." The AG's opinion concluded "...a court would likely find the proposed subsidy would violate the prohibition against using public funds for a private purpose."

During its deliberations, County Council expressed concerns about the utility rate increase's impact on low-income utility customers. In the spirit of alleviating financial hardship to those customers, staff developed a proposal for County Council's consideration.

Proposed Residential Utilities Assistance Program

This is a proposal to implement a Residential Utilities Assistance Program ("Assistance Program" or "RUAP") for the approved Richland County Combined Utilities System ("Combined Utilities System"). The Combined Utilities System uses the new rate increase approved by Richland County Council at its March 19, 2019, meeting. The goal of the Assistance Program is to help reduce the financial burden of the utility rate increase for low-income customers in the combined utility system area.

The RUAP proposes a \$10.00 a month credit to the new rate for each eligible and qualified low-income utility customers. It is estimated the Assistance Program should help about 800 customers. Through the Assistance Program, private donations may be made to a Council-approved Assistance Program Fund to implement the RUAP and to provide financial assistance on a first come, first served basis.

The proposal includes the creation of the Residential Utilities Assistance Program Fund. Similar to private utilities' funds through which utility customers or anyone may make private donations of any amount, the APF would assist eligible and qualified low-income households that apply to the Assistance Program. The Residential Utilities Assistance Program Fund will be subject to County Council appropriations through the biennium budget process as all other funds are required to be.

The Residential Utilities Assistance Program Fund would have the following features:

1. Non-eligible utility customers may choose to round up their utility bills to the next integer (i.e., whole number) dollar amount. For example, if the utility bill is \$37.15, the bill will be rounded up to \$38.00. The difference between the actual utility bill and the rounded up amount will be earmarked to the Residential Utilities Assistance Program Fund for future use of the Assistance Program.
2. Utility customers or any one may choose to make donations to the Assistance Program Fund in any amount. The donation will be earmarked to the Assistance Program Fund for use of the Assistance Program.

For each fiscal year, funds from the RUAPF will be available for the Assistance Program until the County Council appropriated funds are exhausted or until there are no applications from eligible, qualified applicants. Remaining appropriated funds at the end of each fiscal year will return to the fund balance of the RUAPF.

Residential Utilities Assistance Program Rules

The Assistance Program rules would be as follows:

1. Customers will apply on a first come, first serve basis. That is stated on the draft Richland County Residential Utilities Assistance Program Application (Attachment 1).
2. The application process will be open for one month, should County Council approve the program.
3. Customers will need to apply annually for the \$10.00/month credit.
4. Eligibility will be based on the Federal Poverty Guidelines.

Administration of the Program

Because of their familiarity and expertise with managing financial assistance programs and qualifying clients for such programs, the County should form a partnership with a non-profit organization such as the United Way or Salvation Army to administer the qualification and eligibility of low-income customers for the County's Assistance Program. The partner will review the application and determine eligibility based upon the County's defined criteria. This will help ensure fair treatment of customers, and County personnel will not qualify applicants. The cost to administer the program will also be paid using funds in the RUAP.

If approved by County Council, a brochure explaining the Assistance Program will be included with the utility bill. The brochure and the application will be available on the County's website. There will be a deadline for applying for the credit in each year.

Attachments:

1. Attachment 1: SC Attorney General Opinion.
2. Attachment 2: Richland County Residential Utilities Assistance Program Application (Draft).
3. Attachment 3: Program Information for Flyer and Website.

May 07, 2019

Mr. Larry C. Smith, Esquire
Attorney for Richland County
Post Office Box 192
Columbia, South Carolina 29202

Dear Mr. Smith:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

Richland County ("County") has sewer customers on several different systems within the county. Until now, those users paid a user fee based on the necessities of that particular system. In an effort to comply with State law and following a rate study, Richland County is raising its sewer utility rates for all users and making those rates uniform across the entire county. This increase will affect users of the systems differently, with those users historically paying lower rates seeing a higher increase than other users.

