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3 Title: Prevention of Employment Discrimination Against Formerly Incarcerated  
4 Individuals

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6 Introduced by: Brent Oldham for the Medical Student Section

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8 Original Authors\*: Danielle Reynolds, and Manraj Sekhon

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10 Referred to: Reference Committee D

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12 House Action: **DISAPPROVED**  
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15 Whereas, a criminal record reduces the likelihood of a callback or job offer by approximately 50  
16 percent, and the rate of unemployment of previously incarcerated individuals is approximately 27  
17 percent, which is significantly higher than the current U.S. unemployment rate of less than four percent<sup>1,2</sup>,  
18 and

19  
20 Whereas, studies have shown that formerly incarcerated individuals are more active in the labor  
21 market than the general population, supporting the idea that the high unemployment rate is attributable  
22 to discrimination rather than differences in aspirations and motivation<sup>2</sup>, and

23  
24 Whereas, the Equal Employment Opportunity Commission (EEOC) states that each time a  
25 minority's job application is excluded because of a criminal background check, that supports a finding of  
26 racial discrimination, since incarceration disproportionately affects minorities (i.e., blacks are incarcerated  
27 at a rate greater than five times that of whites)<sup>1,3</sup>, and

28  
29 Whereas, employers routinely fail to solicit information outside of an employment application,  
30 and the EEOC has determined that many companies apply a "blanket policy," failing to conduct individual  
31 assessments of the nature and gravity of the offense, time passed since conviction or completion of  
32 sentence, or whether the crime is relevant to the nature of the job sought<sup>3,4</sup>, and

33  
34 Whereas, unemployment has been associated with increased illicit drug use, tobacco use, and  
35 heavy alcohol use; a greater risk of having a premature or low birth weight baby; and decreased self-  
36 perceived mental health<sup>5,6,7</sup>, and

37  
38 Whereas, unemployed individuals are more likely to delay seeking health care due to cost and are  
39 less likely to have access to healthcare than employed individuals<sup>7</sup>, and

40  
41 Whereas, the recent and ongoing implementation of Medicaid work requirements poses an  
42 additional barrier for formerly incarcerated individuals to accessing health care when seeking  
43 employment<sup>8</sup>, and

44  
45 Whereas, an estimated 68 percent of formerly incarcerated individuals were arrested within three  
46 years of their release, and an estimated 83 percent were arrested within nine years of their release<sup>9</sup>, and

47  
48 Whereas, incarceration is associated with limited future employment opportunities and earnings  
49 potential, which are the strongest predictors of recidivism<sup>10</sup>, and

50  
51 Whereas, the EEOC recommends that employers do not ask about convictions on job  
52 applications<sup>3</sup>, and

53           Whereas, Hawaii, Minnesota, Massachusetts, and Rhode Island have implemented statewide  
54 private sector “ban the box” laws, which prohibit employers from asking applicants if they have been  
55 convicted of a crime on an initial job application, and  
56

57           Whereas, cities and counties in California, Connecticut, Michigan, New Jersey, New York,  
58 Pennsylvania, and Washington have implemented both private sector and government contractor “ban  
59 the box” laws, and  
60

61           Whereas, since the implementation of the “ban the box” law in Hawaii, a criminal defendant  
62 prosecuted for a felony is 57 percent less likely to have a prior criminal conviction, suggesting that “ban  
63 the box” laws have been successful in preventing recidivism<sup>11</sup>; therefore be it  
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65           RESOLVED: That MSMS support policies and practices that prevent employers from  
66 discriminating against formerly incarcerated individuals.  
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69 WAYS AND MEANS COMMITTEE FISCAL NOTE: \$1,000 or more for costs related to the adoption of new or  
70 revised MSMS or AMA policy.

**Relevant MSMS Policy:** None

**Relevant AMA Policy:** None

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<sup>1</sup> NAACP | Criminal Justice Fact Sheet. <https://www.naacp.org/criminal-justice-fact-sheet/>. Accessed February 1, 2019.

<sup>2</sup> Couloute L, Kopf D. Out of Prison & Out of Work | Prison Policy Initiative. <https://www.prisonpolicy.org/reports/outofwork.html>.

<sup>3</sup> Paul K, Bell A. Are Felons The New Protected Class?: The Criminal Background Check Minefield - Part One | Employment Law Lookout. <https://www.laborandemploymentlawcounsel.com/2013/08/part-one-are-felons-the-new-protected-class-the-criminal-background-check-minefield/>. Published 2013. Accessed February 1, 2019.

<sup>4</sup> Pager D, Bendick M, Hauser RM, et al. The Mark of a Criminal Record 1. Vol 108.; 2003.

[https://scholar.harvard.edu/files/pager/files/pager\\_ajs.pdf](https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf). Accessed February 1, 2019.

<sup>5</sup> Compton WM, Gfroerer J, Conway KP, Finger MS. Unemployment and substance outcomes in the United States 2002–2010. *Drug Alcohol Depend.* 2014;142:350-353. doi:10.1016/J.DRUGALCDEP.2014.06.012

<sup>6</sup> Kaplan EK, Collins CA, Tylavsky FA. Cyclical unemployment and infant health. *Econ Hum Biol.* 2017;27:281-288. doi:10.1016/J.EHB.2017.08.001

<sup>7</sup> Pharr JR, Moonie S, Bungum TJ. The Impact of Unemployment on Mental and Physical Health, Access to Health Care and Health Risk Behaviors. *ISRN Public Health.* 2012;2012:1-7. doi:10.5402/2012/483432

<sup>8</sup> Brown, T. Medicaid Work Proposal Could Prove a High Hurdle for Ex-Felons | Oklahoma Watch.

<http://oklahomawatch.org/2019/02/01/medicaid-work-proposal-could-prove-a-high-hurdle-for-ex-felons/>. Published February 1, 2019. Accessed February 4, 2019.

<sup>9</sup> Alper M, Durose MR, Markman J. Bureau of Justice Statistics (BJS) - 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014).; 2018. <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6266>. Accessed February 1, 2019.

<sup>10</sup> Lopez IH. *Race, Law and Society*. New York, NY: Routledge; 2016.

<sup>11</sup> D’Alessio, SJ, Stolzenberg L, Flexon J. The Effect of Hawaii’s Ban the Box Law on Repeat Offending. *American Journal of Criminal Justice.* 2015;40(2):336-352. doi:10.1007/s12103-014-9251-9. Accessed February 1, 2019.

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