

“Banning the Box” to Increase Ex-Offender Employment:  
Related Issues and a Policy Research Proposal  
for Rochester, NY

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Jamie Dougherty  
Research Associate  
(585) 475-5591  
[jmdgcj1@rit.edu](mailto:jmdgcj1@rit.edu)

John Klofas, Ph.D.  
Director  
(585) 475-6386  
[jmkgcj@rit.edu](mailto:jmkgcj@rit.edu)

Center for Public Safety Initiatives  
Rochester Institute of Technology

## **Executive Summary**

This paper examines ban-the-box policies that remove criminal history questions from job applications and change when criminal records can be obtained by employers. Such policies are in place in at least ten states<sup>1</sup> and 56 cities and counties across the U.S., including Buffalo, NY and New York City.<sup>2</sup> A ban-the-box policy is being proposed in Rochester, NY.<sup>3</sup> I analyze the possible effects and limitations of such a policy as it may pertain specifically to Rochester as well as topics related to ban-the-box legislation. Key points include:

- Employers have legitimate reasons for conducting background checks.
- Discrimination based on criminal history is legal only in certain circumstances, but unlawful employment discrimination and bias are common. This diminishes the prospects of ex-offenders finding work and being productive in society.
- One in three or four U.S. adults has an arrest record. Banning the box may increase the fairness with which many people compete for employment based on their qualifications.
- There are common errors in how criminal records are reported and interpreted. Ban-the-box policies may promote honesty and a better understanding of criminal histories.
- Ban-the-box policies may be a simple way to decrease bias, encourage employers to consider ex-offenders for hire, and encourage ex-offenders to apply for jobs.
- Delaying criminal history disclosure should not negatively affect hiring efficiency, and it can help ensure compliance with other state and federal discrimination law.
- These policies have to mesh with existing employment law and be enforceable in court.
- Research is needed to understand what effect, if any, ban-the-box policies actually have.

## **What is Ban the Box?**

At the end of 2012, 1 in 35 US adults (about 3%) were under correctional supervision, with 1 in 108 adults incarcerated and 1 in 50 under probation or parole supervision.<sup>4</sup> Many more were convicted of crimes for which they served no probation or jail time. Millions have convictions from sometime in the past and have served their sentences years ago. The National Employment Law Project (NELP) estimated that one in four adults in the United States had an arrest history that may appear on criminal background checks<sup>5</sup>. The U.S. Equal Employment Opportunity Commission (EEOC) and Department of Labor's estimate is even higher at one in three adults.<sup>6</sup>

Because most employers collect information about criminal convictions from job applicants and consider that information negatively in hiring decisions<sup>7</sup>, it becomes that much more difficult for people to find employment after even minor contact with the criminal justice system. Identifying this as a barrier to societal reintegration, the grassroots civil rights organization All of Us or None began advocating to "Ban the Box" in 2004. The goals are to remove inquiries about criminal history from preliminary job applications and to encourage employers to consider applicants based on their qualifications first and their conviction history second. It would also,

in theory, help ensure that employers follow fair hiring principles such as checking whether the conviction is related to the job.<sup>8</sup>

Many employers have independently chosen to “ban the box,” and legislation has been passed in areas across the country prohibiting criminal history inquiries at early stages of the hiring process. Specific ordinances vary widely. All remove questions about criminal convictions from public-sector employment, and some require that government contractors or vendors also “ban the box.” A smaller number of ordinances expand the policy to include private employers.<sup>9</sup> Ordinances also vary as to *how much* they delay criminal history inquiries. Some policies require simply removing criminal history questions from job applications, while some delay criminal record inquiries until after conditional offers of employment are made.<sup>10</sup>

Ban-the-box legislations do not limit an employer’s right to run a background check as a condition of employment; they simply affect *when* in the application process this can be done. Ban-the-box laws generally do not apply to employers which are required by state or federal law to screen applicants for criminal history or to law enforcement hiring.

In addition to these policies, each state has its own laws regarding the permanence of criminal records and how to employ or license those with criminal records.<sup>11</sup> There are also federal laws dictating background check processes and federal guidelines for using criminal records in hiring decisions.<sup>12</sup> Ban-the-box legislations have to mesh with these pre-existing laws. Policies must protect employers and public safety while offering those with criminal records the opportunity to be considered for employment if qualified. Ban-the-box may be a simple, effective policy to reduce employment discrimination without interfering much with other laws or hiring practices. However, little is known about the actual effects of these policies on applicants or employers.

