



Outside the Box:

An Approach to Promoting and Increasing Employment Opportunities for People with Criminal Records

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Introduction

Too often, previously incarcerated individuals never finish paying their debt to society because social stigma and other barriers block their efforts to enter or re-enter the workforce. Recidivism remains a reality for those who never get a “second chance.” In fact, nearly two-thirds of previously incarcerated people return to prison within three years after release.¹ Meanwhile, studies overwhelmingly show that maintaining meaningful employment² is one of the primary predictors of whether a person leaving the criminal justice system will successfully reintegrate into society or be recycled back into the prison system.

Recognizing the social and economic strain that unemployment continues to bear on society, those with criminal records and their families, policymakers are stepping up nationwide with proposals to address this problem. Many proposals are being adopted into law with bipartisan support and little or no opposition from businesses.

Koch Industries, the company owned by conservative donors Charles and David Koch, has been vocal about the need to reform America’s criminal-justice system. In April, 2015, the company announced that it will no longer ask whether job applicants have committed a crime – a longstanding barrier that hampers the ability of prospective employees with criminal records to be considered for potentially life-changing job opportunities. Additionally, Koch Industries partnered with the Center for American Progress to form a coalition dedicated to criminal justice reform. The organization (called the Coalition for Public Safety) aims to push bipartisan measures to reduce prison populations, reform sentencing guidelines and reduce the recidivism rate.³

On a federal level, the U.S. Equal Employment Opportunity Commission (EEOC) endorsed removing the conviction question from job applications as a best practice in 2012. Furthermore, the Obama Administration’s My Brother’s Keeper Task Force gave the movement a boost when it endorsed hiring practices “which give applicants a fair chance and allows employers the opportunity to judge individual job candidates on their own merits.”⁴

In July, 2014, Illinois Governor Pat Quinn signed into law a bill that prohibits employers throughout the state from asking applicants if they have been convicted of a crime on job-application forms. Minnesota

Governor Mike Dayton signed a similar law in 2013. Best known as “Ban the Box” legislation, these types of policies don’t prohibit employers from conducting criminal background checks; they delay that practice until the employer has considered the applicant’s qualifications. In addition to allowing employers to consider a person first based on their qualifications and experience, these policies could reduce employer liability associated with rejecting qualified applicants solely for checking the box.⁵

To spark discussion about policies that will help people with criminal records in the state gain access to the job market, this CCLP brief analyzes the barriers that prevent people with criminal records from obtaining employment and the impact of those barriers on individuals and communities. We’ll also look at policies in other states and provide a qualitative assessment of how such policies are working.

Criminal justice: An American overview

The impact of mass incarceration is impossible to deny. Recent statistics show as many as 100 million Americans have criminal records.⁶ The number of Americans incarcerated in federal and state prisons has quadrupled over the past three decades, reaching more than 1.5 million in 2013⁷, far outpacing the rate of population growth. Meanwhile, expenditures at correctional facilities have quadrupled since 1982, costing the economy \$65 billion in 2012.⁸

Tellingly, incarceration has a disproportionate impact on communities of color. Black men are six times more likely to be incarcerated than white men and Hispanic men are 2.5 times more likely to be incarcerated than white men.⁹ The intersection of racial and criminal stigma is one reason black offenders have a far worse chance of being reintegrated into society than white offenders.¹⁰ Disproportionately higher conviction rates for people of color translate into heightened risk of reconviction. Compounding the problem, racial prejudice among employers remains a steadfast reality. While criminal records already reduce an applicant’s likelihood of being hired by nearly 50 percent,¹¹ research has found that a black man *without* a record is less likely to be hired than a white man with a conviction by a margin of 3 percent.¹²

A recent study by the National Institute of Justice confirmed that a criminal record is a powerful hiring disincentive.¹³ Job seekers currently on probation or parole or who have ever been incarcerated are most likely to be refused consideration for a position. And a majority of employers surveyed were unwilling to hire applicants who served prison time.

In terms of economic well-being, the implications of incarceration are devastating. More than 60 percent of formerly incarcerated individuals are unemployed one year after being released. Those who find jobs take home 40 percent less pay annually than those who have not been incarcerated.¹⁴ In fact, only one in four previously incarcerated individuals will ever rise above the bottom 20 percent of income earners.¹⁵ Adding insult to injury, in many states, people with felony drug convictions are barred from receiving certain types of assistance. As a result, up to 180,000 women are subject to a lifetime ban on Temporary Assistance to Needy Families (or TANF) in 12 states.¹⁶

Simply put, these factors hurt communities by increasing poverty, homelessness and crime, creating a perpetual cycle of poverty and crime. Given the importance of employment to successful reentry after incarceration, it is essential to identify and promote policies that remove barriers to employment as a component of broader policies to reduce recidivism.

