

# The Consideration of Criminal Records in Hiring Decisions

Since 2010, the U.S. economy has experienced private sector job growth, a jobless rate below 5.5 percent, and steady growth in the country's gross domestic product. There are still underlying weaknesses, however, as evidenced by the historically low employment rate of prime-age people and the continued high number of workers unemployed for longer than six months.<sup>1</sup> Unemployment is even more prevalent for people with criminal records.

The more than 600,000 people returning to the community from incarceration each year in the U.S. face significant challenges.<sup>2</sup> Numerous studies find that people require a combination of family support, community assistance, and economic opportunity to stay out of the criminal justice system.<sup>3</sup> Access to employment is a critical component of this web of support, as a steady job provides financial resources and social connections that build motivation.

As the field develops more knowledge about what works to reduce recidivism and promote job readiness, the National Reentry Resource Center, a project of The Council of State Governments (CSG) Justice Center, will continue to work with the National Employment Law Project to provide broad-based education, training, and resources to policymakers who wish to implement effective legislation and policies.

## A LOOK AT THE NUMBERS

- More than 10 percent of people entering prisons and jails are homeless in the months before their incarceration.
- For the homeless population with mental illnesses, their rates of entering prisons and jails are even higher: about 20 percent.
- One in 10 people incarcerated in state prisons reported prior military service.<sup>4</sup>
- 41 percent of inmates in the nation's state and federal prisons and local jails do not have a high school diploma or equivalency, compared to 18% of the general population age 18 or older.<sup>5</sup>

## What Are Fair-Chance Hiring Policies?

It is estimated that one in three adults in the U.S. have some type of criminal record that may appear on a routine background check for employment.<sup>6</sup> Furthermore, in one recent survey, men with conviction records accounted for about 34 percent of nonworking men of prime working age.<sup>7</sup> Studies have shown that the existence of a criminal record reduces job callbacks by 50 percent on average, with an uptick to 60 percent for black male job candidates.<sup>8</sup> These statistics demonstrate both that involvement with the criminal justice system is a fairly common experience in the U.S. and that a criminal record impacts employment opportunities.

A broad menu of reforms, which some localities have deemed “fair-chance” laws, incorporates “ban the box” policies<sup>9</sup> and builds off the best practices detailed in the U.S. Equal Opportunity Commission (EEOC) guidelines on the use of arrest and conviction records in employment decisions.<sup>10</sup> EEOC recommendations that have been incorporated into fair-chance laws include, for example:

- Prohibiting certain criminal record information from consideration, such as arrests that have not led to convictions;
- Considering only specific job-related convictions in hiring; and
- Providing job applicants an opportunity to explain their criminal record.

Policy reforms aimed at the consideration of records in hiring decisions run the gamut in substance from simply removing the conviction history from the job application to more robust versions. The scope of the reform also varies as to the level of government, the legal mechanism used, and the type of employer included.<sup>11</sup>

As of October 2015, 19 states representing nearly every region of the country have adopted policies to delay conviction history inquiries: California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Vermont and Virginia. Each of these states have

enacted legislation except for four—Georgia, New York, Vermont, and Virginia; these states have policies in place through gubernatorial actions.<sup>12</sup> Seven states have removed the conviction inquiry from job applications for private employers as well. In addition, major employers such as Walmart, Target, Starbucks, Home Depot, Bed, Bath & Beyond, and Koch Industries have taken the conviction question off of their job applications.<sup>13</sup>

## Impact of Fair-Chance Policies to Date

Although there has been limited formal tracking of the results of these fair-chance policies, existing information indicates an increase in hiring people with records.

