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Women's Institute for
Science, Equity and Race

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Ban-the-Box: A View from the Labor and Housing Markets

More and more citizens in our country are permanently losing the ability to fulfill some of their most basic needs. These are individuals with past criminal histories. A criminal record can have a long-lasting and far-reaching impact, making it difficult for individuals to secure stable housing, obtain a job, or even access basic services such as healthcare or financial assistance. This cycle of poverty and exclusion further increases the likelihood of future criminal activity. Traditionally, men have made up the bulk of the prison population, but research indicates that the number of incarcerated women increased from 26,378 in 1980 to 222,455 in 2019.¹

These facts alone are problematic for those persons with criminal records. However, when you consider the full impact of having a criminal record, you learn it is harmful to the individual, their families, and society. The children, spouses, and other family members of those with criminal records may be negatively affected. For example, children of individuals with criminal records are more likely than other children to experience economic hardship, behavioral problems, and other negative outcomes. A 2010 Pew Charitable Trust article supports these findings, stating that 1 in every 28 children in the U.S. has a parent behind bars, up from 1 in 125 found in 1985.²

Gary C. Mohr, head of Ohio's Department of Rehabilitation and Corrections, states, "Even probation or a six-month sentence is a life sentence because it affects jobs, it affects housing, it affects everything in their lives." Consequently, a conviction at any level could be a severe hindrance to achieving the "American Dream."

This report examines the parallels between banning the box on employment applications and rental applications and whether these policies can help eliminate some of the barriers faced by this expanded group of women.

Purpose

Based on the premise that the harmful effects previously outlined apply universally across various races, ethnicities, and genders, this study specifically examines the experiences and challenges encountered by women from Black, Hispanic, and Native American communities. Even without a criminal history, these women are particularly vulnerable to discriminatory practices in the labor market. Women in the United States working full-time are typically paid 83 cents for every dollar men are paid. That gap increases for Black women (64 cents), Hispanic women (57 cents), and Native American women (60 cents).³

¹ [Incarcerated Women and Girls | The Sentencing Project](#) April 2023.

² Pew Charitable Trusts. (2010). [Collateral Costs: Incarceration's Effect on Economic Mobility](#).

³ <https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/>.

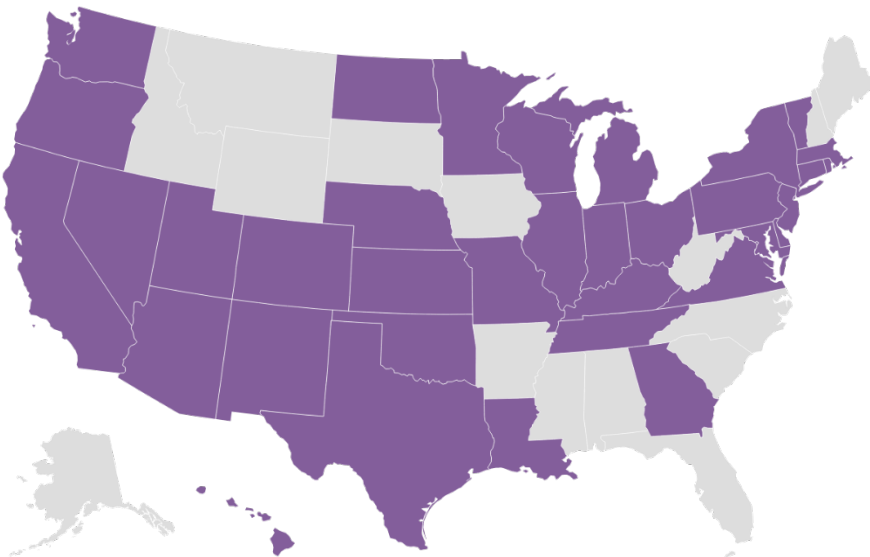
When coupled with a criminal conviction, such earnings disparities increase the vulnerability of these women, leading them to live in high-poverty, low-opportunity neighborhoods. These neighborhoods have high unemployment and school dropout rates and reduced access to high-wage jobs, grocery stores, and banks. A U.S. Department of Health and Human Services report states, "low-opportunity neighborhoods lack the vital conditions necessary for health, wealth, and well-being, and they diminish the life chances of the people who live in them, particularly children."⁴

