

Criminal Record Questions in the Era of “Ban the Box”

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Research Summary

This study examines three central questions about criminal record inquiries on job applications, which is a rapidly developing area in criminology and public policy. We find the following: (1) Among the 78% of employers who ask about records, specific application questions vary greatly regarding the severity and timing of offenses. (2) Applications for restaurant positions are least likely to inquire about criminal histories, whereas racially diverse workplaces and establishments in the most and least advantaged neighborhoods are more likely to ask. (3) The race gap in employer callbacks is reduced when applicants have the chance to signal not having a record by answering “no,” which is consistent with theories of statistical discrimination.

Policy Implications

We conclude with a call to develop standards and best practices regarding inquiries about juvenile offenses, low-level misdemeanor and traffic offenses, and the applicable time span. The need for such standards is made more apparent by the unevenness of criminal record questions across employees, establishments, and neighborhoods. We

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also suggest best practices for Ban the Box implementation to help combat potential statistical discrimination against African American men without records.

*Have you been convicted of a felony using your current name or any other name?
If you do not answer this question, your application will not be considered.* —Job application for laborer position at waste management company

Scholars have long linked employment with desistance from crime. For those with a criminal past, employment provides direct social controls (Laub and Sampson, 2003) while also fostering significant identity shifts and change in self-concept (Giordano, Cernkovich, and Rudolph, 2002; Maruna, 2001). Of course, people must first find jobs to experience such effects—and those with criminal records face formidable barriers in this process. On this front, the research has not been encouraging. Those with a criminal past clearly fare worse in the application stage of employment (Pager, 2003; Pager, Western, and Bonikowski, 2009; Uggen, Vuolo, Lageson, Ruhland, and Whitham, 2014). Across a host of programs designed to assist those with records in acquiring a job, most evaluations have found relatively low impact (Bushway and Apel, 2012) or impact limited to particular subgroups (Uggen, 2000; Uggen and Shannon, 2014; Zweig, Yahner, and Redcross, 2011).

The increasingly common practice of conducting criminal background checks (Bushway, Briggs, Taxman, Tanner, and Van Brakle, 2007; Raphael, 2006, 2010) quickly reveals an applicant's criminal past to potential employers who might screen them out of consideration (Stoll and Bushway, 2008). Although there is a considerable body of research on both background checks and the effects of signaling a record in the hiring decision, few studies have examined the entry portal to the application process, namely, the job application itself. In theory, law, and policy, it is important to distinguish between the initial application stage of the process and later stages at which criminal background checks are routinely conducted. Applications with criminal record questions might have a gatekeeping function distinct from formal background checks that occur after this initial employer review of applicants. Research on applications, therefore, is sorely needed, given the great public attention to criminal records questions, the success of the Ban the Box movement, and the widespread beliefs that the presence of the question affects employment opportunities for people with records (see, e.g., Henry and Jacobs, 2007; Smith, 2014).

This article draws on a unique random sample of job applications for open entry-level positions, which to our knowledge is the first of its kind, to answer the following research questions about criminal history information at the application stage:

1. What do employers ask regarding criminal records on applications?
2. What employer characteristics are associated with who asks, including the level of severity queried?

3. Do applicants without criminal records, particularly African Americans, fare better in job searches if they have the opportunity to answer “no” to a criminal record question (i.e., the box is not banned)?

First, we review the literature motivating these questions. Next, we describe the source of our job application database. We then address results for each of our research questions in turn. Finally, we view these findings through the policy lens of reentry and anti-discrimination efforts.

Background

Scope and Effects of Criminal Record Questions

We began this article with a quotation taken verbatim from an application for a laborer position. The stakes of this question are clear in the warning that accompanies it: “If you do not answer this question, your application will not be considered.” When applicants with felony records answer honestly, they are disadvantaged in ways that reduce individual employment chances and worsen disparities across groups (Pager, 2003, 2007). In particular, African American men face decreased employment prospects as a result of both racial discrimination and employer preferences against hiring those with records. Even if racial discrimination in hiring were otherwise eliminated, the overrepresentation of African Americans in criminal justice populations implies that this group would still face outsized discrimination on the basis of a criminal record.