In North Carolina, Durham County adopted a policy for county job applicants in 2012 that delayed background checks until applicants were selected for hiring and also incorporated EEOC criteria for considering records. The number of applicants with criminal records recommended for hire nearly tripled in the two years since the policy was adopted.<sup>14</sup>

After the City of Minneapolis implemented its policy, it found that removing the conviction disclosure box from initial applications, incorporating EEOC criteria, and postponing background checks until after a conditional offer of employment decreased the amount of transactional work for staff, did not slow down the hiring process, and resulted in more than half of applicants with convictions being hired.<sup>15</sup>

## Fiscal Considerations

An attractive aspect of this reform is its low cost of implementation. Removing the conviction history question from the job application is a minimal expenditure. Incorporating the EEOC best practices into written policies and practices and providing training to human resources decision makers can also be absorbed administratively. Enforcement of the policy, data collection to assess the results, and policy compliance review would require the infrastructure to perform these functions, which would vary in cost depending on the existing systems in place.

## Implementation Considerations

In a case study documenting the implementation of laws in three jurisdictions, a common theme was the importance of stakeholder engagement.<sup>16</sup> Additional components to ensure successful implementation of a

policy include tracking outcomes, identifying any barriers to compliance, and improving upon the policy to ensure the goals are being met. Questions to consider regarding how to meet these goals include the following:

- For tracking compliance of public employers, is there a confidential tracking system in place that documents how many people with records are denied job opportunities based on their records and how many people with records are ultimately hired?
- For private employers, are there low-cost opportunities to document the number of people with records rejected or accepted for job opportunities, such as random audits or simple electronic surveys? In addition, is there a system to track complaints, and can this information be readily made available to the public in the aggregate?

### LESSONS FROM SEATTLE

Seattle's fair chance ordinance, passed in June 2013, directed the agency responsible for enforcement to convene a panel of stakeholders from the employer, social service, and legal community sectors. After seeking the broader community's input through public meetings and a robust education and outreach campaign, the enforcement agency developed rules interpreting the ordinance and resource materials for job seekers and employers.<sup>17</sup>

1. "Occupational Wage Declines Since the Great Recession." Nat'l Emp't Law Project (NELP) (Sept. 2015).
2. The count of total releases in 2014 was 641,961 as generated by using the Corrections Statistical Analysis Tool, U.S. Bureau of Justice Statistics.
3. "Research Supports Fair Chance Policies." NELP (April 2015).
4. U.S. Bureau of Justice Statistics, "Veterans in State and Federal Prison, 2004," (April 29, 2007).
5. U.S. Bureau of Justice Statistics, "Education and Correctional Populations, 2003," (Jan. 1, 2005).
6. "Advancing a Federal Fair Chance Hiring Agenda," NELP (Jan. 2015).
7. Binyamin Appelbaum, *The Vanishing Male Worker: How America Fell Behind*, *The New York Times* (Dec. 11, 2014).
8. See *infra*, fn. 3.
9. "Ban the box" refers to the removal of the checkbox on job applications inquiring about conviction information.
10. San Francisco and NYC provide examples of fair-chance laws. See "Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Barriers to Employment of People with Conviction Records," NELP (Sept. 2015). See also "EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," EEOC (Apr. 2012).
11. See *infra*, NELP fn. 10.
12. *Id.* New York Governor Andrew Cuomo announced on September 21, 2015 that the state would adopt "fair chance hiring" for state agencies.
13. NELP's "Voices in Support" factsheet includes citations to private employer endorsements.
14. Daryl Atkinson & Kathleen Lockwood, "The Benefits of Ban the Box: A Case Study of Durham, NC," *The Southern Coal. for Soc. Justice* (Oct. 2014).
15. Letter from City Council Member Elizabeth Glidden & Conviction History Summary 2004-2008 YTD (Mar. 16, 2009).
16. "Fair-Chance Implementation Case Studies for Government Agencies," NELP (June 2015).
17. *Id.*

*Established by the Second Chance Act, the National Reentry Resource Center (NRRC) provides education, training, and technical assistance to states, tribes, territories, local governments, community-based service providers, nonprofit organizations, and corrections institutions involved with prisoner reentry. The NRRC is administered by the U.S. Department of Justice's Bureau of Justice Assistance and is a project of The Council of State Governments Justice Center, in cooperation with the Urban Institute, the National Association of Counties, the Association of State Correctional Administrators, the American Probation and Parole Association, and other key partner organizations. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of The Council of State Governments Justice Center or members of The Council of State Governments.*