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Jacqueline G. Kelley
Rhode Island Department of Administration

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INTRODUCTION

Much of the legal literature surrounding re-entry and recidivism for people with criminal records centers on a recent trend regarding so-called "ban the box" laws.[1] In 2013, Rhode Island became the fourth state in the Union to adopt one of these laws, forbidding private and public employers from asking about an applicant's criminal history on an initial application for employment.[2] However, under the Rhode Island statute, employers may ask about an applicant's criminal record at or after

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1. *See generally* Aaron F. Nadich, Comment, *Ban the Box: An Employer's Medicine Masked as a Headache*, 19 ROGER WILLIAMS U. L. REV. 767 (2014); Johnathan J. Smith, *Banning the Box but Keeping the Discrimination?: Disparate Impact and Employers' Overreliance on Criminal Background* Checks, 49 HARV. C.R.-C.L. L. REV. 197 (2014); Elizabeth P. Weissert, Comment, *Get Out of Jail Free? Preventing Employment Discrimination Against People with Criminal Records Using Ban the Box Laws*, 164 U. PA. L. REV. 1529 (2016).

2. 28 R.I. GEN. LAWS ANN. § 28-5-7 (West, Westlaw through Ch. 542 of the Jan. 2016 Sess.); MICHELLE NATIVIDAD RODRIGUEZ & BETH AVERY, NAT'L EMP'T LAW PROJECT, *BAN THE BOX: U.S. CITIES, COUNTIES, AND STATES ADOPT FAIR-CHANCE POLICIES TO ADVANCE EMPLOYMENT OPPORTUNITIES FOR PEOPLE WITH PAST CONVICTIONS* 1–2 (2017), http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf (Predecessors were Hawaii, Massachusetts, and Minnesota. To this point, nine states have introduced ban the box laws for private employers, adding Connecticut, Illinois, New Jersey, Oregon, and Vermont. Fifteen other states have laws forbidding the question on applications for public employment.).

the first interview, giving the employee the opportunity to discuss the circumstances regarding their criminal records.[3] Rhode Island's statute sits on a continuum of similar legislation throughout American jurisdictions. Relatively, Rhode Island falls somewhere in the middle. The Rhode Island law applies to public employers *and* private employers.[4] However, some jurisdictions go much further. For example, Hawaii's ban the box statute forbids employers from asking about applicants' criminal records until after a conditional offer of employment has already been made.[5]

Post-incarceration employment opportunities for people with criminal records is of obvious concern for society. Recent estimates place the number of individuals with arrest or conviction records at approximately seventy million.[6] In Rhode Island, recidivism is of significant concern. The Rhode Island Department of Corrections (DOC) has stated that for prisoners released in 2012, a total of 52% of those released persons returned to the DOC with a new sentence within three years.[7] Studies and experts frequently point to an inverse relationship between employment and recidivism rates among those with criminal records.[8] Indeed, studies suggest that employment is one of the

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3. § 28-5-7(7)(iii) (Westlaw).

4. *Id.* § 28-5-7(1).

5. HAW. REV. STAT. ANN. § 378-2.5 (West, Westlaw through the 2016 Second Special Sess. Subject to changes by Revisor pursuant to HRS 23G-15).

6. NAT'L EMP'T LAW PROJECT, SEIZING THE BAN THE BOX MOMENTUM TO ADVANCE A NEW GENERATION OF FAIR CHANCE HIRING REFORMS 2 (2014), http://www.nelp.org/content/uploads/2015/03/Seizing-Ban-theBoxMomentum Advance-New-Generation-Fair-Chance-Hiring-Reforms.pdf.

7. R.I. DEP'T OF CORR., 2012 RECIDIVISM STUDY 2 (2012), http://www.doc.ri.gov/administration/planning/docs/Recidivism%20Study%20 Brief%202012.pdf. Correlation with national recidivism rates is difficult because Rhode Island seems to measure recidivism merely by re-sentencing or awaiting trial at the Adult Correctional Institute, rather than by the national standard of mere re-arrest. For national recidivism rate, see, *Recidivism*, NAT'L INST. OF JUST., https://www.nij.gov/topics/corrections/ recidivism/pages/welcome.aspx (last modified June 17, 2014) (67.8% re-arrested within three years) [hereinafter RIDOC].

8. *See* Michael L. Foreman, Professor, Pa. State Univ. Dickinson Sch. of Law, Statement at the EEOC Meeting on Employment Discrimination Faced by Individuals with Arrest and Conviction Records (Nov. 20, 2008), http:// www.eeoc.gov/eeoc/meetings/11-20-08/foreman.cfm ("Placement programs that specialize in rehabilitating ex-offenders frequently note the inverse correlation between recidivism rates and employment opportunities.").

single most important factors in recidivism rates among those with criminal records.[9] Experts argue that when people with criminal records find themselves "stuck," living outside prison but without gainful employment through which they can attain the means to live, they often turn to illegal activities to make their livelihood.[10] Thus, society in general has legitimate reason and impetus to assist those with criminal records in seeking post-incarceration employment.

I. THE CURRENT "SOLUTION": BAN THE BOX STATUTES

Under Title VII of the Civil Rights Act of 1964, the federal government introduced statutory liability for employers who were found to be engaging in discriminatory hiring practices.[11] However, the Act limits employers' liability to only those practices which discriminate based on race, color, religion, sex, and national origin.[12] Thus, people with criminal records are not a protected class under Title VII. Employers need not *intend* to discriminate on these bases for liability to attach. However, the criminal justice system has a noted disparate impact on minorities. According to statistics from the Bureau of Justice Statistics (BJS), approximately one in seventeen white men (5.9%) will go to prison in their lifetime.[13] Compare this to approximately one in six Hispanic men (17.2%) and approximately one in three African

9. Mark T. Berg & Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382, 387 (2011); *see also* JOHN H. LAUB & ROBERT J. SAMPSON, SHARED BEGINNINGS, DIVERGENT LIVES, DELINQUENT BOYS TO AGE 70 (2003); Christopher Uggen, Sara Wakefield & Bruce Western, *Work and Family Perspectives on Reentry*, in PRISONER REENTRY AND CRIME IN AMERICA 209–43 (Jeremy Travis & Christy Visher eds., 2005); CHRISTY A. VISHER & SHANNON M.E. COURTNEY, URBAN INST., CLEVELAND PRISONERS' EXPERIENCES RETURNING HOME 13 (2006), http://www.urban.org/sites/default/files/publication/42966/311359-Cleveland-Prisoners-Experiences-ReturningHome.PDF.