Many of the users in certain areas affected more dramatically by the rate increase are lower income citizens. In an effort to limit the financial effects on those lower income citizens, the Richland County Council would like to implement a program whereby citizens meeting Federal poverty level income requirements would receive a "discount" or "credit" on each bill in the form of a subsidy paid out of the General Fund. This "discount" or "credit" would be phased out over a certain period of time (ex. 3 year limit).

The question posed is whether the subsidy would violate the prohibition against using public funds for a private purpose.

Law/Analysis

It is this Office's opinion that a court would likely find the proposed subsidy would violate the prohibition against using public funds for a private purpose. In the seminal case of Feldman & Co. v. City Council of Charleston, 23 S.C. 57, 62 (1885), the South Carolina Supreme stated, "It seems to be universally conceded, even by those who are disposed to enlarge the taxing power of the legislature to its greatest extent, that a law authorizing taxation for any

other than a public purpose is void.” Although, the Feldman decision predates the current South Carolina Constitution, the framers of our Constitution enshrined this principle in its text. Article X, Section 5 of the South Carolina Constitution states, “No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.” S.C. Const, art. X, § 5. Further, Article X, Section 11 of the South Carolina Constitution provides, in relevant part, “The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution ...” S.C. Const, art. X, § 11. This Section has been interpreted to prohibit the expenditure of public funds or resources for the primary benefit of private parties. See State ex rel. McLeod v. Riley, 276 S.C. 323, 329, 278 S.E.2d 612, 615 (1981), *overruled on other grounds by* WDW Prop. v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000).

Because the request letter explains that the proposed subsidy would be paid out of the County’s unrestricted general fund and there is no indication that these funds are otherwise specifically allocated, this opinion will assume that the subsidy would likely be found to be paid from tax revenues rather than a direct rebate from the uniform sewer utility fee revenues.¹ Therefore, this opinion must next consider whether a court would likely find this subsidy program serves a public purpose.

Initially, the question of whether a legislative act serves a public purpose is primarily a legislative determination and courts will not interfere unless that determination is clearly wrong. See Elliott v. McNair, 250 S.C. 75, 88, 156 S.E.2d 421, 156 (1967). In Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975), the South Carolina Supreme Court explained how our state courts have approached the question of whether a legislative act serves a public purpose as follows:

The courts have, as a rule, been reluctant to attempt to define public purpose as contrasted with a private purpose, but have generally left each case to be determined on its own peculiar circumstances. As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general

¹ Cf. Brown v. Cty. of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992)

In Emerson, supra, the Massachusetts Supreme Court held that when the revenue from fees is destined for the general fund this indicates that the fee is a tax. The Horry County ordinance provides that the fees are to go into the general fund but that they are to be specifically used for the maintenance and improvement of county roads. Therefore, because the money collected is specifically allocated for road maintenance, we hold that the fee is service charge.

Mr. Larry C. Smith, Esquire
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May 07, 2019

welfare, security, prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof. Legislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose as contrasted with a public purpose merely because some individual makes a profit as a result of the enactment.

265 S.C. at 162, 217 S.E.2d at 47. The Anderson Court cautioned, "It is not sufficient that an undertaking bring about a remote or indirect public benefit to categorize it as a project within the sphere of 'public purpose.'" 265 S.C. at 163, 217 S.E.2d at 48; see also Feldman, 23 S.C. at 63 ("It is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to which the general advantage of the community ...").

The request letter does not contain a statement of legislative intent which could assist this Office in evaluating the public purpose sought to be served by the proposed subsidy plan. Presumably, such a statement would describe a benefit to public health related to improvements in sanitation services and that subsidizing the increased sewer utility fees paid by low income county residents would benefit the economic security of a substantial portion of the County's population. Regardless of the reasons which may be assigned, the proposed subsidy would essentially distribute unallocated tax revenue from the County's general fund to private citizens who pay for sewer service. Certainly, such a plan would directly benefit the private citizens who receive such a subsidy. Presumably, the County would be attempting to address the very real economic impact of higher costs borne by low income households as a result of increased sewer utility rates. There are any number of ways the increased economic security provided to these citizens may benefit the County, but such a benefit could only be characterized as indirect. Because the Anderson Court stated an indirect public benefit is not sufficient to satisfy the requirement of a "public purpose," it is this Office's opinion that a court would likely find the proposed subsidy would violate the prohibition against using public funds for a private purpose.

