



An Alternative to 'Ban the Box'

By **Greg Glod**
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When President Obama called for justice reform at last month's NAACP Centennial Convention, offender reentry was among the areas he highlighted. Specifically, Obama endorsed a federal "ban the box" law, which would prohibit federal employers from inquiring about applicants' criminal histories at the initial stages of the hiring process. Currently, 18 states have enacted this legislation for public employers, while seven have placed this regulation on the private sector as well.

The rationale behind "ban the box" is just and is backed by data. In many cases, it is an insurmountable task to find a proper vocation after being released from incarceration or while under community supervision due to a criminal history. Studies indicate that stable employment is a leading factor in determining who will reoffend. It follows that allowing ex-offenders an opportunity to move beyond their criminal pasts will make our streets safer and save taxpayers millions in corrections costs, while broadening the tax base with a larger workforce.

However, "ban the box" has several drawbacks that make it a less-than-ideal solution, not only for businesses but also for ex-offenders. Rather than being applied to the federal government as Obama suggested, it should be rolled back and replaced with a superior alternative: letting ex-offenders earn the right to seal their records and assert on job applications that they were never arrested, charged, or convicted.

The first problem with "ban the box" is that it places

rather than investing in new hiring or innovative technologies.

In Illinois, for example, a public or private employer who has at least 15 employees cannot ask about an individual's criminal history until the applicant has been selected for an interview or, if there is no interview, until they have been pre-selected for the job. This may seem straightforward; however, Chicago has a separate, tougher "ban the box" rule. Chicago's ordinance applies to businesses with fewer than 15 employees, and also requires certain city agencies to take into account several factors prior to hiring individuals with criminal backgrounds — such as the nature of the offense, the applicant's criminal history, and the age of the individual when convicted. The ordinance also forces small businesses to tell applicants who weren't hired whether the decision was due to their criminal record. Thus, a business owner who has entities in and outside of Chicago must establish different hiring practices and training for each location to indemnify him- or herself from hefty fines and litigation.

Companies such as Walmart, Home Depot, and Koch Industries have all taken the admirable step of eliminating questions regarding criminal history from their applications in recent years. But there's a difference between private-sector decisions and government regulation here: "Ban the box" does not prevent employers from considering criminal history at a later point in the hiring process, so when it's forced on employers who have no intention of hiring ex-offenders, it merely ends up wasting the time of both the businesses and the job applicants.

The alternative is nondisclosure. In general, nondisclosure or "record sealing" allows an individual to petition the court to seal their criminal record from the general public, while allowing law enforcement and employers in sensitive industries, such as health care, education, and finance, to see through the seal. If the judge determines that the ex-offender is indeed on the straightened path, the person can legally state that they have not been arrested, charged, or convicted of the offense to most employers, housing agents, and licensing centers. This places personal responsibility and the costs of reentry with the individual, rather than having the government enact further restrictions on business.

Recently, Texas passed legislation that allows for first-time offenders to receive orders of nondisclosure, so long as their offenses did not involve sex crimes, domestic abuse, or other serious violence. This legislation can serve as a model for states and the federal government to combat the cycle of recidivism that plagues our criminal-justice system, while not expanding the government's control over business.

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