

# BAN THE BOX

IN EMPLOYMENT  
A GRASSROOTS HISTORY



ALL OF US OR NONE

LEGAL SERVICES FOR PRISONERS WITH CHILDREN

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IN EMPLOYMENT  
A GRASSROOTS HISTORY

by Linda Evans



All of Us or None  
A Project of Legal Services for Prisoners with Children ©2016





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**#BAN THE BOX**



**BAN THE BOX**

**BOX**



**FAIR CHANCE FOR A JOB**



**MY PAST IS NOT MY PRESENT**

## AUTHOR'S NOTE

In writing this report, I have tried to capture the contributions of the grassroots — literally thousands of formerly-incarcerated and convicted people around the country, their family members, and a wide variety of social and racial justice organizations. The scope of this report does not allow for all the stories to be told, but I hope we will continue to document this struggle for the future.

About language: Having been in prison myself, I have chosen at times to use the term “we” when referring to people who have been formerly-incarcerated or convicted. Similarly, having myself been involved since 2002 in *All of Us or None* and the movement to restore civil and human rights to those who have been formerly-incarcerated or convicted, I also sometimes use the term “we” when describing these campaigns.

In addition, I have chosen to use language that affirms human dignity. Gone are terms such as ex-con, prisoner, inmate, or ex-prisoner — all words which define a person as the embodiment of their past mistakes. Instead, terms like “people in prison,” “people on parole or probation,” “formerly-incarcerated people,” or “people with criminal records” describe a condition rather than define a person. This choice of language has been integral to the Ban the Box movement, something we have fought for just as we have fought for other forms of social justice progress.

With very few exceptions, throughout this report I have used the names of organizations, but not individuals. I knew it would be impossible to find out all the names of the people who organized for Ban the Box around the country. Rather than include some individuals and exclude others whose work is just as important, I decided to mention only organizations.

I am very grateful to everyone who helped me write this report. THANK YOU to everyone who sent me articles, photos, notes from meetings, analyses, or had conversations with me about your Ban the Box campaign. THANK YOU to all who provided me with information, research, and support. Finally, a very special appreciation to my partner, Eve Goldberg, a brilliant writer and editor, and my best friend.

# INTRODUCTION

## WHAT IS BAN THE BOX?

Ban the Box is a movement to end the discrimination faced by millions of people in the United States, returning to their communities from prison or jail and trying to put their lives back together. It is a campaign to win full restoration of people's human and civil rights.

Ban the Box got its name from that box that appears on most employment forms, as well as applications for housing, college, public benefits, and the right to serve on a jury – the box that reads: “Have you ever been convicted of a felony?” While the wording may change slightly from application to application, the result is the same: it puts up a barrier for people who want to work, educate themselves, provide for their families, and lead healthy, productive lives.


For years, the prejudice against people with conviction histories has grown and flourished until now most employers and housing providers, most universities and colleges, even voting registrars ask that question. Formerly-incarcerated and convicted people know that the conviction history question on applications poses an almost insurmountable obstacle. Banning the Box – eliminating that question – is crucial for our communities and our families.

Ban the Box is a campaign to end *structural discrimination* — discrimination directed against everyone who has a past conviction, without consideration for individual circumstances.

Ban the Box is a powerful tool in leveling the playing field, assuring that people get a second chance to put their lives together, and ending a blanket discrimination that shuts millions out of jobs, shelter, education, and participation in the democratic process. It's a key step in acknowledging the humanity of all people, regardless of past behavior or mistakes.

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The following report focuses on Ban the Box in employment. Employment is the most developed area of the movement, with enormous and unprecedented progress already accomplished. The report begins with a brief history of Ban the Box in employment, followed later by analyses of some important and controversial aspects of the policy. A major component of the report is a crucial but often overlooked aspect of the movement: the grassroots participation and leadership by formerly-incarcerated and convicted people in Ban the Box. Included here is a history of grassroots involvement, as well as a detailed case study (San Francisco).

A companion report on Ban the Box in the areas of housing, education and voting rights will be published at a later date. Once again the focus will be on the participation and leadership of formerly incarcerated and convicted people in these efforts.

## BRIEF HISTORY

# THE CAMPAIGN TO BAN THE BOX

The Ban the Box campaign began in 2004 in the San Francisco Bay Area. It was initiated as a project of All of Us or None — a grassroots group of formerly-incarcerated people dedicated to promoting civil rights and ending the discrimination faced by those with criminal records. All of Us or None began as a program of the non-profit organization, Legal Services for Prisoners with Children.

During 2003-2005, All of Us or None organized Peace and Justice Community Summits where formerly-incarcerated individuals spoke out about the barriers to success they face when returning home from prison. The purpose of the Summits was to promote solutions to these problems. One of the most common issues raised was the need to “End all forms of discrimination based on conviction records.”

While many other problems were identified at the Summits — such as discrimination in housing, education, professional licensing, and voting — All of Us or None decided to focus first on fighting employment discrimination. Of all the problems facing those returning from prison, employment discrimination is perhaps the most pervasive and has far-reaching effects. Employment is necessary for people to achieve stability in their lives. It is often a requirement for parole or probation. Removing the “criminal history” box from job applications is necessary to give formerly-incarcerated people equal opportunity to compete for jobs, based on their skills and qualifications. Asking for a fair chance to work is easily understood by the general public and by politicians as a reasonable demand. It wouldn’t be perceived as asking for special treatment or a hand-out.

All of Us or None decided to focus on public rather than private employment because we [the author of this report is a founding member of All of Us or None] saw the public sector as an area where community pressure would be most effective. Elected officials have an obligation to represent their constituents. We hoped that banning the box in public employment would set an example for private employers.

And thus, All of Us or None’s Ban the Box campaign began.

We focused first on the city and county of San Francisco. The San Francisco government had a reputation for being liberal and forward-thinking, and we believed they might be receptive to our proposed changes in hiring policy.

We soon became aware that Hawaii had already adopted a statewide law in 1998 – a law that applied both to public and private employers. And, we soon learned that a Ban the Box campaign very similar to ours was starting up in Boston. But beyond that, we were entering unexplored territory, ready to tackle an enormous problem.

In Boston, the campaign was successful in eliminating background checks altogether from many City of Boston jobs, and extended Ban the Box to city contractors. In San Francisco, we succeeded in removing the box from public sector job applications and delaying conviction history inquiries until the finalist stage of the hiring process.

All of Us or None recognized the need to expand Ban the Box to other locales around the country. We created a Ban the Box Toolkit and started to distribute it nationally. Included in the Toolkit were sample resolutions, lists of questions to ask Human Resources staff, best practices to argue for, sample flyers, petitions, and organizing suggestions for community outreach. We took the Toolkit with us to an Employment Law conference in Philadelphia and to a New York conference on Women and the War on Drugs. People responded enthusiastically. The national campaign was taking off.

Across the country, formerly-incarcerated people began organizing themselves for political power. All of Us or None made two organizing videos and distributed them widely.<sup>1</sup> Many grassroots groups similar to All of Us or None formed — from Portland, OR, and Worcester, MA, to Philadelphia and New Orleans. As the groups multiplied, we connected with each other, and shared strategies and resources.

Early on, formerly-incarcerated people began to take responsibility for the direction of the Ban the Box movement. We realized it was crucial that we speak for ourselves rather than relinquish leadership to others such as lawyers, politicians, and well-meaning non-profit allies.

But people who had been advocating on behalf of former prisoners were often reluctant to give up that role. It has taken years for traditional policy advocates to accept us as equal partners, much less leaders of social change. Allies in non-profit organizations had spoken on our behalf for years when we had been their legal clients, or recipients of their social services. And formerly-incarcerated people were fed up with being excluded from policy discussions and decision-making. Now this began to change.

The process of building alliances between grassroots activists, non-profit advocates, social service professionals, lawyers, and elected

officials has been critical to the success of Ban the Box campaigns. Gradually, people from very different backgrounds have learned to talk together and respect each other. As we broke through prejudice and stereotypes, formerly-incarcerated people began to be recognized as experts and leaders, and we became more effective advocates for Ban the Box.

The first Ban the Box successes were hard-won. Many of us were inexperienced as political organizers or public speakers. We didn't know how to write a resolution or draft a law. The learning curve was steep. But the movement started to win victories and grow.

Several large cities changed their hiring policies early on — Boston, San Francisco, Chicago, New York, Philadelphia.

All of Us or None chapters developed around California — Los Angeles, San Bernardino, San Diego, East Palo Alto, Sacramento, and Long Beach — as well as across the country in places like San Antonio, Texas. We shared strategies with similar groups such as The Better Way Foundation in Connecticut, The Ordinary Peoples' Society in Alabama, Voice of the Ex-Offender in New Orleans, A New Way of Life in Los Angeles, and Ex-Prisoners Organizing for Community Advancement in Massachusetts.

In many areas, the campaign developed regionally. After the San Francisco victory, All of Us or None moved on to other venues in the Bay Area — Alameda County, Oakland, Berkeley, East Palo Alto. Women on the Rise organizers in the state of Georgia pushed ban the box efforts in five counties: Fulton, Chatham, DeKalb, Liberty, and Dougherty; and five cities: Atlanta, Savannah, Albany, East Point, and Clarkston.

Numerous other small cities banned the box because formerly-incarcerated people organized regionally: Kalamazoo, Ann Arbor, and East Lansing, MI; Durham and several cities in North Carolina; Wichita and Topeka, KS; 16 cities in Ohio, including Cleveland, Cincinnati, and Akron; 12 cities and counties in Florida.

As Ban the Box policy changes took effect in more and more places, the value of the reforms became clear. Despite initial fears about hiring formerly-incarcerated people, official policy reviews yielded positive evaluations. Resistance to Ban the Box softened. Mayors and City Councils started proposing Ban the Box changes themselves, even in the absence of an organized grassroots presence. Legal service organizations responded to the needs of their clients by proposing ban the box policies in local jurisdictions.

Eventually, a number of states passed statewide legislation to ban the box in public employment.

2010 – New Mexico, Massachusetts, Connecticut  
2012 – Colorado  
2013 – Maryland, Minnesota, Rhode Island, California  
2014 – Illinois, Nebraska, Delaware, New Jersey  
2015 – Georgia, Virginia, Vermont, Ohio, Oregon, New York  
2016 – Wisconsin, Oklahoma, Missouri, Tennessee

As of August of 2016, 24 states have banned the box for public employment. In nine of these states, the law also applies to private employers<sup>2</sup>. In addition, over 130 cities and counties have banned the box.<sup>3</sup>

Today, between all of the states and localities that have Ban the Box, over 185 million Americans now live in areas that have adopted fair chance hiring policies. That's half the population of the United States. Millions of lives have been affected for the better as barriers to gainful employment have fallen.

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Concurrent with the above local and state Ban the Box campaigns, there has also been movement on the national level.

The Equal Employment Opportunity Commission (EEOC) is the agency of the U.S. Government that enforces the federal employment discrimination laws. The EEOC undertook a review of their guidelines regarding arrest and conviction history in hiring. The guidelines were reviewed because using criminal records as a criterion for employment decision-making has built-in racial discrimination, due to disproportionate incarceration of people of color. Since equal employment opportunity is the mission of the EEOC, the review was appropriate and timely. In April of 2012, the EEOC's "Enforcement Guidance for Consideration of Arrest and Conviction Records in Employment Decisions"<sup>4</sup> affirmed that criminal record criteria has a built-in racial bias. This has formed the legal foundation for much ban the box advocacy.

In 2011, many organizations and individual formerly-incarcerated people met in Los Angeles and adopted a national program, moving forward as the Formerly-Incarcerated and Convicted Peoples' Movement (FICPM). The existence of a national program and structure has helped further Ban the Box organizing goals.

In 2015, FICPFM, NELP (National Employment Law Project), and PICO National Network launched an initiative urging President Obama to issue an Executive Order to Ban the Box in hiring for all federal contractors. The initiative was supported by over 200

# BAN THE BOX

national, state, and local organizations, and by 27 Senators and over 70 members of the House of Representatives. In November 2015, President Obama issued an Executive Action directing the Office of Personnel Management to delay inquiries into conviction history until later in its hiring process. Additionally, President Obama issued a challenge to private business owners: a Fair Chance Business Pledge.<sup>5</sup> Well over 100 private employers have signed this pledge as of August 2016.