The prevalence of criminal records has risen across *all* racial categories in an era of mass incarceration (Pager, 2007), mass probation (Phelps, 2013), and mass misdemeanor justice (Kohler-Hausmann, 2013). In particularly disadvantaged neighborhoods, contact with the criminal justice system has become a constant state of affairs (Clear and Frost, 2014). As a result, many individuals must answer “yes” to queries about criminal records. In fact, 7.5% of all adults—and one third of adult African American males—must now answer affirmatively to a felony conviction question (Uggen, Manza, and Thompson, 2006). Many employers, however, ask broader questions about lesser offenses, such that misdemeanors also dampen employment prospects. One study estimated that 28% of all U.S. adults have a criminal record of some level that would necessitate an affirmative answer to such questions (Rodriguez and Emsellem, 2011), with rates far higher among African American males (see, e.g., Alexander, 2010). If we consider arrest and nonconviction records among those 23 years old, 49% of African American males, 44% of Hispanic males, and 38% of White males would have to answer affirmatively to such a question (Brame, Turner, Paternoster, and Bushway, 2012). In short, these questions clearly affect a great number of jobseekers.

Although few have studied the prevalence and wording of specific criminal record questions on job applications, there is robust evidence of the effect of signaling that one possesses a criminal record. In Pager’s (2003) landmark field experiment, she observed

a large effect of a felony prison record on the odds of an employer callback for men. Subsequent studies confirmed that Whites with a felony record fared as well as African Americans and Latinos without such a record (Pager et al., 2009). A later audit of misdemeanor arrest records found more modest effects, although African Americans with a misdemeanor arrest again had lower callback rates than did other race/record groups (Uggen et al., 2014). Interviews with the audited employers in the latter study showed that they considered both offense severity and the certainty represented by conviction in employment decisions (Lageson, Vuolo, and Uggen, 2015). With such results in mind, we here consider the prevalence of workers with criminal records that—in the absence of Ban the Box—would be obligated to report at the application stage.

Employers ask about criminal records on applications for many reasons, which parallel the rationales they offer for conducting criminal background checks (Bushway, Briggs, et al., 2007; Raphael, 2010). These include employer fears of liability (Finlay, 2009), confusion over legal responsibility (U.S. Equal Employment Opportunity Commission [EEOC], 2012; Uggen et al., 2014), a desire to avoid high monitoring costs (Finlay, 2009), and simple distrust of those with criminal backgrounds (Bushway, Stoll, and Weiman, 2007). Surely new technologies have made such checks cheap and easy, but the criminal record question on applications provides an even cheaper and easier way to obtain such information (albeit via self-reports).

Context of Criminal Record Questions

Beyond these reasons for asking about criminal records, employers may place such questions on job applications based on the expected applicant pool. According to an audit of low-level offenses, all-White job sites are less likely to call back African American applicants with records, whereas those with a more diverse workforce were less likely to discriminate on the basis of the record (Uggen et al., 2014). All-White establishments that wish to discriminate on the basis of race may use criminal records questions as a “race-neutral” screen for non-White applicants. Conversely, those who hire workers of color might be more likely to ask (particularly about felonies) to distinguish among an applicant pool with greater odds of a criminal record, as well as ostensibly mitigate the perceived costs associated with hiring those with records.

A firm’s expected applicant pool may also be tied to its geographic location. In impoverished neighborhoods, employers might inquire about records as a tool to identify lower risk applicants among a pool with higher odds of a record. We might hypothesize that people in more advantaged neighborhoods will be especially likely to ask criminal record questions when they perceive encroachment by outsiders into the area. According to Suttles’s (1972) theory of the “defended neighborhood,” citizens use diverse mechanisms to defend neighborhood boundaries and exclude outsiders. Maintenance of such boundaries can take many forms, including hate crime (Grattet, 2009; Green, Strolovitch, and Wong, 1998) and housing discrimination (DeSena, 1994). In particular, advantaged, mostly White

neighborhoods have historically fought vigorously against the perceived “racial threat” of encroachment (DeFina and Hannon, 2009). We thus expect that establishments in such neighborhoods will be more likely to ask about records to defend against encroachment by other racial groups and those with criminal records.