The recent housing crisis that began during the pandemic has reduced the amount of affordable housing available for low-wage earners. The National Low Income Housing Coalition reports that the U.S. has a shortage of 7.3 million affordable rental homes available to renters with extremely low incomes (below the federal poverty guideline or 30% of their area median income). Those who have been lucky enough to secure housing now face the consequences of rising costs in the rental market. Many of these individuals are women. According to an analysis released by the National Women's Law Center, during the first half of July 2022, more than 2.3 million women reported being behind on rent, including nearly 1.8 million women of color.⁵ Many of these women may be formerly incarcerated.

Expansion of Options and Less Recidivism (Labor vs. Housing Market)

Status of Ban-the-Box in the Labor Market

Chart 1: Ban-The-Box States 2023



Source: Women's Institute of Science, Equity and Race. • Created with Datawrapper

⁴ U.S. Department of Health and Human Services; Jan. 2021, CHAPTER 2, How Neighborhoods Shape Health and Opportunity.

⁵ <https://nwlc.org/wp-content/uploads/2022/08/PulseWeek47FS.pdf>.

Over 20 years ago, Hawaii became the first state to enact Ban-the-Box policies in the labor market. Since Hawaii's 1998 enactment, 34 states and more than 150 cities nationwide have passed some form of Ban-the-Box or "fair-chance" legislation.⁶ Although each state's policy is unique, all of the current policies cover public employers at a minimum. Only 12 states, including Washington, D.C., apply such laws to private employers.⁷

Although President Obama directed all federal agencies to Ban-the-Box in 2015, a federal Ban-the-Box law was not signed until 2019. The Fair Chance to Compete for Jobs Act of 2019 (FCA),⁸ which went into effect in December 2021, prohibits federal agencies (including offices within the executive, legislative, and judicial branches and federal civilian and defense contractors) from requesting that an applicant for Federal employment disclose criminal history record information before the agency makes a conditional offer of employment to that applicant.

Benefits of Ban-the-Box

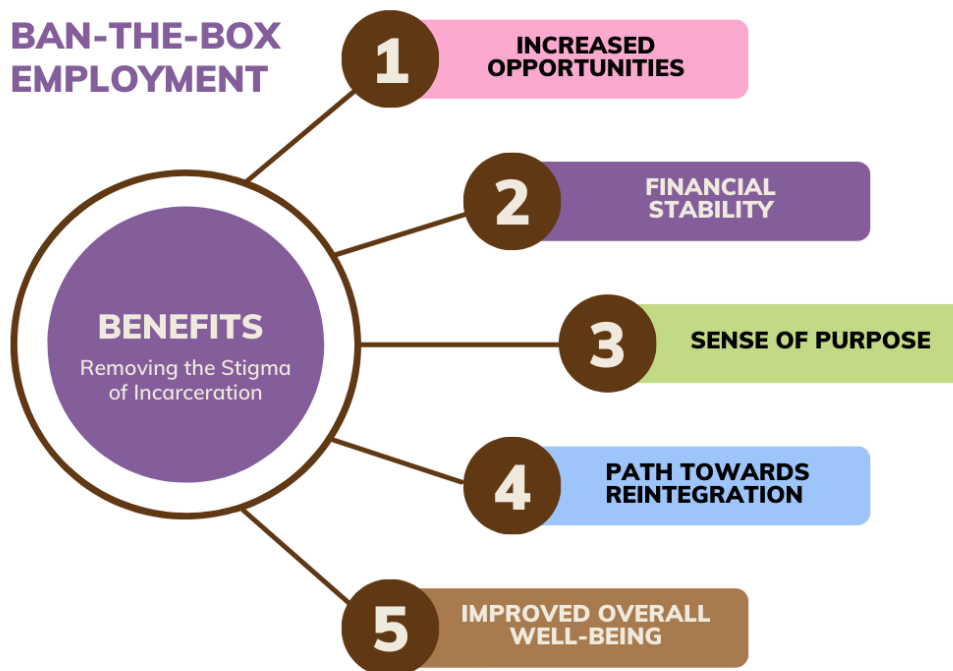
Ban-the-Box policies force employers to consider each applicant's experience and abilities before asking about their criminal history. This infuses both fairness and consistency into the labor market hiring process. A Fact Sheet by the National Employment Law Project points to studies showing that when discrimination occurs 76% of the time, it happens when submitting a job application.⁹ Removing the stigma of being a returning citizen at this point of the hiring process leads to better chances of gaining employment.

