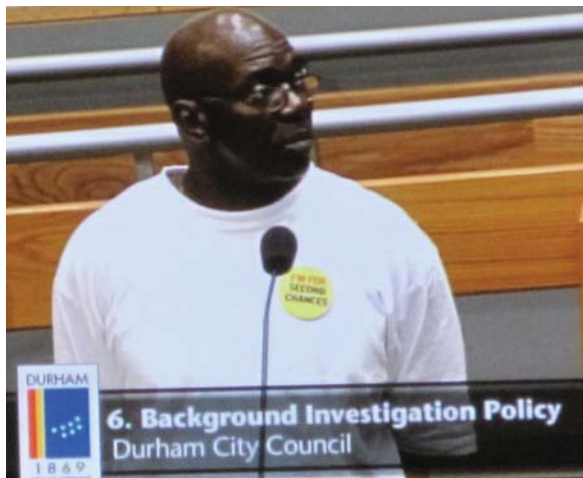


# THE BENEFITS OF BAN THE BOX



## A CASE STUDY OF DURHAM, NC



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## INTRODUCTION

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For many job applicants around the country, one question blocks them from gainful employment and economic opportunity. A single question, often posed as a checkbox on the front of most job applications, asks about an applicant's criminal history. For many employers, it has become a way to weed out applicants before ever considering qualifications such as education and job history. This practice is widespread, and its effects on job applicants and their communities are staggering. A movement to "Ban the Box" (remove the checkbox from applications) was birthed as a response to the structural discrimination faced by people with criminal records. This report details:

1. the need for Ban the Box policies in communities directly impacted by mass incarceration;
2. the history and core strategy of the Ban the Box movement;
3. how Ban the Box polices increase the tax base, reduce recidivism, and expand the qualified applicant pool for employers;
4. the critical components of the campaign in Durham, North Carolina; and
5. the employment outcomes since adoption of Ban the Box policies in Durham.

## COMMUNITY NEED FOR BAN THE BOX

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Over ninety percent of human resource professionals conduct some sort of criminal background check during the hiring process.<sup>1</sup> Applicants who indicate their criminal record on the initial job application are less likely to receive a callback interview.<sup>2</sup> For example, noted sociologist Dr. Devah Pager found that among white applicants, 34% of applicants without a criminal record and 17% of those with criminal records were later contacted about a callback interview.<sup>3</sup> Among African Americans applicants, 14% of applicants without a criminal record and only 4% of those with criminal records were later contacted about a callback interview.<sup>4</sup> The fact that a higher percentage of white applicants with a criminal record were contacted about a callback interview than black applicants without criminal records illustrates the extreme structural disadvantages that black applicants with criminal records face in the employment market.<sup>5</sup>

There are an estimated 65 million adults in the United States with a criminal history.<sup>6</sup> It has been well-documented that African Americans and Latinos are disproportionately represented at every stage of the criminal justice system. Application questions about criminal records guarantee that these Americans will have difficulty finding employment, especially members of minority communities. The inability to find employment has a marked effect on these community members and their families. One study found that in the year after an incarcerated father is released, the total family income drops by approximately 15% from what it was before incarceration.<sup>7</sup> Because of the stunted upward mobility of people with criminal records, they must often rely on family members and communities for support. Research has shown that 83% of the families of formerly incarcerated men had recently provided financial support to their family member, with half of those families reporting that this support was a financial challenge and 30% of these families reporting that this support was a "financial hardship."<sup>8</sup> In sum, these studies and statistics illustrate the structural barriers faced by people with criminal records – a need that birthed the Ban the Box Movement.

