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A Study of Factors Influencing Hiring Decisions in the Context of Ban the Box Policies

Ronald F. Day

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A STUDY OF FACTORS INFLUENCING HIRING DECISIONS
IN THE CONTEXT OF BAN THE BOX POLICIES

by

RONALD F. DAY

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial
fulfillment of the requirements for the degree of Doctor of Philosophy,
The City University of New York

2019

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Ronald F. Day

This manuscript has been read and accepted for the Graduate Faculty in
Criminal Justice in satisfaction of the dissertation requirement for the degree of
Doctor of Philosophy.

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ABSTRACT

A Study of Factors Influencing Hiring Decisions in the Context of Ban the Box Policies

by

Ronald F. Day

Advisor: Lila Kazemian

This dissertation investigates whether NYC employers adhered to Ban the Box by removing the question about criminal history from employment forms, by refraining from inquiring about an applicant's criminal record during the interview process, and by complying with other aspects of the policy. The study also documents employer perspectives on Ban the Box and on the hiring of individuals with criminal convictions, and examines whether more individuals with a criminal record were hired after the policy was implemented.

Using a mixed-methods approach, surveys were administered to companies in the nonprofit and private sectors, and semi-structured interviews were conducted with a subset of these employers. The study found that nearly one-third of the employers did not ban the box, and some continued to inquire about an applicant's criminal history at an earlier stage than what is permitted by the law. When employers did remove the criminal history question from the job application, they were less susceptible to violating other provisions of Ban the Box, such as performing an Internet search for an applicant's criminal record. The majority of employers reported that Ban the Box did not negatively impact the hiring process and that they were generally receptive to hiring individuals with a criminal record, with the exception of those with "objectionable" convictions. In addition, employers seldom collected data about screening and job offers to this population, highlighting one of the main challenges in assessing the policy's overall effectiveness. Because the city does not mandate agencies to document these data, it remains challenging to conduct a comprehensive evaluation of the effectiveness of Ban the Box.

The study findings highlight important practical implications relating to Ban the Box and other similar policies. Given the confusion resulting from the limited guidance offered about the policy, and because some agencies lacked sufficient human resource experience to implement new administrative initiatives, employers were sometimes unsure if they had in fact complied with Ban the Box. The study exposed the need for wider dissemination of informational material about Ban the Box, training on best practices regarding the hiring of individuals with a criminal record, and a reliable mechanism for data collection.

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There are more people that have supported me than I can ever name in this dissertation. The support that I received is overwhelming, which makes the struggles that I had to endure to accomplish this goal all the more noteworthy. Indeed, mine was anything but a linear educational path. I disappointed my now dearly departed mother when I dropped out of high school early in the ninth grade. This decision punctuated a series of misguided adolescent errors. Years later I found myself serving a long stint in prison, with a GED that I had earned through sheer luck. Hence, my educational odyssey began behind the walls of a notorious maximum-security prison.

Men that were incarcerated alongside me, especially Siddiq Najee and Ronald Robertson, encouraged me to thrive in spite of my incarceration, as did correctional counselor Laurie Scott and registered volunteers Rev. Dr. Timothy James Johnson, Dr. Sandra Greene, and Rev. Doug Leonard. So, it's in a place where hope is often dashed, where individuals suffer daily indignities, and where individuals question their *place* in society and their societal *worth*, that my thirst for education was sparked. It's in this dreadful place where a spark ignited a flame that grew into an inferno. A quarter of a century later, as I've traversed this academic juggernaut, I thought often about incarcerated men and women around this country that don't have an opportunity to earn a quality college education, more less a coveted doctoral degree. This dissertation is the culmination of an educational metamorphosis. It's a testament to the belief that people can and do change; to the transformative power of education. For that, I want to thank all the people that believed in me before I believed in myself.

A special thanks to my dissertation committee for guiding me through this process with resolve and patience. They offered considerable time, critical feedback, and deep analysis on a process that was sometimes complicated and exhausting. I want to acknowledge my chair, Dr. Kazemian, for consistently pushing me to revise and improve the dissertation. Her guidance and support played prominently in getting me to the finish line.

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Chapter 1: Background: The Growth and Consequences of Incarceration in the United States

1.1 Introduction

Over the past four decades, the United States has significantly expanded its use of criminal sanctions. This net widening has translated into millions of individuals having criminal records, with a substantial number serving time in jail and/or prison. There are now 2.1 million people incarcerated in the U.S., and another 4.5 million individuals are assigned to some form of community supervision (Bureau of Justice Statistics, 2016). Recent figures suggest that more than 626,000 people are released from prison each year, while another 10.6 million cycles in and out of jails (Bureau of Justice Statistics, 2016; Wagner & Sawyer, 2018). Although there has been a spotlight on “prisoner reentry” since the early 2000s, the challenges and stigma associated with having a criminal record, even absent a period of incarceration, have been enormous.

The collateral consequences of “mass incarceration” are expansive. It has become commonplace for individuals who have been involved in the criminal justice system to face overt or covert discrimination in multiple areas, including housing, education, and employment (Carey, 2005; Day, 2015; Pager, 2003; Pager, Western, & Sugie, 2009). Discrimination in any form is problematic, but it can be particularly vexing in the employment context, as the livelihood of individuals and their ability to take care of themselves and their families is tied to their job prospects (Turney, Lee, & Comfort, 2013).

The stigma of a criminal record has been found to be more pronounced for minorities, who make up the majority of the population involved in the criminal justice system (Bureau of Justice Statistics, 2016; Pew Charitable Trusts, 2008). Employment discrimination predicated on criminal records has been found to have a disparate impact on blacks and Latinos, as they are

more likely to be denied job opportunities (Pager, 2003; Pager, Western, & Sugie, 2009; Pager, Western, & Bonikowski, 2009; Smith, 2014). This inherent bias has led policymakers to seek sensible solutions to this conundrum, with bipartisan efforts to make significant criminal justice reforms. At the signing of the Second Chance Act (a \$300 million prisoner reentry initiative), former President George W. Bush – a law-and-order conservative- intimated that: “America is the land of the second chance – and when the gates of the prison open, the path ahead should lead to a better life” (as cited in Petersilia, 2003, p. 253).

The inability of individuals with a criminal record to find stable work with decent wages is more than a moral issue; it also entails economic and social implications. Enhanced employment opportunities translate into more tax dollars. In a single year, it is estimated that \$57 to \$65 billion is lost in economic output as a result of the lack of employment of individuals with criminal records (Schmitt & Warner 2010). Moreover, studies show that there is a direct correlation between work and crime (Chalfin & Raphael, 2011; National Research Council, 2014; Sampson & Laub, 1997; Uggen, 2000).

Because overwhelming evidence demonstrates that employers are resistant to hiring individuals with a criminal record (Holzer, 1996; Holzer, Raphael & Stoll, 2003; Pager 2003, 2007), this area has been ripe for policy change. A policy that has gained considerable bipartisan support is “Ban the Box,” a procedure that removes the question (checkbox) about criminal history from employment applications and often delays the criminal background check (Rodriguez & Mehta, 2015). Removing the box is designed to level the playing field for job applicants with criminal records, since the goal is to have employers focus on job skills and work experience rather than arbitrarily reject candidates that check the box.

The evidence on Ban the Box is limited, despite the plethora of research on employment outcomes for individuals with a criminal record. It has been difficult for researchers to determine the effectiveness of Ban of Box, partly because the policies are different across jurisdictions, the interactions between employers and jobseekers is a private affair, with the decisions having policy and legal implications, employers rarely collect these data, and employers are likely to be cautious about revealing hiring practices that violate legislation.

In the past, employers openly discussed their reservations about hiring individuals with a criminal record (Decker, Spohn, Ortiz, & Hedberg, 2014; DeVeau v. Braisted, 1960; Green v. Missouri Pacific Railroad Company, 1975; Holzer, 1999). They felt justified in refusing to hire someone who violated societal norms, even if the decisions were only tangentially related to safety or liability. However, consternation and discontent over mass incarceration is drastically changing the landscape. Whereas, policymakers routinely enacted policies that flagrantly discriminated against individuals with records, the political climate, championed by many in the business community, is developing increased sensitivity to this issue. Employers are more amenable to hiring individuals with criminal convictions (as least in certain industries; Society for Human Recourse Management, 2018).

The openness to hire individuals with a criminal record is clouded by the economy, the varying perspectives from employers about Ban the Box, and the fact that the policy does not mandate employers to hire this population. In other words, it is not easy to isolate the root causes of the effects of Ban the Box, since there is rarely one factor that produces an outcome. Researchers have devised clever ways to understand the implications of Ban the Box policies, mostly through secondary data analyses (D'Alessio, Stolzenberg, & Flexon, 2014; Doleac & Hansen, 2016; Shoag & Veuger, 2016). It is important, however, to develop a more nuanced

understanding of hiring practices, not just the decision to hire an individual with a criminal record. The best way to accomplish this feat is through audit studies (Agan & Starr, 2016; Pager, 2003; Vuolo, Lageson, & Uggen, 2017) or by surveying hiring managers (Decker et al., 2014; Holzer, 1999). This dissertation takes the latter approach, piercing the veil of hiring practices by investigating the experiences of hiring managers and senior staff responsible for hiring decisions in the context of Ban the Box.

The dissertation consists of seven chapters. Chapter 1 provides a general background on mass incarceration and its collateral consequences, with an emphasis on employment for a group that is often alienated in the job market. Chapter 2 offers a legal analysis and some historical context to better understand the practice of discriminating against individuals with a criminal record. Chapter 3 presents a comprehensive literature review on the employment outcomes of individuals with a criminal record, including research on Ban the Box. The research procedures and methodology of the current study are detailed in Chapter 4. Chapter 5 summarizes the survey results, and Chapter 6 presents the perspectives of hiring managers drawn from the semi-structured interviews. Finally, Chapter 7 offers a detailed discussion of the results and presents recommendations for research, policy, and practice.

Chapter 2: The Impact of a Criminal Record on Employment: A Legal Analysis

2.1 Introduction

As noted in the previous chapter, the United States' increasingly punitive turn over the last decades has led to policies that have often imposed crippling restrictions on individuals with a criminal conviction, particularly in the employment context. This chapter provides an overview of legal cases that have addressed employment discrimination, from the highest court in the land, the United States Supreme Court, to lower level federal and state courts. Further, it provides some historical background on the legal justifications for discriminating against individuals who are believed to have questionable morals. The cases draw upon legislation and regulatory policies that have hindered access to employment for a population that has been perennially disenfranchised.

The rationale underlying the deliberate imposition of occupational restrictions on individuals with criminal histories relates to the notion that they lack proper judgment and moral character (Aukerman, 2005; Flake, 2015). As such, states and municipalities have adopted a myriad of statutory and regulatory bars to their employment. Moreover, the expansion of the U.S. economy has resulted in a growing diversity of career opportunities, many of which now require a licensure, (e.g. barber, electrician, plumber, pest control technician, bingo distributor, real estate agent, drug counselor, security guard, and the like). Predictably, people with criminal histories are often blocked from obtaining a license, and it can be revoked or suspended if a license holder is convicted of a crime, even in cases involving a minor offense that is unrelated to the occupation (Legal Action Center, 2006; Rodriguez & Avery, 2016).

2.2 The Supreme Court's Endorsement of Discrimination Based on "Bad Moral Character"

There is a legitimate legislative purpose to enacting laws and adopting regulations that protect the public from individuals who have been known to engage in illegal activities. However, policymakers have favored wide-reaching and punitive laws, and courts have sided with the legislature or regulatory agencies, even in cases where a more narrowly tailored law would have sufficed. For example, in the first Supreme Court Case that addressed the issue of employment discrimination against individuals with a criminal record (*Hawker v. New York* 1898), the Court sustained a law that stated that practicing medicine with a prior felony conviction was a criminal offense. In this particular case, Mr. Hawker was charged with the crime of abortion in September of 1877. He was convicted in 1878 and sentenced to 10 years in prison. In 1893, New York State adopted a law, amended in 1895, which prescribed that: "any person who, after conviction of a felony, shall attempt to practice medicine, or shall so practice, shall be guilty of a misdemeanor" (Public Health Law, chapter 398, sec. 153). Although the law was enacted more than fifteen years after his conviction, Mr. Hawker's right to practice medicine was revoked because the state deemed that physicians should possess "good moral character." The Court determined that "character is as important a qualification as knowledge" (p. 190). There was an acknowledgement that people who commit crimes are redeemable, since "one who has violated the criminal law may thereafter reform, and become in fact possessed of a good moral character" (p. 191). Notwithstanding this observation, the Court neglected to consider if Mr. Hawker had reformed his life and he was banned from practicing medicine.

This case raised a fundamental and lingering question about whether charging Mr. Hawker with a crime for practicing his profession and revoking his license could be regarded as

double punishment for the abortion conviction. To this point, it has been argued that the extensive collateral consequences of a criminal conviction, which are apparent to authorities involved in the administration of justice, are in fact a form of “invisible punishment” (Travis, 2002). In *Hawker v. New York*, the Court affirmed that the intent of the law was not to punish, but rather to prevent individuals with bad moral character from practicing medicine.

The Supreme Court elevated the concept of “bad moral character” to new heights in *DeVeau v. Braisted* (1960). This case involved a statute prohibiting unions from collecting membership dues if *any* union official had a felony conviction. The state argued persuasively that criminal activity was rampant on the New York City waterfront and that this corruption had eroded the public trust. Mr. DeVeau insisted that banning anyone with a prior felony conviction from a union position was unnecessarily broad, and could send the misleading message that individuals with felony convictions are incorrigible. Despite the credence of this argument, the Court determined that crime could only be eradicated by blocking individuals with felonies from holding union positions. Further, the Court dismissed the notion that the provision was designed to “punish” this population, accepting instead that it was required “to devise what was felt to be a much-needed scheme of regulation of the waterfront” (363 U.S. 144 at p. 160).

2.3 Felony Convictions and Perpetual Punishment

While the denial of employment opportunities was not regarded as punishment, courts routinely affirmed legislation that imposed significant barriers on individuals convicted of felonies, in a manner that could easily be interpreted as punishment. These decisions raised a fundamental question about fairness. For instance, in *Darks v. City of Cincinnati* (1984), the

Court upheld a decision to deny a license to operate a dance hall on the basis that the applicant had two prior felony convictions. The statute stipulated that licenses were only available to “reputable persons of good moral character” (Cincinnati Municipal Code § 829-11). The city openly admitted that it denied licenses to all applicants who were convicted of a felony. The Court opined that the “state has a strong interest or need to protect the public from those with criminal propensities” (p. 1042). The fact that the felony charges were unrelated to the dance hall business was inconsequential, and the Court decided that questions pertaining to Mr. Darks’ rehabilitation were “irrelevant” (p. 1044; see also, *Flanagan v. Town of Petersburg*, 1929).

The limited importance granted to rehabilitation and the perpetual nature of punishment for individuals with felony convictions were emphasized in *Hill v. City of Chester* (1994). Mr. Hill had undergone significant changes in his life after two prison sentences. He became a minister, got married, fathered three children, and gained considerable legal and administrative skills. Despite these positive changes and signals of successful social reintegration, he was abruptly terminated from his job as the administrative assistant to the mayor. The Court’s decision confirmed the public’s view that a man convicted of homicide and sexual assault was not suitable for an administrative role with the city.

2.4 Discrimination as a Means of Protecting Vulnerable Populations

Courts have endorsed a higher level of protection against individuals with criminal histories for employment positions involving contact with vulnerable populations, such as children, the elderly, and the disabled (*Hilliard v. Ferguson*, 30 F.3d 649, 5th Cir. 1994; *Lopez v. McMahon*, 253 Cal. Reporter 321, Ct. App. 1998). For example, in *Crook v. El Paso*

Independent School District (2008), the court upheld a decision to deny a permanent teaching position to Mr. Crook, who had thirteen felony convictions for barratry (i.e., the persistent incitement of litigation). Although Mr. Crook was hired as a substitute teacher, the policy of the school district was to deny a permanent position to any individual convicted of a felony offense. The court did not find fault with this policy, opining that “the school board’s policy reflects the legitimate interest of protecting children from both physical harm and corrupt influences” (No. 07-50968, 5th Cir. 2008, p. 5). Mr. Crook argued that the school board’s policy was irrational, particularly since he was convicted of a “victimless” crime. The court dismissed this argument, stating that barratry was deemed a “serious crime” in Texas.

Paradoxically, while the school board claimed to seek to protect children from physical harm and corrupt influences, it ostensibly exposed them to these same factors by hiring Mr. Crook as a substitute teacher. The court failed to find a contradiction in permitting Mr. Crook to teach classes and have routine interactions with children. The court’s decision effectively affirmed that although substitutes have similar responsibilities as permanent teachers, they would never receive the perks or the prestige bestowed upon permanent teachers.

2.5 The Courts’ Efforts to Invalidate Discriminatory Practices

The cases cited above show that courts often agreed with policymakers and employers who blocked individuals from employment opportunities based on the premise that a felony conviction – of any type – translated into lack of moral character. As the following cases will demonstrate, the courts eventually extended their legal analysis of moral character to the circumstances surrounding the arrest or conviction, and ruled to invalidate discriminatory policies or practices. For instance, in *Schwartz v. Board of Bar Examiners of New Mexico* (1957),

the Supreme Court reversed a decision to deny licensure to an individual based on prior questionable behavior (i.e., membership in the Communist Party, the use of aliases, and prior arrests that did not result in a conviction). Contrary to *Hawker*, the Court held that the “qualification must have a rational connection with the applicant’s fitness,” and deemed that the mere fact of engaging in disreputable conduct did not necessarily render the defendant unfit to practice law (238-39). Importantly, the Court rejected the notion that an arrest for a criminal offense, even if the defendant was guilty of the act, translated into an absence of good moral character. The Court weighed the criminal behaviors with the defendant’s years of military service, devotion to his faith and family, and testimony about his reputable conduct from various witnesses, and found no evidence that Mr. Schware “presently” lacked moral turpitude.

Mr. Schware’s case was unique in that he had not been convicted of a crime. However, the rationale underlying this decision allowed courts to reject the notion that a felony conviction rendered an applicant unfit for certain occupations. For example, in *Butts v. Nichols* (1974), the court nullified a law banning individuals with felony convictions from obtaining civil service jobs. The court emphasized the irrational nature of the ban by observing that in some cases, misdemeanors are a better indicator of one’s moral character than felonies.

2.6 Discrimination as a Violation of Title VII

Some courts have refused to allow employers to use broad strokes to qualify all individuals with criminal records as inherently bad. One such company, Missouri Pacific Railroad Company (MoPac), had a policy of denying employment to all individuals with a conviction, except for minor traffic offenses. Buck Green, a 29-year-old black male, applied for a clerk’s position with MoPac several months after being released from prison, where he served 21

months for refusing military induction. When MoPac declined to hire Mr. Green, he filed suit under Title VII of the Civil Rights Act of 1964. *Green v. Missouri Pacific Railroad Company* (1975) remains a prominent employment discrimination case, as it demonstrated that Title VII could be violated when the denial of employment disproportionately impacts a protected class. The court determined that even if a hiring policy does not intentionally seek to target a specific group, it may still have racially discriminatory effects. Although MoPac's policy extended to all individuals with a criminal conviction, it may have been regarded as discriminatory if it could be demonstrated that: 1) blacks were denied employment at substantially higher rates than whites, 2) the policy excluded more blacks from employment in comparison to whites, or 3) blacks were employed at MoPac at much lower rates relative to their population size in the relevant geographical area (p. 1293-94). According to MoPac's employment records for the period of time in question, 3,282 blacks and 5,206 whites applied for jobs; 174 blacks (5.3%) and 118 whites (2.23%) were excluded based on their criminal history. In short, MoPac's seemingly non-discriminatory hiring policy resulted in a rejection rate that was 2.5 times higher for blacks when compared with whites.

Even though the hiring policy may have a disparate impact on different groups, it is permissible if justified by "business necessity." In order to establish business necessity, the practice must be related to the aptitude or ability required to perform the job (*Griggs v. Duke Power Co.*, 401 U.S. 424, 1971), and the employer must not have the option of a less discriminatory alternative practice (p. 1298). MoPac insisted that a business necessity existed because hiring individuals with criminal records increases the risk of theft, possible liability, and disruption of employment due to recidivism, among other reasons. The court took an important stance on this issue and vigorously dismissed this assertion:

“We cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed. This is particularly true for blacks who have suffered and still suffer from the burdens of discrimination in our society. To deny job opportunities to these individuals because of some conduct which may be remote in time or does not significantly bear upon the particular job requirements is an unnecessarily harsh and unjust burden” (p. 1298).

2.7 Courts Reject Discrimination in Public Sector Employment

No matter how harsh or unjust the burden, some jurisdictions implemented policies that prevented individuals convicted of felonies from ever securing a job in the public sector. For example, the City of Alameda passed a law stating that, "No person who shall have been convicted of a felony ... shall ever hold any office or position of employment in the service of the City" (Section 22-4 of the City Charter, 1937). This law was challenged as unconstitutional in *Kindem v. City of Alameda* (1980).

Mr. Kindem was convicted as a minor under a federal importation tax law approximately ten years before obtaining a job as a janitor with the city. He had been employed for five months before his background check was completed. Although he admitted having a felony conviction during the hiring process, he was terminated from the position, and was told that his termination was unrelated to his performance. In fact, Mr. Kindem had received unsolicited favorable reviews from the public about his performance. The Court rejected the rationale that banning all individuals with felony convictions from employment “conform to what might be considered legitimate government interests” (p. 1112). In rebuking the City’s position, the Court argued that convictions for assault or theft, although classified as misdemeanor offenses, may be relevant in considering an individual for a janitor position. However, a felony conviction for tax evasion,

while ostensibly more serious than a misdemeanor, has no relation to one's ability to perform a job as a janitor. Hence, the Court invalidated the part of the statute restricting individuals with prior felony convictions from city employment, holding that Mr. Kindem had been denied due process and equal protection rights afforded him by the United States Constitution.

The *Crook* case referenced above illustrated that courts were inclined to provide greater protection for vulnerable populations, but *Nixon v. Department of Public Welfare* (2003) determined that legislation could go too far. In this case, the Commonwealth of Pennsylvania passed the Older Adults Protective Services Act (OAPSA), which sought to protect the elderly from the "imminent risk of abuse, neglect, exploitation, or abandonment" (*Nixon v. Department of Public Welfare*, p. 389). The criminal history chapter prohibited hiring individuals with objectionable convictions, or retaining employees with such convictions if they had been employed for less than a year, in any of the OAPSA facilities (See 35 P.S. §§ 10225.501-10225.508). The court rejected the Commonwealth's contention that not having worked for a year in one of the protected facilities suggested that individuals were less likely to have rehabilitated, and highlighted the contradiction in implying that individuals convicted of certain crimes posed a risk to the elderly, when the agency had "many of these same individuals" on the payroll (*Nixon v. Department of Public Welfare*, 2003, p. 403).

2.8 Court Acknowledges Discrimination as a Significant Barrier to Employment

On May 21, 2015, United States District Court Judge John Gleeson (from the Eastern District of New York) expunged the conviction of a woman who had been consistently denied employment (or terminated from various jobs) because of her criminal record. The defendant in this case, referred to as Jane Doe to protect her identity, was convicted of health care fraud. She

moved to the United States from Haiti in 1983, at the age of 24, and became a naturalized citizen in 1989. In 1997, when Ms. Doe was in her late 30s, she participated in an automobile insurance fraud scheme, in which she profited \$2,500. At the time, she was a single parent with four minor children, including a one-year old; she had a net monthly income of \$783. Her earnings were insufficient to cover rent costs for her two-bedroom apartment. Ms. Doe was found guilty after a jury trial and sentenced by Judge Gleeson in March 2002 to five years of probation, ten months of home detention, and \$46,701 of restitution. During her five years of probation and for several subsequent years, Ms. Doe secured employment more than half a dozen times but was often terminated because of her conviction, usually after the company received her criminal background check. Importantly, Ms. Doe was a “Home Health Aide”. Employers felt justified in terminating her employment because her conviction was at least tangentially related to the job; she worked in the healthcare field, and had a conviction for healthcare fraud.

Even though 13 years had passed since her conviction (and 17 years since commission of the crime), Ms. Doe still found it nearly impossible to maintain employment. Judge Gleeson determined that “her conviction has become an increasingly insurmountable barrier to her ability to work” (pg. 4). The fact that she had not been arrested before or after this incident mattered little. The Attorney General argued against Ms. Doe’s application for expungement, insisting that her case did not present “sufficiently extreme” circumstances that warrant expungement. To this point, Judge Gleeson responded:

“Nearly two decades have passed since her minor, nonviolent offense. There is no justification for continuing to impose this disability on her. **I sentenced her to five years of probation supervision, not to a lifetime of unemployment**” (pg. 13, emphasis mine).

The Attorney General's second argument had some "superficial appeal" to the court. Adopting the position of an employer, the Attorney General reasoned that Ms. Doe's healthcare conviction had a direct relationship to her employment in the healthcare industry. Judge Gleeson believed this was a spurious relationship, insisting instead that it "was essentially fortuitous" that the scheme involved the healthcare industry. Some employers routinely reject applicants simply because they have a criminal record, while others do so because they see a connection, reasonable or otherwise, between the conviction and the job duties. Judge Gleeson dismissed the connection in this case, declaring that, "There was no specter at the time that she had used her training as a home health aide to help commit or cover up her crime. There is no specter now that she poses a heightened risk to prospective employers in the health care field" (pgs. 13-14).

This case provides a recent example of the extreme hardships faced by individuals with conviction histories in efforts to obtain and maintain lawful employment, even in the absence of time served in a correctional facility. It also underlines the limited power granted to courts to offer remedies to these discriminatory practices. Despite the compelling reasons provided by Judge Gleeson for expunging the conviction in this case, the Federal Court of Appeals vacated his decision and had the motion dismissed.

2.9 Summary

Discrimination based on criminal history is arguably one of most tolerated and justifiable forms of discrimination (Aukerman, 2005). Invariably, individuals with criminal histories are believed to lack a moral compass, which has fueled the biases against this population. Through regulatory policy and legislation, policy makers consistently suppressed employment opportunities for individuals who violated the law, particularly those with felony convictions.

As some of the above cases demonstrate, the courts affirmed broad policies that excluded nearly anyone with a criminal record from employment, even where no direct relationship existed between the job duties and the criminal conduct. On the other hand, courts were inclined to invalidate a policy when relevant circumstances were taken into consideration. These decisions were frequently inconsistent and contradictory, as they turned on interpretation of policies that could relegate individuals to a life of marginal employment.

The next chapter focuses on the extensive empirical evidence related to employment for individuals with criminal records, including but not limited to employer perspectives and the relationship between employment and reoffending, and also provides an overview of the more limited body of research on employment in the context of Ban the Box policies.

Chapter 3: Review of the Empirical Research on the Employment Outcomes of Individuals with a Criminal Record

3.1 Introduction

Individuals who have been charged with crimes, even if the cases are ultimately dismissed, are often branded with a scarlet letter (Raphael, 2014). Employers may foster the belief that “criminals” are bad people, without any regard for the factors that may have led to the applicant’s criminal record, or whether the past offense is relevant to the employment opportunity. In essence, simply having a criminal record has resulted in applicants being discredited (Uggen, Vuolo, Lageson, Ruhland, & Whitman, 2014).

The barriers to employment for individuals with a criminal record are often excessive; some employers implement lifetime bans on this population. Blanket bans fail to consider important factors, such as how much time has lapsed since the commission of the crime, the seriousness of the offense, or evidence of rehabilitation. Because of this sometimes overt discrimination, individuals with a criminal record may feel discouraged and pessimistic about their employment prospects, abandon efforts to integrate the labor market, and turn to the underground economy (Agnew, 2006; National Research Council, 2014).

3.2 The Impact of a Criminal Record on Employment Outcomes

As highlighted in previous sections, research has determined that having a criminal record is deeply stigmatizing and seriously hampers job prospects; this is especially true for young black males with limited education (Pager, 2003, 2007). The struggle to secure adequate employment can be challenging for individuals with a conviction history, even if the individual

has not been incarcerated. Despite this, investigations of the link between a criminal record and employment outcomes often focus on individuals who have spent time in prison or jail (Visser & Travis, 2012).

In a three-state longitudinal study, 740 men from Illinois, Ohio, and Texas completed pre- and post-release surveys and interviews (Visser, Debus, & Yahner, 2008). While the participants indicated that having a criminal record put them at a disadvantage, 87% of those with employment reported that their employers were aware of their background. This study also found that 65% of individuals had been employed within a few months of release, but less than half of them remained with employment eight months after release. Other factors, such as pre-prison work experience and in-prison employment, influenced individuals' employability. Interestingly, although having a job lined up was associated with a greater likelihood of post-release employment (59% of individuals who planned for a job prior to release secured employment after release, versus 40% of individuals who did not have a job lined up), this association no longer held 8 months after release.

Nelson, Deess, and Allen (1999) followed 49 individuals recently released from New York State prisons and jails. Because the first 30 days are critical in determining reentry outcomes, the authors focused exclusively on this time period. They found that individuals were often stymied in their attempts to re-acclimate into society. Some, but not all, were successful in securing employment. Those who were unable to find a job were ill equipped to conduct an adequate job search, partly because they were unfamiliar with programs that provided job readiness training and job placement assistance for individuals with criminal records (Nelson et al., 1999).

There have been mixed results on the effects of incarceration on employment outcomes and wages (Apel & Sweeten, 2010; Grogger, 1995; Kling, 2006; Lalonde & Cho, 2008; Loeffler, 2012; National Research Council, 2014; Raphael, 2007; Western, 2006). Using samples of individuals released from prison in Florida and California, Kling (2006) drew on unemployment insurance data to examine the effect of incarceration length on post-release employment outcomes. In the short term (i.e., 1-2 years after release), longer incarceration periods were associated with higher earnings. Kling (2006) argued that the combination of extended periods of time in prison, greater program participation and increased work release seems to result in higher earnings, at least within the first two years after release. In the medium term (7-9 year after release), the author found a negligible effect of sentence length on labor market outcomes. Kling (2006, p. 875) concluded that “a concern about negative effects of longer incarceration spells on the ability of inmates to reintegrate into the labor market is not one of the factors that should receive much weight in these decisions.”

In a rare study examining employment outcomes for formerly incarcerated women, Lalonde and Cho (2008) used administrative data from the Illinois Department of Corrections and the Illinois Department of Employment Security to investigate the relationship between incarceration and post-release employment. Similar to Kling (2007), the authors found that prison did not negatively impact the employment prospects of women in their sample. The employment rates of the women were “about 10-20% above expected rates” over the first 6 months post-release (p. 251). The authors highlighted various factors to explain this unusual finding, including the fact that many of the women were mothers, which provides a strong incentive to work, and also that the study participants were on parole, suggesting that securing

employment may have been a condition of their supervision. Another factor is that many of the women were economically disadvantaged prior to prison, with a 25% employment rate.

Despite these exceptional findings, sufficient evidence exists from administrative and survey data to confirm the negative impact of incarceration on employment outcomes (Freeman, 1992; Grogger, 1995; National Research Council, 2014; Waldfogel, 1994; Western, 2006). Studies have found that incarceration reduced employment outcomes by 10-20 percent, and decreased wages by more than 30 percent (National Research Council, 2014; Western, 2006). One of the challenges in finding gainful employment relates to the fact that individuals who spent time confined may lack essential “soft skills” (e.g. professionalism, enthusiasm, motivation, interpersonal skills), which may be viewed as undesirable in a prison environment (Moss & Tilly, 2001; Pager, Western & Bonikowski, 2009). In addition, some individuals may embrace “behaviors that are adaptive for survival in prison – a taciturn demeanor, a suspicious approach to human relationships, and resistance to authority, for example, often are counterproductive for stable employment” (National Research Council, 2014, p. 235).

It is also important to note that a person’s “employability” potential may be preexisting to the period of incarceration. Petersilia (2011) reported that one third of individuals leaving prison were unemployed prior to incarceration. Because these individuals were often not sought after in the labor market prior to their imprisonment, it remains a challenge to determine whether it is incarceration, or pre-prison risk factors that influence post-release employment outcomes (Apel & Sweeten, 2010; Holzer et al., 2003). Among those who held jobs prior to confinement, the required skills may erode during a period of incarceration and relationships with former employers will likely be severed (Western, 2002). Because of budget cuts and limited vocational programs offered in correctional facilities, the skills acquired in prison work programs may not

be adapted to viable employment opportunities available upon release. Individuals leaving prison are at a major disadvantage, partly because they often must compete against younger job seekers without criminal records. As such, they are more likely to search for employment in the low-wage labor market, where they face intense discrimination (Pager, Western, & Bonikowski, 2009; Pager, Western, & Sugie, 2009).

Drawing on data from the National Longitudinal Survey of Youth 1997 (NLSY97), a sample of 8,984 youths born between 1980-84, Apel and Sweeten (2010) investigated the effect of incarceration on employment outcomes among teenagers and young adults. The authors (2010, p. 455) analyzed a “sample of individuals who were all convicted for the first time, some of whom were sentenced to incarceration,” which enabled them to compare employment outcomes for individuals who were incarcerated with those who received a non-custodial sentence, and those who were arrested only. Apel and Sweeten (2010) found that incarceration reduced the probability of employment by 11%. Although individuals with incarceration histories may not be regarded as attractive job applicants, Apel and Sweeten (2010) argued that unemployment among the formerly incarcerated partly stemmed from individuals’ unwillingness to engage in the formal labor market.

3.2.1 The impact of a criminal record on job performance

Another way to consider the impact of a criminal record on employment outcomes is to determine how well those with records fare in the workplace. There are many assumptions about this population but little empirical support for the proposition that individuals with criminal records are problematic employees. For a variety of reasons, including the fact that employers rarely track hires with criminal histories, scant empirical evidence exists to suggest significant differences in job performance between individuals with and without records. Lundquist, Pager,

and Strader (2016) were afforded a window into this understudied question when the military provided them with data on more than 1.2 million enlistees from 2002 to 2009. The military conducts a thorough screening (referred to as a “whole person” evaluation) of applicants that have been convicted of a crime. Individuals convicted of a felony are usually barred from enlisting in the military, unless they receive a “moral character waiver.” Depending on a variety of different factors (e.g., war time versus peace time), the military may issue waivers after reviewing the following factors: “the age at offense, the circumstances and severity of the offense, the recruit’s qualifications, references, as well as a personal interview” (pg. 7). African Americans and Hispanics are more likely to have a criminal record, but were less likely than Whites to receive a felony waiver.

