

Creating Access to Opportunity Through Fair Chance “Ban the Box” Policies

May 2016

Ellen Sue Katz

William E. Morris Institute for Justice

3707 North Seventh Street, Suite 220

Phoenix, Arizona 85014

(602) 252-3432

eskatz@qwestoffice.net

All non-Arizona material taken with permission from National Employment Law Project (NELP) presentations and publications. The Institute thanks NELP for its assistance in the preparation of this presentation.

Reducing Barriers to Employment for Persons with Criminal Records Matters to All of Us

Policymakers speak out:

- As Mayor Richard Daley explained when he announced Chicago's policy promoting fairness in employment on January 24, 2006: "We cannot ask private employers to consider hiring former prisoners unless the City practices what it preaches." <http://egov.cityofchicago.org/city/webportal/jsp/content/show/NewsItem.jsp?>
- When Illinois Governor Pat Quinn signed state legislation in 2014 that extended "ban the box" to private employers, he noted the importance of the legislation:

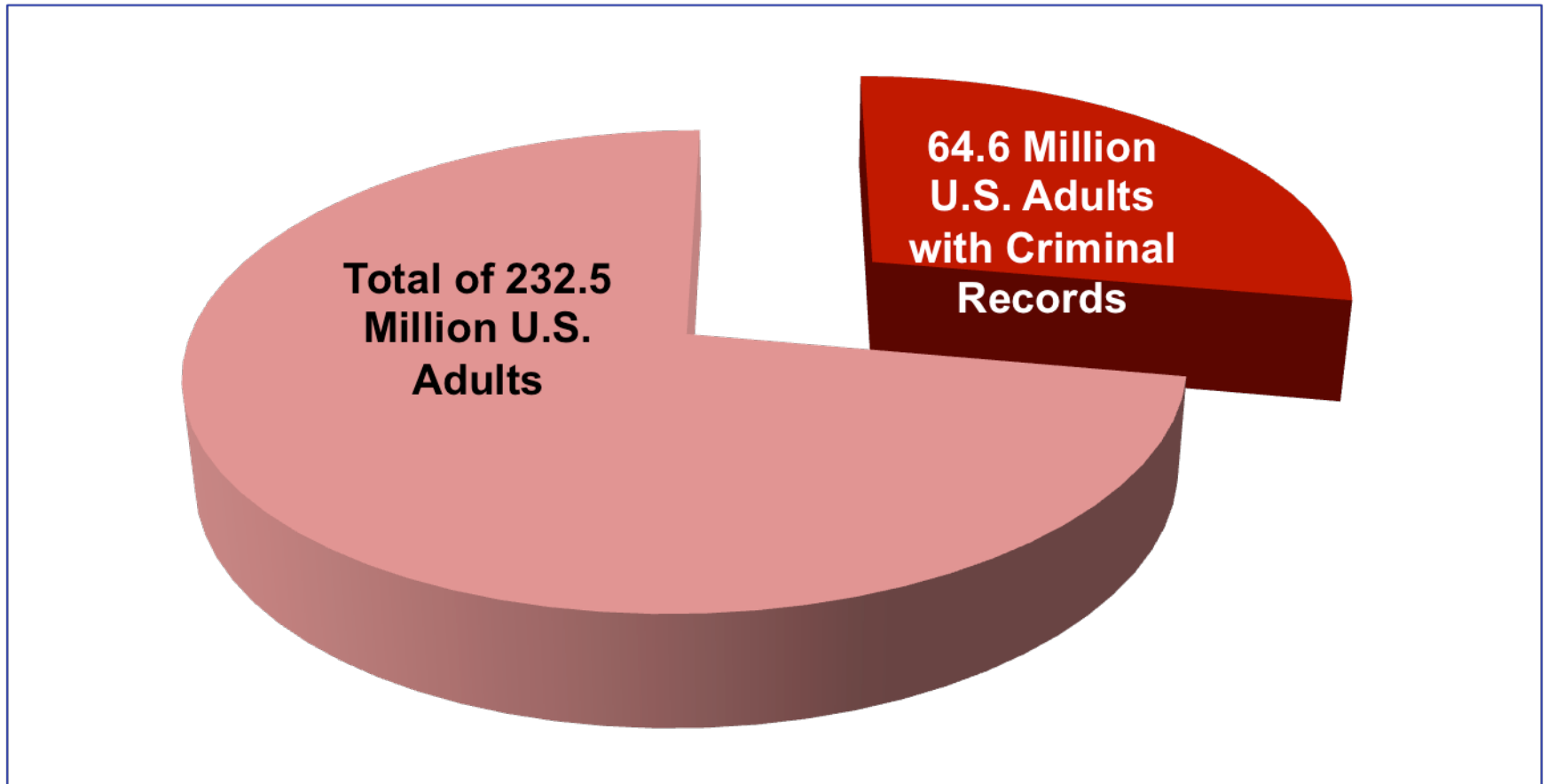
"Everyone deserves a second chance when it comes to getting a job ... This law will help ensure that people across across Illinois get a fair shot to reach their full potential through their skills and qualifications, rather than past history. It will also help reduce recidivism, fight poverty and

and prevent violence in our communities by putting more people back to work.” <http://www3.illinois.gov/PressReleases/ShowPressReleases.cfm>.