⁶ [List Of States And Municipalities With Ban The Box Laws | AccuSource, Inc. \(accusource-online.com\).](https://www.accusource.com/resources/ban-the-box-laws)

⁷ Hartman, M. 2021, "Ban the Box Policy Snapshot," National Conference of State Legislatures.

⁸ National Defense Authorization Act For Fiscal Year 2020 Conference Report.

⁹ [Fair-Chance-Ban-the-Box-Research.pdf \(pcdn.co\).](https://www.pcdn.co/fair-chance-ban-the-box-research.pdf)



Employment not only helps with securing necessities but also helps ex-offenders stay out of jail and prison. The National Institute of Corrections states, "85% - 89% of ex-offenders rearrested are unemployed at the time of rearrest."¹⁰

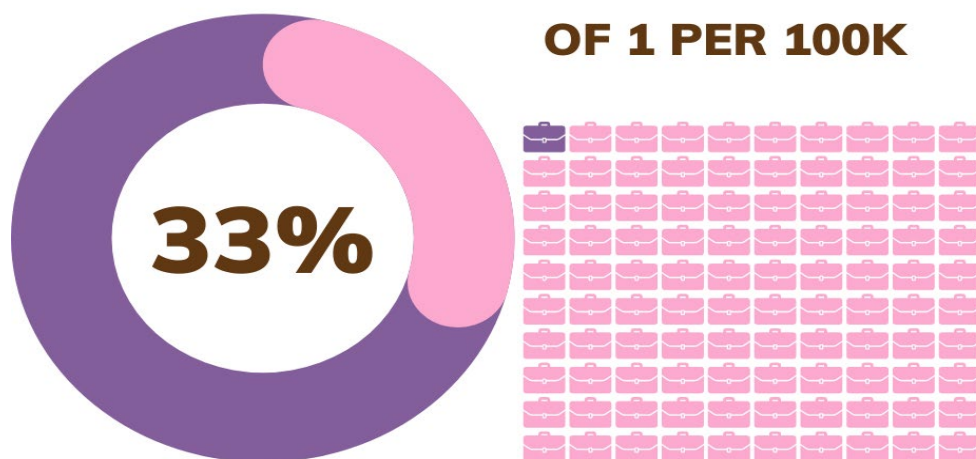
There are also social benefits that extend from an increase in employment rates for ex-offenders. A case study on Ban-the-Box policies in Durham, NC, found that "fair hiring policies benefit communities in the form of increased tax revenue, public safety, and bottom-line improvements of private businesses by increasing their productivity, as well as the retention of qualified, well-trained employees."¹¹

The private sector lags in commitments to Ban-the-Box policies and the results from implementing those policies. In 2016, President Obama called for private employers to take the Fair Chance Business Pledge, a pledge to encourage the private sector to "improve their communities by eliminating barriers for those with a criminal record and creating a pathway for a second chance."¹² Just 19 companies across America joined the Obama Administration as founding pledge takers. Not even 1 out of 100,000 businesses signed this pledge.

¹⁰ [Create a Culture of Employment Readiness and Retention for Incarcerated Individuals | Correctional Industries \(nicic.gov\)](https://www.nicic.gov/create-a-culture-of-employment-readiness-and-retention-for-incarcerated-individuals).

