

Effect of Criminal Background Checks on the Employability of the Formerly incarcerated and Recidivism

BY

Daramfon Uwemedimo Ayeni

**A capstone project in fulfillment of the requirements for the degree of Master of Arts in
Policy Studies**

School of Interdisciplinary Arts and Sciences

University of Washington, Bothell

Advisor: Dr. Shauna Elbers Carlisle

July 17,2024

Table of Contents

Acknowledgment.....	3
Dedication.....	4
Abstract	5
Chapter 1 - Statement of Problem.....	6
Chapter 2 - Introduction of Literature.....	10
Chapter 3 - Methodology.....	16
3.1 Participants	17
3.2 Data Collection Procedure	18
3.3 Data Analysis, Design and Materials.....	19
3.4 Ethical considerations.....	21
3.5 Limitations of Study.....	22
Chapter 4 - Results and Discussion.....	25
4.1 Themes arising from the Data collected.....	25
4.2 Word Count Analysis.....	28
4.3 Outcomes: Implication of themes identified from the data collected.....	29
Chapter 5 - Conclusion and Recommendations.....	35
Appendix 1- Interview Protocol	41
References.....	42

Acknowledgements

I would like to express my sincere gratitude to everyone who has supported me throughout my academic journey and the completion of this Capstone Project.

First and foremost, I would like to thank my advisor, Dr. Shauna Elbers Carlisle for her invaluable tutelage, guidance and encouragement. Her expertise and constructive feedback have been instrumental in shaping this research. I am also deeply grateful to my professor and second reader, Keith Nitta for his insightful comments, suggestions and quick turnaround time which have greatly enhanced the quality and timely conclusion of this work.

Special thanks to my husband Ayodeji Ayeni, his unwavering support and belief in my abilities have been a constant source of motivation through everything.

I would also like to acknowledge the support of my family and friends, their prayers and encouragement during the challenging times meant the world to me. To my parents, Engr. and Mrs. Umoumoh, and my siblings, Uwemedimo Umoumoh and Idaresit Augustine, your unconditional love, support, prayers and cheers has been my driving force. To my colleague and friend at the Nigerian Bar, Feyisayo Arokoyu, thank you for always being a source of inspiration.

I am also grateful to my colleagues and peers for their camaraderie, stimulating discussions, collaboration and jokes; this has made my journey a memorable one.

Finally, I would like to thank the participants of my study and all the organizations that facilitated my research. Without your cooperation and willingness to share your experiences, this thesis would not have been possible.

Thank you all for being a part of this journey.

Dedication

I dedicate this Capstone Project to God Almighty, the champion of the host of heaven and captain of my destiny. He has been my anchor through Life, and it is in him that I live and move and have my being.

Abstract

Gaining employment is challenging under the best of circumstances. For individuals returning home after serving time in prison, the difficulty is significantly amplified. One of the reasons being employers' easy access to applicant's criminal record through routine and frequent background checks. Although criminal background checks were originally intended to ensure workplace safety and security by identifying individuals with criminal histories that might pose a risk to the organization or its employees, and to help organizations minimize the risk of fraud, theft, and other misconduct, they now appear to do more harm than good to society. Despite existing anti-discrimination laws, many employers utilize background checks in a manner that significantly hinders the job prospects of returning citizens, perpetuating a cycle of unemployment and recidivism; issues that remain significant barriers to successful reintegration and economic stability. Utilizing qualitative research methods this study investigates the impact of background checks on the employability of formerly incarcerated individuals in the United States, particularly people of color, and their likelihood of reoffending while also considering the issues of workforce diversity, equity and inclusion in hiring processes. The findings of this study reveal a substantial negative impact of background checks on the employability of the formerly incarcerated, highlighting the need for policy reforms that facilitate their successful reintegration into the workforce, stricter enforcement of anti-discrimination laws in employment spaces and the incorporation of rehabilitation information in background checks to provide a more balanced view of an applicant's suitability for employment. These recommendations aim to mitigate the negative impacts of background checks, promote fair hiring practices, and support the better reintegration of formerly incarcerated individuals into the society, ultimately contributing to lower recidivism rates, lower crime and enhanced social stability.

Chapter One

Statement of Problem

The purpose of this study is to investigate the negative effects of criminal background checks on the employability of job seekers who have been formerly incarcerated in the United States and their propensity for recidivism.¹ It seeks to examine even further how these negative effects disproportionately impact formerly incarcerated people of color in the U.S while probing into the roles and responsibilities of the Equal Employment Opportunity Commission (EEOC), Human Resource professionals and Diversity Equity Inclusion and Justice (DEIJ) principles in shaping these dynamics. There has been extensive research on how criminal background check laws lead to employment discrimination in the United States,² the relationship between employment, recidivism,³ and criminal background checks,⁴ and the racial inequalities experienced by returning citizens in the labor market.⁵ However, research is limited on the crucial role the EEOC and DEIJ play in this field. This study reaffirms findings from previous research, while building on it by addressing specific gaps that have not been adequately explored. It seeks to contribute to informed policymaking and organizational practices that foster both equal employment opportunities and societal reintegration for returning citizens, while addressing concerns of fairness and equity in the employment landscape. The findings from this study will serve as valuable data and basis for possible policy implementation to

¹ The National Institute of Justice defines recidivism as “one of the most fundamental concepts in criminal justice. It refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.” <https://nij.ojp.gov/topics/corrections/recidivism>

² McElhattan, D. (2024). Criminal background check laws and labor market inequality in the United States. *Criminology & Public Policy*, 23(2), 391–429. <https://doi.org/10.1111/1745-9133.12662>

³ Siwach, G. (2017). Criminal background checks and recidivism: Bounding the causal impact. *International Review of Law and Economics*, 52, 74–85. <https://doi.org/10.1016/j.irl.2017.08.002>

⁴ Denver M, Siwach G, & Bushway, S. D. (2017). A new look at the employment and recidivism relationships through the lens of criminal background check. *Criminology*, 55(1), 174-204. <https://doi.org/10.1111/1745-9125.12130>

⁵ Kolbeck, S. G., Bellair, P. E., & Lopez, S. (2022). Race, work history, and the employment recidivism relationship. *Criminology*, 60, 637–666. <https://doi.org/10.1111/1745-9125.12317>

appropriate organizations, bodies, or policy professionals such as the EEOC, Human Resource professionals, Diversity Equity Inclusion and Justice, etc.

Staying out of prison is quite challenging for former inmates, a 2010 United States Sentencing Commission report exploring recidivism of federal offenders found that over an eight-year follow-up period, nearly one-half (49.3 percent) of federal offenders released in 2010 were rearrested.⁶ Studies indicate that state prisoner recidivism rates average around 68 percent for rearrests within the first three years post-release, and this rate increases to 79 percent and 83 percent at five and nine years post-release, respectively.⁷ This shows that at least half of citizens released from incarceration will recidivate in some way following release,⁸ therefore, Schnepel⁹ asserts that prisons in the United States are built with revolving doors. This can be attributed to unemployment, which leads to criminal activity and recidivism. A great deal of evidence evinces a negative relationship between unemployment and criminal activity.¹⁰ Unemployment presents a significant barrier to many reentrants despite its being essential to securing other major needs such as food, clothing, and housing.¹¹ Employment for the formerly incarcerated means access to basic needs, an increase in self-esteem,

⁶ Cotter, R., C. Semisch, and D. Rutter. 2022. *Recidivism of Federal Offenders Released in 2010*. Washington, DC: United States Sentencing Commission. <https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010>.

⁷ Alper, M., Duros M.R., and Markman J. 2018. "2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005- 2014)." Special Report NCJ 250975. Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

⁸ Benecchi, L. (2021, August 8). Recidivism imprisons American progress. *Harvard Political Review*. <https://harvardpolitics.com/recidivism-american-progress/> (Within three years of their release, two-thirds of former inmates are rearrested, with more than 50% reincarcerated)

⁹ Schnepel, K. T. (2018). GOOD JOBS AND RECIDIVISM. *The Economic Journal*, 128(608), 447–469. <http://www.jstor.org/stable/45023227>

¹⁰ Tripodi, S. J., Kim, J. S., & Bender, K. (2010). Is Employment Associated With Reduced Recidivism?: The Complex Relationship Between Employment and Crime. *International Journal of Offender Therapy and Comparative Criminology*, 54(5), 706–720. <https://doi.org/10.1177/0306624X09342980> Life course theories from the sociology and criminology literature emphasize employment as a turning point in the life of an ex-convict that reduces criminal behavior.

