

Missouri Among States Pursuing Fair-Chance Hiring Reforms

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The United States has the appalling distinction of leading the world with its incarceration rate, which is five times that of other countries.¹ One in thirty-five U.S. adults is under some form of correctional supervision.² The result is that seventy million people—nearly one in three U.S. adults—must endure the stigma of having an arrest or conviction record.³ Any contact with the criminal justice system, no matter how minor, can be a modern-day scarlet letter.

One survey showed that nearly nine in ten employers conduct background checks on some or all job

candidates.⁴ With a job callback rate that drops by 50 percent for a white applicant with a record, and drops by two-thirds for a black candidate with a record,⁵ the reality is that millions are locked out of jobs. As one survey showed, men with conviction records accounted for about 34 percent of all the nonworking men surveyed between the ages of 25-54 (generally considered to be prime working age).⁶

Persistent joblessness translates into economic losses with far-reaching consequences for our entire nation. Because people with felony records and the formerly incarcerated have poor prospects in the labor market, the nation's gross domestic product was reduced by as much as \$87 billion in 2014 alone.⁷ Individual families and communities bear the brunt of these economic losses. Due to the stigma of a record, a formerly incarcerated person is stripped of his earnings. By the time he has hit his peak earning years, a typical formerly incarcerated person will have earned \$192,000 less in 2014 dollars than if he had never been incarcerated,⁸ with a commensurate

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¹ Prison Policy Initiative, "States of Incarceration: The Global Context" (June 2014), accessed August 2, 2017, <http://www.prisonpolicy.org/global/>.

² Estimate from 2013. See U.S. Bureau of Justice Statistics, Annual Surveys of Probation and Parole, Annual Survey of Jails, Census of Jail Inmates, and National Prisoner Statistics Program, 2000, 2005, and 2010–2013, at Table 2, U.S. adult residents supervised by adult correctional systems, 2000, and 2005–2013, Correctional Populations in the United States, 2013 NCJ 248479.

³ One of the co-authors of this article has discussed this research in the following publication: Anastasia Christman and Michelle Natividad Rodriguez, "Research Supports Fair Chance Policies" National Employment Law Project, 1 & n.1

(August 1, 2016), accessed August 29, 2017, <http://bit.ly/1sk48Nn> (citing U.S. Bureau of Justice Statistics, *Survey of State Criminal History Information Systems*, 2012 at Table 1 (January 2014), accessed August 22, 2017, <http://bit.ly/2m1uC4U>).

⁴ "Background Checking—The Use of Criminal Background Checks in Hiring Decisions," Society for Human Resource Management, slide 3 (July 19, 2012), accessed August 24, 2017, <http://bit.ly/2mhlrzh>.

⁵ Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108, no. 5 (March 2003): 937, 955-58, accessed August 24, 2017, <http://bit.ly/1vNQBjk>.

⁶ Binyamin Appelbaum, "Out of Trouble, but Criminal Records Keep Men Out of Work," *New York Times* (Feb. 28, 2015), accessed August 24, 2017, http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?_r=0. Poll, accessed August 24, 2017, available at <http://kff.org/other/poll-finding/kaiser-family-foundationnew-york-timescbs-news-non-employed-poll/>.

⁷ Cherrie Bucknor and Alan Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic and Policy Research (June 2016), accessed August 2, 2017, <http://bit.ly/2atNJBu>.

⁸ Bruce Western and Becky Pettit, "Collateral Costs: Incarceration's Effect on Economic Mobility," Washington,

decline in income taxes and a diminished ability for consumer activity.

Conversely, putting people with records back to work can generate measurable economic returns in local communities. A 2011 study found that securing employment for 100 formerly incarcerated people would increase their combined lifetime earnings by \$55 million, increase their income tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, while saving more than \$2 million annually by keeping them out of the criminal justice system.⁹ Clearing the path to employment for people with prior records not only can boost the local economy, but it can also significantly increase public safety. The lack of employment was the single most negative determinant of recidivism, according to a 2011 study of the formerly incarcerated.¹⁰

One of the most well-known reforms aimed at improving job opportunities for people with records is to remove the “box” on a job application that asks about convictions. The “box” on a job application is a barrier to jobs because it has a chilling effect that discourages people from applying. That “box” artificially narrows the applicant pool of qualified workers. Finally, too many employers toss out applications with the checked box, regardless of the applicant’s qualifications.

