

People Who Were Formerly Incarcerated

You are some of the millions of people in the United States who have spent time in prison. Many of you have been incarcerated for nonviolent drug offenses. But it's true that others have committed violent crimes. Some of you may have been to prison more than once. Disproportionately, you are people of color from poor and distressed communities. Some of you may feel that you were wrongly imprisoned.

Whatever the original crime and the conditions of your imprisonment, you have completed your sentences. Some of you are still spending years on parole or probation. As you attempt to re-enter society, you often fear how your past incarceration will affect your chances, and if your punishment will ever really end.

When people leave prison, getting a job and a place to live are usually the two top priorities. If your children are in foster care or if a guardianship has been set up through the courts, for example, you can't reunify (begin the process of regaining custody of your children) until you have both a place to live and steady income from a job.

People who are formerly incarcerated already face many obstacles to finding a job. There is that blank space of time on their job application—where were you during those blank years? Employers usually like to see an unbroken history of jobs.

People returning to the community from prison are likely to have low education levels, too. According to studies, the average reading level for those in prison is upper elementary school; few have college degrees. Learning disabilities that aren't addressed and problems in school can be a first step toward arrest and incarceration.

You can't get a federal school loan if you have a drug conviction. So earning your own money is critical to being able to get more education and improve your employment status.

When there is a box to check on the job application asking if you have ever been arrested or convicted of a crime, you can't even get in the front door—those applications just get tossed away. That is true for housing applications as well.

You are acutely aware of what Michelle Alexander describes in her book *The New Jim Crow*:

Once you're labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal.

For those returning home from prison, having a job can be a critical factor in feeling like you're making a contribution—and that you're making a new start. Also, everyone needs to survive. If it's impossible to find a legitimate job, those who have been in prison may feel forced to return to illegal or under the table sources of money. You wonder why, if you are supposed to become a responsible and law-abiding citizen, society makes it so hard for you to do so.

Criminal Justice Activists

Although you may not have served time in prison yourselves, you are sensitive to the obstacles formerly incarcerated people face. You are also outspoken about the injustices and unfairness you see in the way that the courts, prisons, and police operate. Some of you may even see prisons as something that we should abolish completely—and see the police not as people who “protect and serve” but as an occupying force in many neighborhoods.

You believe in economic justice and opportunity for all people, no matter what their background. Given the economy, this is a really hard time for anyone to get a job—so it is even more important not to discriminate against anyone. A box on a job application that you have to check if you’ve ever been arrested or convicted is a form of legal discrimination, and that’s wrong.

Perhaps most disturbing to you is the racial aspect of this discrimination. Since most people in prison are African American and Latina/o, those are the communities most affected by “the box.” As Michelle Alexander says in *The New Jim Crow*:

Rather than rely on race, we use our criminal justice system to label people of color “criminals” and then engage in all the practices we supposedly left behind. Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans. Once you’re labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal.

You believe that only a small minority of people who have been convicted of crimes should be excluded from jobs where their convictions might create problems (e.g., bank robberies and contact with money). Many people who were formerly incarcerated have great skills that are unrelated to their conviction—for example, auto mechanics, computer technology, cosmetology. As a community, can do better than this—we should be welcoming people home rather than cutting them off.

There is a lot of racism and discrimination in arrest and conviction rates. But even if people were guilty of a crime, they’ve paid their debt and now should be welcomed back. Every conviction shouldn’t be a life sentence. No one should be defined for the rest of their lives by the worst mistake they ever made.

Among the prison activist community, some of you committed serious crimes. You did your time, and now you’re strong members of the community, committed parents, and good employees. Everyone should have that chance.

Other cities have good ideas we could follow: For example, the Youth Justice Coalition in Los Angeles has a monthly Welcome Home LA Resource Fair for formerly incarcerated people and their families. Resources include: help getting government documents, jobs, housing, food, and education; drug and alcohol rehabilitation; connections to health services, counseling, and life skills.

You believe we should focus on approaches like these, not more and more punishment, with ever higher rates of incarceration.

Neighborhood Associations

You are average, everyday Berkeley residents from all over the city. You seek to protect and promote the health and well-being of the city and its residents.

You see that this “ban the box” law connects with many of the issues you care about. The city needs businesses to prosper and its residents need good jobs. You want crime to be dealt with, the city to feel safe, and Berkeley to be seen as a place that is fair and welcoming.

People in your group may not agree on this issue. You have diverse perspectives related to race, class, and where people live. Some of you have family members and friends who are or have been incarcerated, some do not. Some of you have been victims of crime. Some of you are workers. Some own and operate businesses.

On one hand, in this bad economy, many of you think that employers don’t have the luxury to take risks. They should have the right to hire the person they think will be the best at the job and will get along well with other employees and customers. “The box” may be a cost-effective tool to sift out job candidates and ensure a safe working place.

In general, members of neighborhood community groups say they don’t want people moving into their neighborhoods who have gang and drug connections. Life is scary enough as it is. People have worked hard to be able to rent or own homes in Berkeley neighborhoods. They have a right to safety.

Statistically in California, most people who get out of prison end up going back. Community members, realtors, and employers don’t want the crime that results in that return to prison affecting them. It makes sense to you that employment is a key factor in reducing recidivism and ensuring positive public safety. And you don’t want large numbers of unemployable people wandering the neighborhoods. But you’re not sure the best way to go about helping people returning from prison with economic opportunity. Would job placement and rehabilitation programs be more effective?