This paper examines some of the research and topics related to ban-the-box policies that may inform policy implementation. We then discuss the ordinance being proposed in Rochester, NY and propose a research design that could determine the effects, if any, of ban-the-box policies.

## **Why and When do Employers Run Background Checks?**

With heightened concerns after September 11, 2001 and with technology decreasing the cost and increasing the availability of background checks, most employers today do run background checks.<sup>13</sup> The Society of Human Resource Management (2012) found that 69% of the employers surveyed conduct background checks on *all* applicants. Another 18% conduct checks on some applicants, particularly on those with fiduciary, personnel, and management responsibilities.<sup>14</sup>

These companies’ primary reasons for conducting criminal background checks were to reduce liability risk, to ensure a safe workplace, and to prevent theft and crimes at the workplace.<sup>15</sup> Most of these employers (58%) stated they give applicants the opportunity to explain their background before hiring decisions are made.<sup>16</sup> Most (62%) initiate criminal background checks

after making the job offer (contingent on the results); another 32% initiate them after the interview but before the job offer.<sup>17</sup> Overall, then, employers run background checks only on those they are strongly considering for employment, possibly because the cost of a reputable criminal background check is usually between \$30 and \$100.<sup>18</sup> Human resource experts generally recommend running background checks after conditional offers of employment are made to streamline the hiring process<sup>19</sup> or to ensure compliance with anti-discrimination laws.<sup>20</sup>

Employers do seem to recognize that people deserve second chances and are more than their criminal records may imply; nonetheless, the largest motivating factor for conducting criminal background checks is liability risk – a factor which offers little room for such considerations.<sup>21</sup> “Negligent hiring” refers to the legal notion that an employer may be found liable for criminal activity conducted by an employee if the employer knew or “should have known” about the employee’s predisposition for such behavior.<sup>22</sup> Some argue for extensive background checks to protect employers. Conversely, others argue that obtaining an employee’s criminal history is detrimental, as the employer may be more likely to be found liable for acts committed by the employee if they had “actual knowledge” of the employee’s criminal history.<sup>23</sup>

Most employers do want to know about applicants’ criminal history to protect themselves from liability. In theory, they assess applicants’ convictions for relevance to the position and level of risk, but, in practice, they may exclude anyone with any criminal history to most-reduce liability and weed out applicants. Employers remain fearful of hiring those with criminal records and attribute many negative qualities to applicants with criminal records, despite the fact that “reasonable efforts to consider a prospective employee’s background will generally eliminate the risk of employer liability and the lack of evidence that persons with criminal records are any more likely to offend on the job than their counterparts.”<sup>24</sup>

While employers have every right to know about criminal history to avoid liability and most conduct formal background checks only after interviewing, employers also ask about applicants’ criminal history on job applications. Ban-the-box policies aim primarily to remove this question from applications. As discussed below, research has shown that discrimination based on responses to this question is common and potentially in violation of other employment law.

## **The Likelihood of Wrongful Discrimination**

Scholars recognize that ex-offenders may be less qualified for employment for the same reasons they are more likely to have a criminal record (e.g., poverty, lack of education or work history). Regardless, it is important to reduce discrimination so those who are actually qualified for a position are at least considered.<sup>25</sup> While background checks for employment can protect employers and their customers from harm, research has shown the detrimental impact background check misuse has on ex-offender reintegration and on minority men in particular, regardless of other social factors.

Using an employment audit methodology, which allows for an experimental design in a real-life setting, Pager (2003) found that, for white males applying for entry-level jobs, having a criminal conviction decreased the chance of getting a call back by half (34% versus 17% call back rate). Black males *without* a criminal record received less calls back (14%) than white men *with* a conviction. Black males with the same conviction were only called back 5% of the time.<sup>26</sup> A more recent study in Phoenix found smaller levels of discrimination, especially with online job applications. Still, having a criminal record and minority status decreased callback rates.<sup>27</sup>

Pager (2003) suggests that some of this discrimination occurs unconsciously. Also, the majority of disproportionate treatment in age, gender, or racial discrimination occurs during review of the job application. Pager further notes that criminal history discrimination is much more socially acceptable than racial or gender discrimination, as certain exclusions based on criminal records are authorized by law, and criminal records are collected and distributed by the government. This leads people to feel discrimination based on a criminal record is generally legitimate.<sup>28</sup>

Decker et al.'s (2014) study also showed that employers attribute negative qualities such as tardiness and substance abuse problems to applicants with incarceration history, even when applicants submit nearly identical resumes and have equivalent qualifications.

