

## MEMORANDUM

TO: Alder Maurice Cheeks  
Michael P. May, City Attorney  
Patricia Lauten, Deputy City Attorney

FROM: Heather Allen, Common Council Legislative Analyst

DATE: March 11, 2014

RE: **Ban the Box: Policies to remove barriers to employment for people with criminal records**

### OVERVIEW

This memorandum examines policies to remove barriers to employment for people with criminal records. Referred to as “Ban the Box”, these policies remove questions about criminal history from initial employment applications and help ensure that arrest and conviction records are only considered later on in the hiring process, if and only if the records are relevant to the employment opportunity. These policies are intended to address the hiring disparities between applicants with a criminal history and those without. Studies have demonstrated that an applicant is half as likely to receive a call back for a position if they “check the box.” Moreover young African American men are disproportionately subject to arrest, conviction and incarceration at a rate of 10 to 1 compared with white men. Racial disparities in the criminal justice system coupled with the effect of criminal history on employment compound barriers to opportunities for African American ex-offenders. This analysis provides background information on ban the box policies based on the information gathered from the over 50 cities and counties as well as 10 states<sup>1</sup> that have implemented ban the box.

Ban the box is one tool that helps to reduce the initial barriers to employment faced by ex-offenders. Employment can help promote economic self-sufficiency, build social capital and reduce recidivism. Data collated by the National Employment Law Project demonstrate that steady employment increases community safety by reducing an ex-

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<sup>1</sup> California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Mexico and Rhode Island have implemented Ban the Box policies. Delaware, Nebraska, New Hampshire, New Jersey and Virginia have legislation pending. The states of New York, Pennsylvania and Wisconsin have laws prohibiting discrimination based on a criminal record.

offender's likelihood of returning to prison.<sup>2</sup> One study found that only 8% of those who were employed for a year committed another crime compared to that state's 54% average recidivism rate.<sup>3</sup> Increased employment and increased wages are also associated with lower crime rates in states.<sup>4</sup>

## 1. HOW DOES HIRING CHANGE AFTER BAN THE BOX POLICIES HAVE BEEN IMPLEMENTED?

According to the National Employment Law Project's Michelle Rodriguez, there is limited data available on the change in applicants and individuals hired before and after ban the box policies have been implemented. In part, the policies are relatively recent and many municipalities and other governments are not investing in research to assess the results of the policy.

Nevertheless there is some data available for consideration. The City of Minneapolis banned the box in 2007 for city employment and identified significant changes in hiring and applications as a result (APPENDIX A). Comparing conviction information and hiring before the policy (2004 – 2006) and after the policy (2007-2008) the City of Minneapolis had the following results:

- The percentage of applicants 'with concerns' hired increased from 5.7% before the policy to 57.4% after the policy.
- The percentage of applicants rejected prior to an eligible list being established decreased from 5.1% to none.
- The percentage of applicants rejected for not responding to a conviction letter decreased from 4.1% to 2.1%.
- The percentage of applicants rejected due to the nature of the conviction (post-certification) increased from 0.2% to 27.7%.

The City of Minneapolis identified lessons learned:

- Fewer applicants were rejected due to a criminal conviction.
- More than half of the applicants with a criminal conviction marked as a "concern" were hired.

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<sup>2</sup> Christy Visher, Sara Debus & Jennifer Yahner, *Employment after Prison: A Longitudinal Study of Releases in Three States*, Justice Policy Center Research Brief (Oct. 2008), Retrieved from

[http://www.urban.org/UploadedPDF/411778\\_employment\\_after\\_prison.pdf](http://www.urban.org/UploadedPDF/411778_employment_after_prison.pdf).

<sup>3</sup> American Correctional Association, 135th Congress of Correction, *Presentation by Dr. Art Lurigio (Loyola University) Safer Foundation Recidivism Study* (Aug. 8, 2005).

<sup>4</sup> Aliya Maseelall, Amanda Petteruti, Nastassia Walsh & Jason Ziedenberg, *Employment, Wages and Public Safety*, Justice Policy Institute (Nov. 2007) at 2-4, Retrieved from

[http://www.justicepolicy.org/images/upload/07\\_10\\_REP\\_EmploymentAndPublicSafety\\_AC.pdf](http://www.justicepolicy.org/images/upload/07_10_REP_EmploymentAndPublicSafety_AC.pdf)

- Considering criminal conviction information at the time of a job offer has decreased the amount of transactional work for staff.
- Reviewing convictions with a concern at the job offer stage has not slowed down the hiring process. However, having to review conviction information at the job offer stage makes it more obvious to the hiring manager that there is a potential issue with that applicant.

An unpublished study by Lisa Stolzenberg and colleagues at Florida International University examines the effect of Hawaii's Ban the Box policy on repeat criminal offending. Hawaii's policy applies to both public and private employers. The Stolzenberg study of the impact on Hawaii's 1998 law shows the policy can help integrate ex-offenders into the labor force.

*Logistic regression results show that a criminal defendant prosecuted in Honolulu for a felony crime was 57% less likely to have a prior criminal conviction after the implementation of Hawaii's ban the box law. By mollifying the social stigma attached to a criminal record during the hiring process, Hawaii's ban the box law proved to be extremely successful in attenuating repeat felony offending.<sup>5</sup>*

## 2. DO CITIES WITH BAN THE BOX POLICIES ALREADY HAVE LAWS PROHIBITING DISCRIMINATION BASED ON A CRIMINAL RECORD?

Yes, three cities already had criminal record as a protected class before they banned the box. Three states, New York, Pennsylvania and Wisconsin also have laws prohibiting discrimination based on a criminal record.