The Colorado connection

Colorado has the 18th highest incarceration rate among all states, with 445 out of 100,000 Coloradans incarcerated.¹⁷ The state ranks 3rd for highest recidivism rate in the United States at 52.5 percent with the average time between release and re-arrest at approximately eight months.¹⁸

Approved in 2012, Colorado's Ban the Box policy applies to most state departments. In 2010, the Colorado legislature passed a bill that provides greater protection for employers that hire individuals with a criminal background from negligent hiring suits.

Policies in practice

Policies that promote ex-offender employment include **Certificates of Rehabilitation/Good Conduct**, **record sealing**, **provisional pardons**, **tax credits**, and **Ban the Box** policies.

Certificates of Rehabilitation/Certificates of Good Conduct consist of official state documents that vouch for the offender's personal rehabilitation and successful reentry. Such certificates are intended to alleviate employers' fears about hiring people with criminal records. While the concept clearly has merit, further study and discussion is needed to determine how to make these certificates effective in Colorado. An evaluation of New York's Certificate of Rehabilitation policy observed that most people who are eligible for these certificates do not apply for them.¹⁹

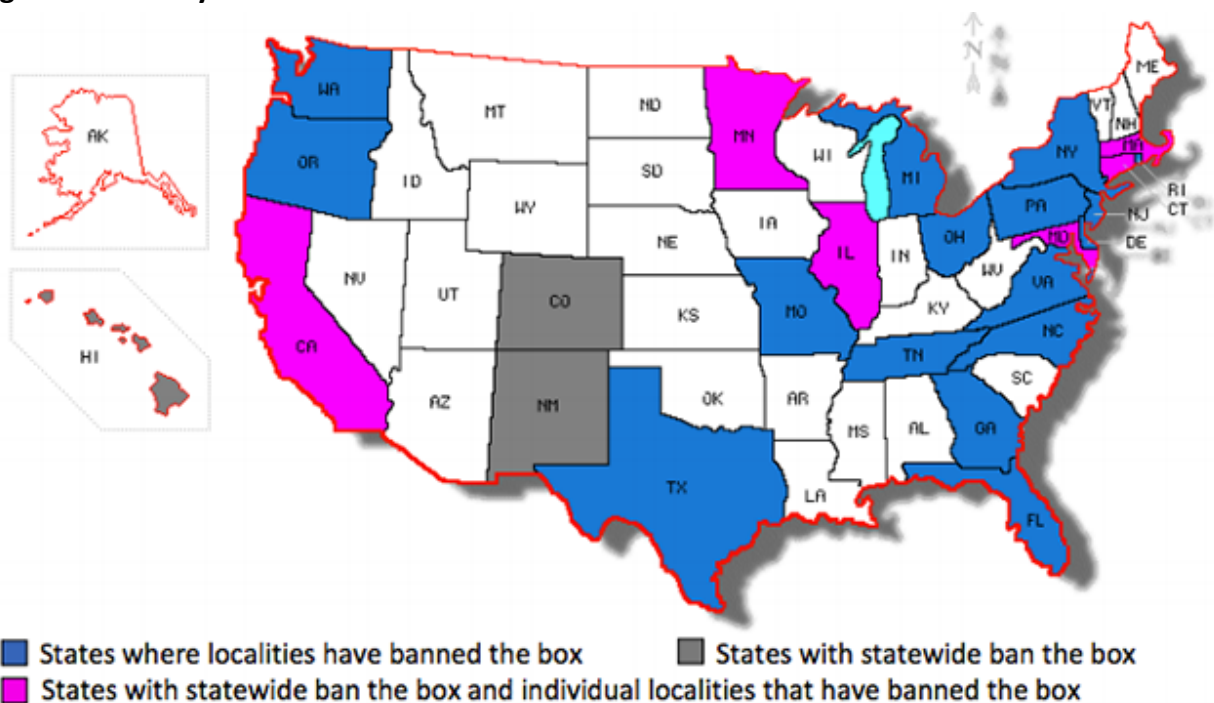
Criminal records may also be **sealed or expunged**, but laws differ widely from state to state. Offenses ranging from parking offenses to felony convictions may be sealed or expunged after varying periods of time. In general, records may be sealed or expunged after parole conditions are met, or by a court after a specified number of years of good behavior. Once a criminal record is sealed or expunged, while the record remains available to law enforcement agencies, applicants have no obligation to acknowledge their criminal record to a prospective employer.

