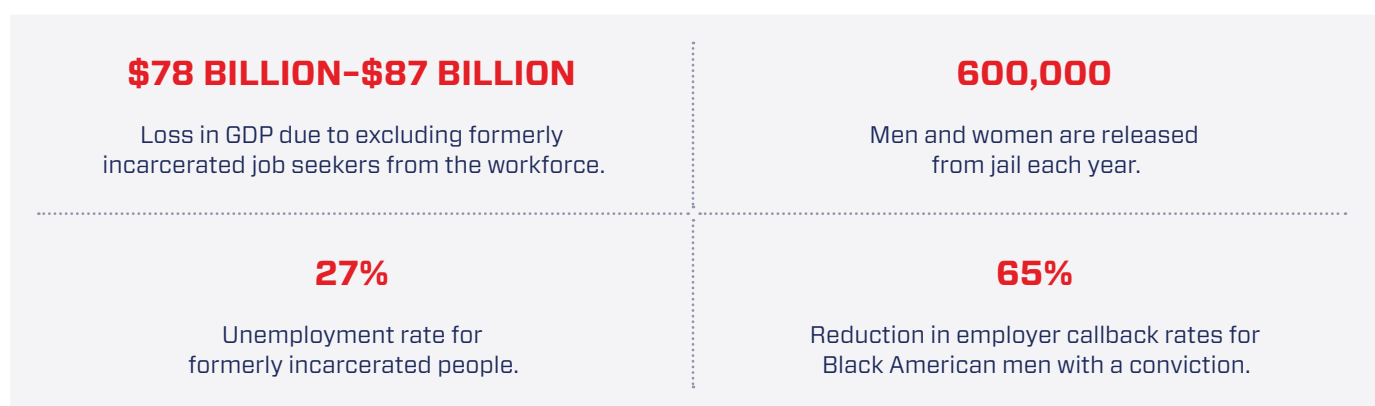


THE BUSINESS CASE FOR CRIMINAL JUSTICE REFORM: SECOND CHANCE HIRING

An estimated 70 million people in the U.S. have an arrest or conviction record,¹ and over 600,000 men and women are released from jail each year.² Successfully reintegrating these individuals brings many advantages. First, there are advantages to these individuals who can get a fresh start supporting and taking care of themselves and their families. Second, employers can benefit by tapping into a talented labor force to meet their workforce needs. And, third, society as a whole gains when ex-offenders are connected to employment opportunities and their communities in terms of reduced recidivism and development of human capital.

Connecting the formerly incarcerated with employment is critical, providing a secure income, stability, and a connection with other members of society. When employers align their interests with social service work—supporting housing agencies, health care providers, nonprofits, and the criminal justice system—the chances of successful reintegration are even greater.³



This issue brief explores the benefits to employers that hire formerly incarcerated individuals, identifies barriers to entry for those with criminal convictions, highlights programs and organizations working to break down these barriers, and discusses developments concerning state and federal legislation that supports second and fair chance hiring. Finally, the brief makes recommendations for further action.

I. Benefits of Hiring Formerly Incarcerated Individuals

BENEFITS OF SECOND CHANCE HIRING



Increased national productivity



High loyalty/low turnover



Available, motivated employees



Safer and stronger communities

Employment of the formerly incarcerated would increase Gross Domestic Product (G.D.P.), leading to greater earning power and improved public safety

At the national level, economists estimate that the Gross Domestic Product (G.D.P.) is reduced between \$78 billion and \$87 billion due to excluding formerly incarcerated job seekers from the workforce.⁴ Increased income from reliable employment leads to greater purchasing power, increased sales and payroll taxes, and improved public safety.

At the local level, the nonprofit organization, D.C. Central Kitchen, found that its full-time employees with criminal histories contributed over \$60,000 in payroll taxes annually.⁵ Data from Philadelphia in 2011 showed that connecting 100 formerly incarcerated individuals with employment would produce \$1.2 million in annual earnings and \$55 million in total post-release lifetime earnings.⁶ Connecting 100 formerly incarcerated individuals to jobs would yield \$1.9 million in additional wage tax contributions and \$800,000 in additional sales tax revenue over the employee's lifetime. One hundred fewer recidivists would result in more than \$5.2 million in annual cost savings to criminal justice agencies, including police, courts, corrections, and probation and parole. Employment of formerly incarcerated individuals contributing to 1,500 fewer recidivists would allow for the closure of a prison facility for an annual cost saving of more than \$26 million.⁷

Second Chance Hires Are Motivated and Loyal

Based on several case studies from around the U.S., formerly incarcerated employees demonstrated greater employee loyalty than those without a criminal record to employers.

- At Total Wine & More Co., human resources managers discovered that annual turnover was on average 12.2% lower for employees with criminal records than those without. By adopting a program to recruit employees with criminal histories, the organization reduced turnover from 25% to 11%.⁸
- According to a 2015 study by Portland State University that compared employees at Dave's Killer Bread over a three-year period, people with criminal backgrounds outperformed those without in three categories: attendance, policy, and behavioral violations. Additionally, employees with a criminal background were promoted faster.⁹
- A study of job performance among call center employees found that individuals with criminal records had longer tenures and were less likely to quit than those without records.¹⁰
- Since 2009, Nehemiah Manufacturing, a consumer packing firm in Cincinnati, Ohio, has hired 180 employees, 80% of whom have criminal backgrounds.¹¹ An analysis of the company's annual turnover rate revealed that the turnover rate is approximately 15%, below the 38.5% average for consumer products companies.¹²
- When researchers analyzed data from almost 60,000 applicants hired into U.S. sales and customer service call centers between 2008 and 2014, they found that former inmates stayed in their positions 19 days longer than those without a record.¹³

Employment Opportunities Reduce the Recidivism Rate

Recidivism is the tendency of a convicted criminal to re-offend. There is a 40% chance they will head back to prison within the next three years for those who have been to prison.¹⁴ Two years after release, employed individuals were twice as likely to have avoided arrest as their unemployed counterparts.¹⁵ Between 1997 and 2007, recidivism rates grew by more than 9% in states with the heaviest licensing burdens and shrank by 2.5% in states with the lowest licensing burdens.¹⁶