Lundquist et al. (2016) found that individuals with felony waivers had similar attrition rates to their non-waiver counterparts, and that they were no more likely to be terminated for poor conduct. Without controlling for other factors, individuals with felony waivers had higher rates of promotion (.25) and were more likely to be promoted to sergeant (by 5 percentage points). Controlling for other relevant factors (e.g., years enlisted), individuals with felony waivers outpaced those without a waiver, and were 33% more likely to reach the rank of sergeant. Conversely, individuals who received misdemeanor waivers received fewer promotions when compared with their non-waiver counterparts, and were more likely to be terminated for poor performance.

There is some additional evidence to suggest that employees with criminal records perform as well, if not better, than those without records. A recent study by Minor, Persico, and Weiss (2017) found that employees with a record retain their jobs longer and quit their jobs less often than other employees. With respect to discharges for misconduct, the authors determined

that the nature of the job is a determining factor. Those who held jobs in customer service were no more likely to separate from the company for misconduct, whereas those who worked in sales were more likely to be dismissed for misconduct. Moreover, a 5-year study conducted by John Hopkins Hospital found that employees with criminal records had lower turnover rates for the first 40 months when compared with those without records (Paulk, 2015). The researchers followed 79 individuals who were convicted of serious crimes over a period of 3 to 6 years, and found that 73 of the original sample remained employed at the conclusion of the study, while only one person was discharged involuntarily.

3.3 The Employment-Reoffending Link

Employment is important for many reasons, including the ways in which it alters routine activities, diminishes ties to antisocial peers, and enables individuals to earn an honest living and contribute to their household. There is tremendous value in employment, particularly if the job pays a livable wage and provides a robust benefits package. Although the benefits of employment are apparent, the relationship between employment and reoffending is complex (Tripodi, Kim, & Bender, 2010). Various factors influence the ability of individuals to succeed in gaining and maintaining employment after a criminal conviction. Studies have found that there is a strong correlation between employment and abandoning a criminal lifestyle (Benda et al., 2005; Laub & Sampson, 2003; Sampson & Laub, 1993; National Research Council, 2014; Uggen 2000). However, much remains unknown about the dynamic process linking employment to desistance from crime, such as receptivity to individuals with criminal records, salary, benefits, skill level, attitude, conviction history, length of incarceration, and appetite for formal

employment (Apel & Sweeten, 2010). A better understanding of these factors is essential in order to develop effective policy solutions.

Several researchers have investigated the employment outcomes of individuals transitioning from prison to the community. For instance, Nally et al. (2012) conducted a longitudinal study of a cohort of 6,561 individuals discharged from the Indiana Department of Corrections in 2005. The sample included individuals who had been convicted of either a violent, non-violent, sex offense, or drug offense. The authors found that individuals who were most likely to re-offend were either unemployed at the time of the offense (irrespective of the crime type), or had low levels of education. Drawing on a sample of 401 males released to parole supervision in a Midwestern state in 2000, Berg and Huebner (2011) concluded that those who found jobs and had strong ties to family were less likely to recidivate. Within twenty months, the individuals that remained unemployed were 18% more likely to be re-arrested than those who found employment (Berg & Huebner, 2011).

Although employment is critical to reducing reoffending, some studies have highlighted some caveats of this association. Uggen's (2000) results suggested that this effect may be age-graded. In his analysis of the National Supported Work Demonstration Project, a randomized sample of 3,000 people from nine cities in the United States, Uggen (2000) found that employment was a turning point in the lives of individuals with criminal justice involvement, but only for those who were 26 years or older. This finding held among individuals who were only provided minimum wage jobs. In contrast, employment did not reduce the risk of recidivism among adolescents and young adults. This study is particularly relevant because the analyses controlled for selection bias (Laub & Sampson, 2001; Uggen, 2000).

There are considerable individual and societal gains to securing and maintaining employment; however, they do not always translate into long-term reductions in recidivism. Tripodi et al. (2010) examined the relationship between employment and recidivism among a sample of individuals released to parole supervision in Texas from 2001-2005. The research found that securing a job after release decreased the re-arrest rate, although it did not significantly reduce recidivism over time.

Skardhamar and Savolainen (2014) found that most individuals with criminal histories had disengaged from crime before the transition to work, and that securing employment was not associated with further reductions in criminal behavior. This finding highlights the complex relationship between employment and reoffending. It may not be work alone, the research suggests, but rather the decision to change one's life or the bonds formed at work that may promote desistance (Laub & Sampson, 2003; Sampson & Laub, 1990; Sampson & Laub, 1993).

3.4 Time to Redemption

Another important consideration in the discussion of the link between employment and reoffending is whether there is a point at which individuals with criminal records pose so minimal a risk that the record loses relevance to potential employers. Using arrest data from Philadelphia, Kurlychek, Brame, and Bushway (2006) set out to answer this question by investigating the extent to which prior criminal records are predictive of future offending. The authors focused on "hazard rates," which refer to the probability that an individual who has abstained from crime will be re-arrested. This study found that although individuals with prior arrests do not become "indistinguishable" from people who have never been arrested, the hazard rates of the two groups are separated by a mere 1 percent after five years. The authors concluded

that criminal history information loses its predictive ability as an indicator of risk among applicants who have not been arrested for a given number of years. Kurlychek, Brame, and Bushway (2007) conducted a similar analysis using data from the 1942 Racine birth cohort study, which tracked individuals through age 32. The authors found that the probability of re-arrest declined significantly over time. The authors suggested that an individual who had remained arrest-free for a period of seven years presented a similar risk of reoffending to someone with a clean record.

Blumstein and Nakamura (2009) further developed this question and addressed a limitation of the Kurlychek et al. (2006; 2007) studies, which relates to the difficulty in estimating hazard rates using cohort data. Blumstein and Nakamura (2009) employed data from a criminal history repository in New York State and set out to provide empirical guidance to employers on the appropriate window to overlook criminal history information. They estimated models of re-arrest risk for more than 88,000 individuals who were initially arrested by 1980, and estimated the risk of arrest of the general population for individuals in the same age category. The authors found that the hazard rates were higher for individuals convicted of violent crimes when compared with property crimes. Moreover, the younger the individual at the time of arrest, the longer the crime-free time frame required to have an arrest rate that is similar to that of someone without a criminal record. For instance, the hazard rate for a person who was initially arrested at 18 years old was 7.7 years, while the hazard rate of an individual who was arrested at 16 years old was 8.5 years. Hence, after 7-8 years, individuals who were arrested at ages 16 or 18 were characterized by an arrest rate that was similar to that of the general population with no prior arrests.

DeWitt, Bushway, Siwach, and Kurlychek (2017) refined the redemption analysis and integrated a process referred to as “benchmarking,” which is defined as “a measurement of the

quality of an organization's policies, products, programs, strategies, etc., and their comparison with standard measurements, or similar measurements of its peers" (buisnessdictionary.com/definition/benchmarking.html). In the employment context, DeWitt et al. suggested that it is useful for employers to compare applicants with criminal records with current company employees without records, as opposed to comparisons with general population samples. The authors used data on individuals who were provisionally hired to work in residential healthcare facilities, supplied by the New York State Department of Health (DOH). The employer provisionally hired applicants who were deemed to be qualified, but the DOH needed to clear them for these positions. The data consisted of 138,974 individuals who were provisionally hired, including 12,312 individuals with a criminal record who were provisionally hired, pending approval from the DOH. About half of these individuals were black (52.46%) and about one third were males (30.60%). There was a stark difference in the likelihood of rearrest between individuals with and without criminal records. Within one year, 13% of the provisionally hired employees with records were rearrested, in contrast to 3% of those without records. Within three years, 25% of the provisionally hired employees with records were re-arrested, in comparison to 7% of those without records.

DeWitt et al. (2017) applied standards of risk that depart from those utilized in prior time to redemption research, which focused on whether people who have arrest records ever approximate the level of risk of (same-age) individuals without records. Instead, DeWitt et al. focused on "what the acceptable level of risk should be for an employer" (p. 16). Inevitably, employers would rather hire an individual that poses little risk to the business, but there is a plethora of factors that determine if an individual poses an acceptable risk. The likelihood of rearrest is higher among individuals with a history of arrest or conviction when compared with

individuals with no such history. However, as Dewitt, et al. (2007) noted, some individuals without records had an equal or higher risk of a future arrest when compared with some individuals with a record. It is important to stress that empirical research has demonstrated that employment reduces the likelihood of rearrest. Other factors influence this association, such as age, education, as well as relationships established at the job and wages.

The studies presented above highlight the benefits of employment for individuals with a criminal record, especially among those who are released from prison. This body of research also confirms that the greatest risk for recidivism occurs in the short time after release, and corroborates the evidence suggesting that the likelihood of reoffending drops sharply and dramatically over time (Cooper, Durose, & Snyder, 2014; Kazemian & Farrington, 2006; Lattimore & Baker, 1992; Raskin, 1987; Schmidt & Witte, 1988). These findings suggest that individuals are “redeemable,” even if they were convicted of serious offenses, multiple crimes, or served a lengthy custodial sentence (Blumstein & Nakamura, 2009). Nonetheless, employers may feel justified to defer hiring individuals with a criminal record until their risk level becomes comparable to that of individuals who have never offended, notwithstanding the fact that employment is likely to reduce the likelihood of reoffending (Berg & Huebner, 2011; Redcross, Millenky, Rudd, & Levshin, 2012).

3.5 Programs and Policies Designed to Improve Employment Outcomes

Policymakers around the country are making efforts to improve job prospects for individuals with criminal records. These efforts are directed at the supply and demand side of employment (Holzer et al., 2003); they include easing policy restrictions, funding programs that serve individuals with criminal histories, and offering incentives to employers for providing

opportunities to this population. Moreover, the National Institute of Justice, the Department of Labor, and many other federal and state agencies have funded research on a number of issues related to the labor market outcomes of individuals with conviction histories.

The federal government, through the Equal Employment Opportunity Commission (EEOC), has offered guidance for employers on the use of arrests and conviction records. The EEOC has determined that employers cannot have a blanket policy of denying employment based on criminal records, since “national data supports a finding that criminal record exclusions have a disparate impact based on race and national origin” (EEOC, 2012, p. 3). In order to have an affirmative defense to a denial of employment, an employer must demonstrate that the rejection is “job related and consistent with business necessity” (EEOC, 2012, p. 3). The EEOC has sued employers who have ignored the guidance, in an effort to bring them and other employers into compliance and encourage them to adopt non-discriminatory hiring practices (Smith, 2014).

Some states have adopted similar practices. For example, New York passed legislation to protect individuals with criminal records from employment discrimination. Thus, employers are not allowed to consider cases that were adjudicated in the applicant’s favor. They also cannot deny a licensure or employment without explicit evidence that there is a “direct relationship” between the conviction and the job or licensure sought, or an “unreasonable risk” to individuals, property, or to the safety or welfare of the general public (NYS Correctional Law Article 23A, §750-55). In addition, employers must consider factors such as the age of the individual when the crime was committed, the seriousness of the offense, evidence of rehabilitation, and the public policy of the state to encourage the employment of individuals with criminal records (NYS Correctional Law Article 23A, §750-55).

The state of Maryland blocks employers from reviewing convictions that are five years or older, if the applicant did not commit another offense in the interim. The state of Wisconsin requires employers to base hiring decisions on job qualifications, or to demonstrate a rational relationship between the criminal history and the employment opportunity (Gauvey & Webb, 2013; National Employment Law Project, 2015). However, states are also increasingly providing protections for employers against negligent hiring lawsuits (ACLU, 2017; Agan, 2017; Gauvey & Webb, 2013; Minor et al. 2017). For instance, the Texas legislature explicitly stated that a suit “may not be brought against an employer, general contractor, premises owner, or other third party solely for negligently hiring or failing to adequately supervise an employee, based on evidence that the employee has been convicted of an offense” (Texas Civil Practice and Remedies Code, §142.002).

In addition to these policy changes, millions of dollars have been pumped into programs that provide job readiness training and job placement assistance for people with conviction histories. The evidence on the effectiveness of these programs in reducing recidivism or in enabling individuals to secure permanent jobs remains limited (see Bushway & Apel 2012; Petersilia, 1999; Travis, Solomon, & Waul, 2001). Some evidence suggests marginal success. For example, in a three-year randomized study of the Center for Employment Opportunities’ transitional work program, Redcross et al. (2012) found that the employment effect faded over time, and few of the transitional workers were placed in unsubsidized employment. However, the program reduced recidivism by 6%, with the control group experiencing some form of re-incarceration at a rate of 71%, in contrast to 65% for the program group (Redcross, et al., 2012).

The promotion of jobs has also been championed through initiatives such as the federal government’s bonding program, the Work Opportunity Tax Credit (a program that permits

employers to receive tax credits for hiring disadvantaged populations), and wage subsidy programs, which reimburse employers for wages when they hire formerly incarcerated people (see summary of employment programs in Appendix A).

3.6 The Prolific Use of Criminal Background Checks

Finding a job is a priority for individuals with a criminal history, particularly for those who are released from jail or prison. However, hiring managers often reject these applicants in order to protect their employees and property, and to avoid negligent hiring lawsuits (Holzer, Raphael & Stoll, 2006). While many of these applicants are dismissed at the initial stage of the hiring process, usually after checking the box on an application that inquires about criminal history, others are denied employment after a criminal background check (Holzer et al., 2006; National Employment Law Project, 2015; Smith, 2014).

In 2014, the Wall Street Journal reported that “Over the past 20 years, authorities have made more than a quarter of a billion arrests, the Federal Bureau of Investigation estimates. As a result, the FBI currently has 77.7 million individuals on file in its master criminal database – or nearly one out of every three American adults” (Fields & Emshwiller, 2014). Private companies now routinely access these databases at the behest of employers that are screening job applicants. These criminal background screenings have become prolific over the past decades, with more than 80 percent of employers now reporting that they routinely require background checks for applicants (Society for Human Resources Management, 2010; Smith, 2014).

The spike in criminal background checks is largely associated with the events of September 11, 2001, as this drastically changed the American security apparatus, including how employers evaluate candidates in the hiring process (American Bar Association, 2014; Pager,

2003). Moreover, with the broad use of online resources, criminal records have become widely accessible to the public. Because many of these records are available on governmental websites, employers who wish to avoid the fees or time associated with a formal criminal background check can conduct criminal records searches through publicly available resources. Hiresafe, a company that conducts criminal background checks, skillfully markets its services to employers:

A criminal records search is the cornerstone of any employment background screening report. With searches at the county, state and federal level no stone goes unturned in our search for applicant's criminal history. We deliver to our clients 100% accurate results with no errors or missing information. Criminals can be very good at hiding their tracks by using alias, changing addresses or faking their documents (www.hiresafe.com/background-check-solutions-service/criminal-records-search).

In short, criminal record information has become more easily accessible to potential employers and to the general public. The benefits and harms associated with the large-scale distribution of these stigmatizing records are not yet fully understood (American Bar Association, 2014).

3.7 Limitations of Criminal Background Checks

There are several limitations associated with the use of criminal background checks. First, criminal records are often replete with errors. While Hiresafe claims to “validate” its records, the background searches are usually conducted with only the applicant’s name and date of birth. This poses a problem because different individuals may share a name and birth date. Cross checking county records may minimize errors, but this process is certainly not foolproof. A study by the Legal Action Center (2013) determined that at least 30 percent of criminal history reports contained inaccuracies. Moreover, the U.S. Bureau of Justice Statistics (1983, p. 30) noted that most experts were of the opinion that “... inadequacies in the accuracy and completeness of criminal history

records is the single most serious deficiency affecting the Nation's criminal history record information systems.”

Second, hiring managers are not likely to be adequately trained to interpret criminal records and they may make rash decisions with limited knowledge on how to interpret these records (ACLU, 2017; Smith, 2014;). Thus, a criminal record can lead to an automatic ban for a candidate who would otherwise be qualified for the position (National Employment Law Project, 2015; Pager, 2003). To this point, six states arbitrarily deny employment in the public sector to any individual who has been convicted of a crime, regardless of the nature of the offense (Solinas-Saunders et al., 2015).

Third, when the employer provides the applicant with a copy of the background check, as required in some jurisdictions, the applicant is usually granted a few days to correct the error(s) identified in the background check. These errors may be substantial, as in the case where a man was “identified as a female prostitute in Florida, an inmate currently incarcerated in Texas for manslaughter, a stolen goods dealer in New Mexico, a witness tamperer in Oregon, and a registered sex offender in Nevada” (Hess, 2010, p. 19). Because efficiency is often paramount in the hiring process, employers may not wait on a person to address errors, which can be an arduous task that is not usually completed in a few days (Legal Action Center, 2013). In addition, employers who are averse to hiring people with criminal records may not bother to supply the applicant with a copy of the background check, or an explanation for the rejection.

Finally, it has been argued that limiting employers' access to criminal background checks can foster “statistical discrimination and increased discriminatory practices,” since it may result in the use of proxies for criminal records (e.g. race, age, and gender; Solinas-Saunders et al., 2015). However, Finlay (2007) found that individuals with conviction histories were less likely

to find employment and received lower wages in states where records were made available online.

In short, criminal background checks are no panacea for the potential concerns of employers about applicants with a checkered past. In fact, this information often provides employers with justification to impose an unreasonably high bar on these applicants, despite the inherent defects in the criminal history record information systems. Moreover, it has resulted in policy makers pushing to limit access to information provided by consumer reporting agencies (see, Fair Credit Reporting Act, 15 U.S.C. § 1681), as well as restricting access to an applicant's criminal history, by banning the criminal history check box on the job application and delaying the inquiry into an applicant's criminal history.

3.8 Employer Perspectives on Hiring Individuals with a Criminal Record

Research has shown that employers have strong reservations about hiring individuals with criminal records. Holzer (1999) examined survey data from over three thousand employers in four major cities (Los Angeles, Boston, Detroit, and Atlanta). He found that the recruitment and screening mechanisms used by employers in the low-wage market often resulted in discriminatory practices against minority applicants. Employers reported that they were more likely to hire disadvantaged workers, such as former public assistance recipients or people with a GED or even those with no high school diploma, but that they would definitely or probably *not* hire individuals with criminal records (Holzer, et al., 2003, 2006). Individuals who have been convicted of serious offenses, especially violent crimes, are subject to increased stigma and discrimination (Holzer, 2007).

Employers are concerned about the risk of harm against customers or other employees, and are leery about theft and liability (Craig, 1987; Holzer, et al., 2003, 2006; Smith, 2014). Jobs in specific industries (e.g., construction and warehousing) are more open to hiring individuals with criminal records, as these employees have limited contact with customers (Connerley, Arvey, & Bernardy, 2001; National Research Council, 2014; Swanson, Langfitt-Reese, & Bond, 2012). These concerns persist even though there is no demonstrable relationship between hiring individuals with criminal records and workplace violence (Gauvey & Webb, 2013).

Individuals with criminal records often have their applications discarded because of preconceived ideas associated with such records, and they are denied the opportunity to present themselves in a positive light to a potential employer (National Employment Law Project, 2017; Rodriguez & Emsellem, 2011). Research has shown that employment prospects increase in cases where individuals can succeed in securing an interview (Pager, Western, & Sugie 2009; see also Swanson, et al., 2012). However, many individuals with criminal records never make it to the interview phase. If they do, employers often base hiring decisions on their intuition and subjective impressions of the candidate (Moss & Tilly, 2001). This type of discrimination has been found to disproportionately impact minorities, particularly blacks, since they make up the majority of individuals involved in the criminal justice system (Bureau of Justice Statistics, 2014; Pager, 2003, 2007). Moreover, black men are often negatively stereotyped as lazy, dishonest, and inept (La Pierre, 1999). As a result, employers have indicated their reluctance to hire black men (Holzer, 1996).

Pager (2003) confirmed the relationship between race, criminal records, and employment in her seminal work, *Mark of a Criminal Record*. This often-cited audit experiment, in which matched pairs of black and white job seekers applied for 350 entry-level jobs in the Milwaukee

area, found that a white man *with* a criminal record is more likely than a black man *without* a criminal record to receive a call back or job offer (Pager, 2003). Blacks with no record received a call back 14% of the time, while whites with a conviction history received a call back 17% of the time. Blacks with a conviction history received the lowest call back rate (5%).

Pager and Quillian (2005) examined whether employer perspectives on hiring individuals with conviction histories translated into the actual practice of offering opportunities to this stigmatized population. This second stage of the Pager (2003) study involved a telephone survey with 350 employers. While more than 60 percent of employers indicated that they were “somewhat” or “very likely” to hire job applicants with a drug conviction, in actuality only 17% of whites and 5% of blacks with a drug conviction received a call back (Pager & Quillian, 2005). This finding suggests a discrepancy between the official discourse and the actual hiring practices of employers with regards to applicants with a criminal record.

Decker et al. (2014) surveyed 49 employers in the food services sector in Arizona and found that they were unlikely to hire individuals who had been in prison or who were on supervision. Moreover, employers held negative stereotypes about black and Latino men, and these applicants were less likely than white men to receive a call back or job offer (see also Pager, Western, & Bonikowski, 2009).

A recent study conducted by the Society for Human Resource Management (SHRM) and the Charles Koch Institute (CKI) explored multiple questions related to workers with criminal records. The SHRM/CKI approach integrated perspectives from human resources professionals, as well as managers and non-managers, to provide a more “holistic” understanding of this topic. The study provides some encouraging news about the job prospects of individuals with criminal records. With respect to job performance, 82% of managers and 67% of HR professionals

indicated that the quality of work performed by individuals with criminal records is as high or higher than those without records and 74% of managers and HR professionals believe the cost of hiring these individuals is the same or lower than hiring individuals without a criminal record (Society for Human Resources Management, 2018).

The study also found that management and non-management personnel are generally receptive to working with individuals that have criminal records, with managers being 55% willing, non-managers 51% willing, and HR professionals 47% willing. As it relates to Ban the Box, 46% of HR professionals indicated that their companies inquire about criminal history on the initial job application. However, 68% of HR professionals are aware of the broader Ban the Box movement, while only 14% of managers and 9% of non-mangers are similarly aware. Finally, when it comes to hiring individuals with criminal records, the factors that are most likely to increase the willingness of managers and HR professionals are a “consistent work history, employment references, job training, and a certificate of rehabilitation,” while other lesser important factors include “monetary incentives” and “positive stories from business leaders” (Society for Human Resources Management, 2018, at pg. 8).

In spite of the promising findings from the SHRM/CKI study, overall, research on employer perspectives has suggested that a criminal record impedes employment prospects, particularly among black males.

3.9 Ban the Box: Promoting Fair Chance Hiring

Ban the Box is an employment-based policy¹ that has gained significant support around the country. The policy has sprung up in one form or another in every part of the country, to the extent that more than two-thirds of the United States population lives in an area covered by the policy (Avery & Hernandez, 2018). Hawaii was the first state to have adopted this policy in 1998, but the movement to persuade employers to embrace fair chance hiring began with *All of Us or None*, a grassroots civil rights initiative. *All of Us or None* was developed in 2003 by a group of formerly incarcerated individuals and their families. *All of Us or None* mounted a successful campaign in 2005, convincing the San Francisco Board of Supervisors to approve a resolution that banned the box on applicants for public jobs, permitting an employer to initiate a criminal background check only for applicants who were considered finalists, and requiring an individualized assessment based on EEOC guidelines (National Employment Law Project, 2015). Prior to 2005, only Hawaii and Boston had enacted Ban the Box policies. Since 2005, advocates have influenced representatives from state and local governments to adopt Ban the Box policies in 33 states and over 150 local jurisdictions. A number of states, including Southern states for the first time, adopted this policy in recent years, e.g., Georgia (2015), Tennessee (2016), Indiana (2017), Kentucky (2017), Utah (2017), Washington (2018); (Avery and Hernandez, 2018).

Some jurisdictions apply Ban the Box to employers in the public sector only, while others extend it to government contractors (currently nine states, the District of Columbia and 29 cities; Avery & Hernandez, 2018). The policy has been extended to private employers in nine states and

¹ Ban the Box has extended into other domains such as housing and it is being pushed by advocates in higher education. See: <http://bantheboxcampaign.org/?p=20#.VwrbrTYrKCQ>; <http://www.wordpress.eiocoalition.org/wp-content/uploads/2014/03/BtB-Policy-Brief-PDF-10-15-2.pdf>

15 local jurisdictions (Avery & Hernandez, 2018), although some companies have voluntarily embraced the policy (e.g. Wal-Mart, Target, Starbucks, and Home Depot). Some jobs are exempt from these policies. For instance, jobs in security, positions with children, the elderly, or other vulnerable populations, and jobs that require access to money and financial data are often exempt, because these jobs require a criminal background check as a part of the screening process.

Jurisdictions differ regarding the stage of the hiring process when employers can inquire about an applicant's criminal history. In some jurisdictions the question is allowed after the initial interview, while others permit the inquiry only after a candidate has been fully vetted or after a conditional offer of employment has been made (National Employment Law Project, 2015; Smith, 2014). There is often minimal guidance provided to employers on how to assess the information gleaned from the criminal background check in making a hiring decision. Some jurisdictions provide clear criteria for employers to follow, whereas others leave it to the discretion of the employers to understand an often-complicated process, which may discourage employers from hiring a person with a criminal record (Smith, 2014).

Ban the Box has raised concerns with some employers, who contend that it delays the hiring process, constrains their decision-making capacity, and opens them up to liability, while other employers have welcomed the opportunity to adopt fair chance hiring practices (Connerley, et al., 2001; Solinas-Saunders & Stacer, 2015). Despite the increasingly wide use of Ban the Box policies and the millions of people with criminal records who are meant to benefit from their implementation, the extant literature on these policies is limited. Moreover, the policies have been enacted at the whim of policymakers, without evidence of how to achieve the best outcomes (Solinas-Saunders & Stacer, 2015).

3.9.1 The narrow focus of prior research on Ban the Box

Jonathan Smith, Assistant Counsel for the NAACP Legal Defense and Education Fund, investigated Ban the Box policies by highlighting the disparate impact of a criminal record on employment and employers' emphasis on criminal background checks. Given that a disproportionate number of minority applicants are disqualified for jobs, particularly African-Americans, Smith (2014) argued that the overreliance on criminal background checks possibly violates Title VII of the Civil Rights Act of 1964 (which prohibits employment discrimination based on sex, race, color, national origin, and religion). Because this discrimination has a significant adverse impact on a protected class (race), a Title VII violation may ensue as a result (EEOC Guidelines, 2012; Gauvey & Webb, 2013; *Green v. Missouri Pac. R.R. Co.*, 523 F. 2d 1290 [8th Cir. 1975]; Smith, 2014).

Smith (2014) provides a history and background of the Ban the Box movement and discusses its limitations. He asserts that "Without doubt, Ban the Box policies have aided a large number of workers in their job search process" (p. 216). He does not specify if the term "aided" translates into applicants securing more interviews, receiving more callbacks, or actually landing jobs more frequently. In fact, the above assertion has a footnote, where Smith (2014, p. 216) observes that, "It is difficult to know the exact number of job applicants with criminal records who have benefited from the plethora of Ban the Box policies that have been adopted across the country." Smith (2014) notes that there is no research that assesses the extent to which employers are informed about Ban the Box, or how it has impacted hiring practices. Although these policies are designed to persuade employers to "keep an open mind" about applicants with criminal records, there is a risk that employers who are averse to hiring this population may exploit the policy.

While Smith (2014) focused largely on the use of criminal background checks and the adverse impact associated with these records on African-American applicants, Solinas-Saunders and Stacer (2015) examined the rationale and motivations that prompted policymakers to implement Ban the Box policies, through the lens of Merton's theory of "unintended consequences of purposive social action" (p. 3). Merton's theory holds that "social agents" make decisions based on their understanding of a particular circumstance, but that these decisions are constrained by rationality, knowledge, energy, time, error, and ramifications (Merton, 1936). Although social agents may be unaware of it, each of these concepts has a substantial effect on decision-making. With respect to Ban the Box policies, Solinas-Saunders and Stacer (2015) contend that social agents seek to fix a problem that is widespread and pernicious (i.e., criminal records-based employment discrimination), while being hampered in their ability to anticipate consequences and unwilling to wait for more evidence on how to best address the challenge. The authors hypothesize that limiting access to criminal history information may cause employers to reject applicants based on proxies like race, age, and sex (see also, Holzer, Raphael, & Stoll, 2006), and encourage them to engage in statistical discrimination, denying employment opportunities to people who are more likely to have criminal justice involvement (particularly young men of color).

In an audit study similar to Pager (2003), Vuolo, et al. (2017) dispatched black and white pairs of testers to over 600 businesses in the city of Minnesota. These young adults submitted close to 300 applications for entry-level positions at 150 job sites. With the use of fake identities, the "testers" either reported having no criminal record, or a misdemeanor conviction for disorderly conduct. To confirm that the testers actually frequented the establishments, and to determine the manner in which criminal record questions were posed during the application

phase, the testers were directed to request an additional application for a friend. The fieldwork was completed from August 2007 to June 2008, prior to the enactment of Ban the Box in Minnesota.

Vuolo et al. (2017) reported that 78% of businesses inquired about the applicant's criminal history. Businesses that inquired about criminal history did so with diverse language. Vuolo et al. found that "the question wording and content varied greatly, as did the offense severity" (p. 146). Of the 78% of businesses that asked criminal history questions, 51% inquired about felony convictions and lesser offenses, whereas 27% asked only about felony convictions. In addition to the diversity in language, the authors also found that restaurants were least likely to pose criminal history questions on job applications, while hotels were the most likely (68% versus 90%, respectively). Furthermore, businesses with a more ethnically and racially diverse staff were more likely to ask about criminal history (90%), while predominantly white businesses were less likely to ask (79%). The location of the establishment was also an important factor; businesses in the most and least disadvantaged neighborhoods were far more likely to probe about criminal history.

Because this research was conducted pre-Ban the Box, Vuolo et al. were able to examine the call back rate of African Americans in comparison to Whites. What they found pointed towards statistical discrimination, although the results were nonsignificant. In situations where no criminal history information was sought, the callback rate for the African American testers was about 18%. On the other hand, when a tester was able to answer no to the question about a felony conviction, the callback rate increased to 23%. The callback rate increased an additional percentage point when the tester answered no to the question about lesser offenses. In

comparison to African Americans, Whites were 2.6 times as likely to receive a callback among businesses that neglected to inquire about an applicant's criminal record.

Although these studies do not directly address the hiring of individuals with criminal records relative to Ban the Box, they extrapolate useful and relevant information about these policies. However, it is necessary to understand how BTB policies have more directly impacted the hiring of a stigmatized population, a topic that is addressed in the following section.

3.9.2 Testing the impact of Ban the Box

An intriguing question often posed about Ban the Box relates to its effectiveness. This is a complex question, largely because the policy varies across jurisdictions, and it has not been applied or enforced in a consistent manner. Further, although the policy is designed to reduce discrimination, there are other relevant potential results. The answer to whether Ban the Box “works,” depends on how we measure effectiveness. Researchers have examined the impact of Ban the Box across a broad range of contexts and outcomes. As such, it has “worked” in some instances and not in others.

D'Alessio, et al. (2014) explored the relationship between Hawaii's Ban the Box law and repeat offending. The authors analyzed data from the State Court Processing (SCPS) program, which includes prosecutions from 118,556 people convicted of crimes in 65 counties in the United States in 2000. They selected Honolulu County because it was the only county in the dataset that had a Ban the Box policy in effect. Using multiple regression analysis, the authors concluded that the odds of repeat offending decreased by 57% after the implementation of Ban the Box. D'Alessio et al. (2014) attributed the reduction in repeat offending to Ban the Box, but they did not investigate the relationship between Ban the Box and hiring practices. Further, the authors did not infer that repeat offending was reduced because of an increased number of

individuals with criminal records securing employment. Although this was a sample that included Asians, blacks, and whites, the study did not reveal the total number of subjects from each racial group. Despite the inclusion of different racial groups, Honolulu is a county with low rates of blacks and Latinos (2% and 8.1% in 2010, respectively; US Census Bureau, <https://www.census.gov/quickfacts/table/PST045215/15003,00>).

In a case study of the Ban the Box policy in Durham, North Carolina, Atkinson and Lockwood (2014) reported that there was a 7-fold increase in the number of individuals with criminal records who were hired by the City of Durham between 2011 and 2014. The percentage of hired individuals increased each year as follows: 2.25% in 2011; 4.46% in 2012; 9.36% in 2013; 15.53% in 2014. The results for Durham County were touted as equally striking. In 2011, Durham County hired 35 individuals with criminal records, and only rejected one candidate. The number of hired individuals increased to 52 in 2012, with only one denial, and increased again in 2013 to 97, with 4 rejections.

Atkinson and Lockwood (2014 p. 6) maintained that, “ninety-six percent of the applicants with criminal records referred to HR by a county department were ultimately hired despite some criminal history.” They highlighted that none of the individuals hired were terminated because of criminal behavior. While these results sound promising, the authors relied on information provided to them by North Carolina officials. The methodology employed is unknown, as is the type of job and wages offered, along with some of the key characteristics of the applicants, such as race, gender, and age.

The National Employment Law Project (2016) reported that Minneapolis hired more than half of all applicants with criminal records after the implementation of its Ban the Box policy in 2006. This success was achieved without placing a burden on the hiring process (e.g. prolonging

hiring decisions). To the contrary, there was a decrease in the transactional work (i.e. recruitment and administrative duties) required by human resources staff (National Employment Law Project, 2016). These reports demonstrate that some jurisdictions are beginning to collect data about trends in hiring individuals with criminal records, and these new efforts may be a direct result of Ban the Box.

Shoag and Veuger (2016) found a positive effect of Ban the Box using data from the National Neighborhood Crime Study. The authors compared employment rates of residents from high and low crime neighborhoods and found that Ban the Box increased employment by 4% in high crime neighborhoods, where residents were more likely to be black or Hispanic. An unintended consequence of the policy is that employment dropped for women by 0.2% to 0.4%. Employers responded to Ban the Box by increasing educational and experience requirements in job descriptions. This “upskilling” is a strategy utilized by employers to reduce the likelihood that an applicant will have a criminal record.

Berracasa et al. (2016) examined the impact of Ban the Box in the District of Columbia, which has one of the more expansive Ban the Box laws in the country; the law applies to the public and private sector, and inquiries about criminal history are only permitted after a conditional offer of employment has been made. The authors distributed an electronic survey to about 8,500 private businesses and received 261 responses (a response rate of 3%). The law was inapplicable to 197 (75%) of the respondents and 24 (9%) failed to complete the survey, leaving them with responses from 40 businesses.

