

Overview of Ban the Box Organizing in California

Prepared by All of Us or None (revised November 2011)

Background:

During Peace & Justice Community Summits held statewide during 2004 and 2005, formerly incarcerated people and our families identified policy changes that we need to survive. Our communities need full restoration of the rights of people with conviction histories, and an end to all forms of discrimination based on prior convictions or imprisonment. Specifically, we are calling for the elimination of the question about past convictions on applications for all employment and housing. Most people who have past convictions refer to the question about conviction history as “the box,” and we have named our campaign to remove it, “**Ban the Box.**”

As described below, our campaign has produced major victories in San Francisco, Alameda County, and nationwide. In addition, All of Us or None has actively organized city officials, including human resources staff, to promote the Ban the Box initiative across the state. Throughout this campaign, we have collaborated with the National Employment Law Project and a national coalition of attorneys and employment rights organizations. Together, we have developed an outline of **Proposed Best Practices** for distribution to employers and elected officials.

Nationally, many cities have implemented policy changes affecting the employment of formerly-incarcerated/convicted people. Most notable is Boston, which has model practices because a background check is required for only about 30% of city employees, the check is done after a conditional offer of employment, and all city contractors are required to follow the same hiring practices as the city. As of April 2011, Ban the Box reforms have been implemented in almost 35 Cities and Counties nationwide: Alameda County, CA; Memphis, TN; Austin, TX; Minneapolis, MN; Baltimore, MD; Multnomah County, OR; Berkeley, CA; New Haven, CT; Compton, CA; Boston, MA; Norwich, CT; Bridgeport, CT; New York, NY; Oakland, CA; Cambridge, MA; Philadelphia, PA; Chicago, IL; Providence, RI; Cincinnati, OH; San Francisco, CA; Detroit, MI; Seattle, WA; Hartford, CT; St. Paul, MN; Jacksonville, FL; Travis County, TX; Kalamazoo, MI; Worcester, MA; East Palo Alto, CA; San Mateo County, CA. Reforms have also been adopted in six States: Minnesota, Hawai'i, New Mexico, Massachusetts, Connecticut, and California. A comprehensive listing is available online at: <http://www.nelp.org/page/-/SCLP/2011/CityandCountyHiringInitiatives.pdf?nocdn=1>

Progress in California:

State of California: In a precedent-setting executive order in 2010, Governor Schwarzenegger ordered 2 questions regarding conviction history removed from the State of California employment application. The State Personnel Board has issued a new application, and background checks will not be required for every position.

City/County of San Francisco: In January of 2005, All of Us or None initiated a campaign to remove the question, “Have you been convicted in a court?” from the public employment and housing applications for San Francisco. We wrote a resolution focused on public employment, sought and ultimately received the advice and support of the Human Rights Commission. At the Board of Supervisors this resolution was sponsored by Tom Ammiano, Sophie Maxwell, Ross Mirkarimi, and Chris Daly. It was passed unanimously (but without the signature of Mayor Gavin Newsom) on

January 19, 2006. Subsequent discussions with the Department of Human Resources and hearings before the Civil Service Commission led to significant changes in the application process. On June 1, 2006 a new employment application and hiring process were implemented.

In December 2010, All of Us or None met with the Reentry Council of the City and County of San Francisco, the San Francisco Human Rights Commission, the National Employment Law Project, Lawyers' Committee for Civil Rights, and the National Housing Law Project to craft a new anti-discrimination ordinance for San Francisco. This initiative would amend City/County Police and Administrative codes to prohibit unfair discrimination based on arrest or conviction records. These amendments would improve current hiring procedures for public employment, and would prohibit discrimination in employment and housing by private employers, private landlords, in hotels and public accommodations, and with all contractors (vendors and renters) with the City/County. As the initiative is publicized, more community organizations are endorsing it – over 30 organizations so far. In March 2011 the Reentry Council of San Francisco unanimously endorsed the initiative. In April 2011 the Human Rights Commission unanimously supported the initiative as well. A vote by the Board of Supervisors is anticipated later in 2011, after a series of community meetings with landlords and employers have been held.

City College of San Francisco: State Education Code currently prohibits anyone with a past drug conviction or sex offense from working at a community college, although the Board of Trustees can hire those applicants if the record has been dismissed or if there is a Certificate of Rehabilitation, or the Board determines that applicant has been rehabilitated more than 5 years. A CCSF graduate of the Drug and Alcohol Certificate program there was denied the opportunity to apply for CCSF employment because of past drug convictions. The Women's Employment Rights Clinic at Golden Gate Law School challenged the Board's refusal to consider rehabilitation and urged CCSF also to adopt the same changes being made by San Francisco DHR. The Trustees have adopted new policies, creating a committee to determine whether a candidate is eligible for employment after rehabilitation. A hiring freeze has impeded meaningful implementation of the policy.