10. Berg & Huebner, *supra* note 9, at 387.

11. 42 U.S.C.A. § 2000e-2 (Westlaw through Pub. L. No. 114-327).

12. *Id.* § 2000e-2(a) (Westlaw).

13. THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974–2001 1 (Aug. 2003), https://www.bjs.gov/content/pub/pdf/piusp01.pdf; U.S. EEOC, ENFORCEMENT GUIDANCE NO. 915.002 9–10 (2012), https://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf [hereinafter 2012 GUIDANCE].

American men (32.2%).[14] Under the so-called "disparate impact" doctrine established in *Griggs v. Duke Power Co.*[15] and later codified by Congress, employers may be held liable for their employment practices if they have a disparate impact on a protected class, even if the policy was not intended to do so.[16] For those alleging discrimination because of their criminal records, their only relief under Title VII is via this doctrine. Thus, because of statistical disparities in the incarceration rates of Hispanic and African American men, discrimination against people with criminal records is likely to have a disparate impact on these protected classes.[17]

People with criminal records face a harsh uphill battle in their post-incarceration employment search. Statistics show that 92% of employers subject applicants to criminal background checks.[18] Most employers who use these tests cite legal requirements and concerns surrounding negligent hiring liability, theft, and workplace violence as reasons for subjecting applicants to them.[19] Indeed, many theorize that people with criminal records have difficulty gaining employment because of stigmas associated with criminal records that are often directly related to job performance, such as dishonesty, violence, or unreliability.[20]

A. The Fear of Negligent Hiring

Much of this concern and apprehension revolves around the liability of employers for negligent hiring. In Rhode Island, an

14. BONCZAR, *supra* note 13, at 1; 2012 GUIDANCE, *supra* note 13, at 9–10.

15. 401 U.S. 424, 430–31 (1971) (holding that a facially race-neutral policy can still constitute illegal racially discriminatory hiring practices if the policy has a disproportionate impact on racial minorities *and* is not justified by business necessity).

16. § 2000e-2(k) (Westlaw).

17. BONCZAR, *supra* note 13, at 1; 2012 GUIDANCE, *supra* note 13, at 9–10. Incarceration rates for women are relatively low: 0.9% for white women, 5.6% for African American women, and 2.2% for Hispanic women. Although disparities exist, they do not appear to be severe. *Id.*

18. 2012 GUIDANCE, *supra* note 13, at 6.

19. Id.

20. Devah Pager, Professor, Princeton Univ., Statement at the EEOC Meeting on Employment Discrimination Faced by Individuals with Arrest and Conviction Records (Nov. 20, 2008), http://www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm.

employer may be held liable for negligent hiring when it fails "to exercise reasonable care in selecting a person who the employer knew or should have known was unfit or incompetent for the employment, thereby exposing third parties to an unreasonable risk of harm."[21] In *Welsh Manufacturing v. Pinkerton's, Inc.*, the Rhode Island Supreme Court aligned itself with the majority of jurisdictions in holding employers liable to those who are injured as a result of the harm,[22] drawing on the reasoning from *Ponticas v. K.M.S. Investments.*[23]

In *Ponticas*, a tenant filed suit against the landlord for negligent hiring after she was sexually assaulted by the manager of her apartment complex.[24] The manager had an extensive prior criminal history, including convictions in multiple states for receiving stolen property, armed robbery, and burglary.[25] The court found that, given the employee's close proximity to tenants, and the fact that he was given a passkey, which would give him access to all units, the employer breached its duty of care insofar as it failed to adequately determine whether or not the manager was fit for the specific job at hand.[26]

Moreover, the Supreme Court of Minnesota held that employers have no general duty to conduct criminal background checks of individual applicants.[27] In fact, employers satisfy their legal duty when the employer has "made adequate inquiry or otherwise has a reasonably sufficient basis to conclude the employee is reliable and fit for the job . . . ."[28] However, the court noted that even though there is no general affirmative duty to determine if an applicant has a criminal record, an employer has not necessarily discharged its duty. Rather, liability is determined based on whether, in the totality of the circumstances surrounding the hiring, the employer exercised reasonable care in selecting the employee.[29] Thus, an employer may be held liable for failing to conduct a criminal background check if the

21. Welsh Mfg. v. Pinkerton's, Inc., 474 A.2d 436, 440 (R.I. 1984).
22. *Id.* at 439–40.
23. *Id.* at 440; 331 N.W.2d 907, 911 (Minn. 1983).
24. *Ponticas*, 331 N.W.2d at 909.
25. *Id.*
26. *Id.* at 915.
27. *Id.* at 913.
28. *Id.*
29. *Id.*

circumstances of the position require it, even if there is no general affirmative duty to conduct such a check.

Certainly, there is strong policy reasoning for such a holding. The Minnesota court recognized that holding an employer liable merely for hiring a person with a criminal record would be severely detrimental to understanding that part of the goal of the American criminal justice system is rehabilitation.[30] It reasoned that:

> Were we to hold that an employer can never hire a person with a criminal record at the risk of later being held liable for the employee's assault, it would offend our civilized concept that society must make a reasonable effort to rehabilitate those who have erred so they can be assimilated into the community.[31]

Even with these policy concerns and limits, however, employers' fears of liability for negligently hiring a person with a criminal record have distinct and severe effects on those attempting to gain post-incarceration employment. By way of example, a study of people leaving Cleveland prisons found that only 39% of individuals interviewed three months after release had worked in that period.[32] Moreover, only 30% were currently employed three months after release, compared to 70% employment prior to incarceration.[33] What is more, studies suggest that qualified white men with past criminal convictions are about half as likely to receive a callback for a job compared to other qualified white applicants without criminal records.[34] Minorities are more severely affected, as African Americans with criminal records are about 64% less likely than African Americans without criminal records to receive a callback from a prospective employer.[35] Thus, it is evident that employers' fears of liability still linger. Indeed, employers ought to be wary of potential

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30. *Id.*

31. *Id.*

32. VISHER & COURTNEY, *supra* note 9, at 11.

33. *Id.*

34. Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 956 (2003).