Advent of “Ban the Box” Legislation

In response to the increasing use of criminal history questions and criminal background checks, a social movement has arisen to push for change in hiring practices. Support for “banning the box” on job applications grew from a sense that candidates with arrests or convictions rarely had the chance to be evaluated on their skills and experience as their criminal history screened them out at early stages of the hiring process (National Employment Law Project [NELP], 2016a). This is particularly the case for low-level records as the geography of police patrol exacerbates race and class inequalities in the prevalence and likely impact of such records. In the early 2000s, organizers in San Francisco and Boston began lobbying to remove criminal history questions from employment applications; in only a decade, at least 23 states and more than 100 cities or counties have adopted this policy. As of this writing, an estimated 185 million people in the United States (or 57% of the 2016 population) live in a jurisdiction with some sort of Ban the Box law (NELP, 2016a).

These laws vary in scope and impact across states and municipalities, but most call for the removal of any criminal record question on applications for public and/or private employers. Many also include fair hiring practice provisions regarding applicants with records, especially after the strong guidance document issued by the U.S. Equal Employment Opportunity Commission in 2012 (NELP, 2016a; U.S. EEOC, 2012). For instance, the National Employment Law Project recommends employers remove stigmatizing language (such as ex-felon) from all application materials, to consider the relevance of background checks given the particular duties of the position, to avoid blanket exclusions (i.e., “you must pass a background check” on an application), and to delay background checks until a conditional offer of employment is made (NELP, 2015).

Although Ban the Box initiatives could help “level the playing field” for jobseekers, theories of statistical discrimination suggest that they could also have negative consequences (Bushway, 2004; Holzer, Raphael, and Stoll, 2004; Solinas-Saunders, Stacer, and Guy, 2015). Statistical discrimination refers to the idea that employers use characteristics such as race or gender to draw “quick and dirty” assumptions about group differences in productivity and other attributes, particularly when they lack detailed information about applicants (Arrow, 1973; Bielby and Baron, 1986; Braddock and McPartland, 1987; Moss and Tilly, 1996; Phelps, 1972; Tomaskovic-Devey and Skaggs, 1999). When applications do not ask for criminal history information, employers might assume that African Americans (or, more specifically, young African American men) harbor a record as a result of their statistical overrepresentation in the criminal justice system. Such employers

might therefore exclude these applicants based on prevailing stereotypes about the average productivity of persons with a criminal background.¹

By attributing racial differences in productivity to the higher statistical likelihood of a criminal record among African Americans, employers rapidly categorize workers based on their group membership, giving less attention to personal qualifications (Pager and Shepherd, 2008). In such a scenario, African Americans (and, particularly, young African American men) *without* criminal records might fare better when employers inquire directly about their criminal histories than when such questions are not asked. One study of employers in four major cities found that firms that checked criminal backgrounds were 8 percentage points more likely to have made an African American applicant their most recent hire than were firms that did not conduct background checks (Holzer et al., 2004). Although supportive of statistical discrimination, such results cannot speak to the criminal record question on job applications, which are central to the Ban the Box movement. Several recent studies are now documenting similar effects (Agan and Starr, 2016; Doleac and Hansen, 2016), although questions remain regarding how to interpret these findings and incorporate them into policy discussion (NELP, 2016b). Thus, we will here consider how variability in questions asked on job applications affects employers' propensity to hire African American and White candidates. Simply put, we examine whether African Americans may benefit from the ability to say "no" and contradict racial stereotypes.

Such results are potentially important for policy, especially as the Ban the Box movement gains momentum. Such laws are enacted with the laudable goal of protecting applicants with records from discrimination and improving job prospects for those with criminal histories. Nevertheless, little is known about their effects on those *without* records. Before addressing this question, we first examine which employers ask criminal history questions and what kinds of questions they ask.