Criminal record is a protected class in the City of Boston as a result of a local effort in 2004. The City of Boston banned the box in 2006 for city hiring and for private vendors that do business with the city.

The State of New York has had a longstanding (1977) anti-discrimination statute in place for persons convicted of offenses<sup>6</sup>. New York City banned the box in 2011 when Mayor Bloomberg signed Executive Order 151 declaring;

<sup>5</sup> Stewart D'Alessio, Lisa Stolzenberg, Jamie Flexon, The Effect of Hawaii's Ban the Box Law on Repeat Offending. Abstract. Retrieved from [http://works.bepress.com/lisa\\_stolzenberg/subject\\_areas.html](http://works.bepress.com/lisa_stolzenberg/subject_areas.html)

<sup>6</sup> "Under New York law, employers and state agencies that issue licenses cannot reject job-seekers simply because they have criminal convictions. Legally, job-seekers can only be rejected if there is a direct relationship between the

*With respect to any employment governed by Article 23-A of the Correction Law, except as provided by this Order, Agencies shall not ask questions regarding an applicant's prior criminal convictions on any preliminary employment application documents, excluding the Comprehensive Personnel Document ("CPD"), or ask questions about an applicant's prior criminal convictions before or during the first interview with the applicant.*

The New York City policy applies to city hiring and to some city contractors in human services. Those contracting agencies may not ask about criminal history until after the first interview.

Buffalo, New York amended its municipal code to ban the box for both municipal and private employers as well as private vendors.

### 3. PROVIDE ANECDOTAL FEEDBACK FROM THE IMPACTED POPULATION REGARDING THE POSITIVE OR NEGATIVE REPERCUSSIONS OF BAN THE BOX.

#### **Impacted Population**

##### **Walter Fortson, Cambridge MA**

*Fortson, 28, served two years in prison for dealing crack cocaine: He got out in March 2010 and has been clean since. Though he's successfully turned his life around, he says discrimination against those with a criminal record is very real.*

*"There have been a lot of times that I haven't been offered an opportunity because of the stigma," said Fortson, a Philadelphia native. "A lot of companies have a blanket policy that excludes anyone who's had any contact with the criminal justice system."*

*Fortson is now backing a campaign to make employers remove questions about criminal history from job applications, postponing such queries until a later stage of the hiring process—an initiative widely known as "Ban the Box."<sup>7</sup>*

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conviction and the job or license being sought, or if hiring the applicant would pose an unreasonable risk to persons or property. As the Corrections Law states, employers must look at job-seekers as individuals." Reentry.net/ny. Serving People from Arrest to Reintegration. Retrieved from

[http://www.reentry.net/ny/employment\\_licensing/item.2219-Challenging\\_Employment\\_Discrimination](http://www.reentry.net/ny/employment_licensing/item.2219-Challenging_Employment_Discrimination)

<sup>7</sup> [Suzy Khimm](http://www.msnbc.com/all-in/states-push-provide-some-ex-felons-secon) "States push to provide some ex-felons a second chance. 07/21/13 MSNBC.com Retrieved from <http://www.msnbc.com/all-in/states-push-provide-some-ex-felons-secon>

**Bridget Piggery, Milwaukee, WI**  
**9to5 Wisconsin**

*I am a member and co-chair of the board of 9to5 Wisconsin. I am a three-time convicted felon so I do understand the comments here. I want to do the same here in Wisconsin. All my crimes are over 10 years old, I have been out of prison 9 years will be 10 on April 30, 2014, and I can't even get a job at McDonalds. Yes, I am employed but not at my career just a job. I get paid \$9 an hour cleaning. When I know there are cooks at Applebee's making \$12. It was a rough experience trying to find work.*

*I didn't have anyone here in Wisconsin [to] help me. I want to be that voice and that person for my fellow FELONS. We get looked at less than poverty. My crime is not violent. Really, I look at it like this I have a lot of business skills since I did get a degree in Business and yet I'm cleaning. I do understand all of you and your pain. I want to be that person that makes a change just like my friend Ms. Winn. She is my role model. Because of her, I do know we have a chance to conquer. Thanks! If any [of you] in the state of Wisconsin, if you believe in this, it doesn't have to be you as the convicted felon, but we all know someone that is living the [hardship] all convicted felons are living in.<sup>8</sup>*

**Support for Ban the Box in California**

In October 2013 Governor Jerry Brown signed AB 218 into law for the State of California, requiring state and local agencies to ban the box. "This bill, commencing July 1, 2014, would prohibit a state or local agency from asking an applicant to disclose information regarding a criminal conviction, except as specified, until the agency has determined the applicant meets the minimum employment qualifications for the position."<sup>9</sup> The National Employment Law Project gathered the following feedback as part of the campaign effort.