35. *Id.* at 958–59 (also finding that African American men without criminal records are generally less likely (14%) than white men to receive a callback (37%), a separate issue outside the scope of this Article).

liability and should vigilantly ensure that their hiring practices comport with the duty to ensure that employees are fit for *the* job, since different jobs may require different standards of consideration for past criminal records.[36]

B. The Balancing Act: Griggs *and Title VII*

The formulation of an anti-discrimination policy regarding people with criminal records is not by any means a simple one. On both sides of the argument, there are significant interests and concerns for both employers and employees. The interest to employees and the public is rather obvious. The goal of Title VII is to provide federal safeguards against discrimination to ensure a fair chance in the employment process. In *Connecticut v. Teal*, the Supreme Court noted that Title VII served not primarily to benefit racial or minority groups, but rather as a safeguard and protection for individual employees.[37] However, the disparate impact test developed in *Griggs* demonstrates a key balancing act that such policies must take.[38] In *Griggs*, the Court recognized that Title VII does not require that employers glance over qualified individuals for those less qualified merely because of race or origin.[39] Rather, just the opposite: the true purpose of Title VII is to give the job qualifications controlling power, so that individuals may have a fair chance to obtain the job on their merits, rather than based off of purely racial considerations.[40] Accordingly, the Court held that employers may only use bright line tests so long as they are "demonstrably a reasonable measure of job performance."[41] Thus, the Court attempts to balance the interest in protection of the individual from unfair discrimination with employers' legitimate interests and concerns surrounding negligent hiring liability, theft, and workplace violence, which they often cite in their decisions to utilize background checks.[42] Actually, in *NASA v. Nelson*, the Court recognized that the federal government, as an employer, had legitimate interests in ensuring

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36. *See Ponticas*, 331 N.W.2d at 913.
37. 457 U.S. 440, 453–54 (1982).
38. *See* Griggs v. Duke Power Co., 401 U.S. 424, 436 (1971).
39. *Id.*
40. *Id.*
41. *Id.*
42. *See* Pager, *supra* note 20.

the security of its facilities and in employing a competent, reliable work force, which were furthered by asking about criminal history.[43]

The *Griggs* Court addressed the permissibility of intelligence examinations for employees.[44] Indeed, the Court has not directly addressed Title VII issues relating to people with criminal records. However, in 2007, the Third Circuit recognized that employers have legitimate interests under Title VII in considering the criminal histories of potential employees.[45] In *El v. Southeastern Pennsylvania Transportation Authority (SEPTA)*, the circuit found that an employer's practice of screening and discarding all applicants with a criminal history was legitimate in that the employer has a need of ensuring that applicants will not pose an unreasonable risk in conducting their employment duties.[46] The court made this holding in spite of the fact that the policy did in fact have a disparate impact on African Americans.[47] In *SEPTA*, the candidate, who was convicted of second-degree murder as a teenager, was rejected for the position of paratransit driver on the sole basis of his forty-year-old conviction.[48] The position involved driving vehicles that primarily serve individuals in the community with mental and/or physical disabilities.[49] The employer instituted a hiring practice in which all individuals with a criminal history of either DUI or any felony or misdemeanor conviction of crimes of moral turpitude or violence against persons were immediately disqualified.[50] The candidate argued that this policy had a disparate impact on African American job candidates, and thus it was in violation of Title VII.[51] However, the court rejected this argument, despite the admitted fact that the policy did have a disparate impact, because SEPTA had shown a legitimate interest in passenger safety, which was furthered by its bright-line policy.[52] SEPTA argued, *inter alia*, that given the high

43. 562 U.S. 134, 149–50 (2011).
44. 401 U.S. at 425–26.
45. El v. Se. Pa. Transp. Auth., 479 F.3d 232, 247 (3d Cir. 2007).
46. *Id.* at 245–46.
47. *Id.* at 236–37, 248.
48. *Id.* at 235.
49. *Id.*
50. *Id.* at 236.
51. *Id.* at 235.
52. *Id.* at 248.

recidivism rate of violent criminals and the distinct vulnerability of the passengers which the position was meant to serve, that the bright-line policy was the most accurate manner in which to determine which applicants posed an unacceptable risk.[53] Indeed, many would recognize the dangers that this imposes.

This delicate balancing act is played out daily in administrative practice in Rhode Island. For example, the Department of Children, Youth, and Families (DCYF) has instituted strict regulations regarding licensing of individuals who work for the agency or who are licensed as child care professionals.[54] DCYF requires that all of their employees and licensed child care professionals, including foster parents, pass criminal background checks.[55] Some past criminal convictions automatically disqualify individuals from licensing or employment, such as felony crimes committed against a child, felony drug offenses within five years, or certain felony violence convictions.[56] However, some offenses allow for an individual to appeal their disqualification if their disqualifying convictions were for long-passed felony assault or battery, robbery, and other charges.[57] Individuals may present evidence demonstrating their "long standing record of excellence in child care," which may lessen the gravity of the conviction in DCYF's view.[58]

This criminal background check policy carries into the licensing of individuals in various professions, including insurance.[59] Rhode Island allows the Insurance Commissioner to revoke or deny an application for an insurance license if the individual has been convicted of a felony.[60] When making such

53. *Id.* at 245.
54. *See generally* 3-001 R.I. CODE R. § 03-009-001 (LexisNexis 2016).
55. *Id.* at Policy 900.0040.
56. *Id.* at Policy 900.0040 Addendum (called "Level 1 Offenses").
57. *Id.* at Policy 900.0040 Addendum (called "Level 2 Offenses").
58. *Id.*
59. 27 R.I. GEN. LAWS ANN. § 27-2.4-14 (West, Westlaw through Ch. 542 of the Jan. 2016 Sess.); *see also* 40.1 R.I. GEN. LAWS ANN. § 40.1-25.1-3 (West, Westlaw through Ch. 542 of the Jan. 2016 Sess.) (requiring individuals working with the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals to pass a national background check for employment with the Department); § 40.1-25.1-7 (Westlaw) (statutorily forbidding civil liability for refusing to hire someone disqualified under R.I. GEN.LAWS § 40.1-25.1-3).
60. § 27-2.4-14(a)(6) (Westlaw).