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## HISTORY AND CORE STRATEGY OF THE MOVEMENT

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The Ban the Box Movement was started in 2004 by All of Us or None, a national civil and human rights coalition comprised of formerly incarcerated people. The primary objective of the Movement is to dismantle the structural discrimination faced by people with criminal records in society.<sup>9</sup> Ban the Box was found to be a powerful issue that spurred community organizing for neighborhoods directly impacted by mass incarceration. According to Dorsey Nunn,

By removing questions about criminal history from the early stages of the employment process, employers are able to select the most qualified applicants without the distraction of the criminal record and its attendant stigma.

one of the founders of All of Us or None and the patriarch of the Ban the Box movement, “we decided to push Ban the Box to organize people with criminal records, not the other way around, meaning we did not organize people with records to only pass Ban the Box policies. That was not our primary objective. For us the larger objective was to get people with criminal records to become organized and active in the fight against mass incarceration and the 2nd class status that comes with a criminal record.”

The movement’s central strategy is to advocate for the removal of questions about criminal history from the early stages of the employment process. Initial questions about criminal history create a chilling effect on qualified applicants with criminal records. Many applicants report they are discouraged from

applying for jobs because they doubt their job application will receive serious consideration once they check the box. In addition, early inquiry about criminal history encourages employers to disqualify otherwise qualified applicants without considering their qualifications. By removing questions about criminal history from the early stages of the employment process, employers are able to select the most qualified applicants without the distraction of the criminal record and its attendant stigma.

However, removing the question about criminal history from the early stages of the employment process is not the only strategy involved with a successful Ban the Box campaign, just one necessary component. The movement also seeks to ensure that criminal background checks are used in a fair manner. Ban the Box advocates recommend delaying a criminal background check until after an applicant has been screened for qualifications. Moreover, once the background check is done, advocates recommend instituting a series of procedural protections to ensure that the results of the criminal background check are used fairly. For example, common best practices include:

1. ensuring the applicant has a chance to check the accuracy of the record before the hiring authority makes an adverse hiring decision;
2. limiting the number of people who come in contact with the applicant’s record;
3. making sure the people who come in contact with the record are trained to read criminal records; and
4. giving the applicant the opportunity to present evidence of rehabilitation prior to the hiring decision.

In sum, delaying the criminal background check gives employers the ability to make individualized assessments about the relevance of a criminal record, rather than making blanket exclusions at the outset of the employment process, which may run afoul of Title VII of the Civil Rights Act.

Since the start of the Ban the Box movement, 13 states and over 70 cities and counties have implemented fair hiring policies.<sup>10</sup> In August 2014, New Jersey, under the leadership of Republican governor Chris Christie, became the most recent state to codify a Ban the Box policy, and like many other states, it applies to both public and private employers.<sup>11</sup> However, government is not alone in adopting fair hiring policies. Two major corporations – Target and Wal-Mart – have also removed questions about criminal record history from their initial job applications.

## FAIR HIRING INCREASES THE TAX BASE, DECREASES CRIME, AND HELPS EMPLOYERS

Local and state governments can increase their tax coffers by removing barriers to employment for people with criminal records. For example, a study in Washington state showed that providing job training and employment to a formerly incarcerated person returned more than \$2,600 to taxpayers.<sup>12</sup> A similar study in Philadelphia found that hiring 100 formerly incarcerated people would increase income tax contributions by \$1.9 million, boost sales tax revenue by \$770,000, and save \$2 million annually by reducing criminal justice costs associated with recidivism.<sup>13</sup>

Hiring people with criminal records facilitates public safety by reducing recidivism rates. Studies show that gainful employment is the most successful intervention in decreasing recidivism. One study showed that two years after release, employed people were more than twice as likely to have not committed any additional crimes when compared to

formerly incarcerated people who were unable to secure employment.<sup>14</sup> Another study, conducted over three years, found that formerly incarcerated people who were consistently employed throughout the year had a 16% recidivism rate compared to a 52.3% recidivism rate for all other Department of Correction releases.<sup>15</sup>

Employees with criminal backgrounds are 1 to 1.5 percent more productive on the job than people without criminal records.