In Connecticut, people with criminal records may apply for a **provisional pardon**. Pardon applications are considered by the state's Board of Pardons and Paroles. While provisional pardons do not erase one's conviction from his or her record, they prohibit employers from denying employment to an applicant based solely on a conviction for which the applicant received a provisional pardon. People with criminal records can apply for a provisional pardon at any time after they are sentenced – even when they are still on probation or parole. Three years after a misdemeanor conviction or five years after a felony conviction, an offender can apply for an expungement, which essentially eliminates an offender's criminal record.²⁰ Connecticut's Board receives roughly 800 applications a year. In 2012, 743 applications were received. Three hundred and forty three pardons were granted and 451 applications were denied.²¹

On a federal level, employers earn a tax credit equal to 25 to 40 percent (up to \$2,400) of the first-year wages of a recently hired offender. The Work Opportunity Tax Credit is available to employers who employ people from one of eight targeted groups, including "qualified ex-felons." A "qualified ex-felon" is defined as an individual who (1) has a state or federal felony conviction; (2) is a member of an economically disadvantaged family and (3) is hired within one year of release from prison or from date of conviction. The tax credit may be claimed after the offender has worked a minimum of 120 hours. Of the approximately 900,000 WOTC certificates issued by the federal government in 2012, only 22,000 were for providing employment to ex-felons.²² This data suggests that this tax credit may not be sufficient by itself to induce employers to hire people with a felony conviction.

Of the options that promote employment, **Ban the Box** policies are gaining the most momentum. In fact, 17 states (including Colorado) have some sort of Ban the Box law on the books. Of those, six states – Hawaii, Illinois, Massachusetts, Minnesota, New Jersey and Rhode Island -- have removed the criminal history question on job applications for private employers.²³ In addition to statewide Ban the Box laws, several municipalities enforce Ban the Box ordinances within city limits. No two policies are identical, but the core function of a Ban the Box law is to stop employers from asking about an applicant’s criminal history until after preliminary procedures in the hiring process have occurred.

Figure 1: State-by-State ‘Ban the Box’ laws



Source: National Employment Law Project

In theory, Ban the Box policies give people with criminal records a chance to provide their qualifications before a conviction is taken into consideration. They can also allow the job applicant to explain the

circumstances of their criminal history. These policies also prevent employers from automatically eliminating applications that indicate they have a criminal history while preserving their right to hire whom they deem the best candidate.

Ban the Box: A state-by-state primer

What follows is a rundown of some Ban the Box policies in states and municipalities throughout the U.S.:

Colorado – A law approved in 2012 prohibits most state departments from inquiring about criminal history until after the applicant has been selected as a finalist or has been given a conditional offer of employment. Applicant disqualification on the basis of criminal record is only warranted if the nature of the conviction directly relates to the position.

Illinois – A law passed in 2014 bars employers from inquiring into or requiring disclosure of a job applicant's criminal record or criminal history before the candidate has been selected for a job interview or has been made a conditional offer of employment. The law requires consideration of the nature and gravity of a candidate's conviction record, the time elapsed since the conviction, and whether the conviction has a direct bearing on the candidate's fitness before excluding a candidate. The law applies to public employers and private employers with 15 or more employees. Exempted employers include emergency medical services and employers subject to state or federal laws requiring exclusion of applicants with certain criminal convictions.

Massachusetts – A law approved in 2010 prohibits employers from inquiring about criminal history until after preliminary stages in hiring process. Under the law, felony charges may be sealed after 10 years with a clean record, misdemeanor charges may be sealed after five through an administrative process by mail. It should be noted however that simply getting a record sealed does not erase the record, but maintains a level of confidentiality outside of arresting agencies.²⁴ The law applies to public and private employers in the state of Massachusetts.