decisions, the administrative practice in Rhode Island is to consider the totality of the misconduct, including the time passed since the misconduct, the nature and circumstances of the misconduct, the present character of the individual as demonstrated through her conduct and reformation, and her present qualifications.[61] Under this test, the Department of Business Regulation considers the totality of the circumstances around the misconduct to assess whether or not the individual has met the standard of professionalism required for the licensing, taking into account the potential risk posed to the community.[62]

Thus, one can see the difficult balancing act in drafting an anti-discrimination policy for people with criminal records. On the one hand, there is a distinct public interest in assuring that people with criminal records gain employment after incarceration. Employment has been shown to be a major driving force in controlling recidivism rates.[63] On the other hand, however, employers may be subject to civil liability for their employment of people with criminal records if there is an incident while the employee is on the job.[64] Indeed, the balancing act played out in *Ponticas* leaves most to question if the employer's standard of care in determining whether or not the employee is fit for the job at hand is determined by balancing many factors, rather than a bright-line test.[65] This legal gray area will lead to over-caution when hiring people with criminal records.[66] Moreover, there is a public interest in assuring that members of the public are not subject to an unreasonable risk of harm through close association with potentially dangerous persons.

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61. *See* Stanton, DBR No. 98-L-0035 5–6 (R.I. Dep't of Bus. Reg. Dec. 15, 1998) (setting the standard for evaluations for fitness to hold an insurance license of people with criminal records).

62. For more information regarding this practice, see, for example, Holston, DBR No. 09-I-0179 11 (R.I. Dep't of Bus. Reg. Apr. 29, 2010) (finding that an individual who was convicted of assault with a deadly weapon in a dwelling house with intent to murder and possession of a controlled substance had met the criteria set out in *Stanton* for licensing in insurance).

63. Berg & Huebner, *supra* note 9, at 387 (citing studies by Uggan and Laub); *see also* VISHER & COURTNEY, *supra* note 9, at 10.

64. Welsh Mfg. v. Pinkertons, Inc., 474 A.2d 436, 440 (R.I. 1994).

65. Ponticas v. K.M.S. Invs., 331 N.W.2d 907, 913 (Minn. 1983).

66. *See* Weissert, *supra* note 1, at 1537.

C. Does Rhode Island Go Far Enough?

Even with the above factors in mind, some suggest that laws like Rhode Island's ban the box statute are not enough to protect people with criminal records from discrimination.[67] While not permitting employers to ask about an applicant's criminal history until at or after the first interview gives applicants the opportunity to explain their criminal history, some argue that this merely allows for employers to discriminate against applicants based on criminal histories while using information found in the interview as pretextual justification for the rejection.[68] Critics generally advocate for the adoption of a more rigorous statute, such as that in Hawaii, which states, in part, that employers may not inquire into an applicant's criminal record until "after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position."[69] Some have suggested that such laws will allow applicants to be aware of the role that their criminal history played in the decision-making process, as it will demonstrate that the rescission of their employment offer relied solely on their criminalbackground.[70]

These laws and regulations are meant to create a method for assuring that people with criminal records have an equal opportunity to gain employment. However, ban the box statutes have had some adverse results. Studies have suggested that ban the box statutes merely result in employers using racial stigmas as proxies for criminal records, a practice known as statistical discrimination in employment.[71] That is, when employers may not inquire about an applicant's criminal history, they may use

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67. *See id.* at 1553.

68. *Id. accord.* Smith, *supra* note 1, at 217.

69. HAW. REV. STAT. ANN. § 378-2.5 (West, Westlaw through Ch. 542 of the Jan. 2016 Sess.).

70. *See* Weissert, *supra* note 1, at 1552–53.

71. *See* Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment*, UNIV. OF MICH. LAW SCH., LAW & ECON. RESEARCH PAPER SERIES, no.16-012, 2016, at 38; JENNIFER L. DOLEAC & BENJAMIN HANSEN, DOES "BAN THE BOX" HELP OR HURT LOW-SKILLED WORKERS? STATISTICAL DISCRIMINATION AND EMPLOYMENT OUTCOMES WHEN CRIMINAL HISTORIES ARE HIDDEN 4 (2016), http://jenniferdoleac.com/wp-content/uploads/2015/03/Doleac_Hansen_BanTheBox.pdf.

certain stereotypes in order to avoid those they see most likely to have been previous criminal offenders.[72] Indeed, a recent study found that the probability of employment for young black men without a college degree and for young Hispanic men without a college degree is reduced by 3.4 percentage points and 2.3 percentage points, respectively, when employers do not inquire about criminal history.[73] Thus, while the ban the box statute may have aspirational goals, it does come with some unintended side effects.

Indeed, the steps that Rhode Island has taken to assure fairness in the hiring process to those with criminal records should not go unpraised. Studies have shown that ban the box statutes have achieved at least one key goal, namely lowering recidivism rates. A recent study showed that Hawaii's ban the box statute resulted in a 57% reduction in the odds of repeat offending after the implementation of the statute.[74] However, strong statistical evidence of the effectiveness of ban the box statutes in helping people with criminal records find employment, to this point, is scant.[75] Thus, the jury seems to remain undecided on this matter. Still, giving people with criminal records the opportunity to get their foot in the door first does lend some benefits. Studies have shown that employers are generally averse to hiring those with criminal records.[76] However, they also note

72. DOLEAC & HANSEN, *supra* note 71, at 1, 4.

73. *Id.* at 27. Others have suggested that this merely shows underlying racism, which must be dealt with, rather than a real issue with ban the box statutes themselves. *See* MAURICE EMSELLEM & BETH AVERY, NAT'L EMP'T LAW PROJECT, RACIAL PROFILING IN HIRING: A CRITIQUE OF NEW "BAN THE BOX" STUDIES 3 (2016), http://www.nelp.org/content/uploads/Policy-Brief-Racial-Profiling-in-Hiring-Critique-New-Ban-the-Box-Studies.pdf. However, any decrease in chances for individuals seeking employment must seriously be taken into account. *Id.* at 6.

74. Stewart J. D'Alessio et al., *The Effect of Hawaii's Ban the Box Law on Repeat Offending*, 40 AM. J. CRIM. JUST. 336, 347 (2015).

