



Glenn E. Martin: Testimony on Policies Relating to Bureau of Prisons Reentry, Fair Chance Act, and Ban the Box  
Delivered to the Committee on Government and Oversight Reform: Wednesday, December 13, 2017

To Chairman Gowdy, Ranking Member Cummings, and the Committee:

Today I respectfully submit testimony regarding the significant barriers to reentry faced by millions of formerly incarcerated individuals; the need to eliminate these counterproductive barriers; the policies you can implement to achieve that goal, including passage of H.R. 1905 – the *Fair Chance Act*; and how my personal experience as a formerly incarcerated American and the experience of other formerly incarcerated men and women can inform your actions. There are four key points I hope to convey in my testimony:

**1. Reducing recidivism requires successful reentry.**

In their 2016 report, the Federal Interagency Reentry Council reminded us that holistic reentry, which includes access to stable housing, education, and employment, reduces recidivism, and a period of stability that lasts just a few years can have significant, positive consequences on ensuring the long-term success of an individual's reentry.<sup>1</sup>

**2. Successful reentry requires access to meaningful employment opportunities.**

Transitioning out of and away from the criminal justice system necessitates the ability to transition into more stable opportunities in our community. As the *Council of State Governments* notes, research indicates that holding a job reduces one's chances to recidivate, and job stability over an extended period of time can reduce the likelihood that an individual will reoffend.<sup>2</sup>

**3. Access to meaningful employment opportunities requires implementation or expansion of *Ban the Box* policies and the passage of the *Fair Chance Act*.**

Approximately seventy million people in America have a criminal record, and there are over one-hundred million criminal records at the state level.<sup>3</sup> The insidious stigma of criminality disproportionately impacts black men, as one-in-three of us will be incarcerated in our lifetime.<sup>4</sup> Employers have a demonstrable and well-recognized reluctance to offer opportunities to the men and women with these records,<sup>5</sup> so a nationwide policy that both highlights how employers are systematically ignoring qualified jobseekers and simultaneously levels the playing field is a key step in achieving equity of opportunity.

**4. Understanding the lived experience of formerly incarcerated people is vital for successful reform.**

The data, the analysis, and the academic research are compelling and should help guide your actions as elected leaders in our country. However, the lived experiences of those millions of



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men and women who will be directly impacted by the decisions you make should also inform those actions and should empower your understanding of these issues by offering a vital and often ignored perspective.

I offer this testimony as a national advocate for criminal justice reform and as President of JustLeadershipUSA, a national advocacy organization, and also as someone whose personal experiences have shaped and defined my views of practices and solutions in this field.

I have not only studied, analyzed and debated the policies that you are considering. I have also lived with the consequences of the decisions local and national policymakers have made over the past five decades – decisions that have led to mass incarceration, the unjustifiable and unrelenting consequences of that incarceration, and the creation of a new underclass of citizenship in America.

Six years in prison and, to date, seventeen years of post-incarceration reentry have taught me that those closest to the problem are closest to the solution, but often farthest from the power and resources needed to drive necessary change.

I have experienced the problem of government-sanctioned discrimination from our nation's employers, and know what can and must be achieved so that the people who are returning from our prisons and jails do not face these same, unjustifiable challenges.

Today, I am speaking with the people who have the power and resources needed to bring proposed solutions to fruition immediately. I ask that you continue to hear my voice and the voices of the millions of others under correctional supervision in this country as you discuss, debate, and determine your next steps after today's hearing.

**Reducing recidivism requires successful reentry.**

There is a strong bipartisan consensus at all levels of our government that we must make a concerted effort to reduce recidivism.<sup>6</sup> The question is not *if* we should achieve this goal, but *how*.

