

Fair Chance Hiring

Fair Chance – Ban the Box Toolkit

Opening Job Opportunities for
People with Records

Michelle Natividad Rodriguez &
Anastasia Christman

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About NELP

For more than 45 years, the National Employment Law Project has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing. For more information, visit us at www.nelp.org.

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- **Community Hiring Model Language**
- **NELP Voices in Support Factsheet**
- **Example of State Campaign Materials (California AB 218)**
- **Example of Local Campaign Materials (San Francisco Fair Chance Ordinance)**

Not included in this Appendix due to the frequency of updating the number of jurisdictions with “ban the box” is the [Fair Chance Factsheet & FAQ](#) available through this link. In addition, the [Compilation of Media Featuring Fair Chance and Ban the Box](#) is available through this link.

Introduction

In the early 2000s, grassroots organizers in San Francisco and Boston began urging local governments to remove questions about convictions from job applications so that people can be judged first on their qualifications. Just over a decade later, over 100 jurisdictions have adopted ban-the-box and fair chance policies.

“Ban the Box,” the rallying cry of All of Us or None organizers, refers to the policy of removing the conviction history check-box from job applications. If employers must ask about convictions, they can ask later in the hiring process. As the call to “ban the box” spreads across the country, it has become a powerful movement for fair hiring. NELP advocates for a “fair chance” hiring policy that includes removing the check-box, plus a robust set of fair hiring policies to ease employment barriers. The most effective policies don't just delay a background check; they ensure that when background checks are required, they're used fairly.

Many policies incorporate the [2012 U.S. Equal Employment Opportunity Commission guidelines](#) that advise employers to make individualized assessments instead of using blanket exclusions. Employers should consider the time passed since the offense and its relevance to the job. And because background-check results may contain errors, candidates should be given an opportunity to review the results. These are straightforward, common-sense recommendations for all employers to adopt.

From 2013 to 2014, the number of jurisdictions adopting fair chance policies doubled.

San Francisco's Fair Chance Ordinance is one model of a comprehensive fair chance policy. Passed unanimously in February 2014, the ordinance requires private employers, city contractors, and some housing providers to consider applicants on their merits first, not on their past mistakes.

In a relatively short time, this movement for fair access to employment opportunities has gained impressive momentum. From 2013 to 2014, the number of jurisdictions adopting policies doubled. Now more than 100 million Americans—roughly one-third of the U.S. population—live in a jurisdiction with a ban-the-box or fair chance policy. As successful public-sector efforts pave the way for the private sector, we're moving closer to a day when all qualified job-seekers will have an opportunity to compete fairly for work.

The number of jurisdictions that have adopted fair chance policies is constantly increasing. For the latest number and links to the laws and policies, see [NELP's State and Local Ban the Box guide here](#), which is regularly updated.

1 Why Start a Fair Chance Campaign?

Supporting the employment opportunities of people with records creates safe communities, reduces childhood poverty, and strengthens families, and can easily be integrated into a diverse array of campaigns and strategies. With a large volume of people reentering their communities after incarceration and the high number of people hampered by old and minor convictions, passing a fair chance initiative should be a component of a broader agenda.

A. Community Economic Development

For advocates focused on community economic development, data shows that the concentration of people released from incarceration is heavier in some communities. For example, more than one-half of prisoners released in Illinois return to Chicago, with nearly one-third of those returnees going to just six communities; Baltimore welcomes almost 60 percent of Maryland's released prisoners, and again just six community areas house 30 percent of those returnees.¹

While it is important for those with records to be able to return to supportive families and community members, this concentration of people struggling with an additional hurdle to gainful employment can strain the economic and residential stability of the community. Community advocates who seek to increase neighborhood economic development or improve stable housing should also call for fair chance policies so that a large portion of community residents are no longer barred from being positive economic actors.

B. Local, Targeted Hiring Policies

Groups across the country are engaged in innovative campaigns to open doors for minority- and women-owned businesses and low-income workers by negotiating targeted hiring agreements with local governments or project developers.² By incorporating a fair chance campaign, advocates can expand and strengthen the pool of potential job applicants. This will ensure that the largest proportion of the local community can benefit from publicly-supported development. For a model combining targeted hiring with fair chance, see the guide for “**Community Hiring Model Language**” in the Appendix.

C. Advocating for Children's Well-Being

More than two-thirds of male prison inmates were employed before their incarceration and more than half were the primary source of financial support for their children.³ Upon release, discrimination in finding a job can mean that these parents are unable to meet their financial responsibilities, including child support payments and contributing to children's material needs.⁴

Custodial parents with records who cannot find gainful employment may find themselves on multiple-year waiting lists for subsidized child care benefits, opportunities that are critical to early childhood development. Or parents may find

themselves dependent on insufficient food and housing subsidies, which may also be restricted due to the parent's conviction. Thus, advocates who work to advance the interests of children in low-income communities should support efforts to remove unnecessary barriers to the employment of people with records.

D. Restorative Justice

Increasingly, advocates are exploring Restorative Justice programs which seek to reconcile communities impacted by criminal behaviors with those who perpetrated them.⁵ A critical element of this model is that people who committed offenses take responsibility for their actions, including any necessary financial reparations. However, if after release from incarceration a person cannot find gainful employment, he or she may be unable to meet financial obligations and become hopeless while unemployed. In this context, a fair chance policy serves the dual purpose of demonstrating to people who have offended that their community welcomes their full participation in local civil society and allows the person with the record to embrace his or her responsibility to the community.

E. Protecting Civil Rights

Throughout the country, advocates and Americans with past felony convictions are fighting to regain the most fundamental right: the right to vote. These groups work to ensure that a sentence served means the opportunity to redefine oneself from a "criminal" to a citizen, and to emphasize that time served is a debt paid. Similarly, allowing employers to screen out all applicants at the very onset of the job application can run afoul of the notion of civil rights in the employment process and stop people from transitioning from being considered a "criminal" to being perceived as a contributing member of the community.

The U.S. Equal Employment Opportunity Commission has warned that, "Using criminal history information to make employment decisions may violate Title VII of the Civil Rights Act of 1964."⁶ A robust fair chance policy can help those with records regain all of their rights as they establish themselves as civic actors and workers.

¹ Nancy G. La Vigne, Cynthia A. Mamalian, Jeremy Travis, and Christy Visser, "A Portrait of Prisoner Reentry in Illinois," Washington, D.C.: Urban Institute, 2003; and Nancy G. La Vigne, Vera Kachnowski, Jeremy Travis, Rebecca Naser, and Christy Visser, "A Portrait of Prisoner Reentry in Maryland," Washington, D.C.: Urban Institute, 2003.

² For an excellent set of resources and case studies on targeted hiring policies, see the "Policy & Tools: Targeted Hiring" web page created by the Partnership for Working Families.
<http://www.forworkingfamilies.org/resources/policy-tools-targeted-hiring-permanent-jobs>

³ Pew Charitable Trusts, "Collateral Costs: Incarceration's Effect on Economic Mobility," 2010.

⁴ Marcia Festen, "From Prison to Home: the Effect of Incarceration on Children, Families and Communities, Conference Report," Washington D.C.: 2002.
<http://aspe.hhs.gov/hsp/prison2home02/conf-sum/report.pdf>

⁵ See for instance this interview with guests from the National Council on Crime and Delinquency and the National District Attorney's Association, "Victims Confront Offenders, Face to Face," Interview on Talk of the Nation, NPR, July 28, 2011. <http://www.npr.org/2011/07/28/138791912/victims-confront-offenders-face-to-face>

⁶ "Pre-Employment Inquiries and Arrest & Conviction," Webpage of the U.S. Equal Employment Opportunity Commission, accessed March 12, 2014. http://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm

2 How to Start a Fair Chance Campaign

A. Identify the Core Group of Fair Chance Advocates and Organizers.

Many fair chance campaigns begin when a core group of advocates and organizers devote their resources to energizing the community and educating the policymakers about barriers encountered by people with records. Not every campaign has all of the following participants in the beginning of the process, but the list below highlights individuals for building a strong foundation over the course of a campaign:

Experienced organizers can inspire their members to plan and carry out creative and powerful actions to help lead a campaign. Some examples of member-based organizations include the formerly incarcerated, faith-based, criminal justice reform, and organized labor groups.

Advocates familiar with or connected to policymakers. These advocates have the political connections to help you navigate the landscape, gather more information, and garner the support you need from policymakers. Examples may be grassroots organizers, legal advocates, policy groups, or reentry-focused organizations that have experience lobbying.

For lasting change, strong community engagement and the leadership of directly-impacted people in the campaign are essential.

Legal advocates who can assist in drafting or reviewing administrative or legal policies. The national experts at NELP can also provide support.

Directly-impacted people may be included in any of the categories above. Having the leadership and experiences of people with records and their families at the center of the campaign will keep its outcomes grounded in the needs of the community.

As experienced coalition members are aware, often there is a group of advocates who can devote the time to meeting regularly who are at the core of the effort. There may be numerous groups that are less-involved, but are supportive and critical to a broad-based effort. The core group keeps other members in the coalition up-to-date on significant developments, provides opportunities for input, and clarifies the events or items needed from the supporting groups, often through email or a listserv. For example, the supporting groups may sign a petition or ask their members to attend a hearing where a large presence is necessary.

B. Get the Facts to Support That a Fair Chance is Needed.

As the group begins outreach to the community and policymakers, you will need the facts to back up your campaign.

Define the problem:

Millions of qualified job applicants in the country are plagued by a past record and are discouraged from applying to employment because a 'box' on job applications requires conviction history

information that leads many employers to unfairly reject job seekers. When people with records are shut out of jobs, public health and safety suffer. Already hard-hit communities of color are particularly impacted.

The box is a barrier to jobs. One key element of the problem is that the “box” on the job application is unfairly restricting opportunities for people with records. This has a chilling effect on job applicants and artificially narrows the applicant pool of qualified workers. Both the employer and job applicant lose out. When applicants with records see the “box” on job applications, they often assume that their applications will be tossed out. There are qualified workers with records that the employer will lose the opportunity to consider because these workers may self-select out of the process. One of the best means to document this phenomenon is for workers themselves to be prepared to share their negative experiences in the job market with the “box.”

Even if a person with a record looks past the “box” and decides to apply to a position, it is too easy for an employer to toss out the “checked-box” application. A study commonly highlighted to substantiate this point is [The Mark of a Criminal Record](#). The researcher found that in 50% of the cases, employers were unwilling to consider equally qualified applicants because of the criminal record. In other words, a record reduced the likelihood of a job callback by 50%.

The problem is pervasive and severe. Another key element of the problem is the large number of people with records impacted by employment barriers; this is a widespread problem and one which grows larger every day. Nationally, NELP estimated in 2011 in the report, [65 Million Need Not Apply](#), that there were 65 million U.S. adults with an arrest or conviction record. With updated statistics, NELP’s estimate in 2014 is that there are 70 million U.S. adults with a criminal record or nearly 1 in 3 adults in the United States. On top of that, every year approximately 700,000 people are released from prison, and there are over 12 million arrests. The number of Americans with records grows daily.

To frame the issue locally of the high volume of people with records, develop region-specific estimates. At the state level, an estimate may be possible using the methodology NELP used to determine the national number. We first accessed a survey of state criminal history record repositories from 2012, available [here](#). To account for duplication (individuals who may have criminal records in more than one state), NELP conservatively reduced the national number cited in the survey by 30%. Comparing this figure with [Census data](#) for individuals that are 18 years and over gives an estimate of 29.3% or nearly one in three U.S. adults who has a criminal record. Using this percentage with [Census data](#) for the population of individuals that are over 18 years old in an individual state gives you a state estimate.

The U.S. Bureau of Justice Statistics provides the correctional population at the national and state-level [here](#) and arrest data at the local agency level [here](#). State agencies frequently collect information on the number of people arrested and convicted, number of people incarcerated or under law enforcement supervision annually. To obtain additional information for your state or locality, look to probation, law enforcement departments, the state departments of justice or health and human services, or others. Although these numbers will not capture the majority of people with old records, they can be a powerful snapshot of the breadth of the issue in your local area.

Job barriers contribute to a broken criminal justice system. One of the most salient public policy issues today is the broken criminal justice system and the high recidivism rate. Advocates entry into fair chance campaigns often comes from the lens of criminal justice reform. Part of the problem is an expensive, inefficient, and damaging criminal justice system. Cite to the dollar amounts to incarcerate an individual in your state, as seen in the Vera Institute's [The Price of Prisons](#). For state-by-state information on recidivism, see Pew's [State of Recidivism](#). For the relationship between unemployment of people with records and public safety, see Chapter 5, "Research Supports Fair Chance Policies."

Job barriers drain the economy and undermine community well-being. Another effect of our broken criminal justice system is the negative impact that restricting job opportunities for workers has on children, families, the community, and larger society. Advocates can refer policymakers or a general audience to studies on financial losses to the individual, the stagnation of economic mobility of the family, or the billions in losses to the national economy. For studies providing these facts nationally, see Chapter 5, "Research Supports Fair Chance Policies." For specific information about criminal justice expenditures at the state-level and at the large county- and city-level, see the U.S. Bureau of Justice statistics on [justice expenditures](#).

Communities of color are especially hard-hit. A fair chance benefits everyone in the community. However, many organizers are drawn to this campaign because communities of color suffer disproportionately in the current justice system. Additionally, some argue that in too many employment policies a criminal record has become a proxy for race. The [2012 EEOC guidance](#) on the use of arrest and conviction records in employment decisions provides a snapshot of the national data demonstrating that criminal record exclusions have a disparate impact on particular racial and ethnic groups. Local sources may have data broken down by race as well.

The solution. Fair chance legislation is not a panacea. Alone, these policies cannot redress the challenges described above. However, the initial stigma of a record is severe enough that targeting the practice of asking about conviction history on job applications is an important step toward fixing the broken system.

Our Research
Summary
identifies the
studies, facts, and
figures to
strengthen your
arguments for a
fair chance for all.

Removing the “box” from the employment application and delaying inquiry into an applicant’s criminal history until later in the process will lower an unnecessary barrier to fairly competing for jobs. Research indicates that once an employer has had the chance to examine the qualifications of the applicant and in some cases understand the context of the record, the employer will be willing to hire the applicant.

For example, in a [study](#) in which test-pairs of potential workers—one with a criminal record and one without—applied for jobs, researchers found that having personal contact with the potential employer reduced the negative effect of a criminal record by approximately 15 percent.

C. Research to Support Your Fair Chance Campaign.

Researchers throughout the country have used federal and state data sources, interviews with people with records and their families, and audits of businesses to determine the role of employment in fighting recidivism and to document the hurdles that people with records face in attaining employment. As part of its work to support a fair chance, NELP collects and analyzes these studies to inform policymakers and advocates who are designing their own fair chance policies. With millions of people in our communities suffering the effects of diminished access to work, it is imperative that this volume of scholarly and investigative work is widely available. NELP will periodically update Chapter 5, “Research Supports Fair Chance Policies.”

At the same time, the dozens of cities and states that have already passed fair chance policies—and the list grows by the day—provide an ideal laboratory to study how delaying conviction history inquiry results in increased opportunity for those with records to find employment.

NELP urges advocates and policy makers to include data collection and analysis as part of their fair chance legislation. Accountability, transparency, and data collection are among the best practices in public policy, and including these provisions in new bills will result in better outcomes for people with records, more employment in the communities to which they return, and models for the most effective measures.

[Contact NELP](#) for assistance in crafting these measures. We greatly appreciate you sharing models, data, or reports that result so that your efforts can help inform the next generation of fair chance bills.

D. Develop the Goals and Strategy for the Fair Chance Campaign.

One of the goals of a fair chance campaign is to educate the community about the barriers that people with records endure and how this negatively impacts the individual, her family, and the entire community. Changing the hearts and minds of the public, humanizing people with records, and diminishing the stigma attached to a record are top priorities of any campaign. Leverage public outreach and the media to educate the community about the local and national facts you've developed that make this issue a critical issue for every American and every person in your area.

Complementing your public education goal is the development of your policy goals. One of the key questions for your coalition is the scope of your policy goals. See Chapter 3 “Best Practices for Creating a Fair Chance Policy” and Chapter 4, “Model Local and State Policies and Laws” as a starting point for your policy development. These model policies provide a comprehensive menu of options that can be adjusted for your local region. In shaping the parameters of your policy, consider the following:

Who? Will the new policy apply to only the government employer, or to government contractors and/or private employers? To maximize the impact of the policy, consider extending it to private employers where most hiring occurs. By now, fair chance policies have been tried and tested for years and some private employers (like Target, Walmart, and Home Depot) have adopted these policies for all of their stores. Applying the policy to government employers may be the best option in challenging political landscapes, but more campaigns today are starting with a comprehensive policy that includes at least government contractors. Another basis for extending the policy to private employers is the potential for [civil rights violations](#) for private and employment decisions that consider records.

What? How robust will the new policy be? The new policy could focus only on removing the question from job applications and delaying inquiry, but a more effective policy would incorporate how a record can be considered or would better connect workers to job opportunities. Chapter 4, “Model Local and State Policies and Laws” provides an extensive list of options. Simply removing the question from the job application and delaying inquiry is a straightforward, procedural change, but to maximize the policy, consider additional components. To combine a “ban the box” approach with “targeted hiring” in the local community, see “**Community Hiring Model Language**” in the Appendix.