75. Some studies suggest an increase, but research failed to show any detailed statistical studies that effectively correlated the statutes with increased hiring rates across the board. For a summary of evidence, see MICHELLE NATIVIDAD RODRIGUEZ & ANASTASIA CHRISTMAN, NAT'L EMP'T LAW PROJECT, FAIR CHANCE—BAN THE BOX TOOLKIT: OPENING JOB OPPORTUNITIES FOR PEOPLE WITH RECORDS FAIR CHANCE HIRING 39–44 (Mar. 2015), http://www.nelp.org/content/uploads/NELP-Fair-Chance-Ban-the-BoxToolkit.pdf.

76. Harry J. Holzer, Steven Raphael & Michael A. Stoll, *How Willing*

that employers are generally willing to differentiate between different classes of criminal activity, as well as to weigh other factors such as subsequent work history when making a determination about hiring people with criminal records.[77] Thus, the purpose of the Rhode Island ban the box statute seems to flow to a logical conclusion of improved conditions for applicants with criminal records, although there is no prominent study of the effects of the statute in the state.

The question remains, though, whether or not ban the box statutes are the real solution to the issue regarding reemployment, reentry, and recidivism for people with criminal records. Ban the box statutes aim to target the effects of conviction which people face after incarceration. However, there may be tools which are better aimed and targeted at solving the issues facing people with criminal records in the employment process. The next section of this Article will consider the possible approaches that may be taken during incarceration that might assist people with criminal records in avoiding recidivism through various methods.

II. PROPOSALS FOR A MORE EFFECTIVE SOLUTION: REHABILITATIVE CORRECTIONS

As a supplement to ban the box initiatives, which seek to improve the employment outcomes of people with criminal records, there are several rehabilitative policy recommendations that work to improve employment opportunities and reduce recidivism rates before inmates have left prison. The improvement and expansion of prison education as well as job training programs should be strongly considered as viable solutions to reduce recidivism rates. This ideological focus is shared by the Department of Justice (DOJ), which holds that one of the critical objectives of the federal prison system is to prepare prisoners for reentry into society.[78] In a new plan the DOJ is

Are Employers to Hire Ex-Offenders?, 23 FOCUS 40, 41–42 (2004), http://www.irp. wisc.edu/publications/focus/pdfs/foc232h.pdf.

77. *Id.* at 41–43.

78. *See* U.S. DEP'T OF JUST., ROADMAP TO REENTRY: REDUCING RECIDIVISM THROUGH REENTRY REFORMS AT THE FEDERAL BUREAU OF PRISONS 3 (2016), https://www.justice.gov/reentry/file/844356/download (outlining the new initiative to improve post incarceration outcomes for inmates and its various

rolling out across the country, individualized plans are to be constructed according to the educational, mental health, criminogenic needs, etc., of each inmate.[79] Following the creation and adoption of those plans, further policy measures such as Residential Reentry Centers (halfway homes) and access to reentry-related information provide continued support post-release.[80]

Similarly, in Rhode Island, the Helping Offenders Prepare for reEntry Court (H.O.P.E. Court) was developed to assist former federal prisoners at risk of recidivating by offering incentives for good behavior, which can reduce supervision terms in the future.[81] This also provides more efficient monitoring of cases to effectively determine problems before they escalate.[82] Started as a collaboration between the United States District Court for the District of Rhode Island, the Probation Office, the Federal Defender's Office, and the U.S. Attorney's Office, the H.O.P.E. Court mimics judicial reentry programs in other jurisdictions.[83] This court reimagines the role of the judge who continues to be an active participant in the reentry of the inmate after the initial sentencing.[84] Essentially, the program is based on a series of incentives and sanctions for the people with criminal records; these incentives and sanctions are specific to the individual and situation, which allows for creative supervision and quality engagement in the reentry process.[85] While this Rhode Island program also takes effect after a prisoner has already been released, it reflects the innovative approach that is necessary to improve any rehabilitative measure the state intends to implement during the time when a prisoner is actually serving his or her sentence.

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proposals for education and job training) [hereinafter FEDERAL REENTRY].

79. *See id*.

80. *See id*. at 5.

81. *See* Patricia A. Sullivan, Michael J. Primeau & Timothy K. Baldwin, *H.O.P.E. Court, Rhode Island's Federal Reentry Court: The First Year*, 21 ROGER WILLIAMS U. L. REV 521, 521 (2016) (discussing the responsibilities and operations of a new court initiative in Rhode Island to reduce recidivism rates with regards to reentry in the federal system).

82. *See id*.

83. *Id*. at 527–28.

84. *Id*. at 529.

85. *See id*.

A. Rehabilitation Alternatives

Firstly, education is a vital component of any rehabilitation program. On average, the typical incarcerated population tends to be less educated than the general population when basing comparison on traditional metrics, such as years in school or degree attainment.[86] Moreover, a significant portion of the inmate population lacks an educational degree of some kind.[87] Many times, problems associated with a lack of an educational degree such as lower literacy rates, typically translate into diminished employment opportunities over time.[88] However, the effect of in-prison education programs is impressive. In a 1991 study of twenty-one prison college programs, inmates who completed a degree program returned to prison custody at a rate of 26.4% while those who did not returned at a much higher rate (44.6%).[89] In another Ohio-specific study, the observations suggested that inmates who completed a college program had a recidivism rate of 18% in comparison to the typical 44% recidivism rate overall.[90] It is vital to include and continually improve any education initiative when discussing reduction in recidivism and better rehabilitative outcomes.

Currently, in Rhode Island, a range of programs allow state inmates to use their time to learn. Such programs include English as a Second Language (ESL), Adult Literacy, GED classes and tests, and post-secondary classes.[91] A 2007 press release indicated that almost 70% of entering inmates were functionally illiterate and 60% did not have a GED.[92] On a positive note, over

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86. N.Y. ST. B. ASS'N, SPECIAL COMMITTEE ON RE-ENTRY, 21–61 (2016), https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=61806 [hereinafter NYSBA SPECIAL COMMITTEE] (special report detailing the current state of New York prisons and policy recommendations that the N.Y. State Bar Assn. recommends for reduced recidivism).

87. *See* James S. Vacca, *Educated Prisoners Are Less Likely to Return to Prison,* 55 J. OF CORRECTIONAL ED., 297, 297–98 (2004) (discussing the importance of education programs, such as GED and Adult Basic Education, on post incarceration recidivism outcomes).

88. *See id*.

89. *Id*. at 298.

90. *Id*.

