



## **The Impact of “Ban the Box” in the District of Columbia**

June 10, 2016

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A Report by the Office of the District of Columbia Auditor  
Kathleen Patterson, District of Columbia Auditor

The Hon. Phil Mendelson, Chairman  
The Council of the District of Columbia  
1350 Pennsylvania Avenue NW  
Washington, D.C. 20004

Dear Chairman Mendelson,

I am pleased to provide this updated and amended version of our earlier report, *The Impact of “Ban the Box” in the District of Columbia*, examining the District’s Fair Criminal Record Screening Amendment Act of 2014 (FCRSA). We provide this amended version following discussion with representatives of the Bowser Administration and the Office of Human Rights to clarify our focus on impact on employers rather than an evaluation of implementation by executive branch agencies. We greatly appreciate the outreach by OHR Director Monica Palacio.

As you know, the Council included in the bill a mandate that the Office of the District of Columbia Auditor (ODCA) evaluate “the hiring of applicants with criminal records by employers and the impact of this law on employers” 18 months after the law took effect, or by June 17, 2016. This review was conducted by a team of graduate students in public policy from The George Washington University as part of what is known as their “Capstone” course.

This report provides detailed insight into the effects the law has had on District employers during its first year of implementation. It also represents one of the first in-depth studies of a “ban the box” law in the nation, since most such laws are relatively new. Accordingly, I hope that this report will be useful to the Council, the public, researchers, and other state and local government officials who have implemented or are considering implementing similar laws.

The review found that a majority of businesses that responded to our survey reported being unfamiliar with the law. It found 417 complaints against employers filed with the District’s Office of Human Rights (OHR) within the first nine months, resulting in 71 monetary settlements. The complaints data show that some employers did not follow the requirements of the law indicating that they may be unfamiliar with the law. The research team also found that District agencies increased the share of positions requiring a background check that have been filled by returning citizens. Finally, the review found that the law applies to just 25 percent of the businesses we surveyed and that a majority of employers reported minimal impact on their hiring processes. Overall, many District businesses interviewed support the spirit of the law.

Based on these findings, the project team developed five recommendations for the Council and the Mayor to increase awareness of the FCRSA among District employers and returning citizens, improve the implementation of future workplace laws by requiring agencies to conduct significant public outreach campaigns, and encourage further research on the effects of the law on both businesses and returning citizens.

I would like to thank the research team from The George Washington University—Colenn Berracasa, Alexis Estevez, Charlotte Nugent, Kelly Roesing, and Jerry Wei—for their excellent work and the staff at OHR and the D.C. Department of Human Resources for their cooperation in providing data for the analysis.

Sincerely Yours



Kathleen Patterson  
District of Columbia Auditor

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May 7, 2016

**A Graduate Student Capstone Project  
Trachtenberg School of Public Policy and Public Administration  
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# Executive Summary

## Why ODCA Did This Audit

The District’s Fair Criminal Record Screening Amendment Act of 2014<sup>1</sup> (FCRSA) instructed the Office of the District of Columbia Auditor to provide the D.C. Council with a report on the impact of this act on employers.<sup>2</sup>

## What We Found

This report evaluates the implementation and impact of FCRSA, more commonly known as “ban the box.” The law prevents employers located within the District from asking about a job applicant’s criminal record until after a conditional offer of employment is made, and the law also limits the reasons for which those employers may retract an offer of employment made to a person with a criminal record.<sup>3</sup> The law is designed to “remove unfair barriers to employment” and allow “returning citizens”—people who have served time in jail or prison and who are reintegrating into society—to get a “foot in the door.”<sup>4</sup>

This report reflects fieldwork conducted from January through late April 2016. Our research aimed to assess the implementation of the law, to evaluate its effects on hiring outcomes for returning citizens (specifically on hiring within the District government), and to evaluate its impact on private-sector employers.

To investigate these questions, we used several methods: analysis of District government administrative data, a private employer survey, and interviews with a subset of private employers. We were limited to reviewing District Department of Human Resources (DCHR) hiring data for District government hires due to lack of availability of the same private-sector data on hiring outcomes for returning citizens.

In examining the law’s implementation to date, we found that many businesses reported being unfamiliar with the law based on our surveys and interviews. Then, looking at enforcement of the law, we found many complaints against employers filed with the District’s Office of Human Rights (OHR) (over 417 within the first nine months); however, 95 addresses account for most of the complaints. Of the 417 complaints, 71 have resulted in monetary settlements and 89 were closed. The complaints data show that some employers did not follow the requirements of the law and thus appear consistent with our survey and interview finding that many employers reported being unfamiliar with the law. These two findings inform our *first and second recommendations* about the District government’s public outreach regarding the law. Additionally, the small number of individuals submitting complaints may indicate that many returning citizens are not aware of their rights under the law; thus, our *fourth recommendation* suggests the District government review its processes for informing returning citizens of their rights.

When analyzing the effects of the law on hiring outcomes for returning citizens, we found that District agencies did increase the share of hires of returning citizens for positions requiring a background check.<sup>5</sup>

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<sup>1</sup> Bill 20-642. Effective December 17, 2014 (D.C. Law 20-152). Codified at D.C. Code § 32-1341 et seq.

<sup>2</sup> See D.C. Code § 32-1345(c).

<sup>3</sup> The law also prohibits any inquiry into arrests or accusations that do not result in conviction at any point in the hiring process. We did not examine compliance with or issues resulting from this portion of the law in this report.

<sup>4</sup> Council of the District of Columbia, Committee on the Judiciary and Public Safety. “Committee Report: Bill 20-643, the ‘Fair Criminal Records Screening Amendment Act of 2014.’” District of Columbia Government. May 28, 2014. Available at: <http://lims.dccouncil.us/Download/30954/B20-0642-CommitteeReport1.pdf>

<sup>5</sup> This is significant because D.C. Code § 32-1342(c) specifically exempts employment requiring the consideration of an applicant’s criminal history from the prohibitions of the law.

However, the lack of comparable private-sector data informed our *fifth recommendation* that the District government conduct further research on hiring outcomes for returning citizens.

Finally, in analyzing the law's effect on private employers' hiring practices, we found that the law likely does not apply to many District businesses; in fact, just 25 percent of the businesses we surveyed reporting being subject to the law's effects.<sup>6</sup> Additionally, a majority of employers reported minimal impact on their hiring processes. Finally, a minority of businesses reported some impact, indicating that the law increased the cost, length and/or complexity of their hiring processes. This concern over the burden of the law resulted in our *third recommendation* that the District government should consider providing technical assistance or tools for private employers to share best practices for complying with the law. Overall, many District businesses interviewed support the spirit of the law.

### **What We Recommend:**

1. The Mayor and Council should direct more resources to outreach and public education to ensure that all District businesses are aware of the requirements under FCRSA.
2. The Council should consider including a requirement that implementing agencies develop a public outreach and education plan—and funding to support it—in all future pieces of legislation that make substantial changes to employment law and worker rights.
3. The Mayor should consider instructing relevant District agencies to provide technical assistance or create tools for employers to share best practices to increase compliance and minimize costs and procedural burdens.
4. The District should conduct further research on the impact that FCRSA has had on returning citizens' experiences and job outcomes.

## **Acknowledgements**

The research team would like to thank Jason Juffras and Matthew Separa at the ODCA for their support, guidance, and coordination during the course of this evaluation. The team would also like to thank officials at DCHR and OHR, as well as managers with private sector employers, from whom we received excellent cooperation. Finally, we would also like to thank Elizabeth Rigby and Ashley Palmer at The George Washington University for providing unparalleled research guidance.

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<sup>6</sup> Sixty-two percent of respondents reported having 10 or fewer employees, while 13 percent of respondents reported either running businesses that work with minors or vulnerable adults or being required to conduct background checks for all or almost all of their positions, both of which exempt them from most of the law's provisions.

## Project Rationale

In Washington, DC, an estimated 70,000 people, or about 10 percent of the total population, have criminal records.<sup>7</sup> People with criminal records—commonly referred to as returning citizens—face many challenges reintegrating into society, and discrimination and a lack of opportunity which often lead to recidivism are among the greatest. In a 2015 interview, the head of the D.C. Mayor’s Office on Returning Citizen Affairs (MORCA) estimated that about half of the people who returned to the District from prisons between 2008 and 2014 will be back in jail within three years.<sup>8</sup> District policymakers want to ensure the successful reintegration of returning citizens into the community, maintain public safety, and reduce recidivism. One strategy for accomplishing these goals is reducing barriers to gainful employment once a citizen has served their time.

In 2014, the D.C. Council took action by passing the Fair Criminal Record Screening Amendment Act (FCRSA). This type of legislation, commonly known as “ban the box,” limits when employers can ask about an applicant’s criminal record and is designed to spur gainful employment for returning citizens. Some in the business community were skeptical of FCRSA in 2014, arguing that it would increase hiring and compliance costs as well as lower the quality of job applicants.<sup>9</sup> In response, the law requires that the Office of the District of Columbia Auditor (ODCA), our client, evaluate the Act’s effects on “the hiring of applicants with criminal records by employers and the impact of this law on employers.”

To answer this question, we developed three key research questions:

1. How has FCRSA affected employers to date?
2. Within the District government, how has the hiring of applicants with criminal records changed following the passage of FCRSA?
3. What are the effects of FCRSA on hiring processes, according to private employers in the District?

There is significant interest in the outcomes of this study from both the public and private sectors. Mayor Muriel Bowser’s office has initiated several programs in support of returning citizens, including a pilot program that provides six weeks of pre-release workforce training and development to male inmates at the District’s Central Detention Facility, and a 14-week program for female returning citizens that includes six weeks of customer service training, professional etiquette, and digital literacy.<sup>10</sup> In addition, the D.C. Council is considering other laws protecting returning citizens.<sup>11</sup> Understanding employers’ experiences

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<sup>7</sup> Anna Clark. “Will D.C. Be the First U.S. City to Escape the Prison Trap?” *Next City*. September 28, 2015. Available at: <https://nextcity.org/features/view/dc-escape-prison-trap-reentry-office-of-returning-citizens-affairs>

Also see report that estimated that D.C. had 60,000 residents with criminal record: Washington Lawyers’ Committee. “The Collateral Consequences of Arrests and Convictions under D.C., Maryland and Virginia Law.” 2014. Available at: [http://www.washlaw.org/pdf/wlc\\_collateral\\_consequences\\_report.pdf](http://www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf)

<sup>8</sup> Anna Clark. “Will D.C. Be the First U.S. City to Escape the Prison Trap?” *Next City*. September 28, 2015. Available at: <https://nextcity.org/features/view/dc-escape-prison-trap-reentry-office-of-returning-citizens-affairs>

<sup>9</sup> Council of the District of Columbia, Committee on the Judiciary and Public Safety. “Committee Report: Bill 20-643, the ‘Fair Criminal Records Screening Amendment Act of 2014.’” District of Columbia Government. May 28, 2014. Available at: <http://lims.dccouncil.us/Download/30954/B20-0642-CommitteeReport1.pdf>

<sup>10</sup> For more details on the Mayor’s programs, see: Executive Office of the Mayor. “Mayor Bowser Announces New Programs to Support the District’s Returning Citizens.” District of Columbia Government. September 14, 2015. Available at: <http://mayor.dc.gov/release/mayor-bowser-announces-new-programs-support-districts-returning-citizens>

<sup>11</sup> For example, Councilmember Kenyan McDuffie (Ward 5) recently introduced a “ban the box” law for housing, prohibiting landlords from inquiring into a potential tenant’s criminal record. See Bill 21-706. : <http://www.kenyanmcduffie.com/mcduffie-introduces-the-fair-criminal-record-screening-for-housing-act/>

with FCRSA could help inform the Council’s future legislation. Finally, private sector employers have an important stake in learning about FCRSA’s outcomes.

The Office of the District of Columbia Auditor (ODCA)’s mission is to support the D.C. Council by making sound recommendations that improve the economy, efficiency, and accountability of the District government. The ODCA targets their work to inform policy in addition to conducting formal compliance studies. The ODCA believes that these evaluation findings could help inform any necessary revisions to the policy.

## Background

### “Ban the Box” Laws in the United States

In 1998, Hawaii passed the first of what have come to be known as “ban the box” laws in the U.S. , banning public and private employers from inquiring into an applicant’s criminal record until after a conditional offer of employment had been extended. Today, the National Employment Law Project states that there are over 100 cities and counties and 21 states that have passed laws banning the box.<sup>12</sup> These laws are also known as “fair chance” laws.