Studies have also found that most employers are equally unlikely to consider applicants who have had *any* prior contact with the criminal justice system, regardless of the severity or age of the conviction; instead, they tend to simply exclude anyone with any conviction.<sup>29</sup> Some employers do not take into account that individuals with convictions are no more likely to commit a new crime than the average person if it has been four to ten years since the conviction, depending on their specific history of offenses.<sup>30</sup> Most employers are unlikely to invest time and energy in understanding nuance in individual histories when faced with large numbers of applicants, even if they claim to give applicants a chance to explain the records.<sup>31</sup>

## **Disproportionate Effects on Minorities: EEOC Guidelines**

In 2012, the U.S. Equal Employment Opportunity Commission (EEOC) released guidelines regarding the use of background checks for employment. They acknowledged the disparate impact the criminal justice system has on minority communities, estimating that Hispanic men are incarcerated at three times the rate of white men, and black men are incarcerated at seven times the rate of white men (with one in 15 African-American men incarcerated).<sup>32</sup>

Compared to rates of criminal offending among racial groups, members of minority groups are disproportionately arrested and incarcerated, due in large part to increased law enforcement in poor urban areas, disproportionate treatment within the criminal justice system,<sup>33</sup> and “societal disadvantages that place minorities...at much greater risk of being both offenders and victims of violent crime.”<sup>34</sup> Having a conviction may be more an indicator of living in a poor urban area than an indicator of more engagement in crime than other applicants.

The EEOC therefore recommends careful use of criminal records in hiring decisions to avoid what effectively amounts to racial discrimination. To the EEOC, refusing to offer employment to anyone with any criminal conviction is equivalent to racial discrimination, due to the overrepresentation of minorities in the criminal justice system.<sup>35</sup> They recommend considering case-by-case the relevance a conviction has to the job and other factors such as the age of the conviction.<sup>36</sup> They strongly recommend against using arrest history in employment decisions, as just being arrested should not imply guilt.<sup>37</sup> They also endorse policies similar to ban-the-box as a “best practice” for employers to avoid wrongfully discriminating against applicants.<sup>38</sup>

## **Criminal Record Inaccuracies**

Compounding these factors is that even the most reputable criminal record databases contain inaccurate or incomplete information. In 2006, the U.S. Attorney General “...revealed that roughly 50 percent of the [FBI’s criminal history] records are incomplete and fail to provide information on the final outcome of an arrest.”<sup>39</sup> Record inaccuracies can have serious impacts on job seekers; about one third of felony arrests never result in conviction and another third of charges are changed to lesser offenses.<sup>40</sup> Since these FBI’s fingerprint-verified criminal history records are usually considered the most accurate records available,<sup>41</sup> this sheds serious doubt on the accuracy of commercial background checks obtained by most employers.

The Fair Credit Reporting Act and EEOC guidelines require employers to give job applicants the opportunity to verify and/or correct background checks before “adverse action” is taken on their application.<sup>42</sup> However, it is very difficult for individuals to obtain documents on the outcome of their criminal case quickly enough for an employer to hold the position open. Older cases and dismissed charges are most prone to error and are also the most difficult records to find.<sup>43</sup>

## **Potential Effects of Ban-the-Box Reforms**

Ban-the-box policies may be able to mitigate some of the problems mentioned above. Advocates must, however, make sensible claims. Some may claim that banning the box will decrease recidivism because people will work instead of committing crime, thus improving public safety. Others may say it will decrease unemployment and the amount of people on public assistance. However, many factors besides a question on job applications affect these wide-ranging social constructs. It is important to focus on the more direct potential effects of the legislations.

By removing the conviction question from job applications, those with criminal histories may be encouraged to apply to more jobs. Many ex-offenders get nervous and discouraged when they see questions about criminal history on job applications. Some choose not to apply, assuming they will not be considered. If more ex-offenders apply, they should be offered more interviews, since the discrimination is mostly avoided by altering the job application.<sup>44</sup> Depending on when criminal history is revealed during the application process and how the employer uses this information, ex-offenders may be offered more employment opportunities.

