

Research Supports Fair Chance Policies

People with arrest or conviction records need and deserve reliable access to income through safe, good-paying, stable jobs. Unfortunately, because of the stigma of a record, many people with records struggle to find employment. This bias also perpetuates systemic racism because Black, Latinx, and Indigenous people are disproportionately penalized by the criminal legal system and are therefore more likely than other racial and ethnic groups to have records. The following research summary helps demonstrate that removing unjust barriers to employment—including through “fair chance hiring” policies—benefits individuals with records, their families, communities of color, and society more broadly.

After the distressing experience of incarceration or other involvement with the criminal legal system, most people require a combination of family support, community assistance, and economic opportunity to rebuild their lives. Access to wages through employment is typically a prerequisite for successfully moving forward.

While having a job does not guarantee a smooth return home from incarceration—especially if that job is underpaid—unemployment makes the transition all the more difficult by exacerbating financial instability and straining critical family support.

Expanding access to good jobs for people with records is crucial to limiting the negative effects of mass criminalization and incarceration and to enhancing racial justice and equity. Fair chance hiring (including “ban the box”) policies alone will not erase the employment struggles of people with records; nevertheless, prohibiting employers from rejecting job applicants with records at the outset of hiring is a necessary step toward fairness for workers with records across the U.S. labor market.

A. Employment Background Checks Unfairly Hold Back Millions of Workers, Disproportionately Workers of Color

- NELP conservatively estimates that roughly 80 million people in the United States (nearly one in three adults) have some sort of criminal record.¹ On average, more than 550,000 people return to our communities from state or federal prisons each year.²
- Black, Latinx, and Indigenous people are much more likely to have a record than white people³ because of massive investments in a legal system that criminalizes and incarcerates people of color.⁴ These racial and ethnic disparities are not explainable by differences in rates of offending.⁵

- By age 35, an estimated 64 percent of unemployed men have been arrested for, and 46 percent convicted of, at least one nontraffic offense as an adult.⁶
- Downward economic trends are especially devastating to workers with records. Data from one state reveals that 40 percent of formerly incarcerated people were employed before the Great Recession compared with only 10 percent in 2008.⁷ The COVID-19 pandemic also made job searching especially difficult for people with records. One large reentry organization placed roughly half as many people with records into jobs in the second half of 2020 as in the second half of 2019.⁸

B. Communities Achieve Greater Economic Stability After Removing Job Barriers Faced by Workers with Records

- People who have been incarcerated suffer tremendous economic losses, with their subsequent annual earnings reduced by an average of 52 percent. People convicted of a felony but not imprisoned see their annual earnings reduced by an average of 22 percent. People convicted of a misdemeanor see their annual earnings reduced by an average of 16 percent.⁹
- A 2011 study found that, when 100 formerly incarcerated persons obtain work, their lifetime earnings increase by roughly \$55 million.¹⁰
- By the time they have hit their peak earning years, a formerly incarcerated worker will have earned an average of \$192,000 less (in 2014 dollars) than if they had never been incarcerated.¹¹
- In sum, economists estimate that, because formerly incarcerated people and those with felony records face poor prospects in the labor market, the nation's gross domestic product in 2014 was reduced by \$78 to \$87 billion.¹²
- Barriers to employment often mean that people with records and their families need additional financial support.¹³ Data reveals that access to social insurance programs—like SNAP and TANF—reduce the likelihood of reincarceration within one year by 10 percent.¹⁴ Yet having a record renders many people ineligible for various social insurance programs, including unemployment insurance,¹⁵ SNAP, and TANF.¹⁶

C. Quality Employment is Critical to Successfully Rejoining One's Community After Incarceration

- A 2011 study of people released from incarceration found that employment was the single most important influence on decreasing the likelihood of rearrest. Two years after release, nearly twice as many employed people had avoided rearrest as compared to those who did not find employment.¹⁷
- Job quality matters, particularly fair pay. Studies demonstrate that higher wages translate to less reincarceration.¹⁸ An average minimum wage increase of \$0.50 is associated with a 2.6 percent decrease in the probability of returning to prison within one year, according to another study.¹⁹