Conclusion

As discussed more fully above, it is this Office's opinion that a court would likely find the proposed subsidy would violate the prohibition against using public funds for a private purpose.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Attachment 2

Richland County Residential Utilities Assistance Program Application richlandcountysc.gov	Mail Application: PO Box 192 Columbia, SC 29202 OR Fax Application: Number OR Email Application: Email address Phone number: Number
This application may be used to enroll in the Residential Utilities Assistance Program. Eligibility is based on meeting each individual program enrollment criteria, meeting annual income criteria, and based on the date the completed application is received by the County. Applications are processed in the order they are received, that is on first come, first served basis.	

1. Government issued identification for all persons 18 years and older. Please provide a copy of one of the items below for each adult:
 - a. State driver’s license
 - b. State identification card
 - c. Passport or Permanent Resident Card

2. Please provide your Food Assistance SNAP benefits client ID or your social security number below to provide verification of gross income.

SNAP Benefits Client ID: _____ OR Social Security # ____ - ____ - _____

If you are not a SNAP, please provide income documentation for ALL persons 18 years old or older living in your home. Please provide verification of GROSS income received in the following month: _____

- a. Paycheck stubs/ Employer statement showing GROSS earnings
- b. Child Support
- c. Social Security/SSI award letter/Survivor benefits
- d. Pensions/Annuity/IRA, Interest & Dividends
- e. Labor and Industry statement
- f. Student financial aid and tuition statement
- g. Rental/Investment property income (Provide a copy of lease/rental agreement)
- h. Other income _____
- i. Please have _____ complete the highlighted sections and sign the enclosed “Request for Records” form and mail it with your applications.

Primary Name on Utility bill:				
	Last	First	Middle	
Physical Address:				
	Street	Apt#	City	Zip
Mailing Address:				
	Street	Apt#	City	Zip

Primary Phone:		Message:		E-Mail	
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Richland County Utility Account #	
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HOUSING INFORMATION

Housing members include everyone living in the home, regardless of age, whether or not they pay rent, and their relationship to applicant. Examples: roommates, relatives, tenants, children, friends, extended family members, etc.

Name (Last, First)	Date of Birth	Sex	Relationship to You	Gross Monthly Income	Income Source (employers name, Social Security, etc.)
		M <input type="checkbox"/> F <input type="checkbox"/>	Myself	\$ _____	
		M <input type="checkbox"/> F <input type="checkbox"/>		\$ _____	
		M <input type="checkbox"/> F <input type="checkbox"/>		\$ _____	
		M <input type="checkbox"/> F <input type="checkbox"/>		\$ _____	
		M <input type="checkbox"/> F <input type="checkbox"/>		\$ _____	

Total number in household: _____ If more than 5, list other household members on a separate page.

Source of income or benefits (please check all that apply):

- Wages Unemployment Child Support Adoption Support
 Pension/Annuity VA Rental income Social Security/SSI
 Other _____

HOUSING INFORMATION

Amount you pay for rent or mortgage: \$ _____ If rent is subsidized (check one)

Housing Status: Columbia Housing Authority Other _____

Housing Type: Single Family Home 2, 3, or 4 Units Apt. Building Condo Mobile Home

OPTIONAL INFORMATION

How do you identify yourself: Multi Racial Native American Asian American/Asian
 Hispanic, Latino Black, African American, African White, Caucasian Other

What is your primary language? _____

How did you hear about our services? Radio Television Newspaper Newsletter
 Website Utility Bill Insert Family or friends Other: _____

As a participant of the Assistance Program, you may be eligible for additional government benefits. If you do NOT wish to receive notices for additional Richland County or State benefit programs, please check this box.

