

Ban the Box and Employment Equity: Examining Policy Effectiveness and Pathways to Fair Hiring

by Daniel Bullman*

Reentry and Employment Discrimination

Employment discrimination remains one of the most persistent barriers to successful reentry for justice-involved individuals, limiting economic mobility and increasing recidivism risks. For more than 70 million Americans possessing some form of criminal record (Gubernick, 2017), access to employment is often limited, particularly for people of color. Historically, employers have used criminal background checks to screen applicants, disproportionately disadvantaging Black and Latino individuals who are overrepresented in the criminal justice system (Sugie, 2017). In response to these hiring barriers, the Ban-the-Box (BTB) movement emerged in the early 2000s as a policy intervention to reduce hiring bias by delaying criminal history inquiries until

evidence-based recommendations for enhancing workforce reintegration efforts.

Underlying Causes of Employment Inequity. The persistent employment inequities faced by individuals with criminal records stem from longstanding systemic barriers, including the lasting effects of mass incarceration, employer biases, and racial discrimination (Sherrard, 2020). Beyond explicit hiring restrictions, stigmatization of justice-involved individuals and implicit biases in employment decisions further exacerbate these challenges. Research indicates that racial discrimination in hiring extends beyond an applicant's actual criminal history, disproportionately affecting Black and Latino job seekers regardless of conviction status. These barriers not only limit workforce access for individuals with records but also reinforce

decisions—most notably, the War on Drugs, which disproportionately criminalized communities of color through sentencing laws such as mandatory minimums and “three strikes” policies (Craigie, 2020). As a result, these communities experience cycles of economic instability as individuals with criminal records struggle to secure employment, housing, and financial security upon release. The long-term consequences of these policies extend beyond incarceration, creating collateral consequences that restrict access to stable housing, educational opportunities, and occupational licenses, limiting economic mobility even after individuals have served their sentences (Kim, 2022).

A key challenge is that incarceration itself reduces employability. Many individuals with criminal records face interrupted work histories, lack of skill development, and difficulty obtaining necessary credentials or degrees. Additionally, employer reluctance to hire individuals with criminal records—often based on assumptions of risk and liability—exacerbates labor market exclusion, further limiting access to stable employment (Shoag & Veuger, 2016). This reality perpetuates cycles of unemployment and recidivism, because those unable to secure stable jobs may return to illegal means of survival.

Employer Bias and Criminal Record Stigma. Employer discrimination remains one of the most significant barriers to employment for individuals with criminal records. Despite legal protections in some jurisdictions, many employers reject applicants solely based on criminal history, regardless of the offense type, time elapsed since conviction, or evidence of rehabilitation (Shoag & Veuger, 2017). Employer concerns about hiring individuals with criminal backgrounds typically fall into three categories: workplace safety, reliability and productivity, and regulatory restrictions (Flake, 2019; Shoag & Veuger, 2017).

One of the primary concerns is perceived risk to workplace safety. Employers in industries such as childcare, healthcare, and financial services frequently cite liability issues and potential harm to clients, customers, or employees as reasons for their

Employer concerns about hiring individuals with criminal backgrounds typically fall into three categories: workplace safety, reliability and productivity, and regulatory restrictions.

later in the hiring process (Stoll & Bushway, 2008). Proponents of BTB argue that the policy expands employment opportunities for individuals with records and promotes their reintegration into society. However, emerging research suggests an unintended consequence when explicit disclosures are removed: racial discrimination may increase as employers resort to statistical discrimination—assuming that Black applicants are more likely to have a criminal history (Agan & Starr, 2016). This paper examines the historical roots of employment inequities for justice-involved individuals, analyzes the effectiveness and unintended consequences of BTB policies, and offers

broader racial and economic disparities, making stable employment after incarceration increasingly difficult.