Employers benefit from fair hiring policies. A study of human resources statistics found that “employees with criminal backgrounds are 1 to 1.5 percent more productive on the job than people without criminal records.”<sup>16</sup> Pamela Paulk, Vice President of Human Resources for the Johns Hopkins Health Resource Center, has known anecdotally about this fact for the last decade. After ten years, Johns Hopkins reviewed the employment files of nearly 500 of their justice-involved employees and found that these employees had significantly higher retention rates as compared to employees without a criminal record.<sup>17</sup> In Cleveland, Richard Friedlander, CEO of Red Restaurant Group, described his employees with criminal records as “model employees,” “frequently the most dedicated,” and “conscientious.”<sup>18</sup>

## CRITICAL COMPONENTS OF THE DURHAM CAMPAIGN

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The Durham Second Chance Alliance (DSCA) successfully advocated for the city of Durham (2011) and the Durham county (2012) to remove questions about criminal record history from the early stages of the employment process for public employment. The components of the Durham campaign highlight the key pieces of a Ban the Box campaign that is led by an organization grounded in a community lawyering model, where the major objective is building power in directly affected communities. The three major components of the Durham campaign were:

1. leadership by directly affected people;
2. policy development through the iterative process of community lawyering; and
3. organizing directly affected communities to flex their power for this policy issue and others in the future.

The campaign in Durham was driven by the idea that effective, lasting social change “can only result from an oppressed group itself identifying its grievances and developing demands and a strategy for achieving them.”<sup>19</sup> As such, the movement was led by the DSCA, a coalition of people with criminal records, reentry service providers, community advocates, and faith-based organizations.<sup>20</sup> Because the leadership of directly affected people was central to the campaign, the alliance provided spokesperson training for people with criminal records. The goal of the training was to help justice-involved people advocate for themselves. This intentional involvement of directly impacted individuals assured the power of the movement resided with those most impacted by its results. The spokesperson training stressed three main messages for the trainees:

1. do not re-litigate the past – take accountability for your actions;
2. talk about the rehabilitative measures you have taken since your conviction, such as skills training or substance abuse treatment; and
3. highlight the fact that you will make a stellar employee.

The policy work for the Durham campaign was informed by directly impacted communities. The Southern Coalition for Social Justice (SCSJ) worked with a focus group of people with criminal records and other Durham Second Chance Alliance members to create a model ordinance and administrative policy, with the goal of having the City and County governments use the model policies as a template for the final legislation. People with criminal records shaped the contours of the policy choices throughout the campaign, which allowed the coalition to adapt its strategy to meet the needs of the community while simultaneously responding to the government.

For example, DSCA initially advocated for a city ordinance to Ban the Box for public employment and independent contractors with the City of Durham. This choice was made because an ordinance was considered to be a more permanent policy solution than an administrative policy or executive order. For instance, municipal ordinances are

passed through a public process. Each member of the city or county government votes on the record, which gives the community the ability to hold that elected representative accountable for their voting record. Conversely, an administrative policy or executive order promulgated by a city or county manager does not have the same level of public transparency. Elected representatives do not vote on the record for administrative policies because the sole decision is made by the executive branch; consequently these decisions are less susceptible to public scrutiny. Moreover, the terms of a municipal ordinance can easily be extended to vendors and independent contractors with the government, whereas the same is not true for administrative policies. Over the course of the campaign the coalition learned through negotiations with the government that a city ordinance was not likely to succeed. As a result, a shift in strategy was warranted, which prompted the directly affected leadership within the coalition to default to the next best option – an administrative policy.

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Another example, demonstrating how the model policies developed by the DSCA were shaped by people with criminal records, dealt with where the government would get its criminal background information – official state criminal justice databases or private data providers. Official state criminal justice databases provide the most accurate and timely criminal justice data. For example, if someone goes to court and their case gets dismissed, the court record of that dismissal is immediately reflected in the dataset. However, under these same set of facts, the dataset for a private data provider may not reflect a change in criminal disposition for a few days – and in some cases, can take weeks, months, or never be updated at all. In an employment context, this matters greatly because an employer may be less likely to hire someone with a pending theft charge as opposed to someone whose theft charge was recently dismissed because they were wrongly identified. Thus, the official state criminal justice database, which provides the most accurate and timely criminal justice

data, gives job applicants the best opportunity for employment because an employer has the most accurate information on which to base the hiring decision.