- Georgia Governor Nathan Deal signed an executive order promoting fair chance and explained that “‘Ban the Box’ hiring policies enhance Georgia’s reputation ... by increasing qualified applicant pools and improving the likelihood that the employer will identify the best candidate for the position.” February 23, 2015 (Executive Order).
http://gov.Georgia.gov/sites/gov.Georgia.gov/files/related_files/document/02.23.15.03.pdf.
- New Jersey Governor Chris Christie signed ban the box legislation and noted that the “[l]egislation ... continues with our promise and commitment to give people a second chance ... So, today, we are banning the box and ending employment discrimination. And this is going to make a huge difference for folks who have paid their debts to society, who want to start their lives over again....” August 11, 2014.
<http://www.state.nj.us/governor/news/news/552014approved/201404811g.html>

Over 1 in 4 U.S. Adults Has an Arrest or Conviction Record

(U.S. Department of Justice, Bureau of Justice Statistics, "Survey of State Criminal History Information Systems, 2010."
<https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>)



The U.S. has the most persons in prison and the highest incarceration rate of any nation in the world

U.S. prisons and jails now hold more than 2.3 million persons: more than **1 in 100 adults** is currently behind bars.

7.3 million persons -- one in 31 adults -- is under some form of criminal justice supervision.

More than **700,000 persons** are released from U.S. prisons every year (four times more than 25 years ago).

“Collateral Costs: Incarceration’s Effect on Economic Mobility.” PEW 2010.

[http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf).

Racial Disparities in Incarceration Rates

“Prisoners in 2011,” Carson and Sabol, U.S. Department of Justice, Bureau of Justice Studies, <http://www.bjs.gov/content/pub/pdf/p11.pdf>.

For males:

- African-Americans: 3,023 per 100,000 persons
- Latinos: 1,238 per 100,000
- Caucasians: 478 per 100,000

Depending on the age group, African-Americans are incarcerated at a rate between 5-9 times greater than white persons.

Racial Disparities (continued)

Latino males are incarcerated at a rate between 2-3 times that of white males.

For women:

African-American women are 2-3 times more likely to be imprisoned and Latinas, in most age groups, are 2-3 times more likely to be imprisoned than white women.

Over 2,471,300 women were arrested in 2011 – 25% of all arrests. Girls under 18 represented 18% of all women arrested.

(FBI report, "Crime in the United States, 2011" www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./tables/personsarrested (table40))

The national breakdown on state felony offenses at the end of 2010

“Prisoners in 2011,” Carson and Sabol, U.S. Department of Justice, Bureau of Justice Studies, <http://www.bjs.gov/content/pub/pdf/p11.pdf>

- 47% of all state felony offenses were nonviolent.
- 25% of females were in for drug offenses and 29% were imprisoned for property crimes.
- 17% of men were in for drug offenses and 18% for property crimes.

The rising number of persons in prison is not because of an increase in crime

- In 2008 both violent and property crimes were below their 1980 rates, when the current incarceration boom began.
- Mandatory sentencing and longer sentence lengths, especially for drug-related offenses, account for the increase.

“Ex-Offenders and the Labor Market.” Center for Economic and Policy Research. November 2010. www.cepr.net/documents/publications/ex-offenders-2010-11.pdf

Imprisonment Trends

Assuming that current incarceration rates remain unchanged, about 1 in 17 white men, 1 in 6 Latino men and 1 in 3 African-American men are expected to serve time in prison during their lifetime.

“Prevalence of Imprisonment in the U.S. Population,” 1974-2001, at 1 (2003), Thomas P. Bonczar, Bureau of Justice Statistics, U.S. Department of Justice. <http://bjs.ojp.usdoj.gov/content/pub/pdf/piuspol.pdf>.

Arizona Statistics

Office of the Auditor General: Department of Corrections – Prison Population Growth. http://www.azauditor.gov/Reports/State_Agencies/Corrections_Department_of/Performance/10-08/10.08.pdf. (September 2010).

