New Model State Policies Improve Employment Opportunities for People with a Criminal Record

Offender Reentry and Collateral Consequences
National Conference of State Legislatures
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Overview

- New Realities of Criminal Background Checks for Employment
- Research Explores Limited Risks of Hiring People with a Criminal Record
- Model Standards Regulating Private Sector, Public Sector and Occupational Licensing
- Additional State Background Check Protections
The New Realities of Criminal Background Checks for Employment

- Nearly one in three (72 million) U.S. adults has a criminal record that will show up on a routine criminal background check.

- Proliferation of criminal background checks by private employers and new occupational screening laws adopted post-9/11.

- Serious limits on reliability of private background checks and federal and state rap sheets.

- Too few federal and state protections for workers subjected to criminal background checks for employment by private and public employers.
Are you looking for a fun job in Hayward, CA? Manpower offers a great seasonal opportunity @ Bank of America LocBox Project!

Over 600 people are needed to fill:
♦ Data Entry Operator positions
♦ Proof Operators
♦ General Clerical

All of our associates must be screened and hired immediately, so don’t delay!

Qualified candidates must be able to pass:
♦ Background Check (no felonies or misdemeanors)
♦ Reference Check
♦ FBI Fingerprint Search

Manpower
500 12th street suite 123
Oakland, CA 94607
510-835-2424
oakland.ca-downtown@na.manpower.com
InstantCriminalChecks.com Order Form

Person You Are Investigating:

*First Name: ____________________________ Middle Initial: ____________ *Last Name: ____________________________

Social Security Number: ________________ Suffix (if any): ________________ (Jr, Sr, III)

*Date of Birth: [Month] [Day] [Year]

Please Select Statewide, 3-State or National Criminal Check:

**Statewide Criminal Check $24.95**

- [ ] California multi-county (CA)

OR

**National Criminal Check $59.95**

- view national description

46 state national search plus Washington DC:

- AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, VT, WA, WI, WV

All orders include a free national sex offender search, terrorist background report & most wanted check.

Contact Information:

*E-Mail Address: ____________________________

Phone Number: ____________________________

Credit Card Information:

*Name: ____________________________

Enter name exactly as appears on your card

*Type of Card: [Select One]

*Card Number: ____________________________

We Accept: 

- [ ] Visa
- [ ] MasterCard
- [ ] Discover
- [ ] American Express
Employment Significantly Reduces Recidivism
(Results of Chicago’s Safer Foundation Job Placement for 1,600 People Recently Released from Prison)

- IL Dept. of Corrections: 54%
- Safer Job Placement: 21%
- 30 Days Employed: 18%
- 360 Days Employed: 8%
Employment Testing Survey Documents Impact of a Criminal Record on Interview Callbacks, by Race (Devah Pager, "The Mark of a Criminal Record," American Journal of Sociology (March 2003))

- **African Americans**
  - Callback (Criminal Record): 5%
  - Callback (No Record): 14%

- **Whites**
  - Callback (Criminal Record): 17%
  - Callback (No Record): 34%
Number of Years it Takes for an Individual's Criminal Record to be "Redeemed" (Blumstein, *Criminology*, May 2009)

- Robbery: 7.7 years
- Aggravated Assault: 4.3 years
- Burglary: 3.8 years
Comparing U.S. and UK Worker Protections
Regulating Criminal Background Checks

**U.S. Protections**
- Title VII of the Civil Rights Act of 1964 (Equal Employment Opportunity Commission guidance): Criminal background checks have a “disparate impact” on people of color, thus precluding blanket disqualifications and requiring the record to be “job related” taking into account the nature of the job, the age and seriousness of the offense.

**UK Protections**
- Rehabilitation Offender Act of 1974: Certain convictions (not including jobs involving vulnerable populations) deemed “spent” after a “rehabilitation period,” preventing employers from asking about the record for employment purposes (convictions involving prison term of more than 2.5 years cannot be considered “spent.”)
“The American Bar Association urges states, territories and the federal government, in order to remove unwarranted legal barriers to reentry, to . . . limit situations in which a convicted person may be disqualified from otherwise available benefits, including employment, to the greatest extent consistent with public safety.”

Justice Kennedy Commission
Approved by ABA House of Delegates
August 9, 2004
Re-Entry Policy Council, Council of State Governments

Recommends that federal and state officials conduct a “review of employment laws that affect employment of people based on criminal history, and eliminate those provisions that are not directly linked to improving public safety.”