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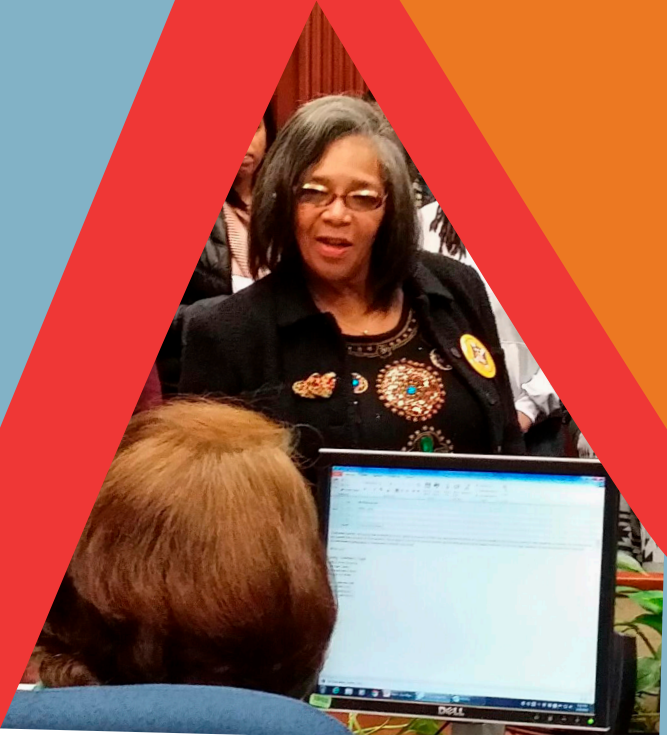
For all the success of the Ban the Box campaign, discrimination is still widespread. Barriers to employment for people with criminal records need to be addressed much more vigorously in the federal, private, and non-profit sectors of the economy, and in the area of professional licensing.

## FEDERAL SECTOR:

The Federal government should extend ban the box hiring practices to the 170,000 companies with government contracts. These companies supply a full 25% of the nation's jobs.

## PRIVATE SECTOR:

Pushed by Ban the Box advocates, local jurisdictions such as the cities of San



Francisco, New York, and Philadelphia have extended ban the box reforms to all large private employers. In San Francisco, for example, the law applies to businesses that employ over 20 workers.

Several major private employers have already adopted fair chance hiring, including Target, Wal-Mart, and Koch Brothers Industries. In April of 2016, President Obama launched the Fair Chance Business Pledge, urging private employers to ban the box. As of August 2016, 185 employees had signed the pledge, adopting new policies that affect over 3 million employees.

## NON-PROFIT SECTOR:

In 2014, All of Us or None launched a Fair Chance Pledge for foundations and non-profit organizations at [www.bantheboxcampaign.org](http://www.bantheboxcampaign.org). The purpose of this effort is to encourage foundations and non-profits to hire and recruit formerly-incarcerated people for staff, Board, and volunteer positions. Additionally, the Pledge encourages foundations to require their grantees to adopt fair chance hiring. It also suggests that non-profits and foundations add language to their official non-discrimination statements that protects people with records from discrimination.

In 2016, several organizations collaborated on a Fair Hiring Toolkit for Philanthropy, available at [bantheboxphilanthropy.org](http://bantheboxphilanthropy.org).

## PROFESSIONAL LICENSING:

Professional licensing processes also need ban the box reform. Most state licensing agencies have an automatic blanket ban in place, prohibiting people with conviction records from renewing their professional licenses. Ban the box reforms in this arena would eliminate all blanket bans and institute individualized assessments of the circumstances of past convictions. Many of those convictions are not job-related and should not be considered during license renewal.

As Ban the Box grows as a force motivating social change, we can expect more barriers to fall, more rights restored, allowing members of our communities a fair chance to survive and thrive.

## NEEDS ASSESSMENT

### WHY BAN THE BOX?

The number of people with criminal records in our society has reached crisis proportions. Today, over 7 million people are under correctional supervision in the U.S.<sup>6</sup> And, estimates are that 1 in 3 people in the U.S. has a criminal record.<sup>7</sup>

This means that Ban the Box policies could affect over 100 million people who experience the stigma and barriers associated with that record. There are a multitude of specific ways in which employment discrimination adversely effects our communities, and an equal number of ways Ban the Box policies can help alleviate these problems and improve people's lives.

### ADDRESSING RACISM

Communities of color are hardest hit by all the effects of mass incarceration.

It is a well-established fact that people of color are arrested, tried, and imprisoned at a disproportionately higher rate than white people in the U.S. The disproportionality is extreme for men between the ages of 18 and 64: For white males in this age group, 1 in every 87 is in prison or jail. The number for similarly-aged Latino males is 1 in 36. For black men it is 1 in 12.<sup>8</sup>

The U.S. criminal justice system so disproportionately affects people of color that considering criminal records has what is defined by law as a *disparate impact* on people of color.

The use of criminal records for hiring decisions further magnifies the effects of racial discrimination. Racial discrimination in employment has been illegal since the 1964 Civil Rights Act, yet employers continue to reject applicants based on race. A 2003 field study, *The Mark of a Criminal Record*, documented that 17% of white applicants with a criminal record received call-backs for a job interview compared to 14% of black applicants without criminal records. Race was actually more important to potential employers than the applicant's conviction history.<sup>9</sup>



Millions of people live with the double burden of racial discrimination and the stigma of a conviction record. People of color face this double barrier when it comes to seeking employment. Ban the Box addresses this situation and is part of changing it.

## INCREASING ECONOMIC STABILITY & SUCCESS

Studies show that prison in someone's past means that their wages after prison will be reduced by 11%. It means that their time employed will be 9 weeks less per year. And it means that their yearly earnings will be reduced by 40%.<sup>10</sup> "These losses do not include earnings forfeited during incarceration; they reflect instead a sizeable lifelong earnings gap between former inmates and those never incarcerated."<sup>11</sup>

Incarceration itself makes a person significantly less employable. Time spent locked up undermines the effects of past education and erodes job skills. Imprisonment leads to the loss of friends and family — social networks important for finding employment and successfully returning to the community.

And then there's debt. When people are released from prison, 85% face criminal justice debt, up from just 25% in 1991.<sup>12</sup> This debt can include payment of fines, court and supervision fees, as well as fees assessed for electronic monitoring, which is often a condition of probation or parole.

In addition, in some states child support debt accumulates while a parent is locked up. While policies vary from state to state, in 14 states, incarceration is currently not a permissible reason for pausing child support orders, meaning that a non-custodial parent who is behind bars can accumulate sizable arrears and interest — despite being unable to make payments while incarcerated.<sup>13</sup> The accumulation of unpayable child support is a major part of post-incarceration debt.

Thus, many people come out of prison only to face bills for thousands of dollars of child support debt. In some states, non-payment of child support debt means loss of a driver's license, making it even more difficult to find work.

Failure to pay post-incarceration debt can lead to re-imprisonment. Paying off child support debt, and paying fines and court fees, are usually a condition of post-release supervision. If a person can't pay off their debt, they may be faced with a probation or parole violation and sent back to prison or jail. This is a modern-day debtors' prison and sets up a cycle of re-incarceration. Securing a job in order to be able to pay off child support, monitoring fees, or other debt is absolutely key to post-prison success.

Before being incarcerated, more than two-thirds of men in prison were employed, and more than half were the primary source of financial support for their children.<sup>14</sup> After incarceration, men have trouble finding work because of their records. And, their income drops even if they are able to get a job. When people are unable to support themselves or their families through traditional jobs, they are more likely to turn to illegal methods of making money.

## SUPPORTING & HEALING FAMILIES

An untold and unquantifiable cost of imprisonment is the suffering of our families. Incarceration of a parent causes trauma to children with lifelong effects. In fact, according to the Centers for Disease Control and Prevention, parental incarceration has been found so traumatic to children that it is considered an Adverse Childhood Experience (ACE). Exposure to multiple ACEs increases the likelihood of long-term negative mental and physical health, including obesity, tobacco and alcohol abuse, heart disease, diabetes, addiction, and asthma. Children with an incarcerated parent are more likely to get sick, have behavior problems or trouble in school.<sup>15</sup> Parental incarceration differs from many other ACEs with its unique combination of trauma, shame, and social stigma.

Due to the enormity of mass incarceration, almost half of all children in the U.S. have at least one parent with a criminal record.<sup>16</sup> One in every 28 children has a parent behind bars, up from 1 in 125 just 25 years ago. Breaking this down by ethnicity: 1 in 9 African American children (11.4%), 1 in 28 Hispanic children (3.5%), and 1 in 57 white children (1.8%) in the United States have an incarcerated parent.<sup>17</sup> This means that a total of 2.7 million children in the U.S. have a parent who is locked up. Two-thirds of these children's parents were incarcerated for non-violent offenses.<sup>18</sup>

A formerly-incarcerated person may not be able to get any type of government assistance. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act banned anyone with a drug felony conviction from receiving public assistance — for life. Some states have modified or waived the ban, some have made assistance payments conditional on participating in drug treatment. But seven states have kept a full ban in place for SNAP payments (Supplemental Nutrition Assistance Program) and twelve more continue a full ban on TANF (Temporary Aid for Needy Families).<sup>19</sup>

People coming out of prison face additional major problems reuniting with their families. Family members of people who had been in prison were surveyed in Houston, TX: 68% said they were having trouble paying child support, 43% were confronted by loss of custody of their children, and 26% had trouble rebuilding relationships with family.<sup>20</sup>

Clearly, removing barriers to employment is crucial if families are to have a chance to re-unite and survive.

## IMPROVING PUBLIC SAFETY

Those of us coming back from prison know the common sense fact that getting a job will help us stay home in our communities. Many studies have verified the effect of employment on recidivism rates. 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.<sup>21</sup> In Hawaii, after Ban the Box provisions were instituted in 1998, another study produced evidence that fewer people with records are committing new crimes.<sup>22</sup> Even just 30 days of employment lowered the three-year recidivism rate to 20 percent.<sup>23</sup> Even a little bit of employment gives us hope that we'll get another job – so we keep job-searching and stay out of trouble. Banning the box also produces hope – instead of being discouraged by that reminder that we'll be judged by our past, we can hope that we will be judged by our skills and qualifications.

## AFFIRMING HUMAN DIGNITY

Banning the box allows people to compete more equally, and for better jobs. It allows people the dignity and equality every human being deserves.

Work is more than a way to make a living; it is a fundamental form of participation in our society. The right to work is a human right, as is the right to decent and fair wages. Studies show that employment status is one of the most significant factors in a person's sense of well-being and self-worth. The inability to secure a job can lead to low self-esteem, depression, and despair.

Obtaining and utilizing a professional skill is also very important to many people. But people who have earned professional licenses

before conviction are often ineligible to renew that license once they've been convicted. State laws on hiring and occupational licensing bar people with certain types of convictions from working in their field. This includes more than 800 occupations nationwide.<sup>24</sup> Replacing these automatic bans on certification and licensure with an individualized assessment process would allow formerly-incarcerated people to work in the professions for which they received training.

## EMPLOYERS WIN ALSO

Many employers use past convictions as an indicator to eliminate an applicant from consideration even before looking at the applicant's unique qualifications. Using background checks in this way reduces the pool of qualified people from which an employer can select a final candidate — clearly not in any employer's interest. They are rejecting applicants based on past mistakes, not their present potential. By banning the box, employers expand the pool of qualified applicants for any job, and all qualified job seekers get a fair chance at becoming employed. It's a win-win for employer and worker alike.



## BEST PRACTICES

# WHAT WE SHOULD DEMAND IN FAIR CHANCE HIRING

Formerly-incarcerated people have been directly involved in Ban the Box campaigns and negotiations in cities, counties, and state capitols for over a decade. Through these experiences, we have defined some model Best Practices — ways to reform hiring policies to expand employment opportunities for people with past convictions.

While there are other (often similar) Best Practice models put forth by various groups and organizations, the suggestions below are those developed by All of Us or None.

### 1. Eliminate blanket bans on job announcements.

Automatic, blanket bans against hiring people with arrest or conviction records are straight-out discrimination. They violate federal anti-discrimination law, and in some cases local and state laws.

Language on job announcements that refers to criminal records, such as “clean background required,” or “No misdemeanors and/or felonies of any type ever in background” should be eliminated.

However, job announcements should list any legal barriers that exist for people with past convictions in applying for a specific job. For example, laws in many states require that people applying for police and law enforcement jobs must never have been convicted. Many state and local laws also prohibit school districts from hiring people who have prior convictions related to sex offenses with children. If there are categories of convictions that will disqualify an applicant by law from a particular job, these should be clearly listed on the job announcement. Applicants who know that a past conviction will disqualify them will not bother applying for the job.