However, official criminal justice databases are not governed by the Fair Credit Reporting Act (FCRA).<sup>21</sup> FCRA governs the dissemination of consumer reports and mandates that employers and consumer reporting agencies adhere to certain obligations.<sup>22</sup> The legislation defines criminal records as consumer reports and third party data providers as consumer reporting agencies.<sup>23</sup> However, official state criminal justice databases are not defined as consumer reporting agencies, thus they are not governed by FCRA.<sup>24</sup> FCRA mandates that consumer reporting agencies report accurate criminal justice information and that they adopt reasonable procedures to ensure accurate dissemination.<sup>25</sup> If a consumer reporting agency does not adhere to the law they can be sued for damages.<sup>26</sup>

This issue became relevant in the Durham campaign as model legislation was drafted, and details were being decided as to where the government should get its criminal justice information. To ensure that directly affected people led the campaign in every aspect, including public policy formation, a meeting was held with the focus group of individuals with criminal records within the DSCA. The following questions were posed:

1. Do you want the government to get its criminal record information from official state criminal justice databases, which are more accurate and will probably put you in the best position to get a job?; or
2. Do you want the government to get its criminal justice information from private data providers, which are less accurate but are covered by FCRA, thus potentially giving you a private right of action if they incorrectly report your information?

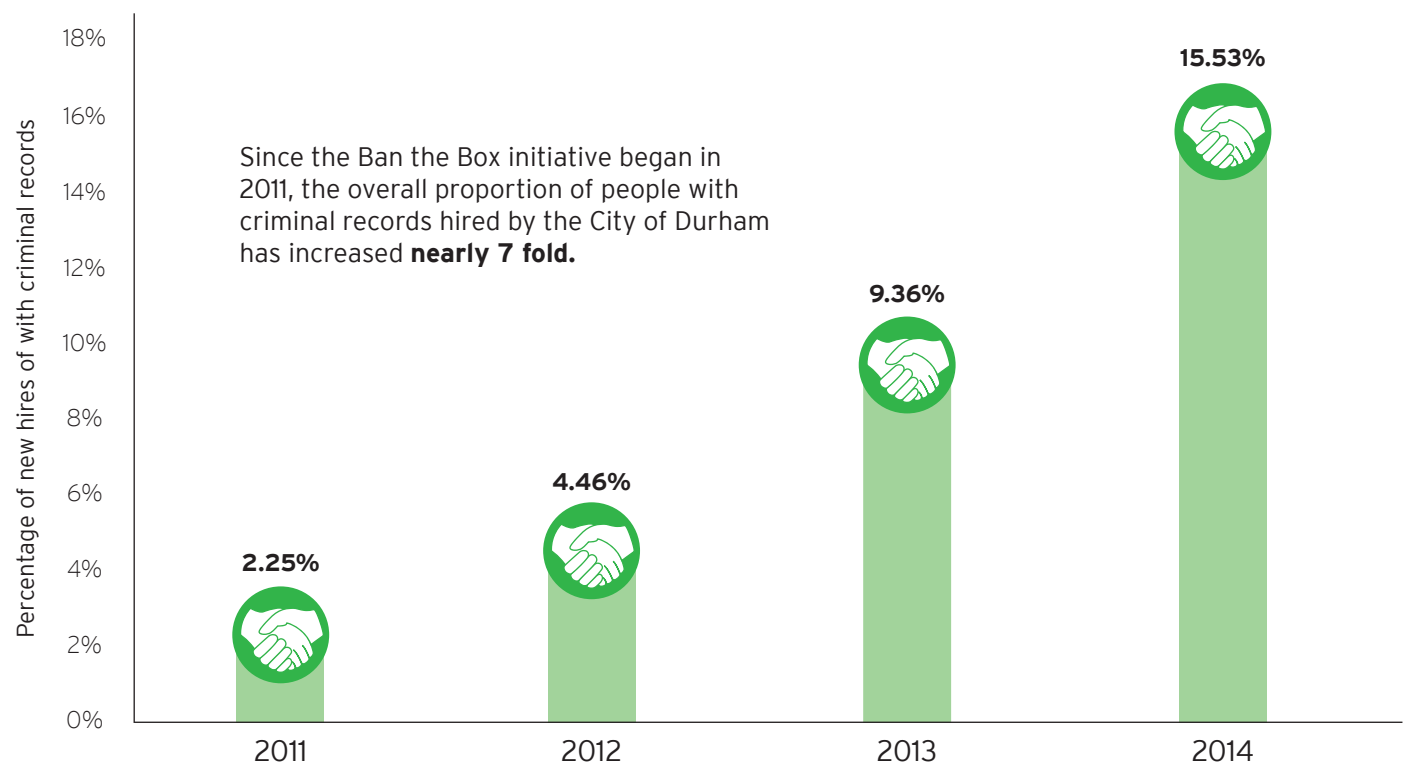
Clarence Stephenson, one of the coalitions's directly affected leaders, answered the question succinctly when he said, "I would rather have a job than a lawsuit. Ask that the government get the data from the official state criminal justice database."