Berracasa et al. (2016) asked questions about familiarity with the law and its impact on business, among other questions about the company’s operations relative to Ban the Box. The survey research was augmented by 11 semi-structured interviews. The authors found that

businesses were relatively unfamiliar with Ban the Box, as 40% (16 out of 40) reported that they had never heard of the law. This finding surfaced in the interviews as well. Eighty-one percent (9 out of 11) reported that the city failed to provide them with information about the law.

In addition to the surveys and interviews, the authors analyzed hiring data from city agencies and determined that more individuals with criminal records were hired the year after the law went into effect. Over a period of 13 months, there were 209 finalists for positions requiring a criminal background check. Of the 209 finalists, 178 were cleared and accepted the job. In 2015, the year the law went into effect, there were 257 finalists over a 12-month period, a 22% increase. Of the 257 finalists, 237 were cleared and accepted the job, 59 more than in the prior year. This amounted to a 33% increase for individuals with criminal records, while the increase for all applicants was 13.5% (from 988 to 1,121).

The evidence presented thus far suggests positive outcomes associated with Ban the Box policies. Other evaluations have suggested negative outcomes of Ban the Box, especially among black and Hispanic males. For instance, Agan and Starr (2016) conducted a field experiment to test employer callback rates and the statistical discrimination theory. They submitted close to 15,000 fictitious online job applications to private employers before and after implementation of Ban the Box policies in New Jersey and New York City, randomly assigning key variables to applications, such as criminal history, race, education, and employment gap. Consistent with prior research, they found that applicants without a felony conviction were 62% more likely to receive a callback when compared with applicants with a conviction, even minor property or drug crimes. With regards to race, white applicants received 23% more callbacks than black applicants with otherwise similar characteristics. Before Ban the Box took effect, white applicants were 7% more likely to receive a callback when compared with black applicants.

After its implementation, this figure increased significantly to 45%. Although the callback rate was low for blacks relative to whites, blacks with a criminal record had low callback rates, even before Ban the Box. Hence, blacks without a criminal record were less likely to receive callbacks because of perceived criminality, while whites in general were not perceived to have a criminal history, before and after Ban the Box. It appears that employers' potentially discriminatory attitudes towards black applicants with criminal histories were displaced to black applicants without a criminal record (Agan & Starr, 2016).

Doleac and Hansen (2016) investigated Ban the Box policies that took effect by December 2014 across the country, using data from the Current Population Survey from 2004 through 2014. The authors focused on young black and Hispanic men, aged 25 to 34 years old and without a college degree. This group was selected because they present a high risk of involvement in crime, and employers have reservations about hiring them. Doleac and Hansen (2016) found that this particular group (low-skilled black and Hispanic young adult males without a college degree) was less likely to find employment post-Ban the Box. The probability of employment dropped by 5.1% for young black men, and by 2.9% for young Hispanic men. Conversely, the likelihood of employment significantly increased for highly educated black women as well as for non-college educated older black men. Doleac and Hansen (2016) concluded that the likelihood of securing employment was lower for young black and Hispanic men because employers assumed that a fair number of these individuals were likely to have a criminal record.

Bogardus (2015) explored the impact of Ban the Box on hiring practices.² Bogardus (2015) distributed an electronic survey through the Minnesota SHRM State Council; 60 local

² The full study was not available online. Only a summary of the methodology, key findings, discussion, and conclusions was provided,

chapter members completed the survey. The survey inquired about, among other things, hiring authority, the size of the company, when and how criminal background information was used, the company's awareness and support of Ban the Box policies, and whether Ban the Box delayed the hiring process. Bogardus (2015) found that companies mostly adhered to Ban the Box by removing requests for criminal history from the application (83.3% required this information before implementation of the policy and only 18.3% after it became effective), and largely refrained from discussing applicants' criminal record during interviews (21.7% did discuss the criminal record during the interview, 45% discussed it at the conditional offer stage, and 30% did not ask about it at all). Importantly, the hiring process was not lengthened, as some companies speculated. However, the study did not support the hypothesis that Ban the Box would lead to an increase in the hiring of people with criminal records. Bogardus (2015, p. 2) found that there was "no significant change in overall hiring fairness or hiring cost."

In its 26-page chapter on *Consequences for Employment and Earnings*, the National Research Council (2014) dedicated one paragraph and one footnote to Ban the Box. The short section highlights the importance, but limited evaluations, of Ban the Box. Because research on these policies is scant, particularly studies investigating their effect on hiring practices, the National Research Council report noted that, "no systematic evaluation of the impact of Ban the Box legislation has yet been conducted. Whether or how – through increased supply or demand – these policies affect the overall employment rates of ex-prisoners is currently unknown" (p. 255).

3.10 Summary

In sum, researchers have barely scratched the surface to understand the factors that influence hiring practices in the context of Ban the Box. Local governments may not have had

sufficient time to gather data, as the law is relatively new in many jurisdictions. Although these laws have been enacted around the country, human resources personnel do not generally collect data and monitor outcomes on employment for this population. Moreover, there is no specific goal, a detailed baseline or a given number of hires of individuals with criminal records, that is established as the goal of this policy, and thus no clear standard that would define the policy as ‘successful.’

The fact remains that individuals with criminal records have been stigmatized and marginalized for decades (Pager, 2007) and laws that are designed to reverse this process will require time to take effect, in large part because social attitudes and perceptions are slow to change. While this policy has admirable intentions, it is difficult to assess its future effectiveness because there remain so many “what ifs” (Henry & Jacobs, 2007). As Bogardus (2015) observed, we need to assess not only if Ban the Box resulted in reduced discrimination with a greater number of individuals with criminal records securing employment, but we also need to understand the factors that influence hiring decisions as well as employer perspectives on Ban the Box. This is critically important because firms that are more likely to discriminate against individuals with a criminal record are also less likely to survive and remain successful (Pager, 2016).

Chapter 4: Methodology

4.1 Purpose of the Current Study

In August of 2011, then Mayor Michael Bloomberg signed Executive Order 151 (EO-151), which required New York City agencies to “ban the box” (see Appendix B). In part, the order stated: “the City wishes to safely remove barriers that impede otherwise qualified individuals from obtaining employment with Agencies of the City of New York.” Mayor Bloomberg later extended the ban to agencies that contract with the city to provide human services (see Appendix C). Hence, EO-151 affected thousands of agencies and a significant number of individuals with criminal records who applied for jobs within those agencies.

Approximately four years after the implementation of EO-151, New York City enacted the Fair Chance Act (FCA), which extended Ban the Box to most employers in New York City (see Appendix D). The sheer size of New York City meant that the policy impacted a vast number of employers and one of the largest populations of individuals with criminal records in the country. Although the policy applied to most employers, specific jobs were exempt if they required a criminal background check as part of the hiring process (e.g. jobs in law enforcement and those working with vulnerable populations). Because of the unfair discrimination that jobseekers with criminal records face, the legislature wanted employers doing business in New York to know that, “The FCA reflects the City’s view that job seekers must be judged on their merits before their mistakes” (see, <https://www1.nyc.gov/site/cchr/law/fair-chance-act.page>).

It is unknown if the agencies that were required to ban the box or delay the inquiry into criminal history did so pursuant to EO-151 or the FCA. Further, there has not been a systematic assessment of the effectiveness of EO-151 to investigate whether there is a difference in the

hiring practices and employer perspectives of agencies that were initially required to “ban the box” versus those that continued doing business as usual.

This study addressed an important gap in the empirical literature and in policy evaluation. The study included four main objectives: (1) it examined the hiring practices of New York City agencies in the context of Ban the Box; (2) it assessed the characteristics of agencies that tend to be noncompliant with Ban the Box requirements; (3) it determined whether agencies that contract with the city were more likely to hire applicants with criminal records after the implementation of Ban the Box; and (4) it documented employer perspectives on Ban the Box.

It may be assumed that when a jurisdiction adopts the Ban the Box policy, it automatically translates into increased employment opportunities for individuals with criminal records. In this instance, there is no available evidence to substantiate that agencies fully complied with EO-151 or the FCA. The study investigated whether employers adhered to Ban the Box policies by removing the question about criminal history from employment forms *and* by refraining from inquiring about an applicant’s criminal record in a manner that would violate the letter and spirit of the law. These steps are fundamental to the integrity of Ban the Box, but they are not the sole criterion employed by hiring managers in the assessment of applicants with criminal records. Therefore, it is crucial to understand the full scope of the decision-making process regarding these applicants, and the perspectives of the hiring managers as it relates to Ban the Box.

The study potentially entails significant policy implications. In various parts of the United States, from large industrial states to small quaint townships, policymakers are confronted with the challenge of tackling the consequences of mass incarceration, including reducing barriers to employment. Although policymakers have been eager to implement Ban the Box, limited evidence has been available about fundamental aspects of the policy. This study will extend our

understanding of the policy’s implementation and impact. Drawing on gaps in prior research, this study raises six key research questions (see Table 1).

Table 1: Research Questions and Hypotheses

Research Questions	Hypotheses
RQ1: Did agencies comply with EO-151 and the FCA by banning the box and by delaying the inquiry about criminal history?	H1a: The majority of agencies are expected to have removed the box from the application. H1b: It is hypothesized that the majority of agencies ceased to inquire about criminal history during the interview process.
RQ2: Do agencies employ alternative methods to circumvent Ban the Box requirements?	H2a: It is hypothesized that a minority of agencies violate Ban the Box by requiring the disclosure of a criminal history on a secondary application. H2b: It is hypothesized that a minority of agencies conduct online searches in order to investigate whether applicants have criminal records.
RQ3: Has Ban the Box placed any additional burden on employers in the hiring process (e.g. additional training, incurred cost, delayed hiring process)?	H3: It is expected that agencies will not report that Ban the Box has resulted in any additional burden on the hiring process.
RQ4: Did human services agencies and non-human services agencies hire more applicants with criminal records after the implementation of EO-151 (i.e. more applicants in 2012 and 2013 than in 2011)?	H4a: It is hypothesized that human services agencies <i>have increased</i> the hiring of individuals with criminal records after the implementation of EO-151. H4b: It is hypothesized that non-human services agencies <i>have not increased</i> the hiring of individuals with criminal records.
RQ5: What criminal history factors are most likely to disqualify applicants with criminal records from employment opportunities?	H5a: Agencies are more likely to hire applicants with a more “stale” criminal record (i.e., with a time lag of at least 7-10 years since the last conviction). H5b: Agencies are more likely to hire applicants with non-violent convictions.
RQ6: What distinguishes agencies that complied with Ban the Box versus those that failed to comply?	H6a: Agencies with a larger employee body are more likely to comply with Ban the Box. H6b: The length of time that the agency has been in operation is likely to be positively associated with the likelihood of compliance. H6c: Familiarity with EO-151 is likely to increase an agency’s compliance. H6d: It is hypothesized that hiring managers belonging to a minority group are more likely to comply with Ban the Box.

(RQ1) *Did agencies comply with EO-151 and the FCA by banning the box or by delaying the inquiry about criminal history?* Removing the box and postponing the criminal history inquiry are core components of Ban the Box that could increase the likelihood that an applicant would be hired (Smith, 2014). Agencies that disregard these key requirements may violate Ban the Box provisions (for those required to comply), even if they feign ignorance of the policy.

(RQ2) *Do agencies employ alternative methods to circumvent Ban the Box requirements?* It would defeat the purpose of Ban the Box if agencies required applicants to complete a secondary application prior to an initial interview. No research has investigated whether agencies adhered to the policy or intentionally circumvented it by soliciting criminal history information through a secondary application. Online searches constitute another strategy for employers to determine whether a given applicant has a criminal record. Ban the Box policies are mostly silent on these types of searches, so it is possible that agencies use this tool to bypass Ban the Box requirements. No research has investigated the prevalence of online searches as an alternative tool to avoid compliance with Ban the Box, but it can be speculated that agencies with few employees or no human resources department will be more likely to conduct these searches (National Research Council, 2014; Stoll, Raphael, and Holzer, 2001).

(RQ3) *Has Ban the Box placed any particular burden on employers in the hiring process (e.g. additional training, incurred cost, delayed hiring process)?* Ban the Box may cause delays in the hiring process, which would be an undesirable outcome for employers. However, there is no evidence that Ban the Box has created a substantial burden on employers in the hiring process (Bogardus, 2015; National Employment Law Project, 2016), but it is unknown whether this is the case in a large city such as New York.

(RQ4) *Did human services agencies and non-human services agencies hire more applicants with criminal records after the implementation of EO-151 (i.e. more applicants in 2012 and 2013 than in 2011)?* Human services agencies are likely to have the most experience in working with individuals who have criminal records and would be more open to interviewing and hiring this population (Pager, Western, & Sugie 2009; see also Swanson, et al., 2012). Contractors are often required to ban the box when granted government contracts, but there is little evidence demonstrating that this practice leads to increased hiring of individuals with criminal histories (Bogardus, 2015; National Employment Law Project, 2015). Because non-human services agencies were not initially required to ban the box, it will be useful to determine whether these agencies hired more of these applicants without a specific mandate that required them to do so, or whether hiring of individuals with a criminal record was more prevalent in a particular industry (Stoll, Raphael, & Holzer, 2004). No research has examined the differential impact of a Ban the Box policy across different sectors in the same city. Although New York City implemented Ban the Box, the policy did not mandate employers to increase the hiring of individuals with a criminal record. It is also possible that more of these applicants secured interviews, but may not have been ultimately hired (Bogardus, 2015).

(RQ5) *What criminal history factors are most likely to disqualify applicants with criminal records from employment opportunities?* Employers have consistently disqualified applicants based exclusively on factors related to an applicant's criminal history (Pager, 2007), but it remains to be seen if this changed with the implementation of Ban the Box policies (Bogardus, 2015). Because Ban the Box is a relatively new policy and it does not require employers to hire individuals with criminal records, it is likely that employers have remained

skeptical about hiring individuals with more recent convictions. Further, it is hypothesized that employers are more likely to reject applicants with violent convictions.

(RQ6) *What distinguishes agencies that complied with Ban the Box versus those that failed to comply?* Research demonstrates that larger agencies are more likely to hire individuals with criminal records and to conduct criminal background checks (National Research Council, 2014). Hence, it is reasonable to suspect that larger agencies will have an increased likelihood of complying with Ban the Box. The length of time in operation is also a factor, as agencies that have a longer existence are more likely to comply with the policy. Moreover, if an agency is not familiar with the policy and its requirements, it is less likely to comply (Bogardus, 2015). The demographics of the hiring manager have been found to play a role in the hiring process, particularly with regards to the minority status of the hiring manager. For example, African-American hiring managers have been found to hire more black applicants when compared to white hiring managers (Stoll, et al., 2001; 2004).

4.2 Research Procedures

4.2.1 Sampling

This research targeted agencies (represented by the staff member responsible for hiring) that contract with New York City to provide a variety of services. All city agencies, as well as agencies that do not contract with the city, were excluded from the sample. According to NYC.gov, there are over 2,000 human services contractors, and over 3,000 non-human services contractors in New York City. An Excel “spreadsheet” with these agencies was obtained from the website of the Comptroller’s Office, which included 5,832 agencies. The spreadsheet

contained pertinent information about agencies (i.e. vendors) that contract with New York City and the contract(s) awarded.

Recruitment into the study was conducted in several stages. The email addresses of the human resources managers/directors were identified through the agencies' websites. About a quarter of the agencies did not provide email addresses for any of their employees. Many of the agencies only provided an "info@XXX" email address, or a phone number listed on the website, although some of the agencies failed to provide any contact information. In cases where emails for human resources personnel were not readily available, the head of the agency, executive level staff, or another agency representative was contacted. The survey, along with a cover letter explaining the purpose of the study and a consent form, was emailed to the hiring managers (or other point of contact) of approximately 3,500 agencies. They were informed that the research was associated with the David Rothenberg Center for Public Policy at the Fortune Society, where I am employed as an Associate Vice President. This tactic was used to alleviate concerns that the research might be linked to the government or a governmental agency, especially since some of the questions concerned compliance to a government policy. The consent form underlined that no identifying information would be collected, and that none of the agencies would be identified in the dissemination of the findings. They were asked to click a button indicating that they understand the modalities of participation (*"I have read the consent form and agree to complete the survey"*), and informed that the survey would take approximately 10 minutes to complete.

Because of the commonly low response rate associated with web-based surveys, a three-phase follow-up procedure was utilized. Respondents who failed to complete the survey were sent a reminder email 7, 14 and 21 days after receiving the survey to reiterate the crucial importance of their participation. Respondents who only partially completed the survey were

called and asked if they would be willing to complete the remaining survey questions. These calls were contingent on the online availability of the agency's phone numbers. A few respondents accepted the offer to complete the survey once they received more information about the study or had their queries and concerns addressed, while others expressed skepticism about answering questions related to their hiring practices. A representative from one agency emailed to inform me that he felt that the survey was too intrusive, and he opted not to complete it. This highlights the challenges in collecting data on employers' hiring practices, regardless of the number of safeguards and guarantees provided to protect confidentiality.

Surveys were administered in two waves. The first wave took place from September 2016 through May 2017, and yielded 66 responses. Respondents who completed or partially completed the survey (i.e., at least 75% of questions) during the first wave were entered into a drawing to win a \$100 gift card. During the second wave, respondents who completed at least 75% of the survey were offered a \$20 incentive. In the second wave, I sent the survey to all of the agencies that received it during the first wave, except those that had already provided sufficiently complete responses. The second wave of data collection was conducted from September 2017 through October 2017, and yielded 60 responses. In total, 126 surveys were, at least partially, completed.

In 48 of the original 126 surveys, respondents failed to answer a large number of questions. Because of the significant missing data, these surveys were excluded, resulting in a final sample of 78 surveys. In addition, 12 semi-structured interviews were conducted with a random sample of the 78 employers, in order to gain more in-depth information about hiring practices.

4.2.2 Representativeness of the sample

Given that the sample included in this study only includes a small sample (n=78) of the 3,547 agencies that were contacted to participate in the study, analyses were conducted to determine the representativeness of the sample. The spreadsheet obtained from the Comptroller's Office, which included 5,832 agencies, was examined in order to identify variables that could be used to provide an appropriate comparison of the sample to the population of agencies. These variables were available for all agencies included in the spreadsheet, and included, among other indicators, the contract start and end date, the purpose of the contract, the M/WBE status of the agencies (i.e., Minority and Women Business Enterprises, which are businesses that are owned and operated by minorities and women,); industry (i.e., the specific service that the agency is contracted to provide, which included construction services, goods, human services, not classified, professional services, and standardized services), the contract amount, the award method (i.e., the method of securing the contract, which consisted of 57 categories including small purchase, negotiation, grants, multiple awards, and request for proposals); and contracting agency (i.e., the specific funder for the contract, which were recorded and narrowed to two types of agencies: NYC Mayoral and NYC non-Mayoral. The NYC Mayoral category consisted of agencies under the auspices of the Mayor's Office (the Mayor appoints the head of the agency), including but not limited to: Administration for Children's Services, Department of Education, and the Department of Homeless Services, whereas the Non-Mayoral category included among other institutions the Public Libraries, City University of New York, Board of Elections, the Borough Presidents Offices, and the Transit Authority.

After careful consideration, the following variables were selected:³ 1) M/WBE status of the agencies; 2) award method; 3) industry; and 4) contracting agency. Drawing on the selected variables, z-scores were computed to compare the proportions in the sample and in the population. As Table 2 illustrates, the sample only resembles the population on one variable: the contracting agency; both sample and population received the vast majority of their funding from NYC mayoral agencies (99% and 97%, respectively). The remaining three variables show significant differences between the sample and the population. Fewer agencies in the sample identified as M/MBE when compared with the population of agencies (4% versus 14%). This is somewhat surprising, as one could expect that minority-owned businesses would take a greater interest in participating in a study that aims to better understand a policy targeting discriminatory hiring practices. A significant difference was observed between the sample and population with regards to the prevalence of request for proposals (RFP) as the award method. The sample received nearly twice as many awards through the RFP process than the population (32% versus 17%, respectively). There was also a sizeable difference between the sample and the population in the proportion of agencies that belonged to the human services industry. More than three-quarters of the sample received contracts to provide human services, in contrast to 31% of the population.

³ These variables were selected because they were the most relevant to the research questions and also to determine how similar the sample is to the population. Although the award method had 57 categories, RFP was the most common award type for contracts with the city. With respect to the contracting agency, there were 91 categories. Dichotomizing these categories into “Mayoral” and “non-Mayoral” agencies seemed most appropriate, since these are distinct primary funding sources. Moreover, the non-Mayoral agencies are different in character and purpose from the Mayoral agencies (e.g. Department of Homeless Services versus the Board of Elections). Industry type originally consisted of six categories, but the human services category is the most central to the current analysis.

Table 2: Relationship between variables from the sample and population

Variables	Agencies that responded to survey (n=78)	Agencies that received a survey (n=3,547)	z scores for 2 population proportions, sig level $p < 0.05$
Contracting Agency - NYC mayoral	99% (n=77)	97% (n=3,434)	Z = 0.40, p = .689
M/WBE	4% (n=3)	14% (n=504)	Z = -2.61, p = .009*
Award Method - Request for Proposals	32% (n=25)	17% (n=594)	Z = -3.55, p = .000*
Industry - Human Services	76% (n=59)	31% (n=1,113)	Z = 8.26, p = .000*

Because significant differences were found between the sample and the population, there are limits to making broad generalizations about New York City agencies based on the findings that emerge from this study. As such, statistical significance is not highly meaningful in the context of the current study. Because no study of this nature has been conducted in New York City since the implementation of Executive Order 151, or the Fair Chance Act, the current research is largely exploratory in nature and aims to provide new and innovative insights into employer perspectives on Ban the Box.

4.2.3 Description of the sample

The different types of agencies included in the sample are presented in Table 3. Most surveys were completed by agencies from the nonprofit sector (72%, n=56 versus 28%, n=22 from the private sector). Agencies may belong to more than one agency type (see question 1 in Appendix E); Human Services (31%, n=24) had the highest frequency, followed by agencies that reported “other” (28%, n=22), which identified as social services (i.e. child welfare, youth development, and alternatives to incarceration), IT staffing, arts and culture, religious, and economic development. Education (27%, n=21) is another type that was selected by a high frequency of agencies, and no other agency type had a frequency above eight. The distribution

demonstrates that most of the agencies perform multiple functions, but some of them likely specialize in one particular area, e.g. technology, real estate, or communications.

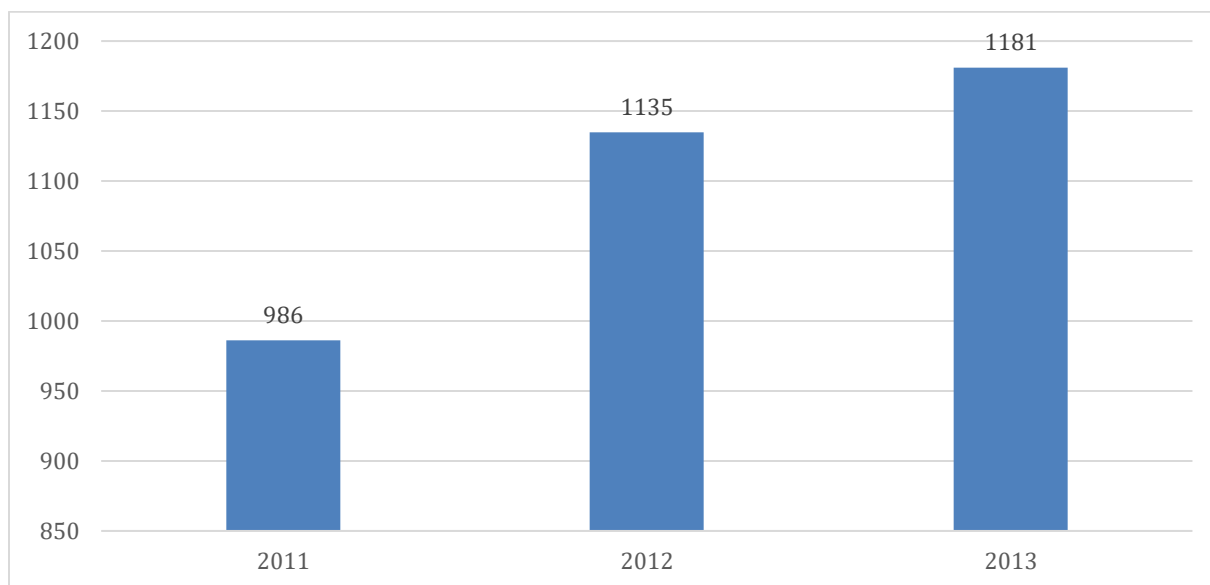
An interesting observation is that only 24 agencies identified as human services, although we know from Table 2 that more than double this figure (n=59) received contracts to provide human services. In a similar vein, although not as extreme, five agencies identified as construction agencies, but seven agencies reported receiving construction contracts. It seems that the industry to which agencies identify does not necessarily correspond to the services that they provide.

Table 3: Distribution of the Sample by Agency Type (n=78 agencies)

Agency type	%	n
Human Services	31%	24
Other (please specify)	28%	22
Education	27%	21
Health Services	10%	8
Housing	9%	7
Consulting	8%	6
Advocacy	8%	6
Employment	6%	5
Construction	6%	5
Policy	5%	4
Mental Health	5%	4
Legal	4%	3
Transportation	3%	2
Substance Use	3%	2
Manufacturing	3%	2
Food Services	3%	2
Environmental	3%	2
Technology	1%	1
Safety and Security	1%	1
Research	1%	1
Real Estate	1%	1
Maintenance	1%	1
Hospitality	1%	1
Communications	1%	1
Behavioral Health	1%	1

Along with agency type, another important description of the sample is agency size. The total number of employees ranged from as low as 2 to as many as 7,000, with a mean of 327 employees. Figure 1 presents the number of employees that were hired each year from 2011 to 2013 for the 36 agencies that provided these data, showing a slight increase in the average from 27 hires in 2011 to 32 hires in 2012 and 2013.

Figure 1: Total Number of Employees Hired by Year (n=36 agencies)



Because African Americans and Latinos have higher arrest rates and are overrepresented in the criminal justice system (Bureau of Justice Statistics, 2018; Gramlich, 2018), it is worth noting the racial composition of the agencies' employees (see Table 4).⁴ Since the initial Ban the Box policy was adopted in 2011 and only applied to human service agencies, the racial distribution presented is for all agencies versus human service agencies. Overall, agencies reported that 40% (n=1,417) of their employees were White/Caucasian, 33% (n=1,251) were

⁴ These data were only available for 38 of the 78 agencies.

Black/African American, 24% (n=888) were Hispanic/Latino, 11% (n=277) were Asian/Pacific Islander, 9% (n=140) were of another ethnicity, and 1% (n=17) were Native American). When examining the racial composition of employees solely in human service agencies, the figures change substantially, as evidenced in Table 4. These agencies tend to hire more minority employees, particularly African American individuals.

Table 4: Racial Composition of the Employee Body Comprising All Agencies in Contrast to Human Service Agencies.

	All agencies (n=38)	Human service agencies (n=11)
White	40% (n=1,417)	26% (n=238)
Black/African American	33% (n=1,251)	44% (n=486)
Hispanic/Latino	23% (n=888)	24% (n=264)
Asian/Pacific Islander	11% (n=277)	18% (n=105)
Native American	1% (n=17)	0% (n=1)
Other	9% (n=140)	1.5% (n=6)

Race and gender play important roles in the hiring process, for the applicants as well as the hiring managers, executives, and other architects of the agency's standard operating procedures. In addition to features of the agency and employee body, the characteristics of the hiring managers are also important. Among those who provided information on their gender, 40% (n=31) were women and 22% (n=17) were men. The racial composition of the sample was relatively evenly split, with a slightly higher proportion of Caucasian hiring managers (White/Caucasian: 31%, n=24; Black/African American: 11%, n=9; Hispanic/Latino: 11%, n=9; Multi-racial: 4%, n=3; Asian/Pacific Islander: 3%, n=2). It is important to note that many of the respondents refused to answer the demographic questions, most likely due to fears of being identified, despite assurances that the data would remain confidential.

4.2.4 Variables

Analyses were based primarily on whether agencies banned the box but also included whether they delayed inquiry into an applicant's criminal history, and conducted a criminal background check. The variables employed in the analyses include general characteristics of the agencies and hiring managers (i.e., agency size, length of time in operation, agency sector), whether the agency conducts informal criminal background checks), and specific variables inquiring about EO-151 (i.e. the agency's familiarity with the policy and whether it placed an additional burden on the agency). Several of the variables were recoded to explore how they related to one another. For example, the number of employees and the length of time in operation were recoded as dichotomous variables, in order to assess the distribution of these variables according to whether agencies had banned the box on the job application. Moreover, the variables *when does your agency ask about criminal record* and *when does your agency conduct a criminal background check* each had multiple categories, i.e. before an interview, after first interview, after follow-up interviews, after an offer, and after a conditional offer. Although these options were available, the primary factor for both variables is whether the agency asked about criminal record or conducted a criminal background check before or after making a job offer. With so many categories, the cross tabs produced cells with an expected count of less than 5.

4.2.5 Survey questions

A 26-question survey was developed for the purpose of this study (see Appendix E). The survey included questions relating to general information about the agency and its hiring practices: basic agency information, familiarity with EO-151, application policies, interview and follow-up procedures, hiring data, and demographic information. It was developed in

consultation with Dr. Devah Pager and Dr. Christopher Uggen (Harvard University and University of Minnesota, respectively), and it is largely based on surveys that these reputable researchers have previously used in their research with employers. The survey was modified to address the research questions raised in the current study.

More specifically, the survey took into account that two distinct Ban the Box policies were adopted by New York City in the span of four years. Hence, the questions were tailored to allow hiring managers to reflect on their current hiring practices, while simultaneously considering whether or not the initial policy impacted their hiring decisions. All of the questions were closed-ended, non-threatening, non-technical, and specifically designed to be answered by individuals with in-depth knowledge of the agency's hiring practices. The more sensitive questions (e.g. age and education of hiring managers) were divided into categories, without any overlap, to avoid requiring the hiring managers to provide precise answers. Further, there was a specific rationale and logical flow to the questions, which made it more likely that the hiring managers could easily follow the sequencing. The questions were also reviewed and revised by my committee chair to ensure that they adequately measured the phenomena under study.

The survey comprised of six sections. The first section solicited general information about the agencies, such as the industry type (human services versus manufacturing) and sector (non-profit versus public), the amount of time that the agency has been in operation, and the number of employees (i.e. agency size). The second section focused specifically on EO-151 and inquired about the hiring managers' familiarity with the order, whether it has resulted in delays of the hiring process, if agencies were more likely to hire individuals with criminal records after its implementation, and the essential question of whether the agency was subject to the compliance requirements of EO-151. The third section delved into features of the employment

application, including whether the criminal history box has been removed from the job applications, and when and why the application changed, if at all. The fourth section of the survey inquired about interview and follow-up procedures. It documented the types of convictions that disqualify applicants, and whether the agency conducts online searches on applicants as an informal background check. The fifth section of the survey inquired about whether the agency hired individuals with criminal records from 2011-2013, which roughly corresponds to the period before, during, and after the implementation of EO-151. This section also asked about the racial composition of the employee body. The final section of the survey included questions about sociodemographic characteristics, including the age, race, gender, and the hiring manager's level of education.

A longer version of the survey was piloted with human resources professionals. In order to ensure that the survey questions were clear and easily understood by human resources personnel, and that the requested information might be accessible to respondents, six human resources directors/managers in the public, private, and nonprofit sectors were consulted. These individuals completed the survey and provided valuable feedback. Namely, they underlined that human resources staff would likely have reservations about completing a lengthy survey, considering the time that they spend on recruitment, payroll, and other important agency issues. Importantly, they also noted that many agencies do not collect hiring data on individuals with criminal records. Based on the feedback from the pilot study, I opted for a web-based survey using Survey Monkey, because it is user-friendly and data can be easily transferred from this platform to SPSS for analysis.

4.2.6 Qualitative interviews

Twelve semi-structured interviews were conducted to supplement the survey data and obtain more detailed information about the decision-making process of hiring managers. This in-depth information allowed for a more comprehensive understanding of whether Ban the Box impacted the hiring practices of applicants with a criminal record.

An email requesting an interview in order to provide additional insight on Ban the Box was sent to 50 randomly selected agencies, which resulted in 12 responses. All of the interviews were conducted over the phone and each of the respondents, save one, agreed to an audio recording of the interview. The consent process was performed orally before the interview, and outlined steps undertaken to protect confidentiality, as well as the benefits and risks associated with the research. An oral consent form was chosen because of the sensitive nature of the interview, and to provide an additional sense of security to participants who may have felt uneasy signing a physical consent form. The interviewees were offered \$50 for their participation in the interview. Three of the interviewees declined the stipend, noting that they were interested in sharing their thoughts, but not for compensation.

Similar to the survey, the interview questions were constructed with an emphasis on expanding our knowledge about an agency's hiring practices relative to Ban the Box. The interviews served to complement the survey questions, and they were open-ended in nature. The questions sought information on process, so they inquire about the "what" and "how" rather than the "why." There were no leading questions, and no questions that required the respondents to have very technical information at their disposal. Moreover, the questions were devoid of jargon and used language familiar to human resources professionals and to individuals familiar with the hiring process. The questions were direct, straightforward, and maintained a logical flow. As

with the survey questions, my committee chair reviewed and revised the interview questions to ensure that they adhered to research standards.

Eighteen questions were included in the interviews but consistent with the semi-structured format, many follow-up questions arose throughout the interviews. The topics included familiarity with EO-151 and the FCA, whether agencies received guidance from the city about these policies, if the agencies revised their hiring practices to comply with Ban the Box, how the criminal background check process is conducted, and if these agencies were concerned about negligent hiring suits. They were also asked to reflect on additional steps that could be undertaken by policymakers and employers to increase the likelihood that individuals with criminal records can secure employment (see Appendix F).

Because of the depth of the answers provided, the interviews added rich information about Ban the Box and the hiring of individuals with criminal records. The length of the interviews invariably depended on the depth of the interviewees' knowledge of Ban the Box and human resources policy and practice. It depended much less on the amount of time that the interviewees were at their current employer. Most interviewees provided very detailed answers to many of the questions, while a few could only offer basic answers.

The average interview time was approximately 35 minutes, but several of the interviews lasted for close to an hour. Interviewees were open to the supplemental questions that arose in the semi-structured format. However, the ability to answer these more specific questions varied based on the interviewees expertise in human resources. All audio-recorded interviews were transcribed, and supplemented with interviewer notes. The average number of pages for the transcribed interviews was 18; the shortest interview transcript was 9 pages, and the longest was 33 pages.