- In the past 30 years while the state's population doubled, the state's prison population increased tenfold to 40,477 in June 2010.
- Arizona's prison growth exceeded every other western state from 2000-2008.
- In 2008, 1 in every 170 Arizonans was in prison.
- Arizona's crime rate has generally dropped since the mid-1990s.

Arizona Statistics

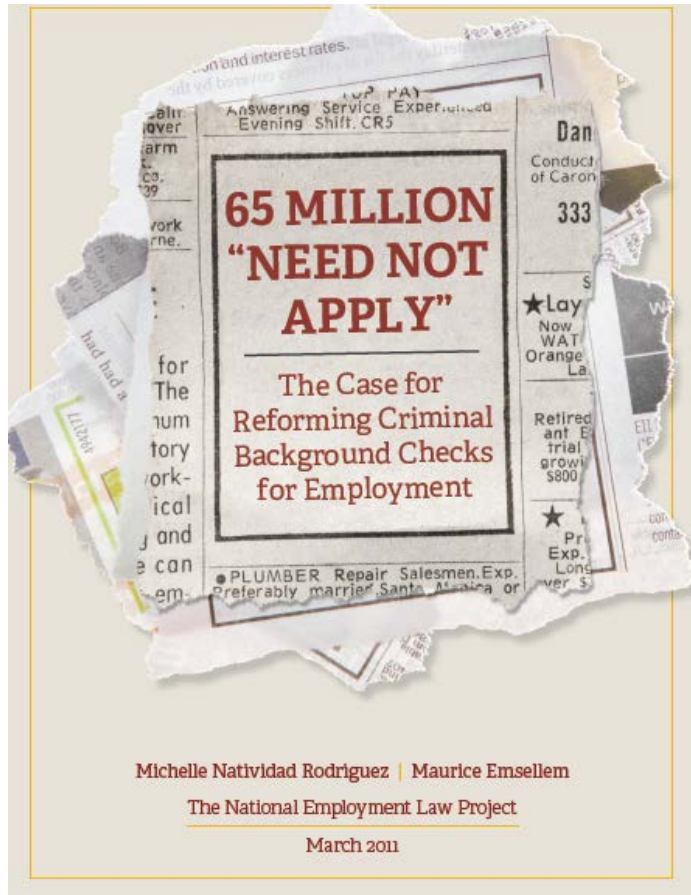
(Continued)

- Arizona's incarceration rate for 2007 was tied for 9th highest.
- In December 2009, over 20% of inmates were in prison for drug offenses and over 12% for assault.
- The percentage of admissions for a violent offense is about 24%.

Arizona Statistics

(Continued)

As of February 2016, there were over 42,600 persons in Arizona's prisons and approximately 5,400 persons in community supervision. "Corrections At A Glance," Feb 2016.
https://corrections.az.gov/reports-documents/reports/correction-glance/Feb_2016_cag.pdf.



