

# Ban the Box in the United States

Examples of fairer employment practices

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The following states in America have removed questions about criminal history from the first stage of their application processes. Their procedures for fairer hiring processes vary both in terms of who the legalisation applies to and at what point employers can ask about criminal history – if at all.

1. **California**
2. **Colorado**
3. **Connecticut**
4. **Delaware**
5. **Hawaii**
6. **Illinois**
7. **Maryland**
8. **Massachusetts**
9. **Minnesota**
10. **Nabaska**
11. **New Mexico**
12. **Rhode Island**

## 1. California

**Year legislation was passed:** October 2013 (effective January 2014)

**Employers covered by legislation:** Public sector employers that work for state, city or county departments and services within that state.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of the department's hiring process. California states, local agencies, cities and counties must first determine an applicant's qualifications for the position before inquiring about applicant's conviction history. In addition, no employer – whether public or private – can ask an applicant to disclose an arrest or detention that didn't result in a conviction.

**Are there any exceptions to this process?** The change to legislation does not apply to law enforcement positions or positions where the applicant will work with children, the elderly and the disabled or other sensitive positions.



Lydia Parnell, Knowledge and Communications Coordinator, Work Inclusion  
T: 0207 566 8760 | [www.bitc.org.uk](http://www.bitc.org.uk)

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## 2. Colorado

**Year legislation was passed:** 2012

**Employers covered by legislation:** Public sector employers that work in state or legislation departments.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of the department's hiring process. State agencies and licensing agencies can only perform a background check once they have determined that an applicant is a finalist for the position or receives a conditional offer. In addition, it is prohibited for a state or legislation department to state on job advertisements that a person with a criminal record may not apply.

## 3. Connecticut

**Year legislation was passed:** 2010

**Employers covered by legislation:** Public sector employers that work in state departments.

**When does the employer ask about offences?** This bill prohibits certain covered state employers from asking about a prospective employee's past convictions until the person is deemed otherwise qualified for the position. It also limits the amount of information a state employer can obtain about applicants during the hiring process. It is now prohibited for an applicant to be disqualified from an employment application process solely because of a conviction.

**Are there any exceptions to this process?** Law enforcement agencies (which include Sheriff's Department court house security and transportation personnel) are the only governmental entities in the state that by law can deny employment based solely on a person's criminal history. All other state officials cannot disqualify an applicant from the hiring process due to their criminal conviction without examining (1) the relationship between the crime committed and the job or license that the person is being considered for, (2) the convicted person's degree of rehabilitation, and (3) the time elapsed since conviction or release. According to the law, the job-relatedness inquiry is the most important. They must demonstrate that a conviction-based disqualification is justified by 'business necessity'.

## 4. Delaware

**Year legislation was passed:** 2014

**Employers covered by the legislation:** Public sector employers in the state, its agencies, and political subdivisions, such as cities and counties.

**When does the employer ask about offences?** The bill prohibits employers from inquiring into an applicant's criminal history until after the completion of the first interview. When reviewing a criminal history, the public employer must consider: nature of offence; time passed; and nature of job

**Are there any exceptions to this process?** Police forces and other positions with statutory mandate for background checks are exempted.

## 5. Hawaii

**Year legislation was passed:** 1998

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services. It also includes private sector employers.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of any employer's hiring process. The bill prohibits employers from inquiring into an applicant's criminal history until after a conditional offer of employment has been made.

NB In 2014, research reviewing data from Hawaii's state judiciary found that criminal defendants prosecuted in the City and County of Honolulu were 57 percent less likely to have had a prior criminal conviction - since the previous-conviction question was stricken from job applications. Find out more: <http://link.springer.com/article/10.1007/s12103-014-9251-9>

**Are there any exceptions to this process?** The offer of employment maybe withdrawn if the applicant's conviction bears a 'rational relationship' to the duties and responsibilities of the position sought. Only employees' conviction records within the most recent 10 years can be taken into account.

## 6. Illinois

**Year legislation was passed:** 2013

**Employers covered by legislation:** Public sector employers in state departments and services.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of any public sector employer's hiring process. State agencies are allowed to conduct background checks, and request information on criminal convictions, but not until later in the process.

**Are there any exceptions to this process?** Background checks can be conducted only if required by the position and applicants can be excluded based on their criminal record when it is in line with business necessity. Employers must have a formal process for informing the applicant if they are conducting a check.

## 7. Maryland

**Year legislation was passed:** 2013

**Employers covered by legislation:** Public sector employers in state departments and services.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of any public sector employer's hiring process. Employers may inquire into the criminal record or criminal history of an applicant for employment once the applicant has been provided an opportunity for interview.

**Are there any exceptions to this process?** This process does not apply for positions at the Department for Corrections, Office of Sheriff of the county or where a background check is required by law.