4.3 Analytical Strategy

This dissertation combines some quantitative description as well as qualitative analysis. All survey questions are of a structured nature and the analysis was conducted using the SPSS statistical software. The questions help to gain a better understanding of the general motivations underlying complex decision-making in the hiring process involving a stigmatized population. Given that we know so little about whether Ban the Box has impacted hiring practices and the exploratory nature of the current study, a large part of the analysis is descriptive. The study explored whether employers comply with Ban the Box, and whether this compliance has influenced hiring decisions. Descriptive statistics are presented for a) whether or not agencies banned the box b) delayed inquiry into an applicant's criminal history; c) conducted a criminal background check; d) were familiar with Executive Order 151; d) or felt burdened by Executive Order 151; and other variables. A chi-square test was conducted to determine whether there is a relationship between these specific factors and an agency's compliance with Ban the Box. Since the sample was not found to be representative of the population, it was not deemed relevant to present statistical significance for the chi-square analyses. The major strength of the current study lies in the detailed information obtained through the interviews conducted with the hiring managers.

The analysis of the interview data draws on thematic analysis, a commonly used qualitative research method (see, Attride-Stirling, 2001; Braun & Clarke, 2006; King, 2004; Leininger, 1992; Nowell et al., 2017). Thematic analysis is similar to other qualitative methods in that it offers a comprehensive and methodical way to describe, organize and illustrate data, which help facilitate the evaluative process (Braun & Clarke, 2006; Nowell et al., 2017). Scholars have disagreed on whether or not thematic analysis is a distinct method, or simply a

process to support researchers conducting qualitative analysis (Nowell et al., 2017). Despite this difference of opinion, there is sufficient support to regard thematic analysis as a qualitative research method (Braun & Clarke, 2006; King, 2004; Leininger, 1992; Thorne, 2000). As with other methods, there are advantages and disadvantages. With respect to the advantages, it is fairly easy to comprehend, and it does not require significant theoretical expertise in other qualitative methods. In addition, it provides sufficient flexibility for a variety of different qualitative studies, so researchers have described it as a useful “method for examining the perspectives of different research participants, highlighting similarities and differences, and generating unanticipated insights” (Nowell et al., 2017, at pg. 2).

The disadvantages of thematic analysis are related to its advantages. Its flexibility may generate themes that are arbitrary and disjointed, which could affect the rigor of the analysis. Although qualitative researchers are left to interpret their data and make claims based on their findings, a thematic analysis will suffer if it is not meticulous. Further, the limited research on thematic analysis, in contrast to other qualitative methods, is likely to impact the thoroughness and trustworthiness of a particular analysis (Holloway & Todres, 2003; Nowell et al., 2017).

Since there is scant research on Ban the Box, this dissertation provides a robust description of the perspectives offered by the respondents. An inductive approach was utilized, so the themes that emerged derive directly from the data and they were not forced into a pre-existing coding framework (Braun & Clarke, 2006; Nowell et al., 2017). Moreover, the themes are analyzed using a latent rather than semantic approach. Unlike the latter, the former allowed for a thorough exploration of the “underlying ideas, assumptions, and conceptualizations,” which was essential for comprehending the intricacies of the hiring process and what encompassed the

hiring manager's decisions - relative to applicants with criminal records (Braun & Clarke, 2006, at pg. 13).

The examination of the interview data began with the transcription of the audio recordings. A transcription company (Daily Transcription) carried out this task, in order to reduce inaccuracies in the transcripts. After listening to the recordings several times and reviewing the transcripts, it was determined that the transcripts accurately reflected the subjects' statements. The transcripts and the interviewer notes were reviewed for commonalities, contrasts, and repeated patterns that provided nuance and context. In addition, extensive notes were drafted about the ideas, opinions, and concepts that materialized, which facilitated the identification of patterns that emerged in each interview and across the different agencies.

Once these data were coded, five main themes and one subtheme was identified in the narratives. With the emergence of these specific themes, the information generated from the narratives was used to answer the research questions. A thematic map was then developed and the relationships between the themes was explored. The credibility of these findings is enhanced and complemented by the survey data, and efforts were undertaken to triangulate the results by verifying the respondents' answers about Ban the Box with the information on the websites of the agencies and the posted job applications.

4.4 Summary

In sum, this study fills important knowledge gaps about Ban the Box policies. First, it investigates the effectiveness of Ban the Box policies as a tool to improve employment outcomes of individuals with criminal records. Second, it identifies the characteristics of agencies that are not likely to comply with Ban the Box, which can entail important implications for the

implementation of this policy, as well as other similar policies. Third, it explored factors underlying decision-making in the hiring process and the perspectives of hiring managers, in the context of a policy specifically designed to ease employment discrimination. These findings have broader significance for other policies that are discriminatory against individuals with a criminal record.

Ban the Box policies have emerged as a way to level the playing field for individuals who are often denied employment without legitimate cause. This policy shift is both practical and economical, since research has determined that employment plays a crucial role in reducing recidivism, promoting desistance, and providing substantial benefits for individuals and communities. However, despite the good intentions of Ban the Box, its effectiveness is dependent on the policy's successful implementation and oversight. The findings presented in the following chapters assess whether Ban the Box has been implemented as intended in New York City.

Chapter 5: The Impact of Ban the Box on Agency Practices

5.1 Introduction

Ban the Box policies aim to remove the criminal history question from job applications and delay inquiry into an applicant's criminal background. When the surveys were administered in the context of the current study, the Fair Chance Act (FCA), had recently become law in New York City. Therefore, unless employers were exempt⁵ from the FCA, they were required to ban the box and not inquire about criminal history until after making a conditional offer of employment. The FCA was adopted between 1-2 years before the surveys were administered, so the current study largely focuses on the impact of the initial policy (Executive Order 151), while also examining certain features of the FCA.

5.2 Did Agencies Remove the Criminal History Question from the Job Application?

Following the implementation of the FCA, survey responses reveal that two-thirds (67%, n=51) of the respondents did not ask about criminal history on the job application. While a majority of the agencies included in the sample did indeed ban the box, the fact remains that one-third of the agencies (33%, n=25) continued to inquire about violations, arrests, or convictions at this stage of the application process. There is a chance that some of these agencies were exempt, but the possibility also exists that they were unaware of their obligation to ban the box or that they purposefully violated the policy. An analysis of the agencies' job applications is offered at this end of this chapter, to determine what agencies say versus what they do.

⁵ Some agencies are exempt, e.g. New York Police Department, New York Fire Department, and the Department of Correction, but not all positions are exempt at specific agencies, e.g. only positions in financial services that must comply with industry regulations are exempt (see NYC FCA).

5.3 Screening Applicants for Criminal History

Ban the Box does not fully prevent employers from asking applicants about their criminal history. With the box removed from most applications, we still need to determine when employers pose the criminal history question. Figure 2 summarizes the point in the hiring process when employers screen for criminal history; 57% (n=41) of hiring managers reported asking about criminal history after an offer, a conditional offer, or a background check. This establishes that the majority of agencies ceased to inquire about criminal history during the interview process. A fairly substantial percentage (19%, n=14) continued to ask the question early in the process, or at least prior to making the applicant an offer, while 24% (n=17) checked the “other” [i.e. no inquiry] category and reported that they do not ask or have never asked applicants about criminal history. Similar to the previous question about removing the box, agencies that ask applicants about their criminal record prior to extending an offer, may be exempt, oblivious to their duties, or simply ignored the policy. Although this is unclear, it is likely that the FCA would have less of an impact on agencies that never asked the criminal history question on the application or inquired about applicants’ criminal record during the interview process.

The majority of the respondents indicated that they asked about criminal history after a criminal background check, which raises the question about the timing of this inquiry, as it might conflict with the FCA if the check is conducted before an offer is made. Figure 3 presents data on the timing of the criminal background check in the hiring process. More than half of the hiring agents (58%, n=37) indicated that the criminal background check was conducted after an offer or a conditional offer. In a possible violation of the FCA, 18% (n=11) of agencies conduct the criminal background check before making an offer. In addition, 25% (n=16) reported that

they do not or have never conducted criminal background checks, or that the check is only performed if required by a third party. An example of a third-party check would be the clearance required to work in a Department of Corrections facility (i.e., agencies that contract with the DOC to offer services inside city jails).

Figure 2: Timing of Inquiry about Criminal History in the Hiring Process (n=72 agencies)

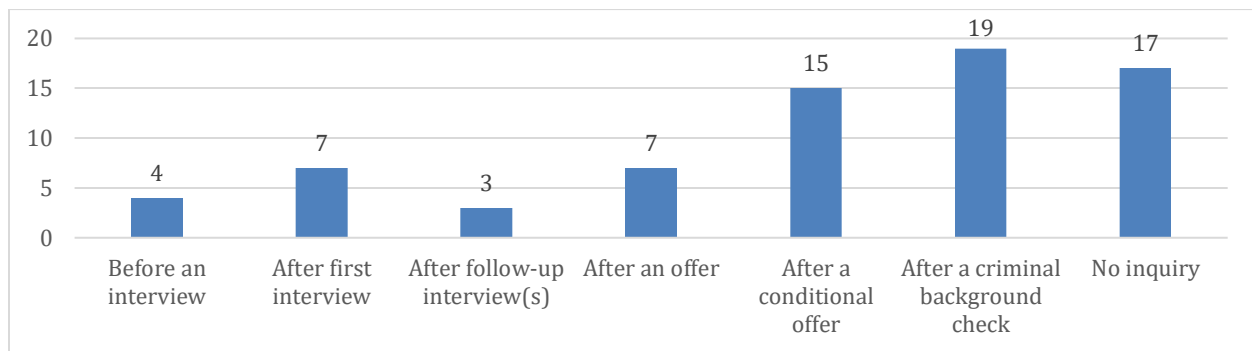
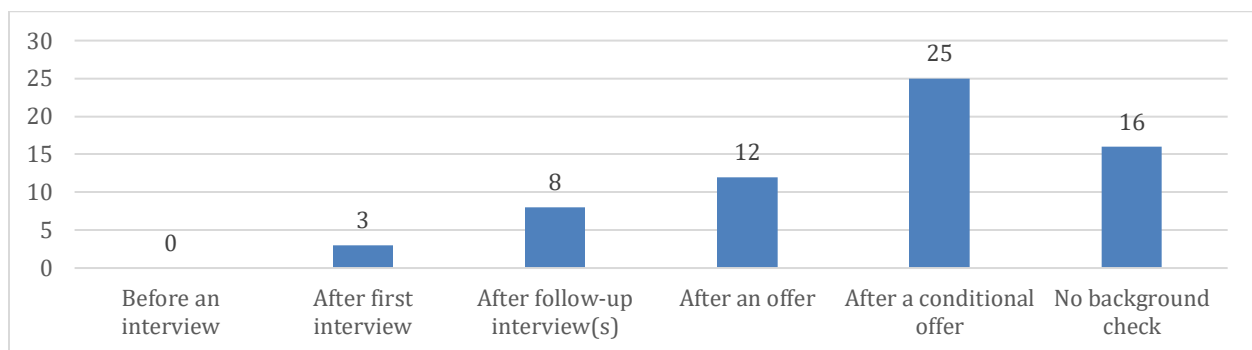


Figure 3: Timing of Criminal Background Check in the Hiring Process (n=64 agencies)



While the majority of agencies seem to have adhered to the FCA’s requirement to refrain from conducting a criminal background check until after making an offer, a sufficient percentage of agencies are possibly out of compliance. Further, it is interesting that 25% of agencies do not routinely perform criminal background checks, considering that more than 80% of companies usually conduct these checks (Society for Human Resources Management, 2010; Smith, 2014).

One likely factor is that these particular agencies are recruiting for jobs that require less scrutiny of an applicant's criminal record (i.e. positions that have limited interaction with the public).

5.4 Are Agencies Avoiding Ban the Box Requirements?

Employers can wittingly or unwittingly circumvent Ban the Box by inquiring about criminal history during the interview process or by conducting background checks before a conditional offer is made. For instance, employers may post the job application on their website or on job boards that does not include the box. However, individuals who have their applications flagged may be asked to complete a secondary application, either in the office or online. This secondary application may include the box. Further, some employers perform online searches of applicants early in the interview process to determine if they have criminal records, a practice that is prohibited by the FCA.

Figure 4 shows that among the 33% (n=25) of agencies that continue to inquire about criminal history prior to making an offer (i.e. who have failed to remove the box), 68% (n=17) do so on the initial application. The other 32% (n=8) of the agencies ask the question on a secondary application. There is a chance that agencies continue to use old forms for the initial or secondary application, despite the requirements of the FCA that went into effect in October 2015. For example, Aldo Group Inc., an international retailer of handbags and accessories, was recently fined \$120,000 by the New York State Attorney General's Office for not banning the box, and for the automatic disqualification of candidates with felony convictions. Interestingly enough, the company reported that "the investigation revealed that New York state stores were distributing outdated applications, without the knowledge of the human resources team"

(Scarcella, 2018). Despite this claim, one cannot rule out the possibility that agencies circumvent the FCA by requiring criminal history information on either of the applications.

Figure 4: Stage of the Application Process when the Criminal History Inquiry Occurs (n=76 agencies)

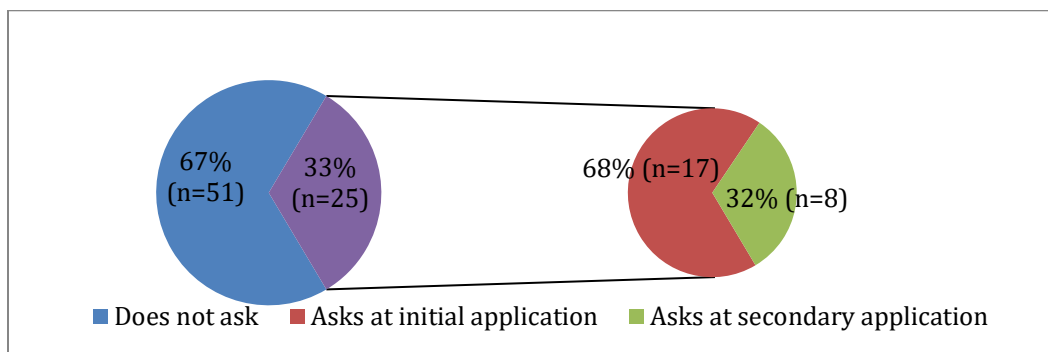
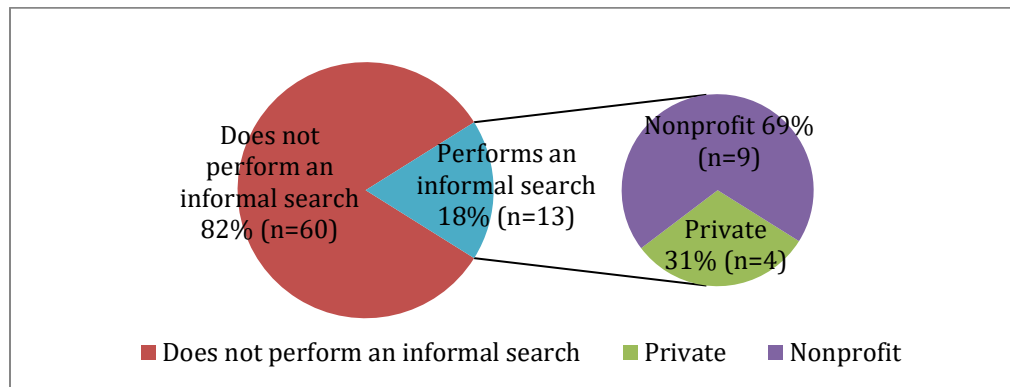


Figure 5 presents the prevalence of online searches among hiring managers and shows that 82% (n=60) of the agencies did not conduct informal criminal justice-related Internet searches. Among the 13 agencies that do conduct these searches, 69% (n=9) represented the nonprofit sector and 31% (n=4) represented the private sector. Respondents were also asked if their agencies ever disqualified an applicant on the basis of these searches, and 4 out of the 13 agencies (31%) reported that they did. It is impossible to determine whether these searches were carried out before or after passage of the FCA given the formulation of the question, but it is striking nonetheless that a reasonably high percentage of agencies conduct these searches and disqualify applicants based on the results. If agencies are unfamiliar with the FCA, they may have no clue that searching the Internet for an applicant's criminal record, prior to making an offer, is impermissible. Moreover, nonprofits might be more likely to conduct these informal searches because of the fees associated with commercial background checks, also known as "consumer reports." With or without Ban the Box, there is always the possibility that these types of searches could produce inaccurate information.

Figure 5: Percentage of Agencies that Perform an Informal Criminal History Search (n=73 agencies)



5.5 Did Ban the Box Impose a Burden on the Hiring Process?

The Ban the Box policy might raise concerns for employers if it extends the hiring process, adds costs, or requires significant staff training. Conversely, employers might be sympathetic to the policy if it does not place additional burdens on the hiring process. The survey only inquired about the Executive Order, and 24 agencies responded that they were subject to its requirements. Of the respondents that answered this question, 76% (n=18) indicated that the new requirements did not impact the length of the hiring process, while only 14% (n=3) reported that the change resulted in a slightly longer process. Likewise, 58% (n=14) of the agencies reported that there was no additional burden placed on the hiring process, with respect to cost and staffing, while 17% (n=4) were unsure about whether the policy created an additional burden.

For these questions, respondents were asked to reflect on whether or not a defunct policy imposed a burden on the agency, since it had been superseded by the FCA. Some respondents may not have been at their current agency when EO-151 was implemented, or they may not have been privy to this information. This might be the reason why some respondents were “unsure” whether the policy imposed a burden on the hiring process. However, it is evident from the

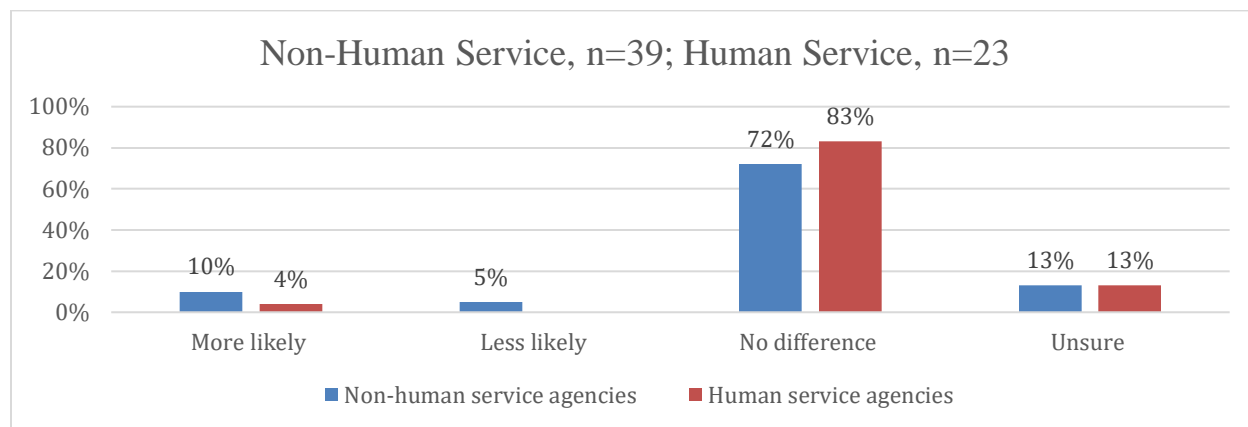
responses that human service agencies did not view this initial Ban the Box policy as a burden. The question of whether or not the FCA imposed a burden on agencies is discussed in more detail in the following chapter.

5.6 Did Ban the Box Impact Hiring Decisions?

This study seeks to determine whether agencies that were required to ban the box reported hiring more applicants with a criminal record after the implementation of the order, in contrast to agencies that had no such requirement. Respondents were asked to provide information about their hiring practices for 2011 through 2013, to assess if they reported an increase in hiring for the first and second years after the executive order went into effect. Respondents were also asked about the likelihood that they would hire individuals with a criminal record.

Figure 6 presents the hiring managers' reported likelihood of hiring individuals with a criminal record after the implementation of EO-151. It shows that 83% (n=19) of human service agencies reported no difference in the likelihood of hiring individuals with a criminal record. Because non-human service agencies were not mandated to comply with requirements of the order, it is not surprising that most agencies (72%, n=28) reported no difference in the likelihood of hiring this population. A small percentage of non-human service agencies (10%, n=4) indicated that they were more likely to hire individuals with records. Without additional context, it is difficult to determine the reasons underlying this change, but some companies may have become resigned to the change precipitated by Ban the Box and more receptive to giving these individuals a second chance. Overall, most hiring managers seemed to believe that Executive Order 151 did not have an impact on the likelihood of hiring individuals with a criminal record.

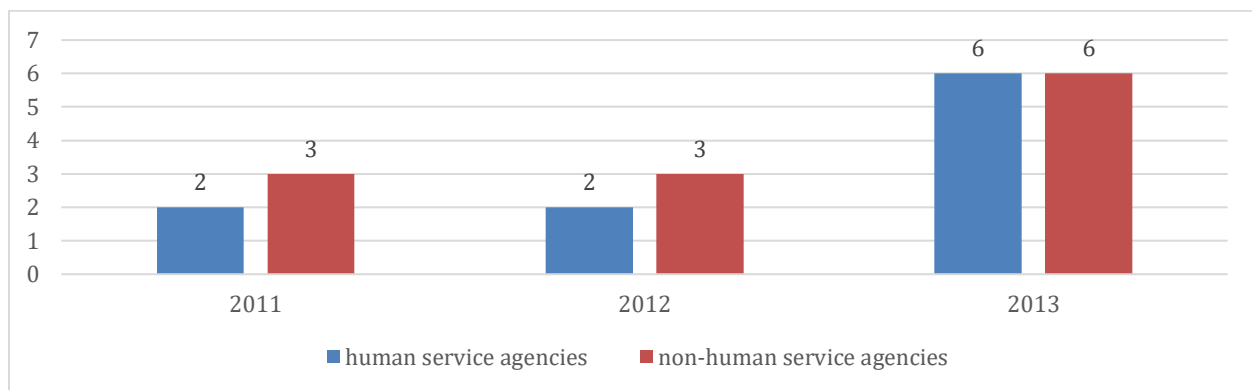
Figure 6: Agencies' Reported Likelihood of Hiring Applicants with a Criminal Record after the Implementation of EO-151 (n=62 agencies)



Against this backdrop, we would expect few agencies to have offered employment opportunities to individuals with a criminal record. Further, based on the information received in the pilot phase, the likelihood is that employers rarely have this information at their disposal. Figure 7, which presents the number of agencies that hired individuals with a criminal record from 2011-2013, confirms this notion. The number of human service agencies that reported hiring individuals with criminal records remained the same in 2011 and 2012 (2 agencies), but this number slightly increased from 2012 to 2013 (6 agencies). The same trend was observed for non-human service agencies (3 agencies hired individuals with a criminal history in 2011 and 2012, and 6 did so in 2013). The limited number of agencies significantly limits the possibility of determining if a difference exists in the likelihood of hiring individuals with a criminal record in the two types of agencies. A substantial increase would not necessarily be expected in a year or two, but one might reasonably conclude that the push to reduce discrimination could result in more agencies extending offers to this population. Even with the small number, it is interesting that a few additional agencies in each group reported hiring individuals with a criminal record over a two-year period after the implementation of EO-151, but there could be factors besides

Ban the Box that explain the marginal increase. It is not surprising that a higher percentage of human services agencies “took a chance” on these individuals (e.g. in 2013 six out of twenty-four human service agencies [25%] versus 6 out of 54 non-human agencies [11%]).

Figure 7: Number of Agencies that Hired Individuals with a Criminal Record, by Year and Agency Type

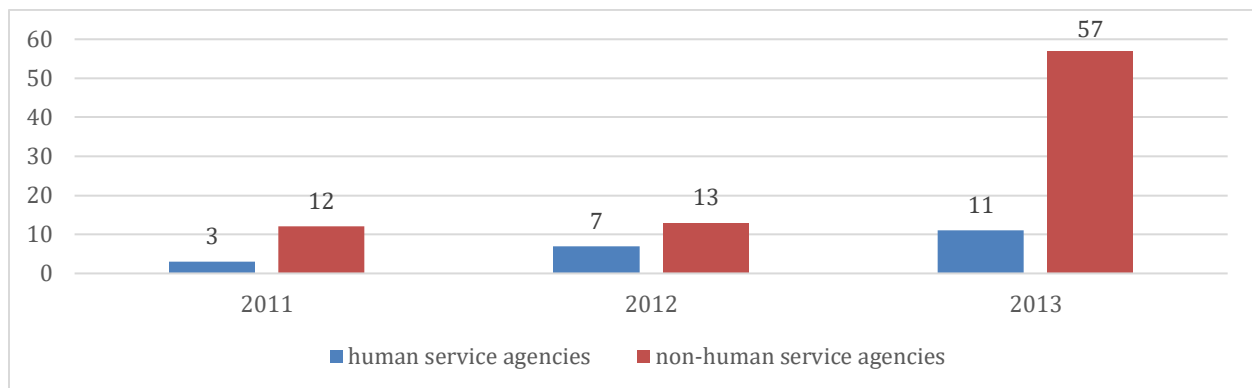


A few additional agencies reported hiring individuals with a criminal record, but the numbers were relatively small. This issue was compounded by the fact that most agencies that hired individuals with a criminal record over a three-year period did not provide the actual number of hires. While raw numbers are meaningful, what is particularly relevant is the proportion of all hires that included individuals with a record. Indeed, two hires might seem inconsequential, but not if the total number of individuals hired that year was five, or even ten.

The total number of employees reportedly hired by human service agencies (n=10) was 385 (2011), 518 (2012), and 511 (2013). Put in perspective of total hires, the number of hires of individuals with a criminal record was small, with 3 hired in 2011 (0.8%), 7 in 2012 (1.4%) and 11 (2.2%) in 2013. With regards to non-human service agencies (n=24), the total number of employees hired was 601 (2011), 617 (2012), and 670 (2013). There was a marginal increase in

hires of individuals with a criminal record for non-human service agencies during this period as well, with 12 individuals being hired in 2011 (2%), 13 in 2012 (2.1%), and 57 in 2013 (8.5%).

Figure 8: Total Number of Individuals with a Criminal Record Who Were Hired by Human Services and Non-Human Service Agencies, by Year



The numbers presented are too small to draw any firm conclusions about the agencies' willingness to hire individuals with a criminal record. The inescapable conclusion is that agencies seldom collect data about the criminal background of employees and/or they may be reluctant to disclose this information, possibly because it would be less than stellar. At this point, it is worth reiterating that the policy is primarily about increasing the chances that individuals with a criminal record would receive interviews and callbacks, and to prevent having their applications discarded because of a criminal record. A secondary outcome would be that these interactions translate into more employment opportunities, but this is impossible to determine without sufficient data.

Some agencies may be more likely to hire individuals with criminal records because they receive incentives for doing so. Although inducements are tantalizing, 96% of the agencies (n=78) responded that they have never accepted incentives to hire this population. In fact, only 3

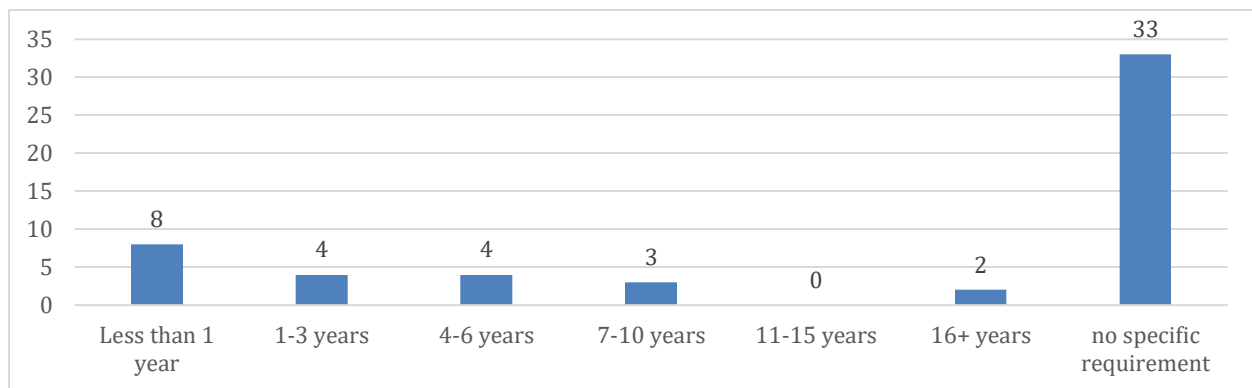
agencies have received incentives, and two of those agencies accepted the incentive more than five years before completing the survey.

5.7 What factors Disqualify Applicants with a Criminal Record?

Respondents were asked to identify the type of conviction that would disqualify an applicant from employment, and the crime-free period required to be considered for employment. Only 10% (n=5) of the respondents indicated that it would take 7 or more years post-conviction to hire an applicant with a criminal record (see Figure 9). Nearly three times as many agencies (29%, n=14) reported that it would take less than 7 years, and 15% (n=8) of agencies indicated that it would take less than a year. However, the majority of the agencies (61%, n=33) reported that they did not have a specific requirement, that the required period of time depended on the nature of the crime, or that these situations were addressed on a case-by-case basis.

Even with this small sample, it seems surprising that only a few agencies reported that it would take 7 years to hire an applicant with a criminal record, considering prior research that highlights the concerns employers have with hiring individuals with more recent convictions (DeWitt et al., 2017; Kurlychek, et al., 2006). This could be an indication that Ban the Box is influencing employers to conduct an individualized assessment of applicants, instead of dismissing them outright based on a conviction timeframe. In addition to Ban the Box, New York City's economy and its more progressive policies, in contrast to many other cities, are relevant factors for why the majority of agencies are not requiring applicants to have more stale records.

Figure 9: Crime-Free Period Required by Agencies to Hire an Applicant with a Criminal Record (n=54 agencies)

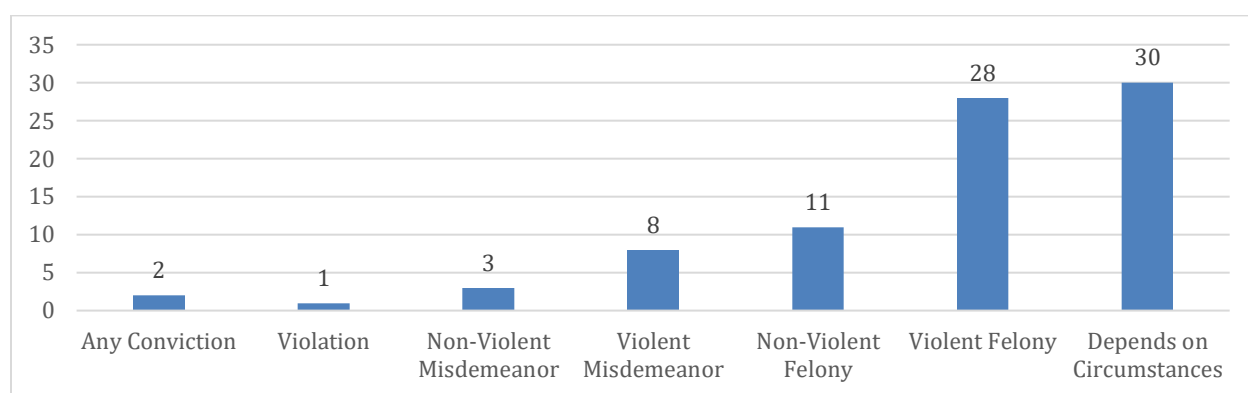


With regards to the type of conviction that disqualified applicants, agencies were given the option to select more than one category. As expected, violent felony convictions disqualified applicants more than any other type of conviction (50%, n=28; see, Figure 10). This is unsurprising considering the often knee-jerk reaction to violent crimes, but ironic given that individuals convicted of violent offenses (e.g., homicide) generally have lower recidivism rates (Cooper, et al., 2014). For a minority of agencies (4%, n=2), any conviction was grounds for being disqualified from employment. One hiring manager even reported that a violation (i.e., the least serious type of offense, such as disorderly conduct or loitering) could disqualify applicants, despite the fact that a violation is not a crime in New York State (according to the New York State Penal Law, a violation is “an offense other than a traffic infraction, for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed.”)

Even though a violent felony was the most likely type of disqualifying conviction, a majority of the agencies opted to check the “other” category to provide more information than just the type of conviction. A few of the hiring managers noted that convictions for child or sex abuse were disqualifying, but the overwhelming majority indicated that they kept an open mind,

dealt with candidates on a case-by-case basis, or that it depended on the applicant’s criminal history or the specific job. The thread that runs through these answers is that the decision to disqualify a candidate depends on a variety of different circumstances. One hiring manager offered an insightful remark about disqualifications, contending that it “depends on the truthfulness of applicant, not a feel-good law.”

Figure 10: Number of Agencies that Would Disqualify an Applicant for a Conviction, by Conviction Type (n=56 agencies)



5.8 Do Any Factors Distinguish Agencies that Comply with Ban the Box from Those That Do Not?

Ban the Box is designed to level the playing field for individuals with a criminal record. Although the policy does not compel employers to hire any particular individual, it is expected that it would enable more applicants with records to receive interviews and callbacks. If the policy is to accomplish its most basic objective, however, employers must comply with the mandate to remove the criminal history question and depending on the jurisdiction, delay inquiry into the applicant’s criminal record. To that effect, it is important to distinguish between employers that comply with Ban the Box requirements and those that fail to comply, and assess

whether there are agency characteristics that make it more or less likely that an employer will comply.

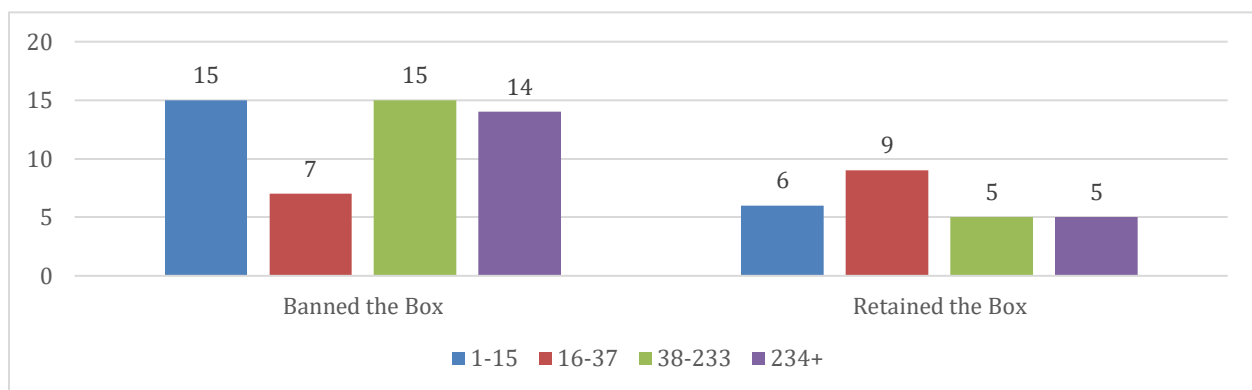
The agency characteristics that were examined, through use of the chi-square, include the number of employees (size of the agency), the length of time in operation (age of agency), familiarity with Ban the Box, as well as the race and gender of the hiring agent. In addition, factors related to the hiring process were examined, such as whether the agency inquiries about criminal history or conducts a criminal background check during the interview or after making an offer, and whether the agency conducts an informal criminal justice-related Internet search. As stated, since this study sample is not representative and the research is mostly descriptive, no statistical results are presented.