## 2. Ban the Box: Remove questions about conviction history from employment applications. Postpone any background check until after a conditional offer of employment.

If an employer determines there is a need for a background check, the request for conviction history information should be made after a candidate has passed all other eligibility tests, including civil service examinations, physical tests, and evaluations of prior education and work experience. Consideration of past convictions should only occur at the finalist stage of the hiring process, after a conditional offer of employment has been made. This will guarantee that selection has been made on the basis of qualifications and experience. At this stage, the employer may be more open to evaluating whether a past conviction is related to the job, and will be more invested in actually talking with the candidate about their history instead of making negative assumptions.

Requiring only a limited number of applicants to submit to background checks also has a definite cost-benefit for employers. Rather than completing expensive background checks and processing background information on all candidates, the employer will do many fewer checks, thus saving time and money.

## 3. Consider whether a background check is truly necessary for the job.

Research shows that work behavior and performance is not related to whether a person has a past criminal conviction. In a recent study by Stanford University students, employees for the City and County of San Francisco were found equally competent and reliable in their jobs, whether they had a conviction history or not.<sup>25</sup>

Urge employers to consider the following questions when deciding to use a background check before hiring:

- Is this background check required by law? Are there legal restrictions about who can work in this job category? For example, California law prohibits people with certain sex-related convictions from working in public schools.
- Will the employee have unsupervised contact with finances or populations traditionally considered “vulnerable” — youth and children, elderly, or disabled people? If there is no unsupervised contact as part of the job, a background check should be unnecessary. In the City of Boston, for example, only 1200 out of 8000 jobs require a background check. Jobs requiring background checks are



those involving finances, or unsupervised contact with elderly, youth, or disabled people.

#### 4. Do not consider arrests that didn't result in a conviction. Do not consider dismissed offenses.

In most states, employers are prohibited from considering arrests that did not lead to a conviction. Many states also prohibit consideration of “expunged” records — offenses that were dismissed by a court. Because reading conviction history information can be confusing, it's important for hiring policies to be clear.

#### 5. Do not consider past convictions that are not job-related.

Once a candidate is made a conditional offer of employment, what happens when a background check reveals a conviction history? How should an employer view and respond to this situation?

The EEOC Enforcement Guidance regarding Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964,<sup>26</sup> clearly states that past convictions should be considered by employers only if the conviction is job-related. Even if a conviction is job-related, the law states that it may be considered, not that it should result in automatic disqualification or ineligibility.

The EEOC Guidance suggests that employers should consider these factors in analyzing whether a conviction is job-related:

- The nature and gravity of the offense
- The time that has passed since the offense or the completion of the sentence
- The nature of the job held or sought



## NATURE & GRAVITY OF OFFENSE

We oppose the use of “nature and gravity of the offense” as a guideline, because this language is vague and invites subjectivity and prejudice. This standard also undermines the question of how a conviction is related to the job, which is central to whether a conviction may be considered at all.

## TIME PASSED SINCE OFFENSE

In terms of “time passed” or the recency of prior convictions, many employers check for convictions occurring within the past 7 or 10 years; others require disclosure of all adult convictions going back to the age of 18.

The City and County of San Francisco has summarized its criteria for considering past convictions as **recency, relevance, and rehabilitation**. The first screen is for recency — is the conviction date within a 7-year look-back period? If the conviction is older than 7 years, the record is not considered.

The Fair Credit Reporting Act allows only 7 years of disclosure for consumer credit reports. We believe this should be the maximum limit allowed for a look-back period. We advocate that the look-back period be counted from the date of conviction, rather than from the date of completion of parole or probation. This will encourage the hiring of people on probation or parole.

Ideally, even better than going back a specified and arbitrary number of years, applicants should be treated as individuals. People change, circumstances differ.

## JOB-RELATEDNESS OF OFFENSE

So how does an employer decide whether a past conviction is job-related? After conducting a background check, an employer must determine whether a conviction is directly related to the specific responsibilities of the job in order to consider it. We recommend that employers use these questions:

- Does the job present the opportunity for the same behavior involved in the prior conviction?
- Are the same circumstances as those leading to the initial offense likely to occur again?

The San Francisco Fair Chance Ordinance considers “whether the position offers the opportunity for the same or a similar offense to occur and whether circumstances leading to the offense for which the person was convicted ... will recur in the employment position.”<sup>27</sup>

The San Francisco Department of Human Resources developed a matrix that shows intersections between certain types of convictions and “position-specific attributes.” That mean: *what types of convictions are related to specific categories of jobs*. For example, if a job requires driving a vehicle, then vehicle violations as well as drug and alcohol violations would be considered more closely. If a past conviction bears no relationship to the job, that conviction cannot legally be considered during the hiring process. In San Francisco, these new standards for consideration of conviction histories mean that only 2% of people with records were disqualified for employment after the individualized assessment had been done.<sup>28</sup>

## 6. Conduct an individualized assessment.

Best practices in fair hiring means that even a finding of job-relatedness does not mean that employers automatically disqualify applicants. Rather, such a finding should trigger an individualized assessment of the conviction and the applicant.

Perhaps the most important part of this assessment is actually evaluating the candidate as an individual person. Talk with the applicant about the circumstances of their conviction and positive changes they have made.

It’s also important that applicants are invited to submit additional evidence of rehabilitation at this point. Allow sufficient time for applicants to respond, and keep the job position opened until a review is complete.

Evidence of rehabilitation can include:

- Completion of probation or parole.
- Participation in drug/alcohol recovery programs.
- Additional education, including completion of classes such as anger management, financial responsibility, or parenting classes.
- A record of community service and community recommendations.

- Facts or circumstances of the offense.
- Evidence of work history.
- Employment or character references.
- Whether an individual is bonded

## 7. Include information about the hiring process on the job application.

- Include a non-discrimination statement that includes protections against discrimination based on past convictions or prior imprisonment. Example: *“In compliance with Federal and State Equal Employment Laws, Equal opportunity will be afforded to all applicants regardless of race, color, sex, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, incarceration or conviction history, prior psychiatric treatment or military status.”*<sup>29</sup>

- Disclose whether a background check will be required at any time during the hiring process for that specific job.

- Inform applicants that past convictions will not be considered unless they have a direct relationship to job responsibilities, in accordance with federal and state employment laws.

## 8. Do not use self-disclosure of conviction history as a “truth test.”

On many job applications, candidates are asked not only to “check the box” but also to list their conviction history. This may appear to be a straight-forward task, but it isn’t. For those who have never been arrested, it may be hard to understand why a person can’t remember in detail each arrest, each exact charge, each conviction. Here are some of the reasons why:

Conviction histories are often complicated. For example, due to plea bargains and other legal processes, people may be convicted of crimes different than those for which they were arrested. People may not know the final official outcome of their cases.

Additionally, a person’s RAP (Record of Arrests and Prosecutions) sheet is often littered with small infractions that have been forgotten over the course of time and life. Most people don’t have access to their official records and depend on memory which may

not always be accurate. Some of the offenses may be decades old. Memory fades, and honest confusion over details is common.

Correctly reading and interpreting RAP sheets requires special training. RAP sheets list all law enforcement activity a person has ever experienced, including information that cannot legally be considered by an employer such as dismissed offenses and arrests that never resulted in a conviction.

Discrepancies between what is self-disclosed and information provided by a background check does not necessarily mean that a candidate lying. If a background check will be conducted anyway, requiring self-disclosure complicates the hiring process unnecessarily.

## 9. Offer an appeal process.

When an applicant is rejected from a job because of past convictions, they should be given written notice of this fact and which conviction is job-related. They should also be provided with a copy of their background check information.

The right to appeal this decision and to submit additional evidence of rehabilitation should be part of any legislation about public employment.

## 10. Centralize the review of conviction history information.

Only a limited number of people should have access to a person's conviction history. This is very personal and highly prejudicial information which should be treated with the highest guarantees of confidentiality. A high level of training should be provided for staff who determine job-relatedness. For example, in Alameda County, conviction history information is not requested until the finalist stage of the application process. Only a small staff in the central office of the Department of Human Resource Services reviews this information. These staff are trained in determining how a conviction may or may not be job-related. Unless a conviction is considered job-related, conviction history information will never be seen by anyone who will be working with the applicant. Even the hiring officer and department head are not informed of past conviction history unless it is determined to be job-related.

## 11. Civil fines for employers who violate fair chance hiring laws

In Austin, TX, the city fines a private employer \$500 for violating the fair chance ordinance. In San Francisco, the city enforces its guidelines with warnings and with monetary penalties that increase with repeat violations.

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The above guidelines are designed to level the playing field, to allow all qualified job seekers a fair chance at finding employment. Putting some or all of these guidelines into practice is necessary if people with conviction histories are to have a fair chance at landing a job and keeping it.



## CASE STUDY

# SAN FRANCISCO BANS THE BOX

## PRELUDE

In 2003, All of Us or None mobilized for a national panel of formerly-incarcerated people to speak before the Congressional Black Caucus about barriers to re-entry after prison. We organized over 200 formerly-incarcerated people from all over the country to come to Washington, D.C. Our panel followed another panel on Re-entry, where Congressional leaders spoke long beyond their allotted time and ignored our panel's scheduled opening time. We were forced to move our panel to a nearby church that night. No Congressional members came to hear our panel at the church.

From this experience, we decided that at future events, we would need to be sure that elected officials actually listened to the experiences and solutions offered by community members, rather than only speaking themselves.

## PEACE & JUSTICE COMMUNITY SUMMITS

During 2003-2005, All of Us or None organized a series of Peace and Justice Community Summits. These Summits took place in locations across California: Oakland, San Francisco, East Palo Alto, Watts, Compton, San Bernardino. The Summits served as a platform for formerly-incarcerated people to testify about our lives, to talk about our experiences and difficulties when returning to our communities after prison or jail. In the audience were elected officials, as well as community members, family of incarcerated people, social service providers, educators, and other. We hoped to convince the attending elected officials to support a series of demands that would come out of this personal testimony.

Among the demands posed at the Summits were: "End all forms of discrimination based on conviction records," and "Ban the Box in

public employment and government contracts.”

After the presentations, an “Action Panel” of elected officials was asked to support our demands by pledging to take specific actions. Although elected officials made promises at the Summits, we knew that continuing community pressure would be crucial for change to occur. However, the fact that these elected officials participated in our Summits laid the groundwork for following up with them as we pressed for policy change.

Following the Summits, All of Us or None assessed where we should focus our campaign. We decided to work first to Ban the Box in public employment and public housing. Based in an analysis of local governments, and the fact that the majority of our early members lived in the San Francisco Bay Area, we decided to focus first on San Francisco.

## THE SAN FRANCISCO CAMPAIGN

From the very beginning, we faced many challenges. Every one of our members was new to the policy world and had little experience with government structures or processes. Adding to that, when dealing with elected officials, lawyers, social service professionals and many others, we often needed to deal with deeply-entrenched prejudice against formerly-incarcerated people.

Because the right to work and the right to housing are human rights issues, we first approached San Francisco’s Human Rights Commission (HRC) for guidance. Staff members at the HRC were extremely helpful and gave us great advice about how government works. They suggested that we should separate our housing and employment demands, since these issues were designated to different HRC committees. We decided that our chances for success would be greater if we started with a single issue. Because employment is critical to regaining stability after prison, and to reuniting our families, we chose to focus on banning the box in public employment.

During 2004, we met repeatedly with HRC staff members, trying to get a letter of support from the HRC to the Board of Supervisors. When a public Human Rights Commission hearing was held on the issue of banning the box, we mobilized formerly-incarcerated people to attend. We prepared ourselves to testify about the difference it would make to ban the box in city employment. For most of our members, this was the first time they had ever spoken publicly. It was a unifying and confidence-building experience.

Next, All of Us or None wrote a resolution describing the barriers people face when coming back from prison, and calling on the San Francisco Board of Supervisors to remove the conviction history question from the initial application for public employment. When

we brought it to the city's staff, they tried to convince us to take out part of our resolution — the part calling for eliminating the conviction history box on job applications.

We refused to revise that part of our resolution. If we had removed it, the resolution would have amounted to a vague expression of concern about the problems San Francisco residents have when they return from prison. No directives, no action to be taken, no teeth.

On the other hand, we accepted some of the staff suggestions regarding wording of the resolution which did not affect actual policy.

