

Ban the Box: What it is and Why it Matters



Dialogue on Race

Issue Group on Income Gap & Employment

Presentation to the Montgomery County Board of Supervisors

December 15, 2014

What is Ban the Box?

- Doing away with (banning) the check box on employment applications that asks individuals whether they have ever been convicted of a crime.
- Ban-the-box laws require hiring managers to put off asking about a candidate's criminal history until after an interview has been conducted or a provisional job offer has been extended.
- The box, if kept, “becomes a broad brush that eliminates further contact with an employer and prevents individuals from becoming employed” (Mr. Ted Edlich, CEO, Total Action for Progress (TAP) in Roanoke).

What about Background Checks?

- Once the hiring official is prepared to offer the applicant a job or when he/she is a finalist for the open position, a criminal background check could be initiated as opposed to at the very beginning of the process.
- Worth considering --
 - In 1996, only 50% of HR managers used background checks; in 2003, over 80% did; in 2009, over 92% did.
 - The use of criminal records checks may result in a Title VII issue: “. . . For a plaintiff to succeed in challenging an employer’s criminal records policy under Title VII’s disparate impact provision she does not need to show the employer intended to discriminate. Instead she must establish that the employer’s consideration of criminal history information has a disproportionate adverse impact on a group protected by Title VII.”

How does the Process Work?

- The applicant is able to explain
 - the nature of the crime,
 - how long ago it was committed,
 - when incarceration ended,
 - successful rehabilitation efforts and certifications if available.
- The applicant is given an opportunity to review the records to determine their accuracy.
- The hiring official adheres to federal Equal Employment Opportunity Commission guidelines and does not make negative decisions when the crime is unrelated to the job duties.

Key Facts to Consider

- Nearly 1 in 4 adults in the US has a conviction history (+70 million).
- Of the 700,000 people released from state prisons, over 75% will not have a job a year after release.
- A criminal record reduces likelihood of callback or employment by 50%.
- The “box” discourages people from applying.
- If hiring discrimination occurs, it most probably (76%) will occur at first interaction (e.g., job application).

More Facts—Relationship to Race

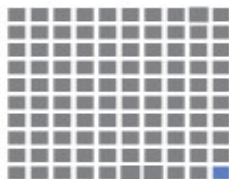
- In 2008, there were an estimated 2.4 million people in U.S. jails and prisons – the disproportionate majority of whom (over 2/3) are people of color.
- African Americans make up roughly 13% of the U.S. population, but are 40% of its prisoners.

	Male	Female	Total	% of Total
	34,125	2,620	36,745	
Race				
White	11,988	1,507	13,495	37%
Black	21,095	1,074	22,169	60%
Hispanic	730	14	744	2%
Other ²	312	25	337	<1%
Age as of June 30th				
Under 18	10	0	10	<1%
18 - 24	4,343	236	4,579	12%
25 - 29	5,498	422	5,920	16%
30 - 39	10,240	866	11,106	30%
40 - 49	8,173	743	8,916	24%
50 - 54	2,902	219	3,121	8%
55 - 59	1,609	79	1,688	5%
60 - 64	773	38	811	2%
65 and Over	577	17	594	2%
Average Age	37.7	37.6	37.7	

Statistics on Incarceration Rates by Race and Sex

Figure 2. U.S. Incarceration Rates by Race and Sex

According to data analyzed by the Pew Center on the States, as of Jan. 1, 2008, more than **1 in every 100 adults is behind bars.**



For the most part, though, incarceration is heavily concentrated among men, racial and ethnic minorities, and 20- and 30-year-olds. Among men the highest rate is with black males aged 20-34. Among women it's with black females aged 35-39.

MEN

White men ages 18 or older **1 in 106**



All men ages 18 or older **1 in 54**



Hispanic men ages 18 or older **1 in 36**



Black men ages 18 or older **1 in 15**

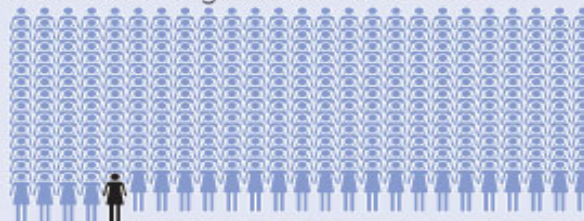


Black men ages 20-34 **1 in 9**

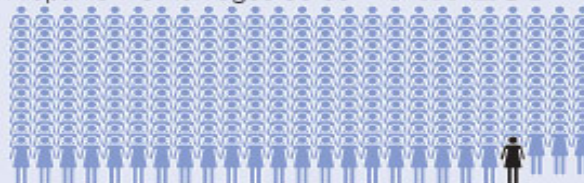


WOMEN

White women ages 35-39 **1 in 355**



Hispanic women ages 35-39 **1 in 297**



All women ages 35-39 **1 in 265**



Black women ages 35-39 **1 in 100**



Source: The Pew Center on the States, *One in 100: Behind Bars in America 2008*, Washington, D.C.: The Pew Charitable Trusts, 2008, http://www.pewstates.org/uploadedFiles/PCS_Assets/2008/one%20in%20100.pdf.

