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# City of Gainesville Policy Program Preliminary Research & Analysis

**TOPIC:** Fair Chance Hiring

**PREPARED BY:** Charlotte Coon, Policy Research Fellow

**DATE:**

**REQUESTED BY:** Mayor Poe

## OBJECTIVE

To examine Fair Chance Hiring policies in municipalities around the country, including in Gainesville, to understand the advantages and disadvantages of expanding a policy to private employers.

## EXECUTIVE SUMMARY

Fair Chance Hiring practices are aimed at removing questions regarding criminal history from the initial hiring process, with the intention of encouraging formerly incarcerated individuals to apply for jobs they are qualified for, with the potential to benefit both employers and employees. These practices are most commonly implemented by municipalities for public employees, however some municipalities require compliance from private as well as public employers. There are several potential benefits to enacting Fair Chance Hiring policies, such as increased hiring pools and lower unemployment rates, but it is not a perfect nor a stand-alone solution to the issue of racial disparities in hiring.

## HISTORY/BACKGROUND INFORMATION

### Fair Chance Hiring

Fair Chance Hiring refers to the practice of not asking for criminal background on applications at the beginning of the hiring process. This is aimed at lowering the barriers to employment that many formerly incarcerated individuals face during their job search by allowing potential employers to screen applicants based on their relevant skills rather than criminal history. There are two different

levels of Fair Chance Hiring practices that cities and municipalities use. The first level only applies to public employers, i.e. municipal human resource departments follow the policy, and the second level covers both public and private employers. While a few municipalities have Fair Chance Hiring practices implemented for both public and private employees, it is more common for Fair Chance to apply to only public employees.

Fair Chance Hiring practices have been implemented in “36 states and over 150 cities and counties”<sup>1</sup> as of September 2020 and the federal “Fair Chance to Compete for Jobs Act of 2019” will go into effect in December 2021. This Act will “prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes.”<sup>2</sup>

### **Why Fair Chance Hiring Matters**

Fair Chance Hiring practices, also known as “Ban the Box” policies, work to address racial disparities in hiring practices, particularly those experienced by people of color. People of color are more likely to be convicted in a court of law which can result in increased barriers to hiring when compared to other racial demographics.<sup>3</sup> This increased rate of conviction can cause problems when individuals with criminal records attempt to find employment after they are released. For non-Hispanic whites, having a criminal record was found to reduce the likelihood of a job callback from 34% to 17% while for African Americans that number dropped from 14% to 5% for those with a criminal record.<sup>4</sup> In Alachua County, minorities, in particular Black people, are more likely to be involved with the criminal justice system. The arrest rate for Whites is 3.1 percent and for Asians 0.5 percent, while for Blacks the arrest rate is 12 percent. African-Americans are 3.9 times more likely to be arrested in Alachua County than Whites.<sup>5</sup> There is also a disproportional number of African-American men incarcerated across the state and the country. 2.4 percent of the total Black population in Alachua County are incarcerated, and they represent around 70.8 percent of the total inmate population in the county. Calculated as a disparity ratio, Blacks are 8.8 times more likely to be an inmate than non-Hispanic Whites.<sup>6</sup> While Ban the Box policies can be a good first step towards combating racial bias in hiring practices and improving the lives of formerly incarcerated individuals, they are not a one size fits all solution. There is some concern that the implementation of Fair Chance Hiring practices can result in employers reducing the number of people of color they offer jobs to since “many [employers might] assume that young, low-skilled black and Hispanic men are likely to have criminal records and, as a result, don’t call them in for interviews.”<sup>7</sup> To help combat this, Fair Chance Hiring practices could be implemented alongside other tools designed to assist formerly incarcerated individuals as they re-enter the workforce and training for employers on recognizing and overcoming unintentional biases in hiring.