5.8.1 Relationship between banning the box and number of employees (agency size)

In an effort to determine whether the number of employees or the length of time in operation influenced compliance, both of these were recoded into quartiles. Quartiles were chosen because they provide a more extensive understanding of these data than if they were dichotomized. As figure 11 indicates, the number of agencies that banned the box and those that failed to do so were fairly consistent across agency size, except for the second group (16-37 employees). It is reasonable to expect that smaller agencies might be more likely to retain the box, since they are less apt to have the resources of larger agencies, including staff with understanding of HR policy and practices. However, agencies with 1-15 employees were just as likely to have banned the box as those with 38 or more employees. The second group (16-37 employees) is unique because the number of agencies in this category that banned the box were half that of the other agency categories. Even with a small sample, this is particularly noteworthy. The difference is not striking when we observe the distribution of agencies that

retained the box on the graph; indeed, only a few additional agencies that retained the box had 16-37 employees. The difference is stark when we consider that more than 70% of the agencies in every other category banned the box but only 44% (7 out of 16) banned the box in the 16-37 employee category. If the overall trend held up, we would only expect to see 2-3 agencies with 16-37 employees to retain the box, but we observe 9. This finding suggests an unclear relationship between banning the box and agency size, but a larger and representative sample is needed to determine if the relationship is statistically significant.

Figure 11: Number of Agencies that Complied with Ban the Box, by the Number of Employees (n=76 agencies)

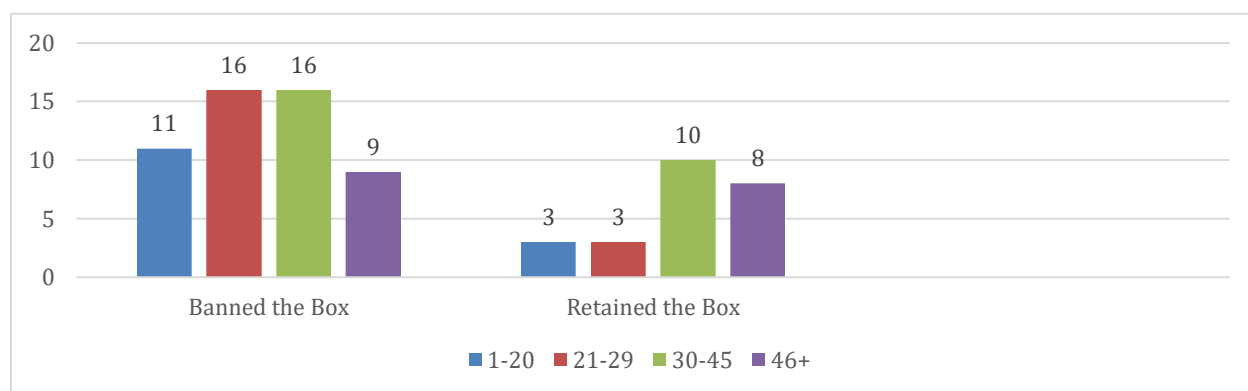


5.8.2 Relationship between banning the box and years in operation

The next variable examined was the length of time that an agency has been in operation. As can be seen from Figure 12, there are substantial differences in whether or not agencies banned the box based on the number of years in operation. Agencies in the range of 1-20 years and 30-45 years were more likely to ban the box (29.4%, n=15 and 31.4%, n=16, respectively). On the other hand, agencies with 46 or more years in operation were the least likely to ban the box (17.6% n=9). The differences are even more pronounced for agencies that retained the box. Indeed, agencies were far more likely to have the box on the application if they have been around

for 30 or more years (these two categories equal 75% n=18). These agencies would normally be expected to comply more frequently than newer agencies, since longevity usually translates into greater knowledge about industry practices. Although the number of agencies is small, this finding is nonetheless a sign that older agencies may be less likely to ban the box. Similar to the finding on number of employees, years in operation presents a compelling reason to extend this research to a larger representative sample.

Figure 12: Number of Agencies that Complied with Ban the Box, by the Agency's Number of Years in Operation (n=75 agencies)



5.8.3 Relationship between banning the box and familiarity with EO-151

Familiarity with Ban the Box is another factor that might improve compliance. In this sample, only the 24 human services agencies were initially required to comply with the policy. Of the 23 respondents who provided an answer to this question, the vast majority of hiring managers were either very familiar (30%, n=7) or familiar (61%, n=14) with Ban the Box. Only 9% (n=2) reported that they had never heard of the policy (see Table 5). Although all of these agencies were subject to compliance, 16 of the 23 agencies (70%) banned the box, including 2 agencies with hiring managers who had never heard of the policy. Interestingly, all 7 agencies that retained the box claimed to be familiar with the Executive Order.

Table 5: Percentage of Agencies that Banned the box, by Familiarity with Executive Order 151

Human service agencies	Familiarity with EO-151 (n=23)	Familiarity with EO-151, agencies that banned the box (n=16)	Familiarity with EO-151, agencies that retained ban the box (n=7)
Never heard of it	9% (n=2)	12.5% (n=2)	0% (n=0)
Vaguely familiar	0% (n=0)	0% (n=0)	0% (n=0)
Familiar	61% (n=14)	62.5% (n=10)	57% (n=4)
Very familiar	30% (n=7)	25% (n=4)	43% (n=3)

In this instance, familiarity with the initial Ban the Box policy did not lead to increased compliance. In other words, even though these agencies would have known about Ban the Box before the implementation of the Fair Chance Act, some of them continued to ask applicants about criminal history on the job application. If hiring managers have reservations about offering employment opportunities to individuals with a criminal record, then they may find ways to undermine the policy, even if the agency embraces it. However, the same could be true in reverse. Hiring managers are in a critical position to flag when an agency is violating a policy, especially if this individual is the local representative of a regional or national company (where Ban the Box is absent in other jurisdictions). This finding gives us insight into whether or not familiarity may influence compliance, but a more robust and representative sample will paint a clearer portrait of this relationship.

5.8.4 Relationship between banning the box and race/gender of the hiring manager

The race of the hiring managers is also an important factor in the hiring process (see, Figure 13). However, many of the respondents failed to provide information about their race. Of the 16 agencies that ask about criminal records, 37% (n=6) had a White human resources

representative (i.e., decision maker), 25% (n=4) had an African-American representative, and 19% (n=3) had a Latino or multi-racial representative. The distribution is relatively even across the racial categories, except among the agencies with a white hiring manager. Of the 24 agencies with a white hiring manager, 75% (n=18) banned the box, in contrast to 56% (n=5) with a black hiring manager, and 67% (n=6) with a Latino hiring manager. Although this is a compelling finding, there is a strong possibility that the percentages will change with a larger and more diverse sample.

As with race, many of the respondents refused to answer the gender question. For the respondents who provided this information, Figure 14 demonstrates that agencies that ask about criminal history are almost evenly split between females (8) and males (9). However, agencies that banned the box were more likely to have a female as the hiring manager. Indeed, of the 17 male hiring managers, only 47% (n=8) work at an agency that banned the box, in contrast to 73% (n=22) of females working at one of these agencies. This finding illustrates that the majority of agencies that are complying with the FCA have a female playing a key role in the hiring process.

Figure 13: Number of Agencies that Complied with Ban the Box, by the Race/Ethnicity of the Hiring Manager (n=47 agencies)

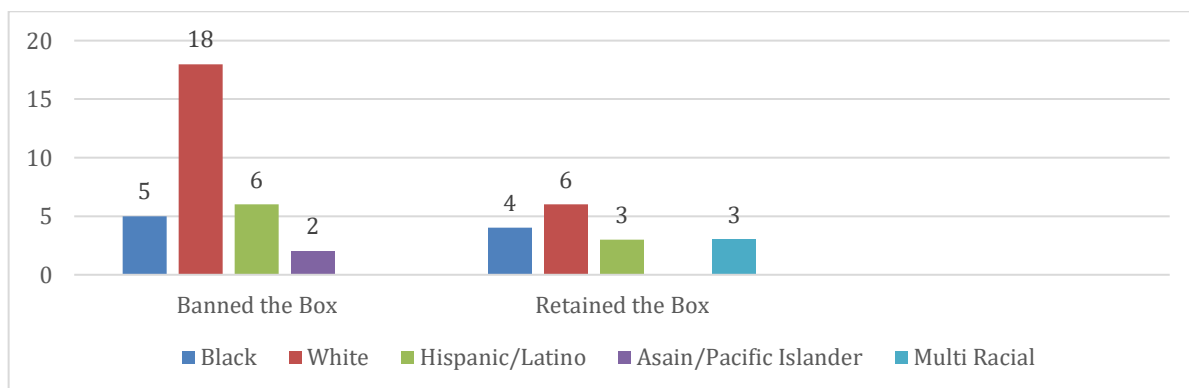
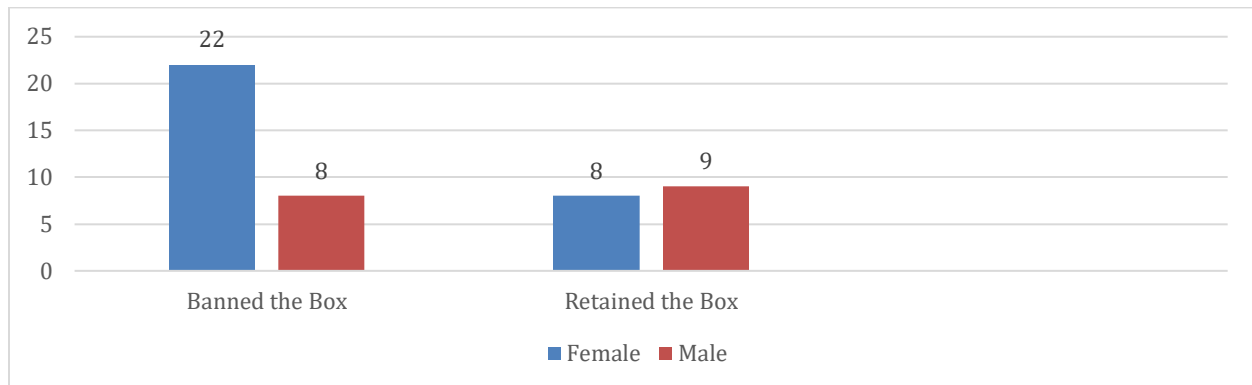


Figure 14: Number of Agencies that Complied with Ban the Box, by Gender of the Hiring Agent (n=47 agencies)



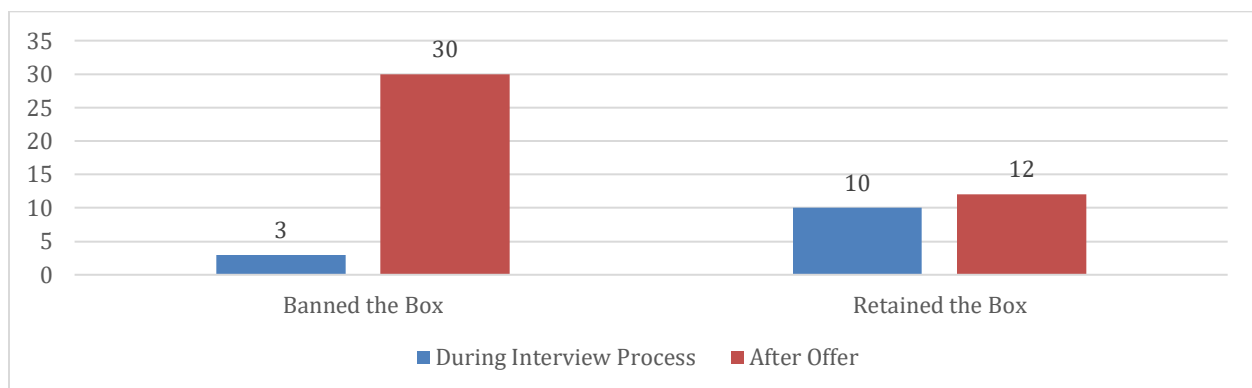
A fundamental challenge for research of this nature relates to the respondents' (un)willingness to provide information about their race or gender, likely motivated by the fear of being identified. It can be presumed that the omission of this information is deliberate because unlike hiring data, this information relates to their own personal information and should be easy to answer for respondents. Unlike hiring data, there is no doubt that they have access to the information. These results indicate that no matter how firm the assurance of confidentiality, the issue of race and gender are highly sensitive and deeply personal. This is summed up in a comment provided by one of the respondents to the race question. Instead of leaving the answer blank, the respondent simply replied, "none of your business." Although respondents were reluctant to provide information about race and gender, it is noteworthy that women were nearly twice as likely as men to provide this information (64% versus 36%, respectively).

5.8.5 Relationship between banning the box and criminal history inquiry

In the investigation of the screening process of applicants' criminal history, it was noted that the majority of hiring managers reported asking about criminal history after making an offer, which is consistent with the FCA. It is reasonable to assume that posing the question during the

interview process will likely be associated with failure to ban the box. Figure 15 demonstrates that the majority of agencies that banned the box (91%, or 30 out of 33) asked applicants about their criminal history after making an offer, although a minority of agencies (9%, n=3) banned the box but inquired about criminal history during the interview. It is noteworthy that 12 of the 22 agencies that retained the box (55%) posed the criminal history question after the offer. A slight majority of agencies that retained the box (i.e., those agencies that are aware of an applicant's criminal history) do not raise specific questions about an applicant's record until after an offer has been made. This finding suggests that if agencies comply with one section of the FCA, they may be more likely to comply with another section. On the other hand, agencies that have the box on their applications are often asking about criminal history during a time that is prohibited by the FCA. However, it is difficult to determine whether this behavior is intentional, or simply negligent.

Figure 15: Number of Agencies that Complied with Ban the Box, by Timing of the Criminal History inquiry (n=55 agencies)

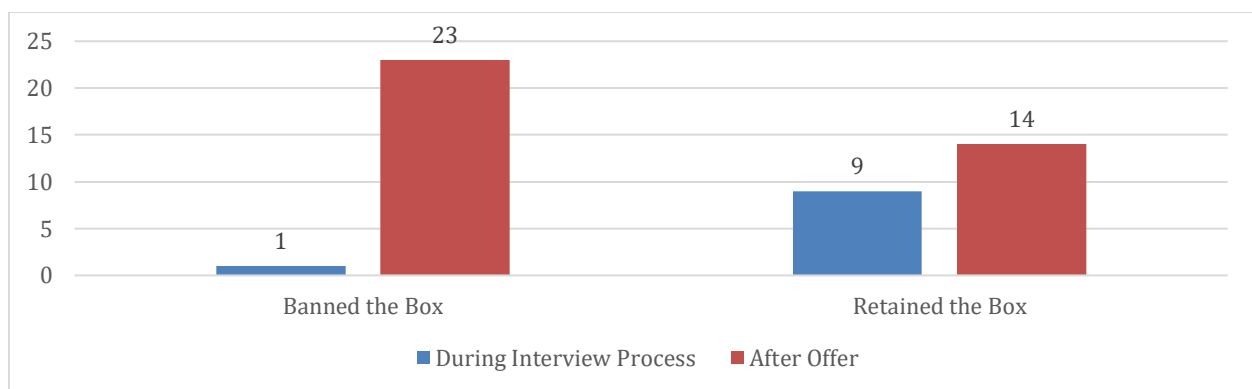


5.8.6 Relationship between banning the box and criminal background check

As stated previously, the FCA requires that agencies ban the box, refrain from asking about criminal history during the interview, and not conduct a criminal background check until

after making an offer to the applicant. The prior result demonstrated that if an agency banned the box, it may be more likely to refrain from asking about criminal history during the interview process. A similar result was found regarding the relationship between banning the box and conducting a criminal background check. Figure 16 indicates that 23 out of 24 agencies (96%) that banned the box delayed the criminal background check until after an offer is made. A fairly substantial percentage (39%, n=9) of agencies that continued to ask about criminal history on the job application also conducted criminal background checks before concluding the interview process. Interestingly, 14 of the 23 (61%) agencies that retained the box performed the criminal background check after making an offer. The result is a further indication that compliance with one section of the FCA (e.g., removing the ban) may translate into compliance with another section.

Figure 16: Number of Agencies that Banned the Box, by Timing of the Criminal Background Checks (n=47 agencies)

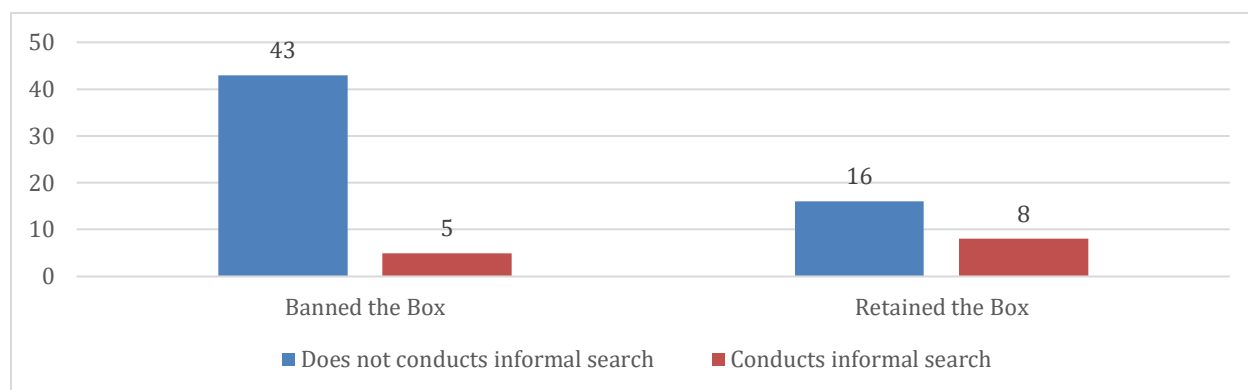


5.8.7 Relationship between banning the box and informal criminal history searches

Agencies are often expected to conduct criminal background checks, but not much is known about informal criminal justice-related Internet searches. Unlike commercial background checks, where employers can search for records related to criminal history, work history, drug test results, bankruptcies, and the like, informal criminal justice searches exclusively serve the

purpose of detecting a criminal record. Figure 17 demonstrates that 18% (n=13) of the agencies that provided an answer to this question reported that they conduct informal searches, which translates to nearly 1 in 5 agencies. However, of the 48 agencies that banned the box, the vast majority (90%) did not report conducting these searches. With respect to the 24 agencies that retained the box, 67% (n=16) did not report performing informal criminal justice searches.

Figure 17: Number of Agencies that Banned the Box, by Agencies Conducting Informal Criminal Background Checks (n=72 agencies)



As with the relationships mentioned above, compliance with the FCA should reduce the likelihood that an agency will perform this type of search. Although financial constraints increase the likelihood for conducting informal searches, getting caught violating the FCA may trigger a financial penalty that will offset the gain of an impermissible search. Whereas, an applicant can divulge that a job application has the box and that the criminal history question was posed during the interview, there is no way of knowing if an agency conducts criminal justice-related Internet searches, absent the agency revealing that it does so. The fact that hiring managers confess to doing it suggests that they may not know the practice is prohibited. The next section presents the results from an analysis of the agency's online job applications, to determine if agencies do what they say that they do.

5.9 What agencies say versus what they do: a review of online job applications

Based on a review of the surveys and an analysis of the interviews (discussed in the following chapter), some of the agencies have discontinued the use of traditional job applications. However, a majority of agencies continue to use applications as the primary way to initially assess job applicants. I reviewed the job applications of the agencies (available online) in order to determine whether there was consistency between what was reported by hiring managers regarding the criminal history question, and the practices that are actually employed by the agencies in their application forms. The answer is a lot more complicated than a simple yes or no.

Of the 78 agencies in this study, 26 required applicants to provide relevant information and documentation through their website, via an online application that excluded the criminal history question. Twenty-four (24) of the 78 agencies did not provide any information about employment opportunities on their website. Only 16 agencies had a paper application without a criminal history checkbox; 10 agencies posted that they did not have any current openings, or there was simply no link to a job application. Only two agencies included an application with the box, and asked a question related to criminal history. One of these two agencies inquired about felonies and misdemeanors, but indicated that the applicant would not be disqualified based solely on the conviction. The agency also required dates and resolutions for any convictions. The second agency required the applicant to create an account in order to access the job application. Once the account was created, the application required the applicant to provide information related to any potential crimes against children, presumably because the agency served this particular population.

Since only two agencies asked about criminal history on the online job application, this suggests that some agencies required the applicant to provide information and documentation online before having to complete a formal job application. For example, of the 26 agencies that required applicants to apply online, 8 agencies reported retaining the box, while 18 agencies reported having banned the box. Moreover, half of the 24 agencies that lack information about job opportunities on their website reported having the box on the application. Interestingly enough, even the two agencies that claimed to have retained the box had actually removed it from the application. In the final analysis, it was hard to determine if many of the agencies banned the box because this could not be determined unequivocally by visiting the agency's website, or even by completing an initial online application that did not inquire about criminal history. This highlights the confusion of hiring managers about the implementation of Ban the Box.

5.10 Summary

In conclusion, the survey results affirmed that the majority of agencies removed the box from the job application in compliance with the FCA and refrained from asking applicants about their criminal history during the interview process. The results also established that few agencies circumvent Ban the Box by requiring applicants to report their criminal history on a secondary application, or by conducting Internet searches of applicants' criminal background. Moreover, in spite of the criticism that Ban the Box has received in some quarters about the likelihood that it would impede the hiring process, agencies responded overwhelmingly that the policy did not place an additional burden on hiring.

Because agencies rarely provided hiring data on the number of staff members with a criminal record, the results were inconclusive about whether Ban the Box impacted the hiring of

individuals with a criminal record. Most agencies did contend, however, that their likelihood of hiring individuals with a criminal record did not increase after the implementation of the initial Ban the Box policy (Executive Order 151). As expected, agencies were more likely to be receptive to applicants with non-violent convictions, but it was surprising that the agencies did not require that applicants be crime-free for a set number of years.

Despite the small sample size, the results provided some preliminary evidence about factors that might distinguish agencies that are more or less likely to comply with Ban the Box requirements. Finally, a review of the agencies' online applications determined that what employers say is not always consistent with what they do regarding the removal of the box from the application.

The next chapter provides the results of the qualitative interviews, which add context to the survey findings. Probing the interview subjects clarified issues that otherwise would have been difficult to decipher.

Chapter 6: Employer Views on Ban the Box and Accessing Applicants with Criminal Records

6.1 Introduction

As noted in the methods chapter, the thematic analysis was conducted after a meticulous review of the audio recorded interviews, transcripts, and interview notes. Getting acquainted with these data helped facilitate an understanding of the salient points *and* the subtle issues surrounding Ban the Box. Moreover, familiarity with these data enabled the systematic identification of codes, each of which reflected a unique facet of information. Through this process, themes emerged that emphasized the commonalities, patterns, and contradictions in the narratives of the respondents, who conveyed highly relevant and often sensitive information about Ban the Box and their agencies hiring practices. What the respondents offered will elucidate our understanding of how agencies make complicated hiring decisions involving individuals with a criminal record, while managing the risk associated with these decisions. Likewise, the themes captured the essence of what different hiring managers had to offer about their experience of a similar phenomenon, which helped to contextualize many of the thorny issues involved in the implementation of Ban the Box.

There were five main themes and one subtheme that formed the perspectives of the respondents. The first main theme is *circumstances matter when assessing applicants with criminal records*, which encapsulates the notion that a criminal record alone should not disqualify otherwise eligible applicants. This theme is composed of a sub-theme entitled, *agencies lack protocols to track hiring individuals with criminal records*. The sub-theme highlights the fact that agencies have reservations about collecting data about hires with criminal records.

Table 6: Codes, Issues Discussed, and Identified Themes

Codes
Scant recollection of the policy; Limited guidance offered by the city; No formal processes developed to alter hiring practices; Insufficient human resources experience; Need for HR training; Criminal record equals incarceration; Criminal background check and outsourcing hiring decisions; Policy did not impose burden; Applicant as individual; Position matters; Offense matters; No protocols to track hiring; Debunk misconceptions; Second chances; Honesty
Issues Discussed
EO-151 & FCA; Did agency receive guidance; Modification to hiring practices; Job applications; Criminal history disclosures; Criminal background checks; Negligent hiring lawsuits; Discrimination lawsuits; Disqualifying factors; Tracking employees with records; Opinion about Ban the Box
Main Themes
<ol style="list-style-type: none"> 1. Circumstances matter when assessing applicants with a criminal record Agencies lack protocols to track hiring individuals with a criminal record (sub-theme) 2. The particulars of Ban the Box were not well understood 3. The agencies were often inexperienced in HR practices 4. Ban the Box was not regarded as a burden on the hiring process 5. Disqualifying applicants with a criminal record as risk management

The second main theme stresses that *the particulars of Ban the Box were not well understood* and provides insight into the confusion that existed around the policy and its implementation. The third theme underlines the fact that *the agencies were often inexperienced in HR practices*, and it conveys the challenges faced by agencies when they lack the wherewithal to execute a policy. The fourth main theme highlights the fact that *Ban the Box was not regarded as a burden on the hiring process*. It emphasizes that the hiring practices of many agencies were

not substantially altered by the policy. Finally, the last theme explores the practice of *disqualifying applicants with a criminal record as risk management* and demonstrates that minimizing risk is often at the core of hiring decisions, regardless of any specific anti-discrimination policy. Table 6 displays the codes and issues discussed, as well as the themes that were identified in this analysis.

6.2 Theme #1: Circumstances Matter when Assessing Applicants with a Criminal Record

Screening applicants for employment opportunities is a delicate balancing act that involves matching an individual's skills, abilities, experience, and other important factors to a variety of different jobs. The process is even more arduous if the agency is interviewing applicants for sensitive positions such as childcare worker, home health aide, bank teller, and bus operator, since they are likely to trigger a much higher level of scrutiny of an applicant's criminal history. Although legislators have adopted laws in some jurisdictions that disqualify individuals with felony convictions from specific jobs, the respondents were adamant that blanket bans against individuals with a criminal record were unnecessary and imprudent. They insisted that everyone should have a fair chance at an employment opportunity, despite conduct that might have disqualified them in the past. *"I would also hope that the limitations are fair. You know, they're not overly balanced towards the business"* (Agency E). In a similar sentiment, another hiring manager noted that, *"we shouldn't penalize everyone for something that only affects a few. I think it's important to be flexible. Just because you have a criminal record doesn't make you a bad employee or a bad person"* (Agency G).

The nature of an offense, the age at which the offense was committed, the period of time elapsed since the offense, and other circumstances matter enormously to many employers. However, one of the most important circumstances is the type of offense in which an applicant was involved. The respondents were explicit in stating that crimes against children or those of a sexual nature rendered applicants' ineligible for jobs at their agencies. A particular reference was made to "*pedophilia*" (Agency A) and "*statutory rape*" (Agency J). Interestingly enough, the former feeds into the misconception that "*pedophilia is synonymous with sex offending*" (Walker, 2017), and the latter is happening increasingly among teenagers (Kempner, 2017). According to one hiring manager, "*any sexual crime would be a disqualification*" (Agency E), while another was more specific about the job duties, "*people convicted of sex offenses wouldn't be allowed to work if they interacted with children*" (Agency F). Even those hiring managers who were opposed to hiring individuals convicted of certain crimes, based on a concern that an applicant might pose an unreasonable risk to their clients or customers, believed that these individuals should not be barred from employment. These respondents insisted that individuals could work in jobs where they would pose little to no danger. In addition to sex offenses and crimes against children, theft was referenced because subjects were concerned about exposing sensitive information to individuals previously convicted of crimes involving larceny. One hiring manager alluded to "*criminal theft*," but clarified that "*it only depends on certain positions. Because certain positions have access to our database that has all of our members birth dates, social [security numbers], and credit card information*" (Agency G). Interestingly, even though homicide is the most serious violent felony offense, it was not highlighted as a main concern by the respondents, despite the fact that these offenses were most often flagged as disqualifying in the surveys. This highlights the importance of gaining more specific insight from employers

about their anxieties around offense type, especially since there is a wide range of crimes in the violent felony offense category, including crimes that do not involve violence (e.g., possession of a weapon).

Another important circumstance is an agency's position on hiring applicants with a criminal record. If an agency is generally open to offering opportunities to this population, then they will find a way to hire individuals with a criminal record, even if it means bypassing criminal background checks, with the exception of cases where such a check is mandated by law.

We learned from the surveys that agencies were no more likely to hire individuals with a criminal record after the implementation of EO-151. However, this is not necessarily an indication that agencies are hostile to this population. To the contrary, the subjects indicated that nonprofit organizations, particularly human service providers, were receptive to giving people a second chance. One respondent specified that, "*criminal history is not a deal breaker for us*" (Agency B), while another added that, "*our general tendency is to be extremely open*" (Agency E). In fact, some respondents reported that they worked with individuals who have been convicted of crimes, sometimes even violent offenses, and that other employees did not have knowledge of their record. One study participant observed that depending on the population being served, having a criminal background "*is really a plus, more than anything else*" (Agency K). The agencies that showed indifference towards criminal history provided similar responses: "*I think that we would be open to hiring someone who was recently incarcerated, and it's possible that we have but we don't know because we've never asked*" (Agency F).

A circumstance that was deemed highly important to the hiring managers was the truthfulness of applicants in the interview process. The respondents unequivocally expressed the crucial importance of applicants being truthful about their criminal record: "*I would be up front*

and honest, because you don't want the employer to look at you as a kind of well what are you holding back from us, and can we trust you? Trust is one of those things where, I don't have to like you, but I have to trust you" (Agency J). The issue of truthfulness was complex because applicants that are informed about Ban the Box are expected to be candid even if the criminal history question is asked at a time that conflicts with the policy. The hiring managers want honesty but not necessarily if it means disclosing one's criminal history: *"I think that you disclosing that you have a criminal record could be the dumbest thing. I mean, if it were me, I wouldn't say anything until somebody asked me. Don't ever disclose anything. Do you know what I mean? Answer the questions, honestly and fully"* (Agency G).

Another relevant circumstance that could potentially impact the hiring of individuals with a criminal record is the misconception that having a criminal record is tantamount to serving time in prison.

"I think if people, if formerly incarcerated individuals have done their time, they're respectful, and they paid their dues to society so to speak, they should be given an opportunity to make a fair, and a respectful living wage and we should stop encouraging practices that don't allow for that" (Agency H).

Indeed, the discussion about hiring someone with a criminal record was often interpreted as hiring a formerly incarcerated individual, even though having a criminal record does not always result in incarceration; in fact, most individuals with a criminal record did not spend time in prison. To this point, one respondent noted: *"I wonder about like the specific needs that someone who had been incarcerated, who's been out of a social network and out of the workforce for a while, what things that person may need to be successful coming into our organization"* (Agency F). This observation is significant because the assumption that an applicant was incarcerated

may bias an employer against the applicant, particularly if the agency or hiring manager has apprehensions about hiring individuals who spent time in prison.

As the respondents noted, circumstances matter, but the reality is that they matter in the realm of persistent misperceptions and stereotypes about employing individuals with a criminal record. Although agencies are purportedly receptive to hiring this population, they often have to adopt a cautious predisposition. The following subtheme highlights an important void in the intersection between Ban the Box and agencies' hiring practices.

6.2.1 Agencies lack protocol to track hiring individuals with a criminal record

Although some agencies did not discriminate based on criminal record, none of the hiring managers reported having a protocol in place to track the hiring of this population. In fact, tracking individuals seemed counterintuitive. A few of the hiring managers argued that information about the criminal background of employees, if tracked, may fall into the wrong hands. They considered this information to be privileged, and contended that it should rest exclusively with human resources: *"I'm the only one that sees it, do you know what I mean? It's confidential, that is part of your privacy"* (Agency G). A new hire with a criminal record could be stigmatized, so the idea is that, *"once you're hired, you're hired. You know, welcome aboard"* (Agency J).

Because agencies did not track the hiring of individuals with a criminal record, even the agencies that openly hired this population, it remains difficult to determine if hiring increased after the implementation of Ban the Box, an issue that also arose in the survey data. Although respondents expressed concerns about respecting the confidentiality of their employees, no one suggested collecting anonymized data to gather this vital information. Clearly, there is tension between the desire to advance knowledge on whether applicants with a criminal record have

received more interviews, callbacks, and ultimately more job opportunities, and the commitment to respecting the individuals' privacy about their past. The following themes provide additional insight into the perspectives of the hiring managers, but relate more specifically to how agencies experienced Ban the Box.

6.3 Theme #2: The Particulars of Ban the Box Were Not Well Understood

When new policies are enacted, they are often accompanied with ambiguities in their implementation. Consequently, the origins, intent, and specifics of a policy might be unknown to many agency representatives, which inevitably impacts its implementation. The more complicated the policy, the greater the need for guidance. Moreover, word is more apt to travel fast in small jurisdictions with a few hundred companies, but it is much more complicated to disseminate information about a policy change in a big city with hundreds of thousands of agencies. With regards to Ban the Box, the majority of the respondents had no recollection of whether the city offered guidance on the policy (for both EO-151 and the FCA). A few noted that the city provided limited guidance, usually in the form of an email alerting the agency about the change in law that might impact its human resources practices.

Moreover, while some of the subjects had general knowledge about EO-151 and the FCA, and a few had detailed knowledge about both, there was a tremendous amount of ambiguity about the intricacies of the policy. It was evident that agencies were aware of the policy's intent, but not necessarily of its specific requirements. To this point, one subject noted, “*I don't have a good understanding of the nuances of the legislation*” (Agency B), while another asserted that, “*I know that it has something to do with, during the application process, not asking*

the question, of I think, whether someone has been convicted of a crime or served any time. I'm not sure exactly [about] the details, or if that's even accurate" (Agency D). Knowledge of the specific requirements of a policy of this nature is paramount for a successful implementation. Since the devil is in the details, agencies would ordinarily be best served by developing protocols that respond to a specific policy. In this case, few agencies developed formal processes to implement Ban the Box.