Proponents believe that “ban the box” laws increase employment opportunities for returning citizens in two ways. First, the presence of questions about criminal records on a job application may be enough to deter returning citizens from applying for that job. Second, under a “ban the box” law, hiring managers do not know about an applicant’s criminal record until a later stage. As a result, managers must consider all applicants, including returning citizens, based on the strength of their skills and qualifications alone. The literature shows that discrimination against returning citizens remains prevalent; in recent resume audit studies,<sup>13</sup> those with criminal records were significantly less likely to be called in for interviews.<sup>14</sup> Since “ban the box” pushes a criminal background check to the final stages of the hiring process (usually after the conditional offer of employment), advocates believe that the employer may be more willing to hire a returning citizen after judging them a strong candidate in interviews.

Despite the increasing popularity of these laws, little research exists into how they have affected employers and returning citizen applicants. One study of Hawaii’s law by Stewart D’Alessio, Lisa Stolzenberg, and Jamie Flexon showed that “ban the box” successfully reduced recidivism by 57 percent by “mollifying the social stigma attached to a criminal record during the hiring process.”<sup>15</sup> A study by Laura Bogardus surveyed human resource professionals and found that Minnesota’s “ban the box” law had minimal to no effects on hiring processes and costs, the areas about which employers in the District had originally expressed concerns. Furthermore, the same study found that some small companies believed that “ban the box”

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<sup>12</sup> Michelle Natividad Rodriguez and Beth Avery. “Ban the Box: U.S. Cities, Counties, and State Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions.” *National Employment Law Project*. 2016. Available at: <http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf>

<sup>13</sup> These types of studies have researchers apply to many jobs using resumes that have been randomized for work experience and education, such that the average education and work experience for these applications are close to identical. One factor is tracked: whether the applicant has a criminal record or not. The researchers can then approximate discrimination against those with criminal records based on the difference in employer callbacks.

<sup>14</sup> See for example: Devah Pager. “Sequencing Disadvantage: Barriers to Employment facing Young Black and White Men with Criminal Records.” *Annals of the American Academy of Political and Social Science*, vol 623 (May 2009). Pp. 195-213 and Devah Pager. “The Mark of a Criminal Record.” *American Journal of Sociology*, 108(5), 2003. Pp. 937-75.

<sup>15</sup> Stewart J. D’Alessio, Lisa Stolzenberg, and Jamie L. Flexon. “The Effect of Hawaii’s Ban the Box Law on Repeat Offending.” *American Journal of Criminal Justice* 40 (2), 2015. P. 341.



increased hiring fairness.<sup>16</sup> One paper by Jessica Henry looks at “ban the box” legislation in three cities, finding that implementation and effectiveness vary considerably between the cities.<sup>17</sup> No studies have attempted to measure the effect of “ban the box” laws on hiring outcomes for returning citizens.<sup>18</sup> This is likely because researchers have not been able to use experimental or pseudo-experimental methods; because these laws generally apply to all employers in a locality, identifying a valid comparison group is difficult. Furthermore, while government hiring data is often available to researchers through records requests, publicly available or easily accessible data on private sector hiring is not detailed or complete enough for most statistical research designs.

## “Ban the Box” in the District

### The District’s Law<sup>19</sup>

The District’s Fair Criminal Record Screening Amendment Act of 2014 (FCRSA) passed the Council on July 14, 2014 and took effect as D.C. Law 20-152 on December 17, 2014. The law prohibits employers located in the District with more than 10 employees from obtaining information about an applicant’s criminal conviction record until an employer has extended a conditional offer of employment. An employer may only withdraw the offer for a “legitimate business reason,” which takes into account six factors (see box at right). Furthermore, employers may never inquire about an arrest or criminal accusation that did not result in conviction. If an employer then takes “adverse action,” such as withdrawing a job offer, the employer must provide the job applicant with a notice advising the applicant of their right to file a complaint with the District Office of Human Rights (OHR).

#### The Six Factors:

1. Specific duties and responsibilities related to the employment;
2. Fitness or ability of the person to perform one or more job duties or responsibilities given the offense;
3. Time elapsed since the occurrence of the offense;
4. Age of the applicant when the offense occurred;
5. Frequency and seriousness of the offense; and
6. Information provided by applicant or on his or her behalf that indicates rehabilitation or good conduct since the offense occurred.

The law also supersedes certain portions of DC Law 18-340, the Returning Citizens Public Employment Inclusion Act of 2010, which had prevented the District government from inquiring about criminal records until an initial screening of applicants was complete.<sup>20</sup> As a result, FCRSA modified District government hiring rules to push background checks farther back in the process and changed hiring rules for many businesses operating in the District. As such, our analysis of the impact of hiring within the District

<sup>16</sup> Laura S. Bogardus. “Impact of Ban the Box on Hiring Processes.” *Health, Education and Human Development Awards*. Paper 10. 2015. Available at: [http://tigerprints.clemson.edu/hehd\\_awards/10](http://tigerprints.clemson.edu/hehd_awards/10)

<sup>17</sup> Jessica S. Henry. “Criminal History on a ‘Need To Know’ Basis: Employment Policies that Eliminate the Criminal History Box on Employment Applications.” *Justice Policy Journal*. Volume 5 – No. 2 – Fall. 2008. Available at: [http://www.cjcy.org/uploads/cjcy/documents/criminal\\_history.pdf](http://www.cjcy.org/uploads/cjcy/documents/criminal_history.pdf)

<sup>18</sup> Some advocacy organizations have shown simple summary increases in the number of returning citizens hired in their reports, but have not attempted to link these increases causally to ban the box legislation. See for example: The Southern Coalition for Social Justice. “The Benefits of Ban the Box: A Case Study of Durham, NC.” *SCSJ White Papers*. 2014. Available at: [http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox\\_WhitePaper-2.pdf](http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf)

<sup>19</sup> D.C. Law 20-152. “Fair Criminal Record Screening Amendment Act of 2014”. Codified at D.C. Code § 32-1341 et seq.

<sup>20</sup> FCRSA supersedes portions of the Returning Citizens Public Employment Inclusion Act of 2010, however the D.C. Code has not been updated to reflect these changes.

government captures the potential impact from expanding the scope of the 2010 “ban the box” law, as opposed to implementing a new “ban the box” law for the first time. However, since the 2010 requirement only applied to the public sector, all of our research about the effects on the private sector is solely attributable to FCRSA.

Based on the law’s requirements, FCRSA is one of the more expansive “ban the box” laws in the nation. Of the estimated 100 cities and 21 states, the National Employment Law Project states that just 27 other cities and 7 states have expanded these laws to include employers beyond the public sector, as the District has.<sup>21</sup> Additionally, many “ban the box” laws require an employer delay a background check until after the first interview. The District’s law pushes this timeline back until after an employer extends a conditional offer of employment. Only 52 other cities’ laws go as far.<sup>22</sup>

## **Implementing Agencies**

Many District agencies’ programs and policies intersect with FCRSA or impact returning citizens. For example, the Department of Employment Services (DOES) generates summary economic and employment statistics for the District and runs hiring programs and internships targeted at returning citizens. However, the most important agencies implementing “ban the box” are the Office of Human Rights (OHR), Department of Human Resources (DCHR) and the Mayor’s Office on Returning Citizen Affairs (MORCA).

**OHR:** The District of Columbia Office of Human Rights (OHR) was established to eradicate discrimination, increase equal opportunity and protect human rights for persons who live in or visit the District of Columbia. The agency is responsible for enforcing local and federal human rights laws. OHR enforces FCRSA by hearing job applicants’ complaints of violations. Once OHR has determined that a complaint falls under their jurisdiction, they schedule mandatory mediation with the complainant and employer, which may lead to settlement. If the mediation fails, OHR will investigate the complaint and potentially certify the case to the D.C. Commission on Human Rights (COHR) if they find probable cause a violation has occurred. COHR then conducts an independent review of the complaint. Penalties imposed by COHR on employers for violations of the law can reach up to \$5,000 for large employers. Half of the penalty is awarded to the complainant and half to the District. To date, all complaints filed under FCRSA have been settled without adjudication by COHR and no fines have been imposed.

In addition, OHR conducts awareness campaigns about the law for both employers and returning citizens. OHR also provides resources for job applicants and employers on their website, including complaint forms.

**DCHR:** The Department of Human Resources (DCHR) is the District’s central personnel agency responsible for hiring, compensation, and performance management and provides human resource management services that strengthen individual and organizational performance and enable the District government to attract, develop, and retain a well-qualified, diverse workforce. DCHR implements the law in District government hiring. This includes providing education and guidance to human resource administrators embedded within each District agency.

**MORCA:** Finally, the Mayor’s Office on Returning Citizen Affairs, while not formally involved in implementing FCRSA, serves citizens returning from jails and prisons. MORCA provides a variety of services

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<sup>21</sup> Michelle Natividad Rodriguez and Beth Avery. “Ban the Box: U.S. Cities, Counties, and State Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions.” National Employment Law Project. 2016. Available at: <http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf>

<sup>22</sup> *Ibid.*

to returning citizens, including health care, housing, and employment assistance. MORCA also provides public education to employers and the public at large about challenges facing returning citizens.

## Methodology

To investigate our three research questions (see Project Rationale, above), we used several methods: analysis of District government administrative data, a private employer survey, and interviews with private employers. Here, we provide a brief description of each of these methods. Detailed descriptions of each approach can be found in the methodological appendix at the end of this report.

Before beginning our research, we conducted 5 exploratory interviews with private and government employers to learn more about the effects of FCRSA. During these interviews, we found employers willing to discuss FCRSA's effect on their hiring processes but more hesitant to discuss issues of compliance or to provide hard numbers on how many returning citizens they had hired. Thus, we learned that research questions 1 and 2 (about implementation of the law and hiring of returning citizens) might be challenging to answer because of privacy concerns and our lack of power to demand implementation and hiring data from private employers. To address this challenge, we chose to collect data from a variety of sources to help account for the inherent limits to each approach.

### OHR Complaints Data

We analyzed 417 complaints filed with OHR from December 17, 2014 through September 23, 2015. The dataset contained information about the status of each complaint to up March 23, 2016, the type of complaint, demographic data about the complainant, and details about the settlements reached between employers and complainants. By analyzing OHR's complaints data, we learned how certain private employers may not have been in compliance with FCRSA, summarized the status of those complaints (settled, in progress, or dismissed), and identified the characteristics of the complainants and employers.

### DCHR Hiring Data

We also analyzed 3,480 DCHR hiring records for government positions requiring a background check, whether by statute or regulation (which are positions exempt from the FCRSA)<sup>23</sup>, or by practice (to which the law applies) from December 2013 to January 2016.<sup>24</sup> The dataset contains hiring records for all job applicants who were extended a conditional offer of employment for a District government job requiring a background check. The dataset gave us information on the position for which the applicant applied, the District agency, and whether the agency eventually cleared the applicant through the background check and the applicant took the job. The dataset also included information on the demographics of the applicant and whether the background check returned evidence of a criminal record (but provided no information on what the record contained).

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<sup>23</sup> The following positions are expressly not subject to the prohibitions of FCRSA: **(1)** Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment; **(2)** To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories; or **(3)** To any facility or employer that provides programs, services, or direct care to minors or vulnerable adults. See D.C. Code § 32-1342(c).

<sup>24</sup> Independent hiring agencies, such as D.C. Public Schools, have separate hiring processes and their data are not included in this analysis. Since many of these independent hiring agencies may have more stringent or lax hiring requirements, a greater or fewer number applicants with criminal records may have been hired at those agencies.

We used these data to identify changes in District government-specific hiring patterns pre- and post-law. The data told us whether the District hired more returning citizens after the passage of the FCRSA, as well as further trends that we highlight in our findings section.