Some ex-offenders weigh the risks of disclosing their history against the risks of lying on job applications.<sup>45</sup> Very rarely do people fully explain their criminal history on job applications as recommended by the Legal Action Center (2011). There is little to no research as to how often or to what degree ex-offenders falsify or fail to disclose on job applications in the hopes that it will help them be considered for the job. It may be a common practice.

Self-disclosed criminal history could easily conflict with information from criminal background checks. Many people are not sure of the names and dates of their convictions. If what they report does not exactly match what is revealed by a background check, the employer may assume the applicant lied. With 90 to 95% of criminal cases being resolved with plea deals,<sup>46</sup> a person may list the crime they were charged with instead of the plea. Such simple “falsification” is grounds for rejection of the application.<sup>47</sup> Research is needed as to how accurately people understand and report their criminal history and how employers interpret discrepancies.

Similarly, some states allow certain criminal records to be expunged (legally destroyed), but applicants may falsely report these convictions anyway. Others may not be able to expunge identical records because they cannot afford the fees. Also, if someone committed the same crime in New York State, for instance, it could never be expunged<sup>48</sup>; it is simply a matter of geography. This limits the employer’s ability to distinguish fairly between applicants.

Considering the last two points, delaying criminal history questions may encourage applicants to be more honest when asked about their history, and employers may get a more accurate picture of the conviction and the applicant. If criminal history is discussed in interviews, applicants have the opportunity to challenge stereotypes and explain the circumstances around their convictions.

Some studies have shown that employers who have hired people with criminal histories before are more willing to do so again, whether the past experience was positive or negative.<sup>49</sup> Thus, increasing employment opportunities for ex-offenders could, in the long-term, warm employers to the idea of hiring ex-offenders. Further, the law could encourage employers to be more aware of bias in hiring decisions and therefore discriminate less against those with records.<sup>50</sup> Thus, employers may be less likely to violate pre-existing state and federal employment law.

There are few obvious negative effects of ban-the-box policies, though it does require employers to alter job applications and effort to enforce the laws. Most employers conduct background checks after interviews or conditional offers anyway,<sup>51</sup> so ban-the-box policies are unlikely to have a detrimental effect on employers’ hiring procedures or efficiencies. Removing the criminal history question from applications may, however, encourage employers to consider those with irrelevant criminal records for employment and may encourage more people to apply.

It is still quite possible that delaying criminal history inquiry will simply delay the rejection of the applicant. We can only speculate that banning the box from job applications will increase interview or hiring rates for ex-offenders. Again, research is needed on this.

## **Enforcement**

Enforcing discrimination law is difficult, especially when discrimination occurs unconsciously<sup>54</sup> and is sometimes lawful and necessary, as with criminal history considerations.<sup>55</sup> In some areas in which the policies have been in place for years, advocates question the efficacy. Philadelphia, for example, has been struggling to enforce the law due to a lack of resources and oversight.<sup>56</sup>

Pederson outlines a legal framework for addressing unconscious bias in employment decisions (2011). She suggests that if there is *any* evidence that employers wrongfully considered conviction history, the courts should consider this unlawful discrimination, even if the employer offers other, more justified reasons for the adverse decision. To Pederson, it is the duty of the law to prohibit legitimate reasoning from masking unjust reasoning. Law can encourage employers to reflect on and consciously choose not to act on their biases.

Ban-the-box ordinances should specify enforcement mechanisms. To start, the laws must be designed to be enforceable. Most ban-the-box policies not only remove questions from applications but also stipulate when employers can run background checks and how they use the information. The most enforceable policies require a conditional offer of employment prior to conducting background checks. Then, if a background check reveals a conviction that legally prevents the employer from hiring the person, the employer's reasoning will need to be clear and well-founded, as it would be obvious that the criminal record is the sole reason for the denial. No matter how the law is written, violations need to be detectable by applicants and by courts.

## **Status of Ban the Box Across the United States**

As of February 2014, ten states had passed laws removing criminal history questions from state employment applications. Eight of these also applied to employment with cities and counties within the state, and four included private employers. Several states require that employers provide applicants with written notification if denied a job and copies of their background checks, in accordance with the Fair Credit Reporting Act. Eight states prohibit consideration of arrest history, and others limit the age of convictions that may be considered.<sup>52</sup>

Another 56 cities and counties have passed ban-the-box ordinances. All of these apply to public employees, while 14 also apply to private employers (25%). Twenty of these cities or counties, including Buffalo, NY, delay background checks until after a conditional offer of employment is made or finalists are selected. Fifteen ordinances outline an appeal process for employment denials, and ten require copies of background checks to be given to applicants.<sup>53</sup>