As a result, hiring managers often expressed confusion about the timing of the criminal history question and uncertainty about how to handle particular issues, such as the disclosure of criminal history information during an interview: *"There has not been any discussions [about criminal history disclosures] and I honestly wouldn't know what to do"* (Agency D). Another hiring manager was equally perplexed, *"I guess the answer is that we don't have a formal way of handling it"* (Agency E).

According to the respondents, applicants rarely understand that disclosing criminal history information can be harmful, and hiring managers are not always aware that asking about criminal history is impermissible. Because the development of protocols was uncommon, few agencies knew how to proceed under these circumstances, no matter how the information was disclosed. On the one hand, some hiring managers with good intentions simply allowed an applicant to disclose, in order for the applicant to feel comfortable and understand that his application was not going in the garbage bin simply because he had a criminal record. On the other hand, some hiring managers avoided the disclosure of a criminal record at all costs. When this information was revealed, some hiring managers glossed over it, or attempted to stop the applicant from disclosing:

“I had a gentleman last month when I was interviewing him and he said, ‘there’s something I’d like to tell you in the interest of full disclosure.’ And I was like, oh god, what now? And he said, ‘I have a criminal history.’ I stopped him right there and I said, You know what, I don’t need to know that. If and when we get to that point, you can discuss that with me” (Agency G).

The general takeaway is that while agencies had some understanding of Ban the Box, the policy was generally poorly understood. The lack of guidance and agencies’ failure to create procedural protocols contributed to this lack of understanding. Another likely explanation is that EO-151 was implemented in 2011 and the FCA in 2015, with the former applying only to a fraction of agencies. The difference of this four years is significant because agencies had one understanding of the policy (EO-151), and were later required to adopt a different understanding (FCA), including whether or not the policy applied to them. In addition to the poor understanding, ambiguity about the policy was also likely to result from the fact that many agencies lacked human resources experience.

6.4 Theme # 3: Agencies’ Lack of Experience in HR Practices

Many of the hiring managers were inexperienced in human resource policy and practice, did not have a formal human resources department, or both. As a result, some hiring managers did not feel the need to be informed about Ban the Box, especially if the agency was receptive to hiring individuals with a criminal record. In fact, there appeared to be an assumption by some hiring managers that their agency was compliant with the policy by virtue of its philosophy about serving and ultimately hiring individuals with prior criminal justice system involvement: *“Because of what we do and who we work with, we have an awareness, an acceptance of formerly incarcerated people. So, you know, there’s no concern about compliance with that law*

[i.e. FCA] *for us because of our philosophy*” (Agency B). Another respondent explained why the agency’s hiring practices were not altered: *“I think it’s because we were assuming that we happened to be compliant before. Yeah, which might not have been the best call”* (Agency D).

The lack of experience was most obviously evidenced by the lack of a dedicated HR representative in the agency, which meant that there was no formal way to keep track of the changes that routinely occur in human resources. Although the smaller agencies were less likely to have a human resources representative, a shifting HR landscape generally impacts all organizations, regardless of their size or the extent of their resources. Here is how one agency responded to this challenge:

“I think we don’t have a sort of developed HR department. We have one person, we really had no HR department when I got here. And then, sometime in the last year and a half, we sort of shifted one person’s role, someone who was really doing payroll, and had been here some time, to doing HR. But she doesn’t have any real training or experience in HR. And so she’s been kind of learning that as we go” (Agency K).

While this agency had one person learning about human resources on the job, other agencies had a variety of employees involved in the hiring process, although these individuals were generally less informed than those who work in human resources. They may conduct interviews without a HR representative in attendance, so they may ask questions that violate the FCA, which can put the agency in legal jeopardy. For this reason, the hiring managers insisted that anyone involved in conducting interviews or making hiring decisions be required to have general knowledge about hiring practices: *“If you don’t have a formal HR person, well somebody better know what’s going on.... I don’t care who you are or what your position is, you should always make a point to understand what you’re doing and what the implications are”* (Agency G).

Lacking a human resources department did not raise the specter of lawsuits based on negligent hiring or employment discrimination against people with criminal records. However, the respondents unequivocally highlighted the need for more human resources training in order to expand their knowledge of Ban the Box and other policies (e.g., the new restriction in New York City regarding queries about an applicant's salary history), which would minimize the risk of making potentially costly mistakes. The hiring managers were eager to get more guidance: *"So I think the training is for people to be able to, in a safe space, to be able to say, listen, I'm challenged a little bit by that, and I don't exactly know what to do, and I need some guidance"* (Agency H). Another respondent echoed this sentiment by expressing the idea that, *"as an HR person you should always be continuously getting trained, or learning about what's going on out there"* (Agency G).

The fact that many agencies were inexperienced in HR, coupled with a lack of understanding about the nuances of the policy, served to foster ambiguity about Ban the Box. Further, this combination made it difficult for the policy to be implemented as intended, and it created significant challenges for agencies to comply with the policy. Despite these challenges, the following theme demonstrates that Ban the Box did not negatively impact the agencies' hiring practices.

6.5 Theme #4: Ban the Box Was Not Regarded as a Burden on the Hiring Process

While the emphasis of the survey was on EO-151, the interviews also inquired about the FCA and the agencies' current hiring process. Nearly all of the respondents reported that the policy did not negatively impact costs incurred to their agencies, or the hiring timeline. Several

hiring managers insisted that the policy did not create a burden because they employed smart hiring practices, which involved only making conditional job offers. One hiring manager asserted that,

“If you’ve been in HR forever, you know that when it comes to discrimination, there are things you should and shouldn’t do. One of those is you don’t make offers to people, you make offers that are contingent. You don’t ask people things up front” (Agency G).

The respondent added that this practice may be problematic for employers who need someone to start immediately, because the applicant would likely be on the job before the employer received the criminal background check report.

Another reason that some agencies did not view Ban the Box as a burden is because they had abandoned the use of traditional job applications. As one participant observed, *“we have never had an application, like a paper application or an online application that people actually fill out”* (Agency E). Indeed, it is much more convenient for some agencies to avoid the use of applications, as this would ostensibly remove the need to inquire about criminal history during this key stage in the process. This practice seems more likely in small organizations. One hiring manager with twenty-five years of HR experience made a distinction between the practices of small versus large companies:

“If you’re in a large company, you have an applicant tracking system and it takes the place of an application. Because that question [criminal history] has been asked in the application. But for small organizations, we just don’t use them at all. There’s just too many legal issues with using them” (Agency G).

According to this respondent, the applications may trigger lawsuits based on discrimination, which agencies want to avoid at all cost. Regardless of whether the agencies used applications or not, hiring managers insisted that Ban the Box did not extend the length of the

hiring process, or incur substantial new costs to the agency. The process appeared very similar to what it was before Ban the Box, which is why some agencies indicated that little change, if any, had been made after implementation of the policy. Moreover, as stated previously, there was often an assumption that being receptive to hiring individuals with a criminal record implied that there was no need to alter the hiring process.

Another reason that explained why Ban the Box was not likely regarded as a burden is that many respondents favored the policy. They provided glowing reviews of its mandate, which could make it difficult to cast the policy as burdensome: *“I love it. It takes the conversation about criminal records out of the equation. Applicants are put at ease”* (Agency L). Ban the Box was qualified as *“excellent”* (Agency B), as having *“value because it allowed people to get their foot in the door”* (Agency C), and it was thought to *“raise awareness”* (Agency K) about a critical issue that elicited a passionate response from the respondents: a belief in second chances. One subject artfully detailed the policy’s broad implications:

“Yeah, I think it's a good policy. I think it's important to sort of see beyond somebody's past. And give people the benefit of the doubt, and allow people to sort of turn their life around. And I also feel like, by having like a box checked, you're not just checking the box for one person. You're checking the box for that person and all of the people that love and support that person. So that it's really a mark against the whole community. So I think it's great to get rid of it” (Agency D).

Although the subjects did not suggest that there was any additional financial or time burden in the hiring process with the implementation of Ban the Box, agencies could be burdened if the policy was not implemented efficiently. Because the agencies were often confused about the policy, especially when it initially came into effect, this could negatively impact the agency’s productivity. At least one subject noted that his agency was not fully

prepared to engage applicants about their criminal history because of the mixed messages that they were receiving about the policy. *“In the beginning it [created a burden] because we weren’t able to have the conversation around criminal record”* (Agency A). Consequently, several applicants were hired, and then abruptly terminated, once the agency discovered that they had been convicted of offenses that rendered them ineligible for employment at the agency. Another respondent indicated that the policy added two days to the background check, and that *“the difference of a day can be significant”* (Agency L).

Notwithstanding the comments from these two respondents, it was clear that the subjects supported Ban the Ban, and did not think that it placed any additional burden on the hiring process. Because some employers may hold negative views of applicants with a criminal record, the hiring managers interviewed in this study opined that the policy allows for a shift in perceptions. If applicants are allowed to interview and get hired without informing the employer of the applicant’s criminal record, this may debunk an employer’s preconceived ideas about this population. The subjects deemed this hugely important, since employers are guarded and circumspect by nature.

The final theme paints a picture of how agencies manage risks associated with hiring individuals with a criminal record, and provides insight into why these applicants may be disqualified for employment.

6.6 Theme # 5: Disqualifying Applicants with Criminal Records as Risk Management

Like any company that interacts with the public, either by offering a service or selling a product, the respondents expressed a clear intention to ensure that their staff, clients, and

customers were safe in the workplace. Background checks (particularly criminal history checks) are the most common mechanism used by agencies to protect individuals and property. In addition to safety concerns, agencies sought to avoid legal ramifications. Hence, the criminal background check is primarily used as a risk management tool:

“I think employers tend to go down the easiest path. And so, regardless of you as an individual, I'm just going to take the least amount of risk that I need to. So, if there's anything in your background, forget criminal history, just anything, anything that points to you being a problem in any way, I'm just going to look for another applicant. It's easier. It's less expensive” (Agency I).

Because there was uncertainty at times about whether a position required a background check, some agencies adopted the use of background checks for every position. This is especially true for agencies that work with vulnerable populations. As one respondent reported: *“Our insurance company requires we run background checks for anyone that has direct contact with youth...we're not supposed to be hiring anyone that has like a violent or youth-related offense on their record” (Agency D).* The scrutiny imposed on individuals with a criminal record seemed commonplace, or business as usual. In this instance, Ban the Box did not substantially alter a process that was already engrained in human resources practice.

Generally, the background checks were conducted by a governmental agency that often has a *“heavy hand”* (Agency J) in the hiring process. These governmental agencies (e.g. Department of Education, Department of Health, and the Justice Center) have the authority to derail the hire, usually because the applicant has a disqualifying conviction. Since the governmental agency is the final arbiter for some positions, the employers felt absolved of responsibility for denying the individual employment. In a sense, agencies outsourced their hiring decisions, at least in some instances. It was an easy way to have a scapegoat in the case of

a potentially controversial job denial or termination: *“I think we are sort of following the lead of the government agencies' policies. Like, if we were to make a termination, in that vein, we would sort of point the finger to DYCD”* [Department of Youth and Community Development] (Agency D).

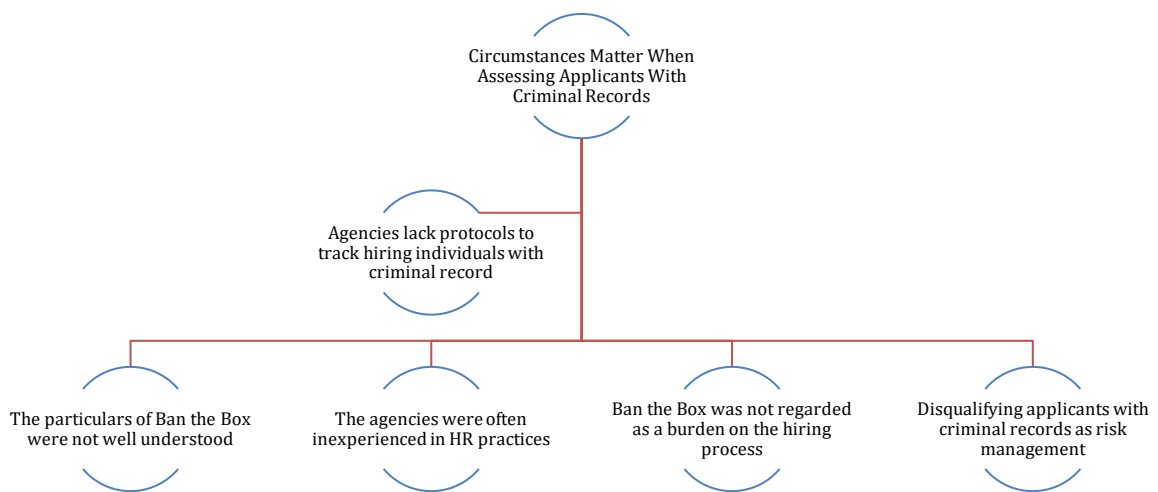
The interviews revealed some arbitrary dimension to the decision-making process of hiring managers. Some relied on a gut feeling about an applicant in making a hiring decision: *“I don't feel it's necessary to do a criminal background check. If I have that kind of feeling, I would be unlikely to hire that person”* (Agency C). At times, a hiring manager's feeling about an applicant may trump his/her qualifications, which is the type of subjective decision-making that Ban the Box attempts to address. Although qualifications may not matter as often as they should, an agency is likely to give considerable weight to any risk the applicant may pose. Having a strong focus on risk does not necessarily imply denying employment to individuals with a criminal record, but it highlights an important dilemma: applicants that are perceived to pose the greatest risk will be less likely to receive an offer.

6.7 Thematic Map

The thematic map displayed in Figure 19 provides an illustration of the relationship between the various themes discussed in this chapter. At the top of the hierarchy is the first main theme; prior offense type, openness to hiring individuals with a criminal record, and the truthfulness of applicants are fundamental circumstances that influence the hiring managers' decisions. Undoubtedly, there are other important circumstances to consider, but these were emphasized by the respondents. The sub-theme is organically linked to the first main theme in

the hierarchy because no matter how effective an agency might be at implementing Ban the Box, or how open the agency is to offering opportunities to individuals with a criminal record, it may be difficult to assess these results without reliable data that is collected on an ongoing basis. There is an interplay between the remaining themes; a fundamental lack of understanding of Ban the Box, coupled with limited human resources experience, will impact the implementation of the policy and the screening of applicants. Interestingly enough, these limitations did not encourage hiring managers to regard the policy as a burden or cause them to be averse to hiring individuals with a criminal record.

Figure 19: Thematic Map



6.8 Summary

In conclusion, the hiring managers were not always clear on the nuances of Ban the Box and they were sometimes unclear about the proper HR protocol for screening individuals with a criminal record. Complying with the policy appeared to be important for the hiring managers, but

prior offense type, criminal background check, and other information about applicants was used to assess any potential risk. Unsurprisingly, all respondents wanted to avoid liability. However, none of the hiring managers were concerned about lawsuits for negligent hiring or discrimination based on criminal history information. The latter was true even if they admitted to violating the FCA in some manner, mostly because they felt that their agencies were open to hiring individuals with criminal records. Invariably, a willingness to hire this population could mean that some agencies are less vigilant about complying with the Ban the Box policy, or they boldly assume that they are already in compliance.

Chapter 7: Policy Implications of the Study and Conclusion

This dissertation focused on a hugely popular yet relatively new anti-discrimination policy: Ban the Box. Because of mass incarceration and its negative effects on individuals and communities, there has been an emphasis on reducing the collateral consequences of a criminal conviction, particularly the challenges associated with obtaining and maintaining employment (Holzer, 1996; Moss & Tilly, 2001; Pager, 2003; Pager, Western & Bonikowski, 2009). Ban the Box has been embraced in jurisdictions around the country, across different political parties. Indeed, policymakers across the political spectrum have advocated for fair chance hiring (Bergen, 2017). Employers have joined the fray as well, some banning the box in their retail chain, including places where the government has not adopted the policy (National Employment Law Project, 2015).

Although Ban the Box has widespread support, we still have a very limited understanding of its impact (National Research Council, 2014; Solinas-Saunders & Stacer, 2015; Vuolo et al., 2017). This exploratory study sought to expand our knowledge by engaging employers about their hiring policies and practices in the context of Ban the Box. It aimed to investigate whether employers are complying with the policy, intentionally or unintentionally, and whether more individuals with a criminal record were hired over a period of several years after implementation of the EO-151. In addition, the study investigated what, if any, factors distinguish employers that have banned the box from those that have retained the box. This research has raised awareness about the complications associated with implementing a policy in a major urban city, and will add to the scant literature on this subject. This concluding chapter expounds on the study's findings, and discusses policy implications about the Ban the Box policies, and the FCA more generally. Further, it offers recommendations for research, policy, and practice, which can

provide additional insight on a popular policy that we have not yet fully understood. In the final analysis, this dissertation seeks to provoke continued dialogue around the consistently complicated issue of employing individuals with a criminal record.

7.2 Discussion of Study Findings

Despite the ambiguity related to the implementation of EO-151 and the FCA, along with the reality that some agencies lacked adequate HR experience, the general consensus was that most agencies removed the criminal history question from the job application. Similarly, most of the hiring managers indicated that applicants were not probed about their criminal record during the interview phase, but several subjects continued to ask the question at this stage, either because of uncertainty, an eagerness to be informed about the applicant's history, a belief that knowing would not taint the decision (i.e., for agencies that were open to hiring these individuals), or because they were possibly exempt from the policy. Either way, if an agency retained the box or continued asking the criminal history question, it seemed unintentional, at least in this sample. Indeed, none of the subjects appeared to defiantly engage in these practices because they objected to conditions of the FCA.

From the survey responses, we were able to determine that agencies were not purposefully seeking to avoid the requirements of Ban the Box. Few agencies required candidates to complete a secondary application, and informal criminal background checks were rare. Interview responses revealed that many agencies had no way of handling the disclosure of criminal history during the interview, which is a way of circumventing the policy, albeit inadvertently. Although this may have been an accidental omission, precipitated by a question

from the hiring manager, or a voluntary omission from the candidate, some agencies addressed the issue head on, while others just glossed over it. No matter how the proverbial cat got out of the bag, the information was disclosed. The consequences of this type of disclosure depends on a variety of different factors, such as the openness of the agency or hiring manager to employ individuals with a criminal record. Nonetheless, this practice revealed a departure from the requirements of the FCA.

The subjects overwhelmingly rejected the notion that Ban the Box created an additional burden on the hiring process. Hiring managers are less likely to report additional burdens caused by a policy that they highly favor. This is not to suggest that subjects were blinded to ways that the policy could hamper the hiring process, but rather that they did not give these “burdens” much consideration or weight. When prompted to elaborate, respondents mostly noted that the hiring process had not been seriously altered, that the criminal history inquiry was already being completed at the appropriate stage of the hiring process, or that the use of applications had been completely phased out. With the exception of the initial confusion at the time of the implementation of the policy, and the ambiguity that lingered, agencies generally did not feel burdened by the policy.

When it came to factors that may disqualify applicants for employment, there was widespread agreement that crimes against children and offenses of a sexual nature would bar applicants from job opportunities. Crimes like theft were worrisome, but only if the position required the applicant to have access to confidential information (e.g., social security and credit card numbers). Surprisingly, there was generally no strong condemnation of violent crimes. Although hiring managers insisted that individuals should be granted the opportunity to secure employment, notwithstanding the conviction(s) and its circumstances, there was seldom a

nuanced discussion about the particulars of any crime. For example, we know that in the age of the Internet, individuals may be convicted of crimes such as “sexting,” including many young adults, which may result in an obligation to register as a “sex offender.” Hence, the nature of the offense matters to hiring managers, especially when the applicant has been convicted of a crime deemed to be repugnant.

The most challenging question to answer in this research pertained to whether the EO-151 increased hiring of individuals with a criminal record. Results seem to suggest that it did not, at least for the human services agencies that were impacted by the policy. The respondents stated explicitly that it did not increase the chances of hiring an individual with a criminal record, although the policy would have only been able to accomplish this indirectly. The challenge in answering the question relates to the fact that agencies failed to provide sufficient data to test this hypothesis, and the hiring managers reported that they were genuinely receptive to hiring individuals with a criminal record. This receptivity to a stigmatized population, at least by nonprofit organizations generally and human service providers specifically, implies that in its initial stage, Ban the Box likely had little of the intended impact on the agencies that it targeted.⁶

The respondents were unambiguous that the age of an applicant’s criminal conviction(s) was not particularly relevant. This position is clearly advantageous to individuals with a criminal record, but it is important to also highlight that hiring managers evaluated these applicants on a “case by case basis.” It is curious that hiring managers were not more apprehensive about hiring applicants with recent involvement in the legal system. It may be that the recent convictions involved offense types that the hiring managers did not find objectionable.

⁶ The policy was designed to impact city agencies as well but they were excluded from this study.

This study revealed that the number of employees was unrelated to whether agencies banned the box, except for mid-size agencies (16-37 employees). The percentage of agencies that banned the box with 16-37 employees was about half of the other categories (29.4% versus 13.7%). This result needs to be explored further, to determine if there is a statistical relationship between these variables. With regards to the relationship between the years that agencies have been in operation and their removal of the box, older agencies (30 or more years in operation) were more likely to retain the box. It may be that these agencies are less apt at keeping abreast of new policies, or more likely to be exempt. Indeed, agencies that have been in existence longer often have more government funding, and may be more inclined to serve vulnerable populations. Either way, this result also needs further exploration to confirm if older agencies are less compliant.

Human service agencies engage with clients that have criminal records more than other agencies. Further, human service agencies had four additional years to become familiar with the policy and to adjust their hiring practices, since EO-151 required them to ban the box and delay the criminal history inquiry in 2011. Consequently, these agencies may have had a stronger inclination to participate in the study, that is, to respond to the surveys and agree to be interviewed. This inclination is similar to the selection bias that is associated with studies involving a random sample. It is possible that this bias impacted whether agencies banned the box, and the relationship between banning the box and factors such as the number of years an agency has been in operation.

An agency's familiarity with the policy did not impact compliance. Nearly all of the agencies were familiar with the policy, including the 7 that retained the box. If familiarity positively influenced compliance, we would expect to see a small percentage of the 21 agencies

that were either familiar or very familiar with the policy to have banned the box. However, hiring managers could also be familiar with Executive Order 151 but have limited input into whether or not their agency complied with the FCA.

As mentioned in the Chapter 5, many of the hiring managers refused to provide information about their race and gender. Research in this area has established that race matters, at least when it comes to African American hiring managers and applicants, as the former may be more sympathetic to offering individuals with a criminal record a second chance (who are far more likely to be of the same race) [Stoll, et al., 2001; 2004]. In this research, whites and women were more often hiring managers at agencies that banned the box, but additional research is needed to determine the significance of these relationships.

Findings also showed that if agencies banned the box, they were more likely to comply with other sections of the FCA, such as refraining from asking about criminal history during the interview, performing a criminal background check before making a conditional offer, or conducting informal criminal history searches. These results all relate directly to the hiring process. This is very promising from an implementation and policy standpoint, because a law would be relatively ineffective if hiring managers complied with one component and ignored other dimensions. When it comes to offering opportunities to individuals with a criminal record (or not discriminating against them), it would make little sense to have agencies remove the box but ask criminal history questions during an interview, or perform background checks before making an offer. If the majority of agencies complied with every provision of the policy, chances are higher that qualified candidates with a criminal record would be offered employment. Further, it is arguably more challenging to convince agencies to stop violating a policy than it is to convince agencies to comply (particularly if the violation occurs later in the hiring process).

To this point, an ongoing policy challenge is to make companies aware of the FCA and to ensure that they are in compliance. This includes the thousands of new businesses that open their doors each year, and those who do business in New York City but have their headquarters elsewhere. Awareness of the policy will likewise reduce the likelihood that companies will conduct informal criminal background checks. In a large city like New York, even a small percentage of companies engaging in this practice could be hugely problematic.

It may be tempting to conduct these searches and to be eager to learn the criminal background of a particular applicant, but this is likely to occur more often with minorities, especially African Americans, since they make up the bulk of individuals with a criminal record. Moreover, many organizations, particularly human service providers, are working with tight budgets and have high rates of insolvency (Human Services Council, 2016). Consequently, organizations are exploring ways to cut costs and likely prefer not to waste time on applicants who might have a disqualifying conviction. Pulling back the veil on an applicant's criminal history might make sense because the company wants to fill a position quickly, or due to the costs associated with commercial background checks. Either way, this conduct triggers a violation of the FCA, but it is challenging to determine whether the individuals are disqualified upon learning of their criminal history. It is worth noting that agencies that contract with the state to serve vulnerable populations can turn to the Justice Center, the Department of Health, and other state agencies to conduct criminal background checks at no cost (i.e., as part of a contractual obligation).

Table 7 presents the research questions and hypotheses, as outlined in Table 1, along with the specific outcomes associated with the hypotheses.

Table 7: Research Questions, Hypotheses, and Outcomes

Research Questions	Hypotheses	Outcomes
RQ1: Did agencies comply with EO-151 and the FCA by banning the box and by delaying the inquiry about criminal history?	<p>H1a: The majority of agencies are expected to have removed the box from the application.</p> <p>H1b: It is hypothesized that the majority of agencies ceased to inquire about criminal history during the interview process.</p>	<p>A majority of agencies banned the box (67%, n=51 vs 33%, n=25). The hypothesis is confirmed.</p> <p>A majority of agencies (57%, n=41) delayed the criminal history inquiry. The hypothesis is confirmed.</p>
RQ2: Do agencies employ alternative methods to circumvent Ban the Box requirements?	<p>H2a: It is hypothesized that a minority of agencies violate Ban the Box by requiring the disclosure of a criminal history on a secondary application.</p> <p>H2b: It is hypothesized that a minority of agencies conduct online searches in order to investigate whether applicants have criminal records.</p>	<p>A minority of agencies (11%, n=8) reported asking about criminal history on a secondary application. The hypothesis is confirmed.</p> <p>A minority of agencies 18%, n=13) reported conducting informal criminal history searches. The hypothesis is confirmed.</p>

Research Questions	Hypotheses	Outcomes
RQ3: Has Ban the Box placed any additional burden on employers in the hiring process (e.g. additional training, incurred cost, delayed hiring process)?	H3: It is expected that agencies will not report that Ban the Box has resulted in any additional burden on the hiring process.	Most agencies (76%, n=18) did not report any additional burden with the implementation of Ban the Box. The hypothesis is confirmed.
RQ4: Did human services agencies and non-human services agencies hire more applicants with criminal records after the implementation of EO-151 (i.e. more applicants in 2012 and 2013 than in 2011)?	<p>H4a: It is hypothesized that human services agencies <i>have increased</i> the hiring of individuals with criminal records after the implementation of EO-151.</p> <p>H4b: It is hypothesized that non-human services agencies <i>have not increased</i> the hiring of individuals with criminal records.</p>	Few agencies collect data about hiring individuals with a criminal record, so these findings are inconclusive.

Research Questions	Hypotheses	Outcomes
RQ5: What criminal history factors are most likely to disqualify applicants with criminal records from employment opportunities?	<p>H5a: Agencies are more likely to hire applicants with a more “stale” criminal record (i.e., with a time lag of at least 7-10 years since the last conviction).</p> <p>H5b: Agencies are more likely to hire applicants with non-violent convictions.</p>	<p>Only 6% (n=3) of agencies reported being more likely to hire applicants with old convictions. The hypothesis is not confirmed.</p> <p>50% (n=28) of agencies were likely to reject applicants convicted of violent crimes. The hypothesis is confirmed.</p>
RQ6: What distinguishes agencies that complied with Ban the Box versus those that failed to comply?	<p>H6a: Agencies with a larger employee body are more likely to comply with Ban the Box.</p> <p>H6b: The length of time that the agency has been in operation is likely to be positively associated with the likelihood of compliance.</p> <p>H6c: Familiarity with EO-151 is likely to increase an agency’s compliance.</p> <p>H6d: It is hypothesized that hiring managers belonging to a minority group are more likely to comply with Ban the Box.</p>	<p>Larger agencies were not more likely to ban the box. The hypothesis is not confirmed.</p> <p>Agencies that have been in operation longer were not more likely to ban the box. The hypothesis is not confirmed.</p> <p>Familiarity with EO-151 did not increase an agency’s compliance. The hypothesis is not confirmed.</p> <p>Minority hiring managers were not more likely to Ban the Box than other racial groups. The hypothesis is not confirmed.</p>

7.3 Policy Implications

At times, policymakers feel the pressure to prematurely declare a policy successful. While enacting a sweeping Ban the Box policy in New York City is a success in itself, it is

another thing entirely to conflate the success of the policy's passage with its outcomes. In this case, the primary goal of Ban the Box is to level the playing field for individuals with a criminal record by removing the box from the job application, refraining from inquiring about criminal history during the job interview(s), and from conducting a criminal history inquiry until after the applicant has been made a conditional offer. To this extent, the FCA has been effective. Admittedly, there are businesses currently violating the FCA, intentionally or unintentionally, but given that most businesses are generally complying with the policy, this success should be acknowledged.

Success has multiple facets, however, so it is safe to say that the rollout of the policy was less effective than it could have been. This is largely because many agencies received limited guidance, and were confused about whether the policy applied to them. The onus is on a company to keep abreast of policies that may impact its business, but governmental agencies have a responsibility to work with agencies in order to ensure that they have a clear understanding of new policies. New York City worked with agencies, business associations, and the like to disseminate information about the policy but as evidenced in this study, more coordination and collaboration was necessary, especially with small nonprofit organizations.

The policy also was less successful than it could have been because it did not require agencies to collect data. Under the FCA, there is no way of knowing whether more individuals with a criminal record secured interviews or callbacks if the agency is genuinely unaware of an applicant's criminal history. On the other hand, we can determine if more of these individuals received job offers, since agencies are permitted to ask about criminal history once an offer is made, and will likely conduct a criminal background check. Anecdotal evidence suggests that agencies are more likely to rescind offers to individuals with a criminal record after the

implementation of the FCA, but few agencies are gathering this information. It will remain challenging to unravel the complexities associated with the policy if agencies fail to collect data, which is likely to persist without a requirement from the local government. In the case of a requirement, data collection can be reliably carried out during a pilot period with a random select group of agencies or alternatively, with agencies that have been found to violate the requirements of the policy.

One very important factor that could obfuscate the impact of Ban the Box is the state of the economy. For the past eight years, or since the Great Recession, the economy has grown steadily. There were 96 straight months of job growth, which has reduced the unemployment rate to 3.7%, the lowest it has been since 1969. In addition, more than 20 million jobs have been created, in contrast to mid-2008, when the country hemorrhaged over 8 million jobs (Casselman, 2018). When the economy is weak (i.e., when jobs are scarce), individuals with a criminal record find it extremely challenging to secure employment. Conversely, when the economy is robust, employers find it difficult to fill positions with the most qualified candidates (Dorfman, 2017). Because jobs have been plentiful, individuals with a criminal record have been more likely to find employment (Society for Human Resource Management, 2018), even though they still exhibit far higher unemployment rates (i.e., African-Americans make up the majority of people with records and they have the highest unemployment rates) [Gayle, 2018]. However, it is important to not conflate the success of Ban the Box with a bustling economy. Individuals with a criminal record will need to secure viable employment opportunities even when the economy falters, so we need to isolate the benefits of Ban the Box and apportion success in a manner that is fair, justified, and sustainable in the long term, regardless of the state of the economy.

In the public discourse and in the findings presented in the current study, there is often an assumption that having a criminal record means that an individual has been incarcerated. The nomenclature for individuals with records is often “formerly incarcerated,” which clearly implies incarceration. This issue is complicated because there is an abundance of people with multiple convictions who have never served time in prison, and others who committed one crime and served years, if not decades, behind bars. Individuals who served a prison sentence are normally at a bigger disadvantage because this usually implies that a more serious crime was committed (Decker et al., 2014). Although the number is difficult to estimate, reports indicate that 70-100 million individuals have a criminal record (Friedman, 2015). However, most of these individuals have not served time in prison, so it is important to not necessarily associate a criminal record with prison.

7.4 Recommendations for Research, Policy, and Practice

When jurisdictions adopt Ban the Box, they might consider mounting a rigorous campaign for employers and job-seekers, including the use of social media. A campaign increases the likelihood that agencies will be informed about Ban the Box. The jurisdiction might be well served by engaging with Departments of Corrections, including officials from parole and probation services as well as the Department of Social Services, in order to ensure that the message is disseminated in settings frequented by individuals with a criminal record. Indeed, the incarcerated population is often neglected from the dissemination of information pertaining to policies that impact them greatly, even though the information would likely spread unencumbered in this type of environment.

In addition to a campaign, it is imperative that employers receive training on best practices for hiring individuals with a criminal record, and on how Ban the Box may alter their hiring practices. The training could ideally be provided in a variety of ways, including but not limited to: webinars, lectures, tutorials, videoconferences, case studies, and the like. Depending on the size of the jurisdiction, the government may need to work with for-profit and nonprofit organizations to ensure that businesses in all industries, and of all sizes, are informed about the policy and are adhering to it. The correctional population can also be engaged in this process, often through the organizations that are contracted to provide services inside the facilities.

Individuals with a criminal record also require job training, since employers seek applicants who can perform the requisite job duties and who likewise have important soft skills. Although training and soft skills are essential, employers are increasingly seeking evidence of rehabilitation among job-seekers who have experience with the criminal justice system (Society for Human Resource Management, 2018). Consequently, it behooves the government to increase the issuance of Certificates of Good Conduct and Certificates of Relief for Disability, as these provide the evidence required by employers. It normally takes years after an applicant has applied to issue a certificate. Hence, the certificates need to be issued in a more systematic manner. Individuals should be notified once they have become eligible for the certificate, rather than them having to apply. Moreover, except in extraordinary cases, the default should be to issue the certificate. The bar also needs to be lowered with respect to the extensive documentation that is required, as this will likely increase the number of applications.

Currently, there is no uniform Ban the Box policy. Although the research is limited on this issue, some evidence has suggested that Ban the Box policies are not imposing a substantial additional burden on employers (Bogardus, 2015; Berracasa et al. 2016). To this effect,

jurisdictions may consider adopting Ban the Box policies that provide the greatest likelihood of reducing unfair discrimination, including the requirement that the policy apply to employers in all sectors. This is not to suggest a departure from criminal background checks that are performed after a conditional offer is made, but it does suggest scrutinizing cases where an applicant's offer was revoked due to a conviction that is job-related, or where the individual is thought to pose a risk.