¹¹ *A Second Chance: The Impact of Unsuccessful Reentry and the Need for Reintegration Resources in Communities*. (2022). Retrieved May 29, 2024, from https://cops.usdoj.gov/html/dispatch/04-2022/reintegration_resources.html
https://cops.usdoj.gov/html/dispatch/04-2022/reintegration_resources.html

intellectual growth and challenge, (which must have been a struggle while incarcerated), access to community for building constructive connections, a positive sense of identity and eventually a stable life disassociated from crime. For the formerly incarcerated and their dependents, unemployment results in living below the poverty line, lack of access to basic human needs like food, shelter, healthcare, education etc. this results in recidivism which negatively impacts their ability to participate in wealth development.¹² Therefore, in contemporary society, the employability of the formerly incarcerated and recidivism rates poses a significant challenge, and gainful employment is one of the major ways of winning the battle against recidivism.¹³

Central to this challenge of unemployment is the widespread practice of employers conducting criminal background checks as part of their hiring processes.¹⁴ While these checks are intended to mitigate potential risks, they often result in systemic barriers that disproportionately affect returning citizens,¹⁵ particularly from marginalized communities, leading to reduced employment opportunities and higher rates of recidivism. This erodes social cohesion within societies, while creating a burden on all taxpayers¹⁶ to pay for poverty reduction, healthcare services, unemployment, crime, and homelessness. Every year, the

¹² Harding, D. J., Wyse, J. J., Dobson, C., & Morenoff, J. D. (2014). Making Ends Meet After Prison. *Journal of policy analysis and management: [the journal of the Association for Public Policy Analysis and Management]*, 33(2), 440–470. <https://doi.org/10.1002/pam.21741>

¹³ International, C. (2023, June 15). Gainful Employment a Critical Factor in Post-Incarceration Life. Criminon International. <https://www.criminon.org/who-we-are/groups/criminon-international/gainful-employment-a-critical-factor-in-post-incarceration-life/>

¹⁴ Westrope, E. (2018). Employment discrimination on the basis of criminal history: Why an anti-discrimination statute is a necessary remedy. *Journal of Criminal Law and Criminology*, 108(2), 367+. https://link-gale.com.offcampus.lib.washington.edu/apps/doc/A538725133/ITOF?u=wash_main&sid=bookmark-ITOF&xid=4d1b52a1

and Siniscalco, G., Connell, E. M., & Stathopoulos, A. (2012). Criminal Background Policy Checkup. *HR Magazine*, 57(7), p61.

¹⁵ McElhattan, D. (2024). Criminal background check laws and labor market inequality in the United States. *Criminology & Public Policy*, 23(2), 391–429. <https://doi.org/10.1111/1745-9133.12662>

¹⁶ Zoukis, C., JD, MBA (2014). *The Cost of Recidivism: Victims, the Economy, and American Prisons*. Zoukis Consulting Group. <https://federalcriminaldefenseattorney.com/cost-recidivism-victims-economy-american-prisons/>

United States spends over \$60 billion on prison systems, a limited portion of which is used on first-time offenders.¹⁷ This means that communities stand to benefit when people with criminal records find good jobs because decrease in poverty rates, collection of taxes on earned income, and the strengthening of families would be collateral effects. The practice of employers conducting criminal background checks during their hiring process and using the results to exclude returning citizens from the labor force raises pertinent questions regarding fairness, equity, and compliance with anti-discrimination laws, as overseen by the Equal Employment Opportunity Commission (EEOC), and the broader principles of Diversity, Equity, Inclusion, and Justice (DEIJ) which has not been extensively explored. The findings of this study will contribute to the creation of enforceable guidelines for background check users and the development of regulations aimed at improving employment opportunities for the formerly incarcerated.

¹⁷ Ibid.

Chapter Two

Introduction of Literature

With over 2 million individuals currently incarcerated, and over half a million prisoners released from prison each year,¹⁸ there is a large and growing number of people being processed through the criminal justice system. Studies show that within three years of their release, two out of three former prisoners are charged with new crimes and more than 50% are incarcerated again.¹⁹ This results in a large number of people with criminal records. A criminal history record is believed to be a valid indicator of the propensity for rule violation, and such records are rightly used in applied decision making both within and outside of the criminal justice system (e.g., employment screening).²⁰ We take it for granted that a conviction creates a criminal history record, a more or less publicly accessible document that identifies an individual as having broken the law at some time in the past. Such records are intended to promote public safety by identifying individuals at risk for offending, however, their information value should be balanced with their cost, both to the jurisdiction maintaining them and to the individuals identified, because in the United States, having a record can limit access to diverse social goods including employment, housing, social assistance, and the right to vote.²¹ Convicted felons face both legal and informal barriers to becoming productive citizens at work, responsible citizens in family life, and active citizens in their communities. As criminal punishment has increased in the United States, collateral sanctions such as voting restrictions have taken on a new meaning.²² It has long been

¹⁸ Pager, D. (2003). The Mark of a Criminal Record. *American Journal of Sociology*, 108(5), 937–975. <https://doi.org/10.1086/374403>

¹⁹ Benecchi, L. (2021, August 8). Recidivism Imprisons American Progress. *Harvard Political Review*. <https://harvardpolitics.com/recidivism-american-progress/>

²⁰ Hanson, R. K. (2018). Long-Term Recidivism Studies Show That Desistance Is the Norm. *Criminal Justice and Behavior*, 45(9), 1340–1346. <https://doi.org/10.1177/0093854818793382>

²¹ Uggen, C., Manza, J., & Thompson, M. (2006). Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders. *The ANNALS of the American Academy of Political and Social Science*, 605(1), 281–310. <https://doi.org/10.1177/0002716206286898>

²² Ibid.

settled that employment serves as an important mechanism to prevent ex-offenders from reverting to criminal activity and evidence shows that full-time and relatively well-paid employment can help reduce recidivism among ex-offenders, thereby reducing the escalating costs of incarcerating spiraling numbers of offenders.²³ The irony remains that employers' attempts to safeguard the workplace not only segregates a workforce who pose little to no risk,²⁴ but they also are compromising public safety as studies have shown that providing the formerly incarcerated with the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety.²⁵

To a job applicant who does not have to answer in the affirmative, the question 'have you ever been arrested or convicted of crime?' may seem innocuous. However, the same question presents a sweeping stumbling block to returning citizens with criminal records who are seeking gainful employment. Returning citizens have a high chance of getting hired when they make it to the interview stage of the hiring process,²⁶ however, with the advent of an ominous "box" mandatorily requesting applicants to disclose prior convictions on their applications, those impacted by the criminal justice system are easily identified and removed from the hiring process; for those who somehow make it past 'the box', they are less likely to escape criminal background checks conducted by so many companies in the U.S.²⁷ Employers across the country are increasingly performing criminal background checks on job applicants and screening out those

²³ Finn, P. (1998). Job Placement for Offenders in Relation to Recidivism. *Journal of Offender Rehabilitation*, 28(1–2), 89–106. https://doi.org/10.1300/J076v28n01_06

²⁴ Many people who have a criminal record that shows up on a background check have never been convicted of a crime; in fact, one-third of felony arrests never lead to conviction. *U.S. Bureau of Justice Statistics, Felony Defendants in Large Urban Counties, 2004* (April 2008)

²⁵ Rodriguez, M. N., & Emsellem, M. (2011) National Employment Law Project, *65 Million "Need Not Apply": The Case for reforming Criminal Background Checks for Employment 1 & 27 n.1* https://www.nelp.org/app/uploads/2015/03/65_Million_Need_Not_Apply.pdf

²⁶ Jones, D. R (2014, May 15). *End Hiring Discrimination Against the Formerly Incarcerated*. <https://www.cssny.org/news/entry/end-hiring-discrimination-against-the-formerly-incarcerated>

²⁷ National Survey: *Employers Universally Using Background Checks to Protect Employees, Customers and the Public.* (HR.com and NAPBS 2017) <https://pubs.thepbsa.org/pub.cfm?id=6E232E17-B749-6287-0E86-95568FA599D1>

applicants with criminal records.²⁸ In a survey conducted by the largest association of human resources personnel (Society of Human Resources Management), over 90 percent of their members, which were mostly large employers, perform criminal background checks on some or all job candidates.²⁹ In the right circumstances, criminal background checks are meant to promote safety and security at the workplace. However, in situations where the scrutiny denies any type of employment for people with criminal records; failing to take into account critical information like the nature of an offense, the age of the offense, its relationship to the job, possible rehabilitation, etc. such acts are illegal under civil rights laws.³⁰ Whether or not employers are carrying out these screenings according to the requirements of the law³¹ is a question that cannot be answered categorically as there are no structures in place to monitor their compliance. This means that all forms of hiring discrimination have an impact on an increasingly large segment of the workforce. These hurdles make getting to the interview stage extremely difficult for most job seekers with conviction histories because they are automatically turned away when they answer “yes” to the question “Have you ever been convicted of a crime?”³² This goes to say that although “tough on crime” policies may be effective in getting criminals off the streets, insufficient preparations have been made for when they get back out. Although the 2012 EEOC guidelines provide explicit and helpful guidance regarding the use of criminal records in hiring under Title VII, there is

²⁸ Weissert, E. P. (2016). Get out of jail free? Preventing employment discrimination against people with criminal records using ban the box laws. *University of Pennsylvania Law Review*, 164(6), 1529 —Gale Business: Insights. (n.d.). Retrieved December 29, 2023, from https://go-gale-com.offcampus.lib.washington.edu/ps/i.do?p=GBIB&u=wash_main&id=GALE|A462685572&v=2.1&it=r&sid=bookmark-GBIB&asid=1b635565

²⁹ Society for Human Resources Management, Background Checking: Conducting Criminal Background Checks (Jan. 22, 2010), at 3.