II. Barriers to Entry

Formerly incarcerated people are unemployed at a rate of over 27%.¹⁷ The stigmas attached to a criminal record are important to acknowledge. This includes labeling, stereotyping, status loss, and discrimination that accompanies a criminal record. These stigmas manifest as a lack of trust that makes some employers reluctant to hire ex-offenders.¹⁸ In addition, employers often expect applicants with criminal records to engage in undesirable behaviors on the job, even ones unrelated to the conduct initiated by the record.¹⁹

Reputational risk/liability is often why employers are wary of hiring past offenders or hesitant to disclose that an employee is a convicted criminal. Potential liability is the practice of negligent hiring, which occurs when an employer fails to verify that a prospective employee may present a clear and present danger to the organization. Employers are concerned about the legal liability of hiring these individuals and the potential impact on the company brand if customers learn some employees have criminal records. Thus, in certain circumstances, when employers decide not to verify that a prospective employee has a criminal record, they may end up on the losing end of negligent hiring cases, losing about 75% of the time with the average settlement of such claims as high as \$1 million.²⁰

Lack of education and employment are also structural barriers to entry. Approximately two-fifths of people entering prison do not have a high school diploma or General Educational Development (G.E.D.) credential.²¹ Most have less work experience and fewer job-related skills than the general population.²²

The criminal justice system disproportionately impacts minorities. Black Americans comprise 13% of the U.S. population but 40% of the incarcerated population.²³ Black Americans are more likely than white Americans to be arrested. And once arrested, they are more likely to be convicted and once convicted, they are more likely to experience lengthy prison sentences.²⁴ Further, having a record reduces employer callback rates by 50% for white male applicants but 65% for Black men.²⁵ Black women are hit especially hard. Unemployment for formerly incarcerated white men is 14 percentage points higher than the general population but 37 percentage points higher for Black women.²⁶ Struggles with finding employment post-incarceration contribute to the growing wealth gap in the U.S. Approximately 1 in 9 Black children and 1 in 28 Latino children have an incarcerated parent, compared with roughly 1 in 57 white children.²⁷

OCCUPATIONAL LICENSING

Occupational licensing is a form of government regulation requiring a license to practice a profession or vocation for compensation. Occupational licensing restrictions prevent many former offenders from starting their own businesses in a licensed industry, stifling entrepreneurship and new business creation.²⁸

Today, one out of every five Americans needs a license to work.²⁹ Data from the American Bar Association show that individuals with criminal convictions are automatically disqualified for thousands of professional licenses and certifications.³⁰ Considering that as many as one in three Americans has a criminal record, these exclusions have far-reaching implications.³¹ This also renders many individuals ineligible for a large share of jobs,³² perpetuating unstable economic situations for them. Applicants in 31 states can even be denied licenses based on an arrest that did not lead to a criminal conviction.³³ In other words, boards can refuse to issue a license even though the applicant is functionally innocent.

Laws restricting licensing opportunities for workers with criminal records have a disproportionate impact on Black and Hispanic workers.³⁴ Twenty-eight states and the District of Columbia have no standards in place governing the relevance of conviction records³⁵ of applicants for occupational licenses. In these states, a licensing board may deny a license to an applicant who has a criminal conviction regardless of whether the conviction is relevant to the license sought, how recent it was, or whether there were any extenuating circumstances.

III. Breaking Down Barriers

Prison Education and Job Training Programs Lead to Improved Outcomes

Prison education improves post-release employment outcomes.³⁶ Research has reported a return on investment (R.O.I.) of \$19.62 for prison-based correctional education (primary and postsecondary) and \$13.21 for vocational education.³⁷

- Minnesota's EMPLOY program provides participants with employment assistance 90 days before release from prison and continued for up to one year after release. An evaluation of the program revealed that participants were more likely to find and maintain a job after their release from prison than their comparison group counterparts, resulting in more total wages earned.³⁸ Due to these results, a cost-benefit analysis indicated that EMPLOY generated an R.O.I. of \$6.45 for a total of \$2.8 million in costs avoided annually.³⁹
- Second Chance Act (S.C.A.) Adult Demonstration pilots showed that multijurisdictional funding supports and a follow-through care approach to reentry increased employment outcomes and wages for program participants. Individuals included in the S.C.A. treatment group were more likely to be employed and earned an average of \$1,800 more than nonparticipants; this wage differential represented a 70% improvement in employment earnings.⁴⁰
- Getting Out and Staying Out is a New York-based program that provides reentry for young men aged 16 to 24 through education, employment, and emotional well-being.⁴¹ The organization noted that recidivism rates for its participants who have gone to school, undergone training, received mentorship, or gotten jobs in the previous 90 days are 15% or lower, compared with 67% for young men in a similar age group nationwide.⁴²
- A Washington State study said that a reduction in crime due to job training and employment for a single formerly incarcerated individual amounted to more than \$2,600.⁴³

Stakeholder Participation and Active Organizations

- Prison-2 Employment, a collaboration between the Building Industry Association's Baldy View chapter and several San Bernardino agencies, allows participants to land entry-level jobs with 1 of 30 local construction firms.⁴⁴

- The Manufacturing Institute is partnering with the Charles Koch Institute and Stand Together to promote and educate companies about Second Chance hiring.⁴⁵
- The U.S. Department of Labor’s Reentry Employment Opportunities Program connects employers with community and faith-based programs to gather data and inform them about successful approaches to reemployment opportunities.⁴⁶ On June 21, 2021, the U.S. Department of Labor awarded 28 grants to organizations in 17 states and Washington, D.C., to assist individuals now or once involved in the criminal justice system with securing employment in their communities.⁴⁷
- The mission of the Beacon of Hope Business Alliance is to “expose 2,500 Second Chance job opportunities in Hamilton County (Cincinnati, Ohio) by inspiring and equipping employers to embrace this cause.”⁴⁸
- The objective of the Second Chance Business Coalition is “to promote the benefits of second chance employment and provide employers with resources to hire and provide career advancement to people with criminal records.”⁴⁹ Companies that have joined the SCBC include Accenture, AT&T, Bank of America, Best Buy, Cisco, CVS Health, DICKS’s Sporting Goods, Eaton, Gap Inc., General Motors, The Home Depot, JPMorgan Chase & Co., Koch Industries, Kroger, Mastercard, McDonald’s, Microsoft, PepsiCo, Inc., Procter & Gamble, Prudential Financial, Inc., Schnitzer Steel Industries, Target, Texas Instruments Incorporated, Union Pacific, Verizon Communications, Visa, Vistra Corp., Walgreen Boots Alliance, and Walmart.⁵⁰
- The purpose of the Responsible Business Initiative for Justice is to “work with companies to champion fairness, equality, and effectiveness across systems of punishment and incarceration.”⁵¹
- Georgetown University’s Pivot Program is a custom certificate in business and entrepreneurship explicitly created for formerly incarcerated individuals. Designed in partnership with the D.C. Department of Employment Services and delivered by Georgetown faculty, the Pivot Program is a one-year transition and reentry program centered on a blend of academic work and supported employment.⁵²
- The Institute for Justice tracks occupational licensing requirements by state⁵³ and provides model bills⁵⁴ for overall reform. It also tracks and advocates reforming occupational licensing laws to make it easier for ex-offenders to find work in state-licensed fields.⁵⁵