91. *Rehabilitative Services: Educational Services,* R.I. DEP'T OF CORRECTIONS (Dec. 24, 2016 12:15 PM), http://www.doc.ri.gov/rehabilitative/educational/index.php.

92. *Focus on Reentry: Education at the RIDOC,* RI.GOV (July 31, 2007),

500 inmates received either a GED or a certificate to show completion of a non-GED program and an additional 557 inmates completed a community college course.[93] However, only three inmates were awarded an associate's degree.[94] This does not reflect the educational needs of twenty-first century employees.

Another important characteristic of prison rehabilitation is the presence of adequate job training. For example, the Federal Bureau of Prisons currently has an integrated jobs system in place called Federal Prisons Industries (FPI). This program functions as an aggregate of various factories that employ prisoners in fields such as electronics recycling, data services, and office furniture.[95] The goods produced in these factories are used by U.S. governmental agencies and bureaus, allowing these agencies to purchase needed goods at an economically-low price point while also training inmates in specific skills that can be helpful after their sentence is complete.[96] Moreover, FPI's programs operate independently outside of government funding, making them sustainable. Currently, 77% of all revenue goes to buying materials and supplies from the private sector in order to continue operations, 20% of revenue is for the salaries and benefits for the civil servants who train and supervise the inmates, and the remaining 3% goes toward the inmates' salaries.[97] Based on these numbers, it is clear that there are substantial direct benefits to both private and public sectors as well as considerable indirect benefits to prisoners. Demand for private sector goods is supported even as the U.S. public sector receives prisoner-made products. At the same time, prisoners gain meaningful skills and job training that are more easily translated into employment opportunities later.

The Rhode Island DOC has a comparable system called

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https://www.ri.gov/press/view/4606.

93. *Id*. (programs include English as a Second Language, vocational training, Adult Basic Education, as well as postsecondary courses in writing or math).

94. *Id*.

95. *Inmate Worker Related FAQs*, UNICOR, https://www.unicor.gov/FAQ_Inmate_Workers.aspx (last visited Feb. 7, 2017).

96. *Fact or Fiction*, UNICOR, https://www.unicor.gov/fact_v_fiction.aspx (last visited Feb. 7, 2017).

97. *FPI Operations FAQs*, UNICOR, https://www.unicor.gov/FAQ_Operations.aspx (last visited Feb. 7, 2017).

Corrections Industries (CI) whose products are purchased by eligible organizations.[98] These products are made in accordance with Rhode Island General Laws Chapter 13-7 entitled *Prisoner Made Goods*.[99] According to an audit conducted in 2014 of the CI program and its impact, 4.4% of the total inmate population participated as employees, comprising of only 141 male inmates from a total male inmate population of 3,214.[100] The main product areas are license plate and metal fabrication, auto body repair, and upholstery/carpentry.[101] This audit recommends the implementation of a certification program, similar to what BOP has, to offer inmate-workers credentials.[102] While CI has remained a self-sustaining entity and has not received a general revenue appropriation in recent years, to their credit, the number of inmates employed is disproportionate to the number of prisoners released each year.[103] Therefore, the overall impact of CI's job training cannot extend further than the 4.4% of inmates who participate. This suggests that a large portion of the inmate population could leave prison without an employable skill set, which does not bode well for the employment outcomes of those with a criminal record.

Similarly, mental health counseling is also a necessary component to any rehabilitative program. According to statistics released by the BJS, 56% of state prisoners and 45% of federal prisoners either exhibit symptoms of some type of mental illness or have a history of mental health problems.[104] Between 8% and 19% of prisoners suffer from a psychiatric disorder that results in

98. Letter from Dorothy Z. Pascale, Chief, R.I. Dep't of Admin., Bureau of Audits, to A.T. Wall, Director, Dep't of Corrections 5 (Nov. 6, 2014) (on file with http://www.omb.ri.gov/documents/audits/DOC_CorrectionalIndustries Report_11-2014.pdf) (independent audit of the R.I. Dep't of Corrections and their current operations and programming) [hereinafter Pascale].

99. 13 R.I. GEN. LAWS ANN. §§ 13-7-1 through 13-7-15 (West, Westlaw through Ch. 542 of the Jan. 2016 Sess.) (statute on the production and distribution of prisoner-made goods).

100. Pascale, *supra* note 98, at 5.

101. *Id*. at 6.

102. *Id*. at 8.

103. *Id*. at 10.

104. *Mental Illness, Human Rights, and U.S. Prisons*, HUMAN RIGHTS WATCH (Sept. 22, 2009, 11:16 AM), https://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons [hereinafter HUMAN RIGHTS WATCH].

significant functional disabilities.[105] Moreover, 74% of prisoners suffering a mental illness also have a negative physical health condition.[106] Statistics also show that a portion of those suffering physical and mental conditions are not having the full scope of their medical needs met.[107] Only 28% of all men in prison have received medication on a regular basis while in prison.[108] Finally, 84% of prisoners do not have any health coverage when they leave prison and re-enter society, which further increases recidivism rates.[109] These numbers paint a sobering picture, which suggest that mental illness continues to be a significant obstacle to rehabilitation within the modern prison system. Furthermore, the International Covenant on Civil and Political Rights of which the United States is a member, Article 10(1), dictates that prisoners must be treated humanely and with dignity.[110] Therefore, it is critical that our standards of care in prison settings conform at the very least to the humane standard of the international community, which would include adequate mental health counseling and care for prison populations.

In that vein, the Rhode Island DOC currently retains four psychologists and eight social workers in their Mental Health Services Department (MHS).[111] These full-time employees are supplemented with psychiatrists that are contracted to provide 100 hours of care each week.[112] MHS is tasked with conducting initial psychiatric evaluations, monitoring inmates, and managing medication.[113] Within the Rhode Island prison system, between 15% and 20% of prisoners are receiving mental health treatments,[114] which would total over 400 inmates based on projections of the 2015 population.[115] For the current number of

105. *Id*.
106. VISHER & COURTNEY, *supra* note 9, at 11.
107. *Id*. at 11.
108. *Id*. at 11–12.
109. *Id*. at 12.
110. HUMAN RIGHTS WATCH, *supra* note 104.
111. *Mental Health Services*, R.I. DEP'T OF CORRECTIONS, http://www.doc.ri.gov/rehabilitative/health/behavioral_mental.php (last visited Feb. 7, 2017).
112. *Id*.
113. *Id*.
114. *Id*.
115. R.I. DEP'T OF CORRECTIONS, FISCAL YEAR 2015 ANNUAL POPULATION REPORT, 7 (2015), http://www.doc.ri.gov/administration/planning/docs/FY15

inmates receiving treatment, the number of staff and resources seems sufficient. However, if the metric of those suffering from mental health is actually more in line with the measurements of the BJS, then that would suggest more than 1,500 prisoners are currently in need of mental health treatment. Clearly, the national average is an aggregate of all states' prison populations and Rhode Island does have a very low rate of incarceration relative to the national average.[116] That being said, assuming all those who receive mental health treatment have significant mental conditions, that would mean that Rhode Island has approximately 60% less mentally ill prisoners than the national average, which may indicate an underestimation.