Data and Methods

Our main data source is a random sample of entry-level job applications that were collected as part of a study modeled after Pager's (2003) Milwaukee audit. In this audit, same-race pairs were sent to 605 randomly selected establishments in the Twin Cities metropolitan area, with one applicant reporting no criminal history and the other reporting a low-level misdemeanor offense (for a detailed discussion of the audit design and method, see Uggen et al., 2014). For the experimental audit portion of the study, young male "testers" applied for entry-level jobs using fictitious identities. All entry-level advertisements from five local print sources and one online source (Craigslist) were selected, so long as they required

1. In most audit studies, applicants signal their record verbally or through correspondence (e.g., submitting a resume) to ensure that the criminal record treatment condition is tested among all employers in the sample (see Pager, 2003; Uggen et al., 2014). Still, some employers may not ask a record question at all, and prior audit studies cannot speak to situations in which a criminal record question is neither asked nor answered.

no special skills or licenses, instructed applicants to apply in-person, and were located within the surrounding seven-county metropolitan area. The eight testers were grouped into pairs by race (with two pairs for each race), selected on the basis of shared physical and personal characteristics. Each week from August 2007 to June 2008, one tester in each pair was assigned to the treatment condition: a single misdemeanor disorderly conduct offense. Over the course of eight months, each pair submitted close to 300 applications at 150 job sites, with each tester assigned to the treatment condition for half of the audits. The primary dependent variable was an employer “callback,” measured by a job offer or an invitation for a second interview (whether in-person or through e-mail or voicemail).

Importantly for this study, testers were instructed to request an extra application to give to a friend. This procedure served a quality control function (documenting that the testers actually went to the site), while also providing critical information about how employers ask about criminal records at the application stage. Thus, the dataset constitutes a random selection of open entry-level job applications within a large metropolitan labor market. For 69% of the sampled employers, the testers either successfully obtained an application or established that the site only accepted resumes (in which case, there was no physical application and hence no application criminal record question). This 69% figure can thus be considered the effective response rate for the analysis presented. Data are missing for firms that used computerized on-site applications, refused to allow paper applications to leave the site, or when both testers could not obtain the application. Although we recognize this as a possible source of selection, the distributions of missing and nonmissing are similar on many key employer characteristics to which we have access and no such differences were statistically significant, as shown in Appendix A.

In the models predicting who asks criminal record questions, we use four sets of explanatory variables. First, we consider job type, which includes the categories of restaurant (40%), retail (21%), warehouse or labor (19%), hotel (8%), office (5%), and a heterogeneous “other” category (e.g., health care, driver, and security; 7%). Second, we include an indicator of whether the advertisement was from an online source (31%). Third, immediately after each test was conducted, the testers reported the racial makeup of the employees at each job site. Our models include a dummy variable indicating whether any workers of color were noted (41%).

Finally, we collected suburb and neighborhood (for jobs in Minneapolis or St. Paul) information for each of the 95 geographic units represented by the jobsites in the dataset (Minnesota Department of Public Safety, 2008; Minnesota Office of the Secretary of State, 2013; Minneapolis Police Department, 2007–2008; St. Paul Police Department, 2008; U.S. Census Bureau, 2013; Wilder Research Foundation, 2013). Given the high correlation among geographic measures, we used factor analysis to construct a neighborhood disadvantage scale. The scale includes the percentage of African Americans, the percentage below the poverty line, the Index I crime rate, the percentage owning a home, the median household income, the percentage of adults working, and location within Minneapolis or

St. Paul. A single factor explained 81% of the variance in these measures (see Appendix B for factor loadings). To test our three research questions, we used binary and multinomial logistic regression and descriptive statistics. We discuss the details of each analysis in turn in the Results section that follows.

Results

What is asked regarding criminal records on applications?

Employers ask about criminal records in a great diversity of ways, as shown in Table 1. Approximately 22% did not include a criminal record question on their application (17%) or did not use applications (i.e., by only requesting a resume; 5%). Among the 78% of employers that did include a criminal record question, the question wording and content varied greatly, as did the offense severity level. Approximately 27% of employers asked about felony convictions only, whereas 51% asked about lesser offenses. Within the categories of felony only and lesser offense in Table 1, we organized questions from the most to least inclusive. For felonies, the questions were straightforward, with 16% of all applications simply asking, "Have you been convicted of a felony?" An additional 11% of applications included a time limit on how recently the felony occurred, ranging from 2 to 10 years.