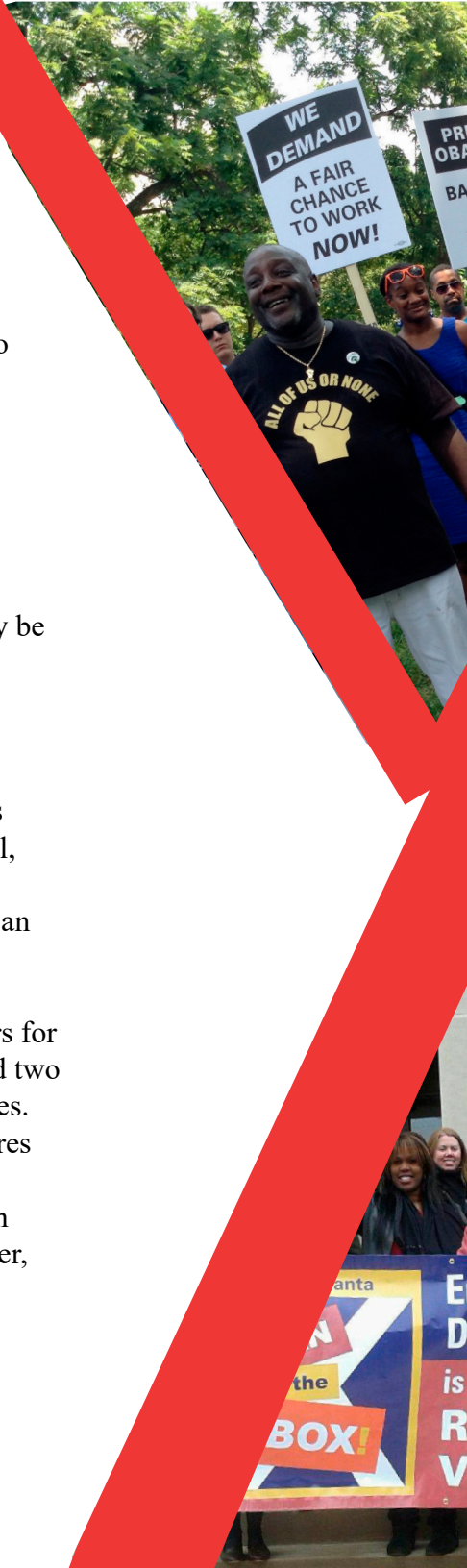
**LESSON LEARNED:** We learned during this process that accepting a compromise can sometimes facilitate relationship-building and can be a stepping stone for future change. But sometimes a compromise may be so extreme that it's unacceptable.

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We finalized our draft of the resolution. Then we made another decision: Because of the liberal-leaning politics of a majority of the Board of Supervisors, it might have been possible to simply walk office to office in City Hall, and secure enough votes to pass the Resolution. But this would not have involved our members, or organized more people with records to work to Ban the Box. So we started doing outreach in different neighborhoods in San Francisco.

We also discovered that in order to pass our resolution, we would have to appear before the Board of Supervisors for several hearings. We wanted to show the Board how much support we had for Ban the Box. To this end, we did two things: We created a petition to present to the Board and circulated it around the community, gathering signatures. And, we created flyers announcing our hearing dates and asking people to join us. We gathered petition signatures and handed out flyers wherever we thought we would find formerly-incarcerated people. We went door-to-door through neighborhoods around the Bay Area. We spent hours at transit stops. Our members were interviewed on radio programs, and we placed articles about the Ban the Box campaign in the local African-American newspaper, *The San Francisco Bay View*.

During the San Francisco campaign, we learned that Boston was also in the process of banning the box. We







contacted the manager in the Boston human resources department who was implementing their policy and learned a lot about their Ban the Box policies. We contacted the Boston City Council member who had introduced the legislation, and he wrote a letter of support for us.

Finally, we appeared in front of the Board of Supervisors — and we won the vote! The Board of Supervisors issued an official resolution requiring the Human Resources department to remove the box from city employment applications.

But our job wasn't over in San Francisco. In order to ensure that the most fair hiring practices were adopted by the Department of Human Resources (DHR), we felt that we needed to be a part of formulating the actual policies. There are many ways to Ban the Box. Often, due to federal, state, and municipal laws, it is not possible to entirely eliminate a background check during the hiring process.

Major questions about the application process would need to be hammered out. Questions including:

- Which jobs would require a background check?
- When, if at all, in the application process would people be asked about their past convictions?
- How would those convictions be considered?

DHR provided All of Us or None with a memorandum explaining their current hiring practices. It was important to understand the steps in their hiring process in order to suggest specific changes. We responded with a formal letter outlining our ideas.

Fortunately, the Human Resources department welcomed working with us. We actually sat down with HR managing staff and discussed specific changes we recommended to every step of the hiring process.

Because San Francisco had recently passed a law requiring background checks of every employee, we couldn't eliminate background checks altogether for any job. Eliminating the box on the initial job application would mean that the background check had to be done later in the process. But when? We argued that background checks should come only after a conditional offer of employment had been made. This would ensure that a person's conviction history not be used against them for a job they were otherwise well-qualified for. HR staff explained to us that due to hiring time constraints this plan would be unmanageable. However, they did agree to postpone the background check until a candidate had passed every other qualifying test and was chosen as a

finalist (usually as part of a group of 3 to 5 other finalists).

A crucial part of our conversations was how to judge job-relatedness. SF-DHR was interested in using guidelines laid out by the U.S. Equal Employment Opportunity Commission, such as judging the “nature and gravity of the offense.” We objected to this language, believing it to be too vague and prone to misuse. Explaining how he would apply this standard, a senior DHR staff member stated that in looking for a secretary, he would hire a person convicted of sales of marijuana over a person convicted of sales of heroin because marijuana sales is less serious than heroin sales. We pointed out that neither conviction was job-related, having no relationship to whether a person could perform the duties of a secretary, and therefore should not be considered at all. He understood our point.

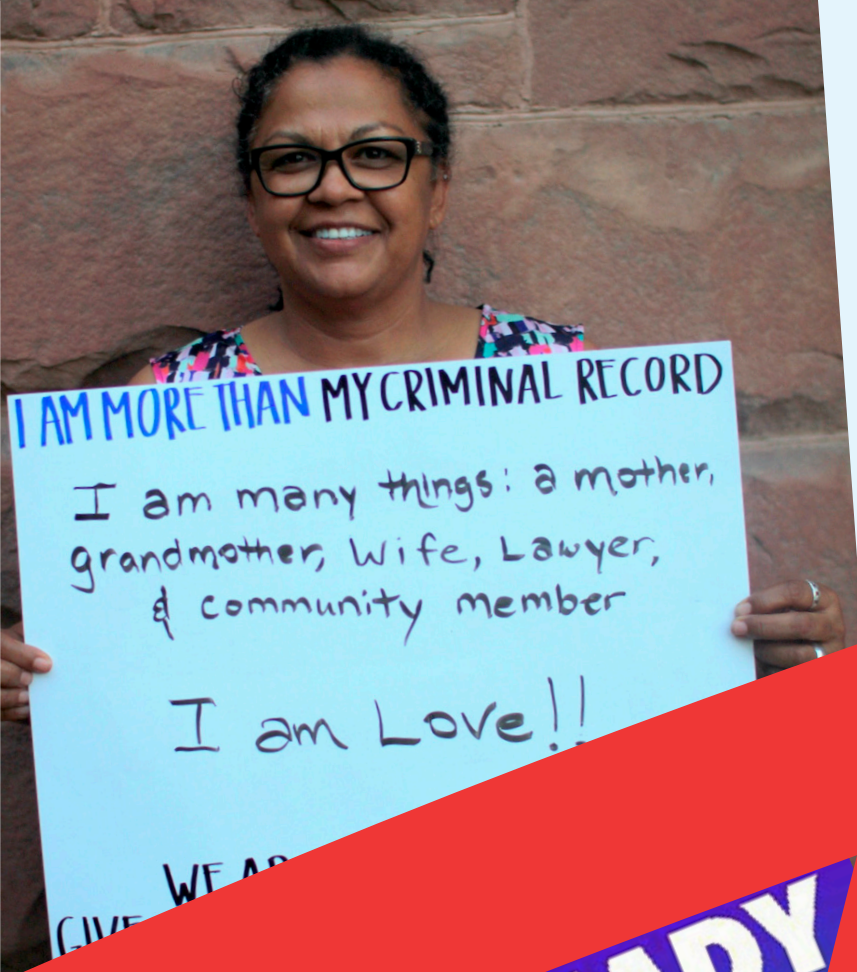
In further discussions with DHR staff, we learned that criminal record information was being gathered on every applicant, even before people had passed a civil service test or deemed minimally qualified for the job. We pointed out that the city could save time and money by only conducting background checks on finalists for each position. This was a big selling point to DHR. After much discussion, DHR staff agreed to move background checks to later in the hiring process.

**LESSON LEARNED:** It was crucial for us to understand San Francisco’s hiring process thoroughly in order to point out advantages that would come with adoption of Ban the Box policies. It was a great lesson in how doing our homework, being knowledgeable and prepared, helped us accomplish our goals. On a personal level, many of our members discovered that regardless of education or past experience, we could all learn how to read and analyze public policy. That lesson was empowering on a deep level.

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Throughout this process, the DHR staff person working with us was sympathetic and insightful. He had been impressed by our insistence on being recognized as people above all. For example, we stressed to him the importance of using language like “formerly-incarcerated person” instead of “ex-offender.” Responding in kind, he suggested that instead of “criminal record,” the language on the form should be “conviction history.” Since that time, All of Us or None has advocated that people use “conviction history” where possible, instead of the more prejudicial phrase, “criminal record.”

**LESSON LEARNED:** Make no assumptions about where support will come from. Be willing to learn from everyone. Accept and adopt all good suggestions.



## NEXT STEPS

We soon discovered that in addition to being passed by the Board of Supervisors, banning the box in San Francisco required approval of the Civil Service Commission. So we proceeded to learn another process, write the required documents, and develop relationships with another city department. After a public hearing, we won Civil Service Commission support as well.

Now, finally, Ban the Box was officially adopted by the city and county of San Francisco. We had won our first concrete victory, and had learned a lot along the way.

We held a press conference on City Hall steps announcing the change. Many of our members, along with allies in city government and other elected officials, attended. We wanted press coverage so that more people would know of these changes, and be able to benefit from them. We celebrated a victory that had been won by hard-working formerly-incarcerated people from all over the Bay Area!<sup>30</sup>

# GRASSROOTS HISTORY

## BANNING THE BOX ACROSS THE U.S.

What follows is a history of the rich and vital grassroots movement to Ban the Box in employment. So far, over 130 cities and counties, plus 24 entire states, have banned the box. This section will provide snapshots of some of these campaigns. Only a fraction of this vast and growing movement is documented here. The campaigns are arranged alphabetically by state.

These snapshots highlight two key factors: the contributions of formerly-incarcerated people who conceived of, organized, and lead this movement; and the power of coalition-building. Time and time again, Ban the Box brought people from different walks of life together in common cause — in part because mass incarceration has affected so many people from so many different backgrounds. These alliances have broadened the scope and influence of our movement, opening doors to elected officials and policy-makers at every level. Formerly-incarcerated people have learned that to make change real, it must be enacted into law or policy.

In communities across the country, grassroots activists have organized local campaigns to ban the box. In some areas, activists took responsibility for their entire region (such as the Inland Empire in Southern California), organizing Ban the Box at multiple levels of government. In other places, such as Florida, Virginia, Georgia, and Ohio, a group took on organizing throughout the entire state.

These are a few of their stories.

## CALIFORNIA – BAY AREA

**East Palo Alto: 2006**

**Alameda County: 2007**

**Berkeley: 2008**

## Oakland: 2010

After successfully banning the box in San Francisco (see Case Study), All of Us or None moved forward with campaigns to change hiring practices in other regional jurisdictions: East Palo Alto, Alameda County, Berkeley, and Oakland.

## East Palo Alto

The city manager of East Palo Alto had attended a Peace and Justice Community Summit held by All of Us or None in 2004. After the Summit, the East Palo Alto chapter of All of Us or None did outreach about Ban the Box at community events — at drug treatment programs, clean slate days, and community barbecues. In 2006, the city manager issued an administrative order to Human Resources to remove the conviction history box from the application, and to delay background checks until an applicant is a finalist for the job. Two factors combined — a supportive city official and grassroots community organizing — to create this victory.

