



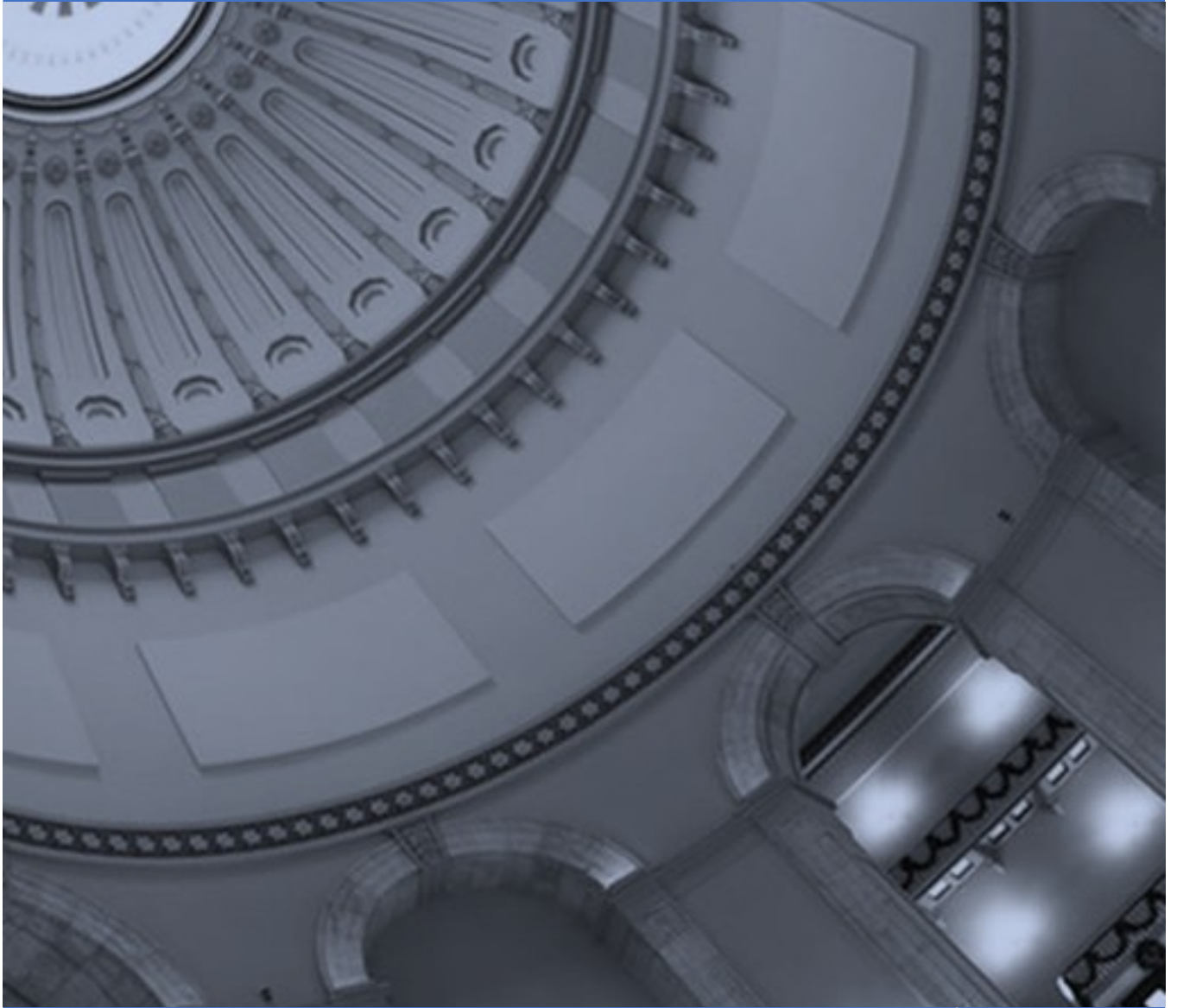
Limits on Use of Criminal Records in Employment and “Ban the Box”

Anne S. Teigen, Esq.
Associate Director, Criminal and Civil Justice

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Who is NCSL?

