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**“Ban the Box”
policies may hurt
the job-seekers
they aim to help**



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A PREFACE TO

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So-called Ban the Box policies were well-intended, prohibiting employers from asking on an initial job application whether an individual has been convicted of a crime. This, the theory went, gives qualified applicants with criminal records an opportunity to convey their value to employers rather than seeing their résumés preemptively thrown out.

Do the policies work? This can be tested since 37 states have such laws, with some places even applying them to the private sector. Wisconsin has applied a Ban the Box law to state government hiring since 2016, and Milwaukee and Racine followed for municipal jobs. Has it made a difference?

Recent and rigorous academic evaluations suggest that such policies aren't effective at increasing employment among the formerly incarcerated. Some research links the policies with worsened employment prospects for men without criminal records or for Black men.

In short, Ban the Box policies are ripe for re-evaluation and Wisconsin should avoid them.

— *Badger Institute*

“Ban the Box” policies may hurt the job-seekers they aim to help

Introduction

“Ban the Box” (BTB) policies have gained popularity as a method of attempting to ensure that individuals with criminal records get a fair shake from employers. With key political leaders expressing support, BTB may see increasing discussion in Wisconsin.

While the goals of BTB policies are noble and reducing recidivism rates should be a priority, leaders should resist simple acceptance of BTB as a tried-and-true solution. Research suggests that BTB policies may help some but also hurt those with records more than they help and that the policies may have significant unintended consequences for younger, less-skilled minority men who do *not* have criminal records.

Ban the Box

In general terms, Ban the Box policies forbid employers from asking on an initial job application whether an individual has been convicted of a crime. On many applications, conviction history is a box to be checked. Hence, the policy’s name.

Under BTB policies, it is only later in the hiring process — presumably after applications have been screened and the prospective employee has an opportunity to convey his or her qualifications to the employer — that an employer may inquire about relevant conviction history or run a background check.

The theory is intuitively appealing. It goes like this: When employers see an application showing a criminal history, they too often throw it in the trash. As a result, qualified applicants with criminal records never get the opportunity to convey their value directly to employers. Because they never get in the door, they do not get hired.

So, eliminating a tool that employers use to immediately screen out those with convictions should increase the chances that qualified applicants with a conviction history get hired. This, in turn, should reduce recidivism rates. Since more individuals with conviction histories would be earning legal, regular paychecks, their need or incentive to return to illegal activities for economic reasons would be reduced.

The policies have proliferated at the federal, state and local levels. In 2015, then-President Barack Obama banned the box in federal employment. By some measures, 37 states

and 150 municipalities now have such policies in some form. In some areas, the policies are known as fair-chance laws. Most pertain to public-sector hiring. However, BTB policies have been extended to the private sector as well in 15 states.

Wisconsin has had BTB laws on the books since 2016. The 2015 Wisconsin Act 150 included provisions stating that the state may not “request a person applying for a position in the civil service, on an application or otherwise to supply information regarding the conviction record of the applicant or otherwise inquire into or consider the conviction record of the applicant before the applicant has been certified for the position.”¹ Milwaukee in 2016 and Racine in 2017 passed similar local ordinances applying to civil service positions.² As yet, these laws have not applied to private-sector employment in Wisconsin.

Do Ban the Box policies work?

Several recent and rigorous academic evaluations of these policies suggest that, at most, the policies do not appear to be effective at increasing employment levels among the formerly incarcerated. And many suggest that the policies have significant, unintended negative effects. Here is a selection.

- **The racial gap in employer callback rates**

A significant amount of research has documented that some level of discrimination occurs when employers review job applications — applicants with traditionally Black names are less likely to receive employer callbacks than identical applicants with traditionally white names. Sonja Starr, a law professor at the University of Michigan, and Amanda Agan, a Princeton University economist, conducted a field experiment in New York and New Jersey to determine whether implementation of BTB in those jurisdictions affected this racial gap in callbacks.

