

Support “Ban the Box” Legislation – Fair Chance Access to Employment

The ACLU urges the adoption of “Ban the Box” legislation to ensure that Idahoans returning to the workforce post-incarceration are able to access employment opportunities that decrease their likelihood of recidivism, allow them to provide for themselves and their families, and increase their ability to contribute to Idaho’s growing economy.

What is “Ban the Box” legislation?

Most job applications have a checkbox asking applicants to disclose if they have a criminal record. Checking the box slashes the likelihood of a callback or offer by nearly 50 percent. This is devastating for people who are trying to rebuild their lives and provide for their families. Today, 70 million Americans—one in three adults—have a criminal record. While 2.3 million people are imprisoned in the United States, 95 percent of people in state prisons will re-enter our communities at some point¹ with more than 640,000 people released from prisons each year.² These are people who have or will reenter their communities and need gainful employment to build stability and find success after incarceration. Banning the box gives all job applicants a fair chance at opportunity and a fresh start, while ensuring that Idaho’s recidivism rates stay low because formerly incarcerated Idahoans are able to access meaningful employment in their local communities.

What is the problem in Idaho?

- Approximately 30% of the U.S. population has a criminal record of some kind. An estimated 361,000 adult Idahoans (21% of Idahoans) have a previous criminal conviction.³ There are currently 8,410 people incarcerated in prison and 17,688 people on probation or parole.⁴
- Racial disparities in conviction and incarceration rates means Black and Hispanic Idahoans will face increased barriers in accessing employment upon release from prison or jail. According to the Sentencing Project, Idaho ranks 15th in the country for highest incarceration rates of Black prisoners per capita – despite Black community members only representing .80% of Idaho’s total population. Idaho also ranks 2nd in the country for highest incarceration rates of Hispanic prisoners per capita – despite Hispanic community members only representing 12.3% of Idaho’s total population.
- People with felony records have difficulty obtaining employment, which impacts their ability to secure safe housing and to provide for themselves and their families. This substantially contributes to Idaho’s unemployment and homelessness rates.

What is the solution?

Reducing recidivism rates in Idaho requires successful community reentry upon release from incarceration. The Federal Interagency Reentry Council reported that holistic reentry, which includes access to employment, reduces recidivism. And, a period of stability that lasts just a few years can have

¹ Timothy Hughes and Doris James Wilson “Reentry Trends in the U.S.,” Bureau of Justice Statistics, <https://www.bjs.gov/content/reentry/reentry.cfm>.

² Prison Policy Initiative, “Mass Incarceration: The Whole Pie” (2017): <https://www.prisonpolicy.org/reports/pie2016.html>.

³ 1,245,523 people 18 years of age or older in Idaho multiplied by estimated 30% of US adults with a criminal record.

⁴ January 2018 Population Snapshot. Idaho Department of Corrections. https://www.idoc.idaho.gov/content/document/january_2018_population_snapshot

significant, positive outcomes on ensuring the long-term success of an individual's reentry.⁵ Ban the Box legislation begins to remove the structural discrimination and stigmatization that formerly incarcerated people face when accessing employment while also educating employers and human resource departments about how to evaluate a criminal record justly.

What does the "Ban the Box" legislation do?

This fair chance employment policy encourages employers to eliminate blanket exclusions of people with criminal records, delaying criminal history inquiries until later in the hiring process, and ensuring that information about an applicant's criminal record is considered in a job-related context. It also integrates the 2012 Equal Employment Opportunity Commission recommendations that require employers to conduct individualized assessments of job applicants who are screened out of the hiring process because of their criminal history.⁶ In doing so, it begins to address the wholesale exclusion of individuals with criminal convictions which disproportionately impacts black and Latino job candidates, given the pervasive racial disparities in the criminal justice system.⁷

Specifically, this Idaho proposal would:

1. Ensure access to the application process by barring language in job descriptions that seeks to exclude people with previous criminal convictions.
2. Allow employers to first, determine whether the applicant is otherwise qualified for the job and second, extend a conditional offer of employment before considering an applicant's previous criminal conviction and conducting a background check. Employers could not consider arrests that did not lead to a conviction or expunged convictions in making their hiring decisions.
3. Provide employers guidelines as to how they should appropriately consider an applicant's previous criminal conviction, including:
 - a. The nature and seriousness of the offense;
 - b. The amount of time that has passed since the conviction; and
 - c. The nature of the job and its relevance to the conviction.
4. Maintain transparency in the hiring process by giving the applicant notice of their denial for employment based on the outcome of their background check. The notice should include the reason for the denial, a copy of the background check report and an opportunity for the applicant to respond within ten days to provide additional evidence of rehabilitation or mitigating circumstances that an employer should consider.

⁵ Lynch, L. and Muñoz. C. (Eds.) (2016). The Federal Interagency Reentry Council: A Record of Progress and Roadmap for the Future. Washington, D.C.: United States Department of Justice.

⁶ U.S. Equal Opportunity Commission, "Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," 42 U.S.C., April 25, 2012, https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm. 43.

⁷ Ibid.