- Non-profit, bi-partisan organization.
- Members are all 7,383 legislators and 30,000 legislative staff in 50 states, D.C. and U.S. territories.
- Offices in Denver and D.C.
- Among our goals- to provide legislatures with information and research about policy issues, both state and federal.
- NCSL tracks state policy develops in all public policy areas.



What are “Ban the Box” laws?

- “Ban the Box” policies arose from a belief that employers should consider a job candidate’s qualifications first —without the stigma of a conviction or arrest record. Many Ban the Box policies provide applicants a fair chance at employment by removing conviction and arrest history questions from job applications and delaying background checks until later in the hiring process.



<https://documents.ncsl.org/wwwncsl/Criminal-Justice/Ban-the-Box-Policy-Snapshot.pdf>



Federal Legislation

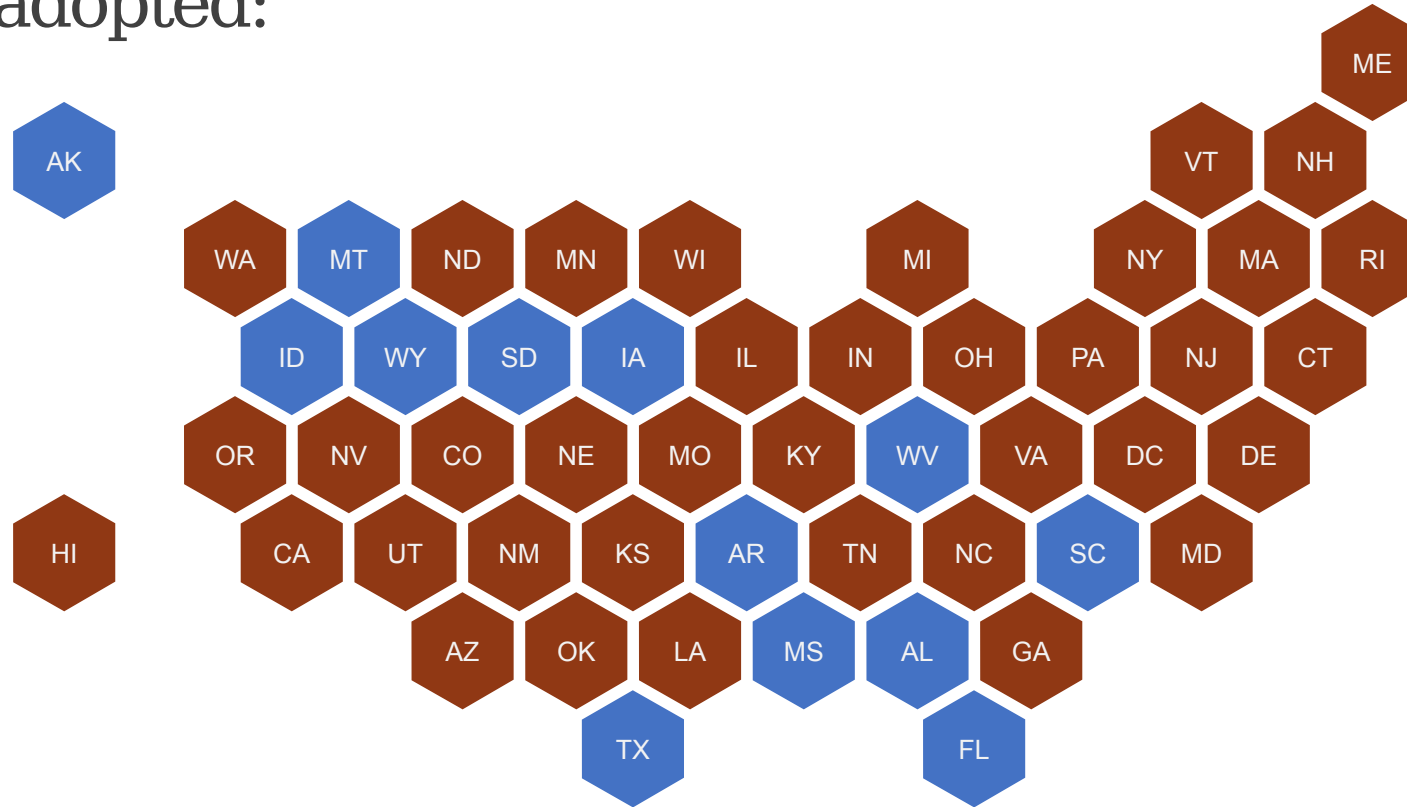
Fair Chance to Compete for Jobs Act of 2019 (FCA), also known as the federal “Ban the Box” law, prohibits Federal employers, including employing offices in the legislative branch, from requesting that applicants for most jobs disclose information on arrest and conviction history before a conditional job offer is extended to the applicant.