How? What's the best vehicle for the new policy? For city and county campaigns consider an administrative change, a resolution, or ordinance. For state campaigns, consider an executive or administrative order or legislation. Note that administrative or executive changes may not be possible if the new policy applies to non-government employers. The most long-lasting impact would be accomplished by adopting a law, such as a regulation or a statute. However, in some jurisdictions a sympathetic executive

branch or city manager could quickly incorporate a new policy. An administrative change could then provide the foundation for a new law down the road.

The decision-making process. As you shape the parameters of the new policy, consider the decision-making process each option would entail. This will help you understand what is politically feasible.

1. **Who are the decision-makers?** What are the decision-makers' top issues? Who influences the decision-makers? Tap into your coalition's experience with local decision-making. As a starting point, many local and legislative bodies have websites with helpful information, such as descriptions of committees and the schedules for meetings.
2. **Who will be the author, sponsor, and/or champion for the new policy?** Lining up a champion on the inside of the decision-making process will help you understand the political landscape and focus your strategy. Once your coalition has a better sense of its policy goals, it may be appropriate to meet with an ally decision-maker for feedback. If you're aiming for a law, then you may need a formal champion in the form of a "sponsor" or "author" of the legislation.
3. **What's the timeline for the process?** A local knowledgeable advocate, the staff of your government champion, and government websites can help map out the timeline.
4. **Introducing a law?** If you're introducing legislation, you'll want to find out more about lobbying in your area and have a plan for outreach to the elected officials. Meeting with staffers and/or the elected officials to cultivate support may be necessary at several points.

E. Launch the Fair Chance Campaign.

At this point your coalition understands the facts and has the national and local information to support your argument. To broaden your base of support, develop outreach materials using this information. Common materials include a factsheet or FAQ. Examples are located in the Appendix:

- **NELP Voices in Support Factsheet**
- **Example of State Campaign Materials (California AB 218)**
- **Example of Local Campaign Materials (San Francisco Fair Chance Ordinance)**

One key additional factsheet is not included in the Appendix, because it is regularly updated online at www.nelp.org with recent numbers of jurisdictions that have adopted "ban the box." This factsheet is available here, [NELP Fair Chance Factsheet & FAQ](#)

Additional
resources such as
factsheets and
examples may be
found in the
Appendix.

To broaden your base and launch the campaign:

Cultivate spokespeople to put a human face on facts and figures. Policymakers and the general public want to know how proposed policies will help real people in their daily lives. However, many people are keenly aware of the social stigma of having a record and “going public” can be personally challenging. Employers with fair hiring practices may also fear repercussions.

Despite these concerns, undoubtedly, it is the courageous acts of directly-affected people, their family members, and business leaders who have been willing to speak out publicly in favor of these policies that have been most influential in changing the hearts and minds of the public. As an example of how to incorporate spokespeople stories into your campaign, see these [placards and public education](#) materials from New York. See Section G, “**Cultivate Voices in Support of a Fair Chance**” for more tips and examples.

Hold an event like a community or town hall meeting on the barriers to opportunities for people with records and rally the public to support the concrete solutions offered by the fair chance campaign. Starting with a faith-based group or other groups with regular meetings may be a first step.

Circulate a petition for individuals to sign affirming that they support the concepts in your proposal.

Ask for the endorsements of community, reentry, civil rights, labor, faith-based, criminal justice, law enforcement, homeless, youth, workforce development, veteran, and racial justice groups in your area. Be creative and think broadly. Some groups have asked for endorsements through email blasts and targeted phone calls. If your policy proposal applies to private employers, consider whether you can get major or small businesses to sign on as “fair chance employers.” A few local campaigns have collected “fair chance pledges” of employers and presented these lists at legislative hearings.

Cultivate your allies with broad and deep networks. Understand who the influential leaders or groups are in the community and invest in one-on-one discussions. These allies will help your community meetings, petition, or endorsement efforts be successful.

Plan a lobby day with visits to the elected officials, if you’re introducing legislation. A lobby day could range from a small group of spokespeople meeting with officials to hundreds of participants making visits with coordinated messages, buttons, or T-shirts, culminating in a rally. Consider adding-on the fair chance legislation to other related lobby day events.

Include a media plan for your launch. Consider elements like a press conference, seeking editorial endorsements, developing a social media strategy, and developing the tools to ensure your team can engage the media effectively. To leverage the media, see below, Section H of this Chapter, “**Amplify a Fair Chance Through the Media.**”

F. Draft a Fair Chance Policy.

While the coalition garners public support, the language of the fair chance policy must be developed. After introducing the basic concept of the new policy, being able to propose a complete policy to policymakers makes “the ask” concrete and ensures it includes all of the necessary elements.

More information-gathering. A simple policy may not require a significant investment in time, but more robust policies may require multiple coalition meetings and information-gathering meetings with government personnel and your government champion. A policy addressing private employers or government contractors will entail understanding the compliance and enforcement mechanisms that are possible in your area. Any meetings with government personnel may be best setup through your government champion and timed appropriately in the process.

Working with legal experts. Policy advocates or attorneys familiar with the local and state laws can help navigate the language and discussion with government personnel. Expect government legal counsel to provide feedback and be prepared to respond to their concerns. [Contact NELP](#) for support with language.

Provide examples. Depending on your policy requests, counter any resistance with examples of other areas’ policies to support your proposal. For example, the policymakers may be most interested in a sister city or state in your region, or a locality that has enacted a similar policy. NELP provides a complete listing of known cities, counties, and states in its [State and Local Guide](#) available on the website. The summary charts in the back of the State and Local Guide provide highlights of the policies such as those areas that extend to private employers or government contractors. The guide also includes links to the adopted laws and policies. See Chapter 3 “**Best Practices for Creating a Fair Chance Policy**” and Chapter 4 “**Model Local and State Policies and Laws**” for information on how to draft a fair chance policy.

G. Cultivate Voices in Support of a Fair Chance.

Developing strong spokespeople in support of your fair chance policy is essential to ensuring that the public is educated about the broad depth and diversity of support for your efforts. In addition to elevating the voices of people with records who face poor job prospects, the campaign should feature allies who can speak to different reasons for championing the policy.

For example, members of the police force, probation or parole departments can highlight the fact that fair chance policies increase public safety and lead to reduced recidivism. Leaders in the faith community can speak to the role of redemption and bringing people with criminal records back into the community. A local business owner may be able to share her own struggles with employment having a criminal record or her positive experience with retaining loyal and committed employees—who happen to have records.

Policymakers can speak to a “smart on crime” and an unemployment-reducing strategy that, respectively, lowers criminal justice spending and minimizes the use of public funds to support unemployed people and their families. Developing spokespeople early and throughout the campaign will allow you to respond to specific requests for information or negative attacks on the policy.

For examples of support, see NELP’s “**Voices in Support Factsheet**” in the Appendix, which includes quotes from business leaders, state and federal legislators, faith leaders, and city human resource departments that will help you situate your fair chance campaign in the national movement. In addition, actively develop local spokespeople who can provide area-specific information, respond to press requests, and attend meetings with policymakers. We encourage you to adapt the language for your own factsheet.

H. Amplify a Fair Chance Through the Media.

Part of erasing the stigma of a criminal record involves educating the public about the damaging consequences of having a record and about the struggles that people with records face daily. Consider developing a media plan for your campaign that will help you reach a broad cross-section of the public. Even with a limited budget, you can add an effective media component to your campaign that will help shape the public debate.

Consistent messaging. First, you want to develop a consistent and powerful message for your coalition. After you develop talking points that resonate with your local area’s concerns, share them with your coalition members so you are all pushing out a consistent message. Your factsheets and other outreach materials will use this same messaging. Note that many groups avoid using stigmatizing labels such as “ex-offenders” or “ex-convicts.” NELP, inspired by the [language campaign](#) of the Center for NuLeadership on Urban Solutions, uses terms that lead with “people” in order to humanize people with records.

Worker stories. Cultivate worker stories, and prep your spokespeople to interact with the media. Reporters need people’s real-life stories to illustrate the issue. For examples, see the [NELP Ban the Box Media Compilation](#).

Media presence for your campaign launch. If you're planning a campaign launch, such as a rally or town hall, consider inviting the media or holding a press conference. Identify speakers who can explain why the policy is important and deliver brief but powerful testimony. Speakers may include an affected worker, a supportive voice in law enforcement, a representative of the local faith-based community, an employer (if the policy applies to private-sector business), and your government champion. You may decide that a press conference is premature for the campaign launch, but it could be a perfect forum to introduce legislation once you have powerful allies in place.

Social media plan. Use your coalition's Facebook and Twitter accounts. These are free ways to circulate your message. Recommend posts and tweets with specific hashtags and ask your coalition to disseminate them widely. Consider coordinating tweets with coalition partners at critical moments in the campaign for a "tweet chat." By engaging with crucial "influencers" (i.e., policymakers, business leaders, journalists, or organizations with large followings), social media posts are more likely to catch the attention of large audiences. If your coalition has the capacity to develop information graphics or purchase social media ads, then consider using these resources to escalate the reach of your posts.

Editorial endorsements. Endorsements from local influential media outlets raise the profile of your campaign and will help shape the public dialogue. Consider drafting short editorial board memos (2-3 pages maximum) explaining why the new policy is needed, why it's relevant news, and who supports it. Offer editorial boards the opportunity to meet with the campaign drivers to ask questions or collect quotes from workers or community leaders.

Develop op-eds, press releases, and pitch your story. Coalition members, influential allies, and unlikely voices in support of a fair chance should submit op-eds. Prepare a list of local reporters who write on issues of public safety, workers, business, or the economy, and reach out to them. Circulate your press releases for newsworthy events such as the launch of your campaign, your lobby day, the introduction of the legislation, and major victories. Encourage reporters to follow your coalition's Twitter feeds during significant moments in the campaign. Tweet reporters when you have major events.

The [NELP Ban the Box Media Compilation](#) provides examples of articles, op-eds, editorial endorsements, press releases, campaign videos, and e-campaign materials.

3 Best Practices for Creating a Fair Chance Policy

As you craft a fair chance policy, here are the top ten principles to follow. NELP partnered with [All of Us or None](#) in developing “best practices” for implementation of California’s new legislation, available [here](#). The top ten best practices below are applicable to any state or region.

NELP’s model state and local policies and laws are available in Chapter 4. A text version of the models is also available for downloading.

1. **Avoid stigmatizing language** such as “ex-offenders” or “ex-felons.” Use terms that lead with “people,” such as “people with records.” NELP was educated by the [language campaign](#) of the Center for NuLeadership on Urban Solutions on this point.
2. **A background check may be unnecessary for a job position** because most jobs do not involve unsupervised access to sensitive populations or handling sensitive information. If the background check is not legally required, it may be cost-saving to forego. Even if a background check is legally mandated, it is unnecessary to exempt a position from the majority of these best practices as these practices do not interfere with conducting background checks.
3. **Avoid blanket exclusions and instead include an equal opportunity statement on job applications** to indicate that a record will not automatically disqualify anyone from a job, unless there is a specific legal exclusion. If a background check is required or if there is a specific legal barrier, inform applicants that “a background check will be conducted for this position.” However, avoid phrases such as “must pass a background check,” or “clean background only” as this language may be interpreted as a categorical exclusion.
4. **If a background check is necessary, only consider those convictions with a direct relationship to job duties and responsibilities and consider the length of time since the offense.** Follow the best practices of the [2012 U.S. Equal Employment Opportunity Commission guidance](#) in evaluating convictions and avoid consideration of records of arrest not followed by a valid conviction. Do not consider sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
5. **Remove inquiries into convictions from the job application.** The most effective policy is to delay all conviction inquiries, oral or written, until after a conditional offer of employment. Do not include a provision to permit “voluntary disclosure” of background check information from the applicant. “Voluntary disclosure” circumvents “ban the box” as applicants are often directed to provide background check information by job services.
6. **Remove self-reporting questions about conviction history.** Discrepancies between self-disclosed information and background checks are often caused by

workers' misunderstanding of their own records, and too often are inaccurate "truth tests." If a background check will be run, there is no benefit to this additional step, which trips up well-intentioned workers. Prior to any discussion about the applicant's conviction history, provide the applicant with a copy of any background check.

7. **If a job applicant is rejected because of a record, inform the applicant.** Provide the applicant with written notice of the specific item in the background check report that is considered job-related and provide the applicant with a copy of the report. Background check reports are often inaccurate, so give applicants the chance to verify or challenge the information.
8. **Provide the applicant the right and sufficient time to submit evidence of mitigation or rehabilitation** when a record is considered in hiring. Evidence may include letters of recommendation from community members and certificates from programs or education. Hold the position open until the review is complete.
9. **Expand the fair chance policy to private employers.** To maximize the impact of the fair chance policy, apply the policy to government contractors and private employers. Another method of strengthening the policy for government contractors is to combine it with targeted hiring, as shown in "Community Hiring Model Language" in the Appendix.
10. **Combine data collection and effective enforcement.** At a minimum, a government agency should have the infrastructure to process complaints and to audit compliance. If the policy applies to private employers, the ability to bring a lawsuit based on a violation of the ordinance may be an effective means of enforcement. With government contractors, the ability to rescind the contract is motivation to comply. Data collection to ensure that the policy is opening job opportunities for people with records will also support enforcement.

Ultimately, a robust enforcement regime will ensure that the law or policy is not just well-intentioned, but effective. NELP is currently developing a chapter for this Toolkit on best practices that are specific to enforcement and implementation.

4 Model Local and State Policies and Laws

A. Model Administrative Memo for Cities and Counties

A mayor, city manager, or human resources director ready to enact a fair chance policy may be able to do so by developing an administrative memo or by executive order. This could be the most viable option if a local council or board is unwilling to entertain a fair chance policy. Legislation is a more permanent solution, but an administrative change may provide the foundation for a new law. However, an administrative policy change may be inappropriate if the goal of the campaign is to apply the fair chance policy to non-government employers.

This model administrative memo provides a comprehensive approach. A more limited approach could be taken by omitting sections below. Note that local- and state-specific terms, such as criminal justice related terms, must be adjusted for local law. For examples, see [Oakland, California](#) and [Durham, North Carolina](#). A downloadable text version of the model policy is [available](#).

Sec. 1. Policy

The City will not conduct background checks on applicants unless it is required by law or the City has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted. Applicants will be considered for employment opportunities on the merits of their skills and experience related to the position sought, and will not be denied employment solely or in part because of a prior conviction, unless the City determines that the conviction is job-related. If the City has determined that a background check is warranted for the position, the background check will be conducted after the City has selected the best candidate for the position. If a background check yields information that is of concern to the City, the applicant will be provided an individualized assessment. The applicant will be given an opportunity to review the background check findings and present information regarding inaccuracy, mitigating circumstances, and rehabilitation.

Sec. 2. Definitions

“Adverse action” means to refuse to hire, to not promote, to discharge a person, or to revoke an applicant’s conditional offer of employment.

“Applicant” means a person who has filed an application for examination to a City job position.

“City” means the City, department, agency, or office thereof.

Sec. 3. Existing Law

The City will comply with state and federal law requiring background checks for certain positions and dictating certain disqualifying offenses and other existing law. An employer’s use of an individual’s arrest and conviction record in making employment decisions to automatically disqualify applicants may violate the prohibition against employment discrimination under federal law, Title VII of the Civil Rights Act of 1964.

The U.S. Equal Employment Opportunity Commission (“EEOC”) Guidance recommends employers adopt the following best practices to avoid violating federal law. The employer should only consider job-related convictions taking into account length of time since the conviction. In addition, the guidelines recommend that the employer perform an individualized assessment on the applicant, which would allow the applicant to demonstrate that the conviction history is inaccurate or provide evidence of mitigating circumstances or of rehabilitation.

The federal Fair Credit Reporting Act, 15 U.S. Code Sec.1681, *et seq.*, governs the use of commercially-prepared background reports. The subject of the background report must authorize the report. These reports should not include information on arrests older than seven years and the applicant should be provided a copy of the report prior to any adverse action.

Sec. 4. Considering Conviction History in Employment Decisions

1. **Identifying position as requiring background check.** Human Resources analyst performs initial review of position to determine if the position is of such sensitivity that a background check is warranted or if a background check is required by law.
2. **Posting job announcements.** All job announcements and position descriptions shall contain the following statement if the position requires a background check, unless otherwise required by law: *“This position is subject to a background check for any convictions directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate.”*
3. **Job applications.** Job applications shall not inquire into an applicant’s conviction history.
4. **Examination process.** A list of eligible applicants will be created based on examination results and the list will be sent to the hiring department. The hiring department will conduct interview(s) and select an individual from the list of eligible applicants.
5. **Notice of rights.** Once an individual has been selected, the hiring department shall notify Human Resources (HR), and HR shall send the individual a conditional offer letter, notice of rights under this policy, and a request for authorization to conduct a background check, if so required.
6. **Limitation to conviction history.** HR shall not use or access the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions,

misdemeanor convictions where no jail sentence can be imposed, and infractions.