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<sup>1</sup> <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

<sup>2</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/387/text?q=%7B%22search%22%3A%5B%22Fair+Chance+Act%22%5D%7D&r=1>

<sup>3</sup> <https://www.prisonpolicy.org/blog/2020/07/27/disparities/>

<sup>4</sup> [https://scholar.harvard.edu/files/pager/files/pager\\_ajs.pdf](https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf) (pg. 958)

<sup>5</sup> [https://www.bebr.ufl.edu/sites/default/files/Research%20Reports/ri1\\_baseline\\_report.pdf](https://www.bebr.ufl.edu/sites/default/files/Research%20Reports/ri1_baseline_report.pdf)

<sup>6</sup> <http://www.djj.state.fl.us/research/reports/reports-and-data/>

<sup>7</sup> <https://www.urban.org/debates/how-can-we-improve-ban-box-policies> (Jennifer Doleac)

### **Best Practices**

Fair Chance Hiring practices differ based on municipality but in general they all follow a similar set of guidelines. The National Employment Law Project has provided the following best practices and model policies for municipalities looking to implement Fair Chance Hiring:<sup>8</sup>

- ◇ Avoid stigmatizing language – using phrases such as “people with records” rather than “ex-felons” or “ex-offenders”
- ◇ Conduct background checks only when it is appropriate for the job in questions – not all jobs require background checks and foregoing one, unless it is legally required, can save employers money.
- ◇ Include equal opportunity language on applications rather than blanket exclusions – aimed at preventing the discouragement of people with records from applying to jobs.
- ◇ For jobs requiring background checks, consider the relevance of the offense to the position as well as the time elapsed since the offense was committed – see US Equal Employment Opportunity Commission’s 2012 Enforcement Guidance for best practices.<sup>9</sup>
- ◇ Remove inquiries into conviction from job applications – includes “voluntary disclosure” sections
- ◇ Remove self-reporting questions from job applications – reduces the chance for misinterpretation by applicants that could result in discrepancies between self-reported history and background checks.
- ◇ Inform applicants rejected due to criminal background of reasoning in writing – allows applicants time to dispute or verify the information present in a background check.
- ◇ Allow applicants time to submit evidence of rehabilitation or mitigation – can include letters of recommendation or certificates of completion issues by relevant programs.
- ◇ Expand Fair Chance Hiring policy to private employers – aimed at ensuring equal opportunity across all areas of employment.
- ◇ Combine data collection and effective enforcement – minimum recommendation is to have the infrastructure to process complaints and conduct through audits to ensure compliance when necessary.

The National Employment Law Project also provides model administrative memos and model resolutions and ordinances for municipalities to reference when crafting legislation surrounding Fair Chance Hiring.<sup>10</sup>

### **State of Florida Current Legislation and Practices**

As of 2021, Florida has no state-wide ordinance requiring the implementation of Fair Chance Hiring practices in its municipalities nor preempting the abilities of cities to enact Fair Chance Hiring Practices.<sup>11</sup> Currently, there are not any municipalities in the State of Florida which expand Fair

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<sup>8</sup> <https://www.nelp.org/publication/best-practices-model-fair-chance-policies/>

<sup>9</sup> <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>

<sup>10</sup> <https://www.nelp.org/publication/best-practices-model-fair-chance-policies/>

<sup>11</sup> <https://www.paycor.com/resource-center/articles/ban-the-box-state-by-state/>

Chance Hiring practices to private employers, however there are several cities which implement Fair Chance Hiring practices for public employees.<sup>12</sup>

**City of Gainesville Current Legislation and Practices**

At the November 19, 2015 City Commission Meeting, the Gainesville City Commission specifically approved removing the Criminal Conviction History Checkbox from the City’s Employment Application.<sup>13</sup>

Gainesville’s Human Resources Department uses the Background Screening Process last revised in 2018 when considering new employees. This Process allows for background checks to only be ordered after a “verbal employment offer is made, [and] the recommended candidate must complete the Pre-Employment Certification/Release form and return it to the Human Resources Department.”<sup>14</sup> For cases where an applicant is found to have a criminal background, the following steps are used:<sup>15</sup>

- a) When filling full-time or part-time regular or temporary vacancies, Human Resources will follow EEOC guidance which requires that each case be reviewed individually rather than having a set of guidelines in which individuals are disqualified from employment eligibility. Regardless of the level of offense, each case will be reviewed individually and consideration will be given to:
  - i. The nature of work to be performed and responsibilities
  - ii. The level of unreasonable risk the offense may pose
  - iii. The time that has passed since the offense or sentence.
- b) Additionally, if there appears to be a pattern of same or similar violations over a period of time, additional scrutiny may be given to the applicants record.
- c) If a decision not to hire or promote a candidate is made based on the results of a background check, there may be certain additional Fair Credit Reporting Act (FCRA) notification requirements. The Human Resources representative will be responsible for handling such FCRA requirements as necessary.