<https://www.ocwr.gov/employee-rights-legislative-branch/ban-the-box/>



Which states have “Ban the Box” for the public sector?

37 states have adopted:

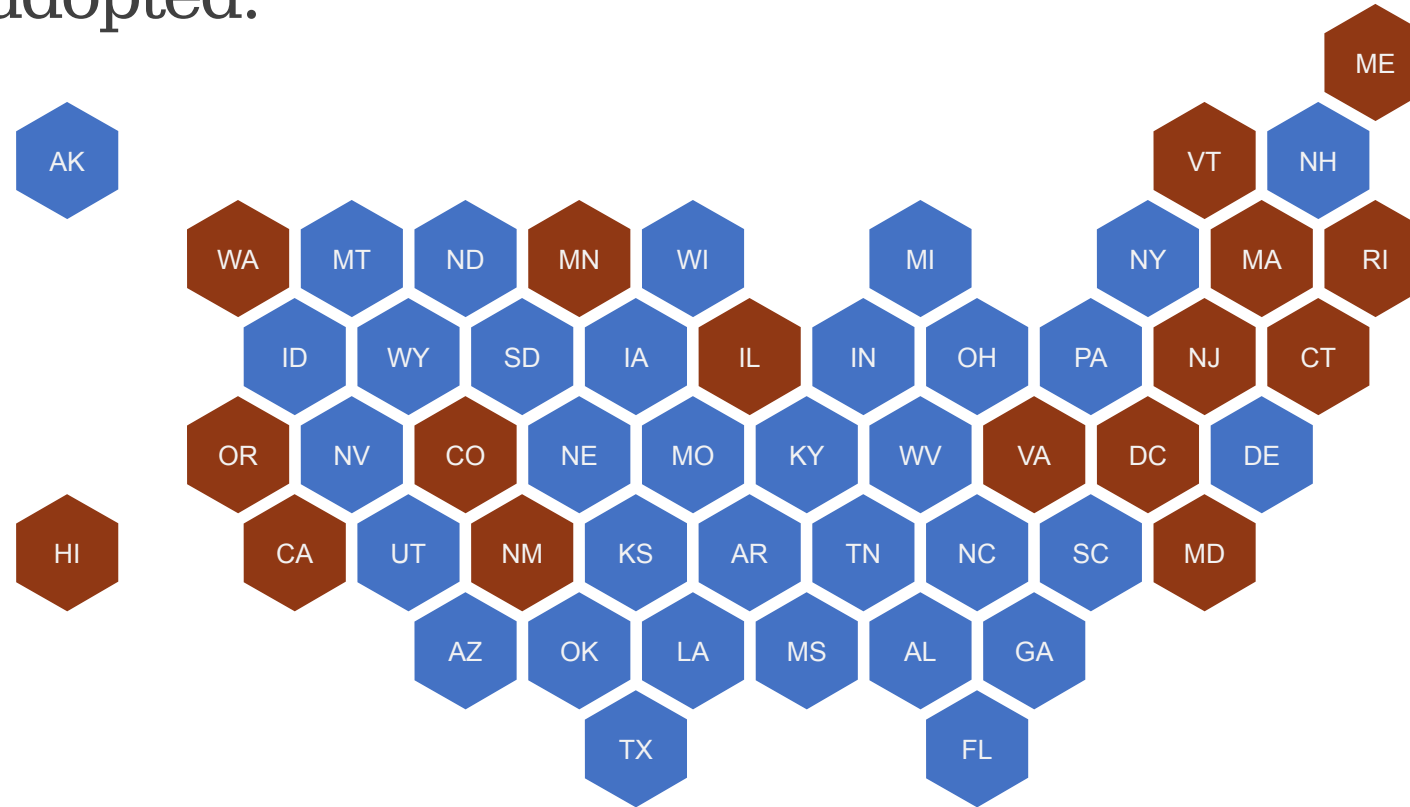


■ Jurisdictions with “Ban the Box” legislation or state policy (public)

Which states have “Ban the Box” for the private sector?