KOCH INDUSTRIES LEADING THE CHARGE

In February 2020, Koch developed and deployed the Creating Second Chances strategy, which guides Koch companies in making a concerted effort to recruit and hire formerly incarcerated people. A few of the steps Koch takes to make its reentry hiring program successful include not disqualifying job seekers with criminal pasts, removing unintended barriers in hiring practices, ensuring employees with criminal records are not stigmatized in the workplace, and making Koch’s public commitment.⁵⁶

The organization partners with organizations like The Last Mile, which teaches job skills to inmates in the Topeka Women’s Correctional Facility. Koch has also worked with the Atlanta Public Defender’s Office to create job opportunities for people with criminal records and Dave’s Killer Bread, a bakery in Oregon dedicated to second-chance employment.⁵⁷

In addition, the Charles Koch Institute, a research and grant-making organization founded by Koch Industries Chairman and C.E.O. Charles Koch, recently partnered with the Manufacturing Institute, a national trade group, to promote second-chance hiring. The Institute designs and holds roundtable discussions, webinars, leadership events, and pilot programs to share knowledge throughout the industry.⁵⁸

IV. Public Policy Proposals

State Legislation

As criminal justice reform takes place primarily at the state level, this section provides an overview of ban-the-box legislation and clean slate hiring practices. For more detailed information, see the appendix.

BAN-THE-BOX

The objective of ban-the-box is to help people with criminal records access the labor market by removing the box on an employment application that requires applicants to disclose their criminal history. Checking this box can lead to an application's rejection. Ban-the-box delays the inquiry until later in the process, once employers have had an opportunity to assess applicants on their merits.

- Thirty-six states, the District of Columbia, and over 150 cities and counties have adopted a ban-the-box (“fair chance”) policy.⁵⁹ These laws incorporate the Equal Employment Opportunity Commission guidance (2012) on the use of arrest and conviction records in employment decisions, which recommends that employers conduct an “individualized” assessment. This guidance states no explicit federal prohibition on making inquiries about arrests and convictions, but they cannot be a proxy for racial discrimination⁶⁰ (see the appendix).
- On December 20, 2020, President Trump signed into law the National Defense Authorization Act of 2020. The law bars federal agencies and contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer.⁶¹
- **Ban-the-Box Propels Employment Gains**
 - In Durham County, North Carolina, the number of applicants with criminal records recommended for hire nearly tripled in the two years since its ban-the-box policy passed. The resulting numbers of hires increased from 35 to 97. On average, 96.8% of those with records recommended for hire ultimately got the job.⁶²
 - A longitudinal study conducted by the Johns Hopkins Hospital found that after banning the box on initial applications and making hiring decisions based on merit and the relevance of prior convictions to particular jobs, hired applicants with criminal records exhibited a lower turnover rate than those with no records.⁶³

CLEAN SLATE

Clean slate laws implement criminal record relief in the form of expungement, sealing, or set-aside of certain qualifying felonies, as well as misdemeanors.

- As of 2021, several states have enacted an automatic conviction sealing law.⁶⁴ California, Michigan, New Jersey, Pennsylvania, and Utah are among the states that have passed automatic record clearing (see the appendix).
- Other states, including Delaware, Oregon, and Texas, are considering this type of legislation.⁶⁵
- **Expunging Criminal Records Correlates to Increased Employment and Earnings**
 - After an individual's record is expunged, average employment rates grew from roughly 75% to 80%–85%. Within three years of participation, earnings grew by a third - from \$4,000 below baseline to nearly \$2,000 above baseline.⁶⁶
 - The University of Michigan found that a year after a record is cleared, people are 11% more likely to be employed and earn 22% in higher wages.⁶⁷

Federal Legislation

Building on these state-based reforms, members of Congress have introduced federal legislation to complement these efforts. For individuals who have been convicted of federal crimes, both the Clean Slate Act and the First Step Implementation Act of 2021 would provide an avenue for criminal relief.

WORKFORCE JUSTICE ACT

On March 3, 2021, Reps. David Trone (D-MI) and Maxine Waters (D-CA) introduced H.R. 1598, the Workforce Justice Act.⁶⁸ The bill would give states three years to remove from private sector employment applications the question asking job seekers to disclose criminal history. Non-compliant states would stand to lose criminal justice funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program.⁶⁹

CLEAN SLATE ACT

On April 28, 2021, Rep. Lisa Blunt Rochester (D-DE) and Sen. Bob Casey Jr. (D-PA) introduced H.R. 2864⁷⁰ and S. 1380,⁷¹ respectively, the Clean Slate Act.