**Public Officials**

**Mayor Eric Garcetti, Los Angeles**

"AB218 would help people with convictions become employed and successfully reintegrate into the community. As we have done in Los Angeles, this bill will allow

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<sup>8</sup> Bridget Piggery Comment on 'City of Atlanta Joins Growing List of Employers to "Ban the Box"' January 31, 2014. <http://www.equalvoiceforfamilies.org/city-of-atlanta-joins-growing-list-of-employers-to-ban-the-box/#sthash.UMyvSQ5t.dpuf>

<sup>9</sup> Legislative Council's Digest. Assembly Bill No. 218. Chapter 699. An act to add Section 432.9 to the Labor Code, relating to employment. Approved by Governor October 10, 2013. Filed with Secretary of State October 10, 2013. Retrieved from [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB218](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB218)

people with a conviction history get a foot in the door without compromising safety and security.” (Support Letter, August 8, 2013)

**Mayor Edwin M. Lee, San Francisco**

“We know from our own experience that allowing people with a conviction history to compete fairly for employment will not compromise safety and security in the workplace. Indeed, it can reduce recidivism and promote public safety. I am very pleased to support this bill.” (Support Letter, July 17, 2013)

**Law Enforcement**

**Chief of Police Chris Magnus, City of Richmond**

“I strongly support AB218, which will help reduce recidivism and provide members of the Richmond community and other residents of California the opportunity to compete for jobs. This legislation promotes public safety by reducing unnecessary job barriers for the nearly seven million adult Californians with a criminal record.” (Support Letter, March 4, 2013)

**District Attorney George Gascon, City and County of San Francisco**

“Public sector employers in California have a special obligation to pave the way for the private sector to reduce barriers to employment of people with criminal records. For these reasons, I support AB218.” (Support Letter, March 22, 2013)

**Clergy**

**Father Gregory Boyle (Founder and Executive Director of Homeboy Industries in Los Angeles) and Reverend Joseph Clopton (of Sacramento Area Congregations Together)**

“It’s not just about fairness for people with criminal records – it’s also good for California’s economy and for the safety of our communities to ensure we’re maximizing job opportunities for everyone.” (Op-ed, “Fair Hiring Policy Gets an Unfair Rap,” Sacramento Bee, September 10, 2013)

**Human Resources Professionals**

**Jody Pollak, Alameda County Labor Relations Analyst**

“[T]here has been no negative or adverse consequences since we made this change back in 2007. The feedback that we’ve received has been overwhelmingly positive. In fact what we hear from members of the community is that they are far more likely to apply for a position with Alameda County based on this change that we made . . . . [W]e’ve been able to expand our pool of qualified applicants as a result of this change in our application process, which has been a tremendous benefit to the County.” (Testimony before the California Senate Labor Committee June 26, 2013)

**Labor Unions**

**California Labor Federation, AFL-CIO**

“As California moves toward realignment, and there is a shift from incarceration to community release and supervision, it is essential that we get real about rehabilitation.

The public sector should be a model of opportunity for the rest of California’s employers.” (Support Letter, March 28, 2013)

#### 4. COULD A BAN THE BOX POLICY SUPPORT THE CITY OF MADISON’S EFFORTS TO GROW DIVERSITY AND OPPORTUNITIES?

Yes, the City of Madison could increase access to living wage jobs by implementing ban the box policies for hiring. The trend of growing diversity coupled with increases in poverty and unemployment and disproportionate arrest and conviction rates require a new suite of policy approaches to people and their families.

Diversity is on the rise in Madison as demonstrated by student demographic trends. In the early 1990s students of color comprised approximately 20% of the Madison Metropolitan School District student population and in 2012 students of color comprise approximately 50% of the student body.

As diversity has grown poverty has been on the rise as well. The Race to Equity Report released in October 2013 found,

*The black/white poverty rate gap in the county is even wider than our local employment disparities. In 2011, the Census’ American Community Survey reported that over 54% of African American Dane County residents lived below the federal poverty line, compared to 8.7% of whites, meaning Dane County blacks were over six times more likely to be poor than whites. ...*

*In 2011, the American Community Survey estimated that more than 74% of Dane County’s black children were poor, compared to 5.5% of white children. In other words, Dane County black kids were estimated to be over 13 times more likely to be growing up in poverty than white children. Our research suggests that this 13 to 1 disparity ratio may constitute one of the widest black/white child poverty gaps that the Census Surveys reported for any jurisdiction in the nation.*

Unemployment and underemployment also impacts local poverty levels. The three most underemployed groups in Wisconsin are young people ages 16-24, those with less than a high school education, and African Americans.<sup>10</sup> Overall, nearly one-third of the African American workforce needs a job or needs more hours from the one they have.

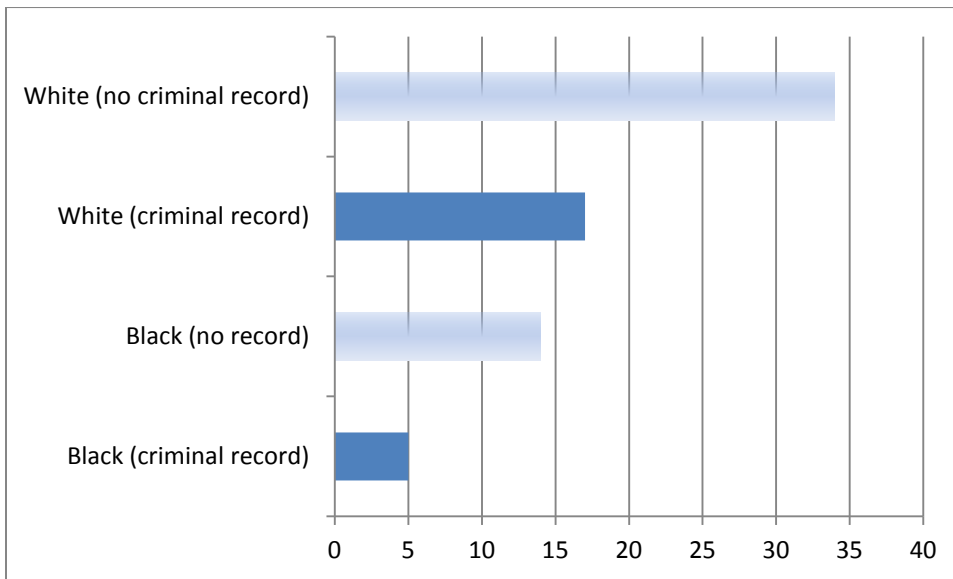
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<sup>10</sup> Center on Wisconsin Strategy: The State of Working Wisconsin 2012.