B. Why Do Rehabilitation Programs Make Economic Sense?

An independent study by the Vera Institute for Justice[117] found that the taxpayer cost of funding prisons in forty states was almost 14% higher than the budgetary allocations that those states' respective departments of corrections received annually.[118] As an example, our western neighbor, Connecticut, had a 34% increase in cost for their prison system over the budget the correctional department was allotted.[119] The result was slightly better for Rhode Island at just over 7% above the DOC budget.[120] This indicates that the cost of maintaining both prisons and high numbers of prisoners is causing a significant negative drain on government resources and possibly that budgetary projections are not reflecting actual costs. To be clear, the average cost per

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PopulationReport.pdf.

116. *See id*. at 8. In Rhode Island, 197 of every 100,000 inhabitants are incarcerated, compared to 493 per 100,000 nationally, making Rhode Island the state with the third-lowest incarceration rate nationwide.

117. The Vera Institute for Justice is an independent non-profit policy research organization that focuses on mass incarceration and racial disparities. *See* VERA INST. OF JUST., http://www.vera.org (last visited Mar. 27, 2017).

118. CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INST. OF JUST., THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS, 2–4 (2012), http://archive.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf.

119. *Id*.

120. *Id.* at 7 (this 7.2% cost increase represents an additional $12 million in cost to the taxpayer in FY 2010).

inmate in a Rhode Island prison is over $49,000 annually.[121] If recidivism rates continue at their current levels, that would mean that half of the costs that the DOC expends on prisons will become perennial costs as people with criminal records reoffend and re-enter prison custody. Given the fact that CI is self-sustaining, the current cost for roughly 5% of the total inmate population to receive job training is not an additional expense for the DOC budget. If that can be expanded to reach a larger number of inmates, the positive effects in employment post release would be beneficial to recidivism rates.

C. Legislative Recommendations

There is existing legislation that attempts to bridge the gap between eliminating discrimination against convicts in the labor market while still protecting employers' rights to choose their own workers. In 2010, the Uniform Law Commission[122] (ULC) drafted legislation that, if enacted, would enable prisoners to know the direct employment consequences that their conviction would cause. This law, called the Uniform Collateral Consequences of Conviction Act (UCCCA), tries to impose a scope on the extension of collateral consequences, which are defined as the "legal disabilities that attach as an operation of law when an individual is convicted of a crime but are not part of the sentence for the crime."[123] For example, a collateral consequence could be the inability of a convict to receive a liquor license when he has a criminal conviction that is not directly related to any license. Conversely, the UCCCA requires a substantial relationship between the offense and the consequence in order to deny a former convict a certain right or privilege post release.[124] The UCCCA

121. *Id*. at 10. (The Vera Institute 2010 report showed an average cost per prisoner of $49,133. Based on calculations from the DOC's website using FY 2013, the average cost per prisoner was $49,156.23, meaning there was a total cost of $146,878,824. This takes into account the cost distinctions between the various security levels.).

122. The Uniform Law Commission is an independent body that drafts model legislation across the United States.

123. Collateral Consequences of Conviction Act Summary, UNIF. LAW COMM'N, http://www.uniformlaws.org/ActSummary.aspx?title=Collateral%20Consequences%20of%20Conviction%20Act (last visited Mar. 27, 2017) [hereinafter UCCCA].

124. NYSBA SPECIAL COMMITTEE, *supra* note 86, at 29.

creates this scope in two significant ways.[125] First, collection of all potential collateral consequences that can be found within state law and regulations is done in order to have a comprehensive list for the person to be charged.[126] Second, notification of these collateral consequences must be made to the defendant at the important points in any criminal proceeding.[127] This is meant to ensure that the defendant knows her rights and ramifications of her actions and can make informed decisions. Finally, the UCCCA allows for different types of relief from collateral consequences and remedies at law for people with criminal records to receive that relief.[128]

The first type of relief allowed under the UCCCA pertains to a court order for limited relief.[129] A person with a criminal record would file a petition with the court or a relevant governmental agency for the sanction of one or more collateral consequences related to her employment, housing, education, etc. This petition is then subjected to a review that takes into account the individual's criminal history and additional relevant information.[130] The individual is required to show that the consequence of the sanction would "materially assist" her to receive some benefit and that she demonstrates "substantial need" of that benefit.[131] The second form of relief that a governmental agency can issue is a Certificate of a Restoration of Rights. This relief is more comprehensive in that it relieves all collateral consequences imposed by the issuing state[132] after a period of good behavior, which is left open to the state's determination.[133]

At this time, the only state to have enacted the UCCCA is

125. UCCCA, *supra* note 123, at 31.
126. *Id*.
127. *Id*.
128. NYSBA SPECIAL COMMITTEE, *supra* note 86, at 29.
129. UCCCA, *supra* note 123, at 27.
130. *Id*. at 30.
131. *Id*. at 29.
132. *Id*. at 31 (subject to any consequences withheld or pursuant to UCCA § 12, which enumerates three exceptions to relief).
133. *Id*. (recommending a period of five years during which time "the individual must have no disqualifying convictions and no incarceration pursuant to sentence, have been employed, in school, or in rehabilitation, or, if retired or disabled, show a lawful source of income (which could include public assistance), and have complied with all terms of any criminal sentence").