For lesser offenses, there is even greater variety in the criminal record question. Two applications (0.4%) were inclusive beyond a conviction and did not include a time limit, with one querying any arrest or conviction ("Have you been arrested or convicted of a crime in the United States of America or any other country?") and one querying criminal charges and convictions ("Have you been convicted or charged of a crime?"). A full 19% of all applications used the broadly inclusive wording, "Have you been convicted of a crime?" People convicted of any crime at any severity level at any time would be required to answer "yes" to this question. Whether those with juvenile offenses should answer "no" is unclear, although an additional three applications (0.7%) specified adult convictions only. Another 9% of applications similarly inquired about convictions for any crime at any time, but they explicitly excluded traffic offenses. As is the case with the felony-only questions, we observed great variation in the period inquired about, ranging from 5 to 15 years (5% of applications). The next set of common questions asked about some specific combination of felony, gross misdemeanor, or misdemeanor, together constituting approximately 9% of applications.

Finally, there were many unique or unusual questions, several of which obligate greater numbers of applicants to answer "yes." Two applications added the phrase, "or for which a jail sentence could have been imposed," to the conviction for any crime question, with another adding to a felony conviction the phrase, "or spent time in jail." In addition, 2% of applications included, "or have any charges pending against you." Fourteen applications (3%) queried a felony conviction and some other specific crime. Three employers also specifically asked about traffic violations only, each at job sites where driving was a potential requirement. One question enumerated a disparate set of 11 offenses: "Have you ever been convicted

T A B L E 1

Application Criminal Record Questions (n = 416)

Category	Specific Question Wording	N (%)
None		93 (22.4%)
Felony only		112 (26.9%)
	Have you been convicted of a felony?	67 (16.1%)
	Have you been convicted of a felony in the last 10 years?	10 (2.4%)
	Have you been convicted of a felony in the last 7 years?	18 (4.3%)
	Have you been convicted of a felony in the last 5 years?	16 (3.8%)
	Have you been convicted of a felony in the past 24 months?	1 (0.2%)
		211 (50.7%)
Lesser offense		1 (0.2%)
	Have you been arrested or convicted of a crime in the United States of America or any other country?	1 (0.2%)
	Have you been convicted or charged of a crime?	79 (19.0%)
	Have you been convicted of a crime?	3 (0.7%)
	Have you been convicted as an adult of a crime?	36 (8.7%)
	Have you been convicted of a crime, excluding [minor] traffic violations?	1 (0.2%)
	Have you been convicted of a crime, other than an infraction?	1 (0.2%)
	Have you been convicted of a crime, excluding summary offenses?	1 (0.2%)
	Have you been convicted of a crime in the last 15 years, excluding traffic violations?	1 (0.2%)
	Have you been convicted of a crime in the last 10 years?	3 (0.7%)
	Have you been convicted of a crime in the last 10 years, excluding minor traffic violations?	1 (0.2%)
	Have you been convicted of a crime in the last 7 years?	11 (2.6%)
	Have you been convicted of a crime in the last 7 years, excluding minor traffic violations?	2 (0.5%)

(Continued)