7. **Conviction history inquiry.** If required, HR shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, HR shall consider:
 - (a) Whether the conviction is directly related to the duties and responsibilities of that employment position;
 - (b) Whether the position offers the opportunity for the same or a similar offense to occur; and
 - (c) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
 - (d) The length of time since the offense occurred.
8. **Pre-adverse action notice.** If an applicant's conviction history contains information that may be the basis for an adverse action, HR shall:
 - (a) Identify the conviction item(s) that are the basis for the potential adverse action;
 - (b) Provide a copy of the conviction history report, if any;
 - (c) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and
 - (d) Provide the applicant with an individualized assessment as described below.
9. **Individualized assessment.** A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. HR shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the EEOC.
10. **Evidence of mitigation or rehabilitation.** Evidence of mitigation or rehabilitation may be established by:
 - (a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime;

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- and evidence showing compliance with terms and conditions of probation or parole; or
- (b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.

11. **Final notice.** If HR makes an adverse decision, the applicant shall be informed of the final decision, the appeal process, and that the applicant may be eligible for other City positions.
12. **Appeal.** Applicants may appeal the final decision to the Director of Human Resources.
13. **Confidentiality.** Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the City or any of its agencies, or its vendors, to any other entity, except as required by law.
14. **Data Collection.** The Human Resources Department shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants: (a) for a position; (b) who were found eligible for a position; and (c) who were provided a conditional offer for a position. In addition, the Department shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence of mitigation or rehabilitation; (c) who were provided a final adverse notice; and (d) who were hired. The Department shall also regularly conduct a confidential, anonymous survey of employees in positions, in which background checks are not conducted, to determine the number of people with records hired.
15. **Audit.** The Human Resources Department shall conduct a quarterly audit and submit a report to the City Council which will review the City's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the City.

B. Model Resolution for Cities and Counties

A resolution, as a formal expression of the intention or position of the city or county, often entails a simpler process than legislation. Although an ordinance has the benefit of typically being more detailed and thus, potentially more effective, a resolution may be the best course for a fair chance policy that applies only to public employment. In addition, a resolution may be appropriate as an initial step if you need to build your campaign to push for an ordinance that applies to private employers.

This model resolution provides a comprehensive and effective approach. A more limited approach can be achieved by omitting sections. Note that local- and state-specific terms, such as criminal justice related terms, must be adjusted for local law. For examples of resolutions, see [Minneapolis, Minnesota](#) and [Petersburg, Virginia](#). A downloadable text version of the model policy is [available](#).

Purpose

Ensuring that the hiring practices of the City do not unfairly deny people with arrest and conviction records employment with the City and further encouraging rehabilitation of people with records to strengthen communities.

WHEREAS, the ability of people with records to successfully reintegrate into their communities contributes to reduced recidivism, strengthens families, and leads to safer communities; and

WHEREAS, people with records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and

WHEREAS, people of color are arrested, convicted, and incarcerated in numbers disproportionate to their representation in the population as a whole; and

WHEREAS, many people with records in the City are likely to be unemployed or underemployed; and

WHEREAS, people with records represent a workforce that have skills to contribute and a desire to add value to their community; and

WHEREAS, the City seeks to assist the rehabilitation of people with records and ensure healthier, safer communities; and

WHEREAS, studies indicate that stable employment is one of the best predictors of post-conviction success; and

WHEREAS, states and cities across the country have adopted fair chance hiring policies to remove unfair barriers to employment of people with records; and

WHEREAS, the U.S. Equal Employment Opportunity Commission, to maximize compliance with federal anti-discrimination law, recommends delaying inquiry of a job applicant's conviction history and considering the job-relatedness of the conviction taking into account length of time since conviction, and providing an individualized assessment affording the opportunity to correct any inaccuracies and to submit evidence of mitigation or rehabilitation; and

WHEREAS, it is the public policy of the City to encourage the employment of people previously convicted.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY, that the City Human Resources Department shall enact a fair chance policy and prohibit inquiry into conviction history information on all City employment applications unless required by state or federal law; and be it

FURTHER RESOLVED, that the City shall make a good faith determination as to which specific positions of employment are of such sensitivity that a background check is warranted or are required by law; and shall conduct background checks for these positions only; and be it

FURTHER RESOLVED, if it has been established that a position requires a background check, the City shall not conduct the check until after the applicant has been provided a conditional offer of employment; and be it

FURTHER RESOLVED, the City shall not use or access the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions; and be it

FURTHER RESOLVED, that the City shall consider job-related convictions taking into account the length of time since the offense occurred, such that no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction; and be it

FURTHER RESOLVED, that if an applicant has been convicted of an offense that is directly related to the position sought, the Human Resources Department shall notify the applicant and conduct an individualized assessment that permits the applicant to submit information regarding inaccuracy of the record and evidence of mitigation or rehabilitation, as appropriate; and be it

FURTHER RESOLVED, the Human Resources Department shall conduct an audit and submit a report to the City Council which will review the City's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the City; and be it

FURTHER RESOLVED, that the City urges private employers and government contractors to adopt fair hiring practices that encourage the rehabilitation and employment of people with records.

C. Model Ordinance for Cities and Counties

Enacting local law is the best option for regulating private employers. Because it has the force of law, an ordinance is more permanent and authoritative than a resolution. This model ordinance provides a comprehensive approach including the government, vendors, and an option for private employers. A more limited approach could be taken by omitting sections. Note that local- and state-specific terms, such as criminal justice related terms, must be adjusted for local law. For examples, see [New Haven, Connecticut](#) and [San Francisco, California](#). A downloadable text version of the model policy is [available](#).

[EXAMPLE OF PREAMBLE ARE PROVIDED IN “WHEREAS” SECTION OF MODEL RESOLUTION]

Sec. 1. Definitions

“Adverse action” means to refuse to hire, to not promote, to discharge a person, or to revoke an applicant’s conditional offer of employment.

“Applicant” means any person considered for, or who requests to be considered for, employment or any employee considered for, or who requests to be considered for, another employment position, by the employer.

“Awarding authority” means any department, agency, or office of the City that authorizes a vendor to provide requested goods and/or perform services.

“City” means the City, department, agency, or office thereof.

“Employer” means the City; [IF APPLYING TO PRIVATE EMPLOYERS, THEN INCLUDE:] any person regularly employing five or more persons; any person acting as an agent of an employer, directly or indirectly; or any person undertaking for compensation to procure employees or opportunities for employment.

“Employment” means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.

“Vendor” means any vendor, contractor, or supplier of goods or services to the City.

Sec. 2. Considering Conviction History in Employment Decisions

1. **Identifying position as requiring background check.** The employer shall not conduct background checks on applicants unless the employer has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted or if a background check is required by law.
2. **Posting job announcements.** All job announcements and position descriptions shall contain the following information if the position requires a background check, unless otherwise required by law: *“This position is subject to a background check for any convictions directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate.”*

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3. **Job applications.** Job applications shall not inquire into an applicant's conviction history.
 4. **Notice of rights.** Prior to any conviction history check, the employer shall send the applicant a conditional offer letter, notice of rights under this ordinance, and a request for authorization to conduct a background check, if so required.
 5. **Limitation to conviction history.** The employer shall not use or access the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
 6. **Conviction history inquiry.** The employer shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. If the employer is considering the conviction history of the applicant, the employer shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, the employer shall consider:
 - (a) Whether the conviction is directly related to the duties and responsibilities of that employment position;
 - (b) Whether the position offers the opportunity for the same or a similar offense to occur;
 - (c) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
 - (d) The length of time since the offense occurred.
 7. **Pre-adverse action notice.** If an applicant's conviction history contains information that may be the basis for an adverse action, the employer shall:
 - (a) Identify the conviction item(s) that are the basis for the potential adverse action;
 - (b) Provide a copy of the conviction history report, if any;
 - (c) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and
 - (d) Provide the applicant with an individualized assessment as described below.
 8. **Individualized assessment.** A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have ten (10) business days, after issuance of the notice, to respond with any

information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The employer shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.

9. **Evidence of mitigation or rehabilitation.** Evidence of mitigation or rehabilitation may be established by:
 - (a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or
 - (b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
10. **Final notice.** If the employer makes an adverse decision, the applicant shall be informed of the final decision and that he or she may be eligible for other positions.
11. **Appeal.** If denied employment by the employer, applicants may appeal adverse decisions to the Enforcement Agency.
12. **Confidentiality.** Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the employer or any of its agencies, or its vendors, to any other entity, except as required by law.

Sec. 3. Vendors [CONSIDER COMBINING WITH TARGETED HIRING]

1. The City shall do business only with vendors that have adopted and employ conviction history policies, practices, and standards that are consistent with City standards outlined in this chapter.
2. During the bid or contracting process, the Awarding Authority shall review all vendors' conviction history policies for consistency with City standards. The vendors' conviction history standards shall be part of the criteria to be evaluated by the City when determining whether to award a City contract. Further, the City will be able to evaluate a vendor's execution of the conviction history standards as a part of the performance criteria of said City contract(s). The Awarding Authority shall consider any vendor's deviation from these conviction history standards as grounds for fines or rejection, rescission, revocation, or any other termination of the contract, or debarment from all City contracts.

Sec. 4. Compliance

1. **Enforcement Agency.** The employer shall retain application forms, records of employment, and other pertinent data and records required under this chapter, including but not limited to, communication with the applicant, for a minimum of three years, and shall allow the Enforcement Agency access to such records to monitor compliance with this chapter. Any person who is aggrieved by an employer's violation of these provisions may contact the Agency to report any problems, concerns, or suggestions regarding the implementation, compliance, and impact of these sections, and the Agency shall keep a record. In addition, the Agency shall conduct periodic reviews to assess compliance with these sections. The Agency shall investigate and review complaints. The Agency shall report quarterly on complaints, investigations, and reviews.
2. **Data Collection.** The employer shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, the employer shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence of mitigation or rehabilitation; (c) who were provided a final adverse notice; and (d) who were hired. The City shall also regularly conduct a confidential, anonymous survey of employees in City positions, in which background checks are not conducted, to determine the number of people with records hired.
3. **Audit.** The Human Resources Department shall conduct an audit and submit a report to the City Council which will review the City's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the City.

[IF APPLYING TO PRIVATE EMPLOYERS, THEN INCLUDE:]

4. **Penalty.** The Enforcement Agency may issue a fine of up to \$1000 for a first violation of this chapter and provide counseling to the private employer to ensure future compliance. Subsequent violations are subject to fines of up to \$2000 per violation. In addition, an individual may bring a civil action in any court of competent jurisdiction against the employer or other person violating this chapter, and upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to damages, injunctive relief, and reasonable attorney's fees and costs. Where an employer does not maintain or retain adequate records documenting compliance or does not allow the Enforcement Agency reasonable access to such records, it shall be presumed that the employer did not comply, absent clear and convincing evidence otherwise.

D. Model State Executive Order

In both California (2010) and Illinois (2013), the governors were committed to enacting a fair chance policy at a time when passing a bill was not feasible. Although legislation is a more permanent solution, it is also resource-intensive to initiate a statewide campaign. With the governor's backing assured, an executive order may be an appropriate first step in a legislative campaign. In fact, in both California and Illinois, the legislatures passed fair chance legislation in 2013 and 2014, respectively. If the goal of the fair chance campaign is to apply the policy to private employers, a bill may be the only vehicle.

This model executive order provides a comprehensive approach for state agencies. A more limited approach could be taken by omitting sections. Note that state-specific terms, such as criminal justice related terms, must be adjusted for state law. For an example of a state administrative order, see [Illinois](#). A downloadable text version of the model policy is [available](#).

Sec. 1. Scope

This Order shall apply to all positions in State agencies, boards, and commissions. This Order also urges private employers and government contractors to adopt similar fair hiring practices that encourage the rehabilitation and employment of people with records.

Sec. 2. State Employment Applications

The State Personnel Department shall modify the application for state employment to remove any questions about the applicant's conviction history.

Sec. 3. Authorization of Release of Background Check

To the extent a background check is conducted for the position being filled, each agency, board, and commission shall use an Authorization for Release form that obtains an applicant's consent to acquire information relating to the applicant's conviction history. The form shall indicate that the State shall not base employment decisions on the information contained in the background check of an applicant unless the law prohibits hiring an individual with a certain conviction for the position sought or the applicant's conviction is directly related to the duties and responsibilities of the position sought. The form shall indicate that job-related convictions will not automatically disqualify the candidate.

Sec. 4. Considering Conviction History in Employment Decisions

1. **Establish procedure.** Each agency, board, and commission shall establish a documented review process: (a) to determine whether the relevant position is of such sensitivity that a background check is warranted or if a background check is required by law; and (b) to evaluate an applicant's background check in accordance with procedures below.

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2. **Limitation to conviction history.** The agency, board, or commission may not inquire into or consider records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
 3. **Conviction history inquiry.** The agency, board, or commission shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. If the agency, board, or commission is considering the conviction history of the applicant, the agency, board, or commission shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, the agency, board, or commission shall consider:
 - (a) Whether the conviction is directly related to the duties and responsibilities of that employment position;
 - (b) Whether the position offers the opportunity for the same or a similar offense to occur;
 - (c) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
 - (d) The length of time since the offense occurred.
 4. **Pre-adverse action notice.** If an applicant's conviction history contains information that may be the basis for an adverse action, the agency, board, or commission shall:
 - (a) Identify the conviction item(s) that are the basis for the potential adverse action;
 - (b) Provide a copy of the conviction history report, if any;
 - (c) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and
 - (d) Provide the applicant with an individualized assessment as described below.
 5. **Individualized assessment.** A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The agency, board, or commission shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.

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6. **Evidence of mitigation or rehabilitation.** Evidence of mitigation or rehabilitation may be established by:
 - (a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or
 - (b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
 7. **Final notice.** If the agency, board, or commission makes an adverse decision, the applicant shall be informed of the final decision, the appeal process, and that the applicant may be eligible for other State positions.
 8. **Appeal.** Applicants may appeal the final decision to the Personnel Department.
 9. **Confidentiality.** Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the State, except as required by law.
 10. **Data Collection.** The State Personnel Department shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, the Department shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence of mitigation or rehabilitation; (c) who were provided a final adverse notice; and (d) who were hired. The Department shall also regularly conduct a confidential, anonymous survey of employees in positions, in which background checks are not conducted, to determine the number of people with records hired.
 11. **Audit.** The State Personnel Department shall conduct an audit and submit a report to the Governor's Office which will review the State's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the State.

E. Model State Legislation

The first state, Hawaii, has had its fair chance statute in place since 1998. Each year an increasing number of legislatures are introducing fair chance bills. The model legislation below provides a comprehensive example applying to all public employment, including state agencies, cities, counties, and state licensing, and contractors with an option for private employers. A more limited approach could be taken by omitting sections. Note that state-specific terms, such as criminal justice related terms, must be adjusted. For an example of a comprehensive state law, see [Minnesota](#). For an example of a more modest state law, see [California](#). A downloadable text version of the model legislation is [available](#).

Sec. 1. Policy

The Legislature finds and declares that reducing barriers to employment for people with arrest and conviction records, and decreasing unemployment in communities with concentrated numbers of people with records, are matters of statewide concern. The Legislature further finds and declares that increasing employment opportunities for people with records will reduce recidivism and improve economic stability in our communities.

Sec. 2. Definitions

“Applicant” means any person considered for, or who requests to be considered for, employment or any employee considered for, or who requests to be considered for, another employment position, by the employer.

“Employer” means the State, its agencies, or political subdivisions; **[IF ADDING PRIVATE EMPLOYERS, THEN ADD:]** and any person in this State employing four (4) or more individuals; any person acting in the interest of an employer directly or indirectly; or any person undertaking for compensation to procure employees or opportunities for employment.

“Hiring authority” shall mean the person, board, commission, or department of the State, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment.

“Licensing authority” shall mean the person, board, commission, or department of the State, its agencies or political subdivisions, responsible by law for the licensing of persons for occupations.

“License” includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the State, its agents, or political subdivisions before a person can pursue, practice, or engage in any occupation.

“Occupation” includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the State, its agencies, or political subdivisions.

Sec. 3. Availability of Records

- (a) The following criminal records shall not be used, distributed, or disseminated by the State, its agents, or political subdivisions in connection with any application for employment nor in connection with an application for a license:
 - (1) Arrest not followed by a valid conviction.
 - (2) Convictions which have been sealed, dismissed, or expunged.
 - (3) Misdemeanor convictions for which no jail sentence can be imposed or infractions.
- (b) Any information pertaining to an applicant’s background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the State, its agents, or political subdivisions, except as required by law.

Sec. 4. Considering Conviction History

- (a) An employer or hiring authority shall not inquire into or consider an applicant’s conviction history until after the applicant has received a conditional offer.
- (b) A licensing authority shall not inquire into or consider the conviction history of an applicant for licensing until after an applicant is found to be otherwise qualified for the license.
- (c) Job applications and licensing applications shall not inquire into an applicant’s conviction history.