³⁰ Title VII of the Civil Rights Act of 1964 that prohibits unlawful discrimination in the hiring process.

³¹ The EEOC guidelines provide that the business necessity defense is met when the employer has developed targeted screening practices that consider at least the factors identified by the Eighth Circuit in *Green v. Missouri Pacific Railroad*: the nature of the crime, the time elapsed, and the nature of the job. <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>

³² Jones, D. (2014). *End Hiring Discrimination Against the Formerly Incarcerated*. Community Service Society. <https://www.cssny.org/news/entry/end-hiring-discrimination-against-the-formerly-incarcerated>

disagreement over their binding effect since the EEOC is an enforcement agency, not a lawmaking body.³³ In the seminal *Green v. Missouri Pacific Railroad Company* (1977) case, a federal court of appeal banned employers from implementing "blanket bans" or from using an applicant's conviction record as an absolute bar to employment. Instead, employers were encouraged to clear individuals with records to work unless there was a business necessity to deny the applicant (EEOC, 1987). Despite this guidance, blanket bans remain common, particularly in the context of occupational license.³⁴

There are an estimated 70 million U.S. adults with arrests or convictions that have found it difficult, if not impossible, to find work given the proliferation of employment background checks.³⁵ Based on a 2021 report released by the Bureau of Justice Statistics (BJS)³⁶ for more than 50,000 people released from federal prisons in 2010, a staggering 33% found no employment at all over a period of four years post-incarceration and no more than 40% of the population sample was employed³⁷. The people who did find jobs struggled, had an average of 3.4 jobs throughout the four-year study period which suggests that they were landing jobs that didn't offer security or upward mobility.³⁸ Giving more insight into this deplorable situation is an

³³ Weissert, E. P. (2016). Get out of jail free? Preventing employment discrimination against people with criminal records using ban the box laws. *University of Pennsylvania Law Review*, 164(6), 1529 — *Gale Business: Insights*. (n.d.). Retrieved December 29, 2023, from https://go-gale.com/offcampus.lib.washington.edu/ps/i.do?p=GBIB&u=wash_main&id=GALE|A462685572&v=2.1&it=r&sid=bookmark-GBIB&asid=1b635565

³⁴ Denver, M., Siwach, G., & Bushway, S. D. (2017). A New Look at the Employment and Recidivism Relationships through the Lens of a Criminal Background Check. *Criminology*, 55(1), 174–204.

³⁵ National Employment Law Project, 'Seizing the ban the Box Momentum to Advance a New Generation of Fair Chance Hiring Reforms (August 2014), <https://www.nelp.org/wp-content/uploads/2015/03/Seizing-Ban-the-Box-Momentum-Advance-New-Generation-Fair-Chance-Hiring-Reforms.pdf> [https://perma.cc/76E6-V5D4].

³⁶ Carson, E. A., Sandler D., H., Bhaskar, R., Fernandez, L., E., Porter, S., R., U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics Special Report (NCJ 303147, December 2021). Employment of Persons Released from Federal Prison in 2010 summary. <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/eprfp10.pdf> https://bjs.ojp.gov/content/pub/pdf/eprfp10_sum.pdf accessed 3/15/2023.

³⁷ Ibid.

³⁸ Leah Wang and Wanda Bertram "New data on formerly incarcerated people's employment reveal labor market injustices" February 8, 2022 at <https://www.prisonpolicy.org/blog/2022/02/08/employment/>

analysis showing that formerly incarcerated people are unemployed at a rate of over 27% higher than the total U.S. unemployment rate during any historical period, including the Great Depression.³⁹ Furthermore, criminal background checks have now become ubiquitous because of advancement in information technology and growing concerns about employer liability which means that a large number of individual criminal records have accumulated and have been computerized in state repositories and commercial databases and as a result, they are not only easily accessible, but a good number of returning citizens seeking employment are possibly haunted by stale records.⁴⁰

Employment discrimination on the basis of criminal history is bothersome because it increases rates of recidivism and has a contrastive impact on people of color. When congress tasked the Bureau of Justice Statistics (BJS) and the U.S. Census Bureau with reporting on post-prison employment of persons released from federal prison in 2010, their report shows that in the first full quarter after release, 46% of whites in the study population were employed, compared to 37% of American Indians and Alaska Natives; 36% of blacks; 33% of Hispanics; and 33% of Asians, Native Hawaiians, and Other Pacific Islanders.⁴¹ The negative effect of a criminal record is larger and more disabling for people of color than for whites as it appears that employers often base their decisions on the more salient markers of race and criminal background. A lacuna however exists in what the role of the Equal Employment Opportunity Commission (EEOC) and Diversity, Equity, Inclusion (DEI) is in previous research.

³⁹ Couloute, L., & Kopf, D. (2018). Out of Prison & Out of Work: Unemployment among formerly incarcerated people. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/outofwork.html>

⁴⁰ Blumstein, A., & Nakamura, K. (2009). Redemption in the Presence of Widespread Criminal Background Checks. *Criminology*, 47(2), 327–360.

⁴¹ Carson, E. A., Sandler D., H., Bhaskar, R., Fernandez, L., E., Porter, S., R., U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics Special Report (NCJ 303147, December 2021). *Employment of Persons Released from Federal Prison in 2010*. Retrieved March 17, 2023. <https://bjs.ojp.gov/library/publications/employment-persons-released-federal-prison-2010>

This study explores the relationship between background checks and the economic disproportionality experienced by the formerly incarcerated, particularly formerly incarcerated people of color and the role of the EEOC and DEI. Speaking with members of the management teams of organizations working directly with and serving this vulnerable group is one way to investigate the current situation; a sine qua non to making contemporary and reliable recommendations. Being a minority group experiencing employment discrimination, this study suggests possible policy recommendations that should be embedded in the Diversity, Equity, Inclusion and Justice values, Human Resource Management principles and practice and the Equal Employment Opportunity Commission laws and guidance.

Chapter 3

Methodology

This study employs a cross-sectional study design of employers of the formerly incarcerated. It makes use of exploratory qualitative data collection and analysis to investigate the effects of criminal background checks on the employability of the formerly incarcerated and the impact this has on the rate of recidivism among individuals of different racial backgrounds. This design is a good choice for research objectives because it allows for an in-depth exploration within real-life context, offering rich insights and understanding of the underlying complexities.

For participants in this research, I chose a population that is actively creating pathways to equal opportunity and helping the formerly incarcerated overcome economic challenges for the purpose of data collection. These participants serve in a capacity either as employers of the formerly incarcerated or organizations helping them with reentry, employment, housing etc. The reason for selecting this population as participants is because employers are in a great position to provide insights into hiring processes and practices, including the effects of background checks on the employability of the formerly incarcerated. They can explain how they weigh criminal records against other qualifications and the factors that influence their decisions to hire or not hire formerly incarcerated individuals. In order to gain access to examples of successful integration, employers who have successfully hired and integrated formerly incarcerated individuals can share best practices, success stories, and any benefits they have experienced. This can provide valuable insights into what works and why. Organizations actively working with the formerly incarcerated in reentry programs, employment readiness programs etc. also work closely with employers to place their clients in jobs. They can share experiences and feedback from these partnerships, offering a dual perspective on the employer-client dynamic and can discuss the impact of background checks from their experiences in helping these individuals become employable,

industry standards, and the general corporate culture from their experiences in assisting the formerly incarcerated. They have a deep understanding of the specific challenges that formerly incarcerated individuals face when seeking employment and can therefore highlight the effect of background checks.

This population, as participants, are in a well-informed position to advocate for policy changes to improve employment prospects for formerly incarcerated individuals. They can provide valuable insights into current policy debates, suggested reforms, and the real-world impact of existing laws and regulations, particularly background checks. I chose to interview these participants because I believed I would gain a firsthand comprehensive view of the employment landscape for formerly incarcerated individuals and their perspectives would help illuminate the practical implications of background checks and identify effective strategies for improving employability and supporting successful reentry into the workforce.