City of Compton: In April 2011, the City Manager of Compton brought an initiative to ban the box to the City Council. The resolution to remove the question about conviction history from its initial employment application was passed by the Compton City Council on April 5, 2011. All of Us or None members from the Compton and Los Angeles chapters met with Department of Human Resources staff and the City Attorney, and have assisted with implementation.

Los Angeles: All of Us or None organizer Susan Burton and our chapter there submitted a resolution to both the City and County of Los Angeles in 2006. This effort was renewed in 2010.

City Councilwoman Jan Perry originally introduced the resolution at the **City Council of the City of Los Angeles**. The City Council requested a report from the Personnel Committee. This report was completed in February 2007, and recommended removing the question from the application. The Chair of the Personnel Committee has requested further information regarding the financial cost of an additional FBI check on potential employees. The City Human Resources Department issued a report calling attention to the significant costs and resources involved in conducting FBI background checks. Currently, the measure is pending before the Personnel Committee for further consideration on the FBI background check issue.

County Supervisor Yvonne Burke introduced the resolution at the **Los Angeles County Board of Supervisors**. An initial vote requested a report from the County Department of Human Resources.

This report ultimately did not recommend removing the question from the initial application. Unfortunately, despite two public hearings packed with people who could benefit from proposed changes, Ms. Burke withdrew our resolution rather than have it defeated because of insufficient support from Board of Supervisors members.

In the fall of 2010, community organizations re-launched the Los Angeles campaign, calling people together to form an Employment Rights Coalition. This broad-based coalition defined a county-wide strategy of passing ban the box reforms in smaller cities (such as Compton, see above). Coalition members have been reaching out to a broad variety of organizations and individuals seeking their support before re-introducing ordinances at the City or County level.

City of Long Beach, City of Carson: A Peace & Justice Community Summit was held in late October 2011 in Long Beach, with an Action Panel of elected officials including the Mayor of Long Beach and the Mayor of Carson. After testimony from formerly-incarcerated and convicted people about employment and housing barriers, both Mayors pledged to investigate Ban the Box reforms in their Cities. This continues the Southern California strategy to win Los Angeles County through winning over numerous small cities within LA County.

San Mateo County: A Ban the Box resolution was passed by the Board of Supervisors to adopt fair hiring practices as recommended by the Department of Human Resources. Discussions with DHR staff resulted in moving the question to a separate part of the application, which will be centralized and viewed only by central office staff.

East Palo Alto: Mayor Ruben Abrica and his Department of Human Resources staff modified hiring practices and removed the question from the City's application.

San Bernardino: All of Us or None organizer Kim Carter and our chapter there initiated the campaign with the City Council. The Mayor of San Bernardino, Pat Morris, had pledged his support, and City Council member Ricky van Johnson sponsored the resolution. The resolution was referred to the Personnel committee for a feasibility study. Ultimately, the City Council voted against banning the box but did agree to re-locating the question on the application.

City of Sacramento: All of Us or None organizers and allies have held discussions with the Department of Human Resources for the city. DHR staff has been unwilling to remove the question from the employment application; instead they have re-positioned the box in a less conspicuous place on the back of the application.

Alameda County: With the support of Keith Carson and his Chief of Staff Rodney Brooks, we initiated discussions with the Director of Human Resource Services, Denise Eaton-May. Supervisor Carson introduced our resolution to change the County's hiring policies, which was passed unanimously by the Alameda County Board of Supervisors. Subsequent hearings won the support of the Civil Service Commission, and on March 1, 2007, a pilot program instituting a new hiring process started in Alameda County.

City of Berkeley: After conversations with All of Us or None, in June 2007 Berkeley Mayor Tom Bates and the City Council passed a resolution advocating for ban the box changes in the City's hiring policies. In November 2007, the DHR Director issued a new application without a conviction history question. Background checks will still be required for all City employees, but background checks will not occur until after a conditional offer of employment has been made.