They submitted applications from fictitious men in matched pairs based on race — Black and white — by assigning distinctly Black or distinctly white names to the fictitious applicants. They then randomly assigned to these applications a felony conviction or no record. They submitted the matched applications to the same employer with order randomized and time lag. They then tracked the percentage of those fictitious résumés that received callbacks from employers before and after the jurisdictions implemented BTB.

The authors found that before BTB, and among employers affected by the laws, white applicants received 7% more callbacks than matched Black applicants. However, after BTB went into effect, and among this same group of affected employers, this racial callback gap increased dramatically — to 43%. While the results do show that callback rates for Black men with criminal records increased following BTB, the authors indicate that:

“The post-BTB increase in racial inequality in callback rates appears to come from a combination of losses to Black applicants and gains to white applicants. In particular,

The authors of the 2017 study put it bluntly: “We find evidence that BTB has unintentionally done more harm than good when it comes to helping disadvantaged job-seekers find jobs.”

Black applicants without criminal records saw a substantial drop in callback rates after BTB, which their white counterparts did not see. Meanwhile, white applicants with criminal records saw a substantial increase in callbacks, which their Black counterparts did not see. This pattern suggests that when employers lack individualized information, they tend to generalize that Black applicants, but not white applicants, are likely to have records.”³

Figure 1

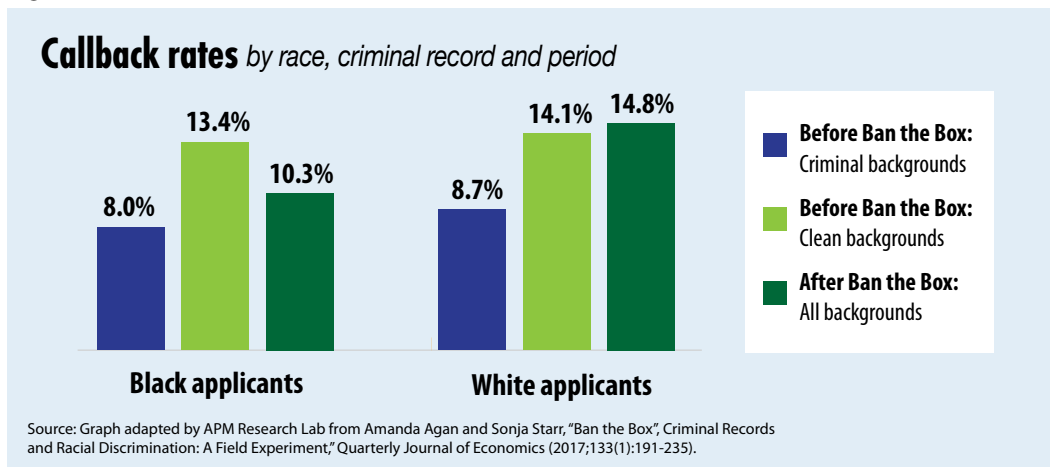


Figure 1, from the APM Research Lab, presents the findings in another way.⁴

This appears consistent with other research on statistical discrimination. Harry Holzer of Georgetown University, Steven Raphael of the University of California-Berkeley and Michael Stoll of UCLA find the same thing — just in reverse. They found that “employers who check criminal backgrounds are more likely to hire African American workers, especially men. This effect is stronger among those employers who report an aversion to hiring those with criminal records than among those who do not.” They note that “in the absence of criminal background checks, some employers discriminate statistically against Black men and/or those with weak employment records.”⁵

• **Employment among less-skilled minority men**

Texas A&M University economist Jennifer Doleac and University of Oregon economist Benjamin Hansen took a slightly different approach to their evaluation of the effects of BTB laws. They exploited differences in the structure and implementation of these policies across states to determine what effect the policies had on actual employment, not just callback rates or inequities.