## **Relevant Employment Law in New York**

In the State of New York, employers can only deny employment based on a criminal record if the crime is directly related to the employment duties or if employing the person “would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.”<sup>57</sup> Eight factors must be considered when determining relevance and risk, including how long it has been since the conviction, how old the person was, and “any information...in regard to his rehabilitation and good conduct.”<sup>58</sup> In addition, applicants with criminal histories who are denied employment are entitled to receive a written explanation within 30 days of request.<sup>59</sup> These laws are enforced as by the state’s division of human rights.<sup>60</sup>

Further, New York’s Human Rights Law only allows employers to consider arrest records if they resulted in an adult criminal conviction or if the case is still pending.<sup>61</sup> Also, New York criminal convictions can never be sealed or expunged, unlike some other states.<sup>62</sup> All misdemeanor and felony convictions from New York remain permanently on a person’s criminal record.

New York does offer Certificates of Relief from Disabilities and Certificates of Good Conduct “to remove any bar to [an offender’s] employment, automatically imposed by law by reason of his conviction of the crime.”<sup>63</sup> This opens opportunities for ex-offenders to apply for positions in “protected” fields, such as health care or child care, but the employer can still deny them a job if the conviction is relevant to the position or poses an unreasonable risk.

There are over one hundred occupations from which people with criminal records are restricted by New York licensing laws, including barbering, massage therapy, health care, teaching, social work, counseling, notary public, plumbing, and funeral directing.<sup>64</sup> Ex-offenders are also barred or discouraged from military service and law enforcement.<sup>65</sup> Ban-the-box policies generally do not apply to employers in these fields, as their hiring practices are governed by state law.

Recently, the Chief Judge of the State of New York, declared initiatives in the 2014 State of the Judiciary to reduce long-term employment barriers for ex-offenders. He is proposing legislation to seal non-violent misdemeanor offenses and some non-violent felony convictions if the person has not been rearrested in several years.<sup>67</sup> Also, beginning in April 2014, New York’s Office of Court Administration (OCA), which disseminates criminal record information, “will no longer disclose misdemeanor convictions of individuals who have no other previous criminal convictions and who have not been re-arrested within 10 years of the date of the conviction.”<sup>68</sup>

New York State provides protections already for both employers and ex-offender job applicants, but some believe more is needed to prevent the existence of a criminal history from being used as an exclusion tool by employers. Ban-the-box ordinances have been enacted in Buffalo (for public and private employers) and New York City (for public employment and city vendors),<sup>69</sup> and a similar ordinance is being proposed in Rochester, NY.

## **Rochester’s Proposed “Opportunity to Compete” Ordinance**

The ban-the-box policy being proposed in Rochester, NY is called Opportunity to Compete. It is a city ordinance that would apply to the City, its vendors, and private employers. It stipulates that employers may not ask questions about prior criminal conviction(s) on employment applications. Such inquiries can only be made after a phone or in-person interview.<sup>70</sup> The ordinance emphasizes that employers must make hiring decisions in accordance with New York Correction Law Article 23-A and the U.S. Fair Credit Reporting Act, as explained above.

The proposed ordinance permits employers for licensed professions to ask questions about criminal convictions in line with their affiliated trade or professional licensing body. Employers hiring for positions where certain convictions are a bar to employment under New York State or Federal law may also ask about those convictions during the application process. The ordinance would not apply for those hiring police officers or firefighters.<sup>71</sup>

The ordinance allows people to commence civil actions against employers within one year of an alleged violation. Courts may impose a penalty of \$500.00 for an employer’s first violation, with subsequent violations having a maximum \$1,000 penalty each. To provide employers time to come into compliance, the ordinance would take effect 180 days after its adoption.<sup>71</sup>

The Opportunity to Compete committee hopes to expand the ordinance to Monroe County after adoption in the city, as most employers are located in the suburbs. Regardless of legislative decisions, the committee has made several steps to gain support for the ordinance. According to the Opportunity to Compete committee, eighteen local organizations have agreed to remove criminal history questions from their job applications (as of March 25, 2014).<sup>72</sup>

The committee is also conducting outreach. They have met with several employer organizations for input into the ordinance’s language. They have spoken to the NY Department of Labor, and they plan to do public outreach if the ordinance is passed to inform applicants and employers.

