

Testimony of  
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In Support of House Bill 3025 (2015)

Before the  
Oregon House Committee on Business and Labor

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Thank you to the Committee Members. My name is Michelle Natividad Rodriguez and I am a Senior Staff Attorney of the National Employment Law Project. I am honored to testify in support of House Bill 3025 aimed at reducing barriers to employment for individuals with conviction and arrest records. NELP applauds the work of the Urban League of Portland and Oregon AFL-CIO, leaders of the broad coalition to support a Fair Chance for All.

### **The National Employment Law Project (NELP) Promotes Workers' Rights**

Over forty-five years ago, NELP was founded to promote the employment rights of the working poor and unemployed. Today, NELP is one of the nation's leading voices promoting employment policies that deliver on the nation's promise of economic opportunity. From our locations throughout the country, we shape model employment policies at the local, state and national levels through empirical research, legal and policy advocacy, and building alliances. One of our focus areas is to reduce employment barriers for people with prior arrests and convictions.

NELP has been a leader in the national movement for fair chance hiring reforms, which has included "ban the box." We have had the privilege of working on dozens of successful fair chance campaigns and providing expertise to support this legislation across the country. Through a national lens, we will highlight the relevant best practices and the most effective components of fair chance bills that have been developed, tried, and tested.

### **Collateral Consequences Exact a Heavy Toll, But Jobs Turn Lives Around**

NELP estimates that there are 70 million adults with arrest or conviction records in the United States—or about one in three adults.<sup>1</sup> Unfortunately, finding a job is all too difficult for many people with records as recently reported in the February 28, 2015 *New York Times* article, "Out of Trouble, but Criminal Records Keep Men Out of Work." Men with criminal records account for about 34 percent of all nonworking men between the ages of 25-54 (generally considered to be prime working age), according to the New York Times/CBS News/Kaiser Family Foundation poll.<sup>2</sup> And the Great Recession made it even worse; for example, in Washington State, researchers found that before the Recession 40 percent of the formerly incarcerated were employed, but in 2008 the proportion had dropped to 10 percent.<sup>3</sup>

The "box" on a job application is a barrier to jobs because it has a chilling effect that discourages people from applying. It also artificially narrows the applicant pool of qualified workers when employers toss out applications with the "box" checked, regardless of the

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<sup>1</sup> In 2012, there were 100,596,300 subjects ("individual offenders") according to a Bureau of Justice Statistics survey of the criminal history files within the 50 states, American Samoa, Guam, and Puerto Rico. U.S. Dept. of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (Jan. 2014) at 2, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. To account for duplication in the survey of the state criminal record repositories (that is, individuals who may have criminal records in more than one state and deceased individuals who have not been removed from the state record systems), NELP conservatively reduced the numbers cited in the state survey by 30 percent to arrive at a total of 70,417,410 individuals with state arrest or conviction records. The U.S. Census 2012 population estimate for those 18 years and over was 240,185,952. *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States April 1, 2010 to July 1, 2012* (U.S. Census Bureau, Population Division, June 2013, [www.census.gov](http://www.census.gov)). Using these estimates, 29.3 percent of U.S. adults, or nearly one in three, have a criminal history on file with states.

<sup>2</sup> Binyamin Appelbaum, "Out of Trouble, but Criminal Records Keep Men Out of Work," *New York Times* (Feb. 28, 2015) ([http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?\\_r=0](http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?_r=0)). Poll available at <http://kff.org/other/poll-finding/kaiser-family-foundationnew-york-times-cbs-news-non-employed-poll/>.

<sup>3</sup> "Educational Attainment, Employment and Incarceration, Part 2," Seattle, WA: Seattle Jobs Initiative, 2012. ([http://www.seattlejobsinitiative.com/wp-content/uploads/BeyondHeadlines\\_MAR2012.pdf](http://www.seattlejobsinitiative.com/wp-content/uploads/BeyondHeadlines_MAR2012.pdf))

applicant's qualifications or relevancy of the conviction to the job. Both the employer and job applicant lose out. Research affirms that having a criminal record reduces a call-back for a job applicant by 50 percent.<sup>4</sup> When candidates answer "yes" to the conviction question on a job application, they are marked with a modern-day scarlet letter.