Simply put, successful holistic reentry – a reentry process that prioritizes access to stable housing, healthcare, education, and employment – is the key factor in reducing recidivism.<sup>7</sup>



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There is an unmistakable urgency to addressing this issue. Today, two-plus million Americans are incarcerated in our country. Another four-plus million men and women are under some form of correctional supervision. Over six million Americans will have their ability to reenter into their communities determined, in part, by the decisions you make today.<sup>8</sup> And while there has been a lot of emphasis on what we can do to prevent incarceration moving forward, we have not done enough to deal with the fact that millions of people presently suffer the injustices related to incarceration.<sup>9</sup>

This lack of concrete action is especially alarming considering that at least 8% of working-age people in our country are labeled by others as “ex-felons,” meaning that nearly one-in-ten of the people who are in our workforce have their access to employment impeded by the stigma of justice involvement.<sup>10</sup> This stigma disproportionately impacts people who look like me. Young black men are ten times more likely than their white counterparts to have been incarcerated, and black men who do not have a high school education have a 50% chance of being incarcerated in their lifetime.<sup>11</sup>

But this problem is not limited to black America. Our nation has 5% of the world’s population and over 20% of the world’s incarcerated population. Our prison population grew by 408% between 1978 and 2014.<sup>12</sup> All of us are disproportionately impacted by the policies that drive mass incarceration. Moreover, the fastest growing prison populations today are in rural areas, a surge fueled by a large increase in the number of incarcerated white women.<sup>13</sup>

Our widening state of mass incarceration has created a second class of citizens. We have already built the world in which millions suffer at the hands of discriminatory policies and practices. It is up to you to decide whether or not we are going to take steps to undo these policies and dismantle an infrastructure that has created unbearable, untenable, and unjustifiable obstacles for too many of us.

Anything short of fully and forcefully removing the barriers that exist in the reentry journeys of these Americans will result in your tacit approval of the fact that we, as a nation, believe that there are some people who are worthy of opportunities for growth and transformation, and many who are not.

This Congress must enact laws and promote policies that eliminate the barriers to successful reentry. From my own experience and from the experience of the hundreds of formerly- and currently- incarcerated men and women that JustLeadershipUSA works with and learns from every day, I know that there are several components required to build a comprehensive reentry process. One of the



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most vital of those components is the one we're discussing today: employment.

**Successful reentry requires access to meaningful employment opportunities.**

Employment is more than a piece of the reentry puzzle. Employment is, in many instances, the primary determinant of whether or not a person's reentry will be successful.<sup>14</sup> Access to employment is the bridge to other aspects of holistic reentry and reintegration, including the ability to afford housing, pay for medical and family needs, pay child support, and care for our loved ones, who – due to our own involvement in the criminal justice system and the similarity in circumstances between their lives and ours – are especially susceptible to being intercepted and entrapped by the justice system.<sup>15</sup> Furthermore, maintaining employment is the only way that the millions of men and women who are on probation or parole can pay the burdensome fees associated with that supervision – payments that are crucial since missing one payment could send someone back to jail or prison for a sentence that's even longer than the one associated with their underlying charge.<sup>16</sup> Simply put, employment can and in many cases does empower and accelerate successful, permanent reentry.<sup>17</sup>

While people who do not have lived experience with these issues will say that self-motivation is required on our part before you fulfill your responsibilities in easing reentry, those of us who have had to endure the painful branding of the criminal justice system and the stigma associated with it will all tell you: we will seize any opportunities we can to ensure the cessation of our involvement with the justice system. But, far too often, our motivations to succeed are overshadowed by the lack of motivation from elected officials and employers to eradicate the barriers that prevent that success.