City of Oakland: Showing her support for Ban the Box changes, City Council member Nancy Nadel started the process by submitting questions to the Office of Personnel Resource Management (OPRM) in December of 2006. When he was inaugurated in January 2007, Mayor Ron Dellums announced he would remove the conviction history question from the city's employment application, and that he would set aside some city jobs specifically as a second chance for people with past convictions. Personnel scandals and turnover in the OPRM resulted in very slow progress. Well over 1000 people have signed a petition demanding these changes in public employment. In April 2008, All of Us or None and Plan for a Safer Oakland held a Speak-out in front of City Hall. As of July 2008, the Department of Public Works had categorized jobs requiring background checks; however, this categorization was later withdrawn because it was improperly conducted.

In November 2010, these agreements were reached: 1) elimination of the conviction history questionnaire and the requirement for self-disclosure of past convictions by applicants; 2) addition of an anti-discrimination statement on the application; 3) agreement that people on probation and parole would be eligible for hire; 4) agreement to categorize which City jobs will require background checks and which will not, dependent on job responsibilities; 5) agreement that background checks for appropriate jobs will be conducted after selection of the finalist candidate. Final documents were signed in December of 2010 by City Administrative Officer Dan Lindheim. The City accepted all of the recommendations made by All of Us or None. Implementation is underway through briefings of Department heads and the Mayor and current City Administrator.

City of San Diego: The City of San Diego does not have the question on their application. Maurice Emsellem of the National Employment Law Project and Alan Mobley from All of Us or None previously met with City Council officials to discuss options to expand the City's policy to contractors and will explore options to collaborate with the District Attorney's Reentry Roundtable to adopt a County Ban the Box policy.

Ban the Box changes in hiring policies are also being discussed with DHR staff and elected officials in the **City of Richmond, Contra Costa County, Carson, Long Beach, Riverside**, and with community members and elected officials in **Santa Cruz**.

Challenges:

Understanding Variations in Underlying Law, Policies, and Procedures: Hiring policies and practices differ in each city and county. Some places require fingerprinting and background checks by statute for every public employee; some places require only self-disclosure of past convictions and do not conduct any background checks. In some places, fingerprinting is required by ordinance or other underlying laws; in other places hiring procedures are wholly determined by the Department of Human Resources (sometimes with additional oversight by a Civil Service Commission). These underlying differences make a uniform approach difficult. **Lesson learned:** Research is very important, in order to identify exactly where changes should be made in the hiring process, and to ensure that protections are instituted at every stage of that process. It's very important for directly affected community members to recognize that this knowledge is not beyond our understanding, that we are experts in the changes that we need, and we can learn how to achieve them. It's crucial for our allies to recognize that we are colleagues and partners, not clients.

Organizing to Build a Community Coalition: It's crucial to build broad-based community support for this initiative, including all affected stakeholders: people with conviction histories and our families, small business owners, employers, service providers, civil rights organizations, agency heads, hiring

officers, elected officials. Building this support requires a lot of public education about the impact of a conviction history on a person's ability to survive, and why equal opportunity should apply to everyone. Legal service organizations and civil rights organizations have been advocating ON BEHALF OF poor people and people in prison for so long, that it's difficult for them to advocate ALONGSIDE us, and for them to respect us and take our ideas seriously. Building multi-racial coalitions is often difficult because of unconscious racism in the best of allies. A severe lack of resources in our communities makes volunteering time and gas money a hardship, or impossible.

Lesson learned: One of the impacts of mass incarceration and the general deterioration of life in the United States, is that more and more people across racial and class barriers are affected by the criminal justice system. All people who share a passion for justice, all those are affected by mass incarceration can unite to support our demand for full restoration of our civil and human rights. Building unity will require determination and mutual understanding and respect. Outreach into the community is rewarding and effective in mobilizing and educating people, and often yields additional allies who have been affected by the criminal injustice system.

Gaining the Support of DHR Staff: Achieving changes in San Francisco impressed us with the importance of support from DHR staff, so we initiated discussions with DHR staff in some of these cities and counties. Keith Carson, Alameda County Supervisor, sponsored a breakfast meeting for Bay Area elected officials and DHR staff. Boston City Council member Chuck Turner and Congresswoman Barbara Lee also participated. Directors of Human Resources Denise Eaton-May (Alameda County) and Phil Ginsburg (San Francisco) addressed the meeting. This regional gathering was effective in presenting the campaign and answering key questions. DHR staff responded to arguments about equal opportunity and expanding their pool of qualified applicants. Elsewhere, as in the case of the County of Los Angeles, Human Resources officials have been less supportive, citing negligent hiring concerns and other issues.