If applicants do not disclose their criminal backgrounds, what about liability? What if something happens—will the employer be responsible? What if a drug addict goes berserk? Is the employer responsible if they knew this person had a drug history?

On the other hand, some community members feel differently. You believe that those who are formerly incarcerated deserve a second chance. Given the high rates of African American and Latina/o arrest and conviction, supporting the community means “banning the box” to give people a fair chance. You recognize that it is so important that children in the community have a chance to grow up in intact, functional families; and so it is the responsibility of the community to do everything they can to support those returning from prison. The religious convictions of some in the community lead them to this perspective.

Employers and Business Leaders

You own and operate businesses. Your goals are simple. You want to run your businesses as efficiently and as profitably as possible. In fact, you must do so, because otherwise you will lose out to your competitors. Profitable and efficient businesses provide a range of important jobs, goods, and services to the residents of Berkeley. Without them, the quality of people's lives in the city would decline.

To achieve your goals, you must be free to make decisions about how to run your businesses, including employment decisions. Limits on economic freedom like laws against pollution or dangerous products can be justified in some cases. But "banning the box" will make running a business unnecessarily difficult and costly. This will be bad for business and, consequently, bad for Berkeley.

When you ask prospective employees to disclose their conviction histories, this is not discrimination. A criminal record is in a person's control. It is not like using age, race, or gender (which are not in a person's control) to discriminate against people. If prospective employees do not want past convictions to be considered by employers, they should not commit crimes.

People who argue that the criminal justice system is racist and biased should take it up with the police and the courts. You are all for making the criminal justice system more fair, but this is not your responsibility as employers; you did not arrest or convict anyone. The only wise course for you is to assume that past conviction records are relevant sources of information about prospective employees. When it comes to evaluating potential employees, shouldn't a conviction in court get more weight than a possibly stereotyped impression of whether the person "looks dangerous"?

You need timely information about past convictions. You could be months into the process of hiring someone only to find out that their conviction history disqualifies them for the job. In many cases, "the box" is a telling indicator of an applicant's character and a cost-effective tool to sift out inappropriate job candidates.

Lawsuits are another issue for you. Lawsuits against businesses can eat up time and money. In tough economic times, you just cannot afford the increased risk of lawsuits. Perhaps people who have been in prison are no more likely than others to commit serious errors at work. However, you can't afford to take that chance. Imagine the headlines if one of your employees harms someone and it's discovered that they have a criminal record!

Perhaps the government should look into improving re-entry and job placement programs. However, this is not your job. You are running a business, not a charity or nonprofit program for formerly-incarcerated people. In the end, employers should be encouraged to look past prior convictions and give people a chance, but you should not be required to do so. You have a right to know this information.

Law Enforcement Officials

You represent those who enforce the law and protect public safety—including police officers, parole and probation officers, prosecutors, and local judges. You work long hours in some of the most dangerous situations. It is your responsibility to protect public safety.

You see what those who want to “ban the box” are really after: they condemn the police and the prisons and present formerly incarcerated people as innocent victims of “the system.” You question whether the need to “ban the box” is even the real issue. What the so-called “ban the box” law would do in Berkeley is already against the law everywhere in the country, based on the Civil Rights Act of 1964.

What people who support the law really want is to radically reform the police and the prisons. To “ban the box” is just the first step in their agenda. They make no secret of the fact that they believe the criminal justice is thoroughly racist. Michelle Alexander has even gone so far as to call it the “new Jim Crow”—associating your work with one of the most shameful periods in this nation’s history. This is a slap in the face to the people who put their lives on the line to protect the community from crime and the scourge of drugs.

People accuse you of being “tough on crime,” as if that is a bad thing. Critics of the war on drugs, for example, criticize the harsh measures and penalties associated with it. But sometimes drastic times call for drastic measures. Ask someone who lives in a neighborhood devastated by crack cocaine. Ask the loved one of a meth addict. Drugs are a profound threat to our families, neighborhoods, schools, and kids. The police and the courts are doing their best to address this problem. New ideas and alternatives to incarceration, like drug courts, are being used when appropriate.

Some supporters of this “ban the box” law try to portray formerly incarcerated people as victims. They complain that these people are being unfairly discriminated against. Well, what about the victims of their crimes? What about the average, law-abiding member of the community? What about the businesspeople who are simply trying to make a living? Why should they be told to look past and forgive the misdeeds of others?

Some also complain that people who have been in prison are being labeled or branded for life. But you feel that society should treat crime very seriously. To be sure, people leaving prison face tough obstacles. And why shouldn’t they? When a person commits a crime, the burden is on them to reform and prove themselves. No one else can do this for them.

You don’t run businesses and won’t try to tell others how to do so. But, to you it’s simple: If an applicant doesn’t want to admit past criminal acts on an application, then they shouldn’t commit crimes. And if an employer thinks a history of convictions is relevant, they should have the right to consider it. You trust that employers are not going to treat a single arrest for public intoxication, for example, in the same light as someone with multiple counts of robbery or drug possession.

Finally, you are concerned that a “ban the box” law would jeopardize public safety. Ask the average Berkeley citizen: Do you like the idea of a convicted identity thief assisting you as a cashier? Do you want a former gang member handling your credit cards and personal information? Of course not.