The bill would establish a process for individuals to petition federal courts to seal records of nonviolent federal offenses.⁷² The legislation would automatically seal records of nonviolent marijuana offenses.⁷³ The bill would also require the automatic sealing of arrest records for those who have been acquitted.⁷⁴

In addition, the act would protect employers from liability for employee misconduct relating to a sealed criminal record.⁷⁵ Finally, the bill would not allow sex offenders or those convicted of terrorism, treason, or violent offenses to seal their records.⁷⁶

FIRST STEP IMPLEMENTATION ACT OF 2021

In March 2021, Sens. Chuck Grassley (R-IA) and Dick Durbin (D-IL) introduced S. 1014, the First Step Implementation Act. If passed, this bill would retroactively apply major sentencing reforms from the First Step Act of 2018 and provide judges in future cases with increased discretion to give sentences below mandatory minimums. It would also implement major reforms for people sentenced as youth, including the opportunity to have lengthy sentences reconsidered.⁷⁷

JUSTICE FOR EXONEREES ACT

On June 17, 2021, Rep. Maxine Waters (D-CA) introduced H.R. 4019, the Justice for Exonerees Act.⁷⁸ This legislation would amend current law to increase the funds for which an exoneree is eligible from \$50,000 per year of unjust incarceration to \$70,000 per year. It would also index the amount of funds for which exonerees are eligible for each year of incarceration with inflation.⁷⁹

Other Policy Recommendations

The U.S. Chamber provides the following recommendations to advance the objective of criminal justice reform for Congress to consider:

APPROPRIATE FUNDS AUTHORIZED BY THE FIRST STEP ACT

The First Step Act (F.S.A.) requires the U.S. Attorney General to “develop a risk need assessment to be used by the federal U.S. Bureau of Prisons (B.O.P.) to assess the recidivism risk and criminogenic needs of all federal prisoners and to place prisoners in recidivism reducing programs and productive activities to address their needs and reduce the risk.”⁸⁰

In July 2019, the U.S. Department of Justice (D.O.J.) announced its new risk and needs assessment system (RNAS), called the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN).⁸¹

Congress authorized \$75 million to implement the risks and needs assessment and new and evidence-based programs aligned to the population's needs.⁸²

Congress should continue to appropriate the necessary funds to implement activities to carry out the First Step Act.

REVERSE THE U.S. SUPREME COURT'S DECISION IN *TERRY. V. U.S.*⁸³

In *Terry v. U.S.*,⁸⁴ the U.S. Supreme Court considered the applicability of retroactive changes to prison sentences for drug possession crimes related to the Fair Sentencing Act of 2010. Its retroactive nature was established by the First Step Act of 2018. In a unanimous judgment, the Court ruled that while the First Step Act allows for retroactive considerations of sentence reductions for drug possession crimes before 2010, this only covers those sentenced under minimum sentencing requirements.

Following the ruling, Sens. Chuck Grassley (R-IA) and Dick Durbin (D-IL) released a statement, "It's now up to Congress to clarify the statute to unambiguously address sentencing in the cases like Mr. Terry's."⁸⁵

REAUTHORIZATION OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

On June 15, 2021, the U.S. House Committee on Education and Labor Subcommittee on Higher Education and Workforce Investment held the Workforce Innovation and Opportunity Act Reauthorization: Examining Successful Models of Employment for Justice-Involved Individuals hearing.⁸⁶

During the hearing, Wendi Safstrom, executive director of the Society for Human Resource Management (SHRM) Foundation, testified on behalf of the business community to reauthorize the Workforce Innovation and Opportunity Act.⁸⁷

SHRM's recommendations follow:

- Consider evaluating all program providers or grant recipients based on employment, earnings, and recidivism or incarceration reduction.
- Create a connection between Reentry Employment Opportunities (R.E.O.) supported programs and employers by requiring individuals responsible for candidate recruitment and initial assessment to partner in any REO-funded grant-making.
- Promote the Work Opportunity Tax Credit (WOTC) availability and make accessible the data necessary to evaluate the program's efficacy in facilitating the hiring of individuals convicted of a felony.

SHRM also recommended that Congress require the U.S. Department of Labor to evaluate grantees based on the employment, earnings, and recidivism reduction of the returning citizens they serve.

CHAMBER ACTION

As a part of our **America Works Initiative**, in June 2021, the U.S. Chamber called upon lawmakers to "address immediate employer needs while also laying the foundation for a modernized, adaptive, and resilient workforce development system."⁸⁸ The U.S. Chamber has identified second-chance hiring opportunities as a pillar of this initiative.⁸⁹

In June 2020, the U.S. Chamber launched the **Equality of Opportunity Initiative** (EOI) to unite the business community around advancing data-driven business and policy solutions that bridge opportunity gaps and ensure that Black Americans and people of color have greater opportunities to succeed.

Appendix

Clean Slate Hiring—Resources

Arkansas	Act 680
California	Chapter 578
Colorado	House Bill 21-1214
Connecticut	Public Act No. 21-32
Delaware	Senate Bill 111 and Senate Bill 112
Florida	Seal and Expunge Process
Hawaii	Expungements
Illinois	How to Expunge and/or Seal a Criminal Record
Indiana	Expunge Criminal History
Iowa	Chapter 901C
Kansas	2020 Kansas Statutes 21-6614
Kentucky	Expungement Certification Process
Louisiana	Art. 978
Maryland	Maryland Courts: Expungement
Massachusetts	Mass.gov Criminal Records
Michigan	Michigan Clean Slate Legislation Overview
Minnesota	Minnesota Judicial Branch: Criminal Expungement
Mississippi	Mississippi Code Title 99. Criminal Procedure §99-19-71. Expungement of conviction; eligible offenses; notice; procedure; order; effect; expungement of arrest records
Missouri	Missouri Courts: Criminal Forms
Montana	Department of Justice: Non-Conviction Removal and Sealing
Nebraska	Nebraska Revised Statute 29-3523
Nevada	Nevada Department of Public Safety: Information on the Sealing of Nevada Criminal History Records
New Hampshire	New Hampshire Judicial Branch: Circuit Court District Division—Annulment
New Jersey	P.L. 2019, c. 269
New Mexico	N.M. Stat. §29-3-A—5 (HB370)
North Carolina	Ch. SL 2020-35
North Dakota	HB 1256
Ohio	Chapter 2953 Revised Code: Appeals; Other Postconviction Remedies
Oklahoma	HB 1269

Clean Slate Hiring—Resources (continued)

Pennsylvania	The Unified Judicial System: Clean Slate, Expungement and Limited Access
Rhode Island	Office of the Attorney General: Expungement Eligibility
South Carolina	F.A.Q.s About Expungements and Pardons in South Carolina Courts
South Dakota	Chapter 23A-3
Tennessee	Tennessee Expunction
Utah	Utah H.B. 341
Vermont	Chapter 230: Expungement and Sealing of Criminal History Records
Virginia	Chapter 542
Washington	Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State
West Virginia	W. Va. Code §61-11-26
Wisconsin	Chapter 973
Wyoming	Chapter 13, Section 7-13-1502, Petition for Expungement of Records of Conviction of Certain Felonies; Filing Fee; Notice; Objections; Hearings; Definition; Restoration of Rights