Companies have power and influence over proposed policies that will impact their operations and ultimately, their bottom line. They often wield this power to block policies or specific provisions that may impede their businesses, including producing data about hiring practices. The failure to produce data may serve the interest of employers, but it does not advance our understanding of Ban the Box policies; it limits our ability to learn about the policy's impact. In this regard, policymakers might consider fashioning Ban the Box policies that compel companies to collect data about their hiring practices relative to individuals with a criminal record, in order to allow for strict monitoring and enforcement for non-compliance. Employers could be reminded that they are not *required* to hire applicants with a criminal record in their search for the best candidate for a position, but they are required to not *disqualify* these applicants because of a criminal conviction. It may be worthwhile to review the practices of companies that have advocated for the hiring of individuals with a criminal record, such as John Hopkins, and track their outcomes (Paulk, 2015).

Agencies that do not have a human resources department or a trained staff performing human resources functions may consider consulting with an outside company or an attorney with this specific expertise. This service is likely available at a reduced cost to small organizations, especially nonprofit organizations. As respondents highlighted, lacking knowledge about

appropriate human resources practices, or having limited personnel, is not a justification to bungle these decisions. Having staff learn about the policy on the job, without training, is risky, no matter the size of the business. There are simply too many opportunities for things to go awry along the hiring continuum.

Although agencies were not apprehensive about lawsuits based on employment discrimination, the reality is that agencies generally express concern about liability (Holzer et al., 2003, 2006; Smith, 2014). It may be necessary to consider limiting the liability of employers that comply with Ban the Box policies, and, in turn, make appropriate amendments to insurance company policies and practices, to assuage concerns about lawsuits involving unforeseeable incidents.

As with most legislation, there is a penalty when companies violate the FCA. Instead of a carrot and stick approach, the government mostly has the stick at its disposal. Because agencies rarely received incentives for hiring individuals with a criminal record (3 out of 78), this may be a useful carrot. Some agencies are hiring these individuals and not taking advantage of the incentives, and others might be more open to doing so if they were aware of the available incentives. All parties involved would benefit from educating employers about the different incentives available for hiring individuals with a criminal record.

A growing body of evidence has shown that some employers refuse to interview black candidates because they may assume that these individuals have a criminal record (Agan & Starr, 2016; Holzer et al., 2006; Solinas-Saunders et al., 2015; Vuolo, et al., 2017). This form of prejudice (i.e., statistical discrimination) is highly problematic, but it is not likely to be curtailed by eliminating Ban the Box policies. Statistical discrimination is a major unintended consequence of Ban of Box policies, but abandoning the policy entirely would derail a

progressive movement initiated by individuals who bear the brunt of discriminatory hiring practices. Moreover, it would address the symptom rather than the cause of this discrimination, which is overt bias towards African American males.

Bias needs to be addressed at all points of the hiring process (i.e. application, interview, callbacks, and job offers), or when it is harbored by managers that are in a position to make hiring decisions. Denying access to employment opportunities to African American men, with or without a criminal record, is unreasonable. Neither type of bias allows potentially viable candidates to secure employment. Policymakers and employers need to address implicit bias and other issues at the root of this discrimination, as this is certain to increase employment outcomes for African Americans and other minorities with records.

There is consistently negative information publicized about individuals involved in criminal activity. Employers are left to sort through what is fact and what is fiction, and to determine on their own how to avoid painting everyone with a criminal record with the same brush. The government can make a more concerted effort to debunk stereotypes and educate employers about the benefits associated with hiring this population. This can be done by advertising the contributions of individuals with a criminal record in the job market, and actively hiring them for positions at every level of government. All that is required of employers is to not unfairly deny employment to applicants simply because of a criminal record.

Even with these efforts, some employers will continue to violate Ban the Box policies. What should the punishment be when employers unlawfully deprive otherwise eligible applicants of employment? The enforcement agency will first need to determine if the violation was intentional, or if there is a pattern of noncompliance. Since the FCA is designed to promote fair chance hiring, any funds collected from employers can be used to provide job training and job

placement assistance, along with internship/transitional work opportunities, for individuals with a criminal record. Companies can also be required to hire this population, partner with human service providers, and compel companies to collect data about these hires. However, change is more likely to occur when we deepen our understanding of an issue, in this case, the harm associated with depriving individuals of employment. Writing a check can produce positive outcomes, but in order to deepen our understanding we often need to get “proximate” (Stevenson, 2014), so it might be useful to require executives or board members of organizations that violated the FCA to work directly with agencies that serve individuals with criminal records.

7.5 Limitations of the Study

There are apparent limitations to the study that are worth noting. For starters, this research employed a relatively small sample. Although the spreadsheet contained thousands of agencies, less than 150 responded and only 78 contained a sufficient amount of data. Moreover, the sample was not representative of the population of agencies, which makes it difficult to extend the findings and conclusions to the population of NYC agencies. In addition, the majority of the agencies were nonprofit organizations, many of which were human service agencies. Because most of the agencies belong to one sector, the analysis is narrower in scope than it would be if the sample included agencies from more diverse sectors. To this point, the study completely excluded city agencies. I reached out to representatives in city government, but they refused to participate in the study. Finally, many of the hiring managers were unwilling to answer specific questions (e.g., race and gender), and most of the subjects did not have access to data about the hiring of individuals with a criminal record. Taken together, these limitations

impact our understanding of the decision-making process of hiring managers in the context of Ban the Box, and should be addressed in future research.

7.6 Future Research

Research on Ban the Box often extrapolates that the policy has been successful at increasing employment outcomes for individuals with a criminal record, but without evidence (Smith, 2014). The policy is likely to increase interviews and callbacks, but this is virtually impossible to quantify. Indeed, an agency will not know if an applicant has a criminal record when they comply with the policy until after the interview process has concluded. Largely through secondary survey data, researchers have argued the advantages and disadvantages of the policy, (Shoag & Veuger, 2016; Doleac & Hansen, 2016). However, these results speak more broadly about unemployment rates, not the specific impact of the policy on individuals with a criminal record. Analyses that have found a positive impact of the policy on outcomes for individuals with a criminal record have been conducted by governmental agencies (Atkinson & Lockwood, 2014; National Employment Law Project, 2016). These analyses should be conducted by impartial parties with no conflicts of interest (e.g., academics, independent research consultants), as they do not have a vested interest in highlighting the beneficial outcomes of any given policy.

For example, I submitted a Freedom of Information Act request to New York City in relation to EO-151. The city reported that this policy increased employment for individuals with a criminal record, but the section of the report dedicated to the analysis on jobs was manifestly ambiguous. It is possible that the increase is associated with the temporary jobs offered to individuals with a criminal record, who would have been granted these jobs anyway based on

their involvement in the New York City Human Resources Administration Work Experience Program (WEP). In other words, these individuals worked menial temporary jobs to receive their public assistance benefits, and the city likely claimed them as a positive impact of Ban the Box.

Research about Ban the Box that examines sections of the policy and its implementation is scarce (Bogardus, 2015). Moreover, individuals with a criminal record have not been consulted about how the policy has impacted them, and only few studies include insight from hiring managers (Bogardus, 2015; Berracasa et al., 2016; Society for Human Resource Management, 2018). For these reasons, we need to continue engaging hiring managers from different industries to gain insight on their hiring practices vis-à-vis individuals with a criminal record, and individuals with criminal records need to be consulted in order to better understand their experience with employment before and after implementation of the FCA. More research is also needed to determine if applicants with a criminal record are unfairly having job offers rescinded under the FCA, and to assess if more of these individuals are securing employment.

Because there is uncertainty about exemptions, we need a better understanding of whether agencies that violate the FCA are exempt, or if they merely have exempt positions. For example, agencies are allowed to discriminate against applicants for positions that require a criminal background check (e.g., childcare worker), but the same agency is not necessarily permitted to discriminate against an applicant that applies for a maintenance position that has no contact with children or other vulnerable populations. In addition, we need more evidence about the factors that might distinguish agencies that comply with the FCA, from those that violate its provisions. Importantly, research related to the FCA needs to separate the outcomes associated with Ban the Box from those related to the economy. In order to get a glimpse of what happens behind the curtain, that is, to determine whether employers are complying with the FCA, researchers can

use testers to detect potential violations of the policy. This way we can secure clear and convincing evidence of hiring practices relative to Ban the Box. Since employers purportedly value evidence of rehabilitation, research can investigate the influence of certificates of rehabilitation in hiring practices, controlling for factors such as offense type and time since release (if the individual has been incarcerated), and how frequently these certificates are issued.

Importantly, researchers need to discover ways to increase the response rate for studies that include employer perspectives, particularly those that comment on Ban the Box policies. Because of the reluctance to speak openly, even confidentially, about hiring practices related to applicants with criminal records, it seems prudent to establish linkages with employers through human resources associations like the Society for Human Resources Management (SHRM) and the Human Resources Professional Association of Nonprofit Organizations (HRPANO). These types of organizations have credibility with human resources managers in different industries, which may alleviate concerns generally associated with research. In addition to these types of associations, forging relationships with government officials could also yield positive results. For example, agency heads might be receptive to permitting their human resources directors to complete surveys if they are assured that the agency and its hiring practices will not be mentioned in the research findings. Undoubtedly, researchers may not have these connections, but it is necessary to think strategically about the best way to cultivate these key stakeholders in a particular region. Although these relationships take time to develop, the response rate will likely increase when associations or individuals with influence in human resources feel comfortable with a researcher, and are willing to recommend the researcher to colleagues who would have otherwise been skeptical. Finally, researchers can also identify similar Ban the Box

policies in different jurisdictions and collaborate in multi-city or multi-state studies, as a larger more concerted effort is needed to gather reliable evidence on this policy.

While the response rate was low for this study, it is worth noting that prior studies on Ban the Box also had low response rates and small sample sizes. Berracasa et al. (2016) and Bogardus (2015) analyzed 40 and 60 surveys from employers, respectively. These small sample sizes are typical in studies involving hiring managers as a primary data source. Although the sample sizes are small, these studies provide an opportunity to hear directly from the professionals charged with implementing an experimental policy, even if they are oblivious to or actually oppose the policy. Either way, these perspectives are varying and depend on multiple factors. However, regardless of an employer's position on Ban the Box, the insight offered on their hiring practices relative to individuals with criminal records helps to advance our understanding of this important topic.

7.7 In Closing

This dissertation makes an important contribution to the literature associated with Ban the Box and employment for individuals with a criminal record. We have a broader understanding of how the policy was implemented and how it impacted employers in New York City. Despite some of the methodological limitations of the study highlighted above, the main points of the study are highly relevant, since they add context and dimension to what has been and remains a nebulous issue.

It is noteworthy that human resources practice (i.e., screening job applicants) differs based on factors such as the size of the company and its resources, but at its core there are significant similarities in the hiring process: recruitment, interviews, call backs, applications or some form of tracking system, criminal background checks (or some other criminal records

screening), and job offers. When it comes to screening applicants with a criminal record, the similarities are likely heightened, since there may be negative perceptions of this population (which may be intensified based on offense type). In this regard, even this small sample size provided a pertinent view of the human resources apparatus regarding a stigmatized group.

Although this dissertation was mostly descriptive and exploratory in nature, the objectives were relatively ambitious. Some of those ambitions were dashed because employers lacked essential data about their hiring practices relative to individuals with a criminal record. The limited capacity to reveal the intricacies of the hiring process, particularly if more applicants with a criminal record secured employment, suggests that researchers will need to continue to investigate the success of Ban the Box through innovative research initiatives.

Ideally, we are interested in concrete outcomes, such as job hires. However, Ban the Box does not provide a linear path to this destination. There is terrain that needs to be traversed along the hiring continuum, such as interviews, callbacks, and offers that will help shape our understanding of the benefits gained by applicants from Ban the Box policies. The point to remember is that policies do not hire people; hence, the benefit has to be more about what a hiring manager does than what a hiring manager says (Pager, 2003). These agents are charged with making complex decisions, which can be made less daunting when they understand the policy, and are equipped with reliable information and an open mind about applicants who, like others, want to make an honest living to provide for themselves and their families.

Appendix A: Employment Programs

<p style="text-align: center;">Work Opportunity Tax Credit (WOTC)</p>	<p>The Work Opportunity Tax Credit (WOTC) is a program that offers a \$1,200 to \$9,600 tax credit to employers that hire qualified candidates, which includes people with criminal records. The program was retroactively authorized for a five-year period from December 31, 2014 to December 31, 2019.</p>
<p style="text-align: center;">Federal Bonding Program (FBP)</p>	<p>The U.S. Department of Labor (DOL) created the Federal Bonding Program in 1966. Designed to provide an incentive to employers to hire people with criminal histories and other hard to place job applicants. The program offers fidelity bonds to employers free of charge to protect them against embezzlement, theft, or forgery by employees. The bonds are issued through the FBP and they generally cover from \$5,000 to \$25,000, for a period of 6 months.</p>
<p style="text-align: center;">Work for Success (WFS)</p>	<p>Work for Success was launched by Governor Andrew Cuomo in 2012, and was developed to increase the skills of individuals in prison, to facilitate a smoother transition for them into community-based programs that can best meet their needs, and to alert employers to WOTC. The governor tasked DOL with ensuring the success of the program, which involved DOL staff cold calling employers daily to discuss WOTC and to engage them in a conversation about hiring people with criminal records.</p>
<p style="text-align: center;">Wage Subsidy Program (WSP)</p>	<p>Program was created as an incentive for employers to hire unemployed individuals, including the formerly incarcerated. In New York State the program is offered through the Office of Temporary and Disability Assistance (OTDA). WSP allows organizations to reimburse employers for hiring their clients; 75% of the client's wages are reimbursed up to \$12 an hour for 90 days, referred to as the subsidized period. After the subsidized period, the employer is then eligible for the remaining 25%. The federal government authorizes the WSP using TANF funds, so those who qualify live in households earning less than 200% of the federal poverty level.</p>

Appendix B: Executive Order No. 151

CONSIDERATION OF CRIMINAL CONVICTIONS IN HIRING

August 4, 2011

WHEREAS, the City of New York is committed to recruiting a broad, diverse, and skilled workforce; and

WHEREAS, a criminal conviction is often a limitation in seeking gainful employment, and access to employment is a proven means of reducing recidivism that helps reintegrate individuals into the community; and

WHEREAS, obstacles to employment for people with prior criminal convictions and other barriers to reentry impair the economic and social vitality of this group, and is contrary to public policy; and

WHEREAS, the City wishes to safely remove barriers that impede otherwise qualified individuals from obtaining employment with Agencies of the City of New York, while still affirming the right of all City agencies to deny candidates employment because their prior criminal convictions have a direct relationship to the job they are to perform or their employment would compromise public safety and property; and

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered that:

Section 1. With respect to any employment governed by Article 23-A of the Correction Law, except as provided by this Order, Agencies shall not ask questions regarding an applicant's prior criminal convictions on any preliminary employment application documents, excluding the Comprehensive Personnel Document ("CPD"), or ask questions about an applicant's prior criminal convictions before or during the first interview with the applicant.

§ 2. Agency inquiry into and consideration of a candidate's prior criminal convictions shall take place only after the first interview. Following the first interview, Agencies may ask applicants to disclose their prior criminal convictions, as specified in Section 3 of this Order, on a form provided by the Department of Citywide Administrative Services' Human Capital Division.

§ 3. Agencies shall limit their review and consideration of an applicant's criminal convictions to (a) an individual's felony convictions in the state of New York or in any other jurisdiction; (b) an individual's unsealed misdemeanor convictions in the state of New York or in any other jurisdiction; and (c) any pending charges against the applicant. Consistent with state law, past arrests not leading to a criminal conviction shall not be considered. In addition,

Agencies may make application to DCAS to waive any provision of this Order and be permitted to ask relevant questions pertaining to the qualifications to hold a specific civil service title, upon demonstrating the need for such waiver.

§ 4. Notwithstanding Section 3, Agencies hiring for certain positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), may ask applicants the same questions asked by the licensing body, in accordance with New York state law.

§ 5. Notwithstanding Sections 1 through 3, Agencies hiring for positions where certain convictions or violations are a bar to employment in that position under the law, shall not be constrained from asking questions about those convictions or violations.

§ 6. Agencies shall comply with Article 23-A of the New York State Correction Law when considering an applicant's prior criminal convictions in determining their suitability for employment. In accordance with Article 23-A, nothing in this Order shall be construed to limit an Agency's authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or their hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.

§ 7. Where practicable, all City Agencies shall provide for the review of a decision not to hire based on prior criminal convictions by a supervisor.

§ 8. Notwithstanding Sections 1 through 7 of this Order, the following law enforcement agencies: the New York City Police Department, the New York City Fire Department, the New York City Department of Correction, the New York City Department of Investigation, the New York City Department of Probation, and the Division of Youth and Family Services of the Administration for Children's Services, may ask about any criminal records of applicants on pre-employment job applications and in initial interviews. Any other Agency hiring for "police officer" and "peace officer" positions, as defined by NYS CPL § 1.20 and NYS CPL § 2.10, may ask about any criminal records of applicants for such positions on pre-employment job applications and in initial interviews.

§ 9. All applicants with disqualifying criminal convictions for specific jobs at specific Agencies shall be promptly removed from civil service lists for those specific jobs at those specific Agencies, in accordance with New York Civil Service Laws.

§ 10. The Department of Citywide Administrative Services' Human Capital Division shall provide training for Agency Personnel Officers on the appropriate manner in which to ask about the prior criminal convictions of qualified candidates, and protocols for consideration of

prior criminal convictions in the hiring decision. Such Personnel Officers shall train their Agency Human Resources staff. All training shall include:

- a) Instruction on Article 23-A of the New York State Correction Law and its factors for consideration.
- b) Procedures for consideration of candidate's prior criminal convictions to assess whether the convictions bear a direct relationship to the duties and functions of the employment sought.

§ 11. The Department of Citywide Administrative Services' Human Capital Division shall undertake a two-year pilot program to end no later than September 30, 2013, wherein periodic operational reviews of Agency practices shall be conducted to ensure compliance with this Order. The Department of Citywide Administrative Services' Human Capital Division shall also ensure all "E-Hire" systems are compliant with this Order and can collect relevant data for its review.

§ 12. The application of the provisions of Sections 1 through 11 of this Order to the New York City Housing Authority, the Department of Education, and the New York City Health and Hospitals Corporation, shall be contingent upon the written concurrence of those entities.

§ 13. All City entities that issue licenses shall undertake a review of their licensing policies to determine whether their practices are consistent with the goals of this Order and Article 23-A of the New York State Correction Law, and report back to the Mayor's Office within forty-five days of the date of this Order.

§ 14. The plans required by Sections 10 and 11 this Order, shall be completed no later than 180 days from the date of this Order.

§ 15. This Order shall not be construed to create any substantive rights. § 16. This Order shall take effect in sixty days.

Michael R. Bloomberg
Mayor

Appendix C:

Notice To Contractors

Please be advised that the City of New York has revised the Human Services Standard Contract used by City agencies for human and client service contracts.

The following changes have been incorporated.

- Section 3.01 has been revised to include requirements to distribute healthy food promotional materials provided to the Contractor by the Department. Any such materials would be provided to the Agency by the Department of Health and Mental Hygiene. In addition, if the Agreement includes a requirement that the Contractor supply food to program participants as a material part of the client services funded by the Department, then the Contractor must comply with New York City Agency Food Standards with regard to the provision of food to program participants.
- Section 4.05(B)(3) has been revised to make it clear that Contractors satisfy any procurement competition requirement through the Group Purchasing Organization (GPO) retained by the City.
- Section 6.04 has been revised to include requirements regarding background checks conducted by contractors related to the hiring of contractor employees and is consistent with the recently issued Mayor Executive Order No. 151.
- Section 7.03(A) has been revised to streamline the requirements for a “Security and Emergency Plan” and to remove the requirement for City approval of the plan. City approval of a plan will only be required when an agency makes a determination to include a specific provision for those Contractors where the city determines that continuation of services in the immediate aftermath of an emergency is essential for public health or safety.
- Section 9.03 has been revised to clarify when the Contractor is required to give notice to the City of an incident related to potential abuse or neglect of a client.

Please refer to the contract itself for a full understanding and the actual text of the changes that were made. The text of the Contract is the controlling document should there be any discrepancies between this notice and the Contract.

**Human Services Standard Contract
March 2012**

ARTICLE VI — PERSONNEL PRACTICES AND RECORDS

Section 6.01 Definition of employee. The term "employee" as used in this Article shall be limited to salaried personnel and shall include neither consultants under contract to the Contractor to provide specified services nor participants in the program who are being paid as trainees.

Section 6.02 Compensation of key employees and Board of Directors.

A. Key employee list. Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and at the beginning of each new fiscal year a list of its key employees, which shall include the Executive Director, Chief Financial Officer, Chief Operating Officer, or the functional equivalent of such positions, and the senior financial and programmatic supervisory personnel involved directly or indirectly in the performance of this Agreement. For each listed employee, Contractor shall provide the current total compensation (including all benefits), all sources of the employee's total compensation, whether from this contract or another City, State, Federal or private source, and the dollar amount of compensation from each such source.

B. Vacancies. Contractor shall notify the Department in writing within ten (10) days of their occurrence any appointments to or resignations from the positions of Executive Director, Chief Financial Officer and/or Chief Operating Officer, and/or the senior programmatic supervisory personnel or the functional equivalent of such positions.

C. Board compensation. Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and at the beginning of each new fiscal year a listing of all members of its Board of Directors and identify any of its members who receive compensation in any form, including but not limited to salary, stipend, per diem payments and/or payments for services rendered, from the Contractor or its affiliates, together with the amount of any such compensation, regardless of the source of its payment, and a description of its purpose.

Section 6.03 Collective bargaining. Contractor acknowledges that neither the City nor the Department is responsible or shall be liable for any obligations contained in any agreement into which Contractor or a representatives of Contractor has entered concerning the collective bargaining rights or benefits of its employees paid in full or in part by funds provided through this Agreement. Furthermore, Contractor agrees to abide by all applicable Laws governing the use of funds in connection with union activities.

Section 6.04 Recruitment and hiring of staff.

A. Maintenance of skilled staff. Contractor shall maintain sufficient personnel and resources, including computer technology, to deliver the services described in the Scope of Work and perform necessary administrative functions throughout the term of this Agreement, including

but not limited to: program evaluation; program monitoring; program research and development, including the preparation of reports required by this Agreement; fiscal reporting, review, audit, and close-out of the Program; and implementation of any corrective actions required by the Department.

B. Background checks.

1. The Contractor shall be responsible for the recruitment and screening of employees and volunteers performing work under the Agreement, including the verification of credentials, references, and suitability for working with clients and participants. Where consistent with State and federal law, if directed by the Department, the Contractor will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Department.

2. The Contractor shall comply with Article 23-A of the New York State Correction Law and Section 296(15) and (16) of the New York State Executive Law when considering an applicant's prior criminal convictions in determining their suitability for employment. In accordance with Article 23- A, nothing in this Agreement shall be construed to limit a Contractor's authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or their hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.

3. With respect to any employment governed by Article 23-A of the Correction Law or Section 296 of the New York State Executive Law, except where the Contractor obtains prior written approval from the Department, the Contractor shall not ask questions regarding an applicant's prior criminal convictions, juvenile delinquency adjudications, or youthful offender adjudications on any preliminary employment application documents or ask questions about an applicant's prior criminal convictions, juvenile delinquency adjudications, or youthful offender adjudications before or during the first interview with the applicant.

4. Consistent with the requirements of Executive Law §296(15) and (16), following the first interview, the Contractor may ask applicants to disclose their prior criminal convictions and any arrests or criminal accusations that are pending and have not been terminated in favor of the applicant. Agencies shall limit their review and consideration of an applicant's criminal convictions to (i) an individual's felony convictions in the state of New York or in any other jurisdiction; (ii) an individual's unsealed misdemeanor convictions in the state of New York or in any other jurisdiction; and (iii) any pending charges against the applicant. Consistent with State law, past arrests not leading to a criminal conviction shall not be considered. (Please note that, pursuant to Section 380.1 of the Family Court Act, juvenile delinquency adjudications are not criminal convictions. Also, pursuant to Section 720.35(1) of the Criminal Procedure Law, a youthful offender adjudication is not a criminal conviction.) In addition, the Contractor may request a waiver from the Department of any provision of this

Section and be permitted to ask relevant questions pertaining to the qualifications to hold a specific position, upon demonstrating the need for such waiver.

5. Notwithstanding any other provision of this Section, if the Contractor is hiring for positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), the Contractor may ask applicants the same questions asked by the licensing body, in accordance with New York State law. In addition, if the Contractor is hiring for positions where certain convictions or violations are a bar to employment in that position under Law, the Contractor may ask questions about those convictions or violations.

6. Where practicable, the Contractor shall provide for the review by a supervisor of a decision not to hire based on prior criminal convictions.

C. Drug-free workplace.

1. Contractor shall conspicuously post at any facility at which activities funded in whole or in part through this Agreement occur, a statement notifying all staff that the manufacture, distribution, dispensing, unauthorized possession, and unauthorized use of controlled substances are prohibited and specifying the actions that will be taken against employees for violation of such prohibition (the “Drug-Free Workplace Policy”). Contractor shall provide a copy of the Drug-Free Workplace Policy to each staff member as part of his or her initial employment orientation with Contractor, and shall inform such staff member that compliance with the terms of the Drug-Free Workplace Policy is a mandatory condition of employment or retention of employment. Contractor shall provide the Department with a written certification that its Facility complies with the Drug-Free Workplace Policy prior to commencement of services funded through this Agreement.

2. Contractor shall provide an on-going drug-free awareness program to inform all staff about the dangers of drug abuse in the workplace; the Contractor’s enforcement of its Drug-Free Workplace Policy; the availability of drug counseling, rehabilitation and employee assistance programs; and the penalties that may be imposed upon staff and clients or participants for violating the Drug-Free Workplace Policy.

3. Contractor shall require staff members to notify Contractor in writing of his/her arrest or conviction for violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such arrest or conviction. Contractor shall thereafter notify the Department within ten (10) calendar days of Contractor’s receipt of the above-described notice of conviction from a staff member or of the date Contractor otherwise received actual notice of such conviction.

4. Contractor shall take one of the following actions within thirty (30) calendar days of receiving notice of such a conviction with respect to any staff member so convicted: (a) appropriate personnel action, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (b) requiring such convicted staff

member both to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement, or other appropriate agency, and to make a good faith effort to continue to abide by the Drug-Free Workplace Policy.

**Human Services Standard Contract
March 2012**

Appendix D: The Fair Chance Act



Mayor de Blasio Signs "Fair Chance Act"

June 29, 2015

NEW YORK—Mayor de Blasio today signed into law eight pieces of legislation – Intro. 318-A, in relation to prohibiting discrimination based on a person’s arrest record or criminal conviction; Intro. 125-B, in relation to licensing car wash businesses; and Intros 456-A, 723-A, 724-A, 725-A, 726-A, and 729-A, related to the City’s outreach and accessibility efforts for small businesses.

“Today, we ‘ban the box’ in New York City. This bill opens the door to jobs for New Yorkers who have already paid their debt to society, rather than condemning them to a grim economic future. Now, all applicants will get

a fair shot at the opportunities that can lead them on a pathway to success,” said **Mayor de Blasio**. “I want to thank Speaker Mark-Viverito for her leadership, as well as Manhattan Borough President Brewer and Council Member Williams for sponsoring this legislation.”

The first bill, Intro. 318-A, strengthens provisions of the City’s Human Rights Law that prohibit discrimination based on an individual’s record of arrest or criminal conviction. In order to combat employment discrimination, the bill will prohibit employers from inquiring about candidates’ criminal records until after they have made a conditional offer of employment, and require them to provide a written copy of the inquiry, analysis, and supporting documentation to applicants. The bill imposes similar restrictions on licensing agencies, with exemptions for licensing activities in relation to explosives, pistols, handguns, rifles, shotguns, and other deadly weapons. The employment provisions include exemptions for public and private employers who are required by law to conduct criminal background checks, and for several City agencies including the Police Department, Fire Department, Department of Correction, and Department of Probation. This bill was passed by the City Council on June 10.

“From establishing significant protections for consumers and the environment to addressing unlawful discrimination in employment, these laws will make New York City a more just place to live and work,” said **Council Speaker Melissa Mark-Viverito**. “Those who have paid their debt to society deserve a fair chance at employment, and the Fair Chance Act will ensure that the employment process limits unlawful discrimination based on an applicant’s criminal background. By licensing car wash businesses, the City will be able to make sure that all car washes operating in the City are in compliance with all applicable laws and regulations; this law will give DCA another tool to use to help consumers in this city. I thank my Council colleagues and the administration for their continued partnership on issues that make a difference in the lives of New Yorkers.”

“Intro 318 strengthens the New York City Human Rights Law in several important ways, making it the strongest in the nation by ensuring greater access to employment for many of our residents with criminal histories,” said **NYC Human Rights Commissioner Carmelyn P. Malalis**. “Under this legislation, the Human Rights Commission is charged with enforcing its key protections, including, among many others, a prohibition to inquire about a job applicant’s criminal history until after a conditional offer of employment is extended. At that point, employers may only consider criminal history in their hiring decisions through a tailored analysis. The Commission looks forward to working with the Mayor’s Office and the City Council to ensure that barriers to employment for individuals with past arrests or convictions are removed so many of our fellow New Yorkers have access to jobs and can keep rebuilding their lives.”

“I am proud New York City will now join the ranks of more than 17 states and 100 cities to give all applicants a fair chance. This is one of the strongest Ban the Box bills in the nation, and will ensure that all New Yorkers, including those with convictions for previous mistakes, will have an equal opportunity to compete for jobs that they qualify for. Though the legislation does not require employers to hire any particular applicant, it delays the

background check, thus supplementing preexisting law that says employers cannot deny a job because of a record unless there is a direct relationship to the job. Not only does employment strengthen communities and lower recidivism, but employers will have access to a broader range of qualified candidates to consider,” said **Council Member Jumaane Williams**. “I would like to thank Mayor de Blasio, Speaker Mark-Viverito, Manhattan Borough President Gale Brewer, Civil Rights Committee Chair Mealy and the vibrant group of elected officials and advocates who worked tirelessly to pass this landmark legislation.”

“We call this bill the Fair Chance Act because that’s what it will give everyone. We will not let the mere fact that a person was arrested become a black mark that closes every door,” said **Manhattan Borough President Gale A. Brewer**. “When these New Yorkers are free to build a better future, we’ll all be better off. I’m proud to have sponsored this bill, both as a Council Member and now in partnership with Council Member Williams, and am thrilled to see the mayor sign it into law today.”

“I am pleased and excited that Mayor de Blasio will sign Int. 318-A bill into law. This is a very important piece of legislation that will prohibit employers from discriminating against applicants based on their criminal history. The goal of 318 is to make sure that people with pending arrests or prior convictions are given a fair chance to gain employment,” said **Council Member Darlene Mealy**.

The second bill, Intro. 125-B, will amend the administrative code of the City of New York in relation to licensing car washes. The bill will require that car wash businesses obtain a two-year license from the Department of Consumer Affairs. Applicants must certify that they have complied with local environmental laws and regulations, and obtained the required surety bond in order to obtain, renew, or maintain a car wash license. Applicants also must certify that there are no outstanding final judgments or warrants arising out of a violation of this law. This bill was passed by the City Council on June 10. In his remarks, the Mayor thanked the bill’s sponsors, Speaker Mark-Viverito and Council Member Miller.

“By requiring car washes to obtain a license from DCA, the Car Wash Accountability Act enhances protections for both consumers and workers,” said **Department of Consumer Affairs Commissioner Julie Menin**. “DCA will be evaluating an applicant’s ‘fitness’ to operate a business, which will include an assessment of past judicial actions, particularly related to the repeated underpayment or non-payment of wages. This important provision will allow DCA to ensure that car washes are engaged in fair business practices and proper labor practices.”

The final package of bills, Intros. 456-A, 723-A, 724-A, 725-A, 726-A, and 729-A, will educate small businesses on rules and regulations, as well as provide mechanisms for the analysis of fines and feedback from business owners. Intro. 456-A would require the Office of Administrative Trial and Hearings to issue monthly reports on dismissals of civil penalty violations, and to help identify and address issues that may be leading to such dismissals. Intro. 723-A will require the development of protocols for inspector interactions with non-English speakers during agency inspections. Intro. 724-A will create small business advocates within the Department of

Small Business Services that will help business owners obtain appropriate services from the Department and help businesses navigate New York City's regulatory environment. Intro. 725-A requires the Mayor's Office of Operations to do additional outreach to inspected businesses, and to provide and publicize an online customer service survey for business owners to share their experience after being inspected by City agencies. Intro. 726-A will require the Department of Consumer Affairs to organize, conduct, and report on business education events twice a year in each borough in order to educate local business about DCA rules in a given industry. Lastly, Intro. 729-A will require the Department of Consumer Affairs to issue an annual report cataloging and analyzing the violations that it dismissed through its tribunal. These laws were passed by the City Council on June 10. In his remarks, the Mayor thanked the bills' sponsors, Speaker Mark-Viverito, Council Member Rosenthal, Council Member Chin, Council Member Cornegy, Council Member Espinal, and Council Member Gentile.

"Language access protocols will ensure that our inspectors communicate clearly with business owners, regardless of their preferred language. Clear communications, in any language, will help business owners meet inspection standards," said **Mindy Tarlow, Director of the Mayor's Office of Operations**. "In addition, incorporating feedback from businesses into agency inspector customer service training will ensure that the City's inspectors are aware of what is important to the business community as they perform their work."

"As the City's central, independent administrative law court, the mission of the Office of Administrative Trials and Hearings is to provide an accessible, fair and neutral court with clear processes and transparent decision-making so that New Yorkers who have been issued a summons or alleged violation have the opportunity to have their day in court and also feel confident that their defense has been heard and considered fairly. It is my hope that small businesses in New York City know that OATH has made the hearing process as accessible and as convenient as possible by offering One-Click (online) Hearings, Hearings by Phone, and Hearings by Mail, which make it possible for all restaurants and other small business to contest alleged violations at their convenience, and without having to come to a hearing in person. Additionally, OATH is moving in the direction of having all in-person hearings called close to the time that is listed on the summons. Today, OATH welcomes the opportunity to share information with the City Council, the Mayor's Office and the City's enforcement agencies to further strengthen its commitment to being a transparent and independent decision-making body," said **OATH's Chief Administrative Law Judge, Commissioner Fidel F. Del Valle**.

"Restaurateurs in my district report receiving frivolous summons that require them to take off work to go to a hearing, which then results in a dismissal. On the other hand, tenants report that valid Department of Buildings violations get dismissed because landlords can afford lawyers, who find loopholes to get the landlords off the hook without making necessary repairs. This bill will bring to light the reasons violations are dismissed so appropriate steps can be taken for a fair outcome," said **Council Member Helen Rosenthal**.