## Alameda County

All of Us or None worked with an Alameda County Supervisor to organize a breakfast information session about Ban the Box for Bay Area human resources personnel. Also attending the gathering were community lawyers from the East Bay Community Law Center who were eager to assist our effort. During that meeting, several other regional HR jurisdictions expressed interest in Ban the Box. This process also clarified a need to expand access to Clean Slate legal remedies.<sup>31</sup>

Next, with the assistance this same Supervisor, we started discussions with the Alameda County HR Director. Eventually convinced that ban the box reforms would result in a larger pool of qualified employees, and that it would level the playing field for job seekers, the HR Director herself authored a resolution that created a fair chance pilot program. The pilot program was so successful that it has become permanent policy in Alameda County.

## Berkeley

In Berkeley, All of Us or None members met with the HR Director several times. We discussed the advantages to banning the box. Probably because this HR Director was progressively oriented, as is much of Berkeley's city government, these few meetings

were sufficient to ensure removal of the conviction history question from the initial job application. Further discussion resulted in background checks being postponed to the conditional offer stage of the hiring process.

## Oakland

All of Us or None also mounted a campaign to ban the box in Oakland. The Mayor had pledged to ban the box during his electoral campaign, but never followed through. All of Us or None held a Speak-Out in front of City Hall, with our partners Critical Resistance and Plan for a Safer Oakland. We also collected more petition signatures to ban the box — this time directed at the Oakland city officials.

During the process of writing a Ban the Box policy for Oakland, the Mayor's staff agreed to facilitate a meeting between All of Us or None and the Department of Human Resources so that we could be involved in the specifics of the policy. Initially, Oakland wanted to require a background check for all new employees, but this was modified to apply only to positions that require a background check by law, and positions that involve unsupervised contact with youth, elderly, or disabled people. We proposed that the background check should be done at the conditional offer stage. We advocated against the exclusion of people on probation or parole from hiring. We argued that self-disclosure was an unnecessary and potentially prejudicial step, given that an official background check was being done. The staff listened. Every one of our suggestions were eventually adopted.

**LESSON LEARNED:** Details are really important in creating public policy. Be clear about your goals and be ready to work with others to get them implemented.

## CALIFORNIA – SOUTHERN REGION

**Compton: 2011**

**Carson: 2012**

**Los Angeles: in process**

**Inland Empire: in process**

All of Us or None held two Peace and Justice Community Summits in the Los Angeles area during 2004–2005: one in Compton, and one in Watts. Both Summits were co-sponsored by elected officials. Like the Summits in Northern California, the Watts and Compton Summits convened Action Panels of local decision-makers and service providers. Ban the Box was one of the demands made to the Summits' Action Panels.

All of Us or None members were determined to make these demands a reality. But the road to eventual victory was filled with many set-backs and disappointments.

In 2006, the L.A. chapter of All of Us or None presented the Ban the Box campaign to a city councilwoman who eventually agreed to introduce a resolution at the Los Angeles City Council. Formerly-incarcerated people from a variety of organizations including Youth Justice Coalition, A New Way of Life, and Homeboy Industries, packed the Council chambers. However, the Council delayed a vote and instead requested a feasibility report from their Personnel Committee. The report eventually recommended removing the conviction history question from city job applications, but also recommended that Los Angeles conduct FBI checks on every job.

The L.A. All of Us or None chapter discussed how they should proceed, given that the City's proposal added additional FBI background checks. Chapter members decided they would wait until the composition of the City Council changed in an upcoming election. Hopefully, new council members might be more receptive to their ideas. So, this particular Ban the Box proposal was rejected by All of Us or None and the resolution died.

That same year, a County Supervisor introduced a Ban the



Box resolution at the Los Angeles County Board of Supervisors. Throughout 2007, All of Us or None members attended numerous meetings with individual supervisors, and testified at several large public hearings. On the day of the vote, one of the supervisors who strongly supported Ban the Box didn't show up, leading to a change of heart in the other supervisors. The resolution was pulled from the agenda to avoid a "no" vote.

In the midst of the Ban the Box campaign in Los Angeles, the Los Angeles Times did a series of articles exposing problems at an L.A. County Hospital. The newspaper's investigation discovered that 10% of the people working at the hospital had criminal records. As a result of the newspaper articles, these workers were fired, though their union later won re-instatement for most of them. Among those fired was an x-ray technician who had been convicted of rape. He had disclosed this conviction when hired, and again each time he was promoted. The County used his case as an argument against Ban the Box, even though he was an excellent worker and no one had ever complained about his work over the course of his 20-year career. This incident resulted in a call for FBI checks on every County employee, which the All of Us or None chapter opposed.

In the fall of 2010, community organizations re-launched the Los Angeles campaign, calling people together to form an Employment Rights Coalition. This broad-based coalition defined a county-wide strategy of passing Ban the Box in smaller cities. This strategy was successful in Compton and Carson where elected officials had earlier attended the Peace and Justice Summits were receptive to these reforms.

In 2013, California's legislature passed a statewide Ban the Box bill. This bill banned the box for all state, county, and city employment.

But local activists in Los Angeles felt the statewide bill did not go far enough. Organizers from A New Way of Life, LA Voice, and Homeboy Industries drafted a new ordinance for Los Angeles which will require private employers with more than 25 employees to ban the box. The City Attorney agreed to support this ordinance, even though it contained a controversial element: a sizable fine for any employer who violated the ordinance. Because of resistance to this clause, the City Council once again delayed a vote on the bill.

As of the writing of this report, Los Angeles has still not passed this strengthened Ban the Box ordinance.

## INLAND EMPIRE

Inland Empire refers to the region east of Los Angeles, generally Riverside and San Bernardino Counties. This area has a population



of over 4 million people. It is among the most conservative areas in California.

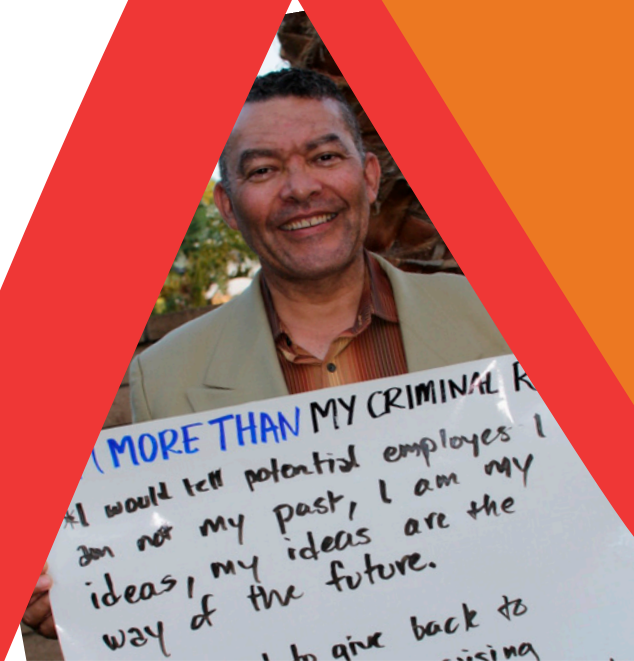
Founded and led by a formerly-incarcerated woman, the mission of Time for Change in San Bernardino is to assist formerly-incarcerated and homeless people with housing, job training, and other crucial services. After the California Legislature banned the box for all state, county, and city public employment in 2013, activists from Time for Change wanted to check up on how the law was being implemented. They approached a professor at Redlands University to research implementation of Ban the Box in the Inland Empire.

Time for Change teamed up with students from Redlands University and with another group led by a formerly-incarcerated woman — Starting Over, Inc. Starting Over assists people coming out of prison with transitional housing, health services, and other needs. Time for Change, Starting Over, and the students began the Fair Chance Report Card project. Their purpose was to develop a “report card” on the hiring practices of the various cities throughout the Inland Empire.

Members of the Riverside All of Us or None helped create the report cards. Staff from the National Employment Law Project assisted by explaining the details of relevant employment law and policies. Then, the activists and students met with Human Resource directors throughout the region to gather information about their hiring practices.

More local grassroots organizations soon joined in the work, forming the Inland Empire Fair Chance Coalition. They released the report cards to the public in a Town Hall meeting that was attended by over 200 people.

The report card release resulted in a tremendous amount of public dialogue. Since then, members of the Fair Chance Coalition have been discussing the prospect of improving state-mandated fair chance hiring policies at a local level. They have met with members of the Board of Supervisors in San Bernardino and Riverside Counties, as well as County HR directors. In the cities of San Bernardino and



## SAN BERNARDINO COUNTY GRADES

San Francisco County	A (Model County)
San Bernardino County	D+
City of San Bernardino	C-
City of Highland	D
City of Redlands	C
City of Colton	B-
City of Fontana	D+

## RIVERSIDE COUNTY GRADES

San Francisco County	A (Model County)
Riverside County	B
City of Riverside	C
City of Banning	C-
City of Indio	C
City of Lake Elsinore	D
City of Perris	C

Perris, city council members have indicated some willingness to extend Ban the Box of private employers who contract with the city. In Riverside County, some Supervisors have also expressed support, but the HR Director is still resistant to these changes.

The Inland Empire campaign to ban the box has been actively utilizing social media and innovative communication techniques. They started a social media campaign using Twitter handles: #WeAreMoreThanOurCriminalRecords, #ThinkBeyondTheBox, #BantheBox, #IEFairChance, #FairChanceHiring, and #WeAreQualified.

They developed an innovative poster campaign that allows people to come out about their criminal records in a positive way. The inspiration for these posters was Harvey Milk and the gay rights movement — the idea that if more people with a record were to come out, we would all realize that we know people with records. This would challenge the stigma of criminal records and push employers to change their hiring practices.<sup>32</sup>

The pace of change has been slow in the Inland Empire. But nobody is giving up.

## FLORIDA

**2009: Jacksonville**

**2013: Clearwater, Tampa,**

**2014: Pompano Beach, St. Petersburg,**

**2015: St. Petersburg, Daytona Beach, Ft. Myers, Gainesville, Miami-Dade County, Orlando, Tallahassee**



One of the unique features of Florida’s Ban the Box campaign is the involvement of Main Street Alliance, an organization of formerly-incarcerated small business owners. The effort of Main Street Alliance to ban the box started at a monthly membership meeting, where a Main Street Alliance member told the story of his incarceration. He talked about how the difficulty of finding a job after prison was what led him to start his own business. Everyone in the room had experienced something similar. The group decided to join with an ally at a re-entry program in Daytona Beach who was working on the Ban the Box campaign there.

Main Street Alliance worked on Ban the Box campaigns in Daytona Beach, Orlando, New Smyrna Beach, and Miami. Their members testified at City Council meetings. They held press conferences, spoke on radio shows, and wrote letters to the editor and newspaper editorials about fair chance hiring. They worked with other groups in Florida such as Organize Now, FAITH, FOCUS (an affiliate of

PICO Florida), and the Vincentian Reentry Organizing Project.

Due largely to the hard work of Main Street Alliance and their grassroots partners, Daytona Beach, Orlando, New Smyrna Beach, and Miami banned the box.

In other areas in Florida, much of the Ban the Box organizing was taken on by PICO Florida, part of the PICO National Network of faith-based social justice organizations. PICO has been actively organizing formerly-incarcerated people and their families into PICO-affiliated organizations in several states. PICO activists are very experienced in providing community organizing trainings, and in coordinating campaigns.

Over a six-year period, 13 cities and counties in Florida banned the box.

## GEORGIA

**Fulton County: 2014**

**Atlanta: 2014**

**Liberty, Dougherty, DeKalb, & Chatham Counties: 2015-2016**

**Savannah, Albany, East Point, Clarkston: 2015-2016**

The movement to Ban the Box in Georgia was notable for being led largely by women, many of them formerly-incarcerated.

The campaign began with a meeting of Women on the Rise, an organization of formerly-incarcerated women; 9 to 5 Atlanta, a group that advocates for women in the workplace; Solutions Not Punishment Coalition, a social justice organization concerned with police abuse and the rights of trans people and sex workers; and Atlantans Building Leadership for Empowerment, a faith-based multi-racial coalition of congregations, unions, and grassroots groups. All of these groups had members who were directly affected by employment discrimination based on conviction histories.



# FULTON COUNTY

In Fulton County, the coalition trained and mobilized formerly-incarcerated people and their families to speak at public hearings and attend one-on-one meetings with County Commissioners. Through this process, the campaign built strong relationships with several Commissioners.

Next, members drafted a model fair chance ordinance and worked with Fulton County's HR department to create an inclusive policy. Although advocates pushed for the ordinance to include private vendors and contractors, the final law fell short of this goal. Political in-fighting may have been the reason for this set-back. The Commissioner who originally sponsored the ordinance had been working closely with community representatives. Suddenly, another Commissioner introduced his own, weaker version of the bill and orchestrated its quick passage.