Ban the Box

State	Municipality	Covered Employers	Notes
California		Employers with 5+ employees	No criminal background check until after a job offer (See recent F.A.Q.s).
	Compton	Contractors doing business with Compton	No criminal background check until after a job offer.
	Los Angeles	Any employer with 10+ employees	No criminal background check until after a job offer.
	Richmond	Private-sector employers with 10+ employees that have contracts with Richmond regardless of where employer is based	
	San Francisco	Employers with 5+ employees	No criminal background check until after a job offer.
Colorado		Effective 9/1/19 for employers with 11+ employees; effective on or after 9/1/21 for all employers	
Connecticut		All employers	No criminal history question on job applications with some exceptions.
	Hartford	Contractors doing business with Hartford	No criminal background check until after a job offer.
	New Haven	Contractors doing business with New Haven	No criminal background check until after a job offer.
District of Columbia		Employers with 11+ employees	No criminal background check until after a job offer.
Hawaii		All private employers	No criminal background check until after a job offer. Then, employers may only inquire about felony convictions within the past seven years and within five years for misdemeanors, excluding periods of incarceration.

Ban the Box (continued)

State	Municipality	Covered Employers	Notes
Illinois		Private employers with 15+ employees	No criminal background check before a job interview or until after a job offer if no interview. Job applicants can only be disqualified if a conviction has a “substantial relationship” to the position.
	Chicago	Private employers with fewer than 15 employees	No criminal background check before a job interview or until after a job offer if no interview.
	Cook County	Private employers with fewer than 15 employees	No criminal background check before a job interview or until after a job offer if no interview.
	Indianapolis	Contractors doing business with Indianapolis	Criminal history questions only after first interview.
	Louisville	Contractors doing business with Louisville	City may end contracts with companies that do not ban-the-box.
	New Orleans	Contractors doing business with New Orleans	No criminal history questions on job applications.
Maryland		Employers with 15 or more full-time employees	Prohibits employers from asking whether an applicant has a criminal history before an in-person interview.
	Baltimore	Employers with 10+ employees	No criminal background check until after a job offer.
	Montgomery County	Employers with 15+ employees	No criminal history questions or checks until after the first interview.
	Prince George’s County	Employers with 25+ full-time employees	No criminal history questions or checks until after the first interview.
Massachusetts		All private employers	No criminal history questions on application. Also bans questions about certain types of crimes later in the hiring process.
	Boston	Contractors/vendors doing business with Boston	
	Cambridge	Contractors/vendors doing business with Cambridge	
	Worcester	Contractors/vendors doing business with Worcester	

Ban the Box (continued)

State	Municipality	Covered Employers	Notes
Michigan		Employers with 15+ employees	
	Detroit	Contractors doing business with Detroit when contract is \$25,000+	No questions about criminal convictions until interview or applicant deemed qualified.
	Kalamazoo	Contractors doing business with Kalamazoo when contract is \$25,000+ or those seeking tax abatement	Must commit not to use criminal history to discriminate.
Minnesota		All private employers	No criminal history inquiries on job application with limited exceptions.
Missouri		No law	
	Columbia	All employers in Columbia	No criminal history checks until after a conditional job offer.
	Kansas City	Private employers with 6+ employees	No criminal history checks until after a job interview.
	St. Louis	Private employers with 10+ employees	No criminal history checks until after a job interview. When making hiring and promotion decisions based on a criminal record, employers must demonstrate that the decision is based on all available information. Hiring forms and job advertisements must not exclude applicants based on criminal history.
New Jersey		Employers with 15+ employees over 20 calendar weeks	Preempts local laws.
New Mexico		All private employers	Can consider a conviction after reviewing an application and discussing employment with the applicant.

Ban the Box (continued)

State	Municipality	Covered Employers	Notes
New York		No law	
	Buffalo	Private employers with 15+ employees/contractors doing business with Buffalo	No criminal history questions on job applications.
	New York City	All employers with 4+ employees	No criminal background check before conditional job offers. On July 29, 2021, Fair Chance legislation was extended to current employees.
	Rochester	All employers with 4+ employees and contractors doing business with Rochester	Criminal background checks only after the initial job interview or a conditional job offer.
	Syracuse	City contractors	No criminal background checks until after a conditional job offer.
Oregon		All private employers	Illegal to exclude an applicant from an interview solely due to past criminal convictions.
	Portland	Employers with 6+ employees	No criminal background check before conditional job offers.
Pennsylvania		No law	
	Philadelphia	All employers with at least one employee in Philadelphia	No criminal background check before conditional job offers. (As of April 1, 2021, protections are extended to gig workers and independent contractors.)
	Pittsburgh	Contractors/vendors doing business with Pittsburgh	No criminal history checks before an applicant is deemed otherwise qualified.
Rhode Island		Employers with 4+ employees	No criminal background check on job applications.
Texas		No law	
	Austin	Employers with 15+ employees	No criminal background check before conditional job offers.
Vermont		All private employers	No criminal history questions on job application.

Ban the Box (continued)

State	Municipality	Covered Employers	Notes
Washington		All private employers	No criminal history checks before an applicant is deemed otherwise qualified.
	Seattle	All employers with 1+ employees	Must have a legitimate business reason to exclude applicants with arrest or conviction records automatically.
	Spokane	All private employers	No criminal history questions before a job interview.
Wisconsin		No law	
	Madison	Contractors doing business with Madison on contracts worth \$25,000+	No criminal history questions or background checks until after a conditional job offer.