SIGNATURE	
I am aware that my information is subject to review and verification and that other documentation may be required. I grant permission to request information from the _____ Housing Authority, Sec 8, HUD, other government agencies, or their delegated agents; this may result in receipt or denial of County benefits. Submitting this application does not guarantee eligibility or enrollment in any programs.	
I certify that the information I provided is accurate and complete and that I may be subject to criminal prosecution if I have knowingly given false or misleading information. I agree to provide updated proof of eligibility at any time, if requested.	
I understand that if I am found to be in violation of program rules, and receive assistance and have not truly disclosed all information, I will be removed from the program and the County may recover the actual costs for the periods I was not eligible.	
I will notify the Richland County if my income or living situation changes.	
<i>Primary Name on RCU Bill</i>	
Signature:	Date:



PROGRAM INFORMATION FOR FLYER AND WEBSITE

Residential Utilities Assistance Program

The Residential Utilities Assistance Program (RUAP) offers eligible and qualified customers a \$10.00 monthly credit. The RUAP is available for income-qualified residential households.

Eligibility:

To be eligible for the RUAP, you must meet the following:

- a. You have a utility bill in your name
- b. Only the primary account holder can apply for the credit on a yearly basis

Your total yearly household income in the one-month prior to applying must be: Household Size	Gross Monthly Income	Gross Yearly Income
1	\$1,561	\$18,735
2	\$2,114	\$25,365
3	\$2,666	\$31,995
4	\$3,219	\$38,625
5	\$3,771	\$45,255
6	\$4,324	\$51,885
7	\$4,876	\$58,515
8	\$5,429	\$65,145
9	\$5,797	\$69,465
10	\$6,165	\$73,785
Each Additional	\$368	\$4,320

Note: Refer to the Utility Credit Program application for additional eligibility requirements.

How to Apply:

Step 1: Check your eligibility for RUAP using the Eligibility Requirements above.

Step 2: Complete your RUAP application

Step 3: Mail your application to:

Richland County Residential Utilities Assistance Program
PO Box 192
Columbia, SC 29202

Step 4: Richland County Utilities' staff will contact you to complete the application process.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Agenda Briefing

To: Chair Joyce Dickerson and Honorable Members of the Committee
Prepared by: Art Braswell, General Manager, Solid Waste & Recycling Division
Department: Public Works
Date Prepared: April 15, 2019 **Meeting Date:** May 23, 2019

Legal Review	Elizabeth McLean, Deputy Attorney, via email	Date:	November 06, 2018
Budget Review	James Hayes, Budget & Grants Director, via email	Date:	May 09, 2019
Finance Review	Stacey Hamm, Finance Director, via email	Date:	May 07, 2019
Approved for Council consideration:	Acting County Administrator	John M. Thompson, Ph.D., MBA, CPM	
Committee	Administration and Finance		
Subject:	Clemson Road Recycling Drop-off Site Lease Renewal		

Recommended Action:

Staff recommends renewing the lease with Clemson University for the Clemson Road Recycling Drop-off Site.

Motion Requested:

Move that the proposed lease with Clemson University for use of the Clemson Road Recycling Drop-off Site be approved.

Request for Council Reconsideration: Yes

Fiscal Impact:

There is no increase in the cost to the County for the rent. Rent for the property is based on the number of containers placed on the property. The County plans to continue with the placement of six recycling containers on the property. The cost to the County is \$720 per month (\$8,640 per year). These funds are within the Solid Waste & Recycling Division operating budget.

Motion of Origin:

This action did not originate with a Council motion.

Discussion:

Richland County entered into a lease agreement with Clemson University on July 2, 2013 for the property located at 900 Clemson Road, Columbia, SC for use by the citizens of Richland County as a recycling drop-off site. The term of the lease agreement was for a period of one-year from the date of execution thereof. The agreement automatically renewed with the same terms and conditions for four consecutive, one-year terms.

The lease agreement required the County to pay a sum of \$120 per month per recycling container on the property. The County has maintained six containers at the site at the cost of \$720 per month or \$8,640 per year.