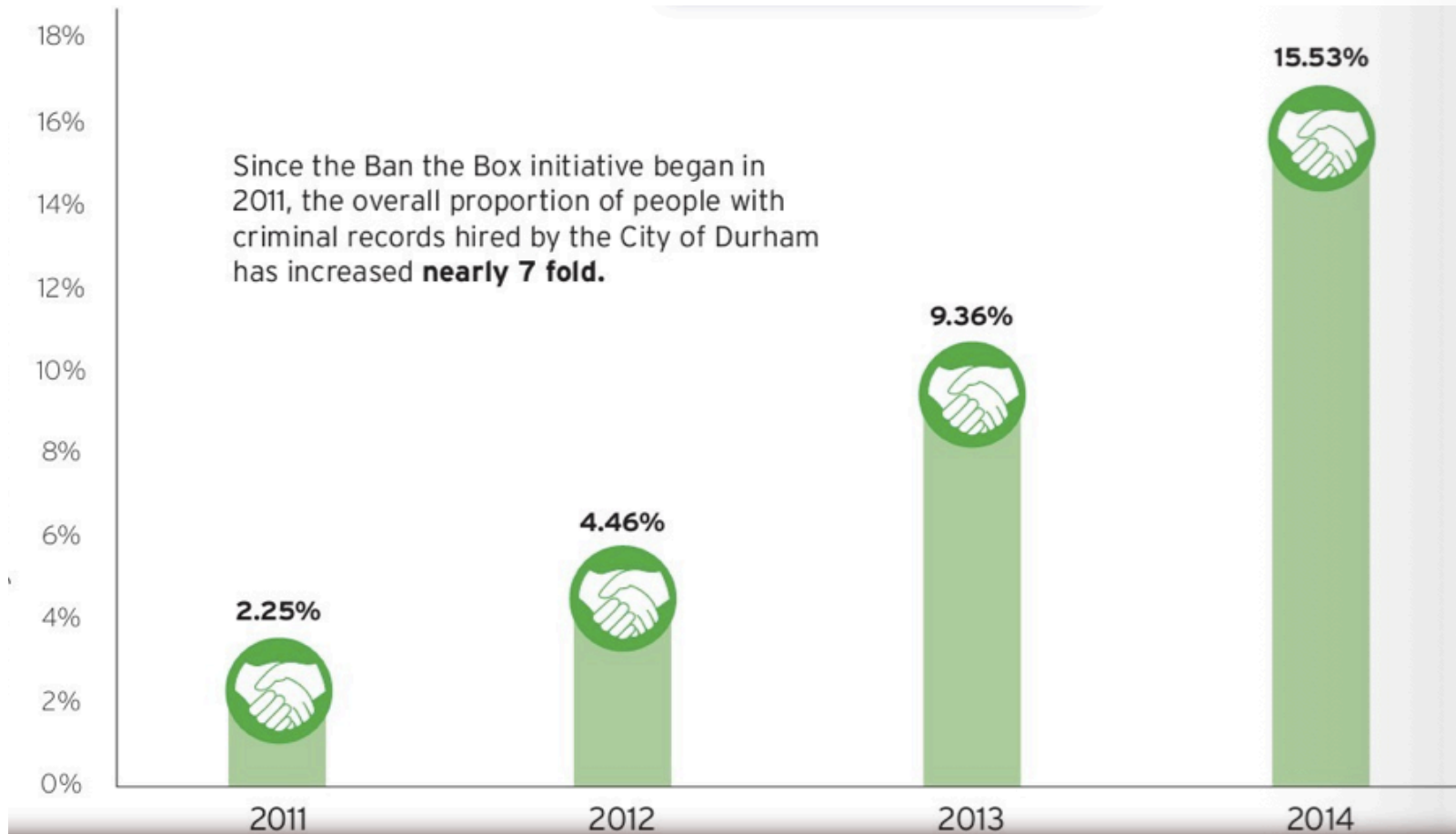
More Key Facts: Economic Costs

- According to a recent report by VERA Institute of Justice, the cost to incarcerate an average daily population of 29,792 in Virginia was \$748.6 million in fiscal year 2010.
 - It costs just over \$25,000 per year to house one prisoner in Virginia.
 - Although several factors affect recidivism, studies have shown that the single largest determinant of rearrest and reconviction is whether an individual is able to find employment after release.
- Virginia releases approximately 13,000 ex-offenders into society each year.
- 2006 study of help-wanted ads in VA: of 192,000 positions listed, only 16,000 (8.23%) were open to hiring to an applicant with a record.