¹¹ <https://www.congress.gov/116/meeting/house/109189/documents/HMKP-116-GO00-20190326-SD013.pdf>.

¹² <https://obamawhitehouse.archives.gov/the-press-office/2016/04/11/fact-sheet-white-house-launches-fair-chance-business-pledge>.



Regarding the benefits of banning the box, studies on the private sector have not produced equally strong results compared to the public sector labor market. Results of those studies have been mixed, with some finding instances where Ban-the-Box policies seem to have negatively affected some minority groups in the labor market in the form of statistical discrimination.

Ban-the-Box – The Housing Market

Four states and nine cities, including Washington, D.C., have passed some version of the Fair Chance Housing laws to combat unfair housing practices. In addition, three states (Colorado, New York, Oregon) and the city of Seattle have restricted the use of Public Record laws, thereby providing some protection for ex-offenders in the rental housing market. With additional cities contemplating their versions of a fair housing policy, the expectation is that both individuals and society will benefit.

Benefits of Fair Chance Housing Laws

One of the most important benefits would be to increase the odds of obtaining public housing, which is more affordable than private rental units. For renters, many affordable housing programs such as Section 8 public housing or Section 41 housing projects will deny applications based on criminal background. Without access to these housing options, many ex-offenders face homelessness. According to the report *Nowhere to Go: Homelessness Among Formerly Incarcerated People* by Lucius Couloute of the Prison Policy Initiative, formerly incarcerated people are nearly ten times more likely to be homeless than the general public. The rate of homelessness for formerly incarcerated people was 203 per 10,000 people. At the same time,

another 367 per 10,000 were marginally housed in hotels, motels, or rooming houses but not counted as homeless.¹³

When people are stably housed, they have fewer recorded non-violent offenses like theft, robbery, trespassing, loitering, and prostitution--prime reasons people with low-level crimes are incarcerated. According to the Texas Criminal Justice Coalition, homeless men make up 40 percent of all arrests for non-violent crimes.¹⁴ By eliminating barriers to housing, fair chance housing laws will help reduce homelessness and recidivism.

In addition, fair chance housing laws will bring consistency to the application process and set standards and guidelines for landlords to follow. This will help reduce the inequity between standards for "buyers" compared to "renters." While no laws prevent a lending institution from declining a mortgage loan to a buyer because of criminal history, it is widely accepted that private banks and lenders worry about income, credit score, length of current employment, and ability to pay back the loan.

By contrast, for renters, a criminal history can be a cause for denial. The liability of renting to certain types of ex-offenders creates the need for background checks in the rental market, which is not the case for homebuyers. As explained by the American Apartment Owners Association:¹⁵

- A tenant who is a registered sex offender could put you at risk for a lawsuit if your property is near a school, park, or other areas that children frequent.
- A tenant with a violent criminal history who harms someone else at your property could lead to a lawsuit and all the fees associated with that when the injured party takes you to court.

Addressing the concerns about these types of lawsuits will encourage more property owners to adopt Ban-the-Box policies. Complete elimination of homelessness may be unattainable, but the fact remains that too many vulnerable citizens are relegated to spending nights on the streets. Ban-the-Box policies in the housing rental markets must continue to be utilized and expanded so that no citizen is left vulnerable to homelessness. Furthermore, policy revision will benefit the children and families of the returning citizens.

Jerry L. Pender is the Research Director for the Women's Institute for Science, Equity, and Race. He is also the founder of The Jordan Reentry Cooperative, whose mission is to assist males reentering their communities in accessing resources and creating a comprehensive plan to ensure a successful transition.

¹³ <https://www.prisonpolicy.org/reports/housing.html>.

¹⁴ Stephens, R. 2021, "Homeless After Reentry Leads to Higher Recidivism Rates," Interrogating Justice.

¹⁵ Tenant Background Check. American Apartment Owners Association.