**Employer Survey**

We developed and distributed a survey to approximately 8,500 private employers located within the District in order to learn more about the effect of the law on their practices. We received 261 responses (a 3 percent response rate). Of these, 24 respondents (9 percent) did not complete the survey. Further, a large proportion of respondents (N=197 or 75 percent) were businesses to which the law did not apply.<sup>25</sup> Therefore, our assessment of impacts is based on the remaining 40 employers to whom the law applies. We chose to administer a short, 11-question survey because, based on statements made by employers in our exploratory interviews, we believed that it would be difficult to collect more nuanced data about FCRSA in a survey format. We asked questions about employers’ familiarity with the law and how they learned about it; their perceptions of the law’s overall impact on their business and industry; the law’s impact on their hiring processes; and the law’s impact on the quality of job applicants and new hires in their business.

**Employer Interviews**

To elaborate on the survey results, we also conducted semi-structured interviews with a variety of businesses. We conducted interviews with 11 organizations that represented several industries (such as nonprofit organizations, professional services, construction, and food service), and several organization sizes (from 11 to 1,000+ employees). We arranged the interviews by reaching out to businesses with whom we had done exploratory interviews, to businesses who were members of the D.C. Chamber of Commerce, to personal connections, and by e-mailing 250 businesses on the list of D.C. Certified Business Enterprises (CBEs) obtained from the District’s Department of Small and Local Business Development (DSLBD). We determined that we reached a “saturation point,” or a point at which the interviewees provided the same types of answers to our questions. Table 1 shows how our data collection efforts map to our research questions.

**Table 1. Research Design Matrix**

Questions	OHR Data (quantitative)	DCHR Data (quantitative)	Survey (quantitative)	Interviews (qualitative)
1. How has FCRSA been implemented to date?	X		X	X
2. Within the District government, how has the hiring of applicants with criminal records changed following the passage of FCRSA?		X		
3. What are the effects of FCRSA on hiring processes according to employers?			X	X

<sup>25</sup> FCRSA does not apply to businesses with 10 or fewer employees, to positions that interact with minors or vulnerable adults, and to positions that have background checks required under other laws.

We combined the above quantitative and qualitative research methods in a mixed methods approach to research, an approach recognized as particularly useful in answering complex policy questions involving multiple actors.<sup>26</sup> In particular, the mixed methods research design helped us to increase the breadth, range, validity, and richness of our findings. After we obtained quantitative hiring data from the District government, we sought to expand<sup>27</sup> our results by collecting survey and interview data from private employers, which enabled us to answer more research questions than we would have been able to answer using a single methodological approach. Additionally, we knew that our survey would not, on its own, provide complete information on how the law has affected private employers. Thus, we compared the results of the quantitative survey with the qualitative interviews to increase the validity and enrich the patterns found in the survey. This “triangulation” enabled us to check the validity of our results in ways that a single methodological approach would not allow.<sup>28</sup> Finally, from its outset, our study sought to learn about different dimensions of the effects of FCRSA; we accomplished this by including analysis of quantitative hiring data for addressing research question 2,<sup>29</sup> and by using the combined methods of in-depth interviews and a survey for answering research question 3.<sup>30</sup> The “complementarity” of our data thus provides a more nuanced picture of FCRSA’s effects than would a single methodological approach.<sup>31</sup>

## Findings

In this section, we describe the information that we uncovered through our analysis of the OHR data, the DCHR data, the employer survey and the employer interviews. We also provide context for our findings by including relevant facts from other sources. In accordance with our mixed methods approach, we present our findings by answering each research question with relevant information from all of our data sources.

### Research Question 1: How has the law (FCRSA) affected employers to date?

To assess how FCRSA has affected employers to date, we looked at information from private employers located in the District, which we gathered by analyzing our survey and interview data as well as complaints data from OHR. From the survey and interviews, we found that private employers are largely unfamiliar with FCRSA, indicating that more outreach from District government agencies to private-sector employers may be beneficial. However, the information gleaned from these data sources may not be generalizable to all employers in the District; we discuss this limitation further under research question 3. From the OHR data and relevant outside sources, we found that the complaint process established by FCRSA has resulted in 71 settlements among a diverse range of businesses, and that OHR has experienced a heavier-than-expected caseload of complaints; we discuss the limitations and implications of these findings, as well as their connection with our finding on employers’ knowledge of the law, throughout this section.

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<sup>26</sup> Jennifer C. Greene, Valerie J Caracelli, and Wendy F. Graham. “Toward a Conceptual Framework for Mixed-Method Evaluation Designs.” *Educational and Policy Analysis*, 11(3), 1989. Pp. 255-274.

<sup>27</sup> “Expansion” is the use of mixed methods to extend a study’s breadth and range. Jennifer C. Greene, Valerie J Caracelli, and Wendy F. Graham. “Toward a Conceptual Framework for Mixed-Method Evaluation Designs.” *Educational and Policy Analysis*, 11(3), 1989. Pp. 255-274.

<sup>28</sup> “Triangulation” entails the use of multiple methods to answer a research question in order to increase the validity of constructs and results. *Ibid.*

<sup>29</sup> “Within the District government, how has the hiring of applicants with criminal records changed following the passage of FCRSA?”

<sup>30</sup> “What are the effects of FCRSA on employers in the District of Columbia?”

<sup>31</sup> “Complementarity” is the use of mixed methods to understand different facets of a policy question in order to build a richer understanding of the issue at hand. *Ibid.*

## **Finding 1: Businesses Are Largely Unfamiliar with the Law**

As mentioned in the Background section of this report, OHR (in partnership with a number of other District government agencies, including MORCA, the Department of Employment Services (DOES), the Office of Cable Television (OCT), and the Department of Corrections (DOC) conducts awareness campaigns about the law for employers and returning citizens and provides resources for job applicants and employers on its website, including complaint forms. However, survey respondents reported being largely unfamiliar with FCRSA. Forty percent of respondents (16 of 40) reported that our request to take the survey was the first they had heard of the law, and 40 percent of respondents also rated themselves a “1” on a scale of 1 to 7 on how familiar they were with the law. (An additional 15 percent of respondents rated themselves a 2 or 3, with a total of 55 percent of respondents reporting lack of familiarity with the law). Only 25 percent of respondents (10 total), did report familiarity with the law, rating themselves a 5, 6 or 7 on the 1 to 7 scale.

Similar findings were evident in our interviews with private-sector hiring officials. A majority of businesses interviewed (9 of 11, or 81 percent) reported not receiving communications from District government agencies about the law. Some businesses we interviewed (5 of 11, or 45 percent) received information from professional associations, such as the D.C. Chamber of Commerce and human resources professional associations. The majority of the interviewees (7 of 11, or 64 percent) consulted District government officials and/or the District’s online resources to inform themselves about the law; most among those (5 of 7, or 71 percent) found that the information provided was insufficient in answering all of their questions about the law. For example, one business stated that available information was not clear about what industries are subject to the law (e.g., private sector, federal government, local government). Another employer we interviewed was concerned that the number of District labor laws is increasing, and their associated regulations should be communicated directly to businesses. Finally, at the end of the interviews, when asked if they wanted to confidentially share comments or recommendations to the D.C. Council about FCRSA, a majority of respondents (6 of 11, or 55 percent) reiterated that they were not adequately informed about the law and recommended that District government improve its outreach efforts.

## **Finding 2: FCRSA-Related Enforcement of the Law Has Resulted in 71 Settlements with a Diverse Range of Businesses**

A wide range of employers in the District had FCRSA-related complaints lodged against them with OHR. To date, 71 of these complaints have resulted in settlements, but none have resulted in fines imposed against an employer by COHR.<sup>32</sup>

In total, OHR recorded 417 FCRSA-related complaints from the beginning of the law’s enforcement through September 23, 2015. About half of these complaints—157 in total—had been closed by OHR as a result of the mediation, an investigation, or because the complainant withdrew the complaint. The National Employment Law Project (NELP), in their report on implementing “ban the box”-type legislation, highlights the case of the District and notes that FCRSA generated some of the highest numbers of complaints filed in the country. NELP attributed the high number of complaints to OHR’s dedicated community outreach and to the easy to use complaints process.<sup>33</sup>

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<sup>32</sup> It is important to note that a settlement is not a finding or admission of wrongdoing.

<sup>33</sup> Zoë Polk and Michelle Natividad Rodriguez. “Fair-Chance Implementation Case Studies For Government Agencies.” *The National Employment Law Project*. June 2015. P. 11. Available at: <http://www.nelp.org/content/uploads/Fair-Chance-Implementation-Case-Studies.pdf>

OHR, as part of the mandatory mediation process, helped complainants and employers reach settlements in 71 cases. The average settlement amount was \$1,217 and ranged from a low of \$100 to a high of \$2,500. The possibility of settlement provides incentives for those who have had their rights violated to file a complaint. The relatively high settlements, as well the complaints process, which requires that the employer go into mediation with the complainant, raises the costs for employers who do not comply with the law. Both OHR and groups such as NELP have contrasted high amounts and the mandate to split any fines levied in the District with less effective “ban the box” enforcement in other states.<sup>34</sup>

The most common industries that paid these 71 FCRSA-related settlements were food services, retail, and personal care and health services. The diversity of employers who paid settlements—from major hospitals, to fast food franchises, to major retailers—appears consistent with our survey and interview findings that a wide range of employers did not know about the requirements of the law (see Finding 1). The breakdown of settled complaints by industry mirrors the overall breakdown of all complaints. Table 2 shows this overall industry breakdown of all complaints.<sup>35</sup>

**Table 2. Complaints by Industry**

<b>Industry</b>	<b>Complaints</b>	<b>Percent of Total</b>
Food Retail and Service	83	19.9%
Retail	49	11.8%
Personal Care and Health Services	19	4.6%
Services - Other	15	3.6%
Accommodation, Hotel and Tourism Services	12	2.9%
Social Services / Nonprofit Services	8	1.9%
Professional, Scientific, and Technical Services	6	1.4%
Government	5	1.2%
Transportation and Warehousing	5	1.2%
Educational Services	5	1.2%
Media and Communications Services	3	0.7%
Construction	1	0.2%
Industry Unknown	206	49.4%
<b>Grand Total</b>	<b>417</b>	<b>100%</b>

<sup>34</sup> *Ibid.* Also see Rachel Sadon. “More Than 350 Washingtonians Filed ‘Ban The Box’ Cases In The Law’s First Year.” *DCist*. February 17, 2016. Available at: [http://dcist.com/2016/02/nearly\\_500\\_people\\_filed\\_ban\\_the\\_box.php](http://dcist.com/2016/02/nearly_500_people_filed_ban_the_box.php)

<sup>35</sup> We were able to identify employer names, and thus, industry, in 211 of the 417 complaints using the address data provided. See appendix for more on our methodology.

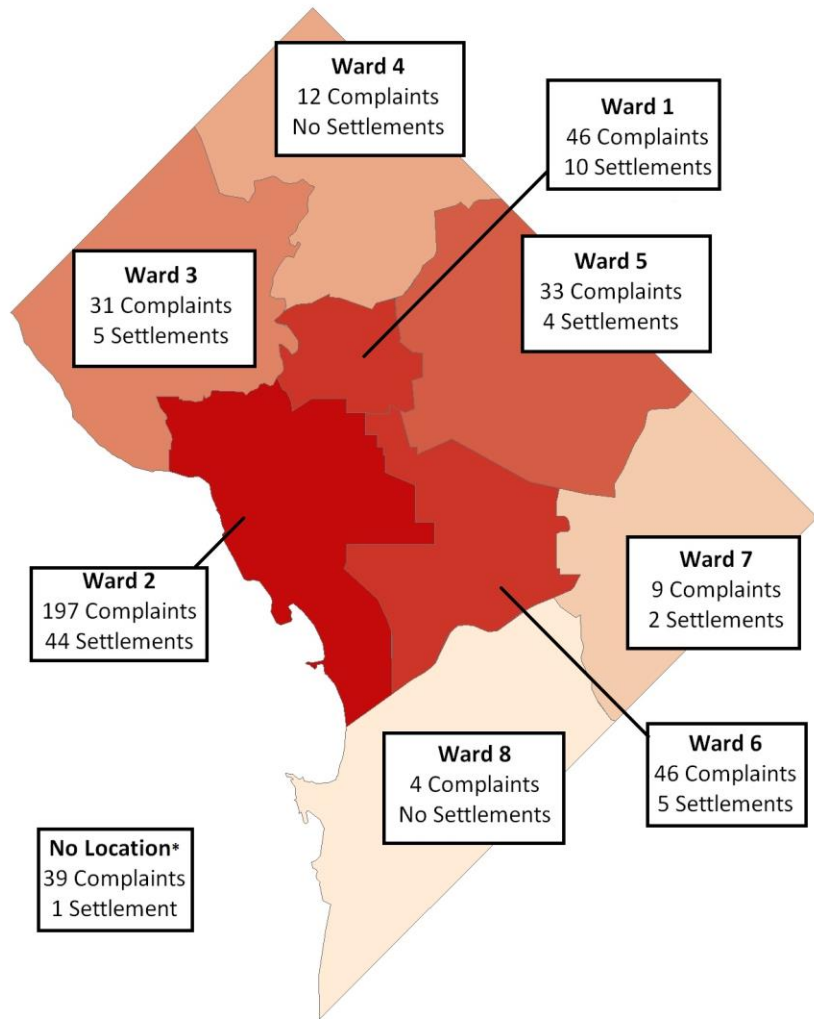
Employers in the downtown Washington business district of Ward 2 comprised 62 percent of the cases (44 total) that resulted in settlements, followed by Ward 1 with 14 percent (10 cases). Wards 6, 3, 5, and 7 follow, all with five or fewer cases with settlements. This geographical distribution aligns with the locations of all businesses that had any FCRSA-related complaint lodged against them as well as the general geographic concentration of businesses in the District. Figure 1 below maps all the 417 complaints by the ward where the business is located.