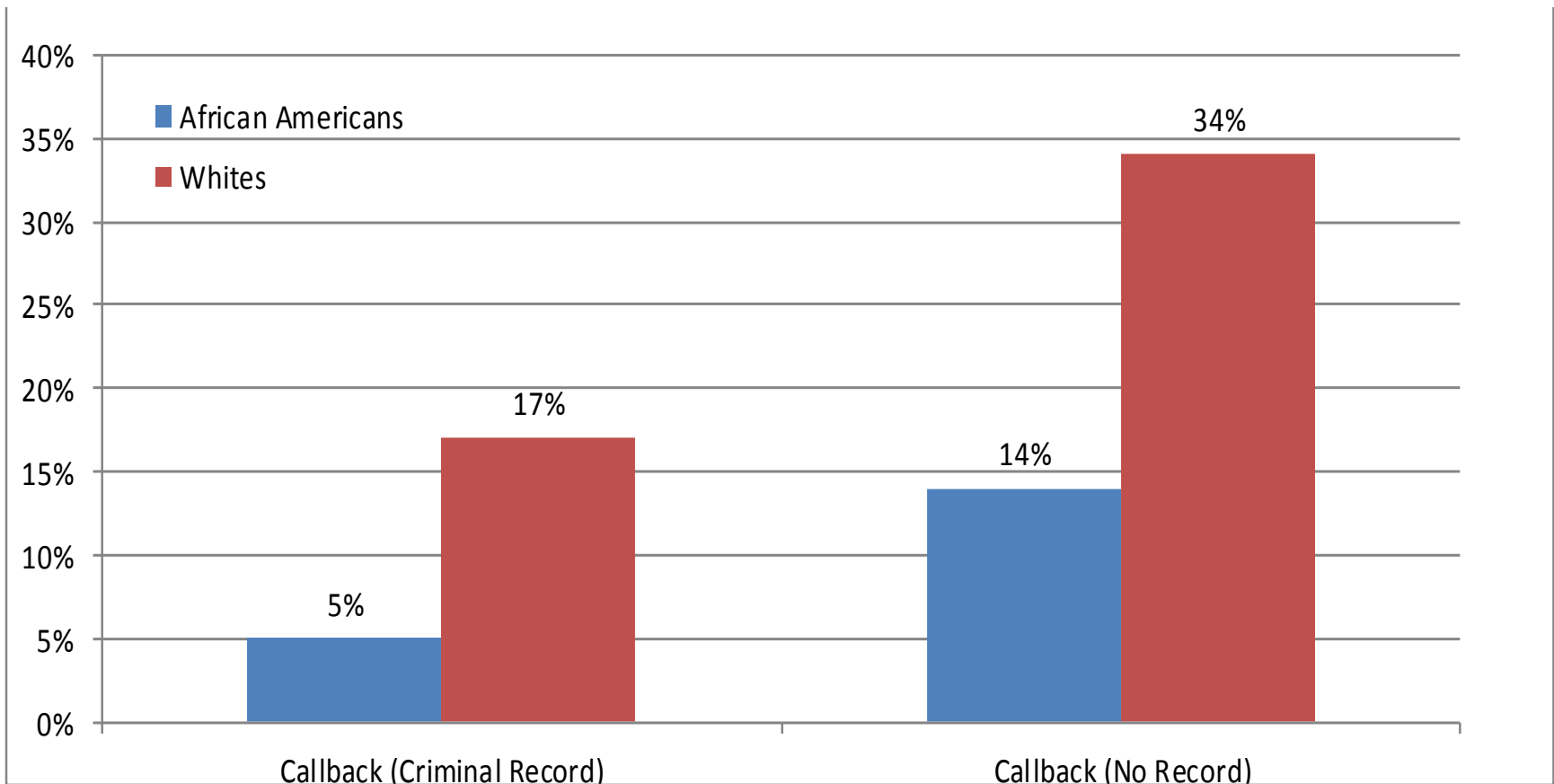
NELP Report Released in March 2011 Documented Blanket Bans on Craigslist Illustrating Breadth of the Problem

http://nelp.3cdn.net/c1696a4161be2c85dd_t0m62vj76.pdf

Sample: "You must not have any felony or misdemeanor convictions on your record. Period."

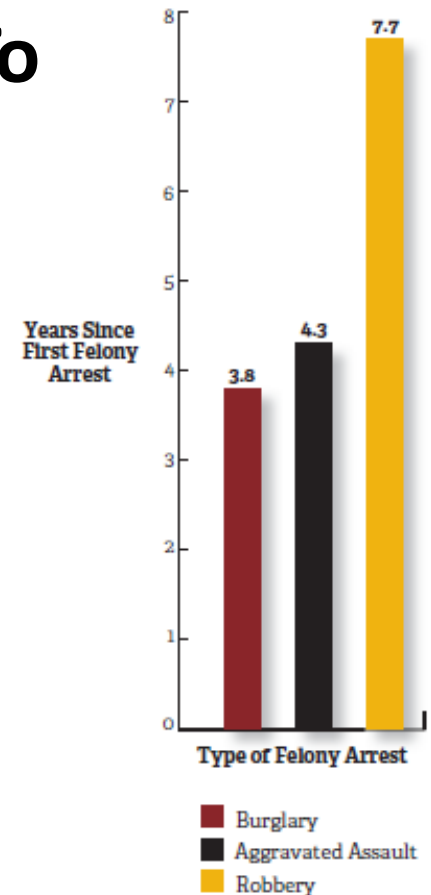
Job Callbacks Reduced by 50% for Persons with Criminal Records—Even Fewer Callbacks for African-Americans

(Devah Pager, "The Mark of a Criminal Record," American Journal of Sociology 108(5) 2003, 937-975, http://www.princeton.edu/~pager/pager_ajs.pdf)



A Prior Criminal Record Alone Is Not a Reliable Indicator of Propensity To Violate The Law