**PRELIMINARY RESEARCH AND FINDINGS**

**Alachua County**

<sup>12</sup> <https://www.hireimage.com/news/lakeland-florida-implements-ban-the-box/#:~:text=Other%20cities%20in%20Florida%20with,Jacksonville%2C%20Tallahassee%2C%20and%20Sarasota.>

<sup>13</sup> [http://gainesville.granicus.com/player/clip/2531?view\\_id=2&redirect=true](http://gainesville.granicus.com/player/clip/2531?view_id=2&redirect=true)

<sup>14</sup> E-1 HR Practice – Background Screening /Personal Communication, Oscar Calderon, Talent Acquisition Manager, City of Gainesville

<sup>15</sup> <sup>15</sup> E-1 HR Practice – Background /Personal Communication, Oscar Calderon, Talent Acquisition Manager, City of Gainesville

Alachua County does not have an official Fair Chance Hiring policy but, in practice, they use the following process for hiring public employees:

**Pre-hire background check**

1. Except as otherwise provided by state or federal law, the Board will not inquire about an applicant’s criminal history in its initial application for employment.
2. Except as otherwise provided by state or federal law, the Board will not seek an applicant’s authorization to conduct a background check unless and until the applicant is selected as the finalist for a position.
3. The Board will make the finalist a contingent offer of employment pending a successful background check as determined by the Human Resource Director.
4. If the HR Director determines the background check makes the finalist ineligible for the position, the finalist will be notified and given an opportunity to respond. The HR Director will consider any additional information provided, and will supply a written response to the finalist.
5. The selection and hiring decisions are final and are not subject to appeal.

**Limiting Provisions**

1. This procedure does not apply to the selection of any position that is otherwise subject to additional screening or requirements regarding criminal history as allowed by state or federal law.
2. Nothing in this procedure requires the Board to hire someone with a criminal record, nor limits the Board’s ability to select the most qualified applicant for a position.
3. Nothing in this procedure prohibits the Board from denying employment based on a criminal conviction directly related to the position sought.
4. Nothing in this procedure creates a cause of action for any applicant with regard to hiring or selection for employment.

Alachua County is in the process of updating their policies and will be including codifying their current Fair Chance Hiring process in that update.<sup>16</sup>

**Tampa, FL**

The City of Tampa, FL enacted a Fair Chance Hiring policy for city employees in January of 2013. Tampa’s Fair Chance Hiring policy is only applicable to those applying for positions offered by the city itself and has not been extended to require private business follow the same practices.

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<sup>16</sup> Personal Communication, Heather Akpan, Human Resources Director for Alachua County

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Ordinance 2013-3 set out the following practices regarding city employee criminal history screenings:

- a) Except as otherwise provided by state or federal law, the City of Tampa will not inquire about an applicant's criminal history on its initial application for employment.
- b) Except as otherwise provided by state or federal law, the City of Tampa will not seek an applicant's authorization to conduct a background check unless and until the applicant is selected as the finalist for a position.
- c) The City of Tampa will make the finalist a contingent offer of employment, pending a successful background check, as determined by the City of Tampa.
- d) If the City of Tampa determines the background check makes the finalist ineligible for the position, the finalist will be notified and given an opportunity to respond. The City of Tampa will consider any additional information provided in writing by the finalist within five business days of notification of ineligibility.
- e) The City of Tampa's selection and hiring decisions are final and are not subject to appeal.