Potential Economic Benefits

- Putting 100 incarcerated people back to work would
 - Increase their lifetime earnings by \$55 million
 - Increase income tax contributions by \$1.9 million
 - Save nearly \$2.5 million by keeping them out of the criminal justice system.
- Resources exist to support reentry programs (e.g., The National Reentry Resource Program, a project of the Council of State Governments Justice Center).

Evidence that the Program Works from Durham, NC



More important, no increase in workplace crime in either the city or the county government has occurred, and no employee has been fired because of illegal activity.

Rural Counties: Cumberland County, NC

More and more rural counties are considering this important initiative. For example, Cumberland County, N.C. changed its hiring policy in September 2011. James Lawson, the assistant county manager for human resources said,

- “We wanted to make sure we’re diligent in considering applicants and that their qualifications are considered first and foremost. With this process, they get to the interview and they have the opportunity to explain any issues they’ve had in their past.”

Virginia Localities that have Banned the Box

- Alexandria
- Arlington County
- Charlottesville
- Danville
- Fairfax County
- Fredericksburg
- Newport News
- Norfolk
- Petersburg
- Portsmouth
- Richmond
- Roanoke
- Virginia Beach

Our Request

- Remove the box from the county's applications, where possible.
- Require any contractor or consultant hired by the county to follow this process.
- Make a public statement to encourage other employers to Ban the Box.

Questions?

- Thank you for including us on your agenda.
- We are happy to answer any questions (or find the answers if we do not have the necessary information available tonight).

References

Slide 1: Title

Slide 2: What is Ban the Box?

- <http://www.shrm.org/hrdisciplines/safetysecurity/articles/pages/ban-the-box-movement-viral.aspx>

Slide 3: What about Background Checks?

- Smith, J. (2014). Banning the box but keeping the discrimination?: Disparate impact and employers' overreliance on criminal background checks." *Harvard Civil Rights-Civil Liberties Law Review*; 49 (1), 197-228.

Slide 4: How does the Process Work?

- <http://www.ncjustice.org/?q=second-chance-alliance/ban-box-second-chance-fair-employment>

Slide 5: Key Facts to Consider

- <http://www.nelp.org/page/content/banthebox/>
- <http://online.wsj.com/articles/SB10000872396390443866404577565170182319412>
- <http://www.nij.gov/journals/270/Pages/criminal-records.aspx>
- http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDUQFjAD&url=http%3A%2F%2Fwww.cream-migration.org%2Fpubl_uploads%2FCDP_11_14.pdf&ei=sNqVMmdJujIsATtoCwCg&usg=AFQjCNFqTwhj11beefQqIS3VWRxianJ8Gw&sig2=G snoO-DuC5EfgBY2-jDiWw&bvm=bv.79908130,d.cWc

More References

Slide 6: More Facts: Relationship to Race

- <http://www.nij.gov/journals/270/Pages/criminal-records.aspx>
- <http://www.naacp.org/pages/criminal-justice-resources>
- <http://vadoc.virginia.gov/about/facts/research/VADOCDemographicReportFY2012.pdf>

Slide 7: Statistics on Incarceration Rates by Race and Sex

- <http://www.pewtrusts.org/en/research-and-analysis/reports/2008/02/28/one-in-100-behind-bars-in-america-2008>

Slide 8: More Key Facts: Economic Costs

- <http://alextimes.com/2014/01/lets-give-ex-offenders-%E2%80%A8a-chance-upon-release/>
- http://articles.dailypress.com/2014-02-10/news/dp-editorial-earlyrelease-0211-20140210_1_virginia-senate-virginia-department-inmate
- <http://www.shrm.org/legalissues/federalresources/pages/applicants-criminal-records.aspx#sthash.StQEJcWM.dpuf>
- Schmidt, J. & K. Warner. (2010). *Ex-offenders and the labor market*. Washington, DC: Center for Economic and Policy Research.

Slide 9: Potential Economic Benefits

- 2011 study by Economy League of City of Philadelphia
- <http://www.naacp.org/pages/criminal-justice-resources>
- <http://csgjusticecenter.org/nrrc/>

Slide 10: Evidence that the Program Works from Durham, NC

- <http://www.southerncoalition.org/program-areas/criminal-justice/ban-the-box-community-initiative-guide/benefits-ban-box/>

Slide 11: Rural Counties: Cumberland County, NC

- <http://www.naco.org/newsroom/countynews/Current%20Issue/1-13-14/Pages/Banning-the-box-gains-momentum-in-counties.aspx>

Slide 12: Virginia Localities that have Banned the Box

- <http://www.nelp.org/page/-/SCLP/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf?nocdn=1>