## **Potential Effect, Scope, and Limitations for Rochester**

It is well-documented that Rochester struggles with concentrated poverty, low educational attainment, a lack of affordable housing, high crime rates, and dispersal of employers to suburbs.<sup>73</sup> These same indicators also point to higher conviction rates among the city population.

In 2009, the New York State Division of Parole supervised about 1,421 parolees in City of Rochester.<sup>74</sup> Since Rochester’s population is roughly 210,000, about 1 in 150 people in Rochester were on parole. About a thousand people each year return to Rochester from state prisons. About 1,500 more people each year are released from local jails after shorter incarcerations, and most of those recently released are concentrated in just a few zip codes.<sup>75</sup>

By demographic and socioeconomic estimates, Rochester residents are likely to be much more affected by the criminal justice system than the average American. Since one in three out of all American adults has an arrest record,<sup>76</sup> higher rates should be expected in Rochester. The Opportunity to Compete ordinance, then, may have an impact on a larger percentage of residents in the City of Rochester than in places where arrest and conviction rates are lower.

There are important limitations that must also be considered. This proposed ordinance delays criminal history inquiries until after an initial interview is conducted. This means employers cannot ask applicants about their criminal histories during interviews. This forces the interview to focus on the person's qualifications. However, the applicant would not have the chance to explain their criminal history before it is seen on paper, unless he or she initiates that discussion with the employer. Some ex-offenders may welcome this opportunity to discuss their history on their own terms and convey honesty, but many applicants would be wary of doing this.

With the language used here and from the enforcement perspective, it remains quite simple for employers to say, after interviewing and obtaining the criminal history, that the position has been filled, even if the real reason for rejection is the criminal history. The applicant may never know the true reason for denial, nor will the courts. As a result, ban-the-box advocates recommend that inquiries into criminal histories are delayed until after a conditional offer of employment.<sup>77</sup> That way, the applicant would know that his or her criminal history is the sole reason for denying the application. However, employers would probably resist such a strict policy. There is also currently no evidence as to how this would affect employers or applicants.

## **Research Proposal**

As stated throughout this report, data on ban-the-box effects is lacking. Some cities have collected data after the ordinance passed, but none, to our knowledge, have compared this to conditions prior to implementation. Also, researchers cannot simply track how many violations of the ordinances are logged; the everyday effects on job applicants and employers must be measured. Here we propose methods to study the effect of this ordinance in Rochester, NY.

A survey could be conducted of unemployed people in Rochester. This can ask people to report how long they have been seeking work, how many jobs they have applied for, and how many interviews and offers they have had. This survey would be conducted again after the Opportunity to Compete ordinance goes into effect to see if there are any changes in reported interview or job offer rates for ex-offenders relative to those without criminal records. We could also use this to estimate how many people have criminal convictions, the types of convictions, how they deal with their convictions during the job application process, and how this population's job search process compares to those without criminal records.

Ex-offenders could also be interviewed to see whether and how they apply for jobs when asked about their criminal records, including how much of their criminal history they accurately report.

Information could also be collected from local employers and temporary staffing agencies as to how they feel about hiring people with criminal histories. Much research has already examined such issues, but no studies have shown if employers' feelings change after passage of a ban-the-box ordinance. By also including agencies that aim to hire ex-offenders or who have hired ex-offenders in the past, we could begin to understand their reasoning and experiences.

Finally, if sufficient funding was secured, a more extensive study could be conducted. Many audit studies have examined the effect of a conviction record on job application callback rates.<sup>78</sup> However, none have done so before and after the passage of ban-the-box legislation.

This research would contribute tremendously to understanding ex-offender employment processes in general and the direct effects of ban-the-box policies in particular.

## **Conclusion**

Screening job applicants for criminal history is extremely common, and unlawful discrimination based on those records prevents a large number of qualified individuals from having a fair opportunity to compete for employment. While laws are already in place to protect both employers and applicants, navigating these laws is complicated, and more may need to be done to curb unjust employment discrimination.

Ban the box legislations have the potential to positively affect a large portion of American workers (especially urban minorities) and to address some of the common problems with background checks, while leaving employers' hiring processes largely unaffected. However, policy makers should cautiously decide how such policies should be enacted and enforced to provide the intended results. Similarly, the effects of ban-the-box policies need to be studied to inform communities about how best to implement these policies.