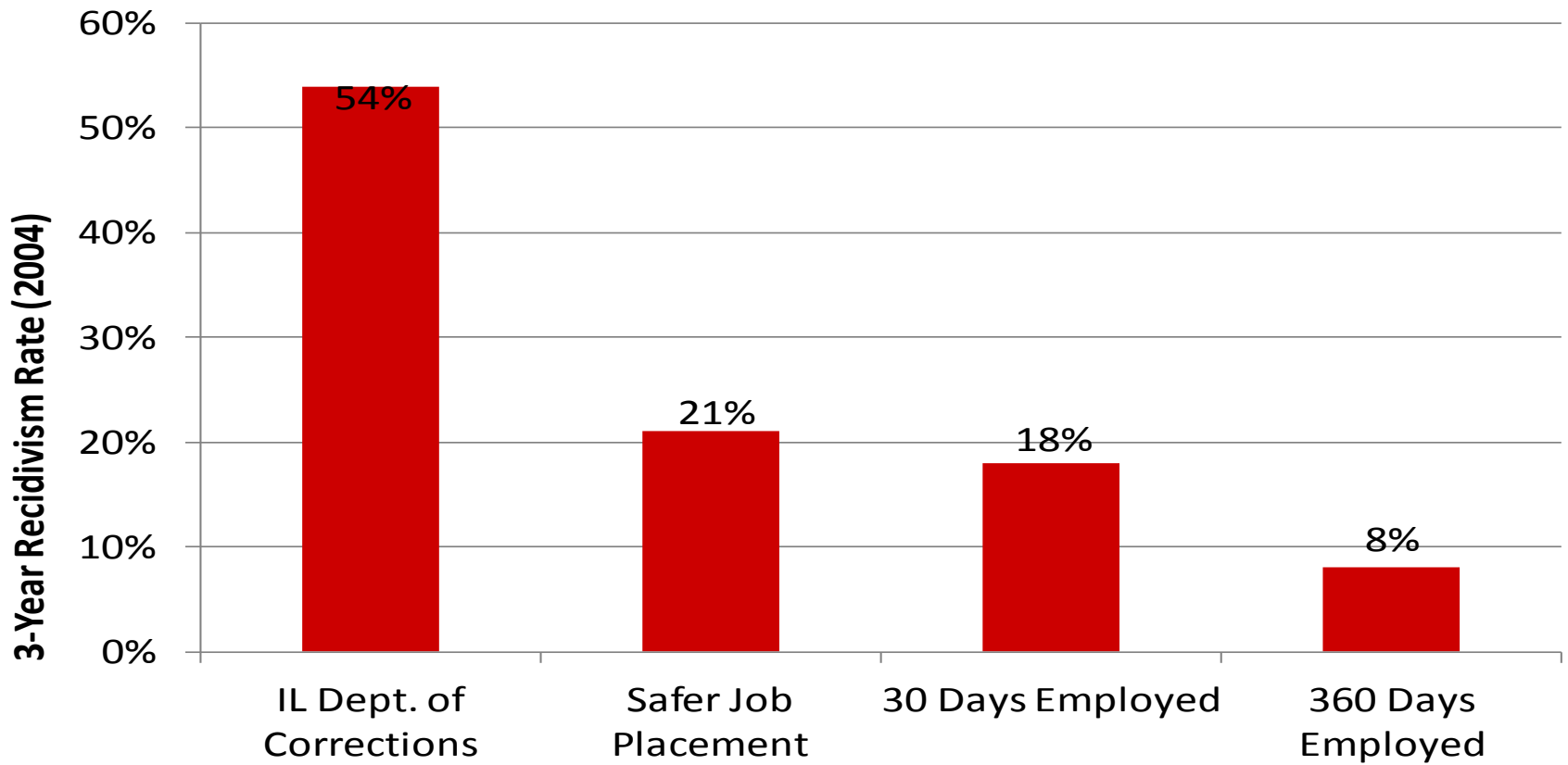
- Persons who were arrested had same risk of being arrested as general population after 4-7 years of no arrests. Alfred Blumstein and Kiminori Nakamura, “‘Redemption’ in an Era of Widespread Criminal Background Checks,” National Institute of Justice Journal, No. 263 (June 2009 at 12-13). <https://www.ncjrs.gov/pdffiles/nij/226872.pdf>.
- Importantly, this shows that lifetime exclusions against persons with criminal records are not supported by research.



A major study found that 18-year-olds who were arrested had the same risk of being arrested as the general population after 3.8 years had passed since a burglary arrest, 4.3 years for aggravated assault, and 7.7 years for robbery.

Employment Significantly Reduces Recidivism

(Results of Chicago's Safer Foundation Job Placement for 1,600 People Recently Released from Prison, American Correctional Association, 135th Congress of Conviction, Safer Foundation Recidivism Study (August 8, 2005))



“Ban the Box”

Restoring Hope and Opportunity to Workers with Criminal Records

- Benefits to worker: remove chilling effect, decrease stigma, demonstrate qualifications
- Benefits to employers: maximize applicant pool and can reduce resource expenditure



Removing Employment Barriers Is a Win-Win for Us All

A 2011 study by the Economy League of Greater Philadelphia found that putting 100 formerly incarcerated persons back to work would increase their lifetime earnings by \$55 million, increase their income tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, all while saving more than \$2 million annually by keeping them out the criminal justice system. “Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,” Philadelphia, PA: Economy League of Greater Philadelphia, 2011. <http://economyleague.org/files/ExOffenders - Full Report FINAL revised.pdf>.