3.1 Participants

To identify suitable participants for this research, I identified 11 national and local organizations who work closely with the formerly incarcerated. The organizations were either employers of the formerly incarcerated or worked directly to assist them by actively working to create pathways to equal opportunity in order to overcome the economic challenges within the population. These organizations embrace diversity, equity and inclusion and possess substantial knowledge and firsthand exposure to various aspects of supporting the formerly incarcerated in areas including employment, housing, and education etc. Through an examination of their mission statements, goals, and team composition, I pinpointed individuals within these organizations who could provide reliable insights into my research topic. Rather than relying solely on job titles, I selected participants based on their direct involvement in advocating for and facilitating the employment rights of the formerly incarcerated. For example, a staff advocating for and working to secure

employment rights of the formerly incarcerated and assisting them get fast-track employment would be a more suitable choice than an accountant or communications manager in the same organization. This purposive or judgmental non-probability sampling approach ensured that the chosen participants could offer authentic, direct, and credible information pertinent to the effect of background checks on the employability of returning citizens and their propensity to recidivate, possible racial disparities in job search experiences between the formerly incarcerated and attesting to the role and impact of the EEOC and DEIJ in these spaces.

Emails were sent out to 5 national organizations and 6 local organizations with an initial plan to interview 24 selected participants within these organizations. The limitations experienced were that a good number did not respond and communication with some simply reached a dead end after they consented to being participants. This study comprises n=8 participants from the carefully selected 24 participants chosen based on their background, role, and extensive experience gained either as employers of the formerly incarcerated or working directly to assist them in job readiness programs, criminal record expungement (vacating records), re-entry etc. Their key positions range from Vice President Antiracism Diversity Equity & Inclusion to HR Managers, Job developers, Community Outreach Managers, Lead navigators on job readiness programs among others.

3.2 Data Collection Procedure

Introductory emails were sent to approximately 10 to 15 national and local organizations that have significant involvement with formerly incarcerated individuals from diverse backgrounds. From each organization, I had identified 1-3 key individuals in the best position to provide factual and reliable perception into my research topic and questions. The emails introduced myself and my research, it further detailed the purpose of the interviews and why specific members of their organizations needed to be interviewed. The expected participation was outlined, and suitable

interview dates requested. Many organizations responded positively and agreed to participate in the research on their preferred dates, however, along the line, some organizations went radio silent despite promising participation and holding initial zoom meetings to familiarize themselves. After an exchange of emails, eight participants provided their consent and indicated their preferred times for interviews. Subsequently, primary data was collected through semi-structured interviews conducted via Zoom, email, and in-person meetings with these selected individuals. The interview scripts and protocol were crafted to gather insights into participants' professional involvement with formerly incarcerated individuals, including the nature and duration of their work or engagement with this population. Specifically, the interviews aimed to explore participants' observations regarding the employment experiences of returning citizens, their encounters with background checks, and their perspectives on recidivism trends over time. Additionally, the interviews sought to uncover any perceived racial disparities in these experiences. Participants were asked to reflect on potential differences in experiences between individuals with similar criminal records, particularly comparing those who are white with those from communities of color.

In Appendix I, the interview protocol is provided, consisting of questions categorized into two sections: one for organizations that employ formerly incarcerated individuals, labeled 'Employers', and the other for organizations that work with the formerly incarcerated, labeled 'Organizations'. For organizations that both employ and work closely with returning citizens, questions from both categories were posed. These interview questions are designed to address specific research inquiries and all sessions were recorded with participants' consent.

3.3 Data Analysis, Design and Materials

This study employs a cross-sectional study design of employers of the formerly incarcerated. It makes use of exploratory qualitative data collection and analysis to investigate the effects of

criminal background checks on the employability of the formerly incarcerated and the impact this has on the rate of recidivism among individuals of different racial backgrounds. The data collected from interviews were recorded on a voice recorder, transcribed through rev software and analyzed on delve software. To analyze the interview responses, I derived content categories using grounded theory⁴². Grounded theory⁴³ provides a systematic approach to analyzing qualitative data, allowing for the discovery of patterns, themes, and relationships that emerge directly from the data. Through constant comparison and iterative coding, themes and categories are identified, refined, and organized into a coherent framework that captures the essence of participants' experiences and perspectives. This theory was most appropriate for my research because I took a qualitative and exploratory approach to data analysis and to reaching my results. The grounded theory approach eliminates any form of possible bias or assumptions, adopting a neutral view of human action in a social context.⁴⁴ It is a great approach when a researcher seeks to discover 'what actually happens'. Grounded theory/grounded action is designed to generate explanations directly from data that provide a theoretical foothold for effecting optimal and sustainable change in social and organizational systems.⁴⁵ Following this analysis, utilizing the rubric (or qualitative grounded theory coding approach) I proceeded to identify emerging themes from interview responses that address my research questions, carried out a word count analysis and subsequently summarize my findings and suggest policy recommendations.

⁴² Loubser, J. J. (1968). [Review of *The Discovery of Grounded Theory: Strategies for Qualitative Research.*, by B. G. Glaser & A. L. Strauss]. *American Journal of Sociology*, 73(6), 773–774. <http://www.jstor.org/stable/2775784>

⁴³ Chun Tie, Y., Birks, M., & Francis, K. (2019). Grounded theory research: A design framework for novice researchers. *SAGE open medicine*, 7, 2050312118822927. <https://doi.org/10.1177/2050312118822927>

⁴⁴ Simmons, O. E. (2006). Some professional and personal notes on research methods, systems theory, and grounded action. *World Futures*, 62(7), 481-490. <https://doi.org/10.1080/02604020600912772>

⁴⁵ Ibid.

3.4 Ethical Considerations

This project adhered to rigorous ethical standards to ensure the protection and respect of all participants involved. The following measures were taken to address ethical considerations:

1. **IRB Approval:** The study was reviewed and granted exempt status by the Institutional Review Board (IRB), confirming that it posed minimal risk to participants and complied with ethical guidelines for research involving human subjects.
2. **Consent:** Prior to participation, all participants were provided with detailed information about the study's purpose, procedures, and their rights via email. Participants were informed that their involvement was confidential and voluntary and that they could withdraw from the study at any time without any consequences. Subsequently, oral consent was obtained from all participants before conducting the interviews.
3. **Confidentiality:** The confidentiality of participants was strictly maintained throughout the study. Personal identifiers like names, emails and phone numbers were kept confidential to ensure anonymity.
4. **Data Protection:** All electronic data was securely stored on password-protected devices while physical data was kept in a file at a secure location. These were accessible only to the researcher. At the end of the research, all recordings, transcripts and physical data were deleted and destroyed.
5. **Respect and Sensitivity:** Given the sensitive nature of the research topic such as criminal background checks and recidivism, interviews were conducted with the utmost respect and sensitivity. Language that could be offensive or triggering to this population was completely avoided (e.g. ex-offenders, ex-convicts). Questions were framed in a non-

judgmental manner, and participants were assured that their responses would be used solely for research purposes.

6. **Transparency and Honesty:** Transparency and honesty was maintained throughout the research process. Participants were informed about the study's goals, and any questions or concerns raised by participants were addressed promptly and thoroughly.

These ethical considerations ensured that the study was conducted responsibly, with respect for the dignity and rights of all participants, thereby enhancing the credibility and integrity of the research findings.

3.5 Limitations of the Study:

Sample Size: It is worth noting that there were limitations regarding the number of organizations that were willing to give a positive response to the request for an interview. Therefore, there is a possibility that the representativeness of the general population may not be reflected; particularly the 8 participants are not a full-proof representation of all organizations who work closely with formerly incarcerated people.

Potential Bias in Participant Selection: Despite efforts to select participants based on their direct involvement with the formerly incarcerated, there may still be inherent biases in the selection process. All participants were based in Washington State and from the data collected, participants were of the opinion that Washington state is open to helping this vulnerable population and unlike other states, has some laws in place. Also, certain perspectives or experiences may have been overrepresented or underrepresented, impacting the comprehensiveness and representation of the data collected.

Potential bias by researcher's interpretations Subjectivity: The researcher's perspectives and biases can influence the coding and interpretation process, potentially affecting the objectivity of the findings.

Limited Scope of Inquiry: The study primarily focused on the effects of criminal background checks on the employability of the formerly incarcerated and the impact on recidivism rates among individuals of different racial backgrounds. Other factors that may influence these outcomes, such as access to education, housing, and social support, were not extensively explored.

Potential for Response Bias: Participants may have been reluctant to disclose certain information or may have provided socially desirable responses during the interviews, leading to potential response bias and affecting the validity of the findings.

Generalizability: Grounded theory typically focuses on specific contexts or groups, which may limit the generalizability of the findings to other settings or populations

Despite these limitations, the qualitative, exploratory case study approach adopted in this research provides valuable insights into the complexities and the issues surrounding criminal background checks and recidivism rates. By conducting in-depth interviews with key stakeholders and employing grounded theory for data analysis, the study offers rich, contextually embedded findings that can inform policy and practice in supporting the formerly incarcerated population. This contributes valuable information to the field and aids in developing actionable recommendations for enhancing employment opportunities for ex-offenders, generate meaningful guidelines for employers and inform regulatory frameworks that support the successful reintegration of the formerly incarcerated into the workforce.

