

"BAN THE BOX" REDUCING THE HARMFUL EFFECTS OF CRIMINAL RECORDS IN THE UNITED STATES

11

Caroline Buhse¹ and Adam Schaffer²

"Ban the Box" is a US initiative encouraging states and cities to adopt legislation that requires employers to stop asking a candidate about their criminal record until the interview process is complete. The initiative is based on the fact that if a candidate makes it to the end of an interview process, they are more likely to be hired, even if they have a criminal record. "Ban the Box" initiatives therefore make it easier for individuals with criminal records to find employment after their release from prison.

Context and Description

In 2014, an estimated 70 million people in the United States had a criminal record, limiting their chance of obtaining work and securing housing. This is also a concern in Latin America and other regions of the world. Several studies have confirmed that there is a strong correlation between unemployment and recidivism, that half of formerly incarcerated individuals remain unemployed a year after their release, and that discrimination against former offenders does not help improve public safety.³

In the past 15 years, activists have facilitated the transition period following release from prison by providing formerly incarcerated individuals a fair chance at finding employment. As a result of this advocacy work, more than 100 US jurisdictions – including cities, counties, and states– have reviewed their legislation to remove questions relating to a candidate's criminal record at job interviews and during the selection process. In November 2015, President Obama also

announced a new regulation aiming to limit questions about a candidate's criminal record for federal government jobs.⁴

These initiatives have used slogans like "Ban the Box" (which refers to the box related to criminal records on forms used for job applications) and "Fair Chance." Although there are differences between local and state laws, most aim to delay any question about a candidate's criminal record until the final stages of the selection process (with some exceptions for jobs related to public safety and education).

In some cases, the candidate is only requested to disclose his/her criminal record when a conviction can have a clear negative effect on the candidate's ability to meet the job requirements. In such cases, the candidates are asked about their criminal background at the end of the application process after a thorough revision of their qualifications. Delaying the criminal

"Ban the Box" provides formerly incarcerated people with a fair chance at finding employment after release.

background check until after the interview process helps to ensure that the candidates are primarily evaluated on the basis of their skills, and that they have a fair opportunity to get a job.⁵



Advocacy group Vocal-NY tweets photo showing support for the adoption of the Fair Chance Act in Oct. 2015. Source: Vocal-NY

Results and Impact

As of 2016, 24 states and over 150 cities and counties across the United States have passed "Ban the Box" or "Fair Chance" measures, which benefit over 206 million Americans.⁶ The City of Durham's government, in North Carolina, is among those that implemented a "Ban the Box" hiring program in 2011. A study by the Southern Coalition for Social Justice in Durham showed that the measure had significantly increased employment rates among individuals with a criminal record. Since the program was launched, the proportion of people with a prior criminal conviction hired by the City of Durham increased by 700%.⁷ Under the program, questions related to the applicant's criminal record are not asked until they have been recommended for the job, after which time the human resources department performs a background check. In Durham, 96% of the candidates with a criminal record who were recommended for a job were hired despite their criminal history.⁸

A related study completed by Devah Pager, Professor of Sociology at Princeton University, found that individuals who had the opportunity to interact with a prospective employer had a much better chance of being hired.⁹ However, many employers seem reluctant to hire a candidate if they are aware of their criminal record before the interview process.¹⁰ If a candidate reveals their criminal history in their job application or on their resume, they are more likely to receive a negative response from the employer (i.e., an immediate rejection without being invited for an interview). Without the opportunity of being interviewed, the candidate cannot personally know and interact with the employer, thereby reducing their chance of being hired.¹¹

These results show that policies that do not require jobseekers to immediately disclose their criminal record have a highly positive effect on formerly incarcerated people.¹² Employment is one of the most decisive factors in influencing a person's recidivism,¹³ and the implementation of "Fair Chance" or "Ban the Box" initiatives can have a significant impact on the hiring rates of people with a criminal record.¹⁴ While these programs do not specifically target women formerly incarcerated for drug offenses, they have an invaluable potential in reducing the high level of stigma and discrimination female drug offenders usually face after their release from prison.

Key Resources

National Employment Law Project, *Research Supports Fair Chance Policies*, March 2016, <http://www.nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>

Natividad Rodriguez, M. & Christman, A., *Fair Chance – Ban the Box Toolkit*:

Opening Job Opportunities for People with Records, March 2015, p. 9, <http://www.nelp.org/content/uploads/NELP-Fair-Chance-Ban-the-Box-Toolkit.pdf>

Southern Coalition for Social Justice, *The Benefits of Ban the Box: A Case Study of Durham, North Carolina*, 2014, https://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf

Acknowledgements

This briefing was translated by Nischa Pieris of the Inter-American Commission of Women, Organization of American States, and Marie Nougier of the International Drug Policy Consortium.

Endnotes

1. Program Assistant, WOLA.
2. Formerly worked as Program Officer, WOLA.
3. Natividad Rodriguez, M. & Christman, A., *Fair Chance – Ban the Box Toolkit: Opening Job Opportunities for People with Records*, March 2015, p. 9, <http://www.nelp.org/content/uploads/NELP-Fair-Chance-Ban-the-Box-Toolkit.pdf>
4. Duran, L.A., Plotkin, M., Potter, P. & Rosen, H. “Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness,” *The Council of State Governments Justice Center*, 2013.
5. The White House, Office of the Press Secretary, *FACT*

SHEET: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly- Incarcerated, November 2, 2015, <https://www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation>

6. Natividad Rodriguez, M. & Avery, B., *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, National Employment Law Project, December 1, 2016.
7. Southern Coalition for Social Justice, *The Benefits of Ban the Box: A Case Study of Durham, North Carolina*, 2014, https://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf
8. *Ibid.*
9. Pager, D., “Sequencing Disadvantage: The Effects of Race and Criminal Backgrounds for Low Wage Job Seekers,” *U.S. Equal Employment Opportunity Commission*, 2008, <https://www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm>
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*
13. Berg, M.T. & Huebner, B.M., “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly*, Vol. 28, 2011, pp. 382-410, <http://www.tandfonline.com/doi/abs/10.1080/07418825.2010.498383?journalCode=rjqy20#preview>
14. National Employment Law Project, *Research Supports Fair Chance Policies*, March 2016, <http://www.nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>

Disclaimer: The opinions set out in this briefing are those of the author(s) and do not necessarily reflect the official position of the CIM/OAS.

This series aims to share examples of innovative approaches that incorporate a gender perspective and the principles of public health and human rights into drug policy. Such innovations will have the best possible outcomes only when they are accompanied by more fundamental drug law and policy reform. However, in the absence of broader reforms, or carried out in conjunction with such reforms, these innovations can help break the vicious cycles of poverty, social exclusion, drug use, involvement in the drug trade, and incarceration that plague so many poor communities across the Americas today. Global Innovative Approaches is a tool that accompanies the publication [Women, Drug Policies and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean](#).