Mass Incarceration and Racial Disparities. The United States leads the world in incarceration, with more than 1.8 million individuals currently imprisoned and millions more facing lasting economic and social exclusion due to prior convictions (Kim, 2022). The racial disparities within the criminal justice system are staggering. Black Americans make up approximately 13% of the U.S. population but account for 33% of the prison population (LaPlant & Vuolo, 2020). Similarly, Latino individuals face higher arrest and incarceration rates than their White counterparts, primarily due to systemic policing biases, sentencing disparities, and targeted enforcement of drug-related offenses (LaPlant & Vuolo, 2020). These disparities are not incidental but are the result of decades of policy

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hesitancy to hire individuals with criminal records (Sherrard, 2020). Another major concern is reliability and productivity, as some employers assume that individuals with criminal backgrounds may struggle with workplace structure, leading to higher rates of absenteeism or misconduct. Additionally, regulatory and legal restrictions limit employment opportunities, as state and federal laws prohibit individuals with specific convictions from obtaining required licenses or employment in sectors such as healthcare and finance. These factors collectively reinforce structural employment barriers that hinder economic reintegration for individuals with criminal records.

A study by Flake (2019) found that employers were 63% more likely to call back applicants with no criminal record than those with identical qualifications who disclosed a prior conviction, even when the offense was minor or occurred many years earlier.

Beyond employer biases, structural challenges within community-based corrections programs also shape employment outcomes for individuals with criminal records. Although community-corrections partnerships can foster reentry support, workforce training, and social connections, institutional barriers such as capacity constraints, security concerns, and conflicting stakeholder priorities often limit their effectiveness (Dewey et al., 2021). These limitations highlight the need for comprehensive reentry strategies that simultaneously address employer discrimination and enhance the capacity of community partnerships to facilitate sustainable workforce reintegration.

Industries with the Most Employment Barriers. As shown in Table 1, certain industries enforce strict regulatory restrictions that limit employment opportunities for individuals with criminal records. Despite the adoption of BTB policies across several states, these barriers persist due to employer biases and informal screening practices. In addition, many employers circumvent BTB laws by conducting online searches for arrest records or making assumptions about an applicant’s criminal history based on race, residential address, or employment gaps. These practices reinforce systemic hiring discrimination, undermining the intended impact of BTB policies and further restricting economic opportunities for justice-involved individuals.

Statistical Discrimination and Race. Racial biases contribute to statistical discrimination, where employers assume

Industry	Common Hiring Restrictions	Likelihood of Employer Discrimination
Healthcare	Background checks required; certain offenses disqualify candidates	High
Financial Services	Regulatory restrictions on individuals with fraud or theft convictions	High
Education	Restrictions on hiring individuals with violent or sex-related offenses	High
Government	Varies by state, but many roles require security clearance. Some states ban holding office with felony conviction	Moderate
Retail and Hospitality	Less restrictive, but employer discretion often results in bias	Moderate

Note: Agan & Starr, 2016; Kim, 2022; LaPlant & Vuolo, 2020; Shoag & Veuger, 2017.

that certain racial groups are more likely to have a criminal history and reject applicants preemptively. This form of discrimination is particularly detrimental to Black and Latino job seekers, because research shows that even when their qualifications are identical to White applicants, they receive fewer interview callbacks (Agan & Starr, 2016).

To mitigate these biases, structured disclosure policies have been proposed, allowing applicants to provide context about their records later in the hiring process (Graber & Zitek, 2021). Additionally, implicit bias training for employers, as successfully implemented in New Jersey’s fair-chance hiring initiative, has been shown to reduce assumptions based on race (Page, 2021). Research suggests that integrating BTB policies with standardized evaluation criteria—such as competency-based assessments—can help employers assess applicants more equitably and limit reliance on racial proxies for criminality (Kim, 2022).

In a field experiment, Agan and Starr (2016) submitted 15,000 fictitious job applications to employers in cities with and without BTB laws. Before BTB, White applicants received 7% more callbacks than Black applicants. However, after BTB policies were enacted, the racial callback gap widened to 45%, as employers—unable to ask about criminal history—assumed Black applicants were more likely to have a record. Figure 1 illustrates this racial gap in callback rates before and after BTB implementation.

Racial disparities in post-release employment outcomes remain a significant driver of recidivism. A study examining justice-involved individuals in the Indianapolis metropolitan area found that unemployment is highly correlated with recidivism, with race and education level emerging as key predictors of

post-release employment success (Lockwood, Nally & Ho, 2016). These findings underscore the persistent racial inequities in employment opportunities, which perpetuate cycles of incarceration and economic marginalization for communities of color.