- A three-year longitudinal study in Norway observed that individuals released from prison who obtained a job were less than half as likely to be rearrested than those who did not.²⁰
- An analysis of state-level data concluded that a 1 percent drop in the unemployment rate correlated to a 2 percent decline in burglary, a 1.5 percent decrease in larceny, and a 1 percent decrease in auto theft.²¹
- Despite the clear importance of stable, quality employment, formerly incarcerated people need more than six months on average to find their first job after release.²² Pay averages far below the U.S. median wage, often resulting in poverty-level wages, especially for workers of color.²³ And the work found is often sporadic, precarious, physically demanding, or unsafe.²⁴

D. Children and Families Also Suffer When People with Records Lack Access to Good Jobs

- The carceral system worsens poverty by removing household earners from their communities during periods of incarceration and reducing their future earnings potential after they return home. Studies reveal that mass incarceration has played a major role in increasing poverty rates across U.S. communities, helping to explain why poverty remains high despite general economic growth.²⁵
- Nearly half of U.S. children have at least one parent with a record.²⁶
- Black households disproportionately lose wage earners first to incarceration and then to a labor market that excludes people with records. One in nine Black children have an incarcerated parent as compared with 1 in 57 white children.²⁷ Nearly half of Black women (44 percent) have an incarcerated family member, compared with 12 percent of white women.²⁸
- When a father is incarcerated, a family's income drops by approximately 22 percent. Even after an incarcerated father is released, family income remains 15 percent lower than before his incarceration.²⁹ These declines occur even though many women with incarcerated loved ones work more hours (35 percent) or get a different job (33 percent) because of their loved one's incarceration.³⁰
- Upward mobility is significantly diminished for workers with records. One study of the lowest quintile of male earners found that those with a record were twice as likely as those without a record to remain in that bottom earnings bracket 20 years later.³¹
- One survey revealed that many parents recently released from incarceration had difficulty paying child support (68 percent), regaining custody of their children (43 percent), and rebuilding relationships with family (26 percent).³²
- Families of formerly incarcerated people often struggle to assist them financially. In one survey of family members, 65 percent reported providing financial support to their

recently released relative.³³ Another study of women with felony records found that 65 percent relied on a family member or spouse for financial support.³⁴ 83 percent of interviewed family members of formerly incarcerated men reported providing financial support after their relative's release; half of those respondents said the support caused them financial challenges, and 30 percent described "financial hardships."³⁵

E. Fair Chance Policies Expand Employment Opportunities for People with Records

Employers Often Unfairly Refuse to Consider Applicants with a Record—Especially Black and Women Applicants

- Applicants who indicate a criminal record on their application are much less likely to hear back from the potential employer: in one landmark study, the callback rate halved (from 34 to 17 percent) for white applicants and dropped by nearly two-thirds (from 14 to 5 percent) for Black applicants when they revealed a record on their application.³⁶
- The effect of a record on callback rates is also deeply intertwined with racism and sexism. The above-mentioned study revealed that white applicants *with* a record received a higher rate of callbacks than Black applicants *without* a record.³⁷ Further study reveals that employers may penalize women with records more severely than similarly situated men with records.³⁸
- Even job applicants with only a minor *arrest* record are less likely to receive a callback than other applicants—flying in the face of the basic legal tenet that individuals are innocent until proven guilty.³⁹
- Of more than 50,000 people released from federal prisons in 2010, 33 percent found no employment during the subsequent four years, and, at any given time, no more than 40 percent were employed. People with records who found employment worked an average of 3.4 jobs during the four-year study period, suggesting that their jobs did not offer stability or upward mobility.⁴⁰
- A study of individuals seeking expungement in Illinois revealed that their records continued to significantly inhibit their employment prospects for many years, even when the offense was minor or the person had never been convicted following arrest.⁴¹
- A study of help-wanted advertisements in Virginia found that, of more than 192,000 total positions listed, just under 16,000 (or 8 percent) were open to hiring an applicant with a record.⁴²

Opportunities to Make Personal Contact and Provide Additional Context Reduce Employer Bias

- Studies show that, if employers discriminate, they are most likely to do so upon the submission of a job application.⁴³