Sources:

<https://www.paycor.com/resource-center/articles/ban-the-box-state-by-state>

<https://www.govdocs.com/ban-the-box-updates-and-state-laws> (Maryland)

- 1 Matthew Friedman, “Just Facts: As Many Americans Have Criminal Records as College Diplomas,” Brennan Center for Justice, Washington, D.C., November 17, 2015.
<https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas>
- 2 “Incarceration and Reentry,” U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation.
<https://aspe.hhs.gov/incarceration-reentry>
- 3 “Reentry Ready: Improving Incarceration’s Contribution to Successful Reentry,” Convergence Center for Public Policy Resolution: Washington, D.C. (2019).
<https://www.convergencepolicy.org/wp-content/uploads/2019/06/Reentry-Ready-Full-Report-FINAL-6.24.pdf>
- 4 Cherrie Bucknor and Alan Barber, “The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies,” Center for Economic & Policy Research, Washington, D.C. (2016).
<https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>
- 5 Eric Krell, “Criminal Background: Consider the risks—and rewards—of hiring ex-offenders,” *HR Magazine* 44 (February 2012).
- 6 “Economic Benefit of Employing Formerly Incarcerated Individuals in Philadelphia,” The Economy League of Greater Philadelphia: Philadelphia, Pennsylvania, (September 2011).
<https://economyleague.org/uploads/files/7211704136107834-economic-benefits-of-employing-formerly-incarcerated-executive-summary.pdf>
- 7 Ibid.
- 8 Total Wine and More data analysis as cited in “Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company,” American Civil Liberties Union: Washington, D.C. (2017).
https://www.aclu.org/sites/default/files/field_document/060917-trone-reportweb_0.pdf
- 9 Samantha Swindler, “For Convicted Felons: A Career Can Be a Second Chance,” *The Oregonian/OregonLive*, August 30, 2017, Updated January 9, 2019.
https://www.oregonlive.com/clackamascounty/2017/08/for_convicted_felons_a_career.html
- 10 Dylan Minor, Nicola Persico, and Deborah M. Weiss, “Criminal background and job performance,” *IZA Journal of Labor Policy* 7, 8 (2018).
<https://doi.org/10.1186/s40173-018-0101-0>
- 11 Kate Rogers and Stephanie Due, “Manufacturers Push to Give Workers with Criminal Records a Second Chance,” CNBC, May 7, 2021.
<https://www.cnbc.com/2021/05/07/manufacturers-push-to-give-workers-with-criminal-records-a-second-chance.html>
- 12 Kent Nutt, “Employers Hiring Felons for a Second Chance,” *ActivateWorld*, February 4, 2020.
<https://activateworld.com/employers-hiring-felons-second-chance>
- 13 Criminal background and job performance. Weiss et al., *IZA Journal of Labor Policy* 2018.
DOI: 10.1186/s40173-018-0101-0
- 14 Adam Gelb and Tracy Velazquez, “The Changing State of Recidivism: Fewer People Going Back to Prison,” The Pew Charitable Trusts: Washington, D.C., August 1, 2018.
<https://www.pewtrusts.org/en/research-and-analysis/articles/2018/08/01/the-changing-state-of-recidivism-fewer-people-going-back-to-prison>
- 15 Mark T. Berg and Beth M. Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly* 28 (2011): 382–410.
<https://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>
- 16 Steven Slivinski, “Turning Shackles into Bootstraps: Why Occupational Licensing Reform is the Missing Piece of Criminal Justice Reform,” Policy Report No. 2016-01, Center for the Study of Economic Liberty, Arizona State University; Tucson, Arizona (2016).
<https://csel.asu.edu/sites/default/files/2019-09/csel-policy-report-2016-01-turning-shackles-into-bootstraps.pdf>
- 17 Lucius Couloute and Daniel Kopf, “Out of Prison & Out of Work: Unemployment among formerly incarcerated people,” The Prison Policy Initiative, July 2018.
<https://www.prisonpolicy.org/reports/outofwork.html>
- 18 Emily M. Crawford and Maurice McBride-Owens, “Perceptions of Employers towards Hiring Ex-Offenders with Online Degrees,” 2014.
<https://www.semanticscholar.org/paper/Perceptions-of-Employers-towards-Hiring-with-Online-Crawford-McBride-Owens/a03e27439fd937fd50cf168e2b9cf0f99562eb0d>
- 19 Dallas Augustine, Noah Zatz, and Naomi Sugie, “Why Do Employers Discriminate Against People with Records? Stigma and the Case for Ban the Box,” UCLA Institute for Research on Labor and Employment: Los Angeles, California (July 2020).
<https://irle.ucla.edu/wp-content/uploads/2020/07/Criminal-Records-Final-6.pdf>
Such conduct may also encompass having a tendency to exhibit violent behavior.
- 20 “Negligent Hiring: How to Reduce Your Chances of Hiring a Claim,” Zurich, 2010.
<http://hpd.zurichna.com/Whitepaper/Zurich-Negligent-Hiring.pdf>