“Our city has great services for small businesses, but many of our small businesses do not know how to access these programs or whom to turn to when they have questions about the City's rules and regulations. With Intro. 724 to create small business advocates, small businesses will now have a voice and a shepherd within the city government who can help them access and navigate City agencies and speak up for them when there are issues,” said **Council Member Margaret Chin**.

“The six small business bills being signed into law today are designed to ensure that the city government’s interactions with small businesses are helpful and transparent, not stressful and disruptive. This package is further evidence of the determination of this Council and administration to support small business success in every way we can. I congratulate each sponsor and thank Speaker Mark-Viverito and Mayor de Blasio for their leadership, as well,” said **Council Member Robert E. Cornegy, Jr., Chair of the Committee on Small Business**.

“Mom and Pop stores are a vital part of the fabric and culture of our City. We must do what we can to create a business-friendly environment that stimulates growth and creates more job opportunities for all New Yorkers. Intro. 726-A will proactively educate small businesses regarding rules and regulations with which they must comply. With the passage of these pieces of legislation, we are taking a big step forward in the effort to make our city more business friendly. I commend the Speaker for initiating this legislative package and thank Mayor de Blasio for quickly signing these bills into law,” said **Council Member Rafael L. Espinal, Jr., Chair of the Committee on Consumer Affairs**.

“Every year, small businesses across the city are subject to numerous violations that are frequently dismissed by the Department of Consumer Affairs tribunals at a later date. This wastes the time of the tribunal’s judges, rips off the New York City taxpayer and places small business owners in a position to constantly fight violations only to later learn that they are being thrown out,” said **Council Member Vincent Gentile**. “This bill will identify trends in violations that are frequently thrown out and will require the DCA to submit an annual report which will in turn minimize waste in the City’s handling of the Department of Consumer Affairs cases. This law will make the process fairer for City employees, taxpayers, and business owners alike. I look forward to this bill’s implementation and its findings.”

pressoffice@cityhall.nyc.gov

(212) 788-2958

Appendix E: Study Survey

General Agency Information

1. What category best describes your agency? Check all that apply.

- | | |
|--|--|
| <input type="checkbox"/> Advertising | <input type="checkbox"/> Hospitality |
| <input type="checkbox"/> Advocacy <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> Housing |
| <input type="checkbox"/> Agriculture <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> Human Services |
| <input type="checkbox"/> Behavioral Health | <input type="checkbox"/> Legal |
| <input type="checkbox"/> Communications | <input type="checkbox"/> Maintenance |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Mental Health |
| <input type="checkbox"/> Consulting | <input type="checkbox"/> Manufacturing |
| <input type="checkbox"/> Distribution/Shipping | <input type="checkbox"/> Personal Services |
| <input type="checkbox"/> Education | <input type="checkbox"/> Policy |
| <input type="checkbox"/> Employment | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Energy | <input type="checkbox"/> Research |
| <input type="checkbox"/> Environmental | <input type="checkbox"/> Retail |
| <input type="checkbox"/> Food Services | <input type="checkbox"/> Safety and Security |
| <input type="checkbox"/> Finance & Insurance | <input type="checkbox"/> Substance Use |
| <input type="checkbox"/> Government | <input type="checkbox"/> Technology |
| <input type="checkbox"/> Health Services | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Other (briefly describe): _____ | |

2. Is your agency:

- ☐ Private
☐ Public
☐ Nonprofit

If private, is it minority-owned?

- ☐ Yes
☐ No

3. How many employees are there in your agency in total? _____

4. How long has the agency been in operation? _____ year(s)

5. Has your agency ever accepted incentives to hire people with criminal records?

☐ Yes

☐ No

A) If Yes, when? Check all that apply.

☐ Less than a year ago

☐ Between 1-3 years ago

☐ Between 3-5 years ago

☐ More than 5 years ago

B) If Yes, what incentive? Check all that apply.

☐ Work Opportunity Tax Credit (WOTC)

☐ Wage Subsidy Program

☐ Other _____

Executive Order 151 (“Ban the Box”) Related Questions

6. How familiar are you with NYC Executive Order 151?

☐ ☐ Never heard of it

☐ ☐ Vaguely familiar

☐ ☐ Familiar

☐ ☐ Very familiar

7. Was your agency subject to the compliance requirements set forth by Executive Order 151?

☐ ☐ Yes

☐ ☐ No

☐ ☐ Unsure

If no: please skip to question #11

8. Did Executive Order 151 have an impact on the length of your hiring process?

☐ ☐ Shorter process

☐ ☐ Slightly shorter process ☐

☐ ☐ No change in process length

☐ ☐ Slightly longer process

☐ ☐ Longer process

☐ ☐ Other: _____

9. Did Executive Order 151 place any particular burden on the agency in the hiring process?

Check all that apply:

☐ ☐ Additional HR trainings required

☐ ☐ Incurred costs (e.g., materials, additional staff) ☐

☐ ☐ Increased time investment

☐ ☐ None

☐ ☐ Unsure

☐ ☐ Other: _____

10. Since the implementation of Executive Order 151, are you more or less likely to hire people with criminal records?

☐ ☐ More likely

☐ ☐ Less likely

☐ ☐ No difference

☐ ☐ Unsure

Application Policies

11. Do any of your agency's applications **currently** inquire about arrests, violations, convictions, or any other information related to criminal history?

☐ ☐ Yes

☐ ☐ No

If yes: At what stage is the question asked?

☐ ☐ ☐ ☐ Initial Application

☐ ☐ ☐ ☐ Secondary Application

12. In the **past**, have any of your agency's applications inquired about arrests, violations, convictions, or any other criminal history?

☐ ☐ ☐ Yes

☐ ☐ ☐ No

If yes,

A) Did your agency's application change? Check all that apply.

☐ ☐ ☐ ☐ In the last year?

☐ ☐ ☐ ☐ In the last 5 years?

☐ ☐ ☐ ☐ Over 5 years ago?

B) Why did your agency's application change? Check all that apply.

- ☐ ☐ ☐ Change in law
☐ ☐ ☐ Change in corporate structure
☐ ☐ ☐ Change in company policy
☐ ☐ ☐ Other: _____

C) **Currently**, when does your agency ask an applicant about their criminal history?

- ☐ ☐ ☐ ☐ ☐ Before an interview
☐ ☐ ☐ ☐ After first interview
☐ ☐ ☐ ☐ After follow-up interview(s)
☐ ☐ ☐ ☐ After an offer
☐ ☐ ☐ ☐ After a conditional offer
☐ ☐ ☐ ☐ After a criminal background check
☐ ☐ ☐ ☐ Other: _____

Interviews and Follow-up Procedures

13. Does your agency conduct an informal criminal justice-related Internet search of an applicant during the hiring process?

- ☐ ☐ Yes
☐ ☐ No

If yes, has your agency ever disqualified a candidate based on this type of search?

- ☐ ☐ ☐ Yes
☐ ☐ ☐ No

If yes, how often does your agency disqualify a candidate based on this type of search?

- ☐ Very Frequently
☐ ☐ ☐ Frequently ☐
☐ ☐ ☐ Occasionally ☐
☐ ☐ ☐ Rarely
☐ ☐ ☐ Very Rarely

14. What kind of conviction would disqualify an applicant? Check all that apply.

- ☐ ☐ Violent Felony
☐ ☐ Non-Violent Felony ☐
☐ ☐ Violent Misdemeanor
☐ ☐ Non-Violent Misdemeanor ☐
☐ ☐ Violation

☐ ☐ Any Conviction

☐ ☐ Other: _____

15. What is the post-conviction (and crime free) period of time required by the agency to hire an applicant with a criminal record?

☐ ☐ Less than 1 year

☐ ☐ 1 year – 3 years

☐ ☐ 4 years - 6 years

☐ ☐ 7 years – 10 years

☐ ☐ 11 years – 15 years

☐ ☐ 16 years +

☐ ☐ Other: _____

16. When in the hiring process does your agency conduct a criminal background check?

☐ Before an interview

☐ After first interview

☐ After follow-up interview(s)

☐ After an offer

☐ After a conditional offer

☐ Other: _____

17. What are your agency's main concerns about hiring people with criminal records? Check all that apply.

☐ ☐ Trustworthiness

☐ ☐ Violence

☐ ☐ Safety

☐ ☐ Liability

☐ ☐ Theft

☐ ☐ Other: _____

Hiring Data

18. How many employees did your agency hire in 2011: _____ 2012: _____ & 2013: _____?

19. What percent of your agency's employees are:

Black / African American: _____ %

Hispanic / Latino: _____ %

White / Caucasian: _____ %

Asian / Pacific Islander: _____ %
Native American / Alaska Native: _____ %
Other: _____ %

20. To the best of your knowledge, has your agency hired any people with criminal records in
- | 2011? | 2012? | 2013? |
|------------------------------|------------------------------|------------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> Yes | <input type="checkbox"/> Yes |
| <input type="checkbox"/> No | <input type="checkbox"/> No | <input type="checkbox"/> No |

If yes,

A) How many people with criminal records were hired in 2011: _____
2012: _____ & 2013: _____?

B) Of the people with a criminal record hired during the years 2011, 2012
and 2013, how many were:

Black / African American: _____
Hispanic / Latino: _____
White / Caucasian: _____
Asian / Pacific Islander: _____
Native American / Alaska Native: _____
Other: _____
Do not collect this information: ☐

21. Of the people with criminal records currently employed by your agency, what percent
have:

Violent Felony convictions?	_____ %
Non-violent Felony convictions?	_____ %
Violent misdemeanor convictions?	_____ %
Non-violent misdemeanor convictions?	_____ %
Violations?	_____ %
Do not collect this information:	_____ %

Demographic Information

22. What is your age?

☐ 20 - 35

- ☐ 36 - 50
- ☐ 51 - 65
- ☐ Over 65

23. What is your preferred gender identity? _____

24. What is your racial or ethnic background?

- ☐ Black/ African American
- ☐ White/ Caucasian
- ☐ Hispanic/Latino
- ☐ Asian/Pacific Islander
- ☐ Native American/ Alaska Native
- ☐ Other (please specify) _____

25. What is the highest level of education that you have completed?

- ☐ Eighth grade or less
- ☐ Some high school
- ☐ High school graduate
- ☐ Trade or technical school beyond high school
- ☐ Some college
- ☐ Associate degree
- ☐ College graduate
- ☐ Masters Degree
- ☐ Doctorate Degree
- ☐ Professional school graduate

26. Are you involved in making hiring decisions?

- ☐ Yes
- ☐ No

Appendix F: Ban the Box Interview Questions

Interviewer: Ronald F. Day

Interview #: _____

Phone: Yes _____ No _____

In person: Yes _____ No _____

Date: _____

1. What role do you play in the hiring process?
2. Please describe your familiarity with NYC's first Ban the Box policy, Executive Order 151, which was signed by Mayor Michael Bloomberg in 2011?
3. What guidance, if any, did your agency receive about Executive Order 151?
4. Please describe your familiarity with the Fair Chance Act, NYC's expansion of Ban the Box, which was signed into law by Mayor Bill de Blasio in 2015?
5. What guidance, if any, did your agency receive regarding the Fair Chance Act?
6. How has your human resources department revised its hiring practices, if at all, to comply with Ban the Box, including job applications, interviews, call backs, and offers of employment?
7. How does your agency handle the intentional or unintentional disclosure of a criminal record during the interview process?
8. Describe what burden, if any, Ban the Box imposed on your agency's hiring practices?
9. If your agency conducts criminal background checks, please describe the criminal background check process.
10. What factors, if any, would disqualify applicants with criminal records from employment at your agency?
11. What additional steps can policymakers take to increase the chances that individuals with criminal records secure employment?

12. What additional steps can employers take to increase the chances that individuals with criminal records secure employment?
13. What about applicants with criminal records, what can they do to increase their chances of securing employment?
14. What concerns, if any, does your agency have about negligent hiring lawsuits?
15. What support, if any, does your agency need to reduce this liability?
16. What concerns, if any, does your agency have about discrimination lawsuits being filed by people with criminal records based on denial of employment?
17. Please elaborate on any protocols that your agency has employed to track the hiring of people with criminal records?
18. What are your thoughts about the use of Ban the Box as a tool to reduce discrimination for people with criminal records?

References

- ACLU, (2017). Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company. American Civil Liberties Union Foundation.
- Agan, A. (2017). Increasing Employment of People with Records. *Criminology & Public Policy*, 16, 1, (177-185).
- Agan, A. and Starr, S. (2016). Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment. *U of Michigan Law and Econ Research Paper No. 16-012*.
- Agnew, R. (2006). *Pressured into Crime: An Overview of General Strain Theory*. Los Angeles: Roxbury Publishing.
- American Bar Association (2014). American Bar Association launches online database of collateral consequences for each U.S. jurisdiction.
- Aos, S., Miller, M., and Drake, E. (2006). Evidence-Based Adult Corrections Programs: What Works and What Does Not. *Washington State Institute for Public Policy*.
- Apel, R., and Sweeten, G. (2010). The impact of incarceration on employment during the transition to adulthood. *Social Problems*, 57(3), 448-479.
- Atkinson, D.V., and Lockwood, K. (2014) The Benefits of Ban the Box: A Case Study of Durham, NC. Southern Coalition for Social Justice.
http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf
- Attride-Stirling, J. (2001). Thematic Networks: An Analytic Tool for Qualitative Research. *Qualitative Research*, 1(3), 385–405.
- Aukerman, M.J. (2005). The Somewhat Suspect Class: Towards a Constitutional Framework for Evaluating Occupational Restrictions Facing People with Criminal Records. *Journal of*

- Law in Society*, 7(1): 1-65.
- Avery B., and Hernandez P. (2018). Ban the Box: U.S. Cities, Counties, and States Adopt Fair Chance Hiring. National Employment Law Project.
- Berg, M.T., and Huebner, B.M. (2011). Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism. *Justice Quarterly*, 28:2, 382-410.
- Berracasa, C., Estevez, A., Nugent, C., Roesing, K., and Wei, J. (2016). The Impact of ‘Ban the Box’ in the District of Columbia. Washington, DC: Office of the District of Columbia Auditor.
- Blumstein, A., and Nakamura, K. (2009). Redemption in the presence of widespread background checks. *Criminology*, 47(2), 327-359.
- Bogardus, L.S. (2015). Impact of “Ban the Box” on Hiring Processes. Institute on Family and Neighborhood Life, Clemson University.
- Boyd, G.M. (1986). Reagans Advocate ‘Crusade’ on Drugs. *New York Times*: Sept. 15.
- Braun, V. and Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3 (2). pp. 77-101. ISSN 1478-0887.
- Bushway, S.D., and Apel, R. (2012). A Signaling Perspective on Employment-Based Reentry Programming Training Completion as a Desistance Signal.
- Butts v. Nichols (1974) Ban on Felons in Civil Service is Arbitrary: *Prison Law Reporter*. Volume 3, Issue 9. 3 *Prison L. Rep.* 245 (1974) Issue 9
- Carey, C.A. 2004. No Second Chance: People with Criminal Records Denied Access to Public Housing. *University of Toledo Law Review* 36: 545.
- Casselmann, B. (2018). As Labor Pool Shrinks, Prison Time Is Less of a Hiring Hurdle. *The New York Times*.

- Chalfin, A., and Raphael, S. (2011). "Work and Crime" in Michael Tonry (ed.), Oxford Handbook on Crime and Criminal Justice, Oxford University Press.
- Connerley, M.L., Arvey, R.D., and Bernardy, C.J. (2001). Criminal Background Checks for Prospective and Current Employees: Current Practices among Municipal Agencies. *Public Personnel Management* Volume 30 Issue 2 pages 173–83.
- Cooper, A.D., Durose, M.R., and Snyder, H.N. (2014). Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005-2010.
- Craig, S.R. (1987). Negligent Hiring: Guilt by Association. *Personnel Administrator* October: 32-34.
- Crayton, A., Neusteter, SR. (2008). The Current State of Correctional Education. Prisoner Reentry Institute. John Jay College of Criminal Justice.
- D'Alessio, S. J., Stolzenberg, L., and Flexon, JL. (2014). The Effect of Hawaii's Ban the Box Law on Repeat Offending. Southern Criminal Justice Association.
- Damaska, M. R. (1968). Adverse Legal Consequences of Conviction and their Removal: A Comparative Study. *Journal of Criminal Law, Criminology, and Police Science*, 59, 347–360.
- Daniel, A. (2007). Care of the Mentally Ill in Prison: Challenges and Solutions. *American Academy of Psychiatry and the Law*. 35:4:406-410. (December 2007).
- Day, R. (2015). Crime and Incarceration: A Future Fraught with Uncertainty. *Impact: Collected Essays on the Threat of Income Inequality*: pp. 65-69.
- Decker, S.H., Spohn, C., Ortiz, N.R., and Hedberg, E. (2014). Criminal Stigma, Race, Gender and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment. U.S. Department of Justice.

- DeWitt, S.E., Bushway, S.D., Siwach, G. and Kurlychek, M.C. (2017). Redeemed Compared to Whom? Comparing the Distributional Properties of Arrest Risk Across Populations of Provisional Employees With and Without a Criminal Record. *Criminology and Public Policy*, 16(3), 963-997
- Doleac, J., and Hansen, B. (2016). Does 'Ban the Box' Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes when Criminal Histories are Hidden. Cambridge, MA: National Bureau of Economic Research.
- Fields, G. and Emshwiller, J.R. (2014). As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime, Justice Not Jails.
- Finlay, K. (2007) *Effects of Employer Access to Criminal History Data on the Labor Market Outcomes of Ex-Offenders and Non-Offenders*. Unpublished manuscript.
- Flake, D.F. (2015) *When Any Sentence is a Life Sentence: Employment Discrimination Against Ex-Offenders*, 93 Wash. U.L. Rev. 45.
- Frank, J.W., Wang, E.A., Nunez-Smith, M., Lee, H., and Comfort, M. (2014). Discrimination based on criminal record and healthcare utilization among men recently released from prison: a descriptive study. National Institutes of Health.
- Freeman, R.B. (1992). Crime and the employment of disadvantaged youths. In G. Peterson and W. Vroman (Eds.), *Urban Labor Markets and Job Opportunities*. Washington, DC: Urban Institute Press.
- Friedman, M. (2015). Just Facts: As Many Americans Have Criminal Records As College Diplomas
- Gauvey, S., and Webb, T. (2013). A New Look at Job Applicants with Criminal Records. Society for Human Resources Management.

- Gramlich, J. (2018). 5 facts about crime in the U.S. Pew Research Center.
- Grogger, J. (1995). The Effects of Arrests on the Employment and Earnings of Young Men. *Quarterly Journal of Economics*, 110, 51–71.
- Henry, J. and Jacobs, J. (2007). Ban the Box to Promote Ex-Offender Employment. *Criminology & Public Policy* Volume 6 Issue 4 pages 755–761.
- Hess, A.R. (2010). Herring v. United States: Are Errors in Government Databases Preventing Defendants from Receiving Fair Trials. *Journal of High Technology Law*. Vol. XI: No. 1: 129-159.
- Holloway, I., Todres, L. (2003). The status of method: Flexibility, consistency and coherence. *Qualitative Research*, 3, 345–357.
- Holzer, H.J. (1996). *What Employers Want: Job Prospects for Less-Educated Workers*. New York: Russell Sage Foundation.
- Holzer, H.J. (1999). “What employers want: Job prospects for less educated workers.” New York: Russell Sage Foundation.
- Holzer H.J., Raphael S and Stoll MA. (2003). Employment barriers facing ex-offenders. Urban Institute Reentry Roundtable, Employment Dimensions of Reentry: Understanding the Nexus between Prisoner Reentry and Work. *New York University Law School*, 19–20 May 2003.
- Holzer H.J., Raphael, S. and Stoll M.A. (2006) Perceived criminality, criminal background checks, and the racial hiring practices of employers. *Journal of Law and Economics* 49(2): 451–480.
- James, D. and Glaze, L. (2006). Mental Health Problems of Jail and Prison Inmates. Bureau of Justice Statistics. Special Report.

- Kazemian, L., and Farrington, D. P. (2006). Exploring Residual Career Length and Residual Number of Offenses for Two Generations of Repeat Offenders. *Journal of Research in Crime and Delinquency*, Volume 43 Issue 1, pages 89–113.
- King, N. (2004). Using templates in the thematic analysis of text. In Cassell, C., Symon, G. (Eds.), *Essential guide to qualitative methods in organizational research* (pp. 257–270). London, UK: Sage.
- Kling, J.R. (2006). Incarceration length, employment and earnings. *American Economic Review*, 96(3), 863-876.
- Kurlychek, M.C., Brame, and Bushway, S. (2006). Scarlet Letters and Recidivism: Does An Old Criminal Record Predict Future Offending? *Criminology & Public Policy* Volume 5 Issue 3 pages 483–504.
- Kurlychek, M.C., Brame, and Bushway, S. (2007). Ending Risk? Old Criminal Records and Predictions of Future Criminal Involvement. *Crime and Delinquency*. Vol. 53, No. 1: 64-83.
- Lalonde, R.J., and Cho, R.M. (2008). The impact of incarceration in state prison on the employment prospects of women. *Journal of Quantitative Criminology*, 24, 243-265.
- La Pierre, C. (1999). Mass Media in the White Man's World. *Poverty and Prejudice: Media and Race*.
- Lattimore, P.K., and Baker, J.R. (1992). The impact of recidivism and capacity on prison population. *Journal of Quantitative Criminology* 8:189–215.
- Laub, J.H., and Sampson, R.J. (2001). Understanding Desistance from Crime. *University of Chicago*.

- Laub, J.H., and Sampson, R.J. (2003). “Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70.” Boston: Harvard University Press.
- Legal Action Center (2006). New York State: Occupational Licensing Survey.
- Legal Action Center (2013). The Problem of Rap Sheet Errors. An Analysis by the Legal Action Center.
- Leininger, M. (1992). Psychiatric Nursing and Transculturalism: Quo Vadis? *Perspectives in Psychiatric Care*. Volume 28 Issue 1 pages 3-4.
- Leininger, M. (1992). Current issues, problems, and trends to advance qualitative paradigmatic research methods for the future. *Qualitative Health Research*, 2, 392–415.
- Lillis, J., (1994). Prison Education Programs Reduced. *Corrections Compendium* Volume:19 Issue: 3, Pages: 1-11.
- Loeffler, C.E. (2012). “Does Imprisonment Alter the Life-Course? Evidence on Crime and Employment from a Natural Experiment.” Cambridge, MA: Harvard University.
- Lundquist, J., Pager, D., and Strader, E. (2016). Does a Criminal Past Predict Worker Performance? Evidence from America’s Largest Employer. *American Sociological Review*.
- Merton, R. (1936). The Unanticipated Consequences of Purposive Social Action. *American Sociological Review*. Volume 1 Number 6 pp. 894-904.
- Minor, D., Persico, N., and Weiss, D. (2017). Criminal Background and Job Performance. Available at SSRN: <https://ssrn.com/abstract=2851951>.
- Moss, P. and Tilly, C. (2001). *Stories Employers Tell: Race, Skill, and Hiring in America*. New York: Russell Sage Foundation.
- National Research Council. (2014). The Growth of Incarceration in the United States.

- Exploring Causes and Consequences. National Academy of Sciences.
- National Employment Law Project. (2012). States Adopt Fair Hiring Standards: Reducing Barriers to Employment of People with Criminal Records. Briefing Paper. New York: National Employment Law Project.
- National Employment Law Project. (2014). Statewide Ban the Box: Reducing Unfair Barriers to Employment of People with Criminal Record. Briefing Paper. New York: National Employment Law Project.
- National Employment Law Project. (2017). “Ban the Box” is a Fair Chance for Workers with Records. Fact Sheet, August 2017.
- Nelson, M., Deess, P., and Allen, C. (1999). The First Month Out: Post-Incarceration Experiences in New York City. New York: Vera Institute of Justice.
- Nowell, L. S., Norris, J. M., White, D. E., & Moules, N. J. (2017). Thematic Analysis: Striving to Meet the Trustworthiness Criteria. *International Journal of Qualitative Methods*. <https://doi.org/10.1177/1609406917733847>.
- Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology*, 108, 937-975.
- Pager, D., and Quillian, L. (2005). Walking the Talk? What Employers Say versus What They Do. *American Sociological Review* Volume 70 Issue 3 pages 355–80.
- Pager, D. (2007). *Marked, Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago, IL: University of Chicago Press.
- Pager, D., Western, B., and Sugie, N. (2009). Sequencing disadvantage: Barriers to employment facing young black and white men with criminal records. *The ANNALS of the American Academy of Social and Political Science*, 623(1), 195-213.

- Pager, D., Western, B., and Bonikowski, B. (2009). "Discrimination in a Low Wage Labor Market: A Field Experiment." *American Sociological Review* 74: 777-799.
- Paulk, Pamela, D. (2015). The John Hopkins Hospital Success in Hiring Ex-Offenders. John Hopkins Medicine.
- Petersilia, J. (1999). Parole and Prisoner Reentry in the United States. *Crime and Justice*. Vol. 26, Prisons, pp. 479-529.
- Petersilia, J. (2003). "When Prisoners Come Home: Parole and Prisoner Reentry." New York: Oxford University Press.
- Petersilia, J. (2011). Parole and Prisoner Reentry. "The Oxford Handbook of Crime and Criminal Justice." ed. Michael Tonry. Oxford University Press.
- Pew Center on the States. (2008). *One in 31: Behind Bars in America 2008*. Washington, DC: Pew Charitable Trusts.
- Raphael, S. (2007). Boosting the earnings and employment of low-skilled workers in the United States: Making work pay and reducing barriers to employment and social mobility. In T.J. Bartik and S.M. Houseman (Eds.), *A Future of Good Jobs? America's Challenge in the Global Economy* (pp. 245-305). Kalamazoo, MI: W.E. Upjohn Institute.
- Raphael, S. (2014). *The New Scarlet Letter: Negotiating the U.S. Labor Market with a Criminal Record*. Upjohn Institute for Employment Research.
- Raskin, H.W. (1987). Longitudinal predictors of serious substance use and delinquency. *Criminology*, 25:715-740.
- Redcross, C., Millenky, M., Rudd, T., and Levshin, V. (2012). *More Than a Job: Final Results from the Evaluation of the Center for Employment Opportunities (CEO) Transitional Jobs Program*. OPRE Report 2011-18. Washington, DC: Office of Planning,

- Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.
- Rodriguez, M.N., and Avery, B. (2016). Ban the Box: US Cities, Counties, and States Adopt Fair Hiring Policies. Washington, DC: National Employment Law Project.
- Rodriguez, M.N., and Emsellem, M. (2016). 65 Million “Need Not Apply”: The Case for Reforming Criminal Background Checks for Employment. National Employment Law Project.
- Rodriguez, M.N., and Mehta, N. (2015). A Key Fair-Chance Hiring Best Practice: Delaying Conviction Inquiries Until the Conditional Job Offer. National Employment Law Project. Toolkit, September 2015.
- Sampson, R.J., and Laub, J.H. (1990). Crime and Deviance Over the Life Course: The Salience of Adult Social Bonds. *American Sociological Review* 55:609-627.
- Sampson, R.J., and Laub, J.H. (1993). “Crime in the Making: Pathways and Turning Points Through Life.” Harvard University Press.
- Sampson, R.J., and Laub, J.H. (1997). “A Life Course Theory of Cumulative Disadvantage and the Stability of Delinquency.” *Developmental Theories of Crime and Delinquency*, ed. Terrence Thornberry. New Brunswick, NJ: Transaction Publishers.
- Schmidt, P. and Witte, A.D. (1988). Predicting Recidivism Using Survival Models. New York: Springer-Verlag.
- Schmitt, J., & Warner, K. (2010). Ex-Offenders and the Labor Market. Washington: Center for Economic and Policy Research.
- Sergejev, A., (2017). Op-ed: A skilled Cal Fire firefighter as an inmate, she’s barred from career now that she’s free,” Mercury News (November 21, 2017).

- Shoag, D., and Veuger, S. (2016a). Banning the Box: The Labor Market Consequences of Bans on Criminal Record Screening in Employment Application. Working Paper.
- . (2016b). No Woman No Crime: Ban the Box, Employment, and Upskilling. American Enterprise Institute working paper. Washington, DC: American Enterprise Institute.
- Skardhamar, T., and Savolainen, J.. 2014. Changes in criminal offending around the time of job entry: A study of employment and desistance. *Criminology Volume 52 Issue 2* pp 263-291.
- Smith, J., (2014). Banning the Box but Keeping the Discrimination?: Disparate Impact and Employers' Overreliance on Criminal Background Checks. *Harvard Civil Rights-Civil Liberties Law Review*. Vol. 49.
- Society for Human Resource Management. (2010). Background Checking: Conducting Criminal Background Checks SHRM Poll. Alexandria: Society for Human Resource Management.
- Society for Human Resource Management. (2018). Workers with Criminal Records: A Survey by the Society for Human Resource Management and the Charles Koch Institute.
- Solinas-Saunders M., and Stacer M.J. (2015). An Analysis of "Ban the Box" Policies through the Prism of Merton's Theory of Unintended Consequences of Purposive Social Action. *Critical Sociology*: 1-12.
- Solomon, A.L. (2012) In search of a job: Criminal records as barriers to employment. *NIJ Journal* 270: 42–51.
- Stevenson, B. (2014). Just Mercy. Spiegel & Grau, an imprint of Random House, a division of Penguin Random House LLC.
- Stoll, M.A., Raphael, S, and Holzer H.J. (2004). Black Job Applicant's and the Hiring Officer's

- Race. *ILR Review*. Cornell University. 57(2), 267-287.
- Swanson SJ, Langfitt-Reese S., and Bond G.R. (2012) Employer attitudes about criminal justice history. *Psychiatric Rehabilitation Journal* 35: 385–390.
- Thorne, S. (2000). Data analysis in qualitative research. *Evidence Based Nursing*, 3, 68–70.
- Tonry, M. (2004). *Thinking about Crime: Sense and Sensibility in American Penal Culture*. New York: Oxford University Press.
- Travis, J., Solomon, A.L., and Waul, M. (2001). *From Prison to Home – Dimensions and Consequences of Prisoner Reentry*. The Urban Institute.
- Travis, J. (2005). “But They All Come Back: Facing the Challenges of Prisoner Reentry.” The Urban Institute Press.
- Travis, J. (2002). *Invisible Punishment: An Instrument of Social Inclusion*. Washington, DC: Urban Institute.
- Tripodi, S. J., Kim, J. S., & Bender, K. (2010). Is employment associated with reduced recidivism?: The complex relationship between employment and crime. *International Journal of Offender Therapy and Comparative Criminology*, 54(5), 706-720.
- Turney, K., Lee, H., and Comfort, M. (2013). Discrimination and psychological distress among recently released male prisoners. *Am J Mens Health*. Nov;7(6):482-93.
- Uggen, C. (2000). “Working as a Turning Point in the Life Course of Criminal: A Duration Model of Age, Employment, and Recidivism.” *American Sociological Review* 67:529-46.
- Uggen, C., Vuolo, M., Lageson, S., Ruhland, E., and Whitman, H.K. (2014). The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment. *Criminology*, Vol. 52: No. 4: 627-654.
- U.S. Department of Justice. (1983). *Use and Management of Criminal History Record Information: A Comprehensive Report*. Bureau of Justice Statistics.

- U.S. Department of Justice. (2015). Correctional Populations in the United States, 2014. Bureau of Justice Statistics.
- U.S. Department of Justice, Bureau of Justice Statistics. 2014. 3 in 4 Former Prisoners in 30 States Arrested Within Five Years of Release. Washington, D.C.: United States Department of Justice. <http://www.bjs.gov/content/pub/press/rprts05p0510pr.cfm>
- U.S. Department of Justice, Bureau of Justice Statistics. (2016), Prisoners in 2015, at 11, <http://bit.ly/2xON9su>.
- U.S. Equal Employment Opportunities Commission. (2012). Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964. http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.
- Visher, C.A., Debus-Sherrill, S.A., and Yahner, J. (2008). Employment after prison: A longitudinal study of releases in three states. *Justice Policy Center*, October 2008.
- Visher, C.A. and Travis, J. (2012). The Characteristic of Prisoners Returning Home and Effective Reentry Programs and Policies. *The Oxford Handbook of Sentencing and Corrections*. Edited by Joan Petersilia Kevin R. Reitz. April 2012.
- Vuolo, M., Lageson, S., and Uggen, C. (2017). Criminal Record Questions in the Era of “Ban the Box”. *Criminology and Public Policy*, 16(1), 139-165. <https://doi.org/10.1111/1745-9133.12250>.
- Wagner P. and Sawyer W. (2018). Mass Incarceration: The Whole Pie 2018. Prison Policy Initiative.
- Waldfogel, J. (1994). The effect of criminal conviction on income and the trust “reposed in the workmen.” *The Journal of Human Resources*, 29(1), 62-81.
- Western, B. (2002). The impact of incarceration on wage mobility and inequality.

American Sociological Review, 67(4), 477-498.

Western, B. (2006). "Punishment and Inequality in America." New York: Russell Sage Foundation.

Court Cases Cited

Butts v. Nichols, 381 F. Supp. 573 (S.D. Iowa 1974)

Crook v. El Paso Independent School District, No. 07-50968, 5th Cir. 2008

Darks v. City of Cincinnati, 745 F. 2d 1040 (1984)

De Veau v. Braisted, 363 U.S. 144 (1960)

Flanagan v. Petersburg, 150 S.E. 382 (W. Va. 1929)

Green v. Missouri Pac. R.R. Co., 523 F. 2d 1290, 8th Cir. (1975)

Griggs v. Duke Power Co., 401 U.S. 424 (1971)

Hawker v. New York, 170 U.S. 189 (1898)

Hill v. City of Chester (1994)

Hilliard v. Ferguson, 30 F.3d 649, 5th Cir. (1994)

Jane Doe v. United States of America, 14-MC-1412 (2015)

Kindem v. City of Alameda, 502 F. Supp. 1108 (1980)

Lopez v. McMahon, 253 Cal. Reporter 321, Ct. App. (1998)

Nixon V. Department of Public Welfare: Supreme Court of Pennsylvania, Middle District
576 Pa. 385 (Pa. 2003)

Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957)

Statutes Cited

City of Alameda, Section 22-4 of the City Charter, 1937

Cincinnati Municipal Code § 829-11

Older Adults Protective Services Act, 35 P.S. §§ 10225.501-10225.508

NYS Correctional Law Article 23A, §750-55

Public Health Law, chapter 398, sec. 153

Texas Civil Practice and Remedies Code, §142.002