The Ban-the-Box Policy as a Systemic Intervention

BTB policies were introduced to address systemic barriers faced by individuals with criminal records in the labor market. The primary goal of BTB laws is to remove criminal history inquiries from the early stages of the hiring process, ensuring that applicants are initially evaluated based on their qualifications rather than being automatically excluded due to past convictions. By delaying the disclosure of an applicant’s criminal record, BTB policies seek to promote fairer hiring practices and expand employment opportunities for individuals with prior justice system involvement. These policies are particularly significant in addressing racial disparities in employment because people of color are disproportionately represented in the criminal justice system and experience heightened discrimination in hiring decisions (Kim, 2022).

The rationale behind BTB policies is that employers should assess a candidate’s skills and experience before considering their criminal history, thereby reducing unconscious bias and premature exclusion. However, despite their intent to improve employment outcomes, research on BTB effectiveness has produced mixed findings. Some studies suggest that BTB policies have increased callback rates and interview opportunities for justice-involved individuals, particularly in

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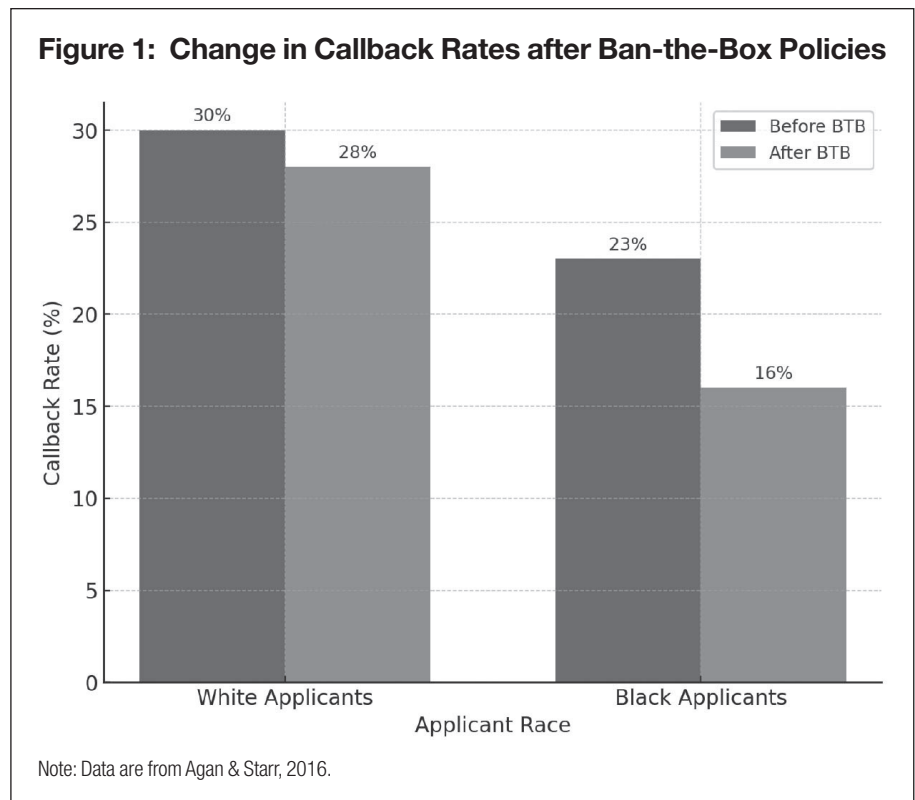
jurisdictions where criminal record inquiries are delayed until after a conditional job offer has been made (Flake, 2019). For example, a field experiment by Graber and Zitek (2021) found that applicants with drug convictions were more likely to be considered for employment when disclosure occurred later in the hiring process, particularly when they were given the opportunity to explain their offense. These findings suggest that delayed disclosure can help mitigate immediate bias, allowing employers to first evaluate an applicant’s qualifications before making assumptions based on criminal history.

However, other researchers highlight unintended consequences, particularly an increase in statistical discrimination against Black and Latino applicants. Agan and Starr (2016; 2017) found that in the absence of explicit criminal history information, employers were more likely to assume Black applicants had criminal records, leading to a 45% decline in callback rates compared to White applicants. This suggests that while BTB policies aim to reduce criminal record discrimination, they may inadvertently shift the basis of exclusion from criminal history to racial profiling.