Sec. 5. Relation of Conviction to Employment or Occupation

- (a) No person shall be disqualified from employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of a prior conviction, unless it is a directly related conviction to the position of employment sought or to the occupation for which the license is sought. If a statute explicitly requires that certain convictions are automatic bars to employment or licensing, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment or licensing, solely or in part because of a prior conviction, unless it is a directly related conviction to the position of employment sought or to the occupation for which the license is sought.

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- (b) In determining if a conviction directly relates to the position of employment sought or the occupation for which the license is sought, the employer, hiring authority, or licensing authority shall consider:
- (1) Whether the conviction is directly related to the duties and responsibilities of that employment position or occupation;
 - (2) Whether the position or occupation offers the opportunity for the same or a similar offense to occur;
 - (3) Whether circumstances leading to the conduct for which the person was convicted will recur in the position or occupation; and
 - (4) The length of time since the offense occurred;

Sec. 6. Notification of Denial of Employment or Disqualification from Occupation

- (a) If an employer, hiring authority, or licensing authority intends to deny an applicant a position of employment or intends to disqualify an applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's prior conviction of a crime, the employer, hiring authority, or licensing authority shall notify the applicant in writing of the following, prior to a final decision:
- (1) Identify the conviction item(s) that are the basis for the potential denial or disqualification;
 - (2) Provide a copy of the conviction history report, if any; and
 - (3) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide.
- (b) The applicant who has been convicted of an offense which directly relates to the employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the employment sought or the occupation for which the license is sought.
- (c) The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The employer or hiring authority shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.
- (d) Evidence of mitigation or rehabilitation may be established by:
- (1) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or

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- (2) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
- (e) If an employer, hiring authority, or licensing authority denies an applicant a position of employment or disqualifies the applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's prior conviction of a crime, the employer, hiring authority, or licensing authority shall notify the applicant in writing of the following:
- (1) The final denial or disqualification;
 - (2) The appeal process;
 - (3) The applicant may be eligible for other employment or occupation; and
 - (4) The earliest date the applicant may reapply for a position of employment or a license.

Sec. 7. Contractors

- (a) It shall be the policy of the State to do business only with contractors that have adopted and employ written policies, practices, and standards that are consistent with the requirements of Sections 1-6.
- (b) State agencies shall review all contractors' background check policies for consistency with the policies of the State as expressed in Sections 1-6, and shall consider background check policies and practices among the performance criteria in evaluating a contract.

Sec. 8. Compliance

- (a) The employer shall retain application forms, records of employment, and other pertinent data and records required under Sections 1-6, including but not limited to, communication with the applicant, for a minimum of three years, and shall allow the Enforcement Agency access to such records to monitor compliance with Sections 1-6. Any person who is aggrieved by an employer's violation of these provisions may contact the Agency to report any problems, concerns or suggestions regarding the implementation, compliance and impact of these sections, and the Agency shall keep a record. In addition, the Agency shall conduct periodic reviews to assess compliance with these sections. The Agency shall investigate and review complaints. The Agency shall report quarterly on complaints, investigations, and reviews.
- (b) The employer shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, the employer shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence of mitigation or rehabilitation; (c) who were provided a final

adverse notice; and (d) who were hired. Public employers shall also regularly conduct a confidential, anonymous survey of employees in public employment positions, in which background checks are not conducted, to determine the number of people with records hired.

- (c) Any appeals or complaints or grievances concerning violations of these sections by public employers shall be processed and adjudicated in accordance with established State procedures.
- (d) The State Personnel Department shall conduct an audit to review the State's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the State.

[IF ADDING PRIVATE EMPLOYERS, THEN ADD:]

- (e) The Enforcement Agency may issue a fine of up to \$1000 for a first violation of Sections 1-6 and provide counseling to the private employer to ensure future compliance. Subsequent violations are subject to fines of up to \$2000 per violation. In addition, an individual may bring a civil action in any court of competent jurisdiction against the employer or other person violating Sections 1-6, and upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to damages, injunctive relief, and reasonable attorney's fees and costs. Where an employer does not maintain or retain adequate records documenting compliance or does not allow the Enforcement Agency reasonable access to such records, it shall be presumed that the employer did not comply, absent clear and convincing evidence otherwise.

Sec. 9. Application

The provisions of these sections shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of employment on the grounds of conviction of an offense. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny, suspend, or terminate employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of an offense but only in the same manner and to the same effect as provided for these sections. Nothing in these sections shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of employment.

5 Research Supports Fair Chance Policies

NELP estimates
that 70 million
people in the
United States have
an arrest or
conviction record.

NELP's conservative estimates indicate that roughly 70 million people in the United States have some sort of a criminal record¹ and nearly 700,000 people return to our communities from incarceration every year. Numerous research studies find that people require a combination of family support, community assistance, and economic opportunity to make different choices and stay out of the criminal justice system. Having access to employment opportunities is a critical component of this web of support. A steady job provides not just financial resources, but also connections to new people and behaviors and a motivation to remain out of incarceration.

Unfortunately, finding a job is all too difficult for many people with records. Men with criminal records account for about 34 percent of all nonworking men between the ages of 25-54 (generally considered to be prime working age), according to a New York Times/CBS News/Kaiser Family Foundation poll.² And the Great Recession made it even worse; for example, in Washington State, researchers found that before the Recession 40 percent of the formerly incarcerated were employed, but in 2008 the proportion had dropped to 10 percent.³

While having a job—especially a low-wage job—is not a guarantee that a formerly incarcerated person will not reoffend, unemployment strains critical family supports and provides opportunities and motives to reengage in illegal behaviors. Thus, removing a barrier that cuts off employment opportunities before the hiring process even begins, is critical to designing a robust policy platform to help millions of Americans with criminal records reenter our communities.

Below is information on studies that offer research and data that support the proposition that removing unjust barriers to employment is good for individuals, families, and communities, increases public safety, and contributes to a robust economy.

A. Removing Job Barriers for People with Records Helps the Economy

- Economists estimated that because people with felony records and the formerly incarcerated have poor prospects in the labor market, the nation's gross domestic product in 2008 was reduced by \$57 to \$65 billion.⁴
- A 2011 study by the Economy League of Greater Philadelphia found that putting 100 formerly incarcerated persons back to work would increase their lifetime earnings by \$55 million, increase their income tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, all while saving more than \$2 million annually by keeping them out of the criminal justice system.⁵
- A Washington State analysis found that providing job training and employment to a formerly incarcerated person returned more than \$2,600 to taxpayers (2014 dollars).⁶

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- By the time he has hit his peak earning years, a typical former inmate will have earned \$192,000 less in 2014 dollars than if he had never been incarcerated,⁷ with a commensurate decline in income taxes and a diminished ability for consumer activity with accompanying sales taxes.
 - In a study of women released from prisons in Texas, 18 percent of respondents reported depending on public assistance even 8 to 10 months after release.⁸ Another study found that nearly one-fifth of heads of households relying on Temporary Assistance for Needy Families (TANF) had been convicted of a felony or arrested.⁹ These numbers don't fully reflect the need experienced by people with records and their families since some types of violations disqualify applicants for various types of publicly-funded supports.

B. Employing the Formerly Incarcerated Improves Public Safety

- A 2011 study of the formerly incarcerated found that employment was the single most important influence on decreasing recidivism, and that two years after release nearly twice as many employed people with records had avoided another brush with the law than their unemployed counterparts.¹⁰
- A three-year recidivism study found that formerly incarcerated persons with one year of employment had a 16 percent recidivism rate over three years as compared to a 52.3 percent recidivism rate for all Department of Correction releases. Even just 30 days of employment lowered the three-year recidivism rate to 20 percent.¹¹
- An examination of a national experimental public work program for the formerly incarcerated found that even marginal employment opportunities were effective in reducing illegal activity and arrest for those over 27 years of age.¹²
- A study of state-level data concluded that a 1 percent drop in the unemployment rate causes a 2 percent decline in burglary, a 1.5 percent decrease in larceny, and a 1 percent decrease in auto theft.¹³

C. Children and Families Suffer When People with Records Can't Work

- In the year after an incarcerated father is released, family income drops by approximately 15 percent from what it was before incarceration.¹⁴
- Upward mobility for those with criminal records is significantly diminished; while one-third of men without a record in the lowest quintile of earners were

still at that level 20 years later, more than two-thirds of men with records were stuck there.¹⁵

- One survey of family members of the formerly incarcerated found that 68 percent said those who were parents were having trouble paying child support, 43 percent were challenged in regaining custody of their children, and 26 percent experienced trouble rebuilding relationships with family.¹⁶
- Families of the formerly incarcerated often struggle to provide them with financial help. One study of women with felonies found that 65 percent relied on a family member or spouse for financial support.¹⁷
- Interviews with family members of formerly-incarcerated men found that 83 percent had provided the recently released family member with financial support, but that half those reported that this presented financial challenges for themselves and 30 percent went so far as to call these “financial hardships.”¹⁸

D. Fair Chance Policies Help People with Records Get Jobs

Employers Refuse to Consider Applicants With Criminal Records

- A study of help-wanted advertisements in Virginia found that of more than 192,000 total positions listed, just under 16,000 (or 8.23 percent) were open to hiring an applicant with a record.¹⁹
- Interviews with Boston-area employers found that employers were especially uncomfortable considering a recently released person with a record.²⁰
- Other employer interviews indicated that while nearly all employers would “definitely” or “probably” hire applicants on public assistance, with lengthy unemployment spells, or other “stigmatizing characteristics,” only 40 percent would give the same consideration to applicants with criminal records.²¹
- Studies have shown that if hiring discrimination takes place, it is most likely (76 percent) to take place at the first interaction: the submission of a job application. Applicants who indicate a criminal record on these applications are much less likely to get a call-back: 34 percent of whites without a record were contacted, while only 17 percent of those with a record did; and among African Americans 14 percent without a record got a callback, but only 5 percent one of African Americans with a criminal record heard back from the potential employer.²²

Personal Contact and Context Put a Criminal Record in Perspective, Giving Applicants a Fair Chance

- Studies show that time since release can itself be a predictor of subsequent criminal activity: one found that among those who did not reoffend in the first 10 years after release, only 3.3 percent were reconvicted in the next 10 years;²³ another found that the number of formerly incarcerated people who returned to prison peaked at 10 months, and that the risk of re-offense halved every 10 months thereafter;²⁴ and a third found that 6 or 7 years after release, the risk for recidivism among those with criminal records was only marginally higher than among those who had never offended.²⁵
- A survey of California employers found that if they knew the nature of an offense, their willingness to consider hiring a worker varied significantly, with 23 percent willing to hire a person with a drug-related felony, and 84 percent willing to consider applicants with a misdemeanor offense, but a blanket prohibition on hiring those with a “criminal record” does not allow for this kind of qualitative assessment.²⁶
- In a study in which test pairs of potential workers, one with a criminal record and one without, applied for jobs researchers found that having personal contact with the potential employer reduced the negative effect of a criminal record by approximately 15 percent.²⁷
- In a study released in 2014 of how hiring managers consider job applicants with criminal records, one of the central themes of the employers’ accounts of hiring was that applicants can compensate for their criminal records based on their personality and ability to make in-person contact with hiring authorities.²⁸

E. Employers Find Valued Workers

- One study of former prisoners found that 8 months after release, 80 percent of employed respondents said that their employers knew about their criminal record but that they were satisfied with their work and their wages.²⁹
- The Human Resources Director for Austin, TX, endorses their Ban the Box policy. “We don’t hire people because they [have records], we hire people because they’re the most qualified...There is a social responsibility for Government to help enable that benefit for the community...There are extremely talented and qualified people who happen to [have records]...They are just as productive as people who do not have criminal records.”³⁰

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- “In my experience, people with criminal records are often model employees. They are frequently the most dedicated and conscientious. A lot of doors are shut to them, so when someone gives them an opportunity, they make the most of it.” Brad Friedlander, CEO Red Restaurant Group.³¹
 - In focus groups conducted by the U.S. Department of Labor’s Center for Faith-Based and community Initiatives in 2002, employers of people with criminal records said: “One of the [people with records] we hired is now a store manager, and another is an assistant manager. Each has excellent management skills and both are great mentors to other [people with records] we’ve hired”; and, “There are many misconceptions out there about [people with records]. We try to look beyond that label and consider each person on his or her merits—on a case-by-case basis.”³²
 - Terri Jackson, head of a telecommunications company in Denver, CO, has said, “Of all the groups we targeted, [people with records] turned out to be the best employees, in part because they usually have a desire to create a better life for themselves...They are often highly motivated and many have usable job skills that are desirable for an employer. They come to work every day and do not engage in the type of behaviors that will land them back in the penal system.”³³
 - Mark Chippendale, a former manufacturing executive and current Rhode Island state representative, “In my experience, a lot of times these folks actually make exemplary employees because they work harder and they have something to prove in a way, or that’s how they feel.”³⁴
 - “I believe our society should do more to support positive initiatives to encourage the rehabilitation of prisoners. We should create more chances for people who have been in jail to make a positive contribution to the workforce,” Richard Branson, founder of Virgin Airlines and Virgin Group, a consortium comprised of more than 400 companies worldwide.³⁵
 - Joey Turner, owner of Brewed, a coffeehouse in Fort Worth, TX, says of his employees with criminal records: “It’s not just a job for them—it’s their life. It’s the on-ramp for them to get back into society. They have inspired our staff because they are so serious.”³⁶
 - “Numerous studies prove that a job is the key ingredient in the recipe for stronger communities and reducing recidivism. Our role is to create those job opportunities and at a fair, living wage.” Gregg Keeling, President RecycleForce.³⁷

Since fair hiring policy passed in Durham County, NC, the number of applicants with criminal records has nearly tripled.

- Evolv, a company that evaluates large amounts of human resources statistics to help companies profile successful employees, has found that “employees with criminal backgrounds are 1 to 1.5 percent more productive on the job than people without criminal records.”³⁸

F. Fair Chance Policies Have Proven Effective

- After the City of Minneapolis implemented its policy, they found that removing the criminal disclosure box from initial applications and postponing background checks until a conditional offer of employment was made decreased the amount of transactional work for City staff, did not slow down the hiring process, and resulted in more than half of applicants with convictions being hired.³⁹
- As a result of its new criminal disclosure policy, 10 percent of the City of Atlanta’s hires between March and October of 2013 were people with records.⁴⁰
- In Durham County, North Carolina, the number of applicants with criminal records recommended for hire has nearly tripled in the two years since its “ban the box” policy passed, with the resulting number of hires increasing from 35 to 97. On average, 96.8 percent of those with records recommended for hire ultimately get the job.⁴¹

¹ In 2012, there were an estimated 100,596,300 subjects (“individual offenders”) in the state criminal history files within the fifty states, American Samoa, Guam and Puerto Rico. U.S. Dept. of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2012 (Jan. 2014) at p.2 (<https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>) To account for duplication (individuals who may have criminal records in more than one state), NELP conservatively reduced the numbers cited in the survey by 30% to 70,417,410 subjects. The U.S. Census 2012 population estimate for those that are 18 years and over was 240,185,952. Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2012, U.S. Census Bureau, Population Division (June 2013). (www.census.gov) Using these estimates, there are 70 million U.S. adults or almost one in three U.S. adults (29%) with a criminal history in the U.S. state criminal history files.

² Binyamin Appelbaum, “Out of Trouble, but Criminal Records Keep Men Out of Work,” New York Times (Feb. 28, 2015) (http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?_r=0). Poll available at <http://kff.org/other/poll-finding/kaiser-family-foundationnew-york-timescbs-news-non-employed-poll/>.

³ “Educational Attainment, Employment and Incarceration, Part 2,” Seattle, WA: Seattle Jobs Initiative, 2012. (http://www.seattlejobsinitiative.com/wp-content/uploads/BeyondHeadlines_MAR2012.pdf)

⁴ John Schmitt and Kris Warner, “Ex-offenders and the Labor Market,” Washington, D.C.: Center for Economic and Policy Research, 2010. (<http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>)

⁵ “Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,” Philadelphia, PA: Economy League of Greater Philadelphia, 2011. (http://economyleague.org/files/ExOffenders_Full_Report_FINAL_revised.pdf)

⁶ Elizabeth K. Drake, Steve Aos, and Marna G. Miller, “Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State,” *Victims and Offenders* (4), 2009:

170-196.

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⁷ Bruce Western and Becky Pettit, "Collateral Costs: Incarceration's Effect on Economic Mobility," Washington, D.C.: The Pew Charitable Trusts, 2010.

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⁸ Nancy G. La Vigne, Lisa E. Brooks, and Tracey L. Shollenberger, "Women on the Outside: Understanding the Experiences of Female Prisoners Returning to Houston, Texas," Washington, D.C.: Urban Institute, 2009. (http://www.urban.org/UploadedPDF/411902_women_outside_houston.pdf)

⁹ Gretchen Kirby, Thomas Fraker, LaDonna Pavetti, and Martha Kovac, "Families on TANF in Illinois: Employment Assets and Liabilities," Washington, D.C.: Mathematica Policy Research, Inc., 2003. (<http://aspe.hhs.gov/hsp/tanf-il-emp03/report.pdf>)

¹⁰ Mark T. Berg and Beth M. Huebner, "Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism," *Justice Quarterly* (28), 2011: 382-410.