**Figure 1. Location of Businesses with Complaints**

Regarding the geographic locations of complainants, of the 71 settlements, 23 percent (16 cases), involved complainants whose address was located in Ward 4; 17 percent (12 cases) in Prince George’s County, Maryland; and 13 percent (nine cases) in both Arlington County, Virginia and Ward 1. The location of these complainants underscores the cross-jurisdictional benefits of FCRSA, which helps residents with criminal records across the D.C. metropolitan region.<sup>36</sup>

**Finding 3: OHR Has Experienced a Heavier-Than-Expected Caseload**

As noted in the prior finding, the FCRSA has led to a large number of complaints relative to other laws in the country. OHR stated that their complaints caseload has increased 114 percent as a result of FCRSA.<sup>37</sup> The large number of submitted complaints has caused delays in OHR’s complaints process, especially in mediation scheduling. All cases are given an opportunity for mediation, which requires scheduling between the complainant, OHR, and the employer.



\*Includes two complaints for businesses in VA and MD.

As result, OHR’s complaints data show an average of 171 days between receipt of a complaint and a scheduled mediation date. An average of 25 days passes between the mediation date and closure. For those cases that have been closed, these data indicate that a complainant has to wait an average of 196

<sup>36</sup> In fact, OHR has noted that FCRSA may benefit residents outside of the metropolitan region if it encourages national or even international firms to change their hiring forms and practices.

<sup>37</sup> Email from the District’s Office of Human Rights, March 31, 2016.



days for a resolution to his or her complaint. In contrast, OHR's complaints process has a stated goal of closing a case within 90 days of a "Type A" complaint's submission and 120 days of a "Type B" complaint submission.<sup>38</sup> These delays slow the enforcement of FCRSA, delay resolution for concerned complainants, and do not meet OHR's own goals for closing FCRSA-related complaints.

In addition to the large number of complaints, OHR explained that part of the caseload problem is the fact that some complainants submit many complaints against several different businesses.<sup>39</sup> This compounds the scheduling problem, since the complainant needs to be scheduled for multiple mediations involving different employers. Indeed, OHR's complaints data suggests that 95 addresses<sup>40</sup> accounted for all 417 complaints to OHR, with an average of 4.4 complaints per address. Furthermore, 12 of these addresses were responsible for 10 or more complaints and one was the source of 55 complaints.<sup>41</sup> At least some of this can be attributed to the nature of the data, which in a few cases included complainant addresses where there are homeless shelters within the District. This raises the possibility that several different complainants filed complaints from the same address.

OHR's data shows that 89 complaints have been closed without a settlement. Of these, 14 did not have a date of mediation perhaps indicating that the complainant withdrew the complaint. Of the other 75, the cases may have been closed without settlement for a number of reasons, including withdrawal of the complaint. Further investigation of OHR's complaints data is needed to determine whether spurious complaints are a common problem.

If complainants continue submitting large numbers of complaints over short periods of time, OHR's caseload will remain heavy, and complainants' trust in the process may be undermined by long processing times. Because the complaints are linked to such a relatively small number of addresses, the data also may indicate that some returning citizens are not aware of their rights or of OHR's complaint process.

## **Research Question 2: Within the District government, how has the hiring of applicants with criminal records changed following the passage of FCRSA?**

As stated in the Background section of this report, FCRSA was not the first law to place restrictions on when District hiring managers could ask job applicants about their criminal records. The first law, called the Returning Citizens Public Employment Inclusion Act of 2010 prevented District agencies from inquiring about criminal records until the completion of initial applicant screenings. As a result, FCRSA did not require the District to completely overhaul their hiring processes but rather to modify them. Although our findings in this section are based on our analysis of DCHR's quantitative hiring data, understanding the context under which the changes in hiring occurred is important. On that note, we did find that the District hired more returning citizens after FCRSA took effect. This finding indicates that the law may have helped

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<sup>38</sup> OHR classifies FCRSA-related complaints into Type A (where an employer violated the law on a job application) and Type B (where an employer violated the law during the hiring process). OHR's dataset did not differentiate between Type A and Type B complaints so the team was not able to separate out our findings by Type A and B complaints.

<sup>39</sup> Email to the team on April 6, 2016 from OHR.

<sup>40</sup> We found that there were only 95 unique complainant mailing addresses in the dataset. While an individual complainant might be linked back to each of these 95 unique mailing addresses, it is also possible that several complainants living at a particular address submitted separate complaints. As a result, we do not attribute cases resulting from a particular address to an individual complainant.

<sup>41</sup> The 55 complaints associated with one address had the following outcomes: 26 of the cases have been closed by OHR and 14 have resulted in settlements. In total, the settlements from the 14 cases totaled \$19,500 (the complainants would receive half of this amount). The example of this address again shows that many of the complaints are genuine. Furthermore, this example also points to the long processing times: the first complaint was closed in April 2015 and the most recent was closed in March 2016.

produce one of its intended effects, but the nature of our data restricts our ability to determine a causal relationship between the implementation of FCRSA and the increases in hiring. At the end of this section, we present a more in-depth discussion on this topic.

**Finding 4: The District Hired More Returning Citizens After the Law Took Effect**

The District had been implicitly complying with FCRSA as a matter of policy since 2008. Beyond policy, a backlog of background checks also made it impossible for DCHR to conduct background checks before a conditional offer was made.<sup>42</sup> After the law took effect, DCHR worked with District agencies not previously covered by the 2010 Returning Citizens Public Employment Inclusion Act, including independent hiring agencies,<sup>43</sup> to remove “the box” from their application forms. DCHR also changed its formal policy and guidance to fully align with the requirements of FCRSA. Between 2014 and 2015, DCHR recorded 2,184 finalists for positions requiring a background check. About half (48 percent) of these finalists were temporary hires with the District’s Summer Youth Employment Program and are included in this section save for our discussion of specific DC agency hiring. DCHR’s data also included background checks for 1,296 cab drivers, which were excluded from this analysis.<sup>44</sup>

DCHR’s data show that the number of returning citizen job applicants who became finalists for positions requiring a background check increased from 209 in the 13 months (Dec 2013 to December 2014) before the law took effect to 257 in the 12 months (January 2015-December 2015) after the law took effect. Returning citizens comprised 22 percent of the 1,145 total finalists in the year after the law took effect. Of those who did not withdraw their application and were cleared by the background check, 237 took the job, 59 more than in the year before the law took effect.

The Summer Youth Employment Program, whose goal is to help youth ages 14-24 spend their summer productively in meaningful paid positions, did not substantially change its share of hires with criminal records before and after the law took effect. Indeed, returning citizens have formed a large percentage of all summer program hires. By analyzing position titles, we determined that 1,074 of all 2,184 job finalists (48 percent) in the dataset were summer employees. Of the finalists with criminal records, 222 of the 466 (again, 48 percent) were summer employees.

**Table 3. District Hiring, Before and After the Law (FCRSA)**

	Finalists with Criminal Records			All Finalists	
	Total	Rejected by clearance process	Cleared and took the job	Total	All finalists who took the job
<b>12/2013 - 12/2014</b>	209	2	178	1,039	988
<b>1/2015- 12/2015</b>	257	9	237	1,145	1,121
<b>Total</b>	<b>466</b>	<b>11</b>	<b>415</b>	<b>2,184</b>	<b>2,109</b>

<sup>42</sup> Interview with Margaret Radabaugh, General Counsel of DCHR, March 2, 2016.

<sup>43</sup> Some D.C. government agencies have independent hiring authority, meaning they hire staff through their own processes rather than through DCHR. The District of Columbia Public Schools (DCPS) and the DC Auditor’s office are two examples of agencies that have independent hiring authority.

<sup>44</sup> The D.C. Taxicab Commission, a District government agency, conducts background checks on all District cab drivers. However, the cab drivers are employed by private employers, so they are excluded from this analysis.

However, the number of returning citizens that were rejected by the background check increased from two to nine from before to after the law’s implementation. Of these nine, three were rejected because of a positive drug test. The other six were rejected because of other factors. Three of the nine rejected after the law was implemented, and both rejected before the law’s implementation, were summer hires. Table 3 above shows hiring details for finalists with criminal records and all finalists in the year before and the year after the law took effect.

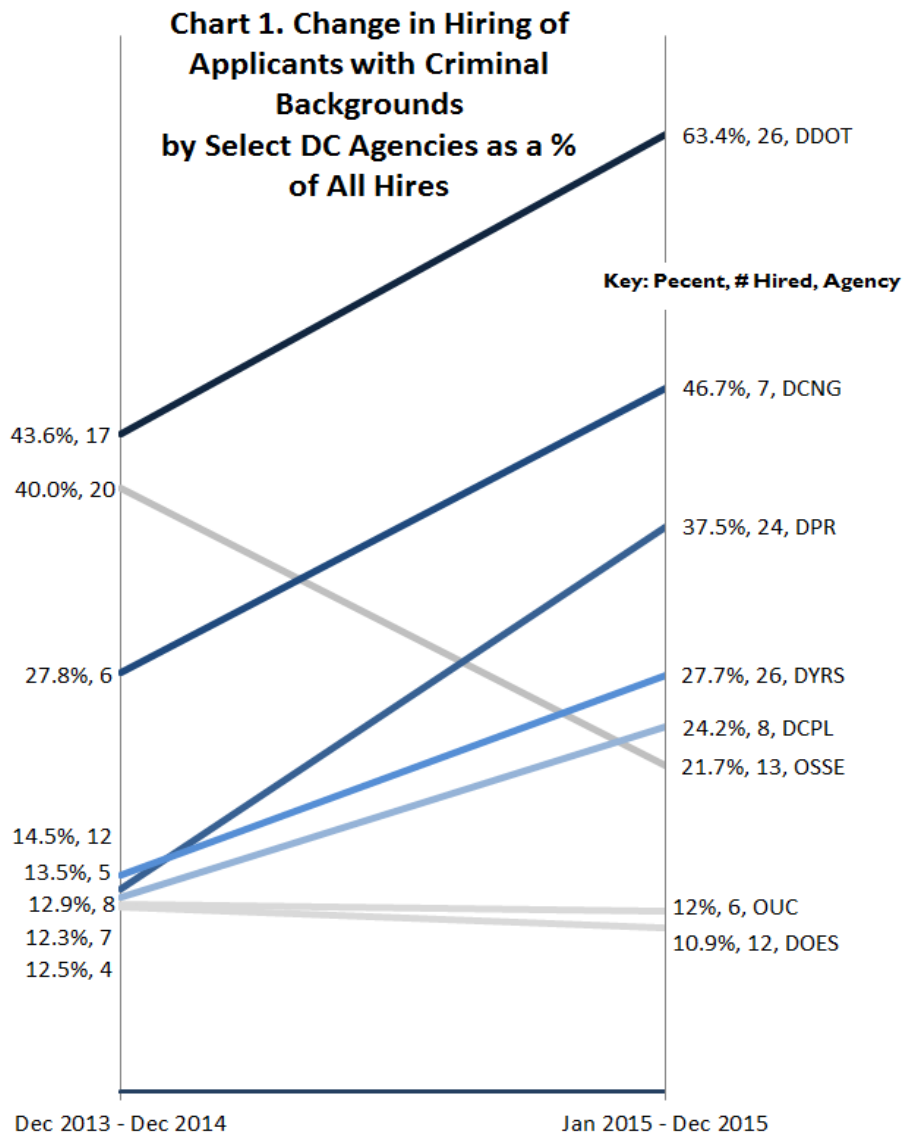
**Table 4. Change in District Government Hiring, Before and After FCRSA**

	<b>Before</b>	<b>After</b>	<b>Total</b>	<b>Percent Increase over Prior Year</b>
Applicants with Criminal Records	178	237	415	33%
All Applicants	988	1,121	2,109	13.5%

DCHR’s data also showed that hiring of returning citizens increased by 33 percent after the law took effect (as a proportion, from 18 percent to 21 percent of all of those hired). In contrast, the total increase in the number of applicants hired after the law took effect was 13.5 percent. Table 4 shows this change.