Their research found that BTB reduced the probability of employment by 3.4 percentage points for younger, less-skilled Black men and by 2.3 percentage points for younger, less-skilled Hispanic men. The effects persisted for Black men long after the policy change, and the effects were “larger for the least skilled in this group (those with no high school diploma or GED), for whom a recent incarceration is more likely.”

Figure 2, from their 2017 paper, compares changes in the probability of employment for Black and Hispanic men ages 25 to 34 with no college degree, based on whether or not the jurisdiction adopted BTB laws. The orange line tracks employment probabilities for those that adopted BTB; the blue line shows trends for jurisdictions that did not adopt BTB. The authors put it bluntly: “We find evidence that BTB has unintentionally done more harm than good when it comes to helping disadvantaged job-seekers find jobs.”⁶

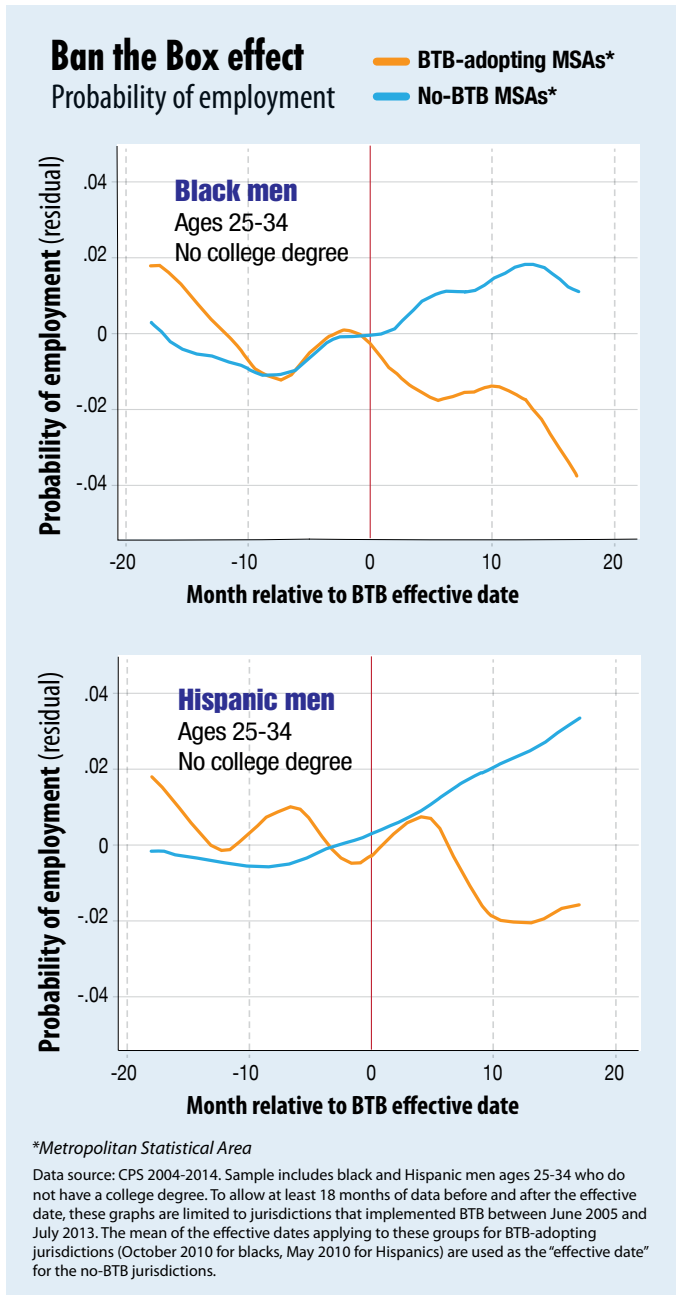
This aligns logically with another interesting study the authors cite about statistical discrimination, drug testing and Black employment. Abigail Wozniak of the University of Notre Dame found that with respect to drug testing, “adoption of pro-testing legislation increased Black employment in the testing sector by 7-30% and relative wages by 1.4-13%, with the largest shifts among low-skilled Black men.”⁷

In the absence of information, employers statistically discriminated against the groups they perceived to use drugs at higher rates. The same appears to be the case here, but for conviction history.