(<http://www.tandfonline.com/doi/abs/10.1080/07418825.2010.498383?journalCode=rjqy20#preview>)

¹¹ "Safer Foundation Three-Year Recidivism Study, 2008," Chicago, IL: 2008.

(<http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>)

¹² Christopher Uggen, "Work as a Turning Point in the Life Course of Criminals: a Duration Model of Age, Employment, and Recidivism," *American Sociological Review* (67), 2000: 529-546.

(http://www.socsci.umn.edu/~uggen/Uggen_asr_00.pdf)

¹³ Steven Raphael and Rudolf Winter-Ebmer, "Identifying the Effect of Unemployment on Crime," *The Journal of Law and Economics (University of Chicago Law School)* (44), 2001: no page numbers available. (<http://www.jstor.org/stable/10.1086/320275>)

¹⁴ Western and Pettit, 2010.

¹⁵ Ibid.

¹⁶ Tracey Shollenberger, "When Relatives Return: Interviews with Family Members of Returning Prisoners in Houston, Texas," Washington, D.C.: Urban Institute, 2009.

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¹⁷ La Vigne, 2009.

¹⁸ Rebecca L. Naser and Christy A. Visher, "Family Members' Experiences with Incarceration and Reentry," *Western Criminology Review* 7(2), 2006: 20-31. (<http://wcr.sonoma.edu/v07n2/20-naser/naser.pdf>)

¹⁹ Eric Lichtenberger, "Where do Ex-Offenders Find Jobs? An Industrial Profile of the Employers of Ex-Offenders in Virginia," *Journal of Correctional Education* 57(4), 2006: 297-311.

(<http://www.jstor.org/discover/10.2307/23282804?uid=3739856&uid=2129&uid=2134&uid=2&uid=70&uid=4&uid=3739256&sid=21103716568513>)

²⁰ Jennifer Fahey, Cheryl Roberts, and Len Engel, "Employment of Ex-Offenders: Employer Perspectives," Boston, Massachusetts: Crime & Justice Institute, 2006.

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²² Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108(5), 2003: 937-975. (http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf)

²³ Alfred Blumstein and Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47(2), 2009: 327-359.

(http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf)

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Appendix

- **Community Hiring Model Language**
- **NELP Voices in Support Factsheet**
- **Example of State Campaign Materials (California AB 218)**
- **Example of Local Campaign Materials (San Francisco Fair Chance Ordinance)**

Not included in this Appendix due to the frequency of updating the number of jurisdictions with “ban the box” is the [Fair Chance Factsheet & FAQ](#) available through this link. In addition, the [Compilation of Media Featuring Fair Chance and Ban the Box](#) is available through this link.



Community Hiring Model Language: Why Do We Need It And How Does It Work?

Each year hundreds of thousands of people are released from incarceration and return to neighborhoods suffering from underemployment and lack of opportunity. In order to put our communities back to work, we need policies that prioritize lifting local residents out of poverty by giving them access to good jobs.

- *Community hiring requirements create incentives for employers to hire from the community, and good first source referral systems create the pipeline of qualified workers from low-income areas prepared to meet that demand.*
- *Ban the box policies remove questions of criminal history from the initial job application, ensuring applicants are considered on their qualifications first.*
- *Job quality standards such as living wage, paid sick days, and other measures help make sure that the jobs made available are good jobs.*

These policies work together to enhance the applicant pool available to employers, assist employers and policymakers in complying with federal antidiscrimination laws and in redressing economic inequality, and strengthen our communities. This resource will provide information on integrating the policies.

Key Components of a Combined Community Hiring and Ban the Box Approach

Reducing stigma. Some of the ways that people with arrest and conviction records are described reinforces stereotypes. There has been growing consensus that leading with the term “people” is humanizing, such as “people with arrests or convictions” or “people with criminal histories.”

What do these measures do? At a minimum, the ban the box component includes removing questions about criminal records from the job application. More effective ban the box policies include the components detailed below. Targeted hiring measures create obligations on employers to include particular categories of workers such as local and disadvantaged workers as a part of their workforce.

Who is covered? The combined measures can be written into law, policy or contracts to cover local government hiring, include contractors with the local government, or even expand to all public and private employers within the area.

Explaining the Model Language: The Components

Ban the Box Measures and Practices

- **A background check may be unnecessary for a job position** because most jobs do not involve unsupervised access to sensitive populations or handling sensitive information.
- **If a background check is necessary, only consider those convictions with a direct relationship to job responsibilities.** Avoid consideration of old records.
- **Do not consider arrests or dismissed convictions.** Some jurisdictions prohibit the consideration of “arrests not leading to convictions” or “dismissed convictions” in an employment decision.
- **Delay inquiry of criminal history.** Requiring that any question regarding criminal histories is removed from a job application is clear and easily enforceable. All inquiries, oral or written, should be delayed.
- **Conviction history inquiry after a conditional offer.** The most effective policies delay conviction history inquiries until after a conditional offer. A conditional offer signals that the individual is the most qualified person for the job and the final step in the hiring process is the criminal background check.
- **Centralize reviewing conviction history information,** both to limit the number of people with access to confidential information and with fewer reviewers, a higher degree of staff training can be assured.
- **List any legal barriers** that exist for people with past convictions in job announcements. In addition, if a background check is required, inform applicants on the job announcement.
- **Remove self-reporting questions about convictions.** Differences between self-disclosed information and background checks are often caused by misunderstandings and are inaccurate “truth tests.”
- **If a job applicant is rejected because of a past conviction,** provide the applicant with written notice of the specific conviction that is considered job-related and how it is related to the job responsibilities.
- **Provide the applicant with a copy of the results of any background check.** Background check reports are often inaccurate, so give applicants the chance to challenge the reported information. Under federal consumer protection law (*Fair Credit Reporting Act (FCRA)*), the subject of a commercially-prepared background check report must be provided a copy of the report prior to an adverse action.
- **Provide the applicant the right and sufficient time to submit evidence of rehabilitation** when a record is considered in hiring. Evidence may include letters of recommendations from community members and certificates from programs or education. Hold the position open until the review is complete.
- **Include effective enforcement.** Ensure there is an oversight mechanism for the policy, such as an agency that has the infrastructure to process complaints and to audit policies.

Targeted Hiring Measures

- **Clearly defined beneficiaries.** It is essential that the categories of individuals who will benefit from targeted hiring be clearly and specifically defined.
- **Accommodate legal restrictions.** Some laws and government grant restrictions limit the ability of government entities and government grantees to use or require preferences among job seekers. For this reason, our model language limits the use of geographic preferences and does not employ preferences based on race or gender except as permitted by federal law (such as the hiring goals in the Executive Order 11246 regulations for federally funded construction projects).
- **Target both low-income zip codes and individual characteristics.** Effective targeted hiring measures recognize that economic disadvantage occurs both because of an individual's own challenges (poverty, lack of a GED or diploma, having been convicted or arrested) and because of where they live. Our model language targets both residents of low-income zip codes and people with individual barriers to employment.
- **Hard percentage requirements expressed in terms of work hours.** In order to ensure that covered employers take targeted hiring seriously, it is best to set out clear, firm and realistic hiring requirements (as opposed to aspirational goals). Setting a straightforward percentage of the workforce that needs to consist of targeted beneficiaries is a common and effective way to do that. It's also best to express the requirement in terms of work hours performed (rather than jobs performed) to guard against the use of very-short-term hires as a way to meet the requirements.
- **Create high quality construction apprenticeship opportunities.** For targeted hiring programs focused on construction jobs, access to high quality apprenticeship is an essential element. First, it's important to require that at least 20% of the positions on the project will be performed by apprentices to ensure that opportunities will exist at the apprenticeship level. Second, it's important to ensure that the apprentices hired are participating in a high quality training program, and at a minimum that means requiring participation in a program that is registered with the state or federal government. Finally, it's useful to set a separate targeted hiring percentage for apprenticeship level positions. This is usually higher than the percentage for the overall workforce, out of recognition that many of the targeted beneficiaries will be coming in at the apprenticeship level.
- **Frequent reporting of results.** In order to effectively determine whether a targeted hiring program is working and whether adjustments need to be made, those monitoring the program need regularly-reported, accurate data during the course of the project. Our model language requires employers to report quarterly and to provide data as requested to the proper oversight body.
- **Protect the employer's hiring discretion.** Targeted hiring policies are intended to benefit groups of disadvantaged individuals, not to ensure that any particular individual gets hired. It's important that employers retain the authority to make (and the responsibility of making) individual hiring decisions.

Community Hiring Model Language

I. Definitions.

The following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“Applicant” means an individual considered for, or who requests to be considered for, a Covered Job.

“Background Check Requirement” means a valid law or regulation of a governmental or quasi-governmental body.

“Covered Job” means [DESCRIPTION OF UNIVERSE OF JOBS COVERED, e.g. “any job for which at least fifty percent of the work hours during any calendar year are performed on the Project Site”]

“Disadvantaged Worker” means an individual who, prior to commencing work in a Covered Job, is domiciled in an Economically Disadvantaged Area and faces at least two of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) receiving public assistance; (4) having a prior arrest or conviction; (5) suffering from Chronic Unemployment (as defined in the Construction Careers Policy); (6) having been emancipated from the foster care system; or (7) being a veteran of the U.S. military.

“Economically Disadvantaged Area” means a zip code that includes a census tract or portion thereof in which the median annual household income is less than \$40,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census and as updated upon the U.S. Census Bureau issuing updated Median Annual Household Income data by census tract in the American Community Survey.

“Employment Hiring Plan” means a plan presented by an Employer to [GOVERNMENT ENTITY] describing in detail the ways in which Employer will meet its obligations hereunder.

“Employer” means any entity employing at least two full time equivalent individuals to perform Covered Jobs.

“Local Disadvantaged Resident” means an individual whose primary place of residence is within an Economically Disadvantaged Area in [LOCAL GEOGRAPHIC AREA, E.G. CITY OR COUNTY].

“Restricted Federal Funding” means funding from a federal agency the receipt of which prohibits the recipient from engaging in geographic discrimination.

II. Hiring of Targeted Workers

- A. [For projects not receiving Restricted Federal Funding] Each Employer shall ensure that at least thirty percent of all work hours performed by workers in Covered Jobs are performed by Local Disadvantaged Residents. In determining compliance with this subsection, hours worked by residents of states other than [STATE] shall be excluded from the calculation.[OR, for projects receiving Restricted Federal Funding] Each Employer shall ensure that at least thirty percent of all work hours performed by workers in Covered Jobs are performed by residents or Economically Disadvantaged Areas.

- B. Each Employer shall ensure that at least twenty percent of all work hours performed by workers in Covered Jobs are performed by Disadvantaged Workers.
- C. **[For all construction projects]** Each Employer shall employ the maximum number of apprentices allowed by law, shall only employ apprentices enrolled in apprenticeship programs registered with the State or Federal government, and shall ensure that fifty percent of all work hours performed by apprentices are performed by Disadvantaged Workers.
- D. **[For federally-funded construction projects]** Each Employer shall comply with U.S. Executive Order 11246 and all implementing regulations, including satisfaction of hiring goals for minorities and women set forth at 41 CFR sec. 60-4.

III. Fair Hiring Process

- A. The Employer shall not conduct criminal background checks nor inquire into an Applicant's conviction history, unless required to do so by a Background Check Requirement. The Employer shall not conduct credit history checks nor inquire into an Applicant's credit history, unless required to do so by a Background Check Requirement.
- B. Where a criminal background check is required by a Background Check Requirement, the Employer shall not inquire into an Applicant's conviction history until after a conditional offer. Job applications shall not inquire into an Applicant's conviction history.
- C. Prior to a criminal background check, the Employer shall send the Applicant: (a) notification of the conditional offer, (b) request for authorization of the background check, (c) notification that prior to an adverse action, the Applicant will have the opportunity to demonstrate inaccuracy or provide evidence of mitigating circumstances or rehabilitation, and (d) notification about the type of evidence that may be submitted per subsection (c).
- D. In considering an Applicant's criminal background check, an Employer may examine only convictions related to job duties and responsibilities of the Covered Job and shall consider the time that has passed since those convictions.
- E. If an Applicant's criminal background check contains information that may be the basis for an adverse action, the Employer shall: (a) notify the Applicant of the potential adverse action, (b) identify the conviction item(s) that would be the basis for the adverse action, and (c) provide a copy of the report.
- F. The Applicant shall have ten (10) business days, after receipt of the notice of the conviction item(s) that would be the basis for the adverse action, to respond to the Employer with any information rebutting the basis for the adverse action. The Employer shall make the final employment decision based on an individualized assessment of the information submitted and the factors recommended by the U.S. Equal Employment Opportunity Commission.
- G. If the Employer makes an adverse decision, the Applicant shall be informed of the final decision and that he or she may be eligible for other positions.
- H. Where a criminal background check is required by a Background Check Requirement, the Employer shall include the following statement in the job

announcement: “This position is subject to a background check for any convictions related to its duties and responsibilities and will be conducted only after a conditional offer. A conviction history will not automatically disqualify an applicant. If an applicant’s conviction history contains information that may be the basis for an adverse action, the applicant will be notified and provided a copy of the report. After notification, the applicant will have ten business days to provide information about any inaccuracy in the report or any evidence of mitigating circumstances or rehabilitation.”

IV. Miscellaneous

- A. **Nondiscrimination.** Employers shall not discriminate against Local Residents or Disadvantaged Workers on the basis of their Local Resident status, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.
- B. **Retaliation Prohibited.** An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the [GOVERNMENT ENTITY] or participating in any proceedings related to enforcement of this [LAW/POLICY] against the Employer.
- C. **Compliance Records.** Each Employer shall make available to the [GOVERNMENT ENTITY] on a quarterly basis and upon request, records sufficient to determine compliance with its obligations hereunder. An Employer may redact names and social security numbers from requested records in order to protect the privacy of individual employees.
- D. **Hiring Discretion.** Nothing in this [LAW/POLICY/AGREEMENT] shall require that any Employer hire any particular individual.

Voices in Support: Leaders In The Community Support Fair Chance Policies

Supporting the ability of qualified workers with records to obtain employment, thereby reducing recidivism and lowering criminal justice costs, is a bipartisan issue that has garnered support from a variety of leaders. Below are quotes from leaders who lend their voices in support of fair chance policies.

Business Leaders

Major Corporations Target and Walmart Ban the Box Nationally.

“Walmart removed the criminal history box from its application in 2010, said spokeswoman Dianna Gee. “The removal does not eliminate the background check or drug test, but it offers those who’ve been previously incarcerated a chance to get their foot in the door,” she said.” Target’s Vice President and General Counsel of Employee and Labor Relations, Jim Rowader said of the company’s ban the box policy, “We’re interested in a safe workplace and shopping environment . . .” *Star Tribune*, [Target to Ban Criminal History Box on Job Applications](#) (Oct. 26, 2013).

Small Business Owners Recognize the Benefit of Hiring People with Records.

“I joined Main Street Alliance of Florida, a network of local small business owners, to help change [the employment barrier problem]. Along with nearly 200 civil and workers’ rights groups around the nation, we are calling on President Obama to take executive action to ensure that qualified job-seekers with past arrests or convictions are not automatically shut out of employment opportunities with federal agencies and federal contractors.” *The Guardian*, [Keeping People with Felonies From Earning Doesn’t Make us Safer, Only Poorer](#) (March 31, 2015).

Federal, State, and Local Policymakers

Gov. Nathan Deal (R-GA) Bans the Box Because it’s Good for Business.

““Ban the Box” hiring policies enhance Georgia’s reputation as the number one place in which to do business by increasing qualified applicant pools and improving the likelihood that the employer will identify the best candidate for the position; and Georgia is positioned to enhance its reputation as regional leader by becoming the first state in the South to implement a fair hiring policy for applicants with criminal records.” State of Georgia [Executive Order](#) by the Governor (Feb. 23, 2015).

Gov. Chris Christie (R-NJ) Bans the Box to End Discrimination.

"[W]e are also going further to reform our criminal justice system by signing legislation that continues with our promise and commitment to give people a second chance.... So, today, we are banning the box and ending employment discrimination. And this is going to make a huge difference for folks who have paid their debts to society, who want to start their lives over again and are going to have an opportunity to do just that in our state." Governor Chris Christie, [Signing Legislation to Ban the Box](#) (Aug. 11, 2014)

U.S. Senator Rand Paul (R-KY) Understands that the "Box" is a Barrier.

"I know a guy about my age in Kentucky, who grew marijuana plants in his apartment closet in college. Thirty years later, he still can't vote, can't own a gun, and when he looks for work he must check the box, the box that basically says: 'I'm a convicted felon and I guess I'll always be one.' . . . This is a lifelong problem then with employment." U.S. Senator Rand Paul, [Senate Judiciary Committee Testimony](#) (Sept. 16, 2013).

Ban the Box Policy has been a Tremendous Benefit to County.

"[T]here has been no negative or adverse consequences since we made this change back in 2007. The feedback that we've received has been overwhelmingly positive. In fact what we hear from members of the community is that they are far more likely to apply for a position with Alameda County based on this change that we made . . . [W]e've been able to expand our pool of qualified applicants as a result of this change in our application process, which has been a tremendous benefit to the County." Jody Pollak, Alameda County Labor Relations Analyst, Testimony before the California Senate Labor Committee (June 26, 2013).