The data also showed that many District agencies increased their share of new full-time hires with criminal records.<sup>45</sup> These agencies account for a large percentage of the overall increase we see in new hires with criminal records. Since the Department of Parks and Recreation accounts for a large number of summer hires, we excluded the summer program from this portion of the analysis. Some District agencies that increased their share of new hires include the Department of Parks and Recreation (from 12.9 percent to 37.5 percent), the D.C. National Guard (27.8 percent to 46.7 percent), the District Department of Transportation (from 43.6 percent to 63.4 percent), and Department of Youth Rehabilitation Services (from 13.5 percent to 27.7 percent). Agencies that increased the total number of new hires with criminal records compared to before the law were the Department of Parks and Recreation (from 12 to 34 hires), Department of Youth Rehabilitation Services (12 to 26), and the District Department of Transportation (17 to 26). Chart 1 on the next page shows the change in hiring by District agency before and after the law.

<sup>45</sup> We looked at DC agencies that had at least ten or more hires with criminal records in the last two years.



Thus, DCHR data show that the number of returning citizen applicants increased both numerically and as a percentage of all hires after FCRSA took effect. However, a number of factors beyond the law could explain this outcome; for example, Mayor Muriel Bowser has made it a priority of her administration to hire returning citizens, and she took office just a month after the FCRSA took effect. In addition, it is possible the District posted a greater number of positions suited for returning citizens during this time period. To expand on these findings, future research can attempt to collect hiring data from independent hiring agencies, look at hiring trends over a longer time horizon (two or five years, for instance), and interview hiring managers in District government about their perceptions of how the law has changed their hiring practices and applicant pool. Future research should also try to identify what types of jobs returning citizens are obtaining within the District and if these job types are changing over time. The agency-level hiring analysis also shows that certain District agencies tend to hire a large number of returning citizens, both as a proportion of all hires and in simple numeric terms. Future research should try to identify why agencies such as DDOT, DPR, DYRS, and OSSE have tended to hire more returning citizens and what that might mean for reentry and job training programs for people who are re-entering society.

### **Research Question 3: What are the effects of FCRSA on hiring processes, according to employers in the District of Columbia?**

The results of our survey and interviews point to the potential effects of FCRSA on private employers' hiring processes. For context, we also include information from other sources where applicable. As described in the Methodology section of this report, the response rate for our survey was relatively low (3 percent), indicating that the survey findings may not be generalizable to the broader population of District businesses. Furthermore, the goal of the interviews was to provide more in-depth information about private employers' experiences with FCRSA, rather than to present information that is generalizable to all District businesses. As a result, the findings we present in this section may not represent the views of all private employers in the District of Columbia, but they do provide an idea of private employers' experiences with the law.

With that caveat in mind, we found that, overall, FCRSA has not had major impacts on the hiring processes of many employers in the District, that many employers support the spirit of FCRSA (that is, reintegrating returning citizens into mainstream society through employment), but also that the law does not apply to many businesses in the District. However, we did find that the law impacted some types of businesses more than others, and that a minority of businesses faced relatively significant changes to their hiring processes.

#### **Finding 5: The Law May Not Apply to Most Businesses Surveyed**

In our survey of employers based in the District, we found that FCRSA likely does not apply to 75 percent of respondents (221 of 261), based on their answers to questions. Sixty-two percent of respondents reported having 10 or fewer employees, while 13 percent of respondents reported either running businesses that work with minors or vulnerable adults or being required to conduct background checks for all or almost all of their positions. All of these conditions create a possible exemption from the law. An additional 9 percent of respondents (24 people) did not complete the entire survey, leaving 15 percent of total respondents to complete all survey questions, or 40 people.

This finding aligns with 2015 data from the U.S. Small Business Administration, which suggests that 10,560 of the 17,123 firms in the District, or 62 percent, are small, having 9 or fewer employees.<sup>46</sup> Given this information, the law likely applies to somewhere between 25-38 percent of all District employers.<sup>47</sup>

#### **Finding 6: Many Businesses Surveyed Report Little Impact on Overall Operations**

As outlined in Chart 2 on the following page, survey results showed that 68 percent of respondents (27 of 40) reported that FCRSA affected their hiring processes "somewhat" or "not at all" (25 percent and 43 percent, respectively). Only 10 percent said the law had "significantly" affected their hiring processes, while 18 percent reported being unsure.<sup>48</sup> At the same time, for each of three specific survey questions about the law's impact on length, complexity, and cost of hiring processes, relatively large numbers of survey respondents reported uncertainty: 28 percent, 28 percent and 30 percent respectively. This uncertainty may be linked to respondents' lack of knowledge about the law, as described in Finding 1.

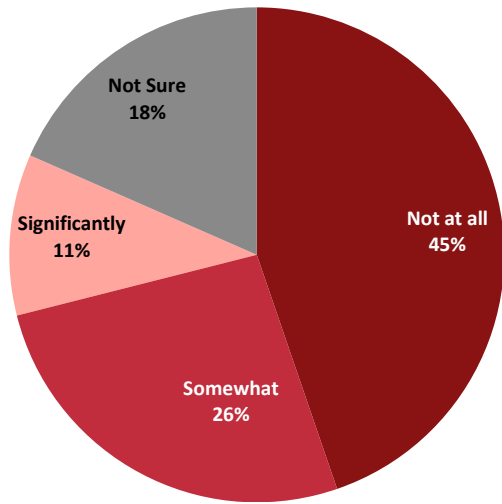
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<sup>46</sup> U.S. Small Business Administration. "Firm Size Data: Table 1: Number of firms, establishments, employment, and payroll by firm size, state, and industry." 2015. Available at: <https://www.sba.gov/advocacy/firm-size-data>

<sup>47</sup> The law applied to only 25% of our survey respondents; in the U.S. Small Business Administration data, 62% of businesses have 9 or fewer employees, leaving a maximum of 38% of businesses that could be affected by the law.

<sup>48</sup> Percentages do not add to 100 percent because 2 respondents skipped this question.

**Chart 2: How has FCRSA affected hiring processes in your organization?**



The representatives from private businesses we interviewed revealed similar information. Most employers we interviewed (10 out of 11) reported that the law has had low impact on their operations, and most interviewees (7 of 11) reported not needing to perform changes to their hiring process to comply with the law. Subsequent interviews repeatedly revealed this sentiment both directly and indirectly. Please see Finding 8 for more detailed information.

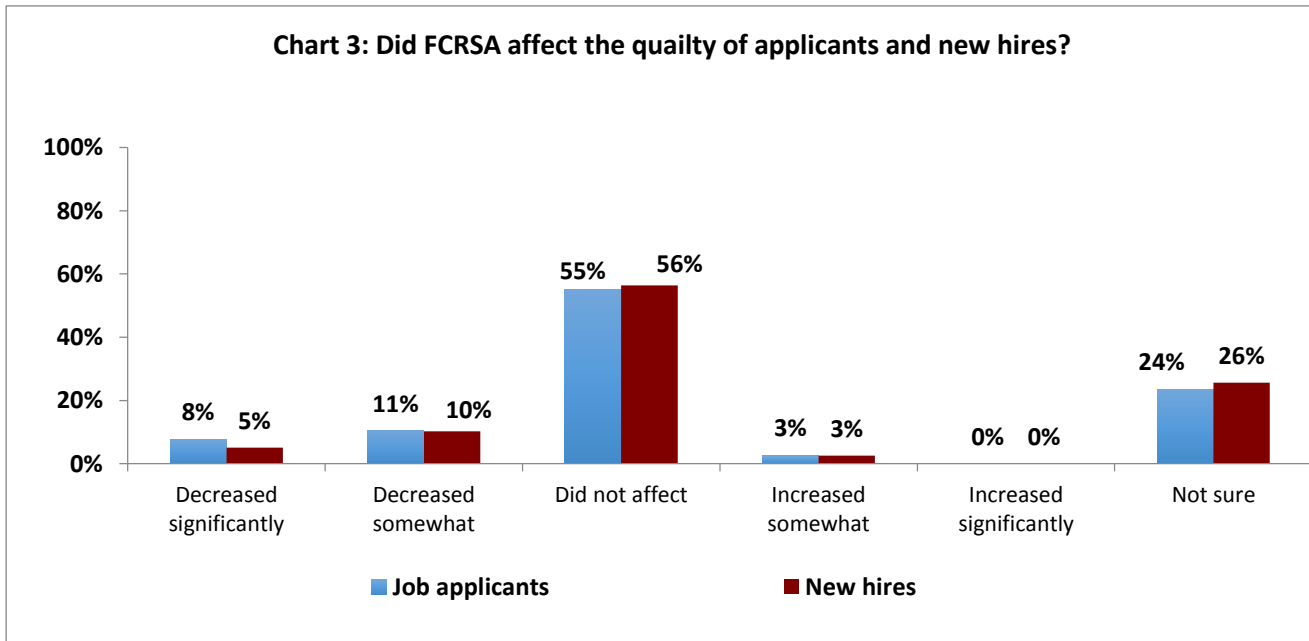
During interviews, we also asked employers about how they handle resume gaps. Our goal with this question was to assess whether gaps in employment history are used as a proxy for “the box”

that existed on many businesses’ job applications before FCRSA took effect, and that employers theoretically used to screen applicants. Specifically, we wanted to know whether employers use the gaps to guess whether an applicant had been incarcerated, and to eliminate candidates believed to have had that experience, as they did with “the box.” Interviewees’ answers revolved primarily around a desire to understand the circumstances surrounding long gaps in unemployment (i.e., gaps of more than a year), rather than around a desire to eliminate applicants with gaps in resumes. Since the employers interviewed do not eliminate candidates from further review based on the gaps, we concluded that it is likely the majority of employers do not use gaps as a direct proxy for “the box.”

However, a minority of employers who ask about gaps in resumes expect returning citizens to be transparent about their criminal records even before a conditional offer of employment is made. First, for a majority of employers (7 of 11) interviewed, asking about gaps in resumes is standard practice; the remaining employers do not have a formal policy for asking about gaps in resumes, but may ask if they see fit. Second, the large majority of employers interviewed (9 of 11) indicate that gaps in resumes are *not* used as a proxy for determining previous incarceration. However, a plurality of employers (3 of 11) interviewed indicate that they have a preference for applicants to be upfront during interviews about their criminal records if gaps in their work histories are related to these records; this is an interesting finding, since (a) under FCRSA, employers are not allowed to directly ask applicants to reveal this information before making the applicant a tentative offer of employment, and (b) the 3 employers we interviewed who prefer applicant frankness about their criminal records also state that they want to use this information to help applicants rather than to eliminate applicants from further consideration, whether it be by placing applicants with jobs for which their criminal records do not preclude them from participating, or because they want applicants to be upfront and honest so that there are no surprises for the employer when the background checks are complete. It is worth noting that the employers who expressed this sentiment are mission-oriented in the sense that they are interested in placing disadvantaged minorities in jobs.

The single employer who indicated that they use gaps in resumes to identify criminal records, a restaurant chain reported that incarceration was not a barrier for further consideration for a position (and, further, that they commonly hire returning citizens).

### Finding 7: Businesses Report Little Impact on the Quality of Job Applicants and New Hires



As demonstrated in Chart 3 above, a majority (55 percent and 56 percent) percent of survey respondents said that FCRSA did not affect the quality of job applicants and new hires in their business. At the same time, 24 percent and 26 percent of respondents, respectively, reported being unsure whether the quality of their applicants and hires has increased. Only 19 percent of respondents reported a decrease in quality of applicants, and only 15 percent of respondents reported a decrease in the quality of hires. Interviewees did not report knowing of any changes to the quality of job applicants or new hires since the implementation of FCRSA.