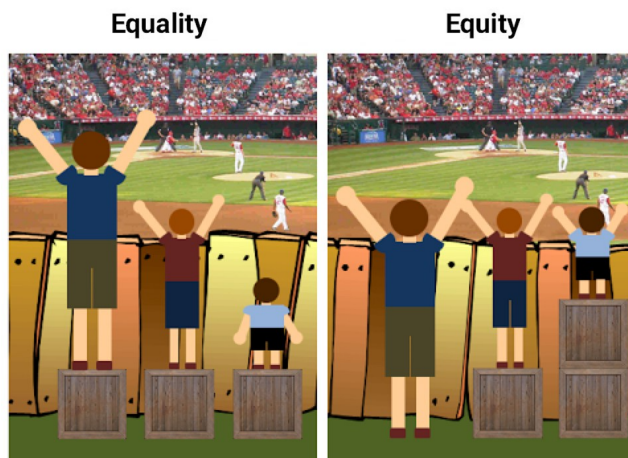
We can and do apply to jobs as soon as we are able to. But 56% of employers will not consider any applicant with a criminal record.<sup>18</sup> Consider that while remembering the statistics cited above about how many people who, like me, must carry a criminal record with them throughout their life. Yet, even when we do not have a criminal record, black applicants receive callbacks in the job application process at a rate that is 20% less than our white counterparts.<sup>19</sup> In fact, a white man with a criminal record actually has a better chance of landing gainful employment than a black man without any record at all. And for the millions of black men and women who do have a criminal record, positive outcomes in the job process for are reduced by 57%.<sup>20</sup> We have less than 5% chance at earning a callback in an interview.<sup>21</sup> Motivation is not the problem. Opportunity is, and until you take meaningful action to eliminate that gap between us and the jobs we are trying to fill, these disparities and the related consequences will worsen.<sup>22</sup> A key step in that action is implementation of the *Fair*

Chance Act and promotion of *Ban the Box* policies for public and private employers in this country.

**Access to meaningful employment opportunities requires implementation  
of *Ban the Box* policies and the passage of the *Fair Chance Act*.**

In my ardent support for *Ban the Box* policies and the passage of the *Fair Chance Act*, let me be unmistakably clear on this point: these measures will not on their own eliminate the challenges faced by formerly incarcerated men and women who are seeking access to employment upon their release. More specifically, these measures will not erase the racism in our employment systems that is a direct consequence and carry-over from the structural, entrenched, and – in some cases – deepening racism of our criminal justice system.<sup>23</sup>

In light of my first point, I refer you to an oft-circulated graphic that depicts three young children standing behind a fence attempting to watch a baseball game on the other side of the fence. One child is tall and can see over the fence; one is of medium height and can barely see over the fence; and one is the shortest of the three and cannot see over the fence. That small child represents the millions of formerly incarcerated individuals, and the game the children are watching represents what would be considered a successful reentry back into the community for those millions of Americans.



On one panel of this graphic, each child is standing on a box that is the same size, and the caption says, “Equality.” However, with each child having the same sized box upon which to stand, the tallest child has a better view, the middle child has a good view, but the smallest child still cannot see. The second panel of this graphic depicts the tall child having no boxes to stand on, the middle child standing on one box, and the small child standing on two

boxes. The caption here is “Equity,” with the idea being that equity – our ultimate goal – is not achieved by one-sized-fits-all solutions. Those solutions tend to benefit the people who do not need the extra support at the expense of people who are already most harmed by our current policies.



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Jennifer Doleac and a small number of others<sup>24</sup> without lived experience with these issues will argue that *Ban the Box* and the *Fair Chance Act* are these ‘one-sized-fits-all’ solutions that we acknowledge will not, on their own, be sufficient. They will argue that these policies will result in what the first panel on that graphic represents: worsening systematic racism and discrimination. Their argument rests on findings showing that when employers cannot inquire into criminal history, they will make discriminatory decisions based on the perceived race of an applicant, instead. In other words, giving everyone one box just sets us back further – it hurts the people that you’re trying to help the most.

What Doleac and others miss, however, is this: we cannot give the smallest child – that black man or woman who has been released from incarceration – two boxes to stand on unless and until we give him one box to stand on, first. *Ban the Box* and the *Fair Chance Act* are that one box. These are the policies that can lay the foundation to do what must be done. They are a first step in the process.

More work will be required to achieve true racial equity in post-incarceration employment and reduce the barriers that black and brown men face in attempting a successful reentry process, but the need for future steps cannot and should not obviate your willingness to take step one.

As United States Representatives, understanding this means understanding the moral obligations of the positions that you hold, and not allowing the power of those positions to be curtailed by misguided and limited empirical analysis that sets out not to derive a conclusion but to prove a conclusion that has already been formed. So, while I acknowledge that *Ban the Box* is not a cure-all solution, I also urge you to recognize that the work being done to undermine its value is flawed.

In some sense, Doleac’s conclusions are predictable. They are the result of allowing preconceived notions of blackness and criminality to define an outlook on reality, and they are the product of an analysis totally lacking in the cultural competency that is required for accurate data interpretation.