Minnesota – A law approved in 2013 prohibits employers from inquiring about criminal history before interview selection or a conditional offer has been extended. It also prohibits applicant disqualification on the basis of criminal record unless the conviction(s) and position are directly related. The law applies to public and private employers, excluding Department of Corrections, police forces, and jobs that require medical licensing and certain state or professional licensing agencies in the state.

Seattle, Wash. – An ordinance approved in 2009 prohibits employers from inquiring about criminal history until after determining final selection of qualified applicants. Furthermore, it prohibits employers from disqualifying applicants on the basis of a criminal record without establishing a legitimate business reason and corresponding list of factors including those enumerated by the Equal Employment Opportunity Commission. The ordinance, which applies to the City of Seattle and private employers within the city, also gives disqualified applicants the right to appeal denial of employment.

What does the data say?

The scope of longitudinal research conducted within jurisdictions that have implemented fair-chance hiring policies is limited, but encouraging:

- A quantitative study conducted in Minneapolis shows that the percentage of ex-offender applicants hired rose from 5.7 percent to 57.4 percent when Ban the Box policy went into effect.²⁵
- Another study found that Minneapolis' Ban the Box policy reduced the amount of time and resources needed to process applicants for city jobs by 28 percent.²⁶
- A study published in the *American Journal of Criminal Justice* showed that a criminal defendant prosecuted in Honolulu for a felony crime was 57 percent less likely to have a prior criminal conviction after the implementation of Hawaii's ban the box law.
- Since Ban the Box was implemented in Durham City, N.C. in 2011, the proportion of people with criminal records hired by the city increased nearly sevenfold (2.25 percent to 15.53 percent).²⁷
- A similar ordinance passed in 2012 by Durham County prompted the number of hired applicants with a criminal record to triple from 35 to 97 between 2011 and 2013.²⁸

Perhaps the most important collaborative initiative to pursue in tandem with policy reform is in the field of public education, specifically for employers. A UK study found that of 55 employers with a record of hiring people with criminal records, only 7 percent indicated any kind of negative experience with ex-offender employees.²⁹

Taking into account the fact that the percentage of employers unwilling to hire individuals with records lingers well above 50 percent (especially for violent crimes) and that the unemployment rate for people with criminal records hovers around 75 percent one year after release, it is clear that apprehension and unemployment is largely caused by unwarranted stigma.

Benefits of Ban the Box

- Ban the Box provides the most immediate and widespread advantages for people with criminal records given its universal application.
- Ban the Box policies, delayed background checks and elimination of screening procedures effectively cuts costs for human resource departments.
- Ban the Box policies result in little to no reduction of autonomy for businesses in the hiring process because the employer still retains the power to determine the best candidate to fill the posted position.
- Ban the Box is the most popular and fastest-growing policy initiative for ex-offender employment, which indicates a higher likelihood of implementation and/or expansion.
- Of the aforementioned policies, Ban the Box has the greatest structural impact. The influence of the currently implemented policy shows that Ban the Box is effective in increasing and normalizing the hiring of people with criminal records.

Conclusion

Due to Colorado's alarmingly high recidivism rate, it is imperative to implement policy solutions that best respond to the issues that sustain these trends. Colorado must do more to improve circumstances for individuals leaving the prison system and promoting employment access is a key catalyst for improvement.

While all options intended to improve employment opportunities for people with criminal records warrant consideration, the evidence published so far shows a dramatic increase in ex-offender employment within jurisdictions enacting Ban the Box policies. It is reasonable to assume that Colorado would see the same positive impact across the state if the policy were expanded to include the private sector.

It is important for business leaders to understand that Ban the Box allows them to retain the ability to reject any applicant for any reason not prohibited by law. Business leaders also must have access to the research and data that show the minimal risk involved in hiring a person with a criminal history after the passage of time. This is why state officials and public leaders must commit to engaging the business community in the larger discussion of how to offer access and opportunity to more Coloradans.