### Finding 8: A Minority of Businesses Surveyed Report Impacts on Hiring Processes

As mentioned in Finding 6, while most survey respondents (68 percent) reported no effects or only minor effects of FCRSA on their hiring processes, a subset of employers did report impacts of FCRSA. Specifically, 25 percent of survey respondents report that the law has increased the number of steps in their hiring processes, 23 percent report that the law has increased the length of their hiring processes, and 20 percent report that it has increased the cost of their hiring processes. In total, 37 percent of respondents reported that the FCRSA imposed one or more of these burdens.

We found similar results in our in-depth interviews of District businesses. The main change in hiring procedures reported by interviewees involved removing “the box” from applications, and/or changing the *order* of the steps in the hiring process to ask about criminal records only after a conditional offer of employment is made. Before the law was implemented, 3 of the 11 interviewees did ask about criminal records on job applications, so they reported small increases in cost in updating their hiring processes. This was true for a range of employers, including a staffing firm that provides temporary human resources services, and a large nonprofit that places vulnerable populations in jobs. One interview participant representing a restaurant chain reported that despite following the law and removing the box inquiring about criminal records from the employment application, because an applicant obtained an old application

form that contained the box from the restaurant, which had failed to discard all copies of the form after updating it. Thus, the settlement increased their costs.

**Finding 9: Many District Businesses Interviewed Support the Spirit of the Law**

Among the businesses we interviewed, personal and professional reactions to, and perceptions of, the law were mostly neutral or positive, but varied depending on the type and size of business. About half of the interview participants reported a positive initial reaction to the law (5 of 11), some participants reported a neutral or minimal reaction to the law (4 of 11), and a few reported a moderately negative reaction (2 of 11). One of these few changed their perception after understanding that the changes in their procedures were minor. Looking deeper into the type of business that provided each answer, we observe that federal government contractors and businesses that hire mostly college-educated professionals report not having a strong reaction to the law. The ones having negative reactions reported either shock at not being able to know about the criminal record of job applicants or concern about the precise effects of the law on their business procedures.

A majority (7 of 11) of the interviewees reported that the law has made them more aware of the challenges facing returning citizens, leading to workplace discussions about how to ensure equitable hiring practices. Furthermore, at the end of the interview, when asked if they wanted to share comments or recommendations to the D.C. Council about FCRSA (an open-ended question), six respondents reiterated their positive opinions about the law and support for the spirit of the law, which they viewed as providing increased opportunities to returning citizens in order to decrease recidivism.



## Recommendations

### **Recommendation 1: The Mayor and Council should direct more resources to outreach and public education to ensure that all District businesses are aware of the requirements under FCRSA.**

As stated in Finding 1, 55 percent of businesses responding to our survey reported not being familiar with or having any knowledge of FCRSA. Furthermore, OHR's complaints data showed that a wide variety of employers settled complaints (Finding 2), indicating that many of these employers possibly did not know about the requirements of the law. As such, we recommend that the District consider more comprehensive outreach to employers across the District regarding FCRSA. One of The Mayor's Office of Returning Citizen Affairs (MORCA)'s functions is to "meet with private sector businesses to....educate companies on EEOC (Equal Opportunity Employment Commission) guidelines, criminal background checks and the new "ban the box" legislation."<sup>49</sup> At the same time, meeting with private-sector businesses was not covered in MORCA's 2013 memorandum of understanding (MOU) to help coordinate services for returning citizens, which was signed by 23 agencies or entities across the District government.<sup>50</sup> Given that one of our key findings was that District employers reported not being familiar with the law, we recommend that the Mayor direct relevant government agencies to consider additional outreach and public education of "ban the box" or to strengthen existing agreements and partnerships (including the agreement outlined in the MOU) to ensure that all District businesses are aware of the requirements under FCRSA. We also recommend that the Council support these efforts with additional appropriations, as required.

### **Recommendation 2: The Council should consider including a requirement that implementing agencies develop a public outreach and education plan—and funding to support it—in all future pieces of legislation that make substantial changes to employment law and worker rights.**

While additional outreach regarding FCRSA would be beneficial, the Council currently has before it a number of proposed pieces of legislation similar in nature to FCRSA that would benefit from a more comprehensive outreach and public education strategy than was employed for FCRSA. Two examples of such legislation include the Universal Paid Leave Act of 2015<sup>51</sup>, currently under consideration by the Council, and the Fair Criminal Record Screening for Housing Act of 2016,<sup>52</sup> recently introduced by Councilmember McDuffie and pending consideration by the Committee on Judiciary. Given the significant impacts these bills would likely have on employers and the rights they would grant to workers and returning citizens if they become law, the Council should ensure that the legislation includes a requirement that implementing agencies develop and engage in robust outreach efforts to ensure that all affected are 1) informed about their rights and responsibilities under the law; and 2) understand the penalties for noncompliance and options for redress the law provides.

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<sup>49</sup> D.C. Office of the Inspector General *Office of Returning Citizen Affairs. Report of Inspection*. District of Columbia Government. September, 2015.

<sup>50</sup> *Ibid.*

<sup>51</sup> Bill 21-415. Introduced on October 6, 2015.

<sup>52</sup> Bill 21-706. Introduced on April 19, 2016.

**Recommendation 3: The Mayor should consider instructing relevant District agencies to provide technical assistance or create tools for employers to share best practices to increase compliance and minimize costs and procedural burdens.**

While a majority of businesses we surveyed reported that there was little or no impact on overall operations (Finding 6), our research indicated that a minority of businesses did report that complying with FCRSA increased costs, complexity or duration of their hiring processes (Finding 8). Additionally, during interviews, individual businesses shared their ideas and successes for adapting their organization's processes to comply with FCRSA. Largely, the procedural impacts and costs on the District's employers varied across size and industry. Thus, we recommend that the District explore ways to provide technical assistance or to develop tools that could help share lessons learned or best practices that could help level the burdens on employers. For example, construction firms described many sector-specific aspects of their hiring processes, one of which was a need to staff projects quickly. One employer shared an idea of providing a voluntary disclosure survey to new hires that have been offered conditional employment, which would help expedite required background checks by helping to identify the relevant jurisdictions to contact, thus saving time and money to staff. More broadly speaking, employers reported that it would be useful to have consolidated resources or tools to help stay on top of FCRSA and other DC laws and regulations and to help ease their compliance costs. We recommend that DOES, MORCA, or OHR explore ways to merge outreach and public education about "ban the box," suggested in Recommendation 1, with the development of specific resources, tools or practices that address how to comply with FCRSA and other laws.

**Recommendation 4: The District should conduct further research on the impact that FCRSA has had on returning citizens' experiences and job outcomes.**

Finally, we were not directed to capture the perspectives of returning citizens about how FCRSA has impacted their experiences applying to a job or how it has changed their employment outcomes. In order to fully assess whether the procedural impacts on employers are balanced out by an improved experience for the law's target population (returning citizens), the District should consider conducting further direct research, perhaps through the Mayor's Office of Returning Citizen Affairs (MORCA) or another District agency.

## Methodological Appendix

Following the standard notation for describing mixed-methods studies,<sup>53</sup> the study follows a temporal and relative priority as follows:

Qual → QUAN → QUAL

The exploratory interviews (Qual) took place first, and provided inputs for both the quantitative and qualitative later stages. The QUAN section refers to OHR and DCHR secondary data analysis as well as the analysis of survey data. The QUAL refers to our in-depth interviews and other qualitative methods.

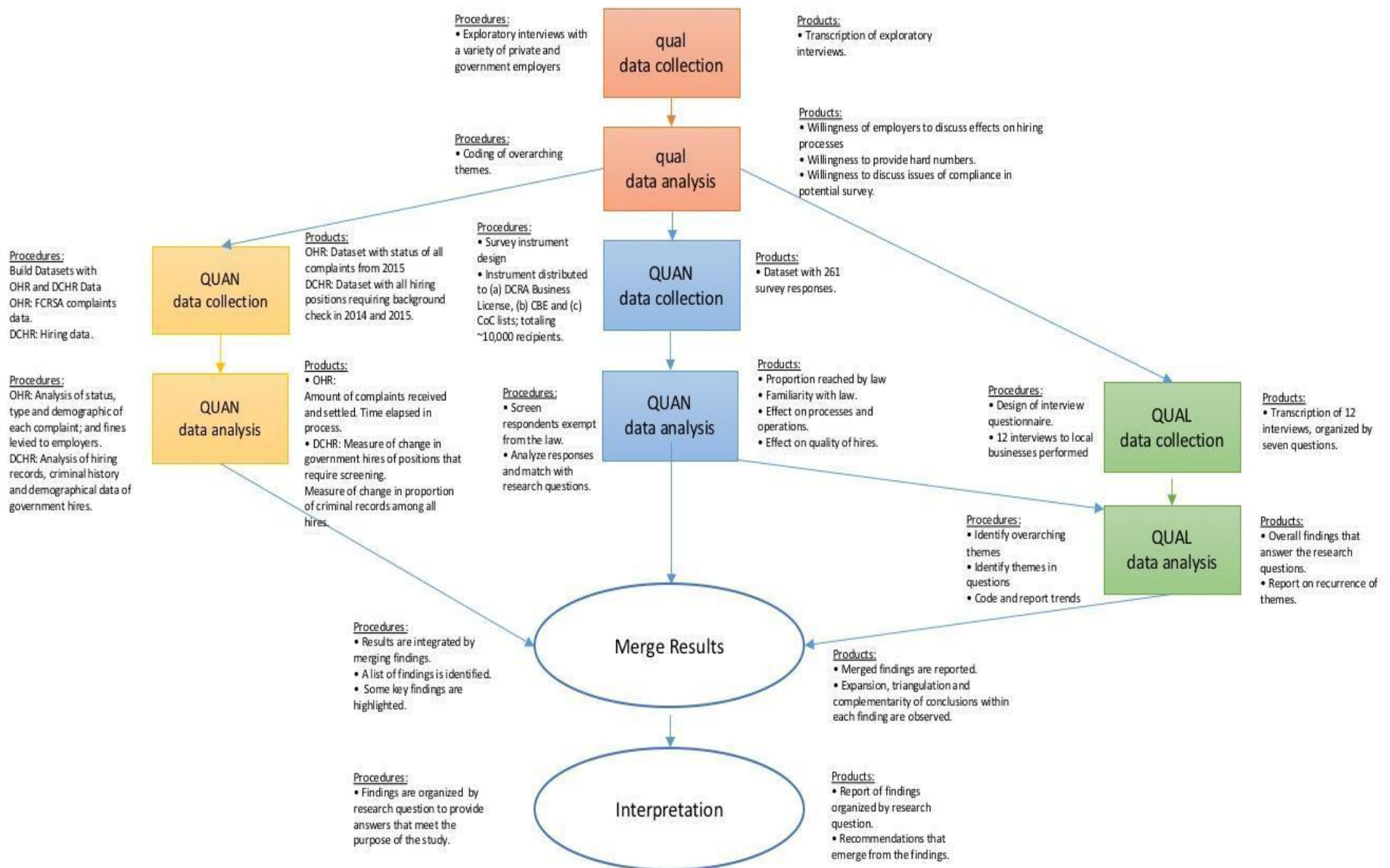
The interaction of our methods in this study is shown by the *procedural diagram*.<sup>54</sup> The vertical axis represents the temporal order and arrows show procedural logic. Capitalization represents relative priority.

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<sup>53</sup> Janice M. Morse and Linda Niehause. *Mixed methods design: Principles and procedures*. Walnut Creek, CA: Left Coast Press. 2009.

<sup>54</sup> John W. Cresswell and Vicki L. Plano Clark. *Designing and Conducting Mixed Methods Research*. Thousand Oaks, CA: Sage Publications. 2010.

Figure 2. Procedural Diagram



## **OHR Complaints Data**

We analyzed 417 complaints filed to OHR under the FCRSA since its promulgation on December 17, 2014 through September 23, 2015. The first complaint was made on December 30, 2014; two weeks after the law went into effect. Though OHR makes a distinction between Type A and Type B complaints, this information was not available. As a result, the report's discussion groups Type A and B complaints together.