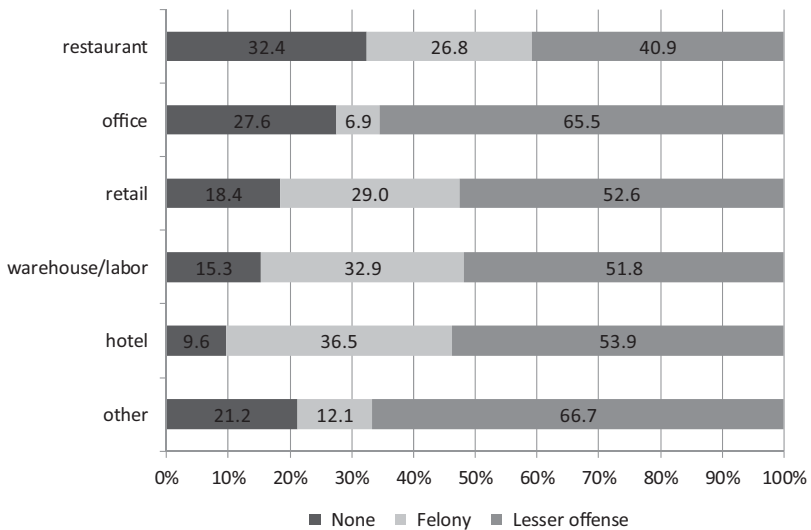
T A B L E 1

Continued

Category	Specific Question Wording	N (%)
	Have you been convicted of a crime in the last 5 years?	1 (0.2%)
	Have you been convicted of a crime in the last 5 years, excluding minor traffic violations?	1 (0.2%)
	Do you have a criminal record? Have you been convicted of a misdemeanor or felony?	1 (0.2%)
	Have you ever been convicted or charged with a misdemeanor or felony?	1 (0.2%)
	Have you been convicted of a felony or misdemeanor?	13 (3.1%)
	Have you been convicted of a felony or misdemeanor, excluding [minor] traffic violations?	3 (0.7%)
	Have you been convicted of a felony or misdemeanor in the last 5 years?	9 (2.2%)
	Have you been convicted of a misdemeanor, gross misdemeanor, or felony?	2 (0.5%)
	Have you been convicted of a gross misdemeanor or felony?	10 (2.4%)
	Have you been convicted of a crime for which you served a jail sentence or for which a jail sentence could have been imposed?	1 (0.2%)
	Have you been convicted of a crime for which you served a jail sentence or for which a jail sentence could have been imposed in the past 5 years?	1 (0.2%)
	Have you ever been convicted of a felony or spent time in jail?	1 (0.2%)
	Have you been convicted of a felony or [specific other crime or misdemeanor or misdemeanor timeframe]?	14 (3.4%)
	Have you been convicted of a crime [felony or misdemeanor] or have any pending charges against you?	8 (1.9%)
	Have you ever been convicted of offenses such as homicide, crimes against the person, crimes of compulsion, sex crimes, incest, theft, and burglary, arson, obscene phone calls, assault, possession or use of narcotics?	1 (0.2%)
	Have you ever been arrested or charged with a crime involving a child or been asked to resign or been de-certified for a sexual crime?	1 (0.2%)
	Have you been convicted of a traffic violation [various wordings]?	3 (0.7%)

Notes. Minor variations in wording were observed within grouped questions, but they were grouped together when the meaning of the question was the same. Of 605 randomly selected employers, valid data (either a physically collected application or an employer who did not use applications) were obtained from 416 employers for a response rate of 68.8%.

FIGURE 1

Criminal Record Application Question by Position Type

of offenses such as homicide, crimes against the person, crimes of compulsion, sex crimes, incest, theft, and burglary, arson, obscene phone calls, assault, possession or use of narcotics?”

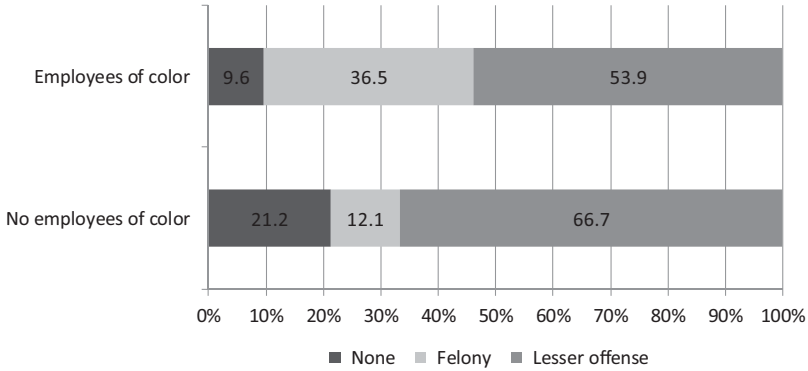
As our data were collected prior to Ban the Box legislation, we expected to see criminal record questions on most job applications. What surprised us, however, is the enormous variability in how the criminal record question was posed. The distinction between “any arrest or conviction” and being “convicted of a felony in the past 24 months” makes a critical difference for applicants, particularly young men of color. The inclusion of arrest information is especially consequential for communities of color: When these applications were collected, the annual arrest rate in Minnesota was approximately 227 per 1,000 for African Americans, relative to 32 per 1,000 for Whites.

Who asks criminal record questions?