• **Employment among ex-offenders**

A study conducted by Osborne Jackson and Bo Zhao of the Federal Reserve Bank of Boston focused directly on those with criminal records. The study examined employment records of individuals who had criminal records and presumably would be helped by a change in Massachusetts policy in 2010-’12.

Figure 2



The policy included two components. First, it applied BTB restrictions for both private- and public-sector employers. Second, it limited the amount of information available to employers about criminal histories in its Criminal Offender Record Information database.

If these policies worked as intended, one would expect that the gap in employment rates between ex-offenders and the general population would narrow. The authors found that relative to the broader population, employment among ex-offenders post-BTB declined roughly 2.6 percentage points. The records reforms had a modest negative reduction of about 0.46 percentage points in employment.

Another study by Evan Rose found that in Seattle, the enactment of BTB policies had little impact on employment and earnings for ex-offenders. Rose suggested that this could be explained by employers running a background check later in the interview process or by ex-offenders selectively deciding to apply to companies already known not to disqualify applicants based on a prior conviction.⁸

Counterpoint?

No public policy issue would be complete without some apparently conflicting evidence.

One recent example comes from Daniel Shoag of Harvard University’s Kennedy School and Stan Veuger of the American Enterprise Institute. They examined BTB effects at the neighborhood level. They sought to understand employment effects of the policy in high-crime neighborhoods in response to implementation of BTB — which would seem consistent with the objectives of the policy.

By some measures, 37 states and 150 municipalities have Ban the Box policies in some form.

They found that the top quarter of high-crime neighborhoods saw a 4-percentage-point increase in employment following implementation of BTB, noting that gains were concentrated in public-sector and low-wage jobs.

Interestingly, they also found that the gains “do not represent aggregate employment gains, but rather substitution across workers.” Employers, they found, responded to this policy shift by raising the educational qualifications required for jobs, perhaps as a screening proxy for employee quality in the absence of criminal history questions.

Their findings contradicted the previously described research — they found that Black men benefit, but Black women are worse off. This, they suggest, is because Black women are less likely to have been convicted of a crime than Black men — so when convictions are used less to screen out applicants, the advantaged position that Black women previously enjoyed is reduced.⁹

Additionally, a study by Terry-Ann Craigie that looked specifically at the public sector saw the probability of employment for ex-offenders increase by 4 percentage points after the implementation of BTB. Furthermore, Craigie did not find that public employers engaged in statistical discrimination against young Black males that others have observed.¹⁰

Conclusion

Policymakers should use caution and consult rigorous academic research when considering issues as important as BTB policies and that have as much intuitive appeal. Though well-intended, and potentially beneficial for some, strong evidence indicates that BTB can reduce employment among young minority men with no criminal records as well as those with criminal records.

But there is also evidence that high-crime neighborhoods may benefit and that Black men in those neighborhoods benefit while women in those neighborhoods are made worse off. It could be that both are true — for example, that those with criminal histories and less-skilled minority men in lower-crime neighborhoods are worse off on average, and especially worse off in lower-crime neighborhoods than they would have been without BTB, but also that those in the highest-crime neighborhoods are better off. Or it could be that older Black men are made better off, while younger minority men are worse off.

As UC-Berkeley’s Raphael summarized in 2021, “The weight of the empirical evidence suggests that BTB does not improve the employment prospects of those with criminal histories at private-sector employers, although there is some evidence of an improvement in employment prospects in the public sector. Regarding spillover effects operating through statistical discrimination, several studies indicate that BTB harms the employment prospects of African American men.”¹¹

Strong evidence indicates that Ban the Box policies can reduce employment among young minority men with no criminal records as well as those with criminal records.