- A study involving test pairs of job applicants—one with a conviction record and one without—revealed that having personal contact with the potential employer reduced the negative effect of a conviction record by approximately 15 percent.⁴⁴
- In another study, hiring managers reported that a job applicant can compensate for their criminal record with their personality through in-person contact with hiring personnel.⁴⁵
- The Equal Employment Opportunity Commission instructs employers to conduct a thorough, individualized assessment of a job applicant with a record, evaluating the time passed since the offense as well as the nature of the conviction and its relationship to the duties of the specific job sought.⁴⁶
- All people with records deserve good jobs, but it's particularly unfair to deny employment based on old convictions. Statistical studies reveal that time passed is inversely correlated with the likelihood of reincarceration. One such study found that, after six or seven years, a person with a conviction record is only marginally more likely to be arrested as someone with no record.⁴⁷ Another study observed that, among those who were not reconvicted in the first 10 years after release, only 3.3 percent were reconvicted in the next 10 years.⁴⁸ A third found that the number of formerly incarcerated people who were again imprisoned peaked at 10 months after release and that the risk of reincarceration halved every 10 months thereafter.⁴⁹
- Rejecting all candidates who check “the box” means that employers don’t consider any nuance. But employers report tremendous variation in their willingness to hire a person with a record, depending on the nature of the conviction. A 2002 survey of California employers observed that, before assessing job-relatedness, 84 percent would consider applicants with a misdemeanor offense, while 23 percent were willing to hire a person with a drug-related felony.⁵⁰

F. Workers with Records Defy Negative Stereotypes

- While the clear moral imperative for hiring people with records remains the paramount reason for adopting fair chance hiring policies,⁵¹ a growing number of employers also point to business-related reasons for such changes.⁵²
- Contrary to negative and unfair stereotypes resulting from the stigma of a record, studies demonstrate that, as they seek economic stability, workers with records stay in their jobs longer and earn promotions faster than other workers. For example, one study found that military personnel with felony convictions are promoted faster and are no more likely to be discharged.⁵³ One large employer observed higher retention and a very low rate of termination among its many employees with records.⁵⁴
- Some employers overstate concerns about possibly losing customers or employees if they hire people with records. However, 2021 survey data reveal that most U.S. workers would be comfortable working alongside colleagues with past convictions or periods of incarceration. Similarly, most consumers would be comfortable visiting businesses that

employ people with records and receiving assistance from formerly incarcerated personnel.⁵⁵

G. Fair Chance Policies Have Proven Effective

- One robust study of public sector hiring found that people with records saw an increased probability of obtaining a government job after the adoption of a ban-the-box policy.⁵⁶
- Since implementing a comprehensive fair chance hiring policy in 2013 that included a careful “individualized assessment,” San Francisco has reported disqualifying only a small percentage of job applicants with conviction records. In the two fiscal years from 2013 to 2015, it disqualified only 2 percent of applicants with a conviction history,⁵⁷ and, by fiscal year 2022–2023, that number dropped to just 0.731 percent (seven candidates, of whom five were disqualified based on a statutory bar).⁵⁸
- For the District of Columbia, the number of applicants with records increased both numerically and as a percentage of all hires after the fair chance hiring law took effect. After the law, the D.C. government hired 33 percent more applicants with records, and people with records made up 21 percent of all new hires.⁵⁹
- City of Minneapolis staff found that, after the city implemented a policy of removing the criminal disclosure box from initial applications and postponing background checks until after a conditional job offer, their transactional work decreased, the hiring process did not slow, and more than half of applicants with convictions were hired.⁶⁰
- As a result of its new criminal disclosure policy, 10 percent of the city of Atlanta’s hires between March and October of 2013 were people with records.⁶¹
- In Durham County, North Carolina, the number of workers with records hired by the county government nearly tripled, from 35 to 97 individuals, in the two years after delaying background checks. Of the candidates with records who underwent background screening after being recommended for hire, 96 percent ultimately got the job.⁶²
- After implementing a hiring policy to delay criminal background checks, Johns Hopkins Hospital rescinded conditional job offers to 19 percent of applicants with records (relatively few for a highly regulated medical setting) and ultimately hired over 60 percent of job applicants with a criminal history.⁶³
- At least one study has revealed a connection between a fair chance hiring law and a reduction in reincarceration. Following the implementation of Hawai’i’s 1998 ban-the-box law, statistical analysis demonstrated that an individual prosecuted in Honolulu for a felony offense was 57 percent less likely to have a prior conviction record.⁶⁴
- Although the theory of statistical discrimination is sometimes cited to criticize fair chance hiring, it remains empirically unclear whether such discrimination increases after banning the box. To the extent such studies reveal anti-Black employer racism, that

racism exists regardless of any ban-the-box policy.⁶⁵ Instead of discarding a policy change that increases job opportunities for people with records, policymakers should explore strategies to identify and eliminate unlawful racial profiling by employers.⁶⁶