The lease agreement for the Clemson Road Recycling Drop-off Site has expired, and Clemson University is requesting that the County sign a new lease agreement for use of the site. The new lease is for approximately 15,000 square feet, which reflects the area the County uses. The proposed lease agreement requires the County to pay a sum of \$120 each month per container located on the premises. There are currently six containers located at the site. The proposed lease agreement requires excess debris, overflow of containers, and materials outside of the containers be cleaned up within 24-hours. Failure to comply will result in a fee of \$50 per day per container until the debris or overflow is removed.

Attachments:

1. Proposed lease with property sketch

GOVERNMENTAL REAL ESTATE LEASE

This lease agreement is made as of this ___ day of _____ by and between Clemson University ("Landlord"), an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at: 201 Sikes Hall, Clemson, SC 29634; and Richland County, South Carolina ("Tenant");

WITNESSETH THAT:

LEASE PREMISES: Upon and subject to the terms, covenants, and conditions hereinafter set forth, Landlord hereby leases to Tenant and Tenant does hereby hire and rent from Landlord that certain area (hereinafter called the "Leased Premises") as shown on (**Exhibit A**) as outlined in red attached hereto and made a part hereof and shall include approximately 15,000 square feet of unimproved property located at 900 Clemson Road, Columbia, SC, together with the right of ingress and egress to and from the Leased Premises and more fully described and shown on Exhibit A. The Tenant has inspected the Leased Premises and has agreed to accept them in "as is" condition.

1. TERM: The Lease Term shall be for an initial period of one (1) year, commencing on **July 3, 2019**, and shall continue thereafter to and including the **2nd day of July 2020**, unless earlier terminated as hereinafter provided. Tenant or Landlord can terminate this lease with ninety (90) days advance written notice. The dates upon which the Lease Term shall commence and terminate are herein called the "COMMENCEMENT DATE" and the "EXPIRATION DATE", respectively. This Lease Agreement shall automatically renew on the same terms and conditions as stated herein, for four (4) consecutive one (1) year terms, unless either party gives ninety (90) days written notice before the end of any term.

2. RENT: Tenant shall pay monthly, as consideration to Landlord without demand, a sum of one hundred twenty (\$120.00) dollars per Sonoco recycling container on the Premises per month. At the commencement of this lease, there are a total of six (6) recycling containers located on the Premises.

3. SERVICES: Tenant shall pay any and all operating expenses, maintenance, including all utilities and grounds maintenance, related to the management of the Leased Premises. Landlord shall pay all taxes and assessments, if any, on the subject Premises.

4. USE OF PREMISES: Tenant shall use and occupy the Leased Premises for the following purpose or purposes: as the Clemson Road Recycling Drop-off Site for approved recycling by the citizens of Richland County and for no other purpose whatsoever. Tenant agrees to comply with all laws, ordinances, and other governmental rules and regulations concerning the Leased Premises, roads, and other public property abutting the Leased Premises.

Tenant will not, at any time, without obtaining Landlord's prior written consent, conduct or permit

any fire, bankruptcy, or auction sale on the Leased Premises, or permit any rubbish or garbage to accumulate on the Leased Premises. Any notice by Landlord to Tenant regarding excess debris, overflow, etc. of recycling containers or materials outside of property containers shall be addressed and cleaned up within 24 hours. If not addressed within the timeframe, Landlord will impose a \$50 per day per recycling container fee until such excess debris, overflow, etc. is addressed and cleaned up.

Tenant will not, at any time, deface or injure any portion of the Leased Premises; or burn anything in or about the Leased Premises.

5. LANDLORD'S RIGHT TO ENTER PREMISES: Landlord, or its authorized agents, may at any reasonable time, enter the Leased Premises to inspect the Leased Premises or adjacent premises as Landlord may deem proper; and there shall be no diminution of rent, or liability on the part of the Tenant by reason of inconvenience, annoyance, or injury to business.

6. (A) LIABILITY: Landlord shall not be liable to Tenant, or those claiming through or under Tenant, for injury, death, or property damage occurring in, on, or about the Leased Premises and appurtenances thereto resulting from the negligent act or omission of Tenant or its employees within the scope of their employment.

(B) NOTIFICATION: Tenant shall notify Landlord of any accident or injury to persons or property in Tenant's area within 24 hours of such accident.

