

Ban the Box

It can be very difficult for former prisoners to find employment upon release. Employers in both public and private settings ask about criminal history on job applications. Employers can reject qualified applicants based on their criminal history alone. Many companies have human resources departments that screen and reject job applications before hiring supervisors see them.

Vermont's governor recently instituted "ban the box," an executive order that removes questions regarding criminal history from the initial application for state jobs. In other locations, "ban the box" legislation also applies to private employer applications.¹

"Ban the box" advocates argue that ex-convicts who have served their sentences have paid their debt to society, and should not continue to be punished when seeking meaningful employment. Offenders who have served their time should be presumed ready and able to become productive members of society. Others argue that these exclusions are counterproductive: Ex-offenders who cannot find jobs are more likely to commit crimes in the future. Some refer to the fact that even those convicted of non-violent and petty crimes are also affected by this policy. Finally, some have observed that this policy has racial implications. In the U.S., for instance, 60% of the 1.6 million people in prison are Black or Hispanic males.² Hiring policies that discriminate against ex-convicts therefore have a disparate impact on communities of color. One solution, advocates argue, is for employers to delay the background check. Questions about criminal history should come after those responsible for hiring have met with job candidates; this way, factors like a criminal record can be understood in context of who the ex-convict has become.

Opponents of these laws point out that private employers should have the right to screen applicants with criminal histories since previous behavior speaks to character. That is, employers have a right to ask about criminal history because committing a crime is an action people choose to undertake rather than an immutable characteristic such as skin color. An employer also deserves to know, for example, if the accountant she is planning on hiring was convicted of theft. Employers also don't want to waste time and resources interviewing candidates that they will turn down for employment at a later phase of selection.

STUDY QUESTIONS

1. Is it morally permissible for employers, including state entities, to ask about criminal history on an application?
2. Is it morally permissible for the state to prevent employers from asking about criminal history on an application?
3. Assuming that employers do ask about criminal history on an application, is it morally permissible for them to reject all applicants with a criminal history?
4. If a government employer refuses to hire someone with a past criminal conviction, does this count as an additional punishment? If so, is it fair for the government to impose such an additional punishment? If a private employer refuses to hire someone with a past criminal conviction, does this count as an additional punishment? If so, is it fair for that private employer to impose such an additional punishment?

¹ <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

² <http://www.bjs.gov/content/pub/pdf/p10.pdf>