As coined by All of Us or None, a grassroots organization led by formerly incarcerated people, “ban the box” is the rallying cry for advocates across

the country. Momentum for the policy has grown exponentially, particularly in recent years. At the national level, President Obama endorsed ban the box in 2015 by directing federal agencies to delay inquiries into job applicants’ records until later in the hiring process.¹¹

Policymakers from both sides of the aisle have been including fair-hiring laws as part of a “smart on crime” agenda to reduce criminal justice spending and increase public safety. In New Jersey, Gov. Chris Christie signed state legislation applying to private employers. He stated: “Today we are also going further to reform our criminal justice system by signing legislation that continues with our promise and commitment to give people a second chance.”¹²

As of August 1, 2017, there were a total of 29 states representing nearly every region of the country that have adopted a ban-the-box policy. These states are California (2013, 2010), Colorado (2012), Connecticut (2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Indiana (2017), Kentucky (2017), Louisiana (2016), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), Missouri (2016), Nebraska (2014), Nevada (2017), New Jersey (2014), New Mexico (2010), New York (2015), Ohio (2015), Oklahoma (2016), Oregon (2015), Pennsylvania (2017), Rhode Island (2013), Tennessee (2016), Utah (2017), Vermont (2015, 2016), Virginia (2015), and Wisconsin (2016).¹³ Nine states—Connecticut, Hawaii, Illinois, Massachusetts, Minnesota,

D.C.: The Pew Charitable Trusts, 2010, accessed August 24, 2017, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_as_sets/2010/collateralcosts1pdf.pdf.

⁹ “Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,” Economy League of Greater Philadelphia, September 2011, accessed August 29, 2017, <http://economyleague.org/uploads/files/712279713790016867-economic-benefits-of-employing-formerly-incarcerated-full-report.pdf>.

¹⁰ Mark T. Berg and Beth M. Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly* 28, no. 2 (April 2011): 382-410.

¹¹ Statement of Christine Owens, Executive Director of National Employment Law Project, “On the President’s

Announcement of ‘Ban the Box’ Hiring,” (Nov. 5, 2015), accessed August 24, 2017, <http://www.nelp.org/news-releases/on-the-presidents-announcement-on-ban-the-box-hiring>.

¹² State of New Jersey, Office of the Governor, “We’re Giving People a Second Chance by Banning the Box,” Gov. Chris Christie (Aug. 11, 2014), accessed August 24, 2017, <http://www.state.nj.us/governor/news/news/552014/approved/20140811g.html>.

¹³ One of the co-authors of this article, Michelle Natividad Rodriguez, discussed these policies in the following regularly updated publication, which she authored for four years, until transferring the authorship in August of 2017: Beth Avery and Phil Hernandez, “Ban the Box U.S. Cities, Counties, and States Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions,” National

New Jersey, Oregon, Rhode Island, and Vermont—have mandated the removal of conviction history questions from job applications for private employers.¹⁴ Tallying up the population of the states and localities that have adopted the policy, there are now over 226 million people in the United States, or over two-thirds, that live in a jurisdiction with some form of ban the box.¹⁵

In the next evolution of these policies, more jurisdictions are also adopting policies in addition to ban the box, such as incorporating the best practices of the 2012 U.S. Equal Employment Opportunity Commission (EEOC) guidance on the use of arrest and conviction records in employment decisions.¹⁶ Robust fair-chance employment laws ensure a fairer decision-making process by requiring employers to consider job-relatedness of a conviction, time passed, and mitigating circumstances or rehabilitation evidence.¹⁷

Fair-chance hiring helps to lift the stigma of the record and allows a person's skills and qualifications to come first. Studies have shown that if hiring discrimination takes place, it is most likely to take place at the first interaction: the submission of a job application.¹⁸ In one study, having personal contact with the potential employer resulted in a significant reduction of the negative effect of a criminal record.¹⁹

Referring to ban-the-box policies and the recent EEOC criminal record guidelines issued, researchers

found in another study that “[s]uch laws give jobseekers the chance to make contact with prospective employers—contact that this study suggests is crucial to the hiring process.”²⁰ And in those communities that have collected data, the evidence suggests the policy reform is working. In Durham, North Carolina, the Southern Coalition for Social Justice documented that the number of people with records hired for jobs grew seven-fold in the four years since the city adopted its comprehensive fair-chance policy that includes ban the box.²¹

Progress on ban the box in Missouri has depended on grassroots advocacy at local and state levels. Campaigns to convince local elected officials in St. Louis City, Columbia, and Kansas City to adopt ban the box and fair hiring in those cities drew the attention of Empower Missouri's Criminal Justice Task Force (CJTF) in 2014.

Around the CJTF table were staff from programs assisting formerly incarcerated persons to secure housing and employment, religious advocacy organizations, probation and parole staff, private citizens interested in social justice, and formerly incarcerated persons themselves. CJTF members saw in fair-hiring a policy that matched their mission statement:

The Criminal Justice Task Force advocates for: healing rather than vengeance; community-based alternatives to prison;

Employment Law Project (August 2017), accessed August 24, 2017, <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide>.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq. (April 25, 2012), accessed August 24, 2017, http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

¹⁷ One of the co-authors of this article discussed the importance of strong enforcement in the following publication: Michelle Natividad Rodriguez and Zoe Polk, “Best Practices in Fair-Chance Enforcement: Ensuring Work Opportunity for People with Convictions,” National Employment Law Project (June 2015), accessed August 24, 2017, <http://www.nelp.org/publication/best-practices-in-fair-chance-enforcement>.