According to the Center on Wisconsin Strategy, more than one in four African American workers who hold jobs earn poverty wages.<sup>11</sup>

Experiences with the criminal justice system also play a significant role in the opportunities available for Madison residents. Arrest and incarceration rates in Madison and Dane County are disproportionately high for African American males. In 2012, while black men “made up only 4.8% of the county’s total adult male population, they accounted for more than 43% of all new adult prison placements during the year.”<sup>12</sup>

As noted earlier in this report, ban the box efforts can help reduce recidivism and allow for increased economic stability for individuals and their families. It may be helpful to revisit the results of the study of the impact of race and criminal records on the likelihood of receiving a call back for a job.



**Figure 1. The effect of a criminal record for black and white job applicants.** The White applicant with no criminal record received call backs from 34% of employers. The White applicant with a criminal record received call backs from 17% of employers. The Black applicant with no criminal record received call backs from 14% of employers. The Black applicant with a criminal record received call backs from 5% of employers.

<sup>11</sup> “Poverty-wage jobs are those that pay a wage that is insufficient to lift a full-time (40 hours a week), year round (52 weeks a year) worker to the poverty line for a family of four with two children. In 2011 dollars the “poverty wage” was \$10.97 an hour or less.”

<sup>12</sup> Wisconsin Council on Children and Families. Race to Equity. A Baseline Report on the State of Racial Disparities in Dane County. October 2013 Retrieved from <http://www.cityofmadison.com/mayor/documents/WCCFR2EReport.pdf>



Figure 1. is an image replicated from Devah Pager’s study on the impact of criminal record and race on hiring. The study “The Mark of a Criminal Record” utilized two pairs of equally matched applicants to approach employers and apply for entry level jobs. The pairs were distinguished by race and criminal record. The results indicated that employers were far less likely to call back an applicant with a criminal record.

The study showed that in “50% of cases, employers were unwilling to consider equally qualified applicants on the basis of their criminal record.” Moreover, race compounds the effect and the results demonstrate that whites with a criminal record are more likely to receive call backs than blacks with no criminal record. Efforts to ban the box could help offset these disparities and contribute to increased opportunities for employment for Africans Americans and those with a criminal record.<sup>13</sup>

Given the now more widely understood correlation between race, poverty and criminal history it follows that efforts to promote employment and economic stability for local ex-offenders can help reduce child poverty, reduce housing instability, reduce crime and recidivism. All of these issues are intimately related and should be analyzed cautiously, nevertheless, the case of Minneapolis and Hawaii demonstrate that ban the box policies can help promote employment and stability for ex-offenders. Increased employment for African Americans and ex-offenders would support other local efforts to reduce disparities between racial groups.

## 5. IF THE CITY OF MADISON WERE TO BAN THE BOX COULD WE INCREASE THE APPLICANT POOL OF FOLKS WHO ARE UNDERREPRESENTED IN CITY JOBS?

Yes, the City of Madison has room to improve hiring diversity in certain job categories, an effort which could be supported by a ban the box policy. As noted earlier, ban the box policies increase hiring for ex-offenders, a group disproportionately comprised of people of color.

The Department of Civil Rights identifies annual placement goals for women and racial / ethnic groups in various job categories. The goals are determined with an underutilization analysis of incumbency and relevant labor market availability of qualified women or minority group members. Data sources include the City of Madison Permanent Employees and the US Census 2010 Equal Employment Opportunity Data Tool for the Madison, WI Metropolitan Statistical Area. The 2014 City of Madison

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<sup>13</sup> Pager, Devah, “The Mark of a Criminal Record.” American Journal of Sociology Volume 108. Number 5 (March 2003).

Placement Goals identified two job groups (officials and administrators as well as technicians) that warrant increased the representation of minority groups (APPENDIX B).

## 6. IS THIS BAN THE BAN THE BOX PROPOSAL SUBJECT TO PREEMPTION BY THE STATE GIVEN THE HOME RULE AUTHORITY OF THE CITY OF MADISON AND THE PROHIBITION AGAINST DISCRIMINATION BASED ON ARREST OR CONVICTION RECORDS (11.335)?

The State of Wisconsin has a longstanding prohibition against discrimination based on arrest or conviction records. Wisconsin is one of three states with similar prohibitions.

Wisconsin Statute §111.321, 111.322 prohibit employment discrimination in both public and private sector employment on the basis of either an arrest or conviction record. Specifically, the law §111.335 provides that an applicant may not be denied employment based on a conviction history unless the conviction “substantially relates[s]” to the circumstances of the particular job or licensed activity, or is not bondable.<sup>14</sup>

In September 2011, Milwaukee County Board passed an ordinance to eliminate the criminal record question on applications for Milwaukee County jobs.

Also in September 2011, a Senate Bill was introduced to the Wisconsin Legislature which would have changed existing state law. SB 207 concluded an employer would not have discriminated if an employer “refuse[d] to employ or bar or terminate from employment an individual who has been convicted of a felony, whether or not the circumstances of the felony substantially relate to the circumstances of the particular job.”<sup>15</sup> The bill did not pass the Legislature.

The Legislative Reference Bureau noted that SB 207 would have determined that discrimination based on criminal records to be a “matter of statewide concern and would have prohibited any county, city, village or town from adopting any provision concerning employment discrimination based on arrest or conviction record that prohibits any activity that is allowed under the state fair employment law.” Because SB

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<sup>14</sup> National Employment Law Project. Statewide Ban the Box: Reducing Unfair Barriers to Employment of People with Criminal Records. February 2014.