Persistent joblessness translates into economic losses with far-reaching consequences. One study found that lowered job prospects of people with felonies and formerly incarcerated people cost the U.S. economy between \$57 and \$65 billion in lost output in 2008.<sup>5</sup> At the individual level, serving time reduces annual earnings for men by 40 percent,<sup>6</sup> meaning families too often fall into a poverty trap.<sup>7</sup>

Conversely, new job opportunities for workers with prior records could translate into economic benefits for all. A 2011 study found that securing employment for just 100 formerly incarcerated people would increase their combined lifetime earnings by \$55 million, increase their tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, all while saving more than \$2 million annually by keeping them out of the criminal justice system.<sup>8</sup>

Clearing the path to employment for people with prior records not only can boost the local economy, but it can also significantly increase public safety. Stable employment has been found to be a significant factor in reducing the likelihood of reoffending.<sup>9</sup> One study found that a 1 percent drop in the unemployment rate causes between a 1 to 2 percent decline in some offenses.<sup>10</sup>

### **The National Movement for Fair Chance Hiring Reform**

Fair chance hiring helps to lift the stigma of the "record" and allows a person's skills and qualifications to come first. Momentum for the policy reform has grown exponentially, particularly in recent years. Just in 2013 and 2014, eight states passed legislation, which at least all included "ban the box." Today, there are 14 states and over 100 U.S. localities across the country that have removed the conviction history question from the job application and delayed background checks until later in hiring.<sup>11</sup> Tallying the populations in the states and local cities and counties with ban-the-box, more than 100 million Americans—or one-third of the U.S. population—now live in a jurisdiction with a policy.

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<sup>4</sup> Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108(5), 2003: 937-975, available at [http://scholar.harvard.edu/files/pager/files/pager\\_ajs.pdf](http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf).

<sup>5</sup> John Schmitt and Kris Warner, "Ex-offenders and the Labor Market," Washington, D.C.: Center for Economic and Policy Research, (2010) available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

<sup>6</sup> Bruce Western and Becky Pettit, "Collateral Costs: Incarceration's Effect on Economic Mobility," Washington, D.C.: The Pew Charitable Trusts, (2010) available at [http://www.pewtrusts.org/uploadedFiles/Collateral\\_Costs.pdf?n=8653](http://www.pewtrusts.org/uploadedFiles/Collateral_Costs.pdf?n=8653).

<sup>7</sup> John Tierney, "Prison and the Poverty Trap," *The New York Times* (Feb. 19, 2013) at p. D1, available at [http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&\\_r=0c](http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&_r=0c).

<sup>8</sup> "Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia," Philadelphia, PA: Economy League of Greater Philadelphia (2011) available at [http://economyleague.org/files/ExOffenders\\_Full\\_Report\\_FINAL\\_revised.pdf](http://economyleague.org/files/ExOffenders_Full_Report_FINAL_revised.pdf).

<sup>9</sup> "Safer Foundation Three-Year Recidivism Study, 2008," Chicago, IL (2008) available at <http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>.

<sup>10</sup> Steven Raphael and Rudolf Winter-Ebmer, "Identifying the Effect of Unemployment on Crime," *The Journal of Law and Economics*, University of Chicago Law School 44, (2001) available at <http://www.jstor.org/stable/10.1086/320275>.

<sup>11</sup> NELP, *U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Unfair Barriers to Employment of People with Criminal Records*, (Jan. 2015) available at <http://www.nelp.org/page/-/SCLP/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf?nocdn=1>.

The breadth of support for fair chance speaks to its commonsense appeal. Policymakers from both sides of the aisle are including fair-hiring laws as part of a “smart on crime” agenda to reduce criminal justice spending and increase public safety. In New Jersey, Governor Chris Christie signed state legislation applying to private employers. He stated: “Today we are also going further to reform our criminal justice system by signing legislation that continues with our promise and commitment to give people a second chance.”<sup>12</sup>

Federally, the U.S. Equal Employment Opportunity Commission (EEOC) endorsed removing the conviction question from the job application as a best practice in its 2012 guidance reaffirming that federal civil rights law regulates employment decisions based on arrests and convictions.<sup>13</sup> The Obama Administration’s My Brother’s Keeper Task Force also gave the movement a boost when it endorsed hiring practices “which give applicants a fair chance and allows employers the opportunity to judge individual job candidates on their merits.”<sup>14</sup>

Today, there are 14 states representing nearly every region of the country that have adopted the policies: California (2013, 2010), Colorado (2012), Connecticut (2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), Nebraska (2014), New Jersey (2014), New Mexico (2010), and Rhode Island (2013). Six states—Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, and Rhode Island—have removed the conviction history question on job applications for private employers.

