



(/)

HOME (/)  
ABOUT  
BLOG (/BLOG)  
ONLINE ORIGINALS (/ONLINE-ORIGINALS)  
SYMPOSIUM  
SUBMISSIONS

# “Don’t Put Me in a Box!”: Why Kentucky Should Join the Ban the Box Movement

MARCH 2, 2023



**Blog Post | 111 KY. L. J. ONLINE | March 2, 2023**

“Don’t Put Me in a Box!”: Why Kentucky Should Join the Ban the Box Movement

**By: Jessica D. Hutchings, Staff Editor, Vol. 111**

In 2004, the All of Us or None organization devised the Ban the Box movement with the hope that former criminals could start receiving a fair chance at gaining meaningful employment. Rather than being hindered by their past conviction, the movement seeks to allow former criminals to be judged purely based on their skill set.[1]

Despite the hypothesized negative impacts of the Ban the Box initiative, the movement has been steadily growing across the United States. Ban the Box has led to substantial impacts for the economy, employers, and especially convicted criminals.[2] It is time for Kentucky to Ban the Box and give criminals a “fair chance at redemption.”[3]

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

Ban the Box refers to the specific questions on employment applications that ask candidates whether they have been criminally convicted.[4] The movement advocates for the removal of the box on employment forms “until after an interview” or “after the extension of a formal job offer.”[5] The purpose of removing the box is to give the employer an “opportunity to form an initial impression of an applicant’s character before reacting to their criminal history.”[6] It encourages employers to choose their best candidates based on skills and qualifications, instead of casting judgment based on their past convictions.[7]

Currently, 37 states and over 150 cities and counties across the United States have adopted Ban the Box policies.[8] In 2017, former Kentucky Governor Matt Bevin issued the "Fair Chance Employment Initiative" executive order which removed the box from state government job applications.[9] Currently, "Louisville is the only city in Kentucky that has a Ban the Box ordinance in effect at the local level," however Hopkinsville has also made a move to remove the box.[10]

### The Negatives

Like all sociopolitical movements, Ban the Box is not without opposition. First, it is argued that removing the box from employment questionnaires simply delays the inevitable and in doing so, wastes time and resources.[11] Ban the Box encourages employers to delay background checks until at least after the interview process.[12] Employers are nonetheless still encouraged, if not required by law, to perform background checks for certain positions.[13] The argument posits that this process ultimately delays the inevitable.[14] Thus, after conducting lengthy interviews, an employer could have saved their time and resources by rejecting the applicant at the outset had they known of the applicant's criminal past.[15]

Next, it is argued that removing the box can lead to increased discrimination for non-criminal applicants, especially persons of color.[16] "When employers aren't allowed to ask about applicants' criminal background early in the hiring process, they may be more likely to assume certain applicants (...) have a criminal history." [17] This hypothesis, however, has never been supported by evidence and has also been regulated by Title VII of the Equal Employment Opportunity Commission.[18]

### The Positives

Ban the Box gives previously convicted criminals a fair chance at receiving employment, which has been shown to lead to a reduction in recidivism and crime rates.[19] This ultimately increases public safety in areas that adopt these policies.[20] In addition, employers also benefit. A study found that "employees with criminal backgrounds are 1 to 1.5 percent more productive on the job than people without criminal records." [21] They also have significantly higher retention rates.[22]

Increasing the employment rates expands the economy because the employed will contribute "to the tax base, purchase more goods, and are less likely to commit a new crime, thus reducing the amount of money (...) governments must spend on their criminal justice systems." [23] These outcomes not only impact the individual but also allows them to contribute to the society around them in a positive way.

The hypothesized negative impacts of the Ban the Box movement have not proven to be impactful, or truly even exist.[24] Due to the beneficial impacts on the economy, employers, and criminal applicants, Kentucky should adopt ban the box policies and give criminals a "fair chance at redemption." [25]

[1] Ban the Box, *About: Ban the Box*, <https://bantheboxcampaign.org/about/#.Y84IG-zMK3J> ("We started the campaign in 2004, after a series of Peace and Justice Community Summits identified job and housing discrimination as huge barriers to our successfully returning to our communities after jail or prison. The campaign challenges the stereotypes of people with conviction histories by asking employers to choose their best candidates based on job skills and qualifications, not past convictions.").

[2] See generally Lakshmi Singh, *Ban the Box: What This New Law Means for Potential Employees with a Criminal Record*, NPR (Oct. 21, 2017), <https://www.npr.org/2017/10/21/559278020/ban-the-box-what-this-law-means-for-potential-employees-with-a-criminal-record> (discussing the benefits of Ban the Box for the economy, applicants, and the employer).

[3] 'Ban the Box' right call for Kentucky, *Editorial*, The Courier-Journal, (Feb. 2, 2017), <https://www.courier-journal.com/story/opinion/editorials/2017/02/02/ban-box-right-call-kentucky-editorial/97406618/>.

[4] *Ban the Box – The Fair Chance Initiative*, Kentucky League of Cities (Aug. 1, 2022), <https://www.klc.org/News/7048/ban-the-box---the-fair-chance-initiative>.

[5] *Id.*; Ban the Box, *About*, *supra* note 1.

[6] Kentucky League of Cities, *Ban the Box*, *supra* note 4.

[7] Ban the Box, *About*, *supra* note 1.

[8] Beth Avery & Han Lu, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, National Employment Law Project (Oct. 2021); *Ensuring People with Convictions Have a Fair Chance to Work*, National Employment Law Project, <https://www.nelp.org/campaign/ensuring-fair-chance-to-work/#:~:text=The%20Fair%20Chance%20to%20Compete%20for%20Jobs%20Act%20of%202019&text=The%20law%20prohibits%20federal%20employers,conditional%20offer%20has%20been%20made>.