<sup>15</sup> Analysis by the Legislative Reference Bureau. 2011 Senate Bill 207

207 did not pass we can assume that the city retains its current constitutional and statutory home rule provisions to determine its own local affairs on this issue (APPENDIX C).

In February of 2013, Dane County implemented a similar policy by simply changing its applications to remove the question for most positions. Dane County has also developed a policy to determine when a background check will be conducted (APPENDIX D). Both the Milwaukee County and Dane County measures applied to County hiring only.

If the City wished to pursue an ordinance more broadly banning the box for all employers in Madison, a more complete analysis of the City's legal authority should be made by an attorney in the Office of the City Attorney.

**City of Minneapolis Conviction Information Summary  
2004 – 2008 YTD**

**What Has Changed Since 2006:**

- City Council adopted the Fair Hiring Practices Resolution 2006R0642 on December 22, 2006.
- The City removed the criminal conviction disclosure box from its employment application on January 30, 2007.
- Revised Background Check Policy went into effect January 1, 2008. Highlights of the policy revisions include:
  - Expanded criteria for which positions would require a background check.
  - Expanded to include credentials check (education, licensure, etc).
  - Specifies that background checks are to be done at the time a conditional job offer has been made

<b><u>Applicant Summary</u></b>	<b>2004-2006</b>	<b>2007-July 3, 2008</b>
Applications Received – City Positions Only	18,842	12,911
# of Background Checks Conducted <sup>1</sup>	996	494
% of Checks to Applications Received	5.3%	3.8%
# of Background Checks with Conviction Concerns (within the preceding 7 years) <sup>2</sup>	N/A	47
% of Background Checks with Conviction Concerns		9.5%
# of Applicants with Concerns – <b>Hired</b>	57 (5.7%) <sup>3</sup>	27 (57.4%)
# of Applicants <b>Rejected Prior to an Eligible List Being Established</b>	51 (5.1%)	None <sup>4</sup>
# of Applicants <b>Rejected for not responding to conviction letter</b>	41 (4.1%)	1 (2.1%)
# of Applicants <b>Rejected due to the nature of the conviction (post-certification)</b> <sup>5</sup>	2 (.2%)	13 (27.7%)

<sup>1</sup> 2004-2006 reflects the number of applicant-disclosed convictions for permanent hires, not the number of background checks conducted through a third-party vendor. 2007-2008 reflects the number of background checks conducted through a third-party vendor for all applicable details, temporary and permanent hires.

<sup>2</sup> For 2004-2006, all disclosed conviction information was reviewed. There is no specific data available for how many of those disclosures had “concerns”.

<sup>3</sup> Percentages are the ratio of applicant status to the number of background checks conducted (2004-2007), or to the number of checks with concerns (2007-2008).

<sup>4</sup> As of 1/30/07, background checks are only conducted after a conditional job offer had been made.

<sup>5</sup> 2004-2006 numbers are lower as rejections were typically done prior to certification. 2007-2008 rejection percentages are higher as it is compared only to the number of checks with a concern (47).

**Key Learnings:**

- Fewer applicants are being rejected due to a criminal conviction.
- More than half of the applicants with a criminal conviction marked as a “concern” were hired.
- Considering criminal conviction information at the time of a job offer has decreased the amount of transactional work for staff.
- Reviewing convictions with a concern at the job offer stage has not slowed down the hiring process. However, having to review conviction information at the job offer stage makes it more obvious to the hiring manager that there is a potential issue with that applicant.

### 2014 City of Madison Placement Goals

The Annual Placement Goals are determined with an underutilization analysis of incumbency and relevant labor market availability of qualified women or minority group members. All selection decisions are made in a nondiscriminatory manner and a placement goal is not justification for selecting an individual based on their protected class. Source: Permanent Employees & US Census 2010 EEO Data Tool Madison, WI (MSA)

Job Family Code and Groups	Total # of Employees	# of Women Employees	Women Incumbency	Women Availability	Establish Goal: Yes or No	If yes goal:	# of Racial Ethnic Employees	Racial Ethnic Incumbency	Racial Ethnic Availability	Establish Goal: Yes or No	If yes goal:
1 - Officials & Administrators	69	17	24.6%	43.9%	Yes	43.9%	3	4.3%	6.2%	Yes	6.2%
2 - Professionals	438	199	45.4%	53.8%	Yes	53.8%	46	10.5%	9.8%	No	
3- Technicians	145	29	20.0%	50.8%	Yes	50.8%	10	6.9%	10.8%	Yes	10.8%
4- Protective Workers	964	230	23.9%	28.1%	Yes	28.1%	177	18.4%	8.1%	No	
5- Paraprofessionals	115	90	78.3%	57.9%	No		17	14.8%	9.0%	No	
6 - Administrative Support	482	331	68.7%	62.0%	No		64	13.3%	8.2%	No	
7 - Skilled Craft Workers	405	27	6.7%	6.3%	No		40	9.9%	5.9%	No	
8 - Service Maintenance	689	126	18.3%	43.3%	Yes	43.3%	161	23.4%	13.4%	No	
<b>TOTAL</b>	<b>3307</b>	<b>1049</b>					<b>518</b>				

## City of Madison Job Categories

### 1 – Officials and Administrators

This category includes occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the City's operations, or provide specialized consultation on a citywide basis. Most of the incumbents in this category are the Department/Division Heads, the Assistant or Deputy Directors and other high-level managers (CG18 Range 15 and higher). However, both the Police Chief and the Fire Chief are included under Protective Services – Sworn. The Mayor and the City Council Members are not included in this analysis since they are elected public officials and, as such, are not considered employees for reporting to the EEOC.