The dataset contained information about the status of each complaint, the type of complaint, as well as demographic data about the complainant, such as their mailing address and Ward. The dataset also detailed the settlements reached between employers and complainants. By analyzing OHR's complaints data, we learned how certain employers may not have been in compliance with FCRSA, summarized the status of each complaint (settled, open, dismissed), and identified the characteristics of the complainants and employers.

To analyze complainant and employer characteristics, we added to and analyzed OHR's data in two ways. First, we used the complainant's mailing address to get a sense of how many individuals submitted a complaint to OHR. Since the mailing address data was detailed to the apartment number or house address level, we could state with some confidence that each different mailing address was linked to different people. However, since several people may live at one address, we decided to describe complainants in terms of different addresses, not individuals. However, since complaints linked to one unique address were almost always submitted on the same day, it is likely that one individual at these addresses submitted these complaints.

Second, we used the OHR-provided location of violation address (the address of the employer) to arrive at an employer name, which then we linked to an industry based on the U.S. Census NAICs classification system for businesses. By cross-referencing these addresses in a search engine, we were able to identify 211 of the 417 complaints to a business name. The remaining 206 addresses were often the address of a major office building without a floor or suite name. The complainant could have lodged a complaint regarding ground-floor retail or an employer on the upper floors.

## **DCHR Hiring Data**

The team also analyzed 3,480 DCHR hiring records for government positions requiring a background check from January 2014 (10 months prior to the law taking effect) to January 2016 (16 months after the law took effect). Independent hiring agencies, such as D.C. Public Schools, have separate hiring processes and their data are not included in this analysis. These independent hiring agencies, which have some leeway to deviate from established personnel regulations, may have more stringent or lax hiring requirements, meaning it is possible that fewer or more applicants with criminal records may have been hired at those agencies, skewing our findings from what they might actually be for the District government as a whole.

The dataset contains hiring records for all those applicants who were extended a conditional offer of employment for a District government job requiring a background check. The dataset gave us information on the job for which the applicant applied, the District agency, and whether the applicant was eventually cleared by the background check and took the job. The dataset also gave us information on whether applicant had a criminal record and demographic data about the applicant. We used these data to identify changes in District government-specific hiring patterns pre- and post-law. The data told us whether more applicants with criminal records were hired after the Act became law, as well as trends that are highlighted in our findings section.

To analyze job types, we added one field to DCHR’s dataset. By analyzing the District agency and position title, we were able to differentiate between full-time District government jobs on one hand and cab driver background checks and Summer Youth Employment Program temporary hires. Of the 3,480 hiring records, 1,296 were cab drivers and 1,074 were summer hires.

## Survey

To gain information about the impact of FCRSA on private employers in the District, we conducted a survey of District businesses and organizations. Based on the Auditor’s past experience administering surveys to private employers, we expected a low response rate<sup>55</sup> and thus sought to distribute the survey through several channels:

- **DCRA Business License List (6,784 individual email contacts):** We sent out survey invitations to a list of people who hold business licenses with the D.C. Department of Consumer and Regulatory Affairs as of Mar. 4, 2016. The ODCA previously used this list for their Sick and Safe Leave Act survey. Consisting of more than 8,000 emails, this list included any business that applied for or holds a business license in the District, including individuals who may have registered for licenses for ventures not covered by FCRSA. To better target and track survey distribution, we eliminated duplicate email addresses and isolated emails that appeared to be personal (e.g. e-mails ending in @aol.com or @yahoo.com). We then sent two separate survey links, one to professional emails and one to personal emails.
- **Certified Business Enterprise (CBE) List:** Invitations to complete the survey were sent to a list of the 1,742 businesses registered as Certified Business Enterprises (CBEs) as of Feb. 25, 2016, which was assembled by the D.C. Department of Small and Local Business Development (DSLBD). The list includes any business that has registered for and received CBE certification, which affirms that a business is a “bona fide District-based business.”<sup>56</sup>
- **D.C. Chamber of Commerce (CoC) Member Newsletter:** The CoC offered to distribute a link to the survey to their members in their weekly newsletter, as well as a follow-up reminder in a subsequent newsletter. While the number of CoC members is available on their web site, CoC could not share the number of emails in the newsletter distribution list, so we can only estimate the total number of survey recipients based on their total membership of 1,515 businesses.

Distribution List	Method of Contact	Number of Recipients	Response Rate
DCRA Business License List	<ul style="list-style-type: none"> <li>● Direct email distribution (SurveyMonkey)</li> <li>● One follow-up reminder email</li> </ul>	6,784	2.8 percent
Certified Business Enterprise (CBE) List	<ul style="list-style-type: none"> <li>● Direct email distribution (SurveyMonkey)</li> <li>● One follow-up reminder email</li> </ul>	1,742	3.9 percent
D.C. Chamber of Commerce	<ul style="list-style-type: none"> <li>● Inclusion of SurveyMonkey link in weekly newsletter</li> <li>● Follow-up reminder in newsletter</li> </ul>	1,515 members	0 percent

<sup>55</sup> Marshall Matsiga and Joshua Stearns. *Effects of the District’s Sick and Safe Leave Act*. Office of the District of Columbia Auditor. May 28, 2015. Available at: <http://www.dcauditor.org/sites/default/files/DCA242015.pdf>

<sup>56</sup> Department of Small and Local Business Development. “CBE Program History.” District of Columbia Government. Accessed on March 5, 2016. <http://dslbd.dc.gov/service/cbe-program-history>

### *Survey Distribution Strategy*

We distributed the survey across these multiple channels with two primary goals: to maximize response rate and to capture information from a diverse pipeline of businesses and organizations. Prior ODCA studies showed that response rates for surveys of this nature tend to be low. Notably, the ODCA recently conducted survey research to evaluate its Sick and Safe Leave Act in 2015 by targeting a comparable population of District businesses. They distributed emails to a list (DCRA's) of over 6,000 organizations and received just 261 responses with only 189 being from eligible organizations.<sup>57</sup> Our team decided that while we would still plan to leverage DCRA's email list, we would also pursue other channels to supplement this list in hopes of increasing total responses. Additionally, we wanted to ensure that these supplemental lists would not create bias towards one type of organization, for example by only adding larger Chamber of Commerce member business perspectives that may represent a biased perspective. As a result, we worked with the ODCA to acquire the CBE List and DCRA Registered Nonprofit List to support broader data collection.

### *Survey Distribution Logistics*

Businesses were invited to click on a link to the survey. The link took them to a secure online survey website where they were asked one qualifying question about their organization, six questions about the law, and four demographic questions about their organization or role within it. Respondents were assured in the corresponding email outreach that all individual answers would remain confidential and that our analysis will only summarize statistics across the entire group of responses. Respondents were given 10 days to complete the survey with the survey period spanning from March 9 to March 18.

### *Survey Design and Content*

We designed the survey to capture information from individuals familiar with the hiring process—primarily human resources or operations personnel. The survey inquires about the employee's familiarity with FCRSA, perceptions of its impact on their organization and their broader industry, FCRSA's effects on the cost, duration and complexity of the hiring process, as well as impact on the quality of applicants and new hires.

To inform the design of the survey, we conducted exploratory interviews with District businesses and organizations. We asked about the level of sensitivity of the topic, the availability of supporting information about our identified measures, and initial feedback on potential variability across industries. These five interviews were conducted with restaurants, a large university, a nonprofit organization and a public agency. One relevant takeaway was that the availability of quantitative data on the length or cost impacts might vary across industries; larger businesses with designated HR departments may have this data handy while smaller businesses or organizations with more informal HR processes would not. Another relevant insight was that respondents might not be willing or able to freely disclose any information in writing that may be interpreted as compliance related. To that point, we learned that potential respondents would be more inclined to answer short, high-level questions as opposed to open-ended questions that may trigger a formal or legal review of submitted answers.

The survey contains predominantly multiple choice or Likert scale items that would capture qualitative feedback on these impacts as opposed to defined quantitative measures (i.e. "the law significantly increased the cost of our hiring process" as opposed to "the law increased the cost of our hiring process by

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<sup>57</sup> Marshall Matsiga and Joshua Stearns. Effects of the District's Sick and Safe Leave Act. Office of the District of Columbia Auditor. May 28, 2015. Available at: <http://www.dcauditor.org/sites/default/files/DCA242015.pdf>

10 percent”). Additionally, we did not include any questions that could be deemed to be overly identifying of their specific role or their specific organization. We also diversified questions so as to not solely request feedback specifically about their organization but also about the broader industry as well. In sum in alignment with our mixed methods strategy, we drafted the survey to capture consistent and non-intrusive feedback on the procedural impacts across industries since we anticipated that targeting this information would yield a higher response rate. Accordingly, we planned to capture more nuanced or sensitive feedback and to perform direct questioning about whether or not the law changed their hiring outcomes for returning citizens within the interviews.

## Interviews

We conducted 11 semi-structured interviews with hiring managers representing businesses in the District in order to increase the richness of our data and provide detail and nuance to our survey findings from a *complementarity* viewpoint.

Though our reasoning behind our interview methodology was similar to that for the survey, the specific methodological processes are by nature different for surveys and interviews, especially with a population as large as employers in the District, so there were some key differences between the two approaches.

### *Initial Sampling Strategy for Interviews*

First, we were able to disseminate the survey to as many employers as possible, but for the interviews, that was not feasible. As a result, we made some key decisions about who to contact and how. Based on the aforementioned exploratory interviews, we deduced that FCRSA was likely having different effects on businesses of different sizes and on businesses in different sectors, so it was important that we design our sampling methodology to ensure that we were speaking with a variety of businesses. Further, we wanted our sample to be as randomly chosen as possible so as to mitigate selection bias and to ensure that we were not selecting businesses simply out of convenience. To accomplish these three goals (size, sector, and selection), we pulled a stratified random sample of businesses from business lists that would, in theory, lead us to interviews with some of the largest and smallest businesses in the District, and that would allow us to gain perspectives from businesses in a variety of sectors. The population list was composed by three datasets that, in turn, defined three equally-sized strata:

- **Department of Employment Services (DOES) Top 200 Employers by Size Class:** DOES produces and analyzes labor statistics in the District, and provides a list of the largest 200 employers in the District.
- **Certified Business Enterprises (CBE) from the D.C. Department of Small and Local Business Development (DSLBD):** The CBE lists approximately 1,700 businesses based in the District of Columbia that have successfully applied to be certified by the DSLBD. The CBE designation allows businesses to receive preferred procurement and contracting opportunities. We also used this list to disseminate the survey.
- **The Think Local First businesses:** Think Local First supports businesses in the District by advocating in favor of local consumption, nurturing a community of local entrepreneurs, and advocating for policies that support their growth. Think Local First makes their list of businesses public, sorted by industry.

By stratifying our sample, we captured the differential effects of the law on private businesses of different sizes in the District.



### *Initial Strategy for Contacting Potential Interviewees*

We randomly selected businesses from the above lists. Then, we contacted the businesses by email, and arranged meetings with their hiring managers. In order to determine which staff member to email, we used the following decision rule: if the business had an HR department, we looked at that department's portion of the website to find the hiring manager's contact information. If there was no hiring manager listed or if there were multiple hiring managers, then we contacted the person in the highest-level position. If the business did not have an HR department, we looked for the staff member to which the businesses directed potential job applicants; if that information was not available, we contacted the highest-level person at the organization. If none of the above were available, we contacted the business through their website's general email address or contact form. The idea of contacting the highest level staff members was that they likely had the authority to determine who in their organization was authorized to talk with people from outside their organization, and that they would know to whom our inquiry should be directed if they were not the appropriate recipient.

If a business did not respond to our email within approximately 3 business days, then we followed up with a phone call to the appropriate person (as defined using the same decision rules as for email communication, outlined in the paragraph above). If the business failed to respond within approximately 3 business days to our phone call, we randomly selected another business using the sampling technique described above.