Throughout the campaign the movement stayed wedded to the community's needs and the critical procedural protections that would increase the employment opportunities for people with criminal records. First, the campaign demanded that the question about criminal history be removed from the initial stages of the employment process. Next, the criminal

record check must occur after an applicant was identified as an otherwise qualified applicant and recommended for hire. Then, the county agency responsible for the job announcement would send the name of the person recommended for hire to the county human resources (HR) department to conduct a background check. A discrete number of HR staff members are trained to read criminal records, which limits the number of people who come in contact with the record, thereby protecting the privacy of the applicant. Prior to the background check the applicant's consent and authorization are obtained by HR staff. Once the background check is pulled, the applicant has the opportunity to check the record for accuracy. If the applicant has a criminal record, the County must send the applicant written correspondence alerting them of the potential for adverse employment action. The applicant then has seven working days to submit written evidence of rehabilitation. Finally, the employer assesses the relevance of the criminal record through a balancing test, which includes looking at the nature of the offense, how much time has passed since the commission of the offense, and whether there is a direct relationship between the underlying criminal conduct of the applicant and the prospective job. Ultimately, the DSCA was able to pressure the City and County of Durham to adopt Ban the Box policies through a combination of direct action community organizing, the persuasive testimony of trained spokespersons, and successful policy advocacy.