The grounded theory approach largely eliminates possible bias or assumptions, adopting a neutral view of human action in a social context and is designed to generate explanations directly

from data. This research design is preferred due to its emphasis on real-life context and in-depth exploration of participants' experiences and perspectives. By prioritizing qualitative data collection methods and engaging with key stakeholders, the research ensures a nuanced understanding of the research topic, allowing for the generation of actionable policy recommendations tailored to the needs of the formerly incarcerated community seeking entry into the labor market.

Chapter Four

Results and Discussion

4.1 Themes arising from the data collected

Table 1: Themes arising from the Interview

Theme	Number of Participants	Number of Transcript Excerpts	Sample Quote(s)
Blanket application of policies	3	5	"...Sometimes it's crippling the marketplace in the sense of not looking at the nature of the crime and how it affects that job and just making blanket policy. It's like, "Oh, we won't accept anybody with felons." Okay, well, how does a minor assault relate to somebody doing janitorial services or food production or aerospace or, there's so many things where they'll make blanket policies and it really has nothing to do with the job that it's adversely affecting those individuals that are affected as far as employment opportunities, but it's also adversely affecting the market and missing out on talent that otherwise would be there"
Lack of transparency	3	4	"...And so I think that the lack of transparency, for one, is one of the biggest things about being transparent about what offenses you will and will not accept..."
Bias/ Discrimination	5	16	"What I do see is, there is an overwhelming effect where, people of color, um, the perception, and trying to go through the employment process and the application process, it's a lot easier for white people. The perception isn't so harsh...a lot of more employers are a little more understanding, so to speak and quote unquote understanding and empathetic to the situation of a white man versus the black man we serve. So, there's a little more opportunity that becomes open to the white person with the criminal background versus the black person. It makes it that just much more difficult because of the perception, and that's where I think race perception comes into it as well. ...we know that there's white privilege and that

			<p>automatically gives an edge up. It really does, especially when it comes to crimes. It affects things even in regard to how long of a sentence that they do. I mean, two people, a Black person, a white person, they commit the same crime, same location. More than likely that Black person is going to get a much longer prison sentence than their white counterpart...then also when they get out, there's going to be less job opportunities</p>
Lack of checks and balances or accountability	3	5	<p>“So, while they have the laws, I don't think they have that component where it's holding them accountable and enforcing that...”</p> <p>“Criminal history isn't supposed to be asked on an application, and it shouldn't be listed in a job advertisement, but I do still sometimes see that it is. Yeah. And so when that happens, there are no checks, nobody's checking...I mean, if there's no penalty for not doing what you're supposed to do, then people aren't going to do it and they know that there's nothing that's going to happen...then they're just going to say- Nothing's going to happen. Catch me if you can”</p>
Positive correlation between lack of employment (or minimum wage) and recidivism	5	8	<p>“...the possibility of people in this situation falling into homelessness and, and to avoid a homelessness they return to the crimes that they were committing before or found guilty of before, um, and thus end up back in the criminal justice system. And so that's how that kind of plays into the recidivism because now it's turning into a means of survival.”</p> <p>“...And I do believe there's a correlation with, um, income, minimum income and recidivism, Yeah”</p> <p>“...I think employers should open up and be a little lenient... Yeah I mean, be willing to give them opportunities because if you don't, they're gonna turn to a life of crime again.”</p>
Second chance	4	16	<p>“They're willing to give those opportunities, but it's very few, um, places that I know of currently that will give second chances to felons..”</p> <p>“...if I had to make an error, I would err on giving people a second chance, especially as a black man in this country...”</p>

Benefits of hiring the formerly incarcerated	4	4	<p>“They often exhibit resilience, determination, and a strong desire for personal growth and stability”</p> <p>“...when you give them a chance, they excel, they shine, they work hard, they care about what they're doing”</p> <p>“...I think ultimately the employer misses out on some great opportunities and some great, very great productive people”</p>
Need to reconsider rehabilitation	2	2	<p>“It is important to consider individual circumstances, rehabilitation efforts, and applicable laws and regulations when evaluating the relevance of criminal history in the hiring process...”</p> <p>“If somebody does have a criminal background, again, we're going to look at the nature of the crime and how it relates to the position. What have they done as far as reform since they've been incarcerated or while they were incarcerated?”</p>
Credits to Seattle, WA	3	3	<p>“...However, here, um, I think, you know, Seattle, Washington itself is a progressive state, but I think Seattle is more of a progressive county versus Pierce County, which is actually a conservative county. Okay. Within a progressive state. Yeah. So, there's more, more civic engagement with the employers for, um, vulnerable demographics, I would say.</p> <p>Yeah. And I think, um, and there's more racial equities that they're trying to promote within, um, institutions of employment and stuff like that”</p>

4.2 Word count analysis

The interview questions were semi structured, asking participants of their opinion, based on their observations and experience while working closely with the formerly incarcerated.

Participants gave more descriptive answers where the themes were then deduced. While some participants would narrate a story that evinced bias, a few would call it what it was before speaking to it to support their view. However specific words were caught and repeated a couple of times.

Table 2: Word Count from Interviews

Word	Number of Times Mentioned
Lack of transparency	3
Correlation	3
Recidivism	9
Bias	6
Blanket policy	3
Second chance	15
Discrimination	5

4.3 Outcomes: Implication of themes identified from the data collected

Blanket application of policies: Participants pointed out that background checks are often implemented uniformly on all individuals, regardless of the specific circumstances or details of

their individual situations. In other words, these organizations will simply reject job seekers with criminal records without the consideration of context or exceptions, often leading to a one-size-fits-all approach. E.g. participants said

“...they basically take the background at face value and say, hey this person is not employable.”

“...so background checks, I think for certain charges shouldn't affect certain jobs, right? And so, for example, say you have a, uh, DUI, it shouldn't affect your ability to teach. It shouldn't affect your ability to work at a computer. Yeah, it shouldn't affect your ability to work on a job that's remote, right? And, um, also I think background checks in some ways if someone has done their time, someone's been reprimanded for their actions, someone has shown progress, they should then be able to be employable.”

This then results in potentially unfair or discriminatory outcomes, as it does not account for factors such as the nature of the offense in relation to the job, the time elapsed since the offense, or the individual's rehabilitation efforts. This also adversely affects the labor market which is missing out on talents that otherwise would be there.

Lack of transparency: according to participants, even employers who claim to employ returning citizens are simply not transparent about what kind of criminal records they are willing to turn a blind eye to. They are not clear about which offenses are acceptable and which are not, leading to a lot of uncertainty among job applicants with criminal records. A participant had this to say

“...say it's privately owned, like let's say for this case, it's a sandwich shop, a family-owned sandwich shop, or a family-owned restaurant. Okay. And they do a background check on

their employee, and the employee comes back with, uh, assault on an officer or resisting arrest. Okay. It's then at the discretion of the employer, whether that person gets the job or not..."

Bias/Discrimination: From lived experiences and observations, participants noted that there indeed exists biases and negative racial disparities in the employment process, particularly for individuals with criminal backgrounds. A pervasive impact of white privilege on the criminal justice system and subsequent employment opportunities. People of color, especially black individuals, face more significant challenges and harsher perceptions or racial bias when seeking employment compared to white individuals who employers are more likely to be understanding and empathetic towards. Consequently, white returning citizens with similar criminal histories have more employment opportunities than their black counterparts exacerbating the long-term consequences of these biases and perpetuating inequality. These are what some participants had to say.

"I think background checks are something that had good intention at one point, but as many systems that are developed within our country tend to get misappropriated and weaponized against vulnerable populations...So the background check, what it really does is introduce a level of bias into the interview process. It introduces this narrative of criminal activity of danger, lack of security and mistrust. And sometimes that can be turned around into a story of success, rejuvenation, a story of empowerment. But oftentimes at first glance, it's the first disqualifier for most people. Before they can even do the application..."

'Um, a lot of more employers are a little more understanding, sort to speak and quote unquote understanding and empathetic to the situation of a white man versus the black man... so, there's a little more opportunity that become open to the white person with the criminal

background versus the black person. It makes it that just much more difficult because the perception, and that's where I think race perception comes into it as well'

"There is a logic to knowing whether somebody is a risk in your workplace and that I do understand. However, when it comes to bias around the formerly incarcerated, around the criminal justice system, around police brutality, there's not enough education and there's not enough re-humanization of these individuals that have gone through such a traumatizing experience on top of going through the experiences that led them there"

"...if there was a situation in your life or if you got caught up in a bad situation that wasn't your fault and the justice system failed you, there's no restorative justice for that, strong enough to account for the level of discrimination and bias that comes from having that tarnish."