But when that cultural awareness is factored in and when a study is conducted with an open mind, the results are startling: we have seen, in some areas of this country, a nearly 300% increase in the amount of applicants with criminal records who receive a call-back interview when *Ban the Box* policies were implemented.<sup>25</sup>

Moreover, while the impact of these policies is most readily felt in the early stages of a job application



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process, several other studies have shown that moving past those stages and actually gaining personal interaction with an employer has a significantly positive impact on determining whether or not someone will ultimately land the job.<sup>26</sup> Again – *Ban the Box* and the *Fair Chance Act* are not sufficient, but their necessity is obvious and cannot be overstated.

Beyond this data-driven refutability of its central findings, Doleac’s argument is fundamentally flawed in two important respects. First, it attempts to reverse causality and allege that *Ban the Box* policies are creating something that has existed in our national hiring practices for centuries: racism.<sup>27</sup> *Ban the Box* does not create racism in hiring practices. If anything, it exposes how deeply that racism is entrenched.<sup>28</sup> Second, Doleac relies on this erroneous causal reversal to claim that *Ban the Box* is detrimental to the cause and that we, as black job applicants actually fare better when the stigma of our criminal justice involvement can be brought front-and-center in the job application process, because we are assumed to have that involvement, anyway.

What is truly stunning about this half of Doleac’s argument is the inference contained therein: for the few black men who have not been wrongfully arrested, tried without due process, convicted to an overly harsh sentence, or mired in the unnecessarily burdensome traps that are our probation and parole systems, doing away with *Ban the Box* will help them because it will allow them to promote their comparative ‘goodness’ over the criminality that, for researchers like Doleac, defines everything about us, our potential, and our commitment to an employment opportunity.<sup>29</sup>

Doleac’s argument seems premised on the idea that you should only seek to help the ‘good’, ‘well-behaved’ black men, and that trying to help the others – us – hurts our brothers and sisters who, for reasons that go far beyond the scope of today’s hearing, are not victimized by our justice system. Not only is this demonstrably untrue, as most black applicants fare worse than our white counterparts, but also it speaks to an ignorance of the scope of our incarceration problem.<sup>30</sup> The problem is too big for marginal, cultural reforms to serve as our go-to solutions. Bold policy transformation is vital.

*Ban the Box* and the *Fair Chance Act* are crucial components of creating a racially just and equitable employment situation for the millions of black and brown men who have a criminal record. These policies are an integral part of comprehensive and unapologetically bold criminal justice reform that will be necessary to undo the decades of racist, myopic, and erroneous policies that were enacted through this body. The *Fair Chance Act* and a requirement for all employers to *Ban the Box* in their



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application processes will open up job opportunities for formerly incarcerated individuals who might otherwise steer clear of potential opportunity for fear of how the stigma of justice involvement will set them back not just in that application, but in their overall reentry.<sup>31</sup>

Additionally, as this hearing seeks to understand what the United States Government and the Bureau of Prisons can do to lower the barriers to successful reentry, I urge each of you to understand that the *Fair Chance Act* and the message its passage would promote are essential not just in removing those barriers, but also in preventing those barriers from reemerging as future reforms take hold. There are myriad reasons that black and brown men face unique challenges in seeking gainful employment, and these challenges are only increased when we have been deemed by the systems you put in place to be criminals, or – worse yet – irredeemable and unemployable. The *Fair Chance Act*, while not sufficient to undo the cumulative effects of your collective inaction on this front, would be a crucial step forward in increasing access to employment for formerly incarcerated individuals, which – along with other vital reforms – will reduce recidivism and result in a safer, fairer, more cost-efficient criminal justice system.<sup>32</sup>

And to speak to Doleac’s central thesis one last time, I would urge you to leverage her misguided conclusion to improve your work: if *Ban the Box* policies do expose the deep-seated nature of racism in our nation’s employers, use the knowledge gained from their implementation to develop other tools that can be used in collaboration with the *Fair Chance Act* to end these abhorrent practices for good. Use the power and resources at your disposal to do what you know must be done based on the experiences of people like me – people who have been closest to the problems we must solve.