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## Notes

1. See National Employment Law Project (2014b) for information on state-wide ban-the-box policies as of January 2014.
2. See National Employment Law Project (2014a) for compiled information on city and county ban-the-box policies as of February 2014.
3. This ordinance is still in drafting stages at the time of this writing and is expected to go before the Rochester City Council in late March or early April 2014.
4. See Glaze & Herberman (2013) for a thorough discussion of the numbers of people involved in the US criminal justice system.
5. See Rodriguez & Emsellem (2011) make this estimate based on estimated totals of state fingerprint records. See their footnote 2 (page 27) for details.
6. See U.S. Dept. of Labor (2013).
7. See Rodriguez & Emsellem (2011) and Society of Human Resource Management (2012).
8. See All of Us or None (n.d.) for their website and information about the movement.
9. See the last pages of National Employment Law Project (2014a) and National Employment Law Project (2014b) for summaries of applicability for ban-the-box policies by municipality.
10. See the last pages of National Employment Law Project (2014a) and National Employment Law Project (2014b) for details about every passed ban-the-box legislation.
11. For New York laws, see New York Correction Law Article 23 (1977) and Article 23-A (1977), New York Human Rights Law (1988). Also see Legal Action Center (2011) for a discussion of employment and licensure restrictions for those with criminal convictions.
12. See Fair Credit Reporting Act (1970), U.S. Department of Labor (2013), and U.S. Equal Employment Opportunity Commission (2012) as examples.
13. See Pager (2003) for a discussion of increased concerns after September 11, 2001.
14. See Society of Human Resource Management (2012) for the results of their survey, particularly slides 3 and 11 from the slideshow provided on the website. This survey is conducted every several years, and past data may be found on their website as well.
15. See Society of Human Resource Management (2012) for the results of their survey. Slide 5 on the provided slideshow discusses reasons for running background checks.
16. See slide #9 from Society of Human Resource Management (2012).
17. See Society of Human Resource Management (2012) for the results of their survey. Slide 7 on the slideshow shows when employers generally run background checks.
18. See HireRight Express (n.d.), one of the largest background check companies in the US.
19. Lytle (2013) provides an article on addressing hiring efficiencies, in which she recommends making employment offers sooner and dependent upon criminal background check results, as running background checks often creates a bottleneck for employers.
20. Comisky & Zubowicz (2006) discuss legal reasons to run background checks at later stages in the hiring process.
21. See Backman (2014) for a thorough discussion of a study examining why employers run background checks. See the portions of Decker, Spohn, Ortiz, & Hedberg's (2014) report examining the results from an employer survey. Lukies, Graffam, & Shinkfield (2011) also discuss employer attitudes towards hiring ex-offenders.
22. See Sullivan (1998) for an extensive discussion of negligent hiring concerns.
23. Carson (2010) proposes that EEOC guidelines should be revised for clarity so that employers can best protect the public and offer employment to those with criminal records without worrying unnecessarily about discrimination liability. Sullivan (1998) discusses the complex

issue of whether “actual knowledge” liability claims are stronger than claims that the employers “should have known” about the person’s criminal record.