### 2 – Professionals

This job category includes occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Most of the incumbents in this category are the professional positions including accountants, engineers, attorneys, HR analysts, budget analysts and planners. This category also includes the managers and supervisors of the organization not included in the Officials and Administrator category.

### 3 – Technicians

In this category we find occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. These employees are found in many departments throughout the City. They include the various inspector and technician jobs found in the City, including the various Code Enforcement Officers, Property Code Inspectors, Civil Technicians, and Water Quality Aide.

### 4 – Protective Services – Sworn & Non-Sworn

This category includes all protective services occupations in which workers are entrusted with public safety, security and protection from destructive forces. It also includes occupations that perform technical and support work in safety or law enforcement work. Examples include police officers, fire fighters, police and fire managers/supervisors, lifeguards, and park rangers. To get the availability data for this category Protective Sworn and Protective Non-Sworn categories from the Census EEO Categories are added together.

### 5 – Paraprofessionals

This category includes all occupations in which workers are trained to assist professionals but do not themselves have professional licenses. They are able to perform tasks requiring significant knowledge in the field. Examples include administrative clerks, program assistants, management interns, and library assistants. Availability data for this category is calculated by averaging the "Professionals" and "Administrative Support" numbers from the Census EEO Categories.

### 6 – Administrative Support

This category includes occupations in which workers are responsible for internal and external communications, recording, and retrieval of data and/or information and other paperwork required in an office. Examples include clerk typists, information clerks, attendants, account clerks, and library pages.

### 7 – Skilled Crafts

Skilled Crafts include occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. It includes a variety of jobs such as electricians, tree trimmers, parks crew leaders, equipment operators, wastewater collection system operators, wastewater treatment plant operators, and water system distribution operators and several types of mechanics.

### 8 – Service-Maintenance

This category includes occupations in which workers perform duties that result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. In the City labor force, this category is mostly composed of maintenance workers and custodians.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2989/1  
GMM:wlj:jf

APPENDIX C.

**2011 SENATE BILL 207**

September 28, 2011 - Introduced by Senators DARLING, LAZICH, ZIPPERER, MOULTON and GALLOWAY, cosponsored by Representatives KLEEFISCH, LEMAHIEU, JACQUE, CRAIG, KNODL, PRIDEMORE, ZIEGELBAUER, THIESFELDT, NASS, ENDSLEY, PETERSEN, KUGLITSCH, LITJENS, T. LARSON and STROEBEL. Referred to Committee on Labor, Public Safety, and Urban Affairs.

1     **AN ACT to repeal** 111.335 (1) (cg) 3. and 111.335 (1) (cv); **to renumber and**  
2     **amend** 111.335 (1) (cm); **to amend** 111.335 (1) (c); and **to create** 111.31 (6),  
3     111.335 (1) (cm) 2. to 4. and 111.335 (2) of the statutes; **relating to:** permitting  
4     an employer to refuse to employ or to bar or terminate from employment an  
5     individual who has been convicted of a felony and who has not been pardoned  
6     for that felony and preempting cities, villages, towns, and counties from  
7     adopting provisions concerning employment discrimination based on arrest or  
8     conviction record that prohibit activity that is allowed under the state fair  
9     employment law.

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***Analysis by the Legislative Reference Bureau***

The current state fair employment law, subject to certain exceptions, prohibits discrimination in employment based on arrest or conviction record. That law specifies, however, that it is not employment discrimination because of conviction record to refuse to employ or to terminate from employment an individual who has been convicted of a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job. This bill specifies that it is not employment discrimination because of conviction record for an employer to

BAN THE BOX

**SENATE BILL 207**

refuse to employ or to bar or terminate from employment an individual who has been convicted of a felony and who has not been pardoned for that felony, whether or not the circumstances of the felony substantially relate to the circumstances of the particular job.

Under current constitutional and statutory home rule provisions, a city or village may determine its own local affairs subject only to the Wisconsin Constitution and to any enactment of the legislature that is of statewide concern and that affects every city or village with uniformity. This bill states that the prohibition against discrimination in employment based on arrest or conviction record under the state fair employment law is a matter of statewide concern, requiring uniform enforcement at the state, county, and municipal levels. As such, the bill prohibits any county, city, village, or town from adopting any provision concerning employment discrimination based on arrest or conviction record that prohibits any activity that is allowed under the state fair employment law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 111.31 (6) of the statutes is created to read:

2           111.31 (6) The legislature finds that the prohibition against discrimination on  
3 the basis of arrest or conviction record under s. 111.335 is a matter of statewide  
4 concern, requiring uniform enforcement at the state, county, and municipal levels.

5           **SECTION 2.** 111.335 (1) (c) of the statutes is amended to read:

6           111.335 (1) (c) Notwithstanding s. 111.322, it is not employment discrimination  
7 because of conviction record to refuse to employ or license, or to bar or terminate from  
8 employment or licensing, any individual who of the following:

9           1. Has An individual who has been convicted of any felony, misdemeanor, or  
10 other offense the circumstances of which substantially relate to the circumstances  
11 of the particular job or licensed activity; or,



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1           2. ~~Is An individual who is not bondable under a standard fidelity bond or an~~  
2           equivalent bond where when such bondability is required by state or federal law, or  
3           administrative regulation ~~or established business practice of the employer.~~

4           **SECTION 3.** 111.335 (1) (cg) 3. of the statutes is repealed.