Policy Statement 21
Creation of Employment Opportunities (Recommendation C)
Charting the Safe & Successful Return of Prisoners to the Community (2004)
Nearly 1.4 Million Criminal Record Checks (Fingerprint-Based) Under California Employment & Licensing Laws

- FY 2001/2002: 1,379,341 CORI, 626,521 FBI
- FY 2002/2003: 1,438,242 CORI, 724,088 FBI
- FY 2003/2004: 1,388,130 CORI, 693,885 FBI
Private Security Officers (Unarmed)
Features of State Background Check Laws

- State Criminal Background Law: 36 states
- Blanket Felony Disqualification: 25 states
- Lifetime Felony Disqualification: 24 states
- Waiver Procedure: 5 states
- Offense Age Limits: 4 states

Number of States
Key Standards for Reform of State Occupational Screening Laws

- Limit criminal background checks required by law to occupations that genuinely involve public safety and national security.
- Limit disqualifying offenses (especially non-violent drug offenses) that are not job related.
- Impose age limits on disqualifying offenses, eliminating unwarranted lifetime disqualifications.
- Allow for individual waivers from disqualifying offenses, thus providing opportunity to document rehabilitation.
- Clean-up incomplete state and federal rap sheets, and provide a copy of the record to worker to verify and appeal its accuracy.
Port Worker Security Program
Model Worker Protections

- **Program Goals:** Post-9/11 maritime security law required two million port workers to be screened by TSA for “terrorism security” risks and credentialed to work at the ports.

- **Age Limits & Narrowly Tailored Disqualifications:** Federal law limits disqualification to specific felony convictions more than 7 years old (or released from incarceration in past 5 years), not including drug possession.

- **Appeal of Faulty Records:** In writing, TSA isolates the specific disqualifying offense, allowing the worker 60 days to produce documentation challenging its accuracy.

- **Waiver to Prove Rehabilitation:** TSA “waiver” procedure allows workers to establish rehabilitation (based on employment and education record, drug treatment and statements of support from the community).
Favorable Impact of TSA’s Port Worker Appeal and Waiver Protections on People of Color (NELP’s Docket, N=287)

- **Waive Felony Conviction**: 54%
- **Appeal Inaccurate Record**: 41%
- **Share of Port Population**:
  - African American: 14%
  - Latino: 19%
  - White: 24%
  - Other (Primarily Immigrants): 2%
Government Employers Pave the Way for the Private Sector

“Implementing this new policy won’t be easy, but it’s the right thing to do . . . . We cannot ask private employers to consider former prisoners unless the city practices what it preaches.”

Chicago Mayor Richard M. Daley
January 24, 2006
# New State “Ban the Box” Protections

<table>
<thead>
<tr>
<th>State</th>
<th>“Ban the Box” Coverage</th>
<th>Screening Criteria</th>
<th>Other Protections</th>
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<tr>
<td>California (2010), Executive Policy</td>
<td>Public Employment</td>
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<tr>
<td>Connecticut (2010), HB 5207</td>
<td>Public Employment/Licensing Boards (checked at conditional offer of employment)</td>
<td>Must consider nature of offense and relationship to job, rehabilitation, age of offense</td>
<td>Written statement of reasons for rejection.</td>
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<td>Hawaii (1998), HRS Sections 378-2, 378.2.5</td>
<td>Private and Public Employment (checked at conditional offer of employment)</td>
<td>Criminal record must bear a “rational relationship” to the job</td>
<td>Employers may not consider felonies over 10 years (excluding periods of incarceration)</td>
</tr>
<tr>
<td>Massachusetts (2010) Chap 256 of Acts 2010</td>
<td>Private and Public Employment (checked when finalists selected)</td>
<td></td>
<td>Employers may not consider felonies over 10 years and misdemeanors over 5 years</td>
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<td>Minnesota (2009) Minn. Stat., Section 364, et seq.</td>
<td>Public Employment (checked when selected for interview)</td>
<td>Requires convictions to be “job related” for public employment and licensing purposes, and must consider rehabilitation</td>
<td>Cannot consider arrest that did not lead to conviction, expunged offenses and misdemeanors not involving jail time</td>
</tr>
<tr>
<td>New Mexico (2010) N.M. Stat. Section 28-2-3</td>
<td>Public Employment (checked when finalists selected)</td>
<td>Conviction must be “substantially related” to the job</td>
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Ban the Box a “Win-Win” Proposition for Public Employers

- In Minneapolis, nearly 60% of applicants with a potential disqualifying record were hired in 2007, compared to 5.7% under prior policy.

- Considering the criminal record after a conditional offer of employment reduced resources devoted to employment screening by 28%.
Other Selected State Protections

- “Uniform Collateral Consequences of Conviction Act” requiring states to document and harmonize state laws that impose collateral consequences (approved by Uniform Law Commission, July 2009)
- Expand expungements to most first felony offenders (Hawaii, Michigan, New Jersey, Ohio, Rhode Island)
- Seal felony drug possession convictions after 4 years without additional offenses (Illinois)
- Adopt and expand “certificates of relief” to cover drug and other appropriate felony offenses (Illinois)
- Clarify that workers can deny expunged records on job applications (New Jersey)
- Provide hiring incentives for private employers, including tax credits, bonding (California)