- 21 Grant Duwe and Valerie Clark, "The Effects of Prison-Based Educational Programming on Recidivism and Employment," *The Prison Journal*, 94 (2014): 454–478.
https://www.researchgate.net/publication/274998103_The_Effects_of_Prison-Based_Educational_Programming_on_Recidivism_and_Employment/link/5628f76408ae518e347c6cc4/download
- 22 "Educational and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook," The Rand Corporation, Press Release, August 22, 2013.
<https://www.rand.org/news/press/2013/08/22.html>
- 23 Wendy Sawyer and Peter Wagner, "Mass Incarceration: The Whole Pie 2020," Prison Policy Initiative, 2020.
<https://www.prisonpolicy.org/reports/pie2020.html>
- 24 "The Color of Justice: Racial and Ethnic Disparity in State Prisons," The Sentencing Project, 2016.
<https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>
- 25 Marilyn C. Moses, "How Likely Are Ex-Offenders to Get a Job Offer?" *Corrections Today*, Vol. 76, No.3, (May/June 2014): 15–19.
<https://www.ojp.gov/pdffiles1/nij/249043.pdf>
- 26 Lucius Couloute and Daniel Kopf, "Out of Prison & Out of Work: Unemployment among formerly incarcerated people," The Prison Policy Initiative, July 2018.
<https://www.prisonpolicy.org/reports/outofwork.html>
- 27 Bruce Western and Becky Pettit, "Collateral Costs: Incarceration's Effect on Economic Mobility," The Pew Charitable Trusts: Washington, D.C. (2010).
https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf
- 28 "Occupational Licensing: Barrier to Work Series," National Conference of State Legislatures, July 2018.
<https://www.ncsl.org/research/labor-and-employment/occupational-licensing-barriers-to-work-series.aspx>
- 29 Morris M. Kleiner and Evgeny S. Vorotnikov, "At What Cost? State and National Estimates of the Economic Costs of Occupational Licensing," Institute for Justice, November 2018.
<https://ij.org/report/at-what-cost>
- 30 National Inventory of Collateral Consequences of Conviction. Collateral Consequences Database.
<https://niccc.nationalreentryresourcecenter.org/>
- 31 Rebecca Vallas and Sharon Dietrich, "One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records," Center for American Progress, December 2014.
<https://www.americanprogress.org/issues/poverty/reports/2014/12/02/102308/one-strike-and-youre-out>
- 32 "Occupational Licensing: A Framework for Policymakers," the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor, July 2015.
https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf
- 33 Nick Sibilla, "From Barred Working: A Nationwide Study of Occupational Licensing Barriers for Ex-Offenders," Institute for Justice, June 2020.
<https://ij.org/report/barred-from-working>
- 34 Maurice Emsellem and Anastasia Christman, "A Healthy Balance: Expanding Health Care Job Opportunities for Californians with a Criminal Record," National Employment Law Project, May 2014.
<https://www.nelp.org/publication/a-healthy-balance-expanding-health-care-job-opportunities-for-californians-with-a-criminal-record>
- 35 "After Prison: Roadblocks To Reentry: A Report On State Legal Barriers Facing People With Criminal Records," The Legal Action Center, 2004.
<https://law.stanford.edu/publications/after-prison-roadblocks-to-reentry-a-report-on-state-legal-barriers-facing-people-with-criminal-records/>
- 36 Rosa Minyo Cho and John H. Tyler, "Does Prison-Based Adult Basic Education Improve Postrelease Outcomes for Male Prisoners in Florida?" *Crime & Delinquency*, 59 (2013): 975–1,005.
<https://journals.sagepub.com/doi/pdf/10.1177/0011128710389588>
Louis M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders, and Jeremy N.V. Miles, "Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults", RAND Corporation: Santa Monica, CA (2013).
https://www.rand.org/pubs/research_reports/RR266.html
Grant Duwe and Valerie Clark, "The Effects of Prison-Based Educational Programming on Recidivism and Employment." *The Prison Journal*, 94 (2014): 454–478.
<https://journals.sagepub.com/doi/abs/10.1177/0032885514548009>
- 37 Steve Aos and Elizabeth K. Drake, (2013). Prison, Police and Programs: Evidence-Based Options that Reduce Crime and Save Money (Doc. No. 13-11-1901), Washington State Institute for Public Policy.
https://www.wsipp.wa.gov/ReportFile/1396/Wsipp_Prison-Police-and-Programs-Evidence-Based-Options-that-Reduce-Crime-and-Save-Money_Full-Report.pdf

- 38 Grant Duwe, "The Benefits of Keeping Idle Hands Busy: An Outcome Evaluation of a Prisoner Reentry Employment Program," *Crime & Delinquency*, 61 (2011): 559–586.
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1019.6826&rep=rep1&type=pdf>
- 39 Grant Duwe. "What Works with Minnesota Prisoners: A Summary of the Effects of Correctional Programming on Recidivism, Employment and Cost Avoidance" (2013), Minnesota Department of Corrections: St. Paul, MN.
https://mn.gov/doc/assets/What_Works_with_MN_Prisoners_July_2013_tcm1089-272845.pdf
- 40 Ronald D'Amico and Hui Kim, "Evaluation of Seven Second Chance Act Adult Demonstration Programs: Impact Findings at 30 Months," Washington, D.C., U.S. Department of Justice, (2018).
<https://www.ojp.gov/pdffiles1/nij/grants/251702.pdf>
- 41 Getting Out, Staying Out. "For Participants."
<https://go.gosonyc.org/l/633571/2020-05-07/426sfb>
- 42 Charisse Jones, "You Just Want to ... Have a Chance," Ex-Offenders Struggle to Find Jobs Amid COVID-19," *USA Today*, February 3, 2021.
<https://www.usatoday.com/story/money/2021/02/03/unemployment-ex-offenders-among-many-struggling-find-work/665672402>
- 43 Elizabeth K. Drake, Steve Aos, and Marna G. Miller, "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State," *Victims and Offenders* 4 (2009): 170–196.
https://www.wsipp.wa.gov/ReportFile/1033/Wsipp_Evidence-Based-Public-Policy-Options-to-Reduce-Crime-and-Criminal-Justice-Costs-Implications-in-Washington-State_Full-Report.pdf
- 44 Jack Katzanek, "Paroled Felons Will Get Job Training for Inland Construction Work," *The Press-Enterprise*, February 17, 2020.
<https://www.pe.com/2020/02/17/status-update-paroled-felons-will-get-job-training-for-construction-work>
- 45 "Second Chance Hiring," The Manufacturing Institute.
<https://www.themanufacturinginstitute.org/workers/second-chance>
- 46 "Reentry Employment Opportunities Programs: Fact Sheet," U.S. Department of Labor.
https://www.doleta.gov/REO/pdf/REO_Program_updated_11819.pdf
- 47 "U.S. Department of Labor Awards More than \$85.5 Million to Improve Employment Outcomes for People Now or Once Involved in Criminal Justice System," June 21, 2021, Press Release, U.S. Department of Labor.
<https://www.dol.gov/newsroom/releases/eta/eta20210621>
- 48 Beacon of Hope Business Alliance.
<https://www.beaconofhopeba.org>
- 49 Second Chance Business Coalition.
<https://secondchancebusinesscoalition.org>
- 50 Press Release, "Major U.S. Employers Commit to Advancing Second Chance Employment," April 26, 2021.
<https://secondchancebusinesscoalition.org/press-releases/major-u-s-employers-commit-to-advancing-second-chance-employment>
- 51 Responsible Business Initiative for Justice.
<https://www.responsiblebusinessinitiative.org/values>
- 52 Georgetown University, About the Pivot Program.
<https://pivot.georgetown.edu>
- 53 Dick Carpenter II, Lisa Knepper, and John Ross, "Executive Summary," Institute for Justice, April 2012.
<https://ij.org/report/license-to-work/executive-summary>
- 54 "Legislation," Institute for Justice.
<http://www.ij.org/legislation>
- 55 "State Occupational Licensing Reforms for Workers with Criminal Records," Institute for Justice
<https://ij.org/activism/legislation/state-occupational-licensing-reforms-for-people-with-criminal-records>
- 56 Press Release, "Practicing What They Preach: A Look Inside Koch's Second-Chance Hiring Efforts," Koch Newsroom, May 21, 2021.
<https://news.kochind.com/news/2021/second-chance-hiring-a-look-inside-koch>
- 57 Ibid.
- 58 Ibid.