5           **SECTION 4.** 111.335 (1) (cm) of the statutes is renumbered 111.335 (1) (cm)  
6           (intro.) and amended to read:

7           111.335 (1) (cm) (intro.) Notwithstanding s. 111.322, it is not employment  
8           discrimination because of conviction record to refuse to employ ~~as an installer of~~  
9           ~~burglar alarms a person, or to bar or terminate from employment, any of the~~  
10          following:

11          1. An individual who has been convicted of a felony and who has not been  
12          pardoned for that felony.

13          **SECTION 5.** 111.335 (1) (cm) 2. to 4. of the statutes are created to read:

14          111.335 (1) (cm) 2. An individual who has been convicted of a felony, the  
15          circumstances of which substantially relate to the circumstances of the particular  
16          job, and who has been pardoned for that felony.

17          3. An individual who has been convicted of a misdemeanor or other offense, the  
18          circumstances of which substantially relate to the circumstances of the particular  
19          job.

20          4. An individual who is not bondable under a standard fidelity bond or an  
21          equivalent bond when such bondability is required by state or federal law,  
22          administrative regulation, or established business practice of the employer.

23          **SECTION 6.** 111.335 (1) (cv) of the statutes, as affected by 2011 Wisconsin Act  
24          32, is repealed.

25          **SECTION 7.** 111.335 (2) of the statutes is created to read:



# APPENDIX D



SECTION: Employee Relations  
TOPIC: Criminal Background  
Checks  
March 2014

## ADMINISTRATIVE PRACTICES MANUAL

### PURPOSE:

The purposes of this policy are:

- To ensure that Dane County provides services in a safe environment;
- To ensure that Dane County complies with those laws and regulations which require Dane County to conduct criminal background checks on applicants as a condition of employment for certain positions; and
- To ensure that Dane County complies with those laws and regulations which prohibit discrimination against job applicants and current employees based upon arrest and conviction records which cannot be lawfully considered when making employment decisions.

### DEFINITIONS

1. **Arrest Record:** Information indicating that an individual has been arrested, apprehended, taken into custody, detained, questioned, held for investigation, charged, or tried.
2. **Conviction Record:** Information indicating that, pursuant to any law enforcement or military authority, an individual has been:
  - Convicted of any felony, misdemeanor or other offense;
  - Less than honorably discharged
  - Fined;
  - Imprisoned;
  - Paroled;
  - Placed on probation; or
  - Placed on extended supervision.
3. **Criminal Charge:** a criminal complaint, information or indictment filed in a state or federal court of law.
4. **Criminal Conviction:** A conviction punishable by a state, federal or local law enforcement or corrections agency.

### DETERMINING WHETHER APPLICANTS FOR A PARTICULAR POSITION MUST UNDERGO A CRIMINAL BACKGROUND CHECK OR NOT

Various State and Federal laws and regulations require employers to conduct criminal background checks under certain circumstances. Common mandates applicable to Dane County are listed below, as well as the policy reasons for Dane County to perform a criminal background check even when not required under a specific State or Federal law/regulation.

- 1. Positions of Trust / Fiduciary Responsibilities.** Dane County completes a criminal background check on applicants for any position that involves a position of trust and/or fiduciary responsibilities, such as:



## ADMINISTRATIVE PRACTICES MANUAL

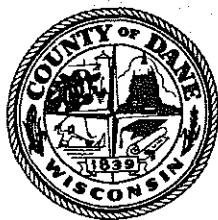
- The responsibility for, receiving, handling or having custody of money, checks or securities;
- Processing payroll;
- Accounting for supplies or other property;
- Authorizing or making appropriations for expenditures, making payment to vendors, signing procurement contracts;
- Approving, certifying, signing, or countersigning checks, drafts, warrants, vouchers, orders or other documents providing for the paying over or delivery of money, securities, supplies or other property;
- Maintaining or auditing accounts of money, checks, securities, time records, supplies or other property;
- Taking physical inventories of money, checks, securities, supplies or other property;
- Setting up and/or having access to or maintaining personnel records;
- Having access to or use of master keys/card access to offices/worksites other than their own departmental worksite;
- Performs public safety related functions and/or is located in (or has job duties that require access to) the Dane County Courthouse; and/or
- The responsibility for top-level management functions, including Department heads and their deputies.

**2. When the law prohibits the appointment of an individual with certain criminal backgrounds to the position.** For example, under Wisconsin's Caregiver Law, Dane County completes a criminal background check on employees and applicants who are or will be responsible for the care, safety, and security of children and vulnerable adults. This includes licensed individuals, employees, prospective employees, and other specified persons affiliated with care-giving entities or providers. It is the policy of Dane County to check applicants' criminal histories before hire, and the criminal history of current employees at least every four (4) years. It is also the policy of Dane County to conduct criminal background checks of applicants who, if hired, will have unsupervised access to vulnerable populations due to their position with Dane County.

**3. Special Circumstances.** Certain Dane County departments, such as the Dane County Sheriff's Office (DCSO), Dane County Emergency Management, the Public Safety Communications Center of Dane County (911), the Dane County Regional Airport, and Public Health – Madison / Dane County (PHMDC) have developed their own policies regarding screening applicants and current personnel.

### PROCEDURE

**1. Notices on Job Postings:** Employee Relations will be responsible for including the following notice in applicable job postings: "Dane County will complete a criminal background check on applicants who progress to a certain stage in the application process, and if an applicant has a criminal history, then Dane County will disqualify the applicant if the position's responsibilities are substantially related to the applicant's criminal history."