¹ Legal Action Center

² Chartered Institute of Personnel and Development, "Employers and offenders: reducing crime through work and rehabilitation," July 2004; <http://www.irp.wisc.edu/publications/focus/pdfs/foc282e.pdf>

³ "Unlikely Cause Unites the Left and Right: Justice Reform," *The New York Times*, Feb. 18, 2015;

http://www.nytimes.com/2015/02/19/us/politics/unlikely-cause-unites-the-left-and-the-right-justice-reform.html?_r=0

⁴ "U.S. Cities, Counties and States Adopt Fair Hiring Practices," National Employment Law Project blog, May 15, 2015; <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

⁵ "Quinn Signs 'Ban the Box' Hiring Legislation," Progress Illinois, July 21, 2015;

<http://progressillinois.com/news/content/2014/07/21/quinn-signs-ban-box-hiring-legislation>

⁶ Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (U.S. Department of Justice, 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>

⁷ Analysis of Bureau of Justice Statistics data by The Sentencing Project, "Trends in U.S. Corrections" (2013), available at http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf

⁸ Based on Bureau of the Census, *Annual Survey of State Government Finances* (U.S. Department of Commerce, 1982–2012), available at https://www.census.gov/govs/state/historical_data.html; Tracey Kyckelhahn, "State Corrections Expenditures, FY 1982-2010" (Washington: Bureau of Justice Statistics, 2014), available at <http://www.bjs.gov/content/pub/pdf/scefy8210.pdf> ; Nathan James, "The Bureau of Prisons (BOP): Operations and Budget" (Washington: Congressional Research Service, 2014), available at <http://fas.org/sgp/crs/misc/R42486.pdf> | John Schmitt and Kris Warner, "Ex-offenders and the Labor Market" (Washington: Center for Economic and Policy Research, 2010), available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>

⁹ Analysis of Bureau of Justice Statistics Data by The Sentencing Project, "Trends in U.S. Corrections" (2013), available at http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf ; E. Anne

¹⁰ Henry and Jacobs, 2007

¹¹ Bruce Western and Becky Pettit, *MIT* (2010). "Incarceration and Social Inequality." Retrieved from: http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00019

¹² Ibid

¹³ Decker and others, "Criminal Stigma, Race, Gender, and Employment"

¹⁴ Society for Human Resource Management, "Background Checking—The Use of Criminal Background Checks in Hiring Decisions" (2012), available at <http://www.shrm.org/research/>

¹⁵ Pew Trust Study Retrieved from:

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/CollateralCosts1pdf.pdf

¹⁶ The Sentencing Project, "A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits" (2011), available at www.sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf

¹⁷ Retrieved from: <http://media.nola.com/graphics/photo/map-incarceration-051312jpg-7d89e406e9497ce4.jpg>

¹⁸ Citing *The Denver Post* and U.S. Department of Justice statistics. Retrieved from:

<http://www.thecrimereport.org/news/crime-and-justice-news/2013-06-parole-to-jail-in-co-8-mo>

¹⁹ "Administering Justice: Removing Statutory Barriers to Reentry," Jay Radice, University of Colorado Law Review, Spring 2012; http://lawreview.colorado.edu/wp-content/uploads/2013/11/8.-Radice-FINAL_s.pdf

²⁰ Conn. Gen. Stat. § 54-130a.

²¹ The Sentencing Project, Connecticut, Margaret Colgate Love,

<http://www.sentencingproject.org/tmp/File/Collateral%20Consequences/Connecticut.pdf>

²² Congressional Research Service, "The Workforce Opportunity Tax Credit", February 4, 2013, www.fas.org/sgp/crs/misc/RL30089.pdf

²³ U.S. Cities, Counties and States Adopt Fair Hiring Practices," National Employment Law Project blog, May 15, 2015; <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

²⁴ "A primer on sealing criminal records," Peter Elikann, *Lawyers Journal*, Massachusetts Bar Association, April 2012; <http://www.massbar.org/publications/lawyers-journal/2012/april/a-primer-on-sealing-criminal-records>

²⁵ City of Minneapolis Conviction Information Summary. Retrieved from: <http://www.southerncoalition.org/wp-content/uploads/2013/07/City-of-Minneapolis-Conviction-Summary.pdf>

²⁶ "Cities Pave the Way: Promising Reentry Policies that Promote Hiring of People with Criminal Records," National League of Cities, National Employment Law Project, July 16, 2010;

<http://nelp.org/content/uploads/2015/03/CitiesPaveTheWay.pdf>

²⁷ Southern Coalition for Social Justice, 2014. The Benefits of Ban the Box: A Case Study of Durham, NC. Retrieved from: <http://www.southerncoalition.org/program-areas/criminal-justice/ban-the-box-community-initiative-guide/benefits-ban-box/>

²⁸ Ibid

²⁹ Working Links, "Prejudged: Tagged For Life." Retrieved from

<http://workinglinks.co.uk/pdf/Prejudged%20Tagged%20for%20life.pdf>