To counteract employer bias, workforce development programs have emerged as a promising strategy for supporting job placement for individuals with criminal records. Programs such as the Hoosier Initiative for Re-Entry (HIRE) program have demonstrated success in helping restorative citizens secure interviews and sustainable employment through workforce training and employer partnerships (Hinton, 2021). Collaborative efforts between the criminal justice system, nonprofit organizations, and local employers further enhance these initiatives, increasing employment opportunities and reducing recidivism.

Successful reintegration requires a comprehensive approach, addressing both immediate survival needs (e.g., food, housing, employment) and skill-based services (e.g., job training, literacy programs, and behavioral health treatment). The literature indicates that without access to structured reentry programs, individuals with criminal records face persistent societal and economic barriers, increasing their likelihood of recidivism (Taxman, 2017). The reentry movement emphasizes multi-sector collaboration, ensuring that individuals returning from incarceration receive the necessary resources to navigate these challenges successfully.

While policies such as Ban-the-Box aim to address hiring discrimination, the broader success of reentry initiatives depends on



community-based solutions. Research indicates that local reentry initiatives are crucial in facilitating reintegration, particularly when they incorporate leadership roles for individuals with lived experiences and expand success measures beyond recidivism rates (Christian, 2022). These findings suggest that a holistic approach—integrating fair hiring policies with robust community support networks—provides a stronger foundation for long-term employment success.

Implementation and Variability Across States. The implementation of BTB policies varies widely across the United States, with differences in timing, scope, and employer obligations. As of 2022, 37 states and more than 150 municipalities have enacted some form of BTB legislation, but the level of protection afforded to job applicants differs significantly (Flake, 2019).

In states such as California and Massachusetts, BTB policies prohibit employers from inquiring about an applicant’s criminal history until after a conditional job offer has been made. This ensures that employers assess candidates based on their skills and experience first, preventing premature disqualification due to past convictions. In contrast, states like Illinois and New Jersey require that criminal history inquiries be postponed until after an initial interview, allowing some employer discretion while still preventing immediate exclusion at the application stage. Other states, such as

Georgia and North Carolina, have more limited BTB protections, applying these policies only to public sector jobs, while allowing private employers to screen applicants for criminal records at any stage of the hiring process (Shoag & Veuger, 2017).

These differences in policy implementation reflect broader debates about the effectiveness of BTB legislation and the extent to which it should regulate employer hiring practices. While comprehensive BTB policies may provide greater protections for individuals with criminal records, they also raise concerns among employers regarding workplace safety, liability, and compliance costs. Critics argue that delaying criminal background checks could lead to higher turnover rates or increased risks of negligent hiring claims (Page, 2021). In states where BTB laws apply only to public sector jobs, policymakers often assume that government employers are better equipped to hire individuals with criminal records, while private businesses may require greater discretion in their screening processes.

The degree to which BTB laws affect hiring practices ultimately depends on enforcement mechanisms, employer awareness, and specific state and municipal regulations. Table 2 compares BTB policies across selected states, highlighting key differences in scope, timing of criminal record inquiries, and employer coverage.

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The variations in BTB implementation outlined in Table 2 illustrate the uneven levels of protection offered to job seekers with criminal records. In states where BTB laws apply to both public and private employers, individuals with prior convictions may have greater access to employment opportunities, because hiring decisions are more likely to be based on qualifications rather than criminal history. However, in states where BTB policies are restricted to public sector employment, individuals with records may continue to face substantial hiring barriers in private industry.

The effectiveness of BTB policies in increasing employment opportunities depends not only on their scope and enforcement but also on complementary measures that address employer bias and racial discrimination. Research suggests that without additional interventions such as employer education programs and structured disclosure strategies, BTB laws alone may not be sufficient in reducing hiring disparities and improving labor market outcomes for justice-involved individuals.

Increased Hiring in High-Crime Areas. One of the notable successes of BTB policies is their positive effect on employment rates in high-crime neighborhoods. Shoag and Veuger (2017) found that employment in these areas increased by up to 4% following the adoption of BTB policies, particularly in the public sector. This suggests that removing criminal record inquiries from the initial application process allows justice-involved individuals to advance further in hiring considerations, at least in certain job sectors.

However, these employment gains are not evenly distributed. While public-sector employers are more likely to comply with BTB regulations, private-sector employers often find ways to circumvent the policy,

such as implementing alternative screening methods or raising hiring criteria (Sugie, 2017). Furthermore, increased employment in high-crime areas does not necessarily equate to long-term job retention or career advancement.