15 states have adopted:



■ Jurisdictions with
“Ban the Box”
legislation (private)

Hawaii

- First state to Ban the Box in 1998.
- In September 2020, Hawaii amended its “Ban the Box” law to limit the convictions that can be used under the rational relationship portion of the law.
 - Hawaii’s law permits employers to inquire into conviction records for prospective employees only after a conditional offer of employment.
 - After that, employers may only withdraw an offer because of a conviction record that bears a *rational relationship to the duties and responsibilities of the position*.
- The amendment altered convictions considered under the rational relationship test from *all convictions in the most recent 10 years*
 - to *felony convictions that occurred in the past five years*
 - and *misdemeanor convictions that occurred in the past three years*.

SB 2193 (2020)

State Limits on Local Ban the Box Policies

Sec. 3. Unless federal or state law provides otherwise, a political subdivision may not prohibit an employer from:

(1) obtaining or using criminal history information during the hiring process to the extent allowed by federal or state law, rules, or regulations; or

(2) at the time an individual makes an initial application for employment:

(A) making an inquiry regarding the individual's criminal history information; or

(B) requiring the individual to disclose the individual's criminal history information.

Indiana SB 312 (2017)

- Limits local government's ability to enact Ban the Box or similar legislation
- Provides for employer liability relief in certain circumstances.

Michigan SB 0353 (2018)

- Does not prohibit establishing local regulation requiring criminal background checks.
- Does prohibit establishing local regulations that an employer must request, require, or exclude any information on an

The People of the State of Michigan enact:

Sec. 4. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution regulating information an employer or potential employer must request, require, or exclude on an application for employment or during the interview process from an employee or a potential employee. This section does not prohibit an ordinance, local policy, or local resolution requiring a criminal background check for an employee or potential employee in connection with the receipt of a license or permit from a local governmental body.



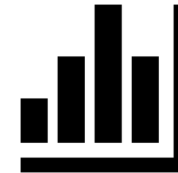


A Look At The Research



A criminal defendant prosecuted in Honolulu for a felony crime was 57% less likely to have a prior criminal conviction after the implementation of Hawaii's ban the box law.

[Alessio, Stolzenberg, &](#)



law, there was a 33% increase in the number of applicants with records hired, which resulted in 21% of all new hires in the district being people with records.

- In Durham County, N.C., the number of applicants with criminal records recommended for hire nearly tripled in the two years since its ban the box policy passed, with the resulting number of hires increasing from 35 to 97. On average, 96.8% of those with records recommended for hire ultimately secured employment.

Effects of Ban the Box Laws on Offenders



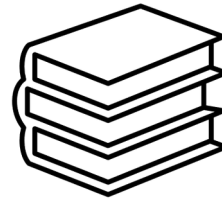
[The National Employment Law](#)



- One study found a statistically significant increase in the likelihood of being employed in the public sector in jurisdictions introducing a Ban the Box law relative to jurisdictions that do not. ([Craigie 2020](#))
- Another study specific to Seattle found no evidence of a relative increase in employment or earnings for workers with criminal histories or recently released from prison. ([Rose 2020](#))
- “To summarize the results from these studies, there is some evidence that BTB law improve access to jobs in the public sector but relatively strong evidence from two analyses of administrative data of a failure of BTB to increase overall employment and earnings of individuals with criminal records.” ([Raphael 2021](#))

Effects of Ban the Box Laws on Offenders





- One study examining effects of Ban the Box on private employment found that after the Ban the Box went into effect, callback rates increased for Black applicants with records from 8% to 10.3%.
- The same study found that ban the box policies increased racial gaps in callback rates. Before Ban the Box, white applicants received about 7% more callbacks than similar Black applicants, but Ban the Box increased this gap by 45%.