Faith Community

Ban the Box is Win-Win for Businesses and Job Seekers.

"This unanimous decision to 'ban the box' [in Louisville, KY] is a 'win-win' for our city. . . [B]y extending the policy to include vendors who do business with the city, there will be thousands of businesses who will earn the benefits of opening their doors more fully to people who are skilled and motivated to be quality employees." Rev. Larry Sykes, Citizens of Louisville Organized and United Together, [Heart of Bluegrass State is Latest to "Ban the Box" with Bipartisan Support](#) (March 17, 2014).

Law Enforcement

Pittsburgh Attorney General Endorses Ban the Box.

U.S. Attorney David Hickton said, "If you give someone a shot after they've made a mistake, they often become your best employee. . . [People] are coming out, and we have a choice. We can take steps when they come out to give them a chance, or we can cycle them right back into the system." Mr. Hickton urged private employers to follow the lead of Pittsburgh and Philadelphia and "ban the box." *Pittsburgh Post-Gazette* [Pittsburgh's U.S. Attorney Urges Employers to Hire People with Records](#) (May 20, 2013).

Richmond, California Chief of Police Supports Fair Hiring.

"[This policy] will help reduce recidivism and provide members of the Richmond community and other residents of California the opportunity to compete for jobs." Chief Chris Magnus, City of Richmond, Letter in Support of California AB 218 (July 17, 2013).

State Campaign Materials: California Assembly Bill 218

To help support efforts to launch fair chance campaigns, we've compiled the campaign materials developed by the lead sponsors of California Assembly Bill 218. Please note that facts cited in the materials were developed in 2013 and are out-of-date.

A Broad Coalition Supported AB 218

[Signed on October 10, 2013](#) by Governor Edmond “Jerry” Brown (D), [AB 218](#) removes questions about convictions from state agency, city, county and special district job applications and postpones such inquiries until later in the hiring process. The bill was initially introduced in 2012 as AB 1831 applying only to cities and counties. After the first effort stalled in the senate, AB 218 was introduced in 2013. Before AB 218 and under the administration of Governor Arnold Schwarzenegger (R), an administrative policy removing the conviction question from state job applications was adopted in 2010. On the effective date of the legislation, NELP released a [survey](#) of the largest cities and counties in California, which [revealed statewide implementation of the law](#).

Sponsoring organizations of AB 218 included the [National Employment Law Project](#), [Legal Services for Prisoners with Children](#), [All of Us or None](#), and [PICO California](#). More than 100 organizations, spanning labor, interfaith, reentry, civil rights, employment, criminal justice, and others groups, formed a coalition that strongly supported the bill. AB 218 was also endorsed by several major newspapers, including [The New York Times](#), [Los Angeles Times](#), and [Sacramento Bee](#).

Attachments

Letter of support [link](#)

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Lifting Up What Works®



AB 218 (DICKINSON) FAIRNESS IN GOVERNMENT HIRING

What does the bill do? This bill would provide that state or local agencies delay consideration of an applicant's criminal history until after the agency has determined the applicant meets the minimum job qualifications.

Why is it needed? Nearly seven million Californians have criminal records that might cause them to be denied jobs, even for arrests or old, minor convictions. Studies have shown that stable employment lowers recidivism. The commonsense approach is to remove barriers to success for people who are qualified to work.

Do other states have this policy? Ten states, including California's state personnel board, have adopted similar policies—several with bipartisan support. The states are Colorado, Connecticut, Hawaii (since 1998), Illinois (committed), Maryland, Massachusetts, Minnesota, New Mexico and Rhode Island. There are over fifty U.S. cities and counties, including ten in California, and New York City that have implemented this policy.

AB 218 allows people with a conviction history to get a foot in the door without compromising safety and security on the job. Key facts about AB 218:

- Agencies may still conduct criminal background checks and screen out workers.
- Any positions that require background checks or in law enforcement agencies are **exempted**.
- Human resources departments in California with policies like AB 218 have attested to ease of implementation, the streamlining of resources, and the benefit of expanding their pool of workers.
- The U.S. Equal Employment Opportunity Commission endorsed the policy in 2012 as a best practice.

Co-Sponsors: Michelle Rodriguez, National Employment Law Project, mrodriguez@nelp.org, (510) 663-5705
Rev. Damita Davis-Howard, PICO California, ddavis-howard@oaklandcommunity.org, (510) 915-2651
Jesse Stout, Legal Services for Prisoners with Children, jesse@prisonerswithchildren.org, (415) 625-7049

For more information: Taryn Kinney, Asm. Roger Dickinson, (916) 319-2007 or Taryn.Kinney@asm.ca.gov

SUPPORT FOR AB 218

National Employment Law Project (co-sponsor)
 Legal Services for Prisoners With Children (co-sponsor)
 PICO California (co-sponsor)
 All of Us or None (co-sponsor)
 National Council of La Raza
 PolicyLink
 Justice Not Jails
 A New Way of Life Reentry Project
 Los Angeles Mayor Eric Garcetti
 San Francisco Mayor Ed Lee
 13 California City Violence Prevention Network

American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME)
 Amalgamated Transit Union, California
 California Conference of Machinists
 California Correctional Peace Officers Association (CCPOA)
 California Labor Federation, AFL-CIO
 California Teamsters Public Affairs Council
 Professional & Technical Engineers, Local 21
 Service Employees International Union (SEIU), Local 1000
 UNITE HERE

United Food and Commercial Workers Union,
 Western States
 Utility Workers Union of America, Local 132
 Alameda County Board of Supervisors
 City of Berkeley
 City of Carson Mayor Jim Dear
 City of Richmond
 Richmond Chief of Police, Chris Magnus
 Glendale City Employees Association
 Organization of Sacramento Municipal Utility
 District Employees
 San Bernardino Public Employees Association
 San Francisco Board of Supervisors
 San Francisco District Attorney George Gascón
 San Francisco Public Defender Jeff Adachi
 San Francisco Chief Adult Probation Officer
 Wendy Still
 San Luis Obispo County Employees Association
 Santa Rosa City Employees Association
 Santa Clara County Board of Supervisors
 9to5 California, National Association of Working
 Women
 ACLU of California
 All of Us or None -Sacramento Chapter
 All of Us or None, Los Angeles/Long Beach
 All of Us or None AV-East Kern Chapter
 All of Us or None San Diego
 A New PATH (Parents for Addiction Treatment
 and Healing)
 Asian & Pacific Islanders California Action
 Network (APIsCAN)
 AV-East Kern Second Chance
 Bayview Baptist Church
 California Attorneys for Criminal Justice
 California Catholic Conference of Bishops
 California Coalition for Women Prisoners
 California Communities United Institute
 California Drug Counseling, Inc.
 California Employment Lawyers Association
 California Partnership
 California Prison Focus
 California Public Defenders Association
 California Reform Sex Offender Laws
 California State Conference of the National
 Association for the Advancement of Colored
 People (NAACP)
 Californians for Safety and Justice
 Center for Young Women's Development
 Center on Juvenile and Criminal Justice
 Chrysalis
 Coalition on Homelessness
 Community Coalition
 Contra Costa Interfaith Supporting Community
 Organization
 Congregations Organizing for Renewal (COR)

Crossroad Bible Institute
 CURB (Californians United for a Responsible
 Budget)
 The Drug Policy Alliance
 The East Bay Alliance for a Sustainable Economy
 East Bay Community Law Center
 Ella Baker Center for Human Rights
 Engineers and Scientists of CA
 Equal Justice Society
 Equal Rights Advocates
 Friends Committee on Legislation of California
 Greenlining Institute
 Homies Unidos
 InnerCity Struggle
 Justice First, LLP
 Justice Now
 LA Voice
 Lawyers' Committee for Civil Rights of the San
 Francisco Bay Area
 Legal Aid Society-Employment Law Center
 Los Angeles Alliance for a New Economy
 Los Angeles Regional Reentry Partnership
 Mexican American Legal Defense and
 Educational Fund (MALDEF)
 Much More Bounce Inc./Ministries
 The National H.I.R.E. Network
 National Association of Social Workers -
 California Chapter
 NMT/The Ripple Effects
 Oakland Rising
 Pacific Institute
 Public Counsel
 Sacramento Area Congregations Together
 (A.C.T.)
 Saffron Strand, Inc.
 Sanmina Corporation
 SHIELDS for Families
 Starting Over Inc.
 Straight Talk Program, Inc.
 The Sentencing Project
 The Training Center
 Transgender Law Center
 University of California Student Association
 (UCSA)
 Western Center on Law & Poverty
 Women's Council of the California Chapter of
 National Association of Social Workers
 Women's Foundation of California
 Youth Justice Coalition (YJC)
 Youth Policy Institute (YPI)

GOVERNOR BROWN, SIGN AB218 AND INCREASE PUBLIC SAFETY BY CREATING JOB OPPORTUNITIES FOR PEOPLE WITH CONVICTIONS

A critical piece of legislation is on Governor Jerry Brown's desk (AB218) that, if signed, would go a long way to help give people with a criminal record – one in four adults in California – a fair shot at a job without in any way compromising safety and security at the workplace.

The bill would require public sector employers to remove the dreaded job application question that asks about an individual's criminal record, but it allows employers to conduct a background check later in the hiring process after an individual has had a chance to prove his or her job qualifications.

Nine states other than California have adopted similar protections, including three just in the past year, along with 50 cities and counties across the U.S. It's a reform whose time has come in California, as reinforced by the many diverse voices that have strongly endorsed the measure across the state.

EDITORIAL BOARDS

The Los Angeles Times

"To Help Ex-Cons, Ban the Box," July 3, 2013

"The most telling predictor of whether an ex-offender will reenter the community as a law-abiding and productive member, or whether instead he or she will return to jail or prison, is employment. Former inmates with steady jobs have fairly high success rates. For those who can't find work, prospects are dismal . . . There is a growing movement nationwide to 'ban the box' from employment applications and end discrimination against people who have spent time behind bars. It is time for California to join the movement, cautiously but deliberately . . . AB218 makes sense and deserves to become law. For public employers, at the earliest stage of the job application process, it's time to ban the box."

AB218 has also been endorsed by the editorial boards of the *Sacramento Bee* ("Clarifying Our Position on Criminal Background Check Boxes," September 10, 2013) and the *New York Times* ("An Unfair Barrier to Employment," May 5, 2013)

PUBLIC OFFICIALS

Mayor Eric Garcetti, Los Angeles

"AB218 would help people with convictions become employed and successfully reintegrate into the community. As we have done in Los Angeles, this bill will allow people with a conviction history get a foot in the door without compromising safety and security." (Support Letter, August 8, 2013)

Mayor Edwin M. Lee, San Francisco

"We know from our own experience that allowing people with a conviction history to compete fairly for employment will not compromise safety and security in the workplace. Indeed, it can reduce recidivism and promote public safety. I am very pleased to support this bill." (Support Letter, July 17, 2013)

LAW ENFORCEMENT

Chief of Police Chris Magnus, City of Richmond

"I strongly support AB218, which will help reduce recidivism and provide members of the Richmond community and other residents of California the opportunity to compete for jobs. This legislation promotes public safety by reducing unnecessary job barriers for the nearly seven million adult Californians with a criminal record." (Support Letter, March 4, 2013)

District Attorney George Gascon, City and County of San Francisco

"Public sector employers in California have a special obligation to pave the way for the private sector to reduce barriers to employment of people with criminal records. For these reasons, I support AB218." (Support Letter, March 22, 2013)

CLERGY

Father Gregory Boyle (Founder and Executive Director of Homeboy Industries in Los Angeles) and Reverend Joseph Clopton (of Sacramento Area Congregations Together)

"It's not just about fairness for people with criminal records – it's also good for California's economy and for the safety of our communities to ensure we're maximizing job opportunities for everyone." (Op-ed, "Fair Hiring Policy Gets an Unfair Rap," Sacramento Bee, September 10, 2013)

HUMAN RESOURCES PROFESSIONALS

Jody Pollak, Alameda County Labor Relations Analyst

"[T]here has been no negative or adverse consequences since we made this change back in 2007. The feedback that we've received has been overwhelmingly positive. In fact what we hear from members of the community is that they are far more likely to apply for a position with Alameda County based on this change that we made . . . [W]e've been able to expand our pool of qualified applicants as a result of this change in our application process, which has been a tremendous benefit to the County." Testimony before the California Senate Labor Committee (June 26, 2013)

LABOR UNIONS

California Labor Federation, AFL-CIO

"As California moves toward realignment, and there is a shift from incarceration to community release and supervision, it is essential that we get real about rehabilitation. The public sector should be a model of opportunity for the rest of California's employers." (Support Letter, March 28, 2013)

AB 218 (Dickinson)

Fairness in Government Hiring Practices

SUMMARY

This bill would provide that state and local agencies may not inquire into an applicant's criminal conviction history or include such an inquiry in their application for employment until after the agency has determined the applicant's qualifications meet the requirements for the position.

PROBLEM

An estimated one in four adult Californians has an arrest or conviction record on file with the state, creating major, unnecessary employment barriers. The Department of Justice generates over 1.7 million criminal background checks every year for employment and licensing purposes.

Because criminal background checks disproportionately deny employment to large numbers of people of color, the U.S. Equal Employment Opportunity Commission (EEOC) requires employers to establish a strong nexus between an individual's conviction history and the specific responsibilities of the job.

"Realignment" (AB 109) of California's criminal justice system seeks to produce budgetary savings by reducing recidivism and promoting rehabilitation. Employment of eligible people with a conviction history is key to the success of realignment at the local level, as studies have shown that stable employment significantly lowers recidivism and promotes public safety.

Otherwise qualified individuals are often discouraged from applying for work in the public and private sectors because of a conviction history inquiry on the application.

THIS BILL

AB 218 will remove any inquiry into a conviction history on a job application and delay any background check until the employer has determined that the applicant's qualifications meet the job requirements. Consistent with "realignment" of the state's criminal justice system, AB 218 strives to reduce unnecessary barriers to employment for the nearly seven million

adult Californians with a conviction history struggling to find work. Not only will this increase public safety, but also help fuel a strong economic recovery.

AB 218 will also make government hiring practices more consistent with the EEOC's guidelines on hiring people with arrest and conviction records.

The provisions of the bill do not apply to positions for which the agency is required by law to conduct a criminal background check, such as positions in law enforcement, positions working with children, the elderly or disabled, and other sensitive positions. Also, the provisions would not apply to any position within a criminal justice agency. In order to allow employers time for implementation, the bill is effective July 1, 2014.

Nine states and over 50 U.S. cities and counties responded to this growing societal challenge by removing the conviction history inquiry from initial job applications in public employment. Under Governor Schwarzenegger, the State Personnel Board removed the question from job applications for state positions in 2010 and added a criminal history supplemental questionnaire for exempted positions.

With this bill, California state and local government will take an important step toward becoming model employers, leading the way for the private sector to allow people with a conviction history to compete fairly for employment without compromising safety and security on the job.

SUPPORT

National Employment Law Project (co-sponsor)
Legal Services for Prisoners With Children (co-sponsor)
PICO California (co-sponsor)
All of Us or None (co-sponsor)
National Council of La Raza
PolicyLink
Justice Not Jails
A New Way of Life Reentry Project
AFSCME

Amalgamated Transit Union, California
 California Conf. of Machinists
 California Correctional Peace Officers Association
 (CCPOA)
 The California Labor Federation
 California Teamsters Public Affairs Council
 Prof. and Tech. Engineers, Local 21
 SEIU Local 1000
 UNITE HERE
 United Food and Commercial Workers Union,
 Western States
 Utility Workers Union of America, Local 132
 Alameda County Board of Supervisors
 City of Berkeley
 City of Carson Mayor, Jim Dear
 City of Richmond
 Richmond Chief of Police, Chris Magnus
 Santa Clara County
 San Francisco Board of Supervisors
 San Francisco District Attorney George Gascón
 San Francisco Public Defender Jeff Adachi
 Wendy Still, San Francisco Chief Adult Probation
 Officer
 9to5 California, National Association of Working
 Women
 ACLU of California
 All of Us or None -Sacramento Chapter
 All of Us or None, Los Angeles/Long Beach
 APIs/CAN
 Bayview Baptist Church
 California Attorneys for Criminal Justice
 California Catholic Conference of Bishops
 California Coalition for Women Prisoners
 California Communities United Institute
 California Drug Counseling, Inc.
 California Employment Lawyers Association
 California Partnership
 California Prison Focus
 The California Public Defenders Association
 California State Conference of the National
 Association for the Advancement of Colored People
 Californians for Safety and Justice
 The Center for Young Women's Development
 The Center on Juvenile and Criminal Justice
 Chrysalis
 The Coalition on Homelessness
 Community Coalition
 Contra Costa Interfaith Supporting Community
 Organization
 Crossroad Bible Institute
 CURB (Californians United for a Responsible
 Budget)
 The Drug Policy Alliance
 The East Bay Alliance for a Sustainable Economy
 East Bay Community Law Center
 Ella Baker Center for Human Rights

Engineers and Scientists of CA
 Equal Justice Society
 Equal Rights Advocates
 The Friends Committee on Legislation of California
 The Greenlining Institute
 Homies Unidos
 InnerCity Struggle
 Justice First, LLP
 Justice Now
 LA Voice
 Lawyers' Committee for Civil Rights of the San
 Francisco Bay Area
 Legal Aid Society-Employment Law Center
 Los Angeles Alliance for a New Economy
 Los Angeles Regional Reentry Partnership
 The Mexican American Legal Defense and
 Educational Fund (MALDEF)
 Much More Bounce Inc./Ministries
 The National H.I.R.E. Network
 National Association of Social Workers - California
 Chapter
 NMT/The Ripple Effects
 Oakland Rising
 Pacific Institute
 Public Counsel
 Sacramento Area Congregations Together (A.C.T.)
 Saffron Strand, Inc.
 Sanmina Corporation
 Shields for Families
 Starting Over Inc.
 The Sentencing Project
 The Training Center
 The Women's Council of the California Chapter of
 The National Association of Social Workers
 The Women's Foundation of California
 The Youth Justice Coalition
 Western Center on Law & Poverty

FOR MORE INFORMATION

Taryn Kinney
 Assemblymember Roger Dickinson
 (916) 319-2007 or Taryn.Kinney@asm.ca.gov



Headquarters: 600 Grand Ave
Suite 410
Oakland, CA 94610-3561

510.663.4000 tel
510.663.4099 fax

1127 11th Street
Suite 425
Sacramento, CA 95814-3809

916.444.3676 tel
916.444.7693 fax

3303 Wilshire Boulevard
Suite 415
Los Angeles, CA 90010-1798

213.736.1770 tel
213.736.1777 fax

March 28, 2013

Assemblyman Bob Wieckowski
Chair, Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814

RE: AB 218 (Dickinson) – SUPPORT

Dear Assemblyman Wieckowski:

The California Labor Federation strongly supports AB 218 (Dickinson), which helps promote rehabilitation and decrease crime by easing barriers to employment for those with a criminal conviction.