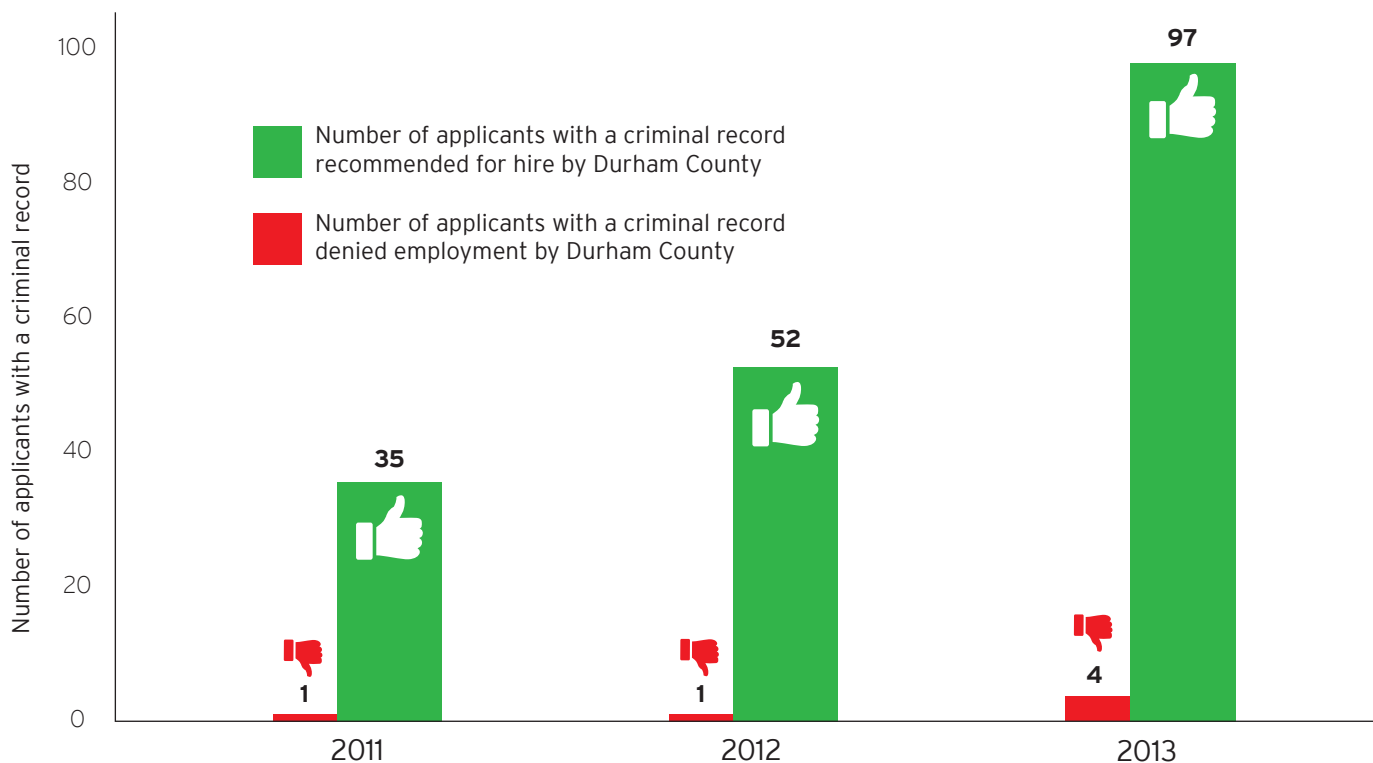
## EMPLOYMENT OUTCOMES OF THE DURHAM CAMPAIGN

Since the Durham government removed barriers to employment for people with criminal records, the employment outcomes for justice involved people have improved tremendously. Since 2011, the percentage of people with records hired by the City of Durham has increased each year.



The results for Durham County are equally as impressive. Since 2012, the number of people with criminal records hired by the County nearly tripled. In addition, 96% of Durham County applicants with criminal records, who were recommended for hire prior to the criminal record check, were ultimately hired after the results of the record check revealed some criminal history. An explanation is required to highlight the significance of this statistic. Pursuant to the county policy, when a county department seeks to hire someone for a position, they post a job announcement. Applicants complete a job application, go through the interview process, and are recommended for hire, if they are the most

qualified candidate prior to the criminal history check. Then, the county department sends the name of the candidate to the HR department to check the criminal history. Ninety-six percent of the applicants with criminal records referred to HR by a county department were ultimately hired despite some criminal history. This data demonstrates that the skills and qualifications of qualified applicants with criminal records outweigh any potential concerns that may be triggered by the applicant's conviction history. Further, none of the people with a criminal record who were hired have been terminated because of illegal conduct. Moreover, the Durham government has improved the employment outcomes of people with criminal records without compromising public safety, as there has not been any increase in workplace crime.



The positive employment outcomes of Durham's Ban the Box campaigns are not isolated. The City of Minneapolis removed the question about criminal record history from the initial employment application in 2007. After the policy was implemented, Minneapolis officials reported that the transactional work associated with the hiring process decreased. Moreover, delaying the question about criminal history did not slow the hiring process down, and it resulted in the employment of more than half of the applicants with a criminal conviction.<sup>27</sup>

## CONCLUSION

Statistical and anecdotal evidence illustrate that Ban the Box policies help dismantle the structural discrimination faced by people with records in the employment market. Moreover, fair hiring policies benefit our communities in the form of increased tax revenue and public safety. Most notably, Ban the Box policies benefit the bottom line of private businesses by increasing their productivity, as well as the retention of qualified, well trained-employees.

For more information about Ban the Box, please visit the Southern Coalition for Social Justice online at [www.scsj.org](http://www.scsj.org), or call 919-323-3380.

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