Updated EEOC Guidance on Use of Arrest and Conviction Records (4/25/12)

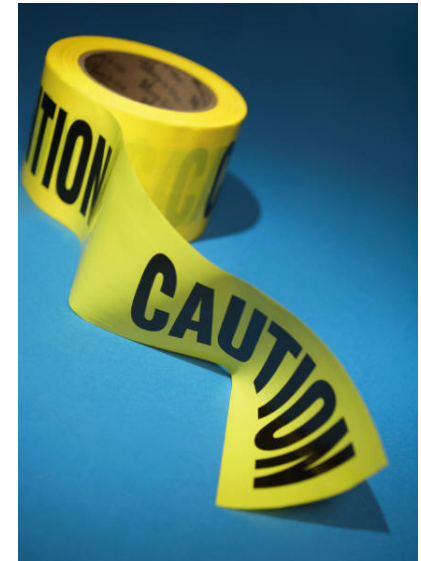
http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

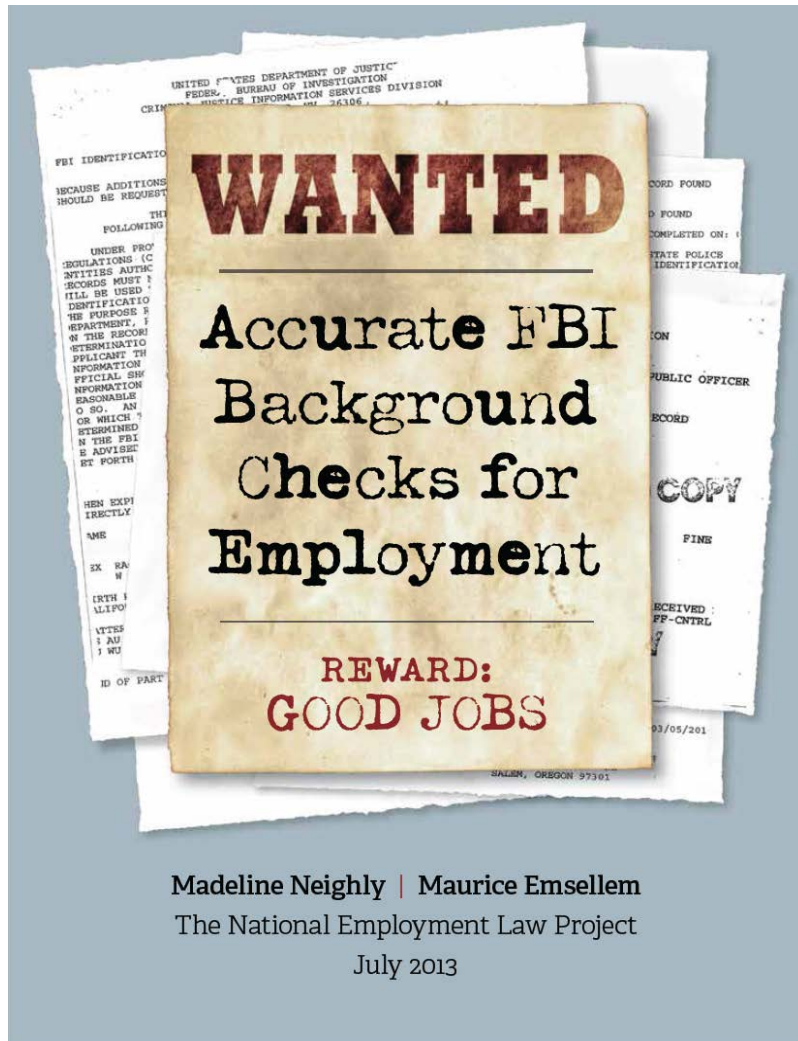


Criminal records exclusions may disproportionately exclude persons of color. If the employer does not show that an exclusion is “**job related and consistent with business necessity**” for the position, the exclusion is unlawful under Title VII.

Common Problems with Commercially Prepared Background Checks

- **Mistakes:** wrong grade of offense, failure to list disposition of an arrest, or that a conviction was overturned on appeal
- **False positives:** mismatched records of persons with similar names and birthdates
- **“Over-reporting” information:** with a disclaimer when uncertain of a match (“There is a conviction with Mr. X’s name. This may not be your Mr. X.”)
- **Presenting information in misleading format:** repeating same case, listing all charges even though most charges (often the most serious) were dropped





Madeline Neighly | Maurice Emsellem
The National Employment Law Project
July 2013

NELP Report Released in July 2013 Documents Inaccurate FBI Reports

<http://www.nelp.org/page/-/SCLP/2013/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf?nocdn=1>

23 States with Ban the Box Policies

As of April 2016, there are 23 states representing every region of the country that have adopted ban-the-box policies - California (2013, 2010), Colorado (2012), Connecticut (2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), Missouri (2016), Nebraska (2014), New Jersey (2014), New Mexico (2010), New York (2015), Ohio (2015), Oklahoma (2016), Oregon (2015), Rhode Island (2013), Tennessee (2016), Vermont (2015), Virginia (2015) and Wisconsin (2016). Of these 23 states, 7 states – Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon and Rhode Island - have banned the box for private employers as well as public employers. The District of Columbia also has banned the box.