24. Quoted from Rodriguez, Farid, & Porter (2011), page 17. See these reports for examinations of the negative qualities employers attribute to those with records: Backman (2014); Decker, Spohn, Ortiz, & Hedberg (2014); and Lukies, Graffam, & Shinkfield (2011).
25. Bruce Western (2008) provides a well-written overview of background check literature.
26. See Pager (2003) for an excellent discussion of the research design, past research, her results, and the social implications of these results.
27. Decker, Spohn, Ortiz, & Hedberg (2014) recently published the results of this extensive study, which used an employment audit design for both in-person and online job applications. It expanded Pager’s research by including women and Hispanics as applicants and by collecting information from employers used in the study.
28. Again, Pager (2003) provides an extensive discussion of these social issues.
29. See Decker, Spohn, Ortiz, & Hedberg (2014), Pager (2003), Backman (2011), and Lukies, Graffam, & Shinkfield (2011) for discussions of some of these issues.
30. Pinard (2013) discusses re-offense rates over time for many types of offenses.
31. Pager (2003) discusses the tendency for employers not to look for underlying details unless strongly considering an applicant, while the Society of Human Resource Management (2012) study states that most employers allow applicants to explain their records. It is possible the latter is an official policy, while in practice the conviction question is used much more as a screening tool.
32. See U.S. Equal Employment Opportunity Center (2012) page 3 for rates of incarceration and community supervision across race and ethnic groups.
33. See the Drug Policy Alliance (n.d.) website for many discussions of disparate treatment of minority populations within the criminal justice system. Also, Piquero & Brame (2008) and Brame, Bushway, Paternoster, & Turner (2014) study the intersection of race/ethnicity and crime in samples of adolescent offenders.
34. Decker, Spohn, Ortiz, & Hedberg (2014), page 8. This paper devotes significant time to analyzing how prevailing social factors influence stigma and in turn employment decisions.
35. See U.S. Equal Employment Opportunity Center (2012) pages 6-9.
36. See U.S. Equal Employment Opportunity Center (2012) pages 15-20.
37. See U.S. Equal Employment Opportunity Center (2012) page 12.
38. See U.S. Equal Employment Opportunity Center (2012) pages 13-14.
39. Neighly & Emsellem (2013), page 3. See this report for an extensive discussion of inaccuracies and incomplete data in criminal record repositories.
40. See Neighly & Emsellem (2013) page 9 and Yu & Dietrich (2012) for a thorough discussion of how background checks affect both workers and businesses.
41. The FBI’s repository is the only database that collects all criminal history information from the entire nation. See Neighly & Emsellem (2013) for a discussion of how criminal record data is transmitted from courts, to state repositories, to the FBI, and finally background check companies and for a discussion of federal mandates for verifying records.
42. See Fair Credit Reporting Act (1970) and the EEOC Guidelines (U.S. Equal Opportunity Employment Center, 2012).
43. See Neighly & Emsellem (2013) Section VI (page 14).
44. See Pager (2003) for a good discussion of these issues.
45. See Pager (2003) for a discussion about criminal history disclosure on job applications.
46. See Devers (2011).

47. See the Legal Action Center's (2011) guide to employment applications for those with criminal records.
48. See the Legal Action Center (2011) guidebook for discussions about expunging records.
49. See Lukies, Graffam, & Shinkfield (2010).
50. See Pederson (2011) for a discussion of how court rulings can encourage recognition of unconscious bias.
51. See Society of Human Resource Management (2012).
52. See National Employment Law Project (2014b) for summaries and detailed discussions of each state's ban-the-box ordinances.
53. See National Employment Law Project (2014a) for summaries and detailed discussions of each city and county ordinance.
54. See Pederson (2011) for a discussion of legal issues about unconscious bias affecting employment decisions.
55. See Carson (2010) regarding difficulties in enforcing the EEOC's 2012 guidelines.
56. See Otterbein (2013).
57. See New York Correction Law (1977), Article 23-A §752.
58. See New York Correction Law (1977), Article 23-A §753.
59. See New York Correction Law (1977), Article 23-A §754.
60. See New York Correction Law (1977), Article 23-A §755.
61. See New York Human Rights Law (1988), Article 15, §296(16).
62. See Legal Action Center (2011).
63. See New York Correction Law (1977), Article 23 §701.
64. See Legal Action Center (2006).
65. In almost every law meant to decrease barriers to employment for ex-offenders, police and military are excluded. In general, these agencies have the right to review applicants' background far more extensively than any other employer (including viewing sealed records, arrest records, juvenile and youthful offender records, etc.). See Legal Action Center (2011) and the language in the proposed Opportunity to Compete (2014) ordinance.
66. Quoted from New York State Department of Labor's (n.d.) website.
67. See Lippman (2014) for more specifics about this proposal; the bill has not yet been drafted as of this report's writing.
68. Lippman (2014), page 13.
69. See National Employment Law Project (2014a) for information on these cities' ordinances.
70. The Opportunity to Compete (proposed 2014) ordinance is in drafting stages and is expected to be filed by the Rochester City Council in late March or early April 2014 in a similar form.
71. Again, we are citing the draft of the ordinance as of March 2014. See note 70.
72. As documented by the Opportunity to Compete committee members.
73. See, for instance, Doherty (2013) for a discussion of concentrated poverty, its causes, and its effects. See also data from the U.S. Census Bureau (retrieved 2014).
74. See Klofas (2009).
75. See Klofas (2009) for a discussion of the concentration of ex-offenders in very small regions of Rochester.
76. According to the EEOC (2012) estimate.
77. See, in general, publications from the National Employment Law Project: National Employment Law Project (2014a & 2014b), Rodriguez & Emsellem (2011), and Rodriguez, Farid, & Porter (2011).
78. See Pager (2003) and Decker, Spohn, Ortiz, & Hedberg (2014).