Everyone knows that the best way to stop recidivism is to create job opportunities. Yet, instead of connecting the nearly seven million adult Californians with a criminal record to employment, they are routinely screened out from jobs they may be qualified for, without even an interview. This creates a permanent underclass of unemployable people, many of whom come from the same impoverished communities, and contributes to intergenerational poverty and despair.

AB 218 simply removes the question about an individual's criminal history from state, city and county job applications while still preserving the right to conduct a criminal background check later in the process. This gives workers a shot to compete for a job and to demonstrate that they have been rehabilitated and changed their lives around. The employer is still free to conduct a background check and to use that information in any subsequent hiring decision. The bill also exempts both law enforcement positions and those for which the public entity is required by law to conduct a criminal background check.

AB 218 follows the lead of six states and over 40 U.S. cities and counties that have removed the conviction history inquiry from initial job applications in public employment and delayed a criminal background check until the later stages of the hiring process.

As California moves toward realignment, and there is a shift from incarceration to community release and supervision, it is essential that we get real about rehabilitation. The public sector should be a model of opportunity for the rest of California's employers.

We urge you to vote "YES" on AB 218 (Dickinson) when it comes before you in the Assembly Judiciary Committee on Tuesday, April 2, 2013.

Sincerely,

Mitch Seaman
Legislative Advocate
ms/tng39521cwa/afl-cio
MS: sm
OPEIU 3 AFL CIO (31)

Cc: Committee Members
Assemblyman Roger Dickinson



George Gascón
District Attorney

March 22, 2013

Chair Bob Wieckowski and committee members
Assemblymember Roger Dickinson
Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814

RE: SUPPORT FOR AB 218

Dear Chair Wieckowski, committee members, and Assemblymember Dickinson:

As District Attorney of San Francisco, I am writing to express my support of AB 218, which promotes public safety by reducing barriers to employment for the nearly seven million adult Californians with a criminal record. I have over three decades in law enforcement experience and I have seen that initiatives that support reentry are essential to public safety. AB 218 removes the question about an individual's criminal history from state, city, and county job applications while permitting a background check later in the hiring process. All of California will benefit when people with criminal records are no longer shut out of jobs and can financially support their families and contribute to a strong economic recovery.

In California and around the country, qualified job applicants are plagued by old or minor records and discouraged from applying because a "box" on job applications requires criminal history information that leads many employers to unfairly reject their applications. Because people of color are especially hard hit, the U.S. Equal Employment Opportunity Commission (EEOC) recently endorsed as a best practice removing the question about conviction histories from job applications to maximize compliance with federal civil rights law.

AB 218 follows the lead of six states and over 40 U.S. cities and counties that have removed the conviction history inquiry from initial job applications in public employment and instead delayed a criminal background check until the later stages of hiring. AB 218 allows people with a conviction history to compete fairly for employment without compromising safety and security at the workplace. The bill exempts jobs for which a criminal background check is legally required and law enforcement related positions.

Public sector employers in California have a special obligation to pave the way for the private sector to reduce barriers to employment of people with criminal records. For these reasons, I support AB 218.

Sincerely,


George Gascón
District Attorney



April 11, 2013

Assemblymember Roger Dickinson
State Capitol
P.O. Box 942849
Sacramento, California 94249-0007
Via electronic mail Taryn.Kinney@asm.ca.gov or facsimile (916) 319-2107

RE: SUPPORT FOR AB 218

Dear Assemblymember Dickinson:

I am the City of Richmond's Assistant City Manager/Human Resources Management Director. I am writing to share with you information regarding the City's criminal background screening practice and the City's support of AB 218.

The City of Richmond's Human Resources Management Department has had a long practice of delaying criminal background checks until after the applicant has been determined to be qualified for the job. This practice was instituted long before the question regarding conviction histories was removed from job applications in early 2012. Consistent with AB 218, the City has only conducted background checks on qualified applicants and has found that conducting background checks on a smaller pool of job applicants actually preserves the City's resources.

Removing the question about conviction histories from the City's initial job application was a simple process. The City had paper applications with the conviction history question on them, but was able to simply block out the question regarding conviction histories with a white label. The costs incurred to make this change were negligible.

Even before the City removed the question about conviction histories from the job application, the City has not had any problems delaying the criminal background check until after the conditional offer. The City's hiring process is in no way compromised by this change and the City has maintained the hiring discretion it needs to find the most qualified candidates.

Ultimately, it is not minimizing resource expenditures or streamlining the hiring process that motivated the City to adopt a policy similar to AB 218. Rather, the City has benefited from hiring dedicated and hardworking City employees because of this policy change.

On November 22, 2011, Richmond's City Council voted to remove questions about conviction histories from the initial job application and delay criminal background checks on applicants until after the applicant was determined to be qualified for the job position. Please find Resolution No. 110-11 attached for your review.

To demonstrate Richmond's support for AB 218, Richmond's City Council passed Resolution No. 26-13 on April 2, 2013. A copy of Resolution No. 26-13 is attached for your review. As stated in Resolution No. 26-13, a survey of Richmond residents conducted by the Safe Return Project revealed that 78% of local parolees were unemployed and over 70% were homeless.

The City is committed to reducing recidivism and finding job opportunities for people with conviction histories. As well, the City is demonstrating that it is a model employer and will hopefully lead the way for the private sector by hiring people with convictions who are making a positive contribution to our workforce.

Sincerely,



Leslie T. Knight
Assistant City Manager/Human Resources Management Director

cc: Mayor and City Councilmembers
Assembly Local Government Committee Chair Kathcho Achadjanian,
Vice-Chair Marc Levine and committee members
via facsimile: (916) 319-3959
Assemblymember Nancy Skinner, 14th Assembly District
via facsimile: (916) 319-2114

Attachments: Resolution No. 110-11
Resolution No. 26-13

LTK:dbm

RESOLUTION NO: 110-11

**RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA IN
SUPPORT OF THE "BAN THE BOX" INITIATIVE AND REQUIRING THAT ANY
QUESTIONS REGARDING PRIOR CRIMINAL CONVICTIONS BE REMOVED
FROM PRINTED AND ONLINE CITY OF RICHMOND EMPLOYMENT
APPLICATION FORMS**

WHEREAS, the City of Richmond is committed to ensuring that all qualified individuals seeking employment within the City should be given an equal opportunity to apply for available positions; and

WHEREAS, the City of Richmond believes that providing an equal opportunity includes extending employment opportunities to qualified individuals who have been released from incarceration and are rebuilding their lives; and

WHEREAS, the U.S. Equal Employment Opportunity Commission has stated that "excluding individuals from employment on the basis of their conviction records has an adverse impact on Blacks and Hispanics in light of statistics showing that they are convicted at a rate disproportionately greater than their representation in the population" and that "such a policy or practice is unlawful under Title VII in the absence of a justifying business necessity"; and

WHEREAS, hiring practices that consider the past criminal history of applicants without a justifying business necessity can prevent willing and qualified job applicants from obtaining gainful employment; and

WHEREAS, the inability to obtain gainful employment after release from incarceration can contribute to a host of problems including high rates of unemployment, increased recidivism rates, and increased crime; and

WHEREAS, the community at large benefits when recidivism rates are reduced and gainful employment is critical for individuals to avoid re-offending, and

WHEREAS, there has been a nationwide initiative, referred to as "Ban the Box", in which employers are encouraged to remove questions regarding prior criminal convictions from employment applications; and

WHEREAS, various cities and counties throughout the United States, including Boston, Chicago, Minneapolis, St. Paul, San Francisco, and Alameda County, have adopted new employment application practices aligned with the "Ban the Box" initiative; and

WHEREAS, as one of the three largest employers in Richmond, the City's hiring practices can influence the practices utilized by other employers, and

WHEREAS, the City of Richmond has an opportunity to lead the way toward greater economic opportunity for individuals by providing equal opportunities for employment to members of the community, including those members who were formerly incarcerated and are attempting to rebuild their lives; and

WHEREAS, the City of Richmond recognizes that positions that State and/or federal laws may require criminal background investigations for certain positions, including positions that involve work with children, positions in law enforcement, and other sensitive positions; and

WHEREAS, the City of Richmond will continue to comply with State and/or federal laws in conducting required and necessary background investigations, while also balancing the interest in providing opportunities for employment to those who have prior convictions in positions in which there are no statutory prohibitions against employment.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Richmond, California, hereby request the removal of any questions regarding prior criminal convictions from printed and online City of Richmond employment application forms; and

BE IT FURTHER RESOLVED, the City of Richmond will inquire about criminal backgrounds in a supplemental questionnaire that will be applicable to those positions for which criminal background investigations are required by State and/or federal law and/or which are justified by business necessity; and

BE IT FURTHER RESOLVED, the Assistant City Manager/ Human Resources Management Director will meet with representatives from the Safe Return Project to assure that the city's hiring policies and procedures provide opportunities to individuals who were formerly incarcerated to seek gainful employment and reintegrate successfully into the workforce, while ensuring compliance with legal requirements and protecting the interest of the City and community at large.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a special meeting thereof held on November 22, 2011, by the following vote:

AYES: Councilmembers Beckles, Booze, Ritterman, Rogers, Vice Mayor Butt, and Mayor McLaughlin.

NOES: None.

ABSTENTIONS: Councilmember Bates.

ABSENT: None.

DIANE HOLMES

CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 110-11**, finally passed and adopted by the City Council of the City of Richmond at a special meeting held on November 22, 2011.

RESOLUTION NO. 26-13

A RESOLUTION IN SUPPORT OF AB 218, WHICH HELPS LEVEL THE PLAYING FIELD FOR QUALIFIED CALIFORNIANS TO COMPETE FOR JOBS AND PROMOTES PUBLIC SAFETY BY REDUCING UNNECESSARY JOB BARRIERS FOR MILLIONS OF CALIFORNIANS WITH A CRIMINAL RECORD

WHEREAS, current law requires the hiring and promotional practices of local agencies to conform to the Federal Civil Rights Act of 1964; and,

WHEREAS, it is the intent of AB 218 to make California state agency and city and county hiring practices more consistent with the mandates of the Equal Opportunity Commission; and,

WHEREAS, AB 218 would prohibit any state or local agency in California from inquiring into or considering the criminal history of an applicant and including any inquiry about criminal history on any initial employment application; and

WHEREAS, AB 218 would authorize state or local agencies to consider an applicant's criminal history after the applicant's qualifications are screened and the agency determines the applicant's qualifications for the job as stated in any notice issued for the position; and,

WHEREAS, AB 218 does not apply to positions for which a state or local agency is otherwise required by law to conduct a criminal history background check; and

WHEREAS, recognizing that reducing barriers to employment for people who have previously offended and decreasing unemployment in communities with concentrated numbers of people who have previously offended is a statewide concern; and,

WHEREAS, recognizing that qualified job applicants in California are often plagued by old or minor records and discouraged from applying because a "box" on the job application requires criminal history information; and,

WHEREAS, recognizing that indicating one's criminal history on a job application often leads employers to dismiss applicants at the outset; and,

WHEREAS, recognizing that criminal background checks for job applications affect people of color – especially young men of color – and minorities disproportionately greater than many other social groups; and,

WHEREAS, recognizing that the employment of eligible people with a conviction history is one key strategy to reducing recidivism rates and promoting rehabilitation; and,

WHEREAS, recognizing that the City of Richmond is one of over forty-five cities, counties and six states across the nation that have banned the box on employment applications.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Richmond hereby adopts this resolution in support of AB 218; and

BE IT FURTHER RESOLVED that the City Council direct the City Clerk to communicate to the California State Legislature our support of AB 218 by sending copies of this resolution to the following:

California Assemblymember Roger Dickinson
California Assemblymember Bob Wieckowski
California Assembly Committee on Judiciary
The National Employment Law Project
Legal Services for Prisoners with Children

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on April 2, 2013, by the following vote:

AYES: Councilmembers Bates, Beckles, Butt, Myrick, Rogers, Vice Mayor Boozé, and Mayor McLaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 26-13, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 2, 2013.

**Senate Labor and Industrial Relations
June 26, 2013**

Hearing on AB 218

**Testimony of Jody Pollak
Labor Relations Analyst
Alameda County Human Resources**

Good morning my name is Jody Pollak. I'm here from Alameda County where I'm a Labor Relations Analyst. I also helped with the implementation of the background screening process for Alameda County. Alameda County changed its process back in 2007 to no longer ask about criminal history information on the initial application. Of course, we continue to ask for the information but we now do it later on in our process.

The County made that decision based on its commitment to reducing recidivism as well as reducing barriers to employment for people with conviction histories. In response to the argument that AB 218 would end up being a waste of time and resources, I can tell you that Alameda County has found precisely the opposite to be true. And that by requiring criminal background screening only after applicants have been determined to be qualified for the job has actually been a much more effective use of County resources.

I want to cite one very quick example to show how that's in fact true. In an exam that I worked on not that long ago for the position of administrative assistant, the County received slightly more than 1000 applications for this position. That's far too many to ask in for an oral interview, obviously, so we ended up giving a written test to screen the applicant pool down to 50 people. We invited those 50 in for an oral exam and only at that time did we distribute a conviction history form for those candidates to fill out. So rather than having to screen over thousand applicants for criminal background information, we ended up only having to screen 50. For that reason again we found it to be a far more efficient use of our time to conduct our process in this way.

I also want to say that since Alameda County made that change in 2007 our current background screening process is in no way less rigorous then it was in the past. Our screening standards have not been compromised in any way. And also we make it a point to provide advance notice to applicants who might be disqualified because of conviction by stating very clearly on our job announcements when there is such a disqualifying conviction. So that they can realize, "okay, this might not be the job for me; I'll apply for a different job."

I also want to say that in terms of implementation, the transition to moving to this way of conducting a process has been in no way difficult to implement. It's been very straightforward. It has not been resource intensive to maintain. And I also want to emphasize that Alameda County has studied AB 218 very carefully and it's concluded that in no way would it remove the discretion that we need in order to run this process in the best way for the County.

So I want to conclude by saying that there've been no negative or adverse consequences since we made this change back in 2007. The feedback that we've received has been overwhelmingly positive. In fact what we hear from members of the community is that they are far more likely to apply for a position with Alameda County based on this change that we made. And so again I'll conclude by saying that we've been able to expand our pool of qualified applicants as a result of this change in our application process, which has been a tremendous benefit to the County. Thank you.

Local Campaign Materials: San Francisco Fair Chance Ordinance

To help support efforts to launch fair chance campaigns, we've compiled the campaign materials developed by the lead sponsors of the San Francisco Fair Chance Ordinance. Please note that facts cited in the materials were developed in 2013 and are out-of-date.

Directly Impacted People Led the Efforts in San Francisco

The San Francisco Board of Supervisors unanimously passed the San Francisco Fair Chance Ordinance in February 2014. Mayor Ed Lee held a signing ceremony for the new law on March 4, 2014. The ordinance removed questions about convictions from applications for private employers, city contractors, and affordable housing providers and postponed such inquiries until later in the application process. The ordinance also included provisions to ensure background checks were used fairly.