Over 100 U.S. Cities and Counties Have Ban the Box Policies, Including

1. Akron, OH
2. Alameda County, CA
3. Allegheny County, PA
4. Alexandria, VA
5. Ann Arbor, MI
6. Arlington County, VA
7. Atlantic City, NJ
8. Atlanta, GA
9. Austin, TX
10. Baltimore, MD
11. Baton Rouge, LA
12. Berkeley, CA
13. Bethlehem, PA
14. Boston, MA
15. Bridgeport, CT
16. Buffalo, NY
17. Cambridge, MA
18. Canton, OH
19. Carrboro, NC
20. Carson, CA
21. Charlotte, NC
22. Charlottesville, VA
23. Cherokee County, GA
24. Chicago, IL
25. Cincinnati, OH
26. Cleveland, OH
27. Columbia, MO
28. Compton, CA
29. Cumberland County, NC
30. Cuyahoga County, OH
31. Dallas County, TX
32. Dane County, WI
33. Dayton, OH
34. Detroit, MI
35. Durham City, NC
36. Durham County, NC
37. East Lansing, MI
38. East Palo Alto, CA
39. Fairfax County, VA
40. Fredericksburg, VA
41. Fulton County, GA
42. Gainesville, FL
43. Genesee County, MI
- 44. Glendale, AZ**
45. Hamilton County, OH
46. Hamilton County, TN
47. Hartford, CT
48. Indianapolis, IN
49. Jacksonville, FL
50. Kalamazoo, MI
51. Kansas City, MO
52. Lancaster, PA
53. Los Angeles, CA
54. Louisville, KY
55. Massillon, OH
56. Mecklenburg County, NC
57. Memphis, TN
58. Milwaukee County, WI
59. Minneapolis, MN
60. Montgomery County, MD
61. Montgomery County, VA
62. Multnomah County, OR
63. Muskegon County, MI
64. Nashville, TN
65. New Haven, CT
66. New York City, NY

Over 100 U.S. Cities and Counties Have Ban the Box Policies, Including (Continued)

- | | | |
|--------------------------------|----------------------------|-------------------------|
| 67. Newark, NJ | 85. Richmond, VA | 103. Virginia Beach, VA |
| 68. Newport News, VA | 86. Rochester, NY | 104. Washington, DC |
| 69. New Castle County, DE | 87. San Francisco, CA | 105. Wichita, KS |
| 70. New Orleans, LA | 88. Santa Clara County, CA | 106. Wilmington, DE |
| 71. Norfolk, VA | 89. Seattle, WA | 107. Worcester, MA |
| 72. Norwich, CT | 90. Spokane, WA | 108. Youngstown, OH |
| 73. Oakland, CA | 91. Spring Lake, NC | |
| 74. Pasadena, CA | 92. Staunton, VA | |
| 75. Petersburg, VA | 93. St. Louis, MO | |
| 76. Philadelphia, PA | 94. St. Paul, MN | |
| 77. Phoenix, AZ | 95. St. Petersburg, FL | |
| 78. Pima County, AZ | 96. Summit County, OH | |
| 79. Pittsburgh, PA | 97. Tacoma, WA | |
| 80. Portland, OR | 98. Syracuse, NY | |
| 81. Portsmouth, VA | 99. Tampa, FL | |
| 82. Prince George's County, MD | 100. Travis County, TX | |
| 83. Providence, RI | 101. Tucson, AZ | |
| 84. Richmond, CA | 102. Ulster County, NY | |

Ban the Box Policies Extended to Private Employers and Contractors

- Many cities also have extended their ban the box policies to private employers, including New York City, Buffalo, Seattle, San Francisco, Philadelphia, Los Angeles, Austin, Baltimore, Newark, Rochester, Portland and Washington, D.C.
- In addition, over 20 cities and counties extend the ban the box policies to private contractors.

No City, County or State that has implemented a Ban the Box Policy has gone back!