Lack of checks and balances or accountability: Participants highlighted that despite regulations prohibiting the inclusion of criminal history on job applications and advertisements, this practice still occurs. Furthermore, the absence of consequences or penalties for violating these rules fails to ensure its compliance among employers. A participant had this to say.

"I think we do have these laws in place and these provisions in place, right? but I think there's no one to hold people accountable...Um, and so a lot of times those missed practices when it comes to hiring and employment are kind of overlooked. Um, and not really being enforced that no one is really actually there to reinforce that, hey, you know, this might be a potential human rights violation or employment violation..."

Positive correlation between lack of employment (or minimum wage) and recidivism: This theme evinces that lack of employment opportunities due to background checks can drive recidivism, because it turns crime into a means of survival for the formerly incarcerated.

Participants pointed out that a cycle exists where background checks lead to unemployment for the formerly incarcerated resulting in severe consequences, such as homelessness. To avoid homelessness, these individuals may resort to committing crimes again, ultimately leading to their reentry into the criminal justice system. A participant painted this elaborate picture.

“You know, try to imagine people’s state of mental health when they, one, can’t access resources because many minimum wage jobs don’t come with benefits. Two can barely pay rent. Three have to pay for kids and all the expenses that come with kids. Four makes it hard to move up in your job. You know, one mental health break, and this person is doing something that may warrant the police. Yeah. You know what I mean? And when police are involved, you know, when somebody gets arrested, they don’t have the money to fight the charge on top of already having charges, therefore, without a doubt, access to employment is huge barrier to not reenter prison. Yeah. Or not re-offend. Yeah”

Second chance: While there are some employers who are open to providing job opportunities to individuals with criminal records, these opportunities are few and far between. The data revealed that only a few organizations are willing to give second chances to felons, indicating that most employers are still reluctant to hire people with criminal histories. Some participants had this to say

“...They’re willing to give those opportunities...but it’s very few, um, places that I know of currently that will give second chances to felons.”

“...are we, as a society, are we committed to giving people second chances or are we not? ...that’s a legitimate question that we need to answer”

Benefits of hiring the formerly incarcerated: From observation and lived experiences, participants noted that when given job opportunities or a second chance, some individuals who were formerly incarcerated often show strong resilience and determination. These individuals frequently excel and shine in their roles, displaying genuine care for their responsibilities. By not hiring them, employers are most likely missing out on highly productive and talented workers, thereby losing the benefits of their potential contributions to the workplace. A participant attested to this in their statement saying;

“We have internal employees here as well who have been incarcerated and now are homeowners and business owners and productive citizens who are giving back. I think of one gentleman who came here pretty much like fresh out. He went through job readiness and training programs and then became an internal employee. He worked here for a couple of years and then went on to start his own business. He started at nonprofit organizations that work with youth and help them break the cycle of recidivism, but additionally, he still contracts with us and he provides services to us now as a consultant...”

Credits to Seattle, WA: Participants in their responses reiterated that Seattle shows higher levels of civic engagement among employers, particularly in supporting vulnerable demographics like the formerly incarcerated within employment institutions. This suggests that employers in Seattle are more proactive in addressing racial disparities and supporting inclusive hiring practices. A quote from one of the participants reads;

“Seattle used to have, um, and they probably still do today, specialized programs that worked with felons, like getting them, um, uh, you know, job training experience, apprenticeship programs, um, definitely are places where felons can, can, you know, gain the skills and get back into the workforce”

Chapter 5

Conclusion

The findings of this study reveal that criminal background checks significantly lower the employment opportunities of formerly incarcerated individuals, often leading to prolonged periods of unemployment. This lack of employment opportunities not only perpetuates economic instability but also contributes to higher recidivism rates as individuals struggle to meet basic needs and reintegrate into society. The study further evinces that racial disparities exacerbate these challenges, with people of color facing even greater barriers to employment compared to their white counterparts. Although there are measures in place for returning citizens to clear their records and theoretically obtain a clean slate, these remedies are inadequate.⁴⁶ The four most predominant remedies intended to tackle employment discrimination against individuals with criminal records are: 1) expungement statutes; 2) protections under the Fair Credit Reporting Act related to background checks; 3) Title VII claims; and 4) ban the box provisions; each one has proved unsuccessful in providing adequate relief for persons with criminal records.⁴⁷

The role of the EEOC and DEIJ initiatives emerged as critical in mitigating these challenges. While the EEOC provides guidelines to prevent employment discrimination, there is a need for more robust enforcement of its guidelines and awareness among employers and human resource managers. DEIJ initiatives within organizations show promise in promoting inclusive

⁴⁶ Westrope, E. (2018). Employment discrimination on the basis of criminal history: Why an anti-discrimination statute is a necessary remedy. *Journal of Criminal Law and Criminology*, 108(2), 367+. https://link-gale.com.offcampus.lib.washington.edu/apps/doc/A538725133/ITOF?u=wash_main&sid=bookmark-ITOF&xid=4d1b52a1

⁴⁷ Ibid

hiring practices, but these efforts need to be more widespread, deeply integrated into organizational cultures and deemed crucial.

Recommendations

Given the large number of people with criminal records in the United States and the estimated high cost of continually excluding them from the country's workforce, this topic should be a green area targeted for making new policies. The results of this study along with the prior research it builds upon, should capture the attention of policymakers. If current statutes and guidelines are indeed not eradicating employment discrimination but creating employment barriers and driving returning citizens back to crime, then it becomes imperative for policymakers to reassess and reform these measures to promote fair employment opportunities and reduce recidivism rates. The following recommendations should be considered to address these issues and foster a more inclusive labor market:

1. **Enforceability:** the Equal Opportunity Employment Commission's (EEOC) regulation prevents employers from disqualifying job candidates purely on the basis of criminal records. However, participants in their interviews emphasized that the lack of enforceability and penalties associated with deviating from the EEOC guidelines (and all other employment discrimination guidelines) encourages employers to disregard them. Lawmakers need to either make the EEOC an enforceable statute or enact one that explicitly prohibits employment discrimination against individuals on the basis of criminal history, except in certain necessary instances e.g. where the conviction is substantially related to the job and sufficient time (say 7 years) has elapsed since it was recorded. Creating mechanisms that hold employers accountable for discriminatory practices that include penalties for non-compliance and incentives for demonstrating equitable hiring practices would be a great improvement.

2. **Transparency:** The decision regarding which crimes automatically disqualify job applicants with criminal records is currently left to the discretion and subjective judgment of employers. Participants noted in their interviews that they observe employers operating a blanket application of criminal background check policies. A policy or statute requiring employers to proactively list disqualifying offenses for every job posting would be proof of transparency while helping to identify and mitigate any possible biases. Again, the disqualifying offenses listed are expected to relate substantially to the job in question and must have been committed within a certain time frame. In addition to increased transparency, this would prevent returning applicants from wasting their limited time and resources applying and hoping for positions for which they will only be disqualified. Additionally, it prevents applicants from feeling embarrassed or discouraged if they are denied the position solely due to their criminal history. It would also protect against employers retroactively coming up with ways that the job is related to an offense based on the record of a certain job applicant or finding some sort of attenuated connection between an applicant's offense and the duties of the job after interviewing an applicant.

3. **Rehabilitation Information:** Just as records of convictions are maintained, official records should be kept of an incarcerated individual's journey of rehabilitation and this information should play a crucial role in granting them clearance into the labor market. As of now, this is not a mandatory legal requirement, neither does an officially recognized record for rehabilitation for the formerly incarcerated exist. Without this information, employment opportunities for returning citizens will most likely continue to significantly reduce as employers could use reliable data on the rehabilitation efforts and the progress of individuals with criminal records to make informed hiring decisions. Two of the participants had this to say about rehabilitation information

“It is important to consider individual circumstances, rehabilitation efforts, and applicable laws and regulations when evaluating the relevance of criminal history in the hiring process”

“If somebody does have a criminal background, again, we’re going to look at the nature of the crime and how it relates to the position. What have they done as far as reform since they’ve been incarcerated or while they were incarcerated?”

By integrating detailed rehabilitation records into the hiring process, employers can better assess the transformative potential of returning citizens and support their reintegration into the workforce, ultimately enhancing their chances for stable employment and reducing recidivism.

4. **DEIJ:** Diversity, Equity, Inclusion, and Justice (DEIJ) initiatives should play a crucial role in addressing racial discrimination in hiring practices, especially for formerly incarcerated individuals. Two quotes from the participants had this to say about DEI

“Hmm. Okay. Well, I feel that if they actually looked into it, I feel that DEI would be a good platform to, um, change the narrative when it, where it comes to employment of the formerly incarcerated. I feel that they have a big role to play. And if they did something about it, then some companies would, um, take it upon themselves to ensure that maybe they have a quota. Right. That okay, every year we accept this number of formerly incarcerated because we wanna help, we wanna show that this population is a minority that needs some support.”

