

**RECOMMENDATION TO THE COMMISSION**  
**FROM THE EMPLOYMENT BARRIERS SUBGROUP OF THE BARRIERS WORKGROUP**

**Enact “Ban the Box” legislation prohibiting inquiries from potential employers about arrests and convictions until a point during or following an employment interview. (Appendix A)**

**SUMMARY**

The Employment Barriers subgroup of the Barriers Workgroup proposes new legislation to prohibit employers from asking about arrests or criminal convictions on employment applications, and from conducting criminal background checks or other inquiries relating to criminal history until an applicant has had the opportunity to meet in person with the employer. This proposal will ensure that persons with criminal convictions are not screened out of potential employment solely because of criminal history.

**CURRENT LAW AND PROBLEM POSED**

Alaska currently has no law relating to the use of an applicant’s criminal history in the general employment process. Research has demonstrated a dire negative effect of criminal history on employment. Having a criminal conviction reduces the chance of a callback or job offer by nearly 50%, despite an applicant’s qualifications. Research indicates that the effect is greatly magnified for minority applicants, though the effect on Alaska Native populations has not been studied.

**SOLUTION**

Research indicates that personal contact with an employer, such as an interview, reduces the negative effect of a criminal conviction. Ban the Box legislation responds to this effect by disallowing screening out applicants solely on the basis of criminal convictions until after an employer has reviewed an applicant’s qualifications and had an opportunity for personal contact with the applicant.

The authors of the “2015 Recidivism Reduction Plan” presented to the Alaska Legislature recommended that the state enact Ban the Box legislation:

This fair employment policy typically removes the question on a job application about an individual’s conviction history and delays the background check until later in the hiring process. The purpose of this reform is to provide applicants a better chance of being evaluated on their qualifications. (p.43)

At the time of this writing, fourteen states and one hundred local governments have enacted some form of Ban the Box or other “fair chance” provisions to lower and lessen barriers to employment created by employers’ use of criminal history. In addition, two of the largest retail employers in the country, Walmart and Target, have voluntarily eliminated questions about criminal history on their employment applications.

Ban the Box legislation works and does not compromise public safety. In Durham, North Carolina, just 2% of city and county hires had criminal convictions prior to enactment of Ban the Box in 2011. After implementation, that figure rose to 4.5% in 2012, 9.4% in 2013, and 15.5% in the first quarter of 2014. There has been no increase in workplace crime in either the city or the county government, and no employee has been fired because of illegal activity. Moreover, Ban the Box has been shown to reduce recidivism. A study of the outcomes of Hawaii’s Ban the Box legislation, enacted in 1998, indicated that after implementation, defendants coming into the system had a 57% lower likelihood of having a prior conviction, meaning fewer defendants were recidivists.

## **PROJECTED IMPACTS**

In Alaska, over 250,000 people have received criminal convictions since 1980. Many likely encounter great difficulty in obtaining employment. “Ban the Box” legislation will improve their opportunities for employment. Projected impacts of increased employment opportunities for persons with prior criminal convictions include:

- Increased economic contributions to families, promoting family stability
- Increased economic contribution to local and national economies
- Reduced reliance on public assistance
- Reduced recidivism and associated costs to victims and criminal justice system
- A broader qualified applicant pool for potential employers

Proposed Ban the Box legislation is set forth in Appendix A.

## **Appendix A**

### **A Bill**

#### **For An Act Entitled**

“An Act relating to reducing recidivism, improving public safety, and increasing employment options for individuals with criminal convictions or arrests in their background.”

#### **Section 1. Purpose**

The legislature finds that recidivism is reduced, communities are made safer, and families are more secure when persons with arrests or criminal convictions in their backgrounds are able to find employment and earn a living wage. Therefore, it is in the public interest to remove unnecessary barriers to employment and facilitate integration of these persons into the workforce.

#### **Section 2. Hiring Practices**

(A) In evaluating an applicant for employment, an employer may not knowingly or intentionally:

(1) make any inquiry regarding any arrest or criminal conviction prior to

[OPTION 1. the conclusion of or following an employment interview]

[OPTION 2. the conclusion of all initial applicant interviews]

[OPTION 3. making an offer or conditional offer of employment]

(2) take any adverse action against the applicant on the basis of any arrest or criminal conviction prior to

[OPTION 1. the conclusion of or following an employment interview]

[OPTION 2. the conclusion of all initial applicant interviews]

[OPTION 3. making an offer or conditional offer of employment]

(B) In evaluating an applicant for employment, an employer may only make inquiry into an applicant’s arrest or criminal background following the extension of an offer or conditional offer of employment.

#### **Section 3. Non-applicability to Law Enforcement Agencies**

This Act is not applicable to any law enforcement agency; however, nothing in this Act shall be construed to preclude a law enforcement agency from adopting the policy and practices of the Act.

## Section 4. Definitions

As used in this Act:

- (1) *Applicant* means any person considered or who requests to be considered for employment by an employer.
- (2) *Arrest* means criminal accusations, being questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, or served a summons by any law enforcement or military authority.
- (3) *Conditional Offer* means an offer of employment that is dependent upon the completion of certain conditions.
- (4) *Conviction* means any sentence arising from a verdict or plea of guilty or *nolo contendere*, including a sentence of incarceration, a suspended sentence, a sentence of probation or a sentence of unconditional discharge.
- (5) *Employer* means any person, and any agent of such person, corporation, nonprofit organization, government entity, or any other business, nonprofit, or public entity having one or more employees.
- (6) *Employment* means any occupation, vocation, job, work for pay or employment, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or any form of vocational or education training with or without pay.
- (7) *Inquiry* means any direct or indirect conduct intended to gather information, using any mode of communication or investigation.
- (8) *Interview* means a face to face, electronically conducted, or telephonic meeting between an applicant and representatives of an employer with authority for evaluating the suitability of applicants for the available position or positions.
- (9) *Law enforcement agency* means any federal, state, or local government agency responsible for enforcing the laws of particular jurisdiction.
- (10) *Offer of employment* means an expression of readiness to employ an applicant.

## Section 5. Short Title

This Act shall be known as the Alaska Fair Chance Act.