Ban the Box Policies Allow Persons with Criminal Records to Get Hired

- After the City of Minneapolis implemented its policy, they found that removing the criminal disclosure box from initial applications and postponing background checks until a conditional offer of employment was made decreased the amount of transactional work for City staff, did not slow down the hiring process, and resulted in more than half of applicants with convictions being hired. Minneapolis Conviction Information 2004-08YTD.pdf (Obtained from NELP).
- As a result of its new policy, 10 percent of the City of Atlanta's hires between March and October of 2013 were persons with records. Data on Atlanta hiring after ban the box 2013.pdf(obtained from NELP).

Ban the Box Policies Allow Persons with Criminal Records to Get Hired

(Continued)

- Since 2011, in Durham County, North Carolina, the number of applicants with criminal records recommended for hire has nearly tripled since its “ban the box” policy passed, with the resulting number of hires increasing from 35 to 97. On average, 96.8 percent of those with records recommended for hire ultimately get the job.
- From 2011 to 2014, the hire rate for persons with criminal records in Durham City quadrupled from 2.25% to 15.53%.
Information provided to NELP by Daryl Atkinson from Southern Coalition for Social Justice. daryl@scsj.org

Human Resources Directors from Alameda County, Oakland and Richmond testified at public hearings in 2013 to positive impact and no problems with their ban the box policies when California law to extend ban the box to cities, counties and special districts was being considered.

- Since adopting the policy in 2007, “our current background screening process is in no way less rigorous.”
- “There've been no negative or adverse consequences.”
- We hear that members of the community “are far more likely to apply for a position . . .”
- “We've been able to expand our pool of qualified applicants as a result of this change in our application process, which has been a tremendous benefit to the County.”

www.nelp.org/page/content/banthebox/.

Major Private Employers Have Banned the Box

- **Target**, the second largest retailer in the United States, announced in October 2013 that it would remove questions about criminal history from its applications throughout the nation after Minnesota (its headquarters) banned the box for private employers in the state.
- **American Airlines, Pepsico, Prudential Financial, Unilever, Walmart, Home Depot, Starbucks and Koch Industries** have banned the box.
- The New York Attorney General's Office has reached settlements with major employers to stop rejecting job applicants with criminal records. Two national employers, **Party City** and **Bed, Bath & Beyond** agreed to Ban the Box.

Also, U of A, ASU and NAU all banned the box.

Widespread Endorsement of Ban the Box

- Major Editorial Boards Endorse Ban the Box:
 - Los Angeles Times*, "To Help Ex-Cons, Ban the Box" (July 3, 2013)
 - New York Times*, "An Unfair Barrier to Employment" (May 5, 2013).
 - Sacramento Bee*, "A Job is Best Crime Prevention Program" (June 27, 2012)
- Pittsburgh U.S. Attorney David Hickman: "[B]an the box [legislation] has been helpful in giving offenders the opportunity to compete for jobs." ("Pittsburgh's U.S. Attorney urges employers to hire ex-offenders," *Pittsburgh Post-Gazette*, May 20, 2013).
- New Republic: "Don't Ask, Don't Tell, Get Hired (a single tweak to job applications would change the lives of millions of ex-cons)." (May 13, 2015)
www.newrepublic.com/article/121775/ban-box-people-criminalrecords-it-works

Widespread Endorsement of Ban the Box

(Continued)

- EEOC: “As a best practice, and consistent with applicable laws, the Commission recommends that employers do not ask about convictions on jobs applications” (EEOC Criminal Records Guidance, pages 13-14, April 25, 2012).

http://www.nelp.org/page/-/SCLP/2013/AB_218_Key_Endorsers.pdf

Elements of a Good Ban the Box Policy

- ✓ Evaluate hiring policies & adopt federal Title VII standards.
- ✓ Include notice on job application that conviction will not bar consideration.
- ✓ Limit background checks by time period and job.
- ✓ Only make inquiry after conditional job offer.
- ✓ Only consider job-related convictions.



Elements of a Good Ban the Box Policy (continued)

- ✓ **Provide applicant copy of background report.**
- ✓ **Allow applicant time to correct information.**
- ✓ **Conduct individualized assessment including consideration of other mitigating factors: time passed, rehabilitation, public policy to hire people with convictions.**
- ✓ **If conviction is job-related and disqualifies person, allow for appeal.**
- ✓ **Confidentiality of records.**

Elements of a Good Ban the Box Policy (continued)

- ✓ **Extend policies to vendors.**
- ✓ **Extend policies to private employers.**

National Employment Law Project

Ban the Box Resources

- Ensuring People With Convictions Have A Fair Chance To Work. www.nelp.org/campaign/ensuring-fair-chance-to-work/
- Ban the Box State and Local Guide
<http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide> (April 2016)
- Ban the Box Toolkit on the NELP website
<http://www.nelp.org>