**LESSON LEARNED:** This taught activists to beware of competing politicians who may use Ban the Box for their own purposes.

# ATLANTA

In Atlanta, the women of 9 to 5 Atlanta pressured the Mayor until the city's HR Department finally removed the conviction history box from employment applications in 2013. But organizers knew this was insufficient — there was no executive order, no legal ordinance, no additional provisions to protect applicants. So, formerly-incarcerated women in Women on the Rise and 9 to 5 worked with City Council members to improve the initially inadequate policy. Using their personal stories and expertise, they convinced Council members to strengthen key provisions.

The Atlanta campaign received excellent press coverage. The story was on television several times, and the Atlanta Journal-Constitution, Creative Loafing (Atlanta's progressive weekly), and Atlanta Daily World all carried major articles. Notably, these articles all depicted formerly-incarcerated people with dignity and respect, with none of the stereotyping so common in press coverage about criminal justice issues.

Since the Fulton County and Atlanta victories, organizers have also banned the box in at least 6 more counties and 5 additional cities.

# LOUISIANA

New Orleans: 2014  
state: 2016

Voice of the Ex-Offender (VOTE), a grassroots group working on criminal justice issues, started the Ban the Box campaign in New Orleans. In 2007, VOTE members were exploring best practices around clean slate remedies. Clean Slate refers to a legal process that allows people to clear some criminal records after all fines and fees have been paid. VOTE members traveled to a Clean Slate Day in Oakland that was sponsored by All of Us or None and the East Bay Community Law Center. At this event, they learned about Ban the Box, and received a CD of the Organizers' Toolkit.

Back in New Orleans, they got to work. Louisiana leads the nation in numbers of people per capita that are imprisoned, so the organizers thought state legislators would welcome a solution to the problems these people face coming back to their communities. However, they could find no support among state elected officials and decision-makers. So they decided to work locally.

Violence was on the increase in New Orleans; 55% of African American men were unemployed; and the new mayor was looking for solutions. The mayor proposed instituting a Ceasefire program — using formerly-incarcerated men to intervene where street violence was erupting. VOTE was quick to point out that it would be impossible to actually implement Ceasefire because the city's hiring policies prohibited anyone with a record from getting a city contract. They offered the obvious answer: Ban the Box for city employees and contractors.

The mayor saw the value of this solution. In 2014, he issued an administrative order that postponed asking job applicants for criminal history information until after an interview and meeting basic qualifications. In order for this policy to be implemented, it had to be approved by the Civil Service Commission.

In New Orleans, it's all about who you know. To get official support to ban the box, VOTE members recruited formerly-incarcerated people from each council district to testify before the City Council. One formerly-incarcerated man spoke about his trouble getting a taxi cab license. This man had even received a pardon from the governor, but was being denied a taxi license. Stories like his made the council sit up and listen. VOTE's media strategy included using the City Council television broadcasts to reach the public and build community support.

In 2014, New Orleans banned the box for all public city employment.

# STATEWIDE CAMPAIGN

Personal stories like the one above highlighted a statewide problem: people with records, regardless of prior training or skills, were being denied the necessary certificates and licenses to work in their chosen profession. Many had gone to school to get training, but were now ineligible for jobs because of their conviction history. Others had been trained in prison, but couldn't get licenses once they were released.

VOTE recruited support for removing state licensing restrictions from the faith-based community, reminding them that formerly-incarcerated people were part of their congregations. VOTE even won over probation and parole staff, in part because without being able to work, people on parole and probation were having a hard time paying their fees. Formerly-incarcerated members of VOTE and the Secretary of Corrections testified together in front of legislators to get licensing restrictions removed.

All this work paid off. The state of Louisiana removed its blanket ban on issuing professional licenses to people with records.

Empowered by this victory, VOTE joined with other organizations to take Ban the Box statewide. These allies included Safe Streets, Strong Communities, a coalition of criminal justice reform organizations; the Workers' Center for Racial Justice, a group that organizes marginalized African-American workers; and Fight for \$15, a national organizing effort to raise the minimum wage. For five years, the coalition kept introducing the bill. But it languished in committee and died.

Eventually however, organizers sensed a shift. After five years of patiently advocating and explaining, the bill no longer seemed so controversial and finally garnered bipartisan support. The fact that New Orleans had adopted fair chance hiring was very convincing for many legislators. The bill passed through the Senate without even requiring testimony. It passed on the House floor as well. It wasn't on the governor's desk a week before he signed it. Louisiana banned the box for over 40,000 public state jobs.

# MASSACHUSETTS

**Boston: 2006**

**Cambridge: 2008**

**Worcester: 2009**

**state: 2010**

In Massachusetts, fighting employment discrimination was linked to reforming how employers used the state's Criminal Offender Record Information (commonly referred to as CORI). Formerly-incarcerated people wanted shorter waiting periods before they could clear their records, and an upgraded state CORI system to compete with private background check companies, which were notoriously inaccurate.

To make fair chance hiring a reality, the Union of Minority Neighborhoods, a group of African-American community activists, founded MARC — the Massachusetts Alliance to Reform CORI. The first city they targeted was Boston.

Several years earlier, in 2001, new Boston city employment regulations had gone into effect which banned people with criminal records from working in health and human services. In response, a progressive Boston City Council member joined with activists from the American Friends Service Committee. They illegally occupied the Department of Public Health Building to protest the new regulations. This act of civil disobedience brought publicity and momentum to the effort to reform public hiring practices.

Now, MARC worked with the same City Councilor who had been arrested for civil disobedience to ban the box in Boston. In 2004, Boston stopped asking about criminal history on its city job applications. In 2006, Boston extended their ban the box policies to private employers with city contracts.



Several other grassroots organizations concerned with fair chance hiring emerged during this period. In Worcester, EPOCA (Ex-Prisoners Organizing for Community Advancement) had deep roots in the addiction recovery community. The Boston Workers' Alliance, a union of under- and unemployed community residents, formed in Boston's African-American neighborhoods. After Boston banned the box in 2004, these groups worked together to ban the box in Cambridge and Worcester.

But at a state level, CORI remained the same.

The CORI coalition increased its size to over 120 organizations statewide. Neighbor to Neighbor Massachusetts joined the coalition and brought Latinos and immigrants into the struggle.



In 2007, the Boston Workers' Alliance mobilized over 2000 people from 50 grassroots groups for a three-mile march supporting CORI reform. They marched from inner-city Boston to the State House. The next year, Worcester's EPOCA organized a five-day, 50-mile walk, designed to raise awareness about Ban the Box and CORI. Members of Neighbor to Neighbor and many other organizations joined the walk. When they got to the State House, they were greeted by hundreds of legislators, union members, clergy, and community members.

Then the campaign hit a snag. In an effort to gain wider support for the CORI reform bill, its legislative authors added a clause expanding parole supervision. This clause was unacceptable to many grassroots members of the coalition. Intense discussions among their members led the coalition to withdraw their support for the bill.

At this point, Ban the Box activists across the state enacted a new strategy: they began to pressure the governor to create an Executive Order reforming CORI.

The strategy worked. Eventually the governor invited leaders of the coalition to help him write an Executive Order on CORI. This Executive Order was signed in 2008. The Order banned the box for all state employment. It also reversed the ban on hiring formerly-incarcerated people in health and human service agencies — the very reason that the Boston Councilor and fellow activists had committed civil disobedience years before.

But there was more work to accomplish. An Executive Order can be rescinded; a good ban the box law and permanent CORI reform still needed to be passed. The CORI coalition kept up a persistent presence at the State House and generated thousands of phone calls and letters statewide. Over 500 members of a coalition of youth organizations, including many people with criminal records and their families, marched on the State House in 2008. In addition, an alliance of African-American ministers launched a 40-day fast for CORI reform.

In 2010, Massachusetts passed an improved Ban the Box bill. The new law banned the box for all public employers — city, county, and state — and all private employers. It included all the CORI reforms that activists had been fighting for. And, it did not include the unacceptable parole expansion clause.

**LESSON LEARNED:** Making connections between different organizations and pooling resources makes a movement stronger and more effective. Some organizations, such as Neighbor to Neighbor, had pre-existing relationships with legislators, and brought their expertise in lobbying to the campaign. This expertise was crucial in working with legislators to create bills and to pass them.

# MINNESOTA

**St. Paul, Minneapolis: 2006**  
**state: 2009**

In Minnesota, a formerly-incarcerated veteran was a key leader in the Ban the Box campaign. He worked as the Advocacy Coordinator at the Council on Crime and Justice (CCJ), a non-profit dedicated to criminal and social justice reform. He had heard about Ban the Box in California and was inspired to start a local campaign.

CCJ brought together about 80 organizations, forming the Minnesota Second Chance Coalition. The coalition included community groups with members who were formerly-incarcerated such as Mad Dads, Take Action Minnesota, and Minnesota Coalition for the Homeless. Homeless and veterans' organizations were especially active and supportive. Other partners included recovery houses, transitional housing providers, faith-based groups, and restorative justice organizations. People joined together, got to work, and started organizing.

At the end of 2006, the mayor of St. Paul responded to the community's activism by issuing a memo to the Department of Human Resources, instructing them to remove the conviction history question from city job applications. The Minneapolis City Council soon followed suit.

Then it was on to banning the box statewide. In 2007, the coalition held a Second Chance Day on the Hill. Community organizations and churches from around the state filled buses, making the trek to St. Paul. Over 900 people with records rallied in the Capitol Rotunda. Many testified in front of legislators at committee hearings. Young people who had never been inside the Capitol building found themselves sitting in legislators' offices, having policy discussions, being listened to.

In 2009, the Second Chance Coalition finally succeeded in convincing the State Legislature to adopt ban the box policies for all public employers. Additional legislation was also passed that year, limiting the liability of employers who hire people with criminal records.

The Coalition also worked on expanding Ban the Box policies to private employers, but organizers encountered strong opposition from the Minnesota Chamber of Commerce. The coalition worked locally to gain support, talking with local Chambers of Commerce and other business groups. After legislation applying ban the box to private employers stalled numerous times in legislative committees, the Chamber of Commerce finally withdrew its opposition and decided to work with the Second Chance Coalition.

With bipartisan support, in 2013 Minnesota passed a second, stronger bill which banned the box for all employment — public and private — in the state.

**LESSON LEARNED:** Sometimes, even a political opponent can become an ally through deeper discussions, to establish a mutually respectful working relationship.

## NORTH CAROLINA

**City of Durham: 2011**

**County of Durham: 2012**

**Charlotte: 2014**

## DURHAM

Ban the Box in North Carolina began in Durham. The Durham Second Chance Alliance was developed by people with criminal records, reentry service providers, community leaders, faith-based organizations, and interested citizens. Their Ban the Box campaign had three notable components: leadership by directly-affected people, policy development by community-based lawyers, and mobilization of directly affected communities to flex their political power.<sup>33</sup>

The Alliance held a spokesperson-training session to encourage formerly-incarcerated people to advocate for themselves. They made videos in which people described their experiences with employment discrimination. The videos were posted online and shown at public meetings.<sup>34</sup> A focus group of people with criminal records worked with the Southern Coalition for Social Justice to create and advocate for a model Ban the Box ordinance for Durham.

After many months of advocacy work, it became clear that Ban the Box would not be passed by the Durham City Council. So the Alliance switched strategy. Instead of trying to pass a bill through the city council, they worked with city administrators to make an administrative policy change. This strategy was successful. In 2011, Durham became the first city in North Carolina to ban the box.

Buoyed by this victory, Second Chance Alliance continued their advocacy at the County level. Durham County officials banned the box in 2012.

Lesson Learned: Be flexible and ready to change strategy rather than give up.

## CHARLOTTE

The Civil Rights Clinic (CRC) at the Charlotte School of Law gives students an opportunity to engage in real-world advocacy and advancing local civil rights causes. A 2010 CRC survey revealed that the incarceration-unemployment-recidivism cycle disproportionately affected Charlotte's poor people and communities of color. CRC concluded that Ban the Box would be an effective way to intervene in this cycle. They believed that Ban the Box was a winnable demand in Charlotte, a city which wanted to portray itself as being part of the "New South," with less racist and more progressive government policies.

The law students decided that the first step to Ban the Box was to build a coalition. CRC joined with the formerly-incarcerated people of All of Us or None/Charlotte, the Charlotte Center for Community Transitions, Homeless Helping Homeless, Action North Carolina. Hundreds of other individuals and several private employers eventually joined and became vocal supporters of the campaign.