[9] EO 2017-064 (Feb. 1, 2017).

[10] Kentucky League of Cities, *Ban the Box*, *Supra* note 4; *Ensuring People with Convictions Have a Fair Chance to Work*, National Employment Law Project, <https://www.nelp.org/campaign/ensuring-fair-chance-to-work/#:~:text=The%20Fair%20Chance%20to%20Compete%20for%20Jobs%20Act%20of%202019&text=The%20law%20prohibits%20federal%20employers,conditional%20offer%20has%20been%20made>.

[11] Jennifer L. Doleac, *"Ban the Box" does more harm than Good*, Brookings (May 31, 2016), <https://www.brookings.edu/opinions/ban-the-box-does-more-harm-than-good/> (Here's the problem: employers still don't want to hire ex-offenders.).

[12] Kentucky League of Cities, *Ban the Box*, *supra* note 4.

[13] Kentucky League of Cities, *Ban the Box*, *supra* note 4. ("[E]mployers must consider criminal backgrounds when hiring police and law enforcement telecommunicators under KRS 15.382, KRS 15.391, KRS 61.300, and KRS 15.540. (...) Further peace officers may not be convicted of a criminal background when hiring firefighters, including volunteers, ambulance workers, and rescue squad workers under KRS 17.167, 202 KAR 7:301. 202 KAR 7:401.").

[14] *Ban the Box Legislation: How Does it Affect Your Hiring Process*, Applicant Pro, <https://www.applicantpro.com/articles/ban-box-legislation-affect-hiring-process/>.

[15] *Id.* ("While all Ban the Box jurisdictions prohibit the use of a criminal record question or "box" on the employment application, many jurisdictions go beyond this basic requirement and require the employer to delay inquiring about criminal records or even running a background check until an interview has been performed or an offer extended.").

[16] Casey Leins, *More Data Needed to Determine Whether 'Ban the Box' Laws Work*, US News & World Report (Sept. 10, 2019), <https://www.usnews.com/news/best-states/articles/2019-09-10/ban-the-box-laws-could-negatively-impact-minorities#:~:text=Some%20studies%20show%20that%20ban,criminal%20history%2C%20denying%20jobs%20to>.

[17] *Id.*

[18] *Id.*; Frank Knaack, *Banning the Box: Good for the Economy, Public Safety; Gives People a Second Chance*, *Advance Local* (May 12, 2017), [https://www.cl.com/opinion/2017/05/banning\\_the\\_box\\_good\\_for\\_the\\_e.html](https://www.cl.com/opinion/2017/05/banning_the_box_good_for_the_e.html) ("The U.S. Equal Employment Opportunity Commission (EEOC) issued a guidance document for entities covered by Title VII, including state and local governments, to help eliminate unlawful discrimination in the employment hiring process. As outlined in the guidance document, an employer must show that the selection criteria use or selection procedures are 'job related and consistent with business necessity.'"); *Title VII of the Civil Rights Act of 1964*.

[19] See Torbjørn Skardhamar & Kjetil Telle, *Post-Release Employment and Recidivism in Norway*, *J. of Quantitative Criminology*, 28(4), 629-649 (2012) (discussing the results of a study performed in Norway which resulted in findings that are consistent with theories suggesting that employment post-incarceration reduces the risk of recidivism); see Tianyin Yu, *Employment and Recidivism: Continued Evidence-Based Education*, EBPSOCIETY: Evidence-Based Community (Jan. 30, 2018), <https://www.ebpsociety.org/blog/education/297-employment-recidivism#:~:text=The%20researchers%20found%20that%20employment,646%2D647>); Angela Wang Lee, *A Time-Sensitive Analysis of the Work-Crime Relationship for Young Men*, 84 *Social Science Research* 1-17, 1 (2019) ("Employment is often touted as a pathway out of crime. Jobs are thought to reduce crime by providing routines, supervision, and reduced economic incentives for criminal activity. Unemployment, on the other hand, may lead to crime by creating negative emotions and by blocking opportunities for legal income.").

[20] See generally Matt Dummerth, *Reducing Recidivism in Released Offenders Improves Public Safety*, U.S. Department of Justice Office of Justice Programs (June 10, 2019), <https://www.ojp.gov/archives/ojp-blogs/2019/reducing-recidivism-released-offenders-improves-public-safety>.

[21] Daryl V. Atkinson & Kathleen Lockwood, *The Benefits of Ban the Box: A Case Study of Durham, NC.*, The Southern Coalition for Social Justice, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.congress.gov/116/meeting/house/109189/documents/HMKP-116-GO00-20190326-SD013.pdf> (citing Eamon Javers, *Inside the Wacky World of Weird Data: What's Getting Crunched*, CNBC (Feb. 12, 2014).).

[22] *Id.* (citing Paula Paulk, *Honored as Champion of Change*, *John Hopkins Medicine* (2014), [http://www.hopkinsmedicine.org/news/stories/pamela\\_paulk\\_champions\\_of\\_change.html](http://www.hopkinsmedicine.org/news/stories/pamela_paulk_champions_of_change.html)).

[23] Knaack, *supra* note 18 ("It is estimated that our nation's economy loses \$78 to \$87 billion each year because of lost output caused by criminal record related barriers.").

[24] Leins, *supra* note 16.

[25] The Courier Journal, *'Ban the Box' Right Call for Kentucky*, *supra* note 3.