- Several studies have examined employment data before and after the adoption of fair chance policies and *not* found evidence for statistical discrimination.⁶⁷
- One of these studies even calls into question a prominent paper that asserted employment reductions for a narrow subset of young, Black men.⁶⁸ The more recent paper identified numerous coding errors and methodological issues that undermine statistical discrimination findings.⁶⁹
- Another study suggests that any statistical discrimination by employers is only temporary, as employers adjust to new fair chance policies.⁷⁰

Endnotes

- ¹ As of December 31, 2020, the criminal history files of the 50 states and the District of Columbia included an estimated 114,375,300 subjects (“individual offenders”). Becki R. Goggins and Dennis A. DeBacco, *Survey of State Criminal History Information Systems, 2020* (Sacramento: SEARCH Group, 2022), table 1, <https://bjs.ojp.gov/library/publications/survey-state-criminal-history-information-systems-2020>. NELP conservatively reduced the numbers cited in the survey by 30 percent to 80,062,710 subjects to correct for possible duplication (individuals who may have records in more than one state) and any counting of deceased persons. The U.S. Census population estimate for those who were 18 years and over (as of the 2020 census) in the 50 states and District of Columbia was 258,343,281. Stella U. Ogunwole et al., “Population Under Age 18 Declined Last Decade,” U.S. Census Bureau, August 12, 2021, <https://www.census.gov/library/stories/2021/08/united-states-adult-population-grew-faster-than-nations-total-population-from-2010-to-2020.html>. Based on these estimates, roughly 80 million—or nearly one in three (31 percent)—U.S. adults have a criminal history record in U.S. state criminal history files.
- ² This figure represents the average (mean) number of individuals released from state and federal prison during the most recent five years for which data is currently available. E. Ann Carson, *Prisoners in 2021 – Statistical Tables* (Bureau of Justice Statistics, 2022), 19; E. Ann Carson, *Prisoners in 2020 – Statistical Tables* (Bureau of Justice Statistics, 2021), 19; E. Ann Carson, *Prisoners in 2019 – Statistical Tables* (Bureau of Justice Statistics, 2020), 13; E. Ann Carson, *Prisoners in 2018 – Statistical Tables* (Bureau of Justice Statistics, 2020), 13.
- ³ Leah Wang, “The U.S. Criminal Justice System Disproportionately Hurts Native People,” *Prison Policy Initiative* (blog), October 8, 2021, <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/>.
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- ⁶ Shawn Bushway et al., “Barred from Employment: More Than Half of Unemployed Men in Their 30s had a Criminal History of Arrest” *Science Advances* 8, no. 7 (February 2022), <https://www.science.org/doi/pdf/10.1126/sciadv.abj6992>. Men with criminal records accounted for about 34 percent of the unemployed, prime working age men surveyed in a 2015 New York Times/CBS News/Kaiser Family Foundation poll. Binyamin Appelbaum, “Out of Trouble, but Criminal Records Keep Men Out of Work,” *New York Times*, February 28, 2015, www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?_r=0 (the cited poll is available at <http://kff.org/other/poll-finding/kaiser-family-foundation-new-york-times-cbs-news-non-employed-poll/>).
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- ⁸ Between July 1 and December 31, 2019, the Center for Employment Opportunities placed 1,793 applicants in jobs. For the same time period in 2020, it placed less than 900. Kevin Bliss, “COVID-19 Pandemic Makes Job Hunting Especially Difficult for Ex-Offenders,” *Prison Legal News*, April 1, 2021, <https://www.prisonlegalnews.org/news/2021/apr/1/covid-19-pandemic-makes-job-hunting-especially-difficult-ex-offenders/>.
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- ¹⁰ *Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia* (Philadelphia: Economy League of Greater Philadelphia, 2011), <https://www.economyleague.org/resources/economic-benefits-employing-formerly-incarcerated-individuals-philadelphia> (also estimating income tax contributions increasing by \$1.9 million, sales tax revenues increasing by \$770,000, and the government saving more than \$2 million annually via reduced criminal legal system costs).
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