“...DEI is affected by politics and being given a wrong narrative rather than more inclusion its exclusion. They should be allowed to make their narrative and this form of discrimination made an inherent value, taking roots in education and awareness. Be a referee and hold people accountable”

It is obvious that DEI needs to answer to its name. It should fully live up to their stated goals and principles by ensuring they genuinely promote diversity, ensure equitable treatment, and foster an inclusive environment even in the workplace, rather than merely paying lip service to these ideals or being swayed by politics. This can be achieved by establishing and enforcing clear policies that specifically address the needs of formerly incarcerated individuals, aiming to eliminate racial discrimination in hiring practices and reiterate the importance of equitable hiring practices and second chances.

In order to provide individuals with criminal records with a successful remedy against employment discrimination, an all-encompassing anti-discrimination statute that explicitly bans employment discrimination against individuals solely based on having criminal history is necessary and beneficial to both the formerly incarcerated and society as a whole. Recent reports highlighting costs to incarcerated persons, families, and communities have made it possible to estimate the true cost of incarceration, which is found to be one trillion dollars; this approaches 6% of GDP and is eleven times larger than corrections spending.⁴⁸ More than half of the costs are borne by families, children, and community members who have committed no crime.⁴⁹ Key statistics show⁵⁰ Total U.S. government expenses on public prisons and jails: \$80.7 billion plus, On private prisons and jails: \$3.9 billion plus, Growth in justice system expenditures, 1982-2012 (adjusted for inflation): 310% plus Number of companies that profit from mass incarceration: ~4,000 plus, Annual cost to families of prison phone calls and commissary

⁴⁸ McLaughlin, M., Pettus-Davis, C., Brown, D., Veeh, C., & Renn, T. ("n.d."). *The Economic Burden of Incarceration in the United States* (Working paper). Institute of Justice Research and Development, Florida State University.
https://ijrd.csw.fsu.edu/sites/g/files/upcbnu1766/files/media/images/publication_pdfs/Economic_Burden_of_Incarceration_IJRD072016_0_0.pdf

⁴⁹ Ibid.

⁵⁰ Prison Policy Initiative. (n.d.). *Economics of incarceration: The economic drivers and consequences of mass incarceration*. Research Library. Retrieved May 24, 2024, from https://www.prisonpolicy.org/research/economics_of_incarceration/

purchases: \$2.9 billion plus,⁵¹ Percent of formerly incarcerated people who are unemployed: 27% plus, Average daily wage of incarcerated workers: \$0.86 plus, and Average earnings someone loses over their lifetime by being incarcerated: \$500,000 plus⁵².

Where employment barriers are reduced, more of the formerly incarcerated who otherwise would be unemployed and dependent on government services⁵³ would be gainfully employed. This would in turn lead to diversion of public funds for other needs and reduction in taxes.⁵⁴ Additionally, returning citizen would fully re-integrate into society and recidivism rates would most likely drop,⁵⁵ increasing public safety. These recommendations on ways to eliminate employment discrimination and racial inequalities in hiring practices affecting the formerly incarcerated, are in no way exhaustive, however they are a great start. By implementing these recommendations, policymakers can help dismantle employment barriers, support workplace diversity and the reintegration of returning citizens, ultimately reducing recidivism and fostering a more equitable society.

⁵¹ Rabuy, P. W. and B. (n.d.). *Following the Money of Mass Incarceration*. Prison Policy Initiative. Retrieved June 4, 2024, from <https://www.prisonpolicy.org/reports/money.html>

⁵² Craigie, T.-A., Grawert, A., Kimble, C., & Barber, J. (2024, March 21). *Conviction, imprisonment, and lost earnings: How involvement with the criminal justice system deepens inequality*. Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>

⁵³ Phillips, M., & Caulderwood, K. (2017, January 5). Criminal records are keeping millions of men out of the workforce—And it's hurting the economy. *Vice*. <https://www.vice.com/en/article/bjdwj8/criminal-records-are-keeping-millions-of-men-out-of-the-workforce-and-its-hurting-the-economy>

⁵⁴ Bucknor, C., & Barber, A. (2017). *"The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies,"* CEPR Reports and Issue Briefs 2016-07, Center for Economic and Policy Research (CEPR).

⁵⁵ Connell, C., Birken, M., Carver, H., Brown, T., & Greenhalgh, J. (2023). Effectiveness of interventions to improve employment for people released from prison: systematic review and meta-analysis. *Health & justice*, 11(1), 17. <https://doi.org/10.1186/s40352-023-00217-w>

Appendices

1. Interview Protocol

Interview Questions in Categories

Employers

1. Tell me about your hiring process and what that process would look like if it involved an applicant who has been formerly incarcerated.
2. Tell me what a conversation with a job applicant about their conviction would look like. What do they typically tell you?" Do you require them to disclose the specific crime or category of crime?
3. How does the response to the second question affect the hiring process and why?
4. What led you to hiring the formerly incarcerated? Why do you lean towards that population?
5. What benefits have you found hiring the formerly incarcerated and why do you keep at it?

Organizations

1. From your experience, would you say most of the formerly incarcerated folks you work with have equal access to gainful employment?
2. How do your clients respond to questions about their prior convictions? What advice do they receive in this area?
3. Tell me about any hindrances or roadblocks you are aware the formerly incarcerated may face trying to obtain gainful employment?

4. Talk to me about success stories that you've had with formerly incarcerated who made it out of poverty and how many have remained in.
5. Based on your experience working with this population over the years, would you say you've observed any difference in experience with seeking employment between formerly incarcerated white folks and formerly incarcerated people of color?
6. How long does it generally take the formerly incarcerated to move from an entry level minimum wage job to something that is more sustainable?
7. Do you find that there is a correlation between the formerly incarcerated who can't get employment or get past minimum wage jobs and the probability of going back to jail?
8. Tell me of your opinion on background checks and how they affect the formerly incarcerated.
9. What can you say has hindered the formerly incarcerated from planning life goals and moving forward economically and socially.
10. Are there any recommendations or reforms you want to suggest towards any laws or guidelines that would enhance the employability of the formerly incarcerated?

References

- Alper, M., Duros M.R., and Markman J. (2018) " Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005- 2014)." Special Report NCJ 250975. Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.
- Benecchi, L. (2021, August 8). Recidivism Imprisons American Progress. *Harvard Political Review*.
<https://harvardpolitics.com/recidivism-american-progress/>
- Berg, M. T., & Huebner, B. M. (2010). Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism. *Justice Quarterly*, 28(2), 382–410.
<https://doi.org/10.1080/07418825.2010.498383>
- Blumstein, A., & Nakamura, K. (2009). Redemption in the Presence of Widespread Criminal Background Checks. *Criminology*, 47(2), 327–360.
- Bucknor, C., & Barber, A. (2016). "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," CEPR Reports and Issue Briefs 2016-07, Center for Economic and Policy Research (CEPR). <https://ideas.repec.org/p/epo/papers/2016-07.html>
- Carson, E. A., Sandler D., H., Bhaskar, R., Fernandez, L., E., Porter, S., R., U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics Special Report (NCJ 303147, December 2021).
Employment of Persons Released from Federal Prison in 2010 summary.
<https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/eprfp10.pdf>
- Chun Tie, Y., Birks, M., & Francis, K. (2019). Grounded theory research: A design framework for novice researchers. *SAGE Open Medicine*, 7, 2050312118822927. <https://doi.org/10.1177/2050312118822927>
- Civil Rights Act of 1964; 7/2/1964; Enrolled Acts and Resolutions of Congress, 1789 - 2011; General Records of the United States Government, Record Group 11; National Archives Building, Washington, DC.
- Couloute, L., & Kopf, D. (2018). Out of Prison & Out of Work: Unemployment among formerly incarcerated people. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/outofwork.html>