All these initiatives began with resolutions to elected officials and/or with conversations directly with DHR staff. The resolution process allowed us to discover the sentiment and level of support from community representatives, but resolutions do not generally have the force of law. Implementation was decided solely by DHR staff, with approval required by the Civil Service Commission in some cases. **Lessons learned:** Although we had initiated the changes, we had little control or input into the final stages of implementation without an ordinance. In some cases, as in the City of Oakland, final agreement to our recommendations came from progressive City Managers rather than DHR staff. For implementation of new policies to be successful, it crucial that DHR staff support and understand the impact of mass incarceration on our communities, and how conviction history is a new excuse for racial discrimination.

Demands to Expand Background Checks: Currently all City of Los Angeles employees are required to submit to fingerprinting and a California DOJ background check before a hire is finalized. The Los Angeles City Council referred our resolution to their Personnel Committee, which ultimately issued a report that supported modifying L.A. hiring procedures. In response to the report, the Chair of the Personnel Committee requested that an FBI check should be added to the process, to disclose an applicant's past convictions in other states. This is problematic:

- ◆ California law authorizes the FBI and state DOJ to report juvenile crimes or non-serious offenses like vagrancy if a county required the individual to be fingerprinted. Some CA counties require fingerprinting for these offenses and some do not, resulting in very unequal disclosure of juvenile and non-serious offenses. Also, these offenses will be reported from other states on the FBI's RAP sheets.

Despite proposed provisions that only job-related convictions should be considered, any additional listings on a RAP sheet can be prejudicial and potentially discriminatory.

- ◆ Requiring FBI checks of every applicant who is a finalist for a job would be very expensive: the projected estimate for City of Los Angeles jobs is \$353,268.24 per year.
- ◆ No other major city in California requires FBI checks of all potential employees. Agreeing to this expansion of background checks in Los Angeles would set a dangerous precedent in California and nationally.
- ◆ Unfortunately, San Francisco is also adding FBI checks to their hiring process, though they have eliminated the conviction history questionnaire.

Difficulty of Evaluating the Impact of Ban the Box Reforms: After enacting any reform, elected officials desire evaluation of whether the reforms are succeeding. Current emphasis on “evidence-based” evaluation has made numbers more important than fairness. The impact of ban the box reforms is not strictly quantifiable, because it is measured by increased individual stability and overall community health and development. Yet in order to convince other employers to remove the box, we need evidence that people with records feel they have more equal opportunity and are actually getting jobs. Also, collecting data on how many formerly-incarcerated/convicted people are hired is inherently contradictory – our policy demand is that we NOT be identified as formerly-incarcerated, making it impossible to count the number of us who are hired after policy reforms.

Difficulty for Employers in Reading RAP Sheets: Currently a lot of extraneous, outdated, and inaccurate information shows up on a background check. California law allows employers to consider convictions ONLY, so additional information on the RAP sheet is unnecessary and often prejudicial. Employers are ignorant about how to read RAP sheets, which results in misunderstandings (particularly about convictions that have been dismissed under California law, Section 1203.4).

Lesson learned: We are examining legislation that would require stricter enforcement of fair credit reporting laws requiring frequent updates, and limits on reporting, to commercial background checks.

Defining Standards for Job-Relatedness: Although many laws, regulations, and policies allegedly require that past convictions should “have a rational relationship to job responsibilities,” no standards or guidelines exist defining the limits of job-relatedness. Often frequent arrests or drug convictions are used as “character test,” although the underlying offenses or behavior may have no relationship to job responsibilities. **Lesson learned:** We are trying to define job-relatedness of a conviction as occurring when the job responsibilities present the opportunity and circumstances for the same behavior to occur again. Very few criminal convictions actually occur at job sites.

Extending Hiring Reforms to Private Employers under Government contract: In the City of Boston, private contractors doing business with the City are required to use the same hiring process as the City. If they want to conduct background checks on potential employees outside those guidelines, these companies must apply for a waiver allowing them to do so. Their request must be based on the same standards employed by the City – background checks are NOT allowed unless an employee has unsupervised contact with finances, or youth, elderly, or disabled people.

Conclusion: For broad changes to occur, building a community coalition is crucial. To achieve the changes will generally take some months (possibly years) of community pressure and effort. The timing of campaigns can be critical, and it’s important to take advantage of the support of any

progressive elected officials. Another important lesson is that WE – formerly incarcerated and convicted people, family members, and allies of All of Us or None – have achieved phenomenal success. We are the people who identified this campaign and named it. We are the experts, and the innovators, but without community support and education, the broad changes our community needs would not be possible. This fight to end the structural discrimination represented by that box may be long, but we are making great progress – and ultimately we will win full restoration of our human and civil rights.