Indeed, there is evidence that BTB policies have harmful ramifications outside of employment as well. Sherrard Ryan found that BTB policies were associated with a “1.34 percentage point (7.2%) increase in the probability of 1-year recidivism for Black ex-offenders,”¹² and Sabia, et al., found BTB laws to be associated with a “10 percent increase in criminal incidents involving Hispanic male arrestees.”¹³

These are areas for research and careful public policy discussion. For example, would it be worth increasing employment in the highest-crime neighborhoods if doing so makes less-skilled minority men with no criminal record and those with criminal records worse off overall as well as Black women in the highest-crime neighborhoods?

The point is that BTB policies are not costless panaceas that make *everyone* better off. Perhaps there are more effective, targeted ways to address the barriers to employment faced by those with criminal records. Take certificates of qualification for employment (CQE), for example. If a judge makes the determination that an individual has demonstrated rehabilitation and work-readiness, the court issues a certificate saying so.

The theory is that by presenting this certificate to an employer, applicants with criminal records signal that they are ready to work, offsetting concerns an employer may have about their criminal history. This can be paired with a policy that eliminates liability for an

employer — another of their concerns — if they hire someone who has presented a certificate. If a court has said that person is ready for work, why should the employer be sued for negligence in hiring?

Peter Leasure of York College of Pennsylvania and Tia Stevens Andersen of the University of South Carolina tested this idea. They created job applications and randomly assigned either a clean record, a felony conviction or a felony conviction with CQE.

The results? Those with CQE were called back at roughly the same rate as those with no felony conviction, while those with a felony conviction but no CQE were called back at much lower rates.¹⁴

Under Ban the Box policies, some groups appear to be made worse off, while others may modestly gain. At a minimum, policymakers should not gloss over focused discussion and honest weighing of these significant trade-offs — more harm than good could easily be done.

The literature indicates there may well be better approaches that involve fewer trade-offs.



Badger Institute takeaways

- Elected officials should repeal all Ban the Box laws in Wisconsin because there is significant evidence that they are harmful to at least some minorities.

Endnotes

¹ <https://docs.legis.wisconsin.gov/2015/related/acts/150/31>

² <https://www.natlawreview.com/article/wisconsin-racine-bans-box-civil-service-applications>

³ Amanda Agan and Sonja Starr (2018). “Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment.” *Quarterly Journal of Economics*, 133.

⁴ <https://www.apmresearchlab.org/stories/2018/05/16/ban-the-box-may-be-counterproductive>

⁵ Harry J. Holzer, Steven Raphael and Michael A. Stoll, “Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers,” *The Journal of Law and Economics* 49, no. 2 (October 2006): 451-480.

⁶ http://jenniferdoleac.com/wp-content/uploads/2015/03/Doleac_Hansen_BanTheBox.pdf

⁷ Wozniak, A. (2015). Discrimination and the Effects of Drug Testing on Black Employment. *Review of Economics and Statistics*, 97(3):548–566.

⁸ Rose, E. (2021). “Does Banning the Box Help Ex-Offenders Get Jobs? Evaluating the Effects of a Prominent Example.” *Journal of Labor Economics* 39(1):79-113.

⁹ <http://www.aei.org/publication/banning-the-box-the-labor-market-consequences-of-bans-on-criminal-record-screening-in-employment-applications/>

¹⁰ Craigie, T. (2019). “Ban the Box, Convictions, and Public Employment.” *Economic Inquiry*, 58(1):425-445.

¹¹ Raphael, S. (2021). “The Intended and Unintended Consequences of Ban the Box.” *Annual Review of Criminology*, 4:191-207.

¹² Sherrard, R. (2020). " 'Ban the Box' Policies and Criminal Recidivism." Available at SSRN: <https://ssrn.com/abstract=3515048>

¹³ Sabia, J., et al. (2020) "Do Ban the Box Laws Increase Crime?" National Bureau of Economic Research, 10.3386/w24381.

¹⁴ Peter Leasure and Tia Stevens Andersen (2016). "The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study." *Yale Law & Policy Review Inter Alia*, 35(11): 11-22.