**Understanding the lived experience of formerly incarcerated people  
is vital for successful reform.**

If you want to step in my shoes and walk on the paths that led me here, I ask each of you to think back to the last time you brought a pair of sunglasses. I ask each of you to go back to that moment when the salesperson showed you the latest styles and rang you up after you chose a pair that you liked. And I ask you, now: describe that salesperson in one word.

Most of you would probably say they were a “person,” or perhaps a “man” or “woman.” Some of you might say “old” or “young.” I am willing to bet, though, that none of you would say “criminal.” And that’s ironic, because my being branded a criminal by a system that Congress helped to build is the





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reason that I could not get a job selling sunglasses after serving six years in New York State Prison.

That was the first job for which I applied as I was coming out of prison. I walked into the shop in downtown New York and applied to be a salesperson. I was excited just to be out of prison and to be this close, so quickly, to what felt like a first step toward home and away from the cages, walls, and barbed wire fences that had been my existence for most of the previous ten years.

The manager at the store said he'd be excited to hire me, and that he would call me the next day with more details. I could not have been prouder – I was going to be one of the lucky ones who got a job. Having a job meant everything. I was going to be one of the guys who never went back.

That feeling came crashing down later that night when the manager called me and told me that he ran a background check and found a felony conviction on my record. There was no point denying it. He was right. I'd lost an opportunity because of something that I did six years ago – something that I thought I'd been punished for, already. Isn't that why I was incarcerated - to punish me and to teach me a lesson? It turns out that my sentence did not end when I stepped beyond the prison walls. In many ways, the second half of my sentence was just beginning.

I applied to fifty jobs in thirty days. No one was willing to hire a convict or a felon or an inmate. They may have been willing to hire a son or a brother, but those were identities that were taken from me by the stigma of conviction and incarceration. Those were identities that I was forced to set aside because *Ban the Box* was not something I could benefit from. It did not exist then. So, instead, I was forced to confront the identity that had been given to me by a system designed to keep me trapped.

The setbacks were more than an immediate problem. They were an agonizing reminder that six years of planning may have been fruitless. They were the crushing body-blows that force young black men like me to reconcile with the fact that our incarceration is not limited to the physical boundaries of our cages. The setbacks proved that preparedness was pointless – that in the face of the hurdles I was forced to confront, years of learning, healing, and transformation meant nothing when all the labor market cared about was the fact that I bore a scarlet letter alerting them to my status as a criminal. Our government is complicit in this. Unless our government takes meaningful action, including passage of the *Fair Chance Act*, our government will continue to protect and promote the re-victimization of men and women – especially of men and women of color – who have already fallen



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prey to a justice system that does less to restore our humanity than it does to repackage and perpetuate past forms of racial discrimination and segregation.

When you are sentenced in a court of law, there is a ceremony involved. The other men and women from throughout the community get to come watch as another young black man is shackled and taken away, his voice drowned out by the chorus of his oppressors. But when you are released from that sentence, you find yourself looking up at towering cement wall and looking back through the doors at the only friends and family you've known for the past several years. There is no ceremony to welcome you back. There is only the constant reminder that too many people in the community did not want you back in the first place.

There is a moment where the world sits us down.

There is not a moment where the world helps us stand back up.

While passage of the *Fair Chance Act* will not be tantamount to having a ceremony for someone's return, and while it will not, on its own, be the hand that reaches out to us to get us back on our feet, it will be a meaningful step in that direction.

It would be, for many of us, the first time that the very same systems that held us back are now going to be the systems that help propel us forward. It would signal to us that you recognize the challenges we face and that you intend to do something about those challenges. It would make clear to the six-plus million Americans who must endure the collateral consequences of our criminal justice system that you still represent them and are willing to fight for and protect their best interests.

I know how meaningful your action could be because I work with the men and women whom your decisions will most directly affect. I am the founder and President of JustLeadershipUSA, a national advocacy organization that seeks to cut the correctional population in the United States in half by 2030 by empowering the people most impacted by the criminal justice system to drive criminal justice reform. In an organization with over 50 staff positions and that runs leadership trainings that now have over 370 graduates, I have never once asked any applicant about a criminal conviction. I have never needed to, because I am able to assess their preparedness by seeing something much more powerful and meaningful: their humanity.