7. ALTERATIONS: Tenant will not make any alterations of or addition to the Leased Premises without the written approval of Landlord, and all alterations, additions, or improvements which may be made by either of the parties hereto upon the Leased Premises shall be the property of Landlord and shall remain upon and be surrendered with the Leased Premises as part thereof, at the termination of this Lease or any extension thereof. Tenant will not permit any mechanics', laborers' or "materialman's" liens to stand against the Leased Premises for any labor or material furnished in connection with any work performed or claimed to have been performed in, on, or about the Leased Premises. Tenant, at its sole expense, shall have the right to erect appropriate signs or markings designating and identifying its use of the Premises and meeting and complying with the ordinances of the County of Richland, SC. Any such signs shall be removed by the Tenant at the termination of the Lease.

8. EASEMENTS FOR UTILITY LINES, ETC. Landlord reserves the right to place, access and maintain (in such manner as to keep to a minimum interference with Tenant's use of the Lease Premises) utility lines, conduits, pipes, tunneling, and the like in, over, below, and upon the Leased Premises as deemed appropriate by Landlord.

9. NO WARRANTY BY LANDLORD REGARDING UNINTERRUPTED SERVICE: It is agreed that Landlord does not warrant that any one of the services referred to in articles above will be free from interruption, including the interruption or curtailment of service resulting from energy shortages. Interruption of service shall never be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises or any part thereof or render Landlord liable

to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease.

10. QUIET ENJOYMENT: Landlord covenants that Tenant shall peaceably and quietly possess and enjoy the Leased Premises as against all persons claiming any right, title, or interest in and to said Leased Premises so long as Tenant shall faithfully perform the covenants, obligations, agreements, and conditions of this Lease. Landlord reserves the right to subject this Lease at all times to the lien of any mortgages or deeds of trust hereafter placed upon the Leased Premises or any part thereof.

11. VACATION OF PREMISES BY TENANT: Upon the expiration or termination of the Lease Term, Tenant shall at its own expense: (a) remove Tenant's goods and effects and those of all persons claiming under Tenant; (b) quit and deliver up the Leased Premises to Landlord, peaceably and quietly, in as good order and condition as the same were in on the date the Lease Term commenced or were thereafter placed in by Landlord, reasonable wear and tear excepted; and (c) at Landlord's request, restore the Leased Premises to general standards adopted from time to time by Landlord for general application throughout the Leased Premises. Any property left in the Leased Premises after the expiration or termination of the Lease Term shall be deemed to have been abandoned and the property of the Landlord to dispose of as Landlord deems expedient.

12. KEYS: Tenant shall install and be responsible for any gates installed on the Leased Premises. Tenant shall provide Landlord with a master key or pass key to any locks installed on the gates or any buildings. Tenant shall have the right to change or install new locks or security systems with the written approval from the Landlord, and Tenant shall provide Landlord with a key and/or electronic access card for the new locks or security systems.

13. FIRE OR OTHER CASUALTY: If the Leased Premises is damaged or destroyed by fire or other casualty, the Landlord shall have the right to terminate this Lease, provided it gives written notice thereof to the Tenant within ninety (90) days after such damage or destruction. If a portion of the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by Tenant, is damaged by fire or other casualty, and this Lease is not thereby terminated, the Landlord shall, at its expense, restore the Leased Premises to as near the condition which existed immediately prior to such damage or destruction, as reasonably possible, and rent shall abate during such period of time as the Leased Premises are untenable, in the proportion that the untenable portion of the Lease Premises bears to the entire Leased Premises. The Landlord shall not be responsible to the Tenant for damage to, or destruction of any furniture, equipment, improvements, or other changes made by the Tenant in, on, or about the Leased Premises regardless of the cause of the damage or destruction. Landlord shall not be responsible to Tenant for any damages suffered by Tenant due to the Leased Premises being untenable for a period of time.

14. (A) INSURANCE: Tenant, at its own expense, shall provide and keep in force liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage. Tenant agrees to arrange for notice by its insurance carrier in the event of any cancellation of insurance coverage.