¹⁸ Pager, “The Mark of a Criminal Record.”

¹⁹ Devah Pager, “Sequencing Disadvantage: The Effects of Race and Criminal Background for Low-Wage Job Seekers,” U.S. Equal Employment Opportunity Commission, accessed August 24, 2017, <http://www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm>.

²⁰ Christopher Uggen, Mike Vuolo, Sarah Lageson, Ebony Ruhland, and Hilary K. Whiteman, “The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment,” *Criminology* 52, no. 4 (November 2014): 650.

²¹ Maurice Emsellem and Michelle Natividad Rodriguez, “Advancing a Federal Fair Chance Hiring Agenda: Background Check Reforms in Over 100 Cities, Counties, and States Pave the Way for Federal Action,” National Employment Law Project (January 2015): 6, accessed August 29, 2017, <http://www.nelp.org/content/uploads/2015/01/Report-Federal-Fair-Chance-Hiring-Agenda.pdf>.

increasing public safety through preventive activities that address social issues of people at risk; and responses that enable persons who commit crimes to develop and express remorse, make restitution, take responsibility for the consequences of their acts, and become integrated successfully into society.²²

CJTF members visited with Sen. Jamilah Nasheed (Senate District 5-St. Louis City) about ban the box and fair-hiring. Senator Nasheed enthusiastically introduced Senate Bill (SB) 44.²³

While SB 44 died at the end of the 2015 Legislative Session, the bill did enjoy substantial first-year progress, being voted “Do Pass” by the Senate Committee on Small Business, Insurance and Industry. However, the bill also acquired a vocal and firm opponent, Sen. Doug Libla (District 25-Poplar Bluff). Senator Libla’s opposition was not to the concept of fair-hiring; indeed he shared with CJTF members that businesses he owns do hire formerly incarcerated persons and that he firmly believes giving our neighbors a second chance is part of what it means to be a responsible and caring member of a community. Sen. Libla’s objection was to mandating fair-hiring by law; he preferred that employers voluntarily adopt such a policy.

With a filibuster on the horizon if Senator Nasheed attempted to move a new version of the bill forward in the next Legislative Session, the CJTF adopted another short-term goal as a next step toward statewide ban the box and fair hiring. In June 2015, the CJTF met in St. Louis to construct a plan for convincing Gov. Jeremiah “Jay” Nixon to issue an executive order for fair-hiring in state government. With more than 51,000 employees under gubernatorial authority, Missouri’s governor is also the CEO of Missouri’s largest employer. While some state jobs would obviously remain off limits for persons convicted of certain crimes, many state jobs may indeed be appropriate for formerly incarcerated

persons who have the right training and employment histories.

Those accepting the CJTF invitation to attend that meeting in St. Louis in June 2015 (most in person, a few by telephone) included:

- The Sentencing Project from Washington DC
- The National Employment Law Project from New York
- Empower Missouri
- The Missouri Catholic Conference
- Sts. Joachim and Ann Care Services
- Employment Connection
- Catholic Charities
- Metropolitan Congregations United
- Center for Women in Transition
- Let’s Start
- Alpha House
- Criminal Justice Ministry

Recognizing that many legislators do believe in human redemption and offering second chances, the coalition called itself “The Second Chances Coalition.” Empower Missouri agreed to staff the coalition’s executive order campaign, sending periodic updates by e-mail and convening weekly calls on Friday afternoons as the pace of the campaign increased. Empower Missouri also offered chapter forums on the fair hiring topic in multiple cities to increase the number of trained advocates prepared to take action on this issue.

Three key leaders of the coalition met with two members of Governor Nixon’s staff on September 16, 2015. Those leaders offered an overview of “ban the box” and fair hiring, shared a packet of resources including samples of executive orders from other states, answered questions, and asked that Nixon give serious consideration to issuing an executive order in Missouri.

Members of the coalition wrote guest columns in major dailies. The voices of formerly incarnated

²² “Criminal Justice Task Force,” Empower Missouri, accessed August 24, 2017, <http://empowermissouri.org/task-forces/criminal-justice>.

²³ “Current Bill Summary,” Missouri State Senate, accessed August 24, 2017, http://www.senate.mo.gov/15info/bts_web/Bill.aspx?SessionType=R&BillID=206.

persons now working with others with criminal histories were especially powerful. Barbara Baker of the Center for Women in Transition had such a column published in the *St. Louis Post-Dispatch* on February 10, 2016.²⁴ Letters to the editor were written and published following the guest columns to expand the media visibility of this issue.