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I have often said that the hardest day in prison is the last because you know you're leaving behind some of the best and the brightest that this nation has to offer. Fortunately, today, I am able to work with and help elevate the voices of many of these men and women. But there are millions of people who my work will not reach – millions of people whose hope for redemption rests in your hands.

I urge you, as members of this Committee and your colleagues, as our elected Representatives in Congress, to Pass the *Fair Chance Act* and do everything in your power to promote *Ban the Box* policies. I, and millions of others, are counting on you.

- Glenn E. Martin

*Founder and President of JustLeadershipUSA*



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## Endnotes

<sup>1</sup> Lynch, L. and Muñoz, C. (Eds.) (2016). *The Federal Interagency Reentry Council: A Record of Progress and Roadmap for the Future*. Washington, D.C.: United States Department of Justice.

<sup>2</sup> Duran, L., Plotkin, M., and Potter, P. (2013). *Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness*. New York, NY: Council of State Governments Justice Center; Visher, C., Debus, S., and Yahner, J. (2008). *Employment After Prison: A Longitudinal Study of Releasees in Three States*. Washington, D.C.: Urban Institute; Sampson, R. and Laub., J. (1993). *Crime in the Making: Pathways and Turning Points Through Life*. Cambridge, MA: Harvard University Press.

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<sup>4</sup> Lyons, C., Pettit, B. (2011). *Compounded Disadvantage: Race, Incarceration, and Wage Growth*. Oxford, U.K.: Oxford University Press on behalf of The Society for the Study of Social Problems.

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<sup>8</sup> Jacobson, M. and Schiraldi, V. (2017). *Less is More: How Reducing Probation Populations can Improve Outcomes*. Cambridge, MA: John F. Kennedy School of Government at Harvard University.

<sup>9</sup> Pager, D. (2003). *The Mark of a Criminal Record*. Chicago, IL: Northwestern University.

<sup>10</sup> Pager, D. (2003). *The Mark of a Criminal Record*. Chicago, IL: Northwestern University; Jacobson, M. and Schiraldi, V. (2017). *Less is More: How Reducing Probation Populations can Improve Outcomes*. Cambridge, MA: John F. Kennedy School of Government at Harvard University.

<sup>11</sup> Pager, D. (2003). *The Mark of a Criminal Record*. Chicago, IL: Northwestern University; Pettit, B. and Western, B. (2001). "Inequality in Lifetime Risks of Imprisonment." Paper presented at the annual meetings of the American Sociological Association. Anaheim, August.

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<sup>18</sup> Pager, D. (2003). *The Mark of a Criminal Record*. Chicago, IL: Northwestern University.

<sup>19</sup> Pager, D. (2003). *The Mark of a Criminal Record*. Chicago, IL: Northwestern University; Bendick, M., Jackson, C., and Reinoso, V. (1994). *Measuring Employment Discrimination through Controlled Experiments*. *Review of Black Political Economy*.

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See also: The New York City implementation of the *Fair Chance Act* provides penalties for per se violations of the *Fair Chance Act*. Penalties for small companies range from \$500 to \$3,500 for first violation, and \$1,000 to 10,000 for a second violation (<https://www.ebglaw.com/content/uploads/2017/09/Act-Now-Advisory-New-York-City-Finalizes-Rules-to-Fair-Chance-Act.pdf>).

In Minneapolis, less than 6% of applicants whose background checks were flagged for concern were hired by the city, but after the adoption of *Ban the Box*, that jumped to 54.7% (<http://www.nelp.org/content/uploads/2015/03/Seizing-Ban-the-Box-Momentum-Advance-New-Generation-Fair-Chance-Hiring-Reforms.pdf>; <https://newrepublic.com/article/121775/ban-box-people-criminal-records-it-works>).

Minneapolis also found that the policy reduced the time and resources needed to process applicants for municipal jobs by 28 percent (<https://newrepublic.com/article/121775/ban-box-people-criminal-records-it-works>).