Effects of Ban the Box Laws on Offenders



Study	Employers Covered	Main Results			
Agan and Starr (2017)	Private	<ul style="list-style-type: none"> • After ban the box went into effect, callback rates increased for Black applicants with records from 8% to 10.3% but decreased for Black applicants without records from 13.4% to 10.3%. • Ban the box increased racial gap in callback rates. Before ban the box, white applicants received about 7% more callbacks than similar Black applicants, but ban the box increased this gap by 45%. 	Flake (2019)	Private	<ul style="list-style-type: none"> • Cross-regional analysis of callback rates in Chicago, a city that has ban the box for public and private employment, and Dallas, a city that does not have ban the box, found that an applicant was 27% more likely to receive a callback in Chicago than in Dallas. • Black applicant's callback rate was 7.6% lower in Chicago and 13.7% lower in Dallas than the white applicant's rate.
Craigie (2019)	Public	<ul style="list-style-type: none"> • Ban the box policies raise the probability of public employment for those with convictions by 4 percentage points (30%). • Probability of public employment increases over time by 3.8-5.3 percentage points. • No findings of statistical discrimination in public sector against low-skilled minority males in response to ban the box policies. 	Jackson and Zhao (2017)	Both	<ul style="list-style-type: none"> • Ban the box reduced employment for people with criminal records by 5%
Doleac and Hansen (2018)	Both	<ul style="list-style-type: none"> • Young, low-skilled (24-34, no college degree) Black men are 3.4 percentage points (5.1%) less likely to be employed after ban the box. • Older, low-skilled (25-64, no college degree) Black men are significantly more likely (2.8 percentage points, or 4.3% more likely) to be employed after ban the box. • Highly educated Black women (25-34, college degree) are more likely (3.2 percentage points, or 3.9% more likely) to be employed after ban the box. 	Rose (2018)	Both	<ul style="list-style-type: none"> • Seattle's ban the box policy had no effect on employment for people with criminal records, positive or negative.
			Shoag and Veuger (2016)	Both	<ul style="list-style-type: none"> • Ban the box increases employment of residents in high crime neighborhoods by 4% (driven largely by public sector hiring). • From 2009 to 2013, the share of full-time public-sector employees who are Black men in MA, MN, and NM increased by 7.1% (6.2%, 8.1% and 11.2% respectively), relative to a national decline in this share over the same time frame. • Likelihood of employment for Black women decrease 2% after ban the box.

Compliance Statistics: [Examples from Minnesota](#) (2021)



A study of application information from 300 employers from 2008-2016 showed that:

- Approximately 79 percent of businesses did not have a criminal record question on the application, while 21 percent did.
- One in five organizations were noncompliant,



firms found:

- 33 percent had a criminal history question in violation of Ban the Box laws
- Only one interviewee employer reported knowing of their noncompliance.
- Minnesota Dept. of Human Rights explained that notification of the law is significantly affected by the small staff size and lack of funding to disseminate

Employer Liability

- 16 states have enacted legislation to combat the negative effect that the perceived risk of negligent hiring liability has on hiring workers with criminal records.
- States limit liability in two primary ways:
 1. Evidentiary protections that limit or expand the admissibility of evidence related to employee criminal history in a negligence lawsuit;
 2. General limitations on liability, including limits on the types of lawsuits that may be brought and, in some states, total immunity from liability.
 - For example, Tennessee provides immunity from suit where any employer relied on an employee's Certificate of Employability, but only in negligent hiring actions. In all other actions against an employer that rely on the Certificate of Employability, the employer is not immune from suit.



Questions? Reach Out Anytime!

Anne S. Teigen, Esq.
Associate Director, Criminal and Civil Justice
anne.teigen@ncsl.org
303.856.1652 (o)
Resources:

<https://documents.ncsl.org/wwwncsl/Criminal-Justice/Ban-the-Box-Policy-Snapshot.pdf>

<https://www.ncsl.org/civil-and-criminal-justice/certificates-of-rehabilitation-and-limited-relief>