With the assistance of lawyers, the law students drafted a model Ban the Box policy. This policy set the "gold standard." It required all private vendors with city contracts to ban the box in their hiring; eliminated the background check altogether for many jobs; and required fairness and transparency when disqualifying a job applicant due to past convictions. Members of the coalition, including formerly-incarcerated people, advocated for this policy with Charlotte's decision-makers. They lobbied city council members, and met with city officials.

An important element of the Charlotte coalition was small business owners. In particular, one restaurant owner who had hired people with records for many years became a very vocal and effective advocate for Ban the Box. He enthusiastically testified that he had a more diverse and skilled pool of employees because he hired people with conviction histories. The Charlotte campaign recruited many private employers to sign statements that supported Ban the Box policies. They submitted the statements to the City Council to demonstrate the high level of support among business owners.

In 2013, organizers decided the time was ripe to bring Ban the Box up for an official vote at City Council. Supporters packed the council chambers, holding signs and wearing red to signify their unified support for Ban the Box. Public comment lasted for over two

hours, with passionate testimony from numerous formerly-incarcerated people, family members, employers, activists, attorneys, and law students.

Despite this tremendous support, the City Council did not pass Ban the Box. Instead, they sent the proposal to a committee for further review. Activists continued to lobby for ban the box, but allies in city government told them that the proposal was too controversial and far-reaching, and it would not get enough votes to pass.

Lesson Learned: Approaching city council members with such a far-reaching policy was evaluated as probably a mistake, and may have contributed to the Council's reluctance to back the proposal. Discussion with the Director of Human Resources before proposing an ordinance might have led to a less comprehensive but still effective proposal that didn't intimidate city council members.

Organizers in Charlotte re-assessed the situation, determined to find a new pathway to success. After researching Charlotte's Council-Manager form of government, they discovered that the City Manager had authority over the city's hiring processes. Ban the Box supporters met with the City Manager, and soon afterward with the Director of the Human Resources department. At these meetings, activists with criminal records eloquently explained how the conviction history question on any application is disheartening, and stops people from believing they should apply or could ever secure a job. Other advocates cited successful Ban the Box policies in other jurisdictions in North Carolina.

Following these discussions, the City Manager directed the City of Charlotte to ban the box.

## OHIO

**Cincinnati: 2010**

**Cleveland: 2011**

**Franklin, Cuyahoga, Hamilton, & Summit Counties: 2012**

**Akron, Lucas County, Stark County: 2013**

**Alliance, Dayton, Massillon, Youngstown: 2014**

**Canton, Newark, Warren: 2015**

**state: 2015**

What is particularly significant about the Ohio campaign to Ban the Box, is how over a six-year period a grassroots coalition won Ban the Box reforms in numerous cities, counties, and statewide. And it all started with the story of one formerly-incarcerated man.

In 2010, a man came to the Ohio Justice & Policy Center (OJPC) asking for legal assistance. After being released from prison, this man had been accepted into an electricians' apprenticeship program. He had graduated #1 in his class. He had passed the civil service exam to become an electrician for the City of Cincinnati. But he was removed from the pool of qualified applicants based on his 12-year old criminal record. OJPC realized that to address this man's situation it was necessary to ban the box.

To this end, OJPC partnered with the AMOS Project, a faith-based social justice organization, and with The Ohio Organizing Collaborative (OOC), a statewide group with members in every major city that worked on issues such as climate change, minimum wage reform, and ending mass incarceration.

The campaign was spirited, with formerly-incarcerated people and their allies attending and, if necessary disrupting meetings, to get attention for proposed changes. After activists disrupted one Civil Service Commission in Cincinnati, they marched to the Mayor's office to deliver hundreds of petition signatures. Cincinnati was the first city in Ohio to ban the box.

With a strong, broad base of activists working around the state, the Ohio coalition won Ban the Box reforms in 16 cities and counties.

In 2015, the Republican governor of Ohio signed into law a Ban the Box bill which applied to all public hiring — city, county, and state — in Ohio.

## OREGON

**Multnomah County: 2007**

**Portland: 2014**

**state: 2015**

The effort to Ban the Box in Oregon began in Multnomah County (Portland area). A formerly-incarcerated woman working at the Partnership for Safety and Justice led a campaign called "Think Outside the Box." She organized a Speaker's Bureau in which formerly-incarcerated people learned public speaking skills, including how to incorporate policy solutions into their own personal stories. They videotaped each other as part of the process of improving skills and developing confidence in public speaking.

Because so many people in addiction recovery are also formerly-incarcerated or convicted, Ban the Box organizers decided it was

important to connect with this community. They attended Portland’s annual “Hands Across the Bridge” gathering that celebrates National Recovery Month. This is the largest event of its kind west of the Mississippi. With thousands participating, it was a great place to mobilize grassroots support for Ban the Box.

In 2007, Oregon organizers had their first victory: Multnomah County removed the conviction history question from their application.

Next, the campaign went statewide with the formation of the Fair Shot for All coalition. This coalition was very large and broad-based, bringing together such diverse groups as the Urban League and the AFL-CIO, along with Voz Workers’ Rights Education Project, Parents of Lesbians and Gays, The Bus Project, and the National Organization for Women.

In Portland, formerly-incarcerated people and their families had been pressing the City Council to ban the box. In 2014, the Portland City Council passed a Ban the Box law by a unanimous vote. This ordinance delays any conviction history check until a conditional offer of employment is extended to an applicant.

In 2015, the state of Oregon banned the box. The governor signed into law a bill which increases the minimum wage, increases paid sick days, and prohibits employers from inquiring about an applicant’s prior criminal convictions until the initial interview with the applicant. The law applies all to public and private employers throughout the state.

## RHODE ISLAND

**Providence: 2009**

**state: 2013**

Rhode Island activists first learned about Ban the Box from All of Us or None in California, then from the Second Chance Coalition in Minnesota. Ban the Box was building momentum, and these successes were inspiring people in new places to take up the challenge.

DARE (Direct Action for Rights and Equality) is a grassroots group in Providence, RI, which organizes low-income families in communities of color for social, economic and political justice. DARE includes formerly-incarcerated people on its staff, its Board of Directors, and in its general membership.

DARE's Behind the Walls committee of prison activists decided that they wanted to Ban the Box statewide in Rhode Island. The committee hoped for a law which applied to both public and private employers, though they agreed they might have to settle for less.

DARE partnered with the addiction recovery group RICARES (Rhode Island Coalition for Addiction Recovery Efforts) to strengthen and enlarge the campaign. They also worked with the ACLU, SEIU, other unions (carpenters, stagehands, electricians), and faith-based groups.

The coalition's first task was to draft a Ban the Box bill. A formerly-incarcerated coalition member drafted this bill. They then organized bipartisan support, recruiting both a progressive state legislator and a Tea Party legislator to co-sponsor the bill.

Next, the organizers launched an online petition to ban the box in Rhode Island on Change.org.<sup>35</sup> They gathered signatures door-to-door. They created a logo to brand the campaign and made T-shirts to wear at public hearings. They also produced a video featuring formerly-incarcerated people in Rhode Island talking about why Ban the Box would help them and their families.<sup>36</sup>

DARE also organized rallies at the State Capitol. Members, many of them formerly-incarcerated, talked to legislators about voting for the bill. RICARES, which had developed crucial connections with legislators, advocated for Ban the Box at their annual lobby day.

In 2011, the DARE coalition asked the City of Providence to issue a resolution of support for a statewide Ban the Box bill. The mayor of Providence had already banned the box by way of administrative order in 2008. In 2009 the Providence Human Resources Department removed all language asking about conviction history from its application. Activists packed City Hall and won the City's official support for the statewide bill.<sup>37</sup>

The coalition kept working. They produced a video, "Beyond the Box," which they used extensively in educating the public and garnering support for Ban the Box.<sup>38</sup> Formerly-incarcerated people testified at committee hearings, the coalition held legislative briefings, and supporters rallied inside and outside the State Capitol.

Finally, in 2013, Rhode Island passed a comprehensive bill that banned the box for all public and private employers in the state.



# U.S.A.

## United States: 2015

On November 2, 2015, President Obama banned the box for many federal jobs. He instructed the Office of Personnel Management to remove the conviction history box from federal job applications, and delay inquiry into past records until later in the hiring process.

This historic reform was a result of a Ban the Box movement which had been growing, organizing, and winning city, county, and statewide victories across the nation for a decade.

Ban the Box activists who worked on local campaigns also participated in the national Ban the Box effort. In Wisconsin, for example, formerly-incarcerated activists in Ex-Prisoners Organizing (EXPO) reached out to state and local officials, asking them to urge President Obama to ban the box for all Federal contractors. They gathered letters of support from the Milwaukee County Executive, several County Supervisors, and numerous State Representatives. EXPO organizers traveled the state, educating the public about how discrimination based on arrest and conviction history ruins peoples' lives, and collecting petition signatures asking President Obama to ban the box.

The campaign to Ban the Box federally was also pushed by national networks, including the Formerly Incarcerated, Convicted People & Families Movement (FICPFM), the National Employment Legal Project, and the PICO National Network, along with 130 other advocacy organizations all calling for President Obama to ban the box.

In July of 2015, formerly-incarcerated leaders from around the nation went to Washington, D.C., to participate in a Ban the Box rally in front of the White House. EXPO members from Wisconsin were there. Three EXPO members were part of a delegation that met later with some of President Obama's policy advisors.

A big breakthrough in the campaign occurred at the 20<sup>th</sup> anniversary of the Million Man March in Washington, D.C. FICPFM members were gathering signatures on the national Ban the Box petition when they connected with Grammy-award-winning musician John Legend. Legend had just launched his "Free America" campaign to end mass incarceration. He enthusiastically agreed to produce a video about Ban the Box and circulate it through [colorofchange.org](http://colorofchange.org). Within 10 days, the petition had reached its goal of 130,000 signatures.

Soon after, FICPFM leaders held a press conference at the White House to announce the 130,000 signatures. They were invited to a meeting in the West Wing.

White House aides urged FICPFM to support a bipartisan criminal justice bill backed by the President — the Booker-Cummings bill. Although this bill would have banned the box for federal contractors, it had very weak penalty and enforcement provisions. FICPFM made it clear that they would not support the bill in its present form.

One week later, President Obama took executive action to ban the box, removing the conviction history question from applications for most federal jobs. This action, however, does not apply to federal contractors. Expanding Ban the Box's scope to include federal contractors will be an important next step in the national campaign.

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The above snapshots give a flavor of how Ban the Box developed around the country. Each locale has its unique process, depending on the specifics of time and place and who stepped up to do the organizing. For a complete and updated list of all Ban the Box victories, you can visit the website of the National Employment Law Project. (<http://www.nelp.org>)

## MYTHS & REALITIES

# ARGUMENTS AGAINST BAN THE BOX

Conviction history background checks have become so widespread that they are everywhere in our society. People even run background checks on who they're dating.

The use of background checks for employment purposes has skyrocketed since the advent of the Internet and increased availability of background checking services. A survey by the Society for Human Resources Management in 2012 found that 69% of member companies conducted criminal background checks on all of their job candidates.<sup>39</sup>

Commercial background check companies encourage this practice and make a lot of money doing so. These companies now have combined revenues of over \$2 billion yearly.<sup>40</sup>

Employers commonly believe that background checks are needed to decide whether an applicant will be a good employee. They often believe that without doing a background check they are leaving themselves vulnerable to all sorts of financial and business risks. But is this true? This section will explore the myths and realities about background checks and Ban the Box.

## MYTH #1

*“A person with a criminal record will be a worse employee than someone without a criminal record.”*

## THE REALITY:

What do the facts say, rather than prejudicial opinion? While there have not yet been many studies done in the area of criminal records and employee performance, there have been a few.

The Public Policy Program at Stanford University conducted a study of San Francisco’s fair-chance hiring, analyzing the performance of employees with criminal records. “Our research suggests that individuals with conviction records do not work fewer days than employees without records, nor are they more likely to suffer from a negative termination. This result gives early validation to claims by advocates of fair-chance hiring policies that a criminal record does not in itself make an employee a “worse” hire.”<sup>41</sup>

This report further states that, “once hired, those persons perform comparably to their counterparts without criminal records.”<sup>42</sup>

The city of Austin, TX, decided to ban the box in 2008, removing the question about arrests or convictions from job applications. “Since then, the Director of Austin’s Human Resources Department states that more qualified candidates with criminal backgrounds—candidates who previously may have opted against completing the application due to the background questions—have applied. ‘There are extremely talented and qualified people who happen to be ex-offenders,’ he adds. ‘They are just as productive as people who do not have criminal records.’”<sup>43</sup>

Beyond statistical studies and reports by government officials, there is a growing body of anecdotal evidence relating to the results of fair chance hiring practices.