- 59 Beth Avery and Han Lu, “Ban the Box: U.S. Cities, Counties, and States Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions,” National Employment Law Project: Washington. D.C. (October 2020).
<https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2020.pdf>
- 60 Some states may have restrictions. See Equal Employment Opportunity Commission, “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Right Act,” April 25, 2012.
<https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>
- 61 The National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Title XI, Subtitle B, Sections 1121 1122, 1123, and 1124.
<https://www.congress.gov/116/plaws/publ92/PLAW-116publ92.pdf>
- 62 Daryl Atkinson & Kathleen Lockwood, “The Benefits of Ban the Box: A Case Study of Durham, NC,” The Southern Coalition for Social Justice: Durham, North Carolina (October 2014).
<https://southerncoalition.org/resources/ban-the-box-white-paper/>
- 63 Pamela D. Paulk, “The Johns Hopkins Hospital Success in Hiring Ex-Offenders,” Johns Hopkins Medicine, September 2016.
<https://www.diversityincbestpractices.com/medialib/uploads/2016/09/Paulk-Presentation-Hiring-Ex-Offenders-09142016.pdf>
- 64 “50-State Comparison: Expungement, Sealing & Other Record Relief,” Restoration of Rights Project, updated May 2021.
https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/#3_Automatic_conviction_relief
- 65 “National Momentum Grows as Four States Launch Clean Slate Campaigns,” The Clean Slate Initiative, Press Release, February 16, 2021.
<https://cleanslateinitiative.org/media/national-momentum-grows-as-four-states-launch-clean-slate-campaigns>
- 66 Jeffrey Selbin, Justin McCrary, and Joshua Epstein, “Unmarked? Criminal Record Clearing and Employment Outcomes,” 108 *J. Crim. L. & Criminology* 1 (2018).
<https://scholarlycommons.law.northwestern.edu/jclcl/vol108/iss1/1>
- 67 J.J. Prescott and Sonja B. Starr, “Expungement of Criminal Convictions: An Empirical Study,” *Harvard Law Review*, Vol. 133, No. 8 (June 2020): 2460–55.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3353620
- 68 Workforce Justice Act of 2021, H.R. 1598, 117th Congress, (2021).
<https://www.congress.gov/bill/117th-congress/house-bill/1598?s=8&r=13>
- 69 Ibid.
- 70 Workforce Justice Act of 2021, H.R. 1598, 117th Congress (2021).
<https://www.congress.gov/bill/117th-congress/house-bill/1598?s=8&r=13>
- 71 Workforce Justice Act, S. 1380, 117th Congress (2021).
[https://www.congress.gov/bill/117th-congress/senate-bill/1380?q=percent7Bpercent22searchpercent22percent3Apercent5Bpercent22Justice+for+Exonerees+Act%22%5D%7D&s=1&r=1](https://www.congress.gov/bill/117th-congress/senate-bill/1380?q=percent7Bpercent22searchpercent22percent3Apercent5Bpercent22S.1380percent22percent5Dpercent7D&s=1&r=1)
- 72 Ibid.
- 73 Ibid.
- 74 Ibid.
- 75 Ibid.
- 76 Ibid.
- 77 Text - S. 1014 - 117th Congress (2021): First Step Implementation Act of 2021 | Congress.gov | Library of Congress.
<https://www.congress.gov/bill/117th-congress/senate-bill/1014/text>
- 78 H.R. 4019, Justice for Exonerees Act, 117th Congress (2021).
<https://www.congress.gov/bill/117th-congress/house-bill/4019?q=percent7Bpercent22searchpercent22percent3Apercent5Bpercent22Justice+for+Exonerees+Act%22%5D%7D&s=1&r=1>
- 79 Ibid.
- 80 “An Overview of the First Step Act,” U.S. Federal Bureau of Prisons.
<https://www.bop.gov/inmates/fsa/overview.jsp>
- 81 “The First Step Act of 2018: Risks and Needs Assessment System—UPDATE,” U.S. Department of Justice: Washington, D.C. (January 2020).
<https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf>

- 82 \$75 million a year for FY 2019 through FY 2023, with 80% reserved for use by the director of the Bureau of Prisons. See U.S. Department of Justice Fiscal Year 2022 Request, press release, U.S. Department of Justice (May 28, 2021).
<https://www.justice.gov/opa/pr/department-justice-fiscal-year-2022-funding-request>
The U.S. Department of Justice is requesting \$1.6 billion to implement further reforms to the criminal justice system and continue critical investment in implementation of the First Step Act.
- 83 *Terry v. U.S.* (Slip opinion 20-594).
- 84 Slip Opinion, U.S. 593 U.S. __ (2021), 7.
https://www.supremecourt.gov/opinions/20pdf/20-5904_i4dk.pdf
- 85 “Grassley, Durbin Statement, Supreme Court First Step Act Ruling on Low-Level Drug Offenders,” Press Release, June 14, 2021.
<https://www.grassley.senate.gov/news/news-releases/grassley-durbin-statement-supreme-court-first-step-act-ruling-on-low-level-drug-offenders>
- 86 Workforce Innovation and Opportunity Act Reauthorization: Examining Successful Models of Employment for Justice-Involved Individuals; Hearing Before the U.S. House Committee on Education and Labor Subcommittee on Higher Education and Workforce Investment, 117th Cong. (2021).
<https://edlabor.house.gov/hearings/workforce-innovation-and-opportunity-act-reauthorization-examining-successful-models-of-employment-for-justice-involved-individuals>
- 87 *Ibid.*
- 88 “Workforce: A Call to Action,” U.S. Chamber of Commerce.
<https://events.uschamber.com/WorkforceCallToAction?ref=USCCWebsite>
- 89 “The America Works Initiative, Employer-Led Solutions,” U.S. Chamber of Commerce.
<https://www.uschamber.com/america-works#private>.