### *Revised Strategy for Sampling and for Contacting Potential Interviewees*

We used our initial strategy for sampling and contacting potential interviewees for approximately two weeks, but with little success (we were only able to schedule one interview, with a business on the DOES list, which also happened to be a contact of ours from the exploratory interviews). As a result, we revised our strategy to include more aggressive and personalized outreach:

- **We reached out to a larger sample from the DSLBD list than previously planned:** 50 businesses per group member, totaling 250 businesses, who we contacted by sending individual emails to each business. The theory behind this idea was that even a very low response rate might yield a few interviews with a 250-business sample. This strategy was quite successful, and allowed us to schedule four of the eleven interviews we conducted.
- **We contacted the businesses with whom we conducted exploratory interviews,** to see if they would be interested in participating in an interview on the record. The theory behind this idea is that we already built some rapport with these individuals, and some had said during the exploratory interviews that they might be interested in speaking with us in a more official way, so we believed that they would be more amenable to speaking with us than if we did not know them at all. This strategy was also successful, as it allowed us to schedule two of the twelve interviews we conducted.
- **We contacted businesses in our neighborhoods** that we frequent, such as grocery stores, restaurants, hardware stores, etc. The theory behind this idea is that we have some connection to these businesses by living in the same neighborhood and sometimes shopping there, so the response rate might be better than if we didn't know them at all. This strategy proved unsuccessful.
- **We contacted our personal connections who work in organizations in the District.** The theory behind this idea is that businesses would be more inclined to speak with us if they know us in some way. This strategy was also successful, and allowed us to schedule three of the twelve interviews we conducted.

This new strategy still allowed us to fulfill our goal of reaching businesses of different sizes and types:

- Approximately half of the organizations were for-profit businesses, and the other half were nonprofit organizations
- Five of the businesses had 11-30 employees, one business had 31-99 employees, and five of the businesses had more than 100 employees (two of these had over 1,000 employees).
- The industries represented included: nonprofit (5), architecture/construction (2), management of companies and enterprises (2), accommodation and food services (1), and educational services (1). All of the staff members with whom we spoke were human resources professionals, hiring managers, members of their organization's executive staff, and/or business owners.

#### *Strategy for Target Number of Interviews*

We conducted interviews until the responses we received reached a saturation point; that is, when respondents started providing similar answers or insights. In practice, we hoped that interviewing 11 businesses would allow us to reach that saturation point. Interview responses were confidential and, like the survey, included topics such as how employers were informed about the Act; employers' reaction to the Act; how employers considered criminal records before the Act, and how these processes have changed; how employers handled gaps in resumes before the Act, and how these processes have changed; and employers' perspectives on hiring returning citizens and how these processes have changed.

#### *Strategy for Conducting Interviews*

We used a semi-structured interview protocol. Under this methodology, we began interviews with semi-formal introductions of each present party, read a confidentiality statement, used a set of predetermined questions as a guide for the topics we covered, and asked follow-up questions as we saw fit. This structure also allowed the interviewees to ask questions as needed.

The interview questions were designed to complement the other data collection methods in our study, especially the survey. Topics included: how employers were informed about the law; employers' initial reaction to the law as well as their current point of view; how employers considered criminal records before the law was implemented, and how these processes have changed (if at all); how employers handled gaps in resumes before the law was implemented, and how these processes have changed (if at all); employers' perspectives on hiring returning citizens and how these processes have changed (if at all) since the law was implemented. Interviews lasted approximately thirty minutes each.

During all of the interviews, the same two members of the Capstone team were present; Colenn Berracasa was primarily charged with leading the interview, and Alexis Estevez was primarily charged with taking notes. This structure reinforced the consistency provided by the interview questions. Interviews were not recorded.

#### *Analysis of Interview Data*

We analyzed interview responses using thematic analysis: we identified major themes in the responses and then analyzed respondents' answers to our interview questions based on these themes.

To analyze the interview data, we used the qualitative research method of thematic analysis. This method is widely recognized in the field of program evaluation in such texts as *The Handbook of Practical Program Evaluation*. Preliminarily, we read through our notes from the interviews, and identified the major themes that came out of each conversation, as well as those that seemed to be common from employer to employer throughout the interviews. We then conducted a more formal coding process to systematically determine themes that provide information to address the research questions.

For this more formal process, we first aggregated respondents' answers to each question into a single file, creating one file for each question and its associated responses. Next, we identified common topics in interviewees' answers to each question. Third, we looked for patterns in the topics, and relationships between topics. Finally, based on all of the above, we identified themes that the interviewees directly expressed, as well as underlying themes that were present but not explicitly vocalized in interviewees' answers; we used the results of this final step, in conjunction with our team's analysis of our other data (i.e., from the survey, from DCHR, etc.) to determine our key findings and recommendations.

## Survey Outreach Email

Dear Local Business:

The Office of the District of Columbia Auditor (ODCA) needs your help!

We're currently evaluating the impact of the District's Fair Criminal Record Screening Amendment Act of 2014, also known as the District's version of "Ban the Box." As many of you know, this law prevents employers from asking about an applicant's criminal history until a conditional offer of employment has been extended and also allows an employer to withdraw a conditional offer upon discovery of an applicant's criminal history only for a legitimate business reason.

About ODCA: The mission of the ODCA is to support the Council of the District of Columbia by making sound recommendations that improve the economy, efficiency, and accountability of the District government. To fulfill our mission, we conduct performance audits and program evaluations. The residents of the District of Columbia are one of our primary customers and we strive to keep them informed on how their government is operating and how their tax money is being spent.

More about the survey: As part of our research, we are looking to survey local businesses on their familiarity with the law as well as how this new law has affected hiring practices, length of the hiring process, retention of employees, and any other costs associated with compliance. To gather this information we hope you will consider taking part in our short (5-10 minute) online survey or passing the survey along to someone who is familiar with the hiring process within your organization. All individual answers to questions in this survey will remain confidential and our report will only summarize statistics across the entire group of responses. The survey will remain open until March 18, 2016.

Your participation is critical to making this report a success. Because "Ban the Box" laws are still relatively new nationwide, there is little data available on how such laws affect the businesses they regulate. We hope to provide data to that end. When the report is complete the ODCA will transmit it to the Council, which may then use it to inform any modifications to the law. With your input, the report will reflect the circumstances and concerns facing our local businesses.

We hope you will participate! Thank you very much.

Sincerely yours,  
Kathleen Patterson  
District of Columbia Auditor

# Final Survey

## Fair Criminal Record Screening Act Survey

### Your Organization

**\* 1. Please check all that apply:**

- Our organization/company has 10 or fewer employees in the District of Columbia.
- The primary business function of our organization/company (e.g. educational services) provides programs or services to minors or vulnerable adults.
- All or almost all positions in our organization/company are designated to encourage employment of those with criminal histories.
- The primary function of our organization/company (e.g. private security) requires us to consider an applicant's criminal history for all or nearly all positions.
- None of the above.
- I don't know / am not sure of the answer to the questions above.

### Effect of the Law (FCRSA)

**\* 2. Please rank your familiarity with the following:**

	Very Unfamiliar					Very Familiar	
Your organization/ company's hiring processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Fair Criminal Records Screening Act (FCRSA)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 3. In your opinion, how has this law (FCRSA) affected hiring processes in both your industry and your organization/company?**

	Not at all	Somewhat	Significantly	Don't Know/ Not Sure
Across my broader industry	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Within my organization	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 4. Think about the hiring process at your organization/company since December 2014. How has the law affected the following dimensions of the hiring process?**

	Decreased significantly	Decreased somewhat	Did not affect	Increased somewhat	Increased significantly	Don't know / not sure
Cost / fiscal burden	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of steps	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Length	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 5. Think about the quality of job applicants and new hires at your organization/company since December 2014. How has the law affected the following?**

	Decreased significantly	Decreased somewhat	Did not affect	Increased somewhat	Increased significantly	Don't know / not sure
Quality of job applicants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of new hires	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 6. How were you informed about the law, if at all? (check all that apply)**

- Colleague in my organization
- Colleague / networking in my industry
- DC government communication (e-mail, newsletter, phone call, etc)
- DC government website
- Legal alert from a subscription/notification service
- Media/news outlet
- Professional/trade association
- I had not heard of or been informed of the law prior to this survey.
- Other (please specify)

**7. Please share any additional opinions you have about the DC Fair Criminal Record Screening Act:**

**\* 8. To which industry does your organization/company belong? (check one)**

- Accommodation and Food Services
- Administrative and Support and Waste Management and Remediation Services
- Agriculture, Forestry, Fishing and Hunting
- Arts, Entertainment, and Recreation
- Construction
- Educational Services
- Finance and Insurance

- Health Care and Social Assistance
- Information
- Management of Companies and Enterprises
- Manufacturing
- Mining, Quarrying, and Oil and Gas Extraction
- Professional, Scientific, and Technical Services
- Real Estate and Rental and Leasing
- Retail Trade
- Transportation and Warehousing
- Utilities
- Wholesale Trade
- Other Services (except Public Administration)
- Industries not classified
- Other (please specify)

**\* 9. How many employees does your organization/company have?**

- 1-30
- 31-99
- 100+

**\* 10. My primary role or function within my organization/company is:**

- Financial or Accounting
- Human Resources
- Legal
- Management
- Operations
- Other (please specify)

**\* 11. I began working in my current role in January 2015 or later.**

- Yes
- No

## Interview Protocol

### *Confidentiality Statement and Questions for Interviews (read at beginning of interviews)*

We will use the following interview to gain insights into your experiences with, and impressions of, the Washington, D.C. Fair Criminal Record Screening Act, also known as “Ban the Box”. We are conducting interviews with a variety of employers in the District as part of a larger evaluation of the implementation of the law for the Office of the D.C. Auditor. The Auditor’s office will use our evaluation as part of a report to

the D.C. City Council about how the law has been working thus far. This report is in no way related to enforcement of the law.

It is very important to note that neither your name nor your organization's name will be included in our final report--the answers from all of our interviews will be aggregated, and we will remove any identifying data from the answers.

For their records, the D.C. Auditor's office will keep notes from this interview on file. There is a small chance that these notes will be used for a quality control audit of our research project. However, in place of your name and business's name, the notes will include a random number, so that neither your name nor your business's name will be recorded.

The interview should take approximately 30 minutes. I [Colenn] will be leading the discussion, and my colleague, Alexis, will be taking notes [by hand / on the computer].

Do you have any questions or concerns before we begin?

*Questions:*

1. For background, could you tell us a little bit about your position, and about the organization as a whole?
  - a. What your job entails
  - b. Number of employees in the organization
  - c. Locations (of your business/organization) in and out of the District.
2. How were you first informed about the law (D.C. Fair Criminal Record Screening Act)?
  - a. Were you subsequently informed about the law in any other ways?
  - b. Did you find that these means of being informed were adequate?
3. Reaction to the law:
  - a. Do you remember your initial reaction to the law?
    - i. personal opinions
    - ii. initial thoughts on how the law would affect you as a hiring manager / business owner
  - b. How has your reaction changed (if at all) since the law was implemented?
    - i. personal opinions
    - ii. initial thoughts on how the law would affect you as a hiring manager / business owner
4. Since the law was implemented in Dec. 2014, could you please tell us about your how your hiring procedures have changed, if at all? Specifically, we are interesting in knowing about changes in:
  - a. Cost of the hiring process
    - i. Is this procedure different depending on position? (probe: higher, lower, mix)
  - b. Number of steps in the hiring process
    - i. Is this procedure different depending on position? (probe: higher, lower, mix)
  - c. Length of the hiring process
    - i. Is this procedure different depending on position? (probe: higher, lower, mix)
5. How was a candidate's criminal record considered in the hiring process before the law was implemented in Dec. 2014?

- a. Did an applicant's criminal record (as indicated on an application) preclude them from further consideration for a position?
  - b. Did an applicant's criminal record impact their chances of receiving an interview?
  - c. Does an applicant's criminal record preclude them from being hiring now?
6. How did you handle gaps in resumes before the law was implemented? Specifically, we are interested in the following areas:
  - a. Did you have a question on your applications, or during your interviews, asking applicants to explain gaps in their work history?
  - b. Did you reject applicants who had gaps in their resumes?
    - i. If so, at what point in the application process?
    - ii. If so, at what length of the gap?
  - c. Were the gaps in resumes handled differently depending on position?
  - d. Have any of the practices we've discussed changed since the law was implemented?
7. Has your perspective on hiring individuals with criminal records changed since the law was implemented? Specifically:
  - a. Are you more or less inclined to hire someone with a criminal record now? Why?
  - b. Have you heard of any feedback (positive or negative) about new employees with criminal records? (Within your broader industry or within your organization)