Beyond policy reforms like BTB, community-based job training programs that integrate peer mentorship, structured support, and self-empowerment have proven effective in fostering sustainable employment for individuals with criminal records. Research on the D.C. Central Kitchen job training program found that these supportive components were critical for successful reentry, particularly when programs incorporate formerly incarcerated individuals as mentors (Matthews et al., 2020). These findings highlight the importance of reentry initiatives that extend beyond policy interventions, focusing on social and peer-based support networks to enhance long-term employment stability and reduce recidivism.

The limited impact of BTB on overall employment rates underscores the need for additional structural reforms that address employer biases and the persistent barriers faced by individuals with criminal records.

Racial Discrimination and Statistical Bias. Although BTB policies were designed to reduce hiring discrimination, research indicates that they have, in some cases, exacerbated racial biases in hiring decisions. Agan and Starr (2016) found that when employers lacked explicit criminal history information, they were more likely to assume that Black applicants had records, resulting in a 45% decrease in callback rates for Black candidates compared to White applicants. This phenomenon, known as “statistical discrimination,” occurs when employers use race as a proxy for criminality, particularly in the absence of direct background information.

This unintended consequence suggests that while removing the criminal history checkbox may prevent immediate exclusion, it does not

eliminate deeply ingrained biases in the hiring process. Instead, it may push employers toward more covert forms of discrimination, reinforcing racial disparities in employment. To counteract this effect, BTB policies must be paired with broader anti-discrimination measures, including structured interview processes, standardized evaluation criteria, and employer training on implicit bias (Page, 2021). These strategies can help ensure that fair hiring practices extend beyond initial application procedures, addressing the underlying biases that continue to shape employment outcomes for justice-involved individuals.

Employers Raising Experience Requirements. Another significant unintended consequence of BTB policies is the adjustment of employer hiring practices in ways that disproportionately disadvantage certain groups. Shoag and Veuger (2017) found that, in response to BTB policies, many employers raised experience requirements for job postings as an indirect method of screening out applicants with criminal records. By increasing these thresholds, employers can legally exclude justice-involved individuals while still maintaining compliance with BTB regulations. This strategy disproportionately harms women and young workers, who are less likely to have extensive work experience and who already face additional barriers to stable employment. Furthermore, the shift toward more stringent experience requirements creates a broader exclusionary effect, reducing access to entry-level positions for many applicants who might otherwise qualify.

The unintended consequences of these hiring adaptations underscore the need for stronger enforcement mechanisms and additional policy interventions to ensure that BTB policies achieve their intended goals. Table 3 presents a comparative analysis of employer hiring practices before and after BTB implementation, illustrating how employers have adapted their screening processes. These findings suggest that although BTB policies reduce direct discrimination based on criminal history, they also incentivize alternative exclusionary tactics. Addressing these issues requires a comprehensive approach that includes employer accountability measures, targeted workforce training initiatives, and improved oversight to prevent discriminatory hiring practices.

Recommendations for Policy Improvement

Although BTB policies have yielded some positive outcomes, their effectiveness remains constrained by employer

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Table 2: Ban-the-Box Policy Comparison Across Selected States

State	Scope of BTB Policy	Timing of Criminal Inquiry	Employer Coverage
California	Strong protection	After conditional offer	Public & private Employers
Illinois	Moderate protection	After initial screening	Public & private employers
Massachusetts	Strict protection	After conditional offer	Public & private employers
New Jersey	Moderate protection	After first interview	Public & private employers
Georgia	Limited protection	No ban for private sector	Public sector only
North Carolina	Limited protection	No ban for private sector	Public sector only

Note: Data compiled from LaPlant & Vuolo (2020); Page (2021); Shoag & Veuger (2017).