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**Washington, DC**

The District of Columbia enacted a Fair Chance Hiring policy known as the “Fair Criminal Record Screening Amendment Act” (FCRSA) in 2014. The FCRSA is meant “To assist in the successful reintegration of previously incarcerated persons into the community by removing barriers to gainful employment”<sup>18</sup> and only applies to District government, companies and non-profit organizations, not Federal government employees.<sup>19</sup> It entered into force on December 17, 2014 and sets out the following requirements for employers:<sup>20</sup>

- 1. An employer may not make an inquiry about or require an applicant to disclose or reveal:
  - a. An arrest or a criminal accusation made against the applicant, which:
    - i. Is not then pending against the applicant; or did not result in a conviction.
  - b. An employer may not make an inquiry about or require an applicant to disclose or reveal a criminal conviction until after making a conditional offer of employment.
  - c. The prohibitions of this act shall not apply:
    - i. Where a federal or District law or regulation requires the consideration of an applicant’s criminal history for the purposes of employment.
    - ii. To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories.
    - iii. To any facility or employer that provides programs, services, or direct care to minors or vulnerable adults.

<sup>17</sup>[https://library.municode.com/fl/tampa/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH12HURI\\_ARTVICRHI\\_SCPR\\_S12-129BACH](https://library.municode.com/fl/tampa/codes/code_of_ordinances?nodeId=COOR_CH12HURI_ARTVICRHI_SCPR_S12-129BACH)

<sup>18</sup><https://www.nelp.org/wp-content/uploads/2015/03/Washington-DC-Ordinance-2014.pdf>

<sup>19</sup><https://ohr.dc.gov/page/returning-citizens-and-employment>

<sup>20</sup><https://www.nelp.org/wp-content/uploads/2015/03/Washington-DC-Ordinance-2014.pdf>

- d. Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant or take an adverse action against an applicant for a legitimate business reason.<sup>21</sup>

Applicants that feel they were illegally discriminated against due to their past records can file a complaint with the DC Office of Human Rights. Employers found to be in violation of the FCRSA are subject to fines based on the number of employees with half of the penalty awarded to the complainant. Employers with 11 to 30 employees are subject to fines of up to \$1,000, employers with between 31 and 99 employees are subject to fines up to \$2,500, and employers with 100 or more employees are subject to fines up to \$5,000.<sup>22</sup>

### **Austin, Texas**

The City of Austin, Texas has a Fair Chance Hiring policy that applies to both public and private employers which became effective on April 4, 2016. The policy is as follows:<sup>23</sup>

- A) An employer may not publish or cause to be published information about a job covered by this chapter that states or implies that an individual's criminal history automatically disqualifies the individual from consideration for the job.
- B) An employer may not solicit or otherwise inquire about the criminal history of an individual in an application for a job covered by this chapter.
- C) An employer may not solicit criminal history information about an individual or consider an individual's criminal history unless the employer has first made a conditional employment offer to the individual. This does not preclude an employer from explaining to applicants, in writing, the individualized assessment system that the employer uses to consider criminal history.
- D) An employer may not refuse to consider employing an individual in a job covered by this chapter because the individual did not provide criminal history information before the individual received a conditional employment offer.
- E) An employer may not take adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.
- F) An employer who takes adverse action against an individual based on the individual's criminal history must inform the individual in writing that the adverse action was based on the individual's criminal history.
- G) Notwithstanding any other part of this chapter, a staffing agency may solicit criminal history information about an individual and make an individualized assessment of an

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<sup>21</sup> The Act specifies what are 'legitimate business reasons' in further detail in the text. Specifications were left out of this report for length considerations.

<sup>22</sup> <https://www.nelp.org/wp-content/uploads/2015/03/Washington-DC-Ordinance-2014.pdf>

<sup>23</sup> [https://library.municode.com/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT4BUREPERE\\_CH4-15FACHHI\\_S4-15-4FACHHIPR](https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT4BUREPERE_CH4-15FACHHI_S4-15-4FACHHIPR)

individual's criminal history when the staffing agency has identified a job to which the individual will be employed or placed in a staffing pool.