The coalition kept a steady stream of information flowing into Nixon's office. When President Barack Obama mentioned second chances for those who have served time in prison in his 2016 State of the Union address, Empower Missouri sent a link to the governor's staff.²⁵ When the Committee on Domestic Justice and Human Development of the United States Conference of Catholic Bishops and Catholic Charities USA endorsed HR 3406, the federal "Second Chance Act," Catholic Charities in St. Louis asked Empower Missouri to provide a copy of their supportive letter to Nixon.²⁶

In February 2016, the Deaconess Foundation and forty-one additional philanthropic organizations announced that they had "banned the box" and adopted fair-chance hiring practices.²⁷ Empower Missouri updated the governor's staff about this development. Shortly afterward, Gov. Mary Fallin of Oklahoma issued an executive order for fair hiring in state employment there.²⁸ Having the Republican governor of a neighboring state move the issue forward was a development that the coalition believed could have special resonance for a Democratic governor leading a state with veto-proof majorities of Republicans controlling both chambers of the General Assembly.

Another key meeting in March was a visit to Andrea Spillars, a member of Nixon's staff who had formerly worked for the Department of Corrections, by Eric Schulz and Patty Berger, two CJTF members who had been incarcerated. Schulz and Berger shared with Spillars their own difficulties obtaining employment and that of clients they now serve. Both Berger and Schulz are employees of organizations that provide support to Missourians with criminal convictions in their personal histories. Spillars eventually became chief counsel to Nixon, so was well-positioned to be an advocate for fair-chance housing, as well as understanding the issue at a deep level due to her extensive background with correctional facilities, probation and parole.

Ban the box was selected as one of two issues to be highlighted during the April 6, 2016, Student Advocacy Day hosted by Empower Missouri. More than 200 students shared information with their state representatives and senators on the issue and signed postcards that were delivered to Governor Nixon's office.

A few days later, Nixon's staff let Empower Missouri staff know that he would be making a public announcement on April 11 and invited coalition leaders to be present for it. At the St. Louis Agency on Training and Employment, Nixon officially signed Executive Order 16-04, opening state employment to fair-chance hiring practices.²⁹

After a period of expressing gratitude to Nixon and his staff, Empower Missouri staff visited with appropriate members of his administration to confirm the policies, practices and procedures that had been

²⁴ Barbara Baker, "Fair-chance hiring policy will put Missourians to work," *St. Louis Post-Dispatch*, February 10, 2016, accessed August 24, 2017, http://www.stltoday.com/opinion/columnists/fair-chance-hiring-policy-will-put-missourians-to-work/article_b6b0e929-0f7d-5606-8d9d-e4e16b15a777.html.

²⁵ "Remarks of President Barack Obama – State of the Union Address As Delivered," accessed on August 24, 2017, <https://obamawhitehouse.archives.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address>.

²⁶ "Letter to House Judiciary on Second Chance," *Committee on Domestic Justice and Human Development of the United States Conference of Catholic Bishops and Catholic Charities USA*, January 11, 2016, accessed August 24, 2017,

<http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/upload/letter-to-house-judiciary-on-second-chance-2016-01-11.pdf>.

²⁷ "Deaconess Joins National Effort To #BANTHEBOX," Deaconess Foundation, February 29, 2016, accessed August 24, 2017, http://www.deaconess.org/deaconess-joins-national-effort-banthebox_.

²⁸ "Executive Department Executive Order 2016-03," Oklahoma Secretary of State, February 24, 2016, accessed August 24, 2017, <https://www.sos.ok.gov/documents/Executive/1023.pdf>.

²⁹ "Executive Order 16-04," Missouri Secretary of State, April 11, 2016, accessed August 24, 2017, <https://www.sos.mo.gov/library/reference/orders/2016/eo4>.

adopted. They indeed went farther than simply banning the box on employment forms, initiating the best practices of fair-chance hiring as described in policy briefs by the National Employment Law Project.

The Second Chances Coalition, Empower Missouri's CJTF and our national allies at The Sentencing Project remain committed to continuing to move fair-chance hiring forward in Missouri. Undergirding these reforms is the goal of changing the hearts and minds of the public. The perceived dangerous criminality of people of color, particularly black and brown men, has contributed to our country's unconscionable death toll. In order to make progress, we all must join in efforts that challenge stereotypes of people with records and leverage the value of inclusion. As public sector and private sector employers adhere to fair hiring frameworks across the country, the coalition hopes to cultivate a new baseline in which all employers must consider jobseekers with records based on their qualifications and skills first. With positive experiences in the workplace that come from being engaged in work together, the coalition's organizations will continue to create a culture shift that will benefit our entire nation.