- Connell, C., Birken, M., Carver, H. *et al.* (2023) Effectiveness of interventions to improve employment for people released from prison: systematic review and meta-analysis. *Health Justice* **11**, 17.
<https://doi.org/10.1186/s40352-023-00217-w>
- Cotter, R., C. Semisch, and D. Rutter. 2022. *Recidivism of Federal Offenders Released in 2010*. Washington, DC: United States Sentencing Commission. <https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010>.
- Craigie, T.-A., Grawert, A., Kimble, C., & Barber, J. (2024, March 21). *Conviction, imprisonment, and lost earnings: How involvement with the criminal justice system deepens inequality*. Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>
- Denver, M. (2020). Criminal Records, Positive Credentials and Recidivism: Incorporating Evidence of Rehabilitation into Criminal Background Check Employment Decisions. *Crime & Delinquency*, 66(2), 194-218. <https://doi.org/10.1177/0011128719833358>
- Denver, M., Siwach, G., & Bushway, S. D. (2017). A New Look at the Employment and Recidivism Relationships through the Lens of a Criminal Background Check. *Criminology (Beverly Hills)*, 55(1), 174–204 <https://doi.org/10.1111/1745-9125.12130>
- DeWitt, S. E., & Denver, M. (2020). Criminal Records, Positive Employment Credentials, and Race. *Journal of Research in Crime and Delinquency*, 57(3), 333–368. <https://doi.org/10.1177/0022427819886111>
- Duane, M., and Reimal, E. (2017) *Locked up and left out: Returning citizens struggle to find work in Washington, DC*. Urban Institute. Retrieved December 12, 2022, from <https://www.urban.org/urban-wire/locked-and-left-out-returning-citizens-struggle-find-work-washington-dc>
- Equal Employment Opportunity Commission. (2012). Enforcement guidance on the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964. <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>

- Finn, P. (1998). Job Placement for Offenders in Relation to Recidivism. *Journal of Offender Rehabilitation*, 28(1–2), 89–106. https://doi.org/10.1300/J076v28n01_06
- Hanson, R. K. (2018). Long-Term Recidivism Studies Show That Desistance Is the Norm. *Criminal Justice and Behavior*, 45(9), 1340–1346. <https://doi.org/10.1177/0093854818793382>
- Harding, D. J., Wyse, J. J., Dobson, C., & Morenoff, J. D. (2014). Making Ends Meet After Prison. *Journal of policy analysis and management: [the journal of the Association for Public Policy Analysis and Management]*, 33(2), 440–470. <https://doi.org/10.1002/pam.21741>
- Heydon, G., & Naylor, B. (2018). Criminal record checking and employment: The importance of policy and proximity. *Australian & New Zealand Journal of Criminology*, 51(3), 372–394. <https://doi.org/10.1177/0004865817723410>
- Holzer, H. J., Raphael, S., & Stoll, M. A. (2006). Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers. *The Journal of Law and Economics*, 49(2), 451–480. <https://doi.org/10.1086/501089>
- International, C. (2023, June 15). Gainful Employment a Critical Factor in Post-Incarceration Life. *Criminon International*. <https://www.criminon.org/who-we-are/groups/criminon-international/gainful-employment-a-critical-factor-in-post-incarceration-life/>
- Jackson, A. (2022). *How hiring individuals with criminal records can benefit today's workforce, according to an expert*. CNBC. Retrieved December 12, 2022, from <https://www.cnbc.com/2022/03/22/how-hiring-individuals-with-criminal-records-can-benefit-todays-workforce.html>
- Jones, D. R. (2014, May 15). *End Hiring Discrimination Against the Formerly Incarcerated*. <https://www.cssny.org/news/entry/end-hiring-discrimination-against-the-formerly-incarcerated>
- Kolbeck, S. G., Bellair, P. E., & Lopez, S. (2022). Race, work history, and the employment recidivism relationship. *Criminology*, 60, 637–666. <https://doi.org/10.1111/1745-9125.12317>

- Loubser, J. J. (1968). [Review of *The Discovery of Grounded Theory: Strategies for Qualitative Research.*, by B. G. Glaser & A. L. Strauss]. *American Journal of Sociology*, 73(6), 773–774.
<http://www.jstor.org/stable/2775784>
- McElhattan, D. (2024). Criminal background check laws and labor market inequality in the United States. *Criminology & Public Policy*, 23(2), 391–429. <https://doi.org/10.1111/1745-9133.12662>
- McLaughlin, M., Pettus-Davis, C., Brown, D., Veeh, C., & Renn, T. ("n.d."). *The Economic Burden of Incarceration in the United States* (Working paper #IJRD-072016). Institute of Justice Research and Development, Florida State University.
https://ijrd.csw.fsu.edu/sites/g/files/upcbnu1766/files/media/images/publication_pdfs/Economic_Burden_of_Incarceration_IJRD072016_0_0.pdf
- National Employment Law Project, 'Seizing the Ban the Box Momentum to Advance a New Generation of Fair Chance Hiring Reforms' (August 2014), <https://www.nelp.org/wp-content/uploads/2015/03/Seizing-Ban-the-Box-Momentum-Advance-New-Generation-Fair-Chance-Hiring-Reforms.pdf>
- National Survey: *Employers Universally Using Background Checks to Protect Employees, Customers and the Public.* (HR.com and NAPBS 2017) <https://pubs.thepbsa.org/pub.cfm?id=6E232E17-B749-6287-0E86-95568FA599D1>
- Pager, D. (2003). The Mark of a Criminal Record. *American Journal of Sociology*, 108(5), 937–975.
<https://doi.org/10.1086/374403>
- Phillips, M., & Caulderwood, K. (2017, January 5). Criminal records are keeping millions of men out of the workforce—And it's hurting the economy. *Vice*. <https://www.vice.com/en/article/bjdwj8/criminal-records-are-keeping-millions-of-men-out-of-the-workforce-and-its-hurting-the-economy>
- Prison Policy Initiative. (n.d.). *Economics of incarceration: The economic drivers and consequences of mass incarceration*. Research Library. Retrieved May 24, 2024, from https://www.prisonpolicy.org/research/economics_of_incarceration/

- Rodriguez, M. N., & Emsellem, M. (2011) National Employment Law Project, *65 Million "Need Not Apply": The Case for reforming Criminal Background Checks for Employment 1 & 27 n.1*
https://www.nelp.org/app/uploads/2015/03/65_Million_Need_Not_Apply.pdf
- Schnepel, K. T. (2018). Good Jobs and Recidivism. *The Economic Journal*, 128(608), 447–469.
<http://www.jstor.org/stable/45023227>
- Simmons O. (2006). *Some Professional and Personal Notes on Research Methods, Systems Theory, and Grounded Action, World Futures*. <https://doi.org/10.1080/02604020600912772>
- Siniscalco, G., Connell, E. M., & Stathopoulos, A. (2012). Criminal Background Policy Checkup: HR Magazine. *HR Magazine*, 57(7), p61–63.
- Siwach, G. (2017). Criminal background checks and recidivism: Bounding the causal impact. *International Review of Law and Economics*, 52, 74–85. <https://doi.org/10.1016/j.irl.2017.08.002>
- The Community Policing Dispatch. *A Second Chance: The Impact of Unsuccessful Reentry and the Need for Reintegration Resources in Communities*. (2022, vol.15, Is4). Retrieved May 29, 2024, from
https://cops.usdoj.gov/html/dispatch/04-2022/reintegration_resources.html
- The National Institute of Justice defines recidivism as “one of the most fundamental concepts in criminal justice. It refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.” <https://nij.ojp.gov/topics/corrections/recidivism>
- Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1964)
- Tripodi, S. J., Kim, J. S., & Bender, K. (2010). Is Employment Associated with Reduced Recidivism?: The Complex Relationship Between Employment and Crime. *International Journal of Offender Therapy and Comparative Criminology*, 54(5), 706–720. <https://doi.org/10.1177/0306624X09342980>
- Uggen, C., Manza, J., & Thompson, M. (2006). Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders. *The ANNALS of the American Academy of Political and Social Science*, 605(1), 281–310. <https://doi.org/10.1177/0002716206286898>

Wang, L. and Bertram, W., (February 8, 2022) 'New data on formerly incarcerated people's employment reveal labor market injustices' Prison Policy Initiative

<https://www.prisonpolicy.org/blog/2022/02/08/employment/>

Wagner P. and Rabuy, B (January 25, 2017) 'Following the Money of Mass Incarceration' Prison Policy Initiative Retrieved June 4, 2024, from <https://www.prisonpolicy.org/reports/money.html>

Weissert, E. P. (2016). Get out of jail free? Preventing employment discrimination against people with criminal records using ban the box laws. *University of Pennsylvania Law Review*, 164(6), 1529 —Gale Business: Insights. (n.d.). Retrieved December 29, 2023, from https://go-gale-com.offcampus.lib.washington.edu/ps/i.do?p=GBIB&u=wash_main&id=GALE|A462685572&v=2.1&it=r&sid=bookmark-GBIB&asid=1b635565

Westrope, E. (2018). Employment discrimination on the basis of criminal history: Why an anti-discrimination statute is a necessary remedy. *Journal of Criminal Law and Criminology*, 108(2), 367+. https://link-gale-com.offcampus.lib.washington.edu/apps/doc/A538725133/ITOF?u=wash_main&sid=bookmark-ITOF&xid=4d1b52a1

Zoukis, C., JD, MBA (2014). *The Cost of Recidivism: Victims, the Economy, and American Prisons*. Zoukis Consulting Group. <https://federalcriminaldefenseattorney.com/cost-recidivism-victims-economy-american-prisons/>