In Florida, a restaurant-owner, with 5 restaurants and 340 employees who has hired employees with criminal records says: “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. ... Because of this policy, we get to hire people who would potentially not otherwise apply for a restaurant job, people who are grateful to have a job and do more than other workers to prove themselves and move up in the company. ... The problems with workers with criminal records are no different than those without records.”<sup>44</sup>

## MYTH #2

***“Without access to background checks, employers will be financially at risk for their employees’ crimes.”***

Many employers fear ban the box reforms because they believe that background checks help protect them against negligent hiring lawsuits. Employers worry about “negligent hiring” — if they hire a person with a conviction history who later commits a new crime, they worry they will be financially liable.

## THE REALITY:

Employers can avail themselves of various employer protection programs, ranging from private insurers to government programs.

The Federal Bonding Program is a public insurance program designed to protect employers from employee dishonesty. Any employee in any state can be covered by this bond, with no age requirements or deductible — and no paperwork for the employer. This bonding program covers all type of stealing: theft, forgery, larceny, or embezzlement.<sup>45</sup>

Ordinarily, people who have “committed a fraudulent or dishonest act” are not bondable by the employer’s private insurance company, which may lead to a denial of employment for someone with a record. However, due to the Federal Bonding Program, after six months on the job participants can then be bonded by the employer’s private insurance.

Another federal program, the Work Opportunity Tax Credit, is available to employers who hire and retain people who face significant barriers to employment. A tax credit of \$1,200 to \$9,600 is available to employers when they hire people with conviction histories. This can be an important incentive to hire people with criminal records.

Some employers fear that if they hire a person with a criminal record who then causes harm (accidental or purposeful) while on the job, the employer is vulnerable to negligent hiring lawsuits by other employees or the general public. In reality, employers are protected in the courts as long as they exercise *reasonable care* in their hiring practices. A background check is not required as part of meeting this standard. The courts generally consider “reasonable care” to mean: require a written application, check all work and personal references, and conduct an in-person interview.

## MYTH #3

***“Ban the Box policies increase racism in hiring.”***

In 2016, two studies were published alleging that ban the box policies resulted in discrimination — a decrease in employer callbacks for Black and Latino applicants, or a decrease in actual employment for young Black and Hispanic men.<sup>46</sup>

The studies did not use real people. One of them was conducted by submitting fictitious online applications to large chain stores,

before and after ban the box policies had been adopted by the companies. In comparing the “before” and “after” application results, that study found that, “before Ban the Box, white applicants to BTB-affected employers received about 7% more callbacks than similar black applicants, but BTB increases this gap to 45%.”<sup>47</sup>

Both studies had similar conclusions: “When an applicant’s criminal history is unavailable, employers statistically discriminate against demographic groups that are likely to have been recently incarcerated.”<sup>48</sup> One of the reports goes so far as actually accusing ban the box policies of “doing more harm than good when it comes to helping disadvantaged job-seekers find jobs.”<sup>49</sup>

Their conclusion is that the denial of criminal record information causes employers to reject black applicants because of employers’ belief that black people are more likely to have criminal records.

## THE REALITY:

It’s not Ban the Box that causes racism in hiring, and these studies don’t prove that it does.

When an employer makes the assumption that a person of color has a criminal record, that’s racial profiling. When an employer refuses to hire a person because of his race, that’s racial discrimination. In today’s society, these are inextricably linked because of the racism of the criminal justice system. All of these are manifestations of the *structural racism* that anti-discrimination campaigns like Ban the Box hope to reduce.

These reports never question employers’ practices of racial discrimination. Instead, racial profiling is accepted as the norm. If employers discriminate due to racial bias, the answer is not to dismantle or discourage ban the box policies that have successfully increased hiring of people with records. Instead, more emphasis should be placed on enforcing existing laws against racial discrimination, and continuing to educate employers.

Results from the studies make it clear: formerly-incarcerated people need both Ban the Box policies and strongly-enforced protections against all forms of discrimination.

These negative studies on Ban the Box have also been disputed in at least one more report. “No Woman No Crime: Ban the Box, Employment and Upskilling,” found that, “Ban the Box legislation appears to have been successful if judged on the basis of its proclaimed proximate objective: making it easier for individuals with criminal records to find and retain employment. It has increased employment in the highest-crime neighborhoods by as much as 4%.”<sup>50</sup>

# EVALUATION

## BAN THE BOX OUTCOMES

This section will evaluate the impact of Ban the Box on four groups of people: activists who have participated in Ban the Box campaigns, job seekers, employers, and the general public.

### IMPACT ON ACTIVISTS

The impact of the Ban the Box campaign on people who have been active participants in this movement cannot be emphasized enough. People who are formerly-incarcerated or convicted have for so long been stigmatized, considered “other” or “less than” or “bad.” We have been shut out of jobs, denied the right to vote, been treated as not deserving of basic civil and human rights.

To come together as a group and struggle for our civil and human rights is a deeply transformative experience.

Martin Luther King Jr. said of the 1960s civil rights movement, “The real victory was what this period did to the psyche of the black man. We armed ourselves with dignity and self-respect [and] we straightened our backs up. And a man can’t ride your back unless it is bent.”<sup>51</sup>

In spearheading the movement to Ban the Box, this same process has occurred for formerly-incarcerated people. We have united and formed a collective identity. Together, we have learned how to talk with elected officials and other decision-makers. We have learned how to actually convince these decision-makers about issues and policies that affect our lives. We have learned how to build coalitions with allies around common interests. We have won victories together, and we have suffered set-backs together. We have formed friendships. We have learned how to transform our ideas into reality.

On a nuts and bolts level, some of us have learned computer skills, how to read an official document, how to build a phone tree, or make an email group, or write a press release.

All of this adds up to feeling empowered rather than victimized, to feeling capable rather than helpless.

In organizing to change society, we have changed ourselves.

## IMPACT ON JOB SEEKERS

Increasing employment opportunity is a fundamental goal of ban the box reforms. For formerly-incarcerated or convicted people searching for work, banning the box removes a huge barrier to becoming employed. Now, when filling out a job application, people with conviction records do not have to re-live the shame of their past, or be defined by their past mistakes. Before Ban the Box, many people with records didn't even bother applying for a job, knowing that their record would most likely send their application straight into the trash bin.

“Why is that box so intimidating? Because right away, it makes us feel that we are being set aside,” says Robert Martinez, a former drug addict who now works for the AARP's Senior Community Service Program in Colorado. “If that box isn't there maybe, just maybe, this employer is going to look at me and my qualifications. Not what I did in the past, but what I can do now.”<sup>52</sup>

Destiny Harris, a high school senior whose mother has difficulty getting a job due to her criminal record, says that banning the box in Austin, TX, gives “people like me and my mom a second chance.”<sup>53</sup>

**In Alameda County, CA** where Ban the Box was instituted in 2007, a county analyst stated, “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.”<sup>54</sup>

Not only do more formerly-incarcerated people apply for jobs after Ban the Box, but statistics show that more are being hired.

**In Durham, NC**, for example, Ban the Box was implemented in both the city and county in 2011. In 2011, only 2% of new city hires had conviction histories. By 2014, 15% of new city hires had records.<sup>55</sup> Results for the County of Durham are remarkable as well: since 2012, the number of people hired who have conviction histories has tripled.

**In San Francisco, CA**, a report on fair hiring found that from 2013 to 2015, only 2% of those with a job-related conviction history were disqualified after the individualized assessment of their conviction.<sup>56</sup> That means that even with a job-related prior conviction



— such as a DUI for a bus driver, for example — many individuals were judged to have been rehabilitated, responsible, stable, and job-ready.

## IMPACT ON EMPLOYERS

Human Resources Departments are often concerned that ban the box laws will slow the hiring process and create extra work for their staff. What have the actual real-life results in this area been so far?

Some cities and counties with ban the box policies have done evaluations. These evaluations can be useful to other cities and counties, as well as to agencies and private employers who are considering these reforms.

**Minneapolis, MN**, adopted Ban the Box laws in 2006, and their revised policies went into effect on January 1, 2008. An evaluation from their Human Resources Department<sup>57</sup> found that considering conviction records at the time of the job offer (instead of earlier on the job application) has reduced staff time involved. And, they found that reviewing convictions at this stage has not slowed down the hiring process. Also, fewer applicants were being rejected due to a conviction history. More than half of the applicants (57%) with a conviction history were hired.

**In Alameda County, CA**, Human Resource staff affirmed very similar conclusions. In testimony supporting a statewide Ban the Box bill in California, an HR analyst for Alameda County commented, “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 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.”<sup>58</sup> The analyst also testified, “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.”<sup>59</sup>

**In Durham County, NC**, where the number of people hired with conviction histories tripled, none — not a single one — of those people has been fired for illegal activity.<sup>60</sup>

In **San Francisco, CA**, Stanford University students collaborated with the San Francisco Human Resources Department and NELP (National Employment Law Project) in a study of 5,228 people who were hired for jobs with the City/County of San Francisco during

a 15-month period. Their findings show that “when comparing the performance of employees for a specific department, employment class, and/or job code, we generally observe no difference in the likelihood of receiving a negative job termination.”<sup>61</sup> This study provides statistical evidence that people with conviction histories perform equally as well in their jobs as people without records.

## IMPACT ON THE GENERAL PUBLIC

Whenever formerly-incarcerated people have started a Ban the Box campaign, the first questions from government officials and other decision-makers are: Does it work? Does banning the box truly result in more formerly-incarcerated people being hired? Does it reduce crime? Does it increase public safety?

The answer is yes, yes, and yes. And, all of these factors are connected.

## REDUCES CRIME, INCREASES PUBLIC SAFETY

According to a 2011 study of the formerly incarcerated, “The lack of employment was the single most negative determinant of recidivism.”<sup>62</sup>

A study of the job-assistance program America Works shows that, “Work reduces recidivism, but there’s an important caveat that we must point out — the sooner ex-offenders are employed, the less likely they will commit future crimes resulting in further jail and prison time. ... Statewide rates of recidivism range from about 31% to 70%, while the rates for those placed in jobs shortly after their release ranged from 3% to 8% percent [in the America Works program].”<sup>63</sup>

It’s common sense: a person’s ability to earn a legal living is paramount in staying away from crime and out of prison or jail. Because banning the box increases the opportunities for formerly-incarcerated people to work, increased public safety is an important argument in favor of these reforms.

A recent study in the *American Journal of Criminal Justice* found that Hawaii’s ban the box law resulted in reducing repeat offending. “By mollifying the stigma attached to a criminal record during the hiring process, Hawaii’s ban the box law proved to be extremely successful in attenuating repeat felony offending.”<sup>64</sup> The study also found that, “the law affected black and non-black ex-offenders

similarly.”<sup>65</sup> This means that Hawaii’s ban the box law has improved public safety because fewer people with records are committing new crimes.

## CHALLENGES STEREOTYPES

Ban the Box campaigns have helped change social perceptions of people who have records or have been in prison. When people who have been in prison organize and advocate for their rights, elected officials and service providers begin to view them in new ways. They begin to be seen as smart, serious human beings, full of ideas, knowledge, and talents. The stigma lessens against formerly-incarcerated people as they interact with broader circles of people, build coalitions, and recruit allies. When the general public hears their testimony, and their stories are featured in press reports, the fear associated with someone who has been in prison is reduced.

Just a decade ago, the voices of formerly-incarcerated people were neither respected nor included in criminal justice policy discussions, even though it was their lives and their families’ lives that were affected by these decisions. Now, formerly-incarcerated activists are winning the respect of allies and elected officials alike, and their analysis and leadership is sought out by decision-makers.

## ADVANCES HUMAN RIGHTS

When any group or individual is deprived of dignity and basic human and civil rights, the entire society is diminished. Removing discrimination in ALL of its forms should be a goal for any society that hopes to be democratic and fair. Ban the Box reforms increase equality and opportunity, and should be affirmed for that reason alone.

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I AM MORE THAN MY CRIMINAL RECORD

I am... **honest** • student

• independent •

• strong • determined • hard-  
willing • worker •  
a **good** mother •

• Teachable •

WE ARE QUALIFIED  
GIVE US A FAIR CHANCE TO WORK

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