Applicants that feel they have been denied employment based on their criminal background that is not relevant to the job they are applying for may file a complaint, either under their own name or anonymously, with the Equal Employment/Fair Housing Office.<sup>24</sup> Employers found in violation of Fair Chance Hiring practices “who fail to cease a violation of this chapter by the end of the 10<sup>th</sup> business day after the day the employer receives written notice of the violation from the City is liable to the City for a civil penalty of up to \$500 for that violation. For a first-time violation, the City may instead issue a warning if the employer attends an appropriate training session about compliance with this chapter.”<sup>25</sup>

### **State of Colorado**

In 2019, Colorado enacted the “Colorado Chance to Compete” Act with the aim of “provid[ing] people with criminal records with a more meaningful chance to compete for a job in the workforce and grow Colorado’s economy, while protecting employer’s ability to make whatever hiring decision the employer deems appropriate.”<sup>26</sup> As of September 1, 2019, all employers public and private must be in compliance with the Act with any remaining employers coming into compliance by September 1, 2021. The Act sets out the following requirements for employers:

#### **PROHIBITS**

- ◇ Stating in an advertisement or on an application for a position of employment that a person with a criminal history may not apply for the position,
- ◇ Inquiring into an applicant’s criminal history on an initial application for a position of employment.
- ◇ Requiring the disclosure of an applicant’s criminal history on an initial application for a position of employment.

#### **UNLESS**

- ◇ Federal, state, or local laws or regulations exist that prohibit employing a person with a specific criminal history to that position.
- ◇ The position is designated by the employer to participate in a federal, state, or local government program to encourage the employment of people with criminal histories.
- ◇ The employer is required by federal, state, or local law or regulation to conduct a criminal history record check for that position.

Any persons wishing to file a complaint against an employer for violation of the Colorado Chance to Compete Act can do so anonymously via the Colorado Department of Labor and Employment using a specific form. Employers found in violation of the Act are subject to a warning and order to comply

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<sup>24</sup> [https://library.municode.com/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT4BUREPERE\\_CH4-15FACHHI\\_S4-15-6AD](https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT4BUREPERE_CH4-15FACHHI_S4-15-6AD)

<sup>25</sup> [https://library.municode.com/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT4BUREPERE\\_CH4-15FACHHI\\_S4-15-8CIPE](https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT4BUREPERE_CH4-15FACHHI_S4-15-8CIPE)

<sup>26</sup> <https://cdle.colorado.gov/sites/cdle/files/CtC%20Fact%20Sheet%20Sept%202019.pdf>

upon first offense, an order to comply plus a fine of up to \$1,000 upon second offense, and an order to comply plus a fine of up to \$2,500 upon third and subsequent offenses.<sup>27</sup>

**PRELIMINARY COST/BENEFIT ANALYSIS**

**Costs**

- ◇ Private businesses might not be open to city mandates on hiring practices.
- ◇ Potential for distracting from other race related inequality issues in hiring practices.<sup>28</sup>

**Benefits**

- ◇ Removing employment barriers for people with records can boost local economies by reducing the need for reliance on public services and increasing contribution to local taxes and businesses by formerly unemployed workers.<sup>29</sup>
- ◇ Employing formerly incarcerated persons can increase public safety – employment plays a minor role in reducing rates of recidivism on its own, but a study published in 2010 found employment significantly increased the time between offenses allowing time for supplemental assistance to prevent re-offense.<sup>30</sup>
- ◇ Potential to increase the hiring pool for employers – allows employers to consider individuals that are well qualified for a position without the influence of their past record.

**PRELIMINARY AND ILLUSTRATIVE LIST OF POTENTIAL STAKEHOLDERS**

- ◇ City of Gainesville Human Resources Department
- ◇ Local Businesses
- ◇ Community Spring
- ◇ Alachua County
- ◇ Gainesville Chamber of Commerce
- ◇ University of Florida
- ◇ Santa Fe College

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Austin, Texas, Municipal Code §4-15-7

<sup>27</sup> <https://cdle.colorado.gov/sites/cdle/files/CtC%20Fact%20Sheet%20Sept%20202019.pdf>

<sup>28</sup> <https://www.urban.org/debates/how-can-we-improve-ban-box-policies>

<sup>29</sup> <https://www.nelp.org/publication/research-supports-fair-chance-policies/>

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