Vermont in 2014;[134] however, it was introduced to the state legislatures of New York, Pennsylvania, and Wisconsin in 2016.[135] The UCCCA was adopted by the American Bar Association in 2010, on the recommendation of the ULC and remains its position with regards to collateral consequences.[136] Similarly, the New York State Bar Association recommended the UCCCA in a 2016 report on re-entry of convicts.[137] Logically, this Act provides a comprehensive list of all potential consequences of a criminal conviction and, by making that information readily available both to the public and potential criminal offenders, it may act as a further deterrent against criminal activity. Therefore, as a matter of policy, the Rhode Island General Assembly should strongly consider adopting the UCCCA in its efforts to reduce Rhode Island's overall recidivism rates.

While the above is a legislative example of what can be done prior to and during a criminal proceeding, other potential legislative changes exist that could lower recidivism rates in Rhode Island. For example, there is a discretionary policy within the family law system whereby parents who go to prison and who are financially unable to pay their child support payments may have those payments accrue as a debt while they are in prison. This supports the policy that a parental obligation does not necessarily stop when an individual has lost their parental rights.[138]

This was the essential finding in the 2002 Rhode Island

134. VT. STAT. ANN. 231 §§ 8001–8017 (2014); *Collateral Consequences of Conviction Act,* UNIF. LAW COMM'N, http://www.uniformlaws.org/Act.aspx?title=Collateral%20Consequences%20of%20Conviction%20Act (last visited Mar. 27, 2017).

135. *Collateral Consequences of Conviction Act,* UNIF. LAW COMM'N, http://www.uniformlaws.org/Act.aspx?title=Collateral%20Consequences%20of%20Conviction%20Act (last visited Feb. 9, 2017). New York and New Mexico introduced the UCCCA in 2017. *Id.*

136. *See* Letter from William C. Hubbard, President, American Bar Association, to Governor, Chief Justice, and Bar President (Dec. 2014) (on file with http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014dec_niccc_l.authcheckdam.pdf).

137. NYSBA SPECIAL COMMITTEE, *supra* note 86, at 29.

138. *See* State v. Fritz, 801 A.2d 679 (R.I. 2002) (establishing a legal distinction between termination of parental rights and termination of parental obligations).

Supreme Court case *State v. Fritz,*[139] which held that the legal termination of parental rights does not necessarily terminate parental responsibilities based on a plain-sense interpretation of Rhode Island General Laws Section 15-7-7(a).[140] In this case, the defendant voluntarily terminated his parental rights following divorce proceedings, but the original child support order was never vacated.[141] The Child Support Enforcement never received notification of that termination and continued to accrue the child support payments until such a time when the non-payment of child support would have normally constituted a felony.[142] The conclusion of *Fritz*, that a parent should never be allowed to avoid their parental responsibilities by voluntary termination of rights, goes to the practice of adoption of children.[143] Generally speaking, when a child is put up for adoption, parental rights are voluntarily terminated by one party and are taken up by another. At the same time, the financial burden, in the form of responsibilities, also shifts to the adopting party.[144] In *Fritz*, there was no adoption by another party to take up the burden left by the defendant when he voluntarily terminated his parental rights so his obligations remained. Likewise, in Rhode Island, incarcerated individuals have effectively terminated some of their parental rights for the time when they are incarcerated, but the obligations have not shifted.

That idea has also been reflected in the Administrative Order 2012-05 of the Family Court of Rhode Island that states, "[i]f a parent is voluntarily unemployed or underemployed, child support should be calculated based on a determination of potential income."[145] In most criminal cases, willful intent is established to

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139. *Id*. at 685.

140. 15 R.I. GEN. LAWS ANN. § 15-7-7(a) (West, Westlaw through Ch. 542 of the Jan. 2016 Sess.) (providing that "the court shall, upon a petition filed by a governmental child placement agency . . . terminate any and all rights of the parent to the child").

141. *Fritz*, 801 A.2d at 681.

142. *Id*. at 681–82; *see also* 11 R.I. GEN. LAWS ANN. § 11-2-1.1 (West, Westlaw through Ch. 542 of the Jan. 2016 Sess.) (establishing criminal consequences for failure to pay child support).

143. *See Fritz*, 801 A.2d at 683.

144. *Id*. at 684.

145. R.I. FAMILY COURT, ADMINISTRATIVE ORDER 2012-5 9, CHILD SUPPORT FORMULA AND GUIDELINES AND THE PROCESSING, COLLECTION AND PAYMENT OF CHILD SUPPORT ORDERS (Sept. 20, 2012), https://www.courts.ri.gov/

prove the defendant truly committed the crime in the eyes of the law.[146] Therefore, incarceration can be seen as voluntary unemployment and should not be an adequate basis for the reduction in child support benefits.[147] However, as a practical matter, the accrual of support payments, which inmates cannot pay while in prison, represents a severe financial hardship for them when they are released. That reality compounded with high recidivism rates and lower likelihoods of employment could indicate that this Rhode Island policy made to protect the benefits that children receive from their parents is largely nominal in light of the fact that those child support payments may never be received.

III. CONCLUSION

Given these points, it is clear that the legislative approach to reduce recidivism through ban the box statutes misses the mark for many former inmates. It also can subject employers to liability should an incident occur after hiring a person with a criminal record.[148] Due to relatively high rates of recidivism in Rhode Island, it is clear that other remedies must be considered. Gainful employment remains one of the most important factors in reducing recidivism as it gives former inmates means to live without resorting to illegal activities.[149] Therefore, rehabilitative measures, such as education, job training, and mental health services, should be viewed as more adequate measures to deter future criminal activity post release.[150] Moreover, legislative measures, such as the UCCCA, addressing the collateral consequences that people with a criminal record face outside of their criminal sentencing should be adopted.[151]

Courts/FamilyCourt/AdmOrders/12-05.pdf.

146. *Criminal intent*, BLACK'S LAW DICTIONARY (Online 10th ed. 2014), http://thelawdictionary.org/ criminal-intent/ (last visited Jan. 3, 2017).

147. R.I. DEP'T OF HUMAN SERVS., RULES AND REGULATIONS § 0719.20, INCARCERATED PARENT'S PROGRAM (Apr. 2010), http://www.dhs.ri.gov/ Regulations/Child%20Support%20Program.pdf (ordering suspension of child support payments in light of an incarceration is within judge's discretion based on circumstances of the case).

148. RIDOC, *supra* note 7.

149. Berg & Huebner, *supra* note 9.

150. *See* FEDERAL REENTRY, *supra* note 78, at 3.

151. UCCCA, *supra* note 123, at 27.