Table 3: Comparative Analysis of Employer Hiring Practices Before and After Ban-the-Box Implementation

Hiring Practice	Before BTB Implementation	After BTB Implementation
Criminal history inquiry timing	Typically conducted on the initial application	Delayed until after interview or conditional offer
Use of racial proxies	Less frequent, due to direct access to criminal history	Increased reliance on race as a statistical proxy for criminality
Callback rates for Black applicants	7% lower than for White applicants	45% lower than for White applicants
Experience requirements	Standard entry-level requirements	Increased thresholds used to indirectly screen out applicants with records
Public sector compliance	Inconsistent adherence to fair hiring standards	Generally more compliant with BTB mandates
Private sector practices	Direct screening through background checks	Shift toward informal screening and indirect exclusion tactics
Impact on women and youth	Already faced employment barriers	Further disadvantaged due to lack of extensive work experience

Note: Agan & Starr, 2016; Shoag & Veuger, 2017.

adaptations, statistical discrimination, and enforcement gaps. To enhance BTB’s impact and mitigate unintended consequences, several policy modifications are necessary. One of the most promising strategies for reducing bias in hiring is employer education. Page (2021) proposes ESCALATE, a structured workshop designed to educate employers about the benefits of fair hiring practices and the risks of implicit bias. Such training programs help hiring managers adopt a skills-based approach, reducing reliance on assumptions based on race or criminal history. Christian (2022) further emphasizes the value of incorporating lived experiences of justice-involved individuals into these training programs to enhance employer understanding and engagement. Incorporating mandatory implicit bias training into BTB policies could prevent statistical discrimination and promote more equitable hiring practices.

Rather than completely removing criminal history inquiries, some scholars advocate for structured disclosure policies that allow applicants to explain their records in context. Graber and Zitek (2021) suggest a post-interview assessment process, in which employers can inquire about criminal records only after evaluating an applicant’s qualifications. Lockwood, Nally & Ho (2016) further reinforce the need for such policies, emphasizing that race and education level are key predictors of post-release employment success. By ensuring that hiring decisions are based on skills and

experience first, structured disclosure policies could reduce automatic exclusion due to past convictions while preventing racially biased assumptions about criminal history.

Many states also lack effective enforcement measures for BTB compliance. Flake (2019) highlights that many employers continue to engage in discriminatory hiring practices without monitoring or penalties for noncompliance. Agan and Starr (2016) provide empirical evidence that statistical discrimination increases when BTB policies lack enforcement mechanisms, because employers resort to racial profiling in the absence of direct criminal record disclosures. Strengthening BTB enforcement through regular audits, employer reporting requirements, and financial penalties for violations would improve compliance and employer accountability.

BTB alone does not eliminate the long-term consequences of a criminal record. Sugie (2017) argues that policies should shift toward automatic record expungement for nonviolent offenses after a designated period. Taxman (2017) further supports this approach, noting that comprehensive reintegration efforts require a balance between survival needs (e.g., housing, employment) and skill-building services (e.g., job training, literacy programs, treatment). Record-sealing laws provide a more permanent solution, ensuring that individuals who have served their sentences are not perpetually penalized in the job market. Integrating BTB with record-sealing initiatives would

create a more holistic approach to employment equity and support long-term reintegration efforts.

Successful reentry initiatives must extend beyond BTB by incorporating workforce development and social support systems. Research indicates that reentry programs are most effective when they provide employment opportunities, social support, and fair service delivery, because these elements enhance participant engagement and job retention (Bender, Cobbina & McGarrell, 2016). Additionally, addressing broader structural barriers—such as mental health challenges, substance use disorders, and housing insecurity—is critical for reintegration success. Dewey et al. (2021) highlight the challenges within community corrections partnerships, reinforcing the need for structured workforce initiatives that provide clear career pathways. Matthews et al. (2020) further emphasize that peer mentorship and structured support play a critical role in successful reentry, particularly when programs incorporate formerly incarcerated individuals as mentors. Kendall et al. (2018) underscore the importance of interpersonal support from case workers, access to stable housing, and continuity of care, all of which significantly improve reentry outcomes. These findings collectively underscore the necessity of community partnerships and integrated behavioral health services to ensure long-term stability for justice-involved individuals.

BTB policies were introduced to expand employment opportunities for individuals with criminal records. However, their effectiveness remains limited by employer biases, statistical discrimination, and hiring adaptations that circumvent their intent. Although BTB has increased employment in some high-crime areas, it has also exacerbated racial disparities in hiring and created new barriers for women and young workers. A hybrid policy approach incorporating employer education, structured disclosure, enforcement mechanisms, and record-sealing laws may provide a more effective solution. By addressing the root causes of employment discrimination and expanding legal protections for justice-involved individuals, policymakers can ensure that BTB fulfills its original promise of promoting fair hiring practices and reducing recidivism.

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