## 8. Massachusetts

**Year legislation was passed:** 2010

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services. It also includes private sector employers with six or more employees.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of any employer's hiring process unless a legal restriction applies to the specific job or occupation. After the initial written application, either during or after the interview, the employer may ask the applicant for criminal history information. The employer should be mindful that existing restrictions on such questioning still apply, so that employers are still prohibited from asking applicants and current employees about certain misdemeanour convictions at any time. In addition, the law requires that applicants receive a copy of their criminal history prior to being questioned about their history and if an adverse decision is made based on the report.

**Are there any exceptions to this process?** The only exception to this prohibition is where either state or federal law dictates that conviction(s) result in presumptive or mandatory disqualification for the job. This prohibition is a change from existing law which permits employers to ask about felony convictions and certain misdemeanour <sup>1</sup>convictions on a job application.

## 9. Minnesota

**Year legislation was passed:** 2009

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services. It also includes private sector employers.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of any employer's hiring process. All employers can only ask about an applicant's criminal history after they have been selected for an interview or before a conditional offer of employment has been made.

NB the City of Minnesota removed the tick box in 2007. After only a year they found that considering criminal conviction information at the time of a job offer decreased the amount of transactional work for staff when hiring. In addition, over 57% of the applicants with criminal convictions were hired compared with only 5.7% before the box was removed.

**Are there any exceptions to this process?** An applicant will be disqualified from the hiring process only if they have a criminal conviction directly related to the position. In addition, the change in legislation restricts the timing of pre-employment inquiries by most private employers into candidate's criminal past.

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<sup>1</sup> Although this varies across the states, in general a felony is a serious crime where the offender is imprisoned for a year or more; a misdemeanour is a crime where the resulting punishment is less than a year in prison. When deciding on the classification of a crime, the type as well as circumstances are taken into account.

## 10. Nebraska

**Year legislation was passed:** 2014

**Employers covered by legislation:** Public employers in state, counties, and cities.

**When does the employer ask about offences?** Public employers are prohibited from inquiring into a job applicant's criminal history until after the employer has determined the applicant meets the minimum job requirements

**Are there any exceptions to this process?** Law enforcement positions and other positions with mandated background check requirements are exempted, as well as school districts regarding specific information.

## 11. New Mexico

**Year legislation was passed:** 2010

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of public sector employer's hiring process. Employers may ask about applicants' criminal convictions once they have been selected as a finalist

## 12. Rhode Island

**Year legislation was passed:** 2013

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services. It also includes private sector employers. It applies to both public and private sector employees in Rhode Island employing four or more individuals, or any person acting directly or indirectly in the interest of the employer e.g. recruiting agents or employment advertising companies.

**When does the employer ask about offences?** It is now prohibited to have a tick box asking about any criminal convictions on the first application form of any employer's hiring process. Employers may ask about any criminal convictions at interview.

**Are there any exceptions to this process?** When federal or state law mandates disqualification of a person from employment because of a prior conviction or specifically authorizes such inquiries.

## **States Bills and Legislation introduced for discussion in 2013 not yet passed (as of August 2014)**

In addition to the states listed above that have removed the tick box from application forms, there are states that are currently discussing bills or legislation that would remove the box.

**These states are;**

1. **Michigan**
2. **North Carolina**
3. **Ohio**

### 1. **Michigan**

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services. It also includes private sector employers.

**When would the employer ask about offences?** It would be prohibited to have a tick box asking about convictions on the first application form of any employer's hiring process.

### 2. **North Carolina**

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services.

**When would the employer ask about offences?** It would be prohibited to have a tick box asking about any criminal convictions on the first application form of public sector employer's hiring process. Employers could not ask about criminal history until a conditional offer of employment has been made. An applicant will be disqualified from the hiring process only if they have a criminal conviction directly related to the position.

### 3. **Ohio**

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services. It also includes private sector employers.

**When would the employer ask about offences?** Any questions about a criminal conviction on an employment application would be prohibited. Currently applicants do not have to disclose any misdemeanours.

## **Pending Legislation**

Lastly, the states listed below discussed state bills or legislations and decided to make amendments based on these talks. Once these amendments are made, these will be reviewed before being passed.

1. **Georgia**
2. **New Jersey**

### 1. **Georgia**

**Employers covered by legislation:** Public sector employers in state.

**When would the employer ask about offences?** Governor Nathan Deal indicated that the state will set an example for private sector employers by not automatically dismissing job applicants with a criminal history. Governor Deal's policy advisor has clearly stated that, "The governor will implement ban the box on the state level" and "this will afford those with blemishes on their record a shot at a good job, which is key to preventing a return to crime."

**Are there any exceptions to this process?** Governor Nathan Deal explains "With the exception of certain jobs that would require a little scrutiny of background, all of the other jobs – which is a vast majority of jobs in state government – somebody will not be automatically rejected because they had to check that box."

### 1. **New Jersey**

**Employers covered by legislation:** Public sector employers in state, legislation, city and county departments and services. It also includes private sector employers.

**When would the employer ask about offences?** It would be prohibited to have a tick box asking about any criminal convictions on the first application form of public sector employer's hiring process. Employers could not ask about criminal history until the employer has conducted the first interview with the candidate. In addition, the results of any criminal history check need to be sent to the applicant.