In addition to these six states, Washington D.C., and 25 cities and counties now extend the fair chance policy to government contractors or private employers. Of the localities, Baltimore, Buffalo, Chicago, Columbia (MO), Montgomery County (MD), Newark, Philadelphia, Prince George’s County (MD), Rochester, San Francisco, Seattle, and Washington D.C. extend their fair chance laws to private employers in the area.

### **Features of Effective Fair Chance Hiring State Legislation**

Oregon has the benefit of the significant experience from cities and states across the nation to shape a fair chance hiring statute that is effective.

#### **Limiting Criminal Record Inquiry Until After a Conditional Offer of Employment:**

The legislation limits criminal history inquiries until after the employer has extended a conditional offer of employment. This is consistent with NELP’s best practices recommendations for an effective fair hiring policy.<sup>15</sup> NELP recommends the conditional offer threshold for the criminal history inquiry because of the clarity it provides in the hiring decision-making process and the benefit to enforceability.

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<sup>12</sup> State of New Jersey, Office of Governor, “We’re Giving People a Second Chance by Banning the Box,” Gov. Chris Christie (Aug. 11, 2014) available at <http://www.state.nj.us/governor/news/news/552014/approved/20140811g.html>.

<sup>13</sup> U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq. (April 25, 2012), available at [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

<sup>14</sup> My Brother’s Keeper Task Force Report to the President (May 2014) at p.10, available at [http://www.whitehouse.gov/sites/default/files/docs/053014\\_mbk\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/053014_mbk_report.pdf).

<sup>15</sup> NELP, Top Ten Best Practices for Fair Chance Policies, available at [http://www.nelp.org/page/-/SCLP/2014/Guides/NELP\\_Best\\_Practices\\_and\\_Model\\_Policies.pdf?nocdn=1](http://www.nelp.org/page/-/SCLP/2014/Guides/NELP_Best_Practices_and_Model_Policies.pdf?nocdn=1)

Delaying conviction history until a conditional offer ensures that the employer has been able to consider the individual's job qualifications to the fullest, without the stigma of the record. If the individual is denied the job at the conditional offer stage, there is clarity that the rationale for a denial is the criminal history, rather than one's job qualifications. This transparency in the hiring process is a benefit to the job candidate and to the employer.

NELP maintains a guide on the ban the box and fair chance hiring policies and laws from across the United States.<sup>16</sup> In our latest edition, we documented jurisdictions that have implemented threshold inquiries at the conditional offer stage. There are two states and 28 cities and counties that have adopted this robust provision in the effort to ensure that their policies and laws would have maximum effectiveness. We are not aware of any negative consequences.

**Integrating the U.S. Equal Employment Opportunity Commission's Best Practices and Guidelines to Ensure Individual Assessment.** HB 3025 is consistent with the U.S. Equal Employment Opportunity Commission (EEOC) criminal records guidelines and best practices, which require employers considering convictions to take into account the age of the offense, whether the offense is related to the job position, and evidence of rehabilitation.

The bipartisan EEOC guidance issued in April 2012 clarified the standards under Title VII of the Civil Rights Act of 1964 that regulate criminal background checks for the employer community.<sup>17</sup> It made clear that blanket prohibitions against hiring people with criminal records, such as hiring practices rejecting anyone with a prior arrest or conviction, generally violate Title VII. HB 3025 benefits employers by providing concrete steps that will help ensure that employers are aligned with the best practices recommended by the EEOC.

**Strong Standards of Accuracy and Transparency.** The federal Fair Credit Reporting Act requires that employers provide job applicants a copy of the commercially-prepared background check that is the basis of the denial. In addition, the employer is required to provide reasonable time for the job seeker to correct any inaccuracies. These are important standards of consumer protection that help ensure that background check errors are not responsible for an individual losing a job opportunity. HB 3025 is consistent with these basic provisions to ensure accuracy and it also provides the job seeker an opportunity to understand his or her denial and provide mitigation or rehabilitation evidence that an employer may find persuasive.

The passage of strong legislation here will benefit millions of Oregon's families and Oregon will join the national movement to provide a fair chance for all. For these reasons, we strongly support HB 3025.

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<sup>16</sup> NELP, *U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Unfair Barriers to Employment of People with Criminal Records*, (Jan. 2015) available at <http://www.nelp.org/page/-/SCLP/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf?nocdn=1>.

<sup>17</sup> U.S. Equal Employment Opportunity Commission, "EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964" (April 25, 2012).