

POLICY UPDATE

Banning the Box

BY TIM SABLİK

Should employers be allowed to screen candidates based on their criminal history? That is the question being raised by advocates of the “ban-the-box” movement, referring to the box on job applications that candidates must check if they have anything more severe than a traffic violation on their criminal record. Critics of this practice argue that it effectively bars the almost one in three American adults with an arrest or conviction from most gainful employment. Ban-the-box legislation prohibits employers from asking candidates about their criminal history until after they have had a chance to interview them and assess their other qualifications.

Today, over a dozen states and more than 100 localities have implemented some form of ban the box. In April, Virginia did so when Gov. Terry McAuliffe signed an executive order banning the box for most state jobs. Some localities have also extended the limits to private employers in general. Last year, three localities in the Fifth District (Washington, D.C., and Montgomery and Prince George’s counties in Maryland) passed ban-the-box legislation affecting private employers over a certain size. There are exceptions for certain employers that are required by law to check an applicant’s criminal history. Employers are also still free to rescind job offers after a later background check, but they typically must provide an explanation for doing so.

The Equal Employment Opportunity Commission contends that federal law already prohibits employers from barring candidates with criminal records unless their offense is job-related. Regardless, the evidence suggests that a criminal record does have a large negative effect on employability. In an oft-cited 2009 study, sociologists Devah Pager and Bruce Western of Harvard University and Naomi Sugie of the University of California, Irvine conducted an experiment in which teams of black and white men were matched and applied for low-wage jobs in New York City. Each pair presented equivalent resumes except one of the individuals had a criminal record. The authors found that callback rates from employers were 50 percent lower on average for the individuals with criminal records. Postponing questions about an individual’s criminal record seems to reduce such negative stigma.

“Employers in our study who first had the chance to talk with the applicant and build more of a rapport before seeing that they had a criminal record were much more likely to give them an opportunity to explain,” says Pager.

Criminal records have always been public in the United States, but advocates of banning the box point out that the

Internet has made it much easier for employers and other interested parties to access this information. According to a 2012 study by the Society for Human Resources Management, nine out of 10 employers conduct criminal background checks for employment.

“It has become extremely easy now to find out about criminal records. A whole industry has arisen around it,” says James Jacobs, the director of New York University’s Center for Research in Crime and Justice and author of the 2014 book *The Eternal Criminal Record*.

Employers, however, argue that they have legitimate reasons for seeking this information. “They have both a legal requirement and a moral responsibility to ensure a safe workplace,” says Bob Moraca, the vice president of loss prevention for the National Retail Federation.

Advocates of ban-the-box legislation say that it represents a compromise between the interests of job candidates and employers, since most ban-the-box laws still allow employers to consider criminal records later in the hiring process. But Jacobs is skeptical that it will help the majority of candidates with criminal backgrounds.

“Many of them are not really work-ready,” says Jacobs. “So they’re not going to come to the top of a big pool of applicants.”

It’s also unclear whether the effects of limiting employer access to criminal records would be entirely positive from the perspective of minority applicants. A 2006 study by public policy professors Harry Holzer of Georgetown University, Steven Raphael of the University of California, Berkeley, and Michael Stoll of the University of California, Los Angeles reported that employers that checked criminal backgrounds were actually more likely to hire black males than those that didn’t.

“Low information is often the basis for what economists call ‘statistical discrimination,’” explains Holzer. “If you don’t have information about a particular individual, you will judge them by their group characteristics.” Holzer says that without access to criminal records, employers were more likely to assume that black men with less education and gaps in their work history had prior criminal convictions, even if that was not the case. When employers could confirm that those individuals did not have criminal records, they were more likely to give them a chance.

Ultimately, says Moraca, criminal history is just one piece of the hiring puzzle. “As an employer, you’re going to choose the best candidate,” he says. “It’s not always about whether or not the candidate has a criminal conviction. **EF**

CORRECTION: In this column in the Third Quarter 2014 issue of *Econ Focus*, the article “Cracking Down on Fraud?” incorrectly stated that the Department of Justice’s suit claimed that Four Oaks Fincorp and Four Oaks Bank & Trust Company received complaints from its customers; it should have said that the complaints allegedly came from customers of the payday lenders involved in the claim. The article also stated that the institutions allegedly granted access to bank customer accounts; it should have noted that this access was said to have been provided through direct access to the Automated Clearing House payments network.