## ADMINISTRATIVE PRACTICES MANUAL

**2. Conducting a Criminal Background Check.** Criminal background checks will be conducted and managed within the Department that the employee or applicant is or will be working. Each Department (or Division within the Department) will identify at least one professional employee to coordinate its criminal background checks, including determining the scope of the check, conducting the check, making recommendations on results, providing appropriate information to decision maker(s) and to applicants/employees, and protecting confidential information.

- a. **Securing Consent:** For those applicants/employees with email accounts, the consent process can be completed online. First, Employee Relations will request applicants/employees to self-disclose convictions and whether he/se is currently facing criminal charges. Then, Employee Relations will provide a consent form to the applicant/employee, indicating that it needs to be completed and returned.
- b. **Conducting a Social Security Number Validation and Trace:** Employee Relations will validate the applicant's social security number and identify the scope of the check by identifying all the places in the United States the applicant has resided/worked using the information in the applicant's/employee's Candidate Profile (e.g. resume, employment history, educational history, achievement history questionnaire, etc.).
- c. **Conducting a Wisconsin Criminal Background Check:** If Employee Relations determines that the applicant/employee has only resided/worked in the State of Wisconsin, then the Department can conduct the check utilizing the Wisconsin Department of Justice, the Wisconsin Sex Offender Registry, and Consolidated Court Automation Programs (better known as "CCAP"). Links to these websites are as follows:

<http://www.doj.state.wi.us/dles/cib/crimback.asp>

<http://offender.doc.state.wi.us/public/>

<http://wcca.wicourts.gov/index.xsl>

- d. **Conducting an Out-of-State Criminal Background Check:** When out-of-state records need to be checked, the Department will develop a plan to do so.
- e. **Note:** Dane County recognizes that databases may include information that is irrelevant to the employment decision making process. For example, some data bases include information about arrests where the charges have been

**ADMINISTRATIVE PRACTICES MANUAL**

dismissed/dropped as well as information about civil cases such as divorces and financial suits. However, it is the policy of Dane County not to consider such information when making employment decisions.

- f. Note: Dane County often conducts records' checks unrelated to criminal background. For example, when a position requires a valid driver's license, Dane County may check with the Wisconsin Department of Transportation (DOT) to confirm that the applicant or employee has a valid driver's license. Similarly, when a position requires a professional license or credential (for example, a nursing license, proof of status as a Certified Nursing Assistant or "CNA," a law license, etc.), Dane County may check the applicant's or employee's status and history with the applicable licensing board.

**3. Making the Determination Whether a Criminal Record is Substantially Related to the Position.** Because everyone is presumed innocent until guilt is proven beyond a reasonable doubt, Dane County will not hold arrests that do not result in a conviction or a plea agreement against an employee or applicant. Furthermore, Dane County recognizes that the existence of a conviction is not always an automatic exclusion from employment. Therefore, it is the policy of Dane County to review each applicant's/employee's criminal background on an individual, case-by-case basis, using the following factors to determine whether there is a substantial relationship between the pending charge or conviction and the position.

- a. The *offense(s)* themselves, in particular, the nature and severity of the offense(s), including but not limited to:
- The statutory elements of the offense(s) (including the requisite level of intent) and whether these elements are related to the position;
  - The amount of time which has elapsed since the last offense occurred;
  - The number of offense(s) and whether there is a pattern;
  - The type(s) of offense(s) (i.e. felony, misdemeanor, traffic, other);
  - Whether the offense(s) occurred on the job or otherwise arose out of an employment situation; and/or
  - Whether the State or Federal government has determined that the nature of the offense(s) must be or may be treated as a complete bar to employment in the position.
  - NOTE: Dane County will not use the individual's account of the facts and circumstances of the offense(s) to discount the nature, severity, and intentionality (or lack thereof) of the offense(s).
- b. The *position* itself, and in particular, the duties, responsibilities and circumstances of the position, including, but not limited to:



## ADMINISTRATIVE PRACTICES MANUAL

- Whether the duties, responsibilities and circumstances of the position offers opportunities to commit new offenses;
  - The level and scope of the position's autonomy / discretionary authority and supervision by superiors;
  - The level and scope of the position's responsibility to supervise subordinate staff;
  - The level and nature of the position's contact with the general public;
  - The extent to which the job requires the trust and confidence of the general public and/or public officials;
  - The sensitivity of the data or records for which the position is responsible and/or to which the position has access.
- c. The *individual* himself/herself, and in particular, the individual's age at the time of the offense(s), his/her record of behavior in other circumstances, and performance in other recent jobs.

Once the criminal background check is complete, it is the policy of Dane County to review the results and act as follows:

1. If no criminal records are found, then the applicant progresses to the next stage of the application process. NOTE: Dane County may offer an appointment contingent upon the successful completion of a criminal background check; in these situations, the appointment letter will state that the appointment will be withdrawn or terminated if the results of the individual's criminal background check are unacceptable.
2. If the criminal background check discloses a criminal history, BUT, using the criteria set forth above, there is NOT a substantial relationship between the offense(s) and the position, then the applicant progresses to the next stage of the application process.
3. If the criminal background check discloses a criminal history, and, using the criteria set forth above, there is a substantial relationship between the offense(s) and the position, then the person making this determination should inform the applicant of the contents of the records check, inform the applicant that Dane County has determined that there is a substantial relationship between the offense(s) and the position and inform the applicant of the non-selection decision.
4. **Recordkeeping.** Information gathered during a criminal background check will be shared on a "need to know" basis and maintained in a secure data base (E-Personality) for a period of seven years after the position has been filled.