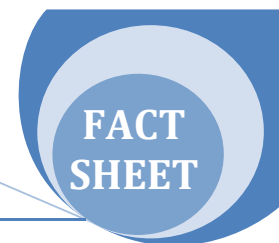
The lead co-sponsors were Supervisors Jane Kim and Malia Cohen. The ordinance garnered the support of the San Francisco Chamber of Commerce, the Human Rights Commission, and the San Francisco Reentry Council, which includes law enforcement leaders such as the District Attorney, the Chief Adult Probation Officer, and the Public Defender.

Lead sponsors were the [National Employment Law Project](#), [Legal Services for Prisoners with Children](#), [All of Us or None](#), [Lawyers Committee for Civil Rights of the San Francisco Bay Area](#), and [Community Housing Partnership](#). Dozens of organizations endorsed the legislation. The excellent media coverage included a front-page story in the *San Francisco Chronicle*, "[Push to Ban Crime Box on Job Applications Expands](#)" (Dec. 10, 2013).

Attachments

Facebook [link](#) and change.org petition [link](#)

Factsheet	1
Request for Endorsement and list of Endorsers	3
Endorser Form and Template Letter of Support.....	6
Postcard flyer	8
Tribute poster	10



Assessing the Need to Regulate Use of Background Checks in San Francisco

Thousands of people in our community, as many as 200,000 San Franciscans, face discrimination based on prior arrests or convictions, and people of color are disproportionately affected.

- 1 in every 4 adult Californians, almost 7 million people, has an arrest or conviction record.¹
- The barriers resulting from a record have a particularly severe impact on communities of color, as African Americans and Latinos are disproportionately represented in the criminal justice system. In San Francisco, African Americans are arrested at twice the rate of all other racial groups combined.²

Today, employers and housing providers are conducting background checks at an unprecedented rate, and prior records are routinely used to screen out applicants.

- Surveys have shown that as many as 90% of employers and 80% of private housing providers conduct background checks.³
- One study found that 2/3 of employers surveyed would not knowingly hire a person with a record.⁴
- A criminal record reduces the likelihood of a job callback or offer by nearly 50%, and this effect has been found to be even more pronounced for African-American men than for white men.⁵

Individuals with prior records experience unemployment and homelessness at an unacceptably high rate.

- Among those seeking assistance from the Public Defender's Clean Slate program, only about 1/3 are employed, and the majority of those who are employed (75%) earn an annual income of \$3,000 or less. Nearly half of Clean Slate clients are African American.⁶
- 26% of homeless people surveyed in San Francisco had been incarcerated within the previous 12 months⁷, and an estimated 30-50% of parolees in San Francisco are homeless.⁸

When qualified individuals can access jobs and housing, San Francisco's families and communities are stronger and safer.

- Having a stable job and housing can significantly increase the likelihood that an individual will successfully reintegrate into the community and avoid future criminal justice involvement.⁹

¹ See NELP, 65 Million Need Not Apply: The Case for Reforming Background Checks for Employment at fn. 2 (March 2011)

² Report of the San Francisco Mayor's Task Force on African-American Out-Migration (2009) at 24.

³ See Society for Human Resources Management, Background Checking: Conducting Criminal Background Checks (Jan. 22, 2010) at 3; Rebecca Oyama, Do Not (Re)Enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act, 15 Mich. J. Race & L. 181(2009) at 192.

⁴ H.J. Holzer, What Employers Want: Job Prospects for Less-Educated Workers. New York: Russell Sage Foundation, 1996.

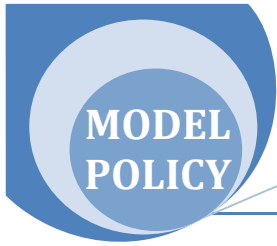
⁵ Devah Pager, Bruce Western & Naomi Sugie, Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records, 623 The Annals of the American Academy 195(2009) at 199.

⁶ Clean Slate Program Office of the Public Defender, City & County of San Francisco, 2007-2008 Evaluation Findings (2009) at 35.

⁷ 2009 San Francisco Homeless Count and Survey.

⁸ Petersilia, Joan, "When Prisoners Come Home," Oxford University Press: New York (2003), p. 121.

⁹ An Illinois study of individuals recently released from prison, found that only 8% of those who were employed for a year committed another crime, compared to the state's 54% average recidivism rate. American Correctional Assoc., 135th Congress of Correction, Presentation by Dr. Art Lurigio (Loyola University) Safer Foundation Recidivism Study (Aug. 8, 2005). See also Christy A. Visher & Shannon M.E. Courtney, The Urban Inst., One Year Out: Experiences of Prisoners Returning to Cleveland (2007) at 3.



A Model Policy to Promote Fair Use of Background Checks in San Francisco

We propose that San Francisco enact a local policy to guide the use of arrest and conviction information for the purpose of housing and employment. The following components set out a model policy that will increase employment and housing opportunities for people with prior arrests and convictions, while balancing the interests of employers and housing providers. In the housing context, this policy applies only to housing providers contracting with the City.

- 1. Determine whether the applicant is otherwise qualified for the job or housing before conducting the background check.**
- 2. Only consider an applicant's prior convictions falling within a defined "look-back period" and don't inquire about or consider arrests that did not lead to a conviction or about expunged convictions.**
- 3. Prior to denying an applicant due to a past conviction, give the applicant notice and include the reason for the denial and the background check report.**
- 4. Give the applicant an opportunity to request consideration and to provide additional evidence of rehabilitation or mitigating circumstances.**
- 5. Only deny the applicant if the conviction is "directly related" to the job or housing, taking into account the following factors:**
 - a. Whether the conduct for which the person was convicted bears a specific and direct negative bearing on:**
 - The person's ability to perform the job, given the type of the job; or
 - The safety of persons or property, given the nature of the housing.
 - b. The amount of time that has passed since the conviction.**
 - c. Evidence of rehabilitation or other mitigating circumstances.**





Dear Friends and Colleagues—

We are writing to ask for your organization's endorsement of a ground-breaking campaign that will standardize how San Francisco employers and affordable housing providers consider background checks. Legal Services for Prisoners with Children, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, the National Employment Law Project, and several community organizations have partnered to propose changes to San Francisco's Administrative and Police Codes. The proposed law will prohibit private and public employers and all affordable housing providers from asking about conviction records until a candidate for a job or housing has received a conditional offer. Clear guidelines will define how and when employers and affordable housing providers may consider the conviction history of any applicant, eliminating unnecessary barriers to jobs and housing for people with prior convictions. The new ordinance will bring employers and landlords into compliance with existing state and federal laws by requiring an individualized assessment of any applicant's prior convictions, limiting denials to convictions that are directly related to the job or housing, and by requiring consideration of the time that has passed and the applicant's demonstrated rehabilitation.

Several organizations are collaborating to advance these amendments: The **Lawyers' Committee for Civil Rights of the Bay Area** works to advance, protect and promote the legal rights of communities of color, immigrants, and refugees, with a specific focus on low-income communities and a long-standing commitment to African-Americans. **All of Us or None**, a project of **Legal Services for Prisoners with Children (LSPC)**, is a civil rights organizing initiative of formerly-incarcerated people and our families, determined to win full restoration of our civil and human rights after release from prison. The **National Employment Law Project** is dedicated to improving conditions for workers across America and to protecting working families from the vagaries of the global economy.

We are calling on our civil rights and social justice allies to join this effort to **standardize guidelines for considering background checks by San Francisco employers and affordable housing providers.** In 2006, All of Us or None/LSPC introduced a resolution to ban the box – eliminate questions regarding conviction history – from applications for employment with the City and County. In 2013, we are campaigning to expand the protections available, level the playing field, and allow people with an arrest or conviction record to compete for jobs and housing. This proposal has already been endorsed by the San Francisco Reentry Council and Human Rights Commission.

As part of our campaign, we are seeking endorsements for this proposed ordinance from individuals and community allies. If you or your organization would like to endorse the proposal, these are the actions we hope you will take:

- 1) Write a letter on your agency's letterhead endorsing the expanded campaign. (A sample letter is attached.) Please send the final letter to Ivy Lee, staff for Supervisor Jane Kim at ivy.lee@sfgov.org, and to Michelle Rodriguez, mrodriguez@nelp.org.
- 2) Complete the endorser form (attached) and allow us to use your name as an endorser of this proposal in front of the Board of Supervisors in San Francisco and statewide as we build the campaign for human rights for people after prison. Please send the endorser form to Jesse Stout, jesse@prisonerswithchildren.org, 415-552-3150(f).
- 3) Send representatives to speak or allow us to read a statement at public hearings.

Please contact us if you have questions or would like more details about this campaign to standardize how San Francisco employers and landlords consider background checks. Also, please forward this request to any other community organizations that might be interested in endorsing. Contact: Jesse Stout, LSPC, at 415-255-7036 x309, jesse@prisonerswithchildren.org.

Thank you very much for your ongoing support, and for endorsing this campaign.

For justice,

**All of Us or None/Legal Services for Prisoners with Children
Lawyer's Committee for Civil Rights of the San Francisco Bay Area
National Employment Law Project**



Community Endorsers for the Fair Chance Campaign

A Campaign to Expand Opportunity by Standardizing Use of Arrest or Conviction Records by Employers and Affordable Housing Providers

- ◆ ACLU of Northern California
- ◆ African American Chamber of Commerce
- ◆ American Friends Service Committee
- ◆ Americans for Safe Access, SF chapter
- ◆ Asian Law Caucus
- ◆ Bay Area Childcare Collective
- ◆ Bay Area Sex Workers' Advocacy Network (BAYSWAN)
- ◆ Big God Ministries
- ◆ Brothers Against Guns
- ◆ California Coalition for Women Prisoners
- ◆ California Prison Focus
- ◆ Californians United for a Responsible Budget (CURB)
- ◆ Center for Young Women's Development
- ◆ Center on Juvenile and Criminal Justice
- ◆ Centerforce
- ◆ Chinese for Affirmative Action
- ◆ Coleman Advocates for Families and Youth
- ◆ Community Justice Network for Youth
- ◆ Delancey Street Foundation
- ◆ Drug Policy Alliance
- ◆ Equal Justice Society
- ◆ Freedom Archives
- ◆ FYI Trilogy
- ◆ Goodwill Industries of SF, San Mateo, and Marin
- ◆ Harvey Milk Democratic Club
- ◆ Homeless Prenatal Program
- ◆ Housing Rights Committee of San Francisco
- ◆ Jobs with Justice
- ◆ Just Cause/Causa Justa
- ◆ La Raza Centro Legal/ San Francisco Day Labor Project
- ◆ NAACP- SF
- ◆ National Housing Law Project
- ◆ No More Tears – The Ripple Effects
- ◆ Operation Second Chance, City College of San Francisco
- ◆ People Organized to Win Employment Rights (POWER)
- ◆ Positive Directions
- ◆ Project Rebound@San Francisco State University
- ◆ Public Defender Jeff Adachi
- ◆ Reentry Council of the City & County of San Francisco
- ◆ Saint Andrew Missionary Baptist Church
- ◆ San Francisco Central Labor Council
- ◆ SF Council on Community Housing Organizations (SF-CCHO)
- ◆ San Francisco Goodwill
- ◆ San Francisco Human Rights Commission
- ◆ San Francisco Living Wage Coalition
- ◆ Senior Ex-Offender Program, Bayview/Hunters' Point Sen
- ◆ Tenderloin Neighborhood Development Corporation

community
housing
partnership

NELP
National Employment
Law Project

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA



Coalition on Homelessness



For more information, contact us at (415) 563-3205x115 or facebook.com/fairchancesf

The sponsoring organizations hope that community endorsers will be actively involved in the campaign to pass legislation to standardize the consideration of background checks by San Francisco employers and affordable housing providers. This endorsement request may require discussion and agreements between your staff and/or Board members regarding your endorsement. We respect that each organization functions differently, so we ask that you send us the information below in order to communicate effectively with your organization.

Our organization supports proposed legislation to establish standards governing consideration of conviction histories by San Francisco’s employers and affordable housing providers.

Organization Name:	_____
Address:	_____
Phone:	_____
Website/Email:	_____

The following person will serve as contact person on behalf of our organization to coordinate support for this campaign.

Authorized Contact Person:

Name:	_____	Position:	_____
Email:	_____	Phone:	_____

**Please send this form to Jesse Stout, Legal Services for Prisoners with Children:
jesse@prisonerswithchildren.org, 415-552-3150(f).**

THANK YOU SO MUCH FOR YOUR SUPPORT!!

(Sample Endorsers' Letter -- On your Organization's Letterhead)

[Please email a copy of your final letter to Ivy Lee, staff for Supervisor Jane Kim at ivy.lee@sfgov.org and to Michelle Rodriguez, mrodriguez@nelp.org for tracking purposes]

[LETTERHEAD]

[DATE]

Mayor Edwin M. Lee
City and County of San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall
San Francisco, CA 94102-4689

Re: Endorsement of Ordinance to Standardize Consideration of Arrest or Conviction Records by Employers and Affordable Housing Providers

Dear Mayor Lee, President Chiu, and Members of the Board of Supervisors:

(Name of your organization) strongly supports an ordinance that will standardize the consideration of arrests and convictions of potential employees or tenants by public contractors, employers, and housing providers contracting with San Francisco, thus reducing unnecessary barriers to employment and housing.

(Description of organization and why this issue matters to organization). We have worked with dozens of individuals with arrest and convictions records who have the skills and drive to be loyal, productive employees. Yet too often these workers are automatically rejected for employment due to arrests or convictions that are unrelated to the potential job position.

One in four adult Californians, approximately 7 million, have arrest or conviction records. Therefore, a substantial number of San Franciscans are directly impacted by barriers based on prior arrest or conviction records. Obstacles to employment and housing for people with arrest and conviction records impede successful reentry, undermining the health and public safety of San Francisco.

Research has shown that stable employment and housing reduce recidivism, thus these regulations will promote public safety in San Francisco. All of San Francisco will benefit when people with records are no longer shut out of opportunities and can financially support their families and contribute to a strong economy.

For these reasons, we support an ordinance regulating the use of arrest and conviction information and removing unnecessary barriers to employment and housing.

Sincerely,

(Name)
(Title)

WE ARE READY

**TO OBTAIN
EMPLOYMENT**

Application for Employment

TO OBTAIN EMPLOYMENT
Application for Employment
TO OBTAIN EMPLOYMENT
Application for Employment

DENIED
DENIED
DENIED
DENIED

HAVE YOU EVER BEEN CONVICTED OF A CRIME?
If yes, explain number of conviction(s), nature of offense(s)
committed, sentence(s) imposed, type(s) of rehabilitation

DENIED
DENIED
DENIED
DENIED

**TO HOUSE
OUR FAMILIES**

TO HOUSE OUR FAMILIES
TO HOUSE OUR FAMILIES
TO HOUSE OUR FAMILIES
TO HOUSE OUR FAMILIES

DENIED
DENIED
DENIED
DENIED

DENIED
DENIED
DENIED
DENIED

**TO HELP
US THRIVE**

TO HELP US THRIVE
TO HELP US THRIVE
TO HELP US THRIVE
TO HELP US THRIVE

DENIED
DENIED
DENIED
DENIED

DENIED
DENIED
DENIED
DENIED

FOR A FAIR CHANCE



**FAIR
CHANCE
CAMPAIGN**

Working towards a fair chance
for people with conviction records

(415) 625-7049

facebook.com/FairChanceSF

Meetings every Friday at 1:00pm

OUR COMMUNITY NEEDS A FAIR CHANCE!

WE are women, veterans, parents, religious leaders, daughters, sons, artists, entrepreneurs, single mothers, single fathers, families, youth, public safety advocates, seniors! We are San Franciscans! We are ready for a fair chance!

OUR NEED: 1 in 7 Californians and 200,000 San Franciscans have a criminal background • Individuals with criminal records experience lifelong barriers to accessing safe and affordable housing and sustainable and lawful employment, even after they've paid their debt to society. • Employers and housing providers are conducting background checks at an unprecedented rate, and refusing to hire or house persons with criminal background, no exceptions, which excludes perfectly qualified candidates. • Since communities of color are disproportionately arrested and convicted, the lifelong barriers devastate these communities in particular.

OUR SOLUTION: Remove Questions about Conviction History from Initial Applications for jobs and affordable housing to give folks a chance to first present their qualifications • Create a Clear Process for employers and housing providers to find the best applicant • Increase Public Safety by ensure that persons with arrest and conviction records get honest work and stable affordable housing • Invest in San Francisco's Economy by housing and employing San Franciscans qualified to meet the needs and contribute to our local markets • Protect Our Communities by ensuring those who have paid their debt to society have a real chance to turn their lives around and return to their families.



JOIN THE CAMPAIGN: [FACEBOOK.COM/FAIRCHANCESF](https://www.facebook.com/fairchancesf)

**TO OBTAIN
EMPLOYMENT**

**TO HOUSE
OUR FAMILIES**

**TO HELP
US THRIVE**

WE ARE READY FOR A FAIR CHANCE



**COMMEMORATING THE TEAMWORK
LEADING TO THE UNANIMOUS PASSAGE OF
THE FAIR CHANCE ACT
BY THE SAN FRANCISCO BOARD OF SUPERVISORS
TUESDAY, FEBRUARY 4, 2014**