15. LOSS OR DAMAGE TO PROPERTY: Neither Landlord nor Landlord's Agent or employees shall be liable for the theft or misappropriation thereof, nor for any damage or injury thereof, nor for death or injury of Tenant, or any other person or damage to property caused by water, snow, frost, steam, heat, cold, dampness, falling plaster, explosions, sewers or sewage, gas, odors, noise, or by any acts or negligent acts of other Tenants or occupants of the Leased Premises, or of any other person, unless any such loss is caused through the negligence or omission of Landlord and or its employees acting within the scope of their employment.

16. SALE BY LANDLORD: In the event of a sale or conveyance by Landlord of the Leased Premises, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. This Lease shall not be affected by any such sale, and Tenant agrees to attorn to the purchaser or assignee.

17. WAIVER OF COVENANTS: Failure of Landlord to insist, in any one or more instances, upon strict performance of any term, covenant, or condition of this Lease, or to exercise any option herein contained, shall not be construed as a waiver of such breach, and Landlord shall not be deemed to have waived any provision of this Lease unless expressed in writing and signed by Landlord.

18. NOTICE: Notice or communication which Landlord desires or is required to give Tenant, including any notice of termination, shall be deemed sufficiently given or rendered in writing delivered to Tenant personally, or sent by registered or certified mail, addressed to Tenant at the address provided below, and at the time of rendering or giving shall be deemed to be the time when the same is delivered to Tenant, or mailed to the Leased Premises as herein provided. Any notice by Tenant to Landlord must be served by registered or certified mail addressed to Landlord at the address listed below, or upon notice given to Tenant, at such other place as Landlord designates.

Tenant Notice Address: Richland County, c/o Administrator, 2020 Hampton Street – PO Box 192, Columbia, SC 29202

Landlord Notice Address: Sandhill REC Director, 900 Clemson Road, Agribusiness Center (560 Civitas Circle , Columbia, SC 29229.

With a copy to: Director, Office of Land & Capital Asset Stewardship, 5 Research Drive, Greenville, SC 29607.

19. ASSIGNMENT, SUBLETTING: Tenant and Landlord agree that this Lease cannot be assigned or any portion of the property sublet.

20. MISCELLANEOUS PROVISIONS:

(A) The words "Landlord" and "Tenant" as used herein shall include the plural as well as

the singular. Words used in masculine gender include the feminine and neuter. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several.

(B) The captions in this Lease are of convenience only, are not a part of this Lease, and shall have no effect upon the construction or interpretation of any part hereof.

(C) Time is of the essence of this Lease and each and all of its provisions.

(D) Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for Lease and it is not effective as a Lease or otherwise until execution and delivery by both Landlord and Tenant.

(E) Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provisions hereof and such other provision shall remain in full force and effect.

(F) This Lease contains the entire agreement between the parties and any agreement hereafter made shall be ineffective to change, modify, or discharge it in whole or in part, unless such agreement is in writing and signed by all parties.

(G) This Lease shall be governed by and construed pursuant to the laws of the state of South Carolina.

(H) The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind heirs, successors, executors, administrators and assignees of the parties hereto and all of the parties hereto shall be jointly and severally liable hereunder.

<<<SIGNATURES TO FOLLOW>>>

IN WITNESS WHEREOF, The Parties have executed this Lease the day and year first above written.

IN THE PRESENCE OF:
WITNESS:

WITNESS:

IN THE PRESENCE OF:
WITNESS:

COUNCIL

LANDLORD:
EVP for Finance and Operations:

(Anthony E. Wagner, EVP-Finance &
Operations) Clemson University

Date

President:

(James P. Clements, President)
Clemson University

Date

TENANT: RICHLAND COUNTY, SC

RICHLAND COUNTY

Date

This Lease Agreement is approved in accordance with Regulation 19-447.1000 by the South Carolina Department of Administration, Division of General Services, Real Property Services, this _____, day of _____, 2019.

EXEMPT

Program Manager/Attorney
Real Property Management

EXHIBIT A
DESCRIPTION OF LEASED PREMISES