We next consider the predictors of asking these criminal record questions, examining two outcomes: (1) a yes/no dichotomy for asking a criminal record question and (2) a three-category outcome for not asking any criminal record question, asking about felonies only, and asking about any lesser offenses (such as misdemeanors or arrests). Figure 1 shows the distribution of criminal records by industry. Restaurants are the least likely to ask a criminal record question on applications (about 68% asked), and comparatively few restaurants inquire about offenses less than a felony (41%). On the other hand, hotels are most likely to ask some kind of criminal history question (90%). Office positions tend to inquire about lesser

FIGURE 2

Criminal Record Application Question by Whether Tester Observed Employees of Color



offenses (66%), but they rarely ask a felony-only question (7%). The percentage querying a lesser offense is similar for retail, warehouse/labor, and hotel positions (52% to 54%).

Figure 2 shows the breakdown by the presence of employees of color. Approximately 90% of the more diverse establishments (that is, where our testers observed at least one worker of color) asked a criminal record question of any type. In contrast, only 79% of the all-White workplaces asked a criminal record question. When more diverse establishments do inquire, however, only 54% inquired about lesser offenses, relative to about two thirds of the all-White establishments.

We used these characteristics, along with the type of advertisement and a neighborhood disadvantage scale, in logistic regressions predicting our two outcomes. The results in Table 2 generally confirm the bivariate relationships described earlier. In Model 1, predicting any criminal record question, more diverse workplaces were 2.1 times as likely to ask ($e^{0.748} = 2.11, p < .01$). For position type, retail ($p < .05$), warehouse/labor ($p < .01$), and hotel ($p < .01$) positions were 2.3, 2.7, and 3.6 times as likely to inquire as restaurants, respectively.

Because the neighborhood disadvantage scale had a more complex relationship with the probability of asking a criminal record question, we estimated models with both polynomials and splines.² This analysis revealed that establishments in both the most and the least disadvantaged neighborhoods are especially likely to ask a criminal record

2. For the polynomials, we began at a linear coefficient and progressed through several orders (up to 5). Aside from the first order, the polynomials visually demonstrated a linear decrease through 1 standard deviation (SD) and an increase from there through the maximum, such that we chose this point for the only knot. Model fit statistics confirm that this spline fit the data better than any polynomial did. Although the polynomials demonstrated the 1 SD knot visually and this spline fit the data best, we also considered several other knots for robustness, particularly within 0.5 units with 1 SD but also within

TABLE 2

Logistic Regressions of Probability of Asking a Criminal Record Question on Application ($n = 416$)

Variables	Model 1: Any question		Model 2, Equation 1: Felony vs. None		Model 2, Equation 2: Lesser offense vs. None	
	Coefficient	(SE)	Coefficient	(SE)	Coefficient	(SE)
Employees of Color Position Type (vs. Restaurant)	0.748**	(0.266)	0.799*	(0.321)	0.717**	(0.272)
Office work	0.180	(0.595)	-1.010	(0.960)	0.469	(0.576)
Retail	0.821*	(0.349)	0.817*	(0.396)	0.840*	(0.376)
Warehouse/labor	0.992**	(0.383)	1.192**	(0.404)	0.889*	(0.407)
Hotel	1.277**	(0.479)	1.373*	(0.586)	1.128**	(0.469)
Other	0.626	(0.528)	-0.114	(0.741)	0.863	(0.560)
Neighborhood Disadvantage Scale Spline						
(min = -1.70 SD, 1 SD)	-0.402*	(0.193)	-0.508*	(0.225)	-0.346#	(0.203)
(1 SD, max = 2.05 SD)	2.201*	(0.961)	2.581*	(1.228)	2.049#	(1.051)
Online Ad	-0.430#	(0.258)	0.124	(0.299)	-0.779**	(0.266)
Intercept	0.417#	(0.250)	-0.872**	(0.332)	0.092	(0.266)
Log-likelihood	-204.31		-400.42			
Model chi-squared	49.19*** (df = 9)		102.70*** (df = 18)			

Notes. Cluster corrected standard errors are used for the 95 neighborhoods/suburbs. Model 1 is fit with binary logistic regression; Model 2 is fit with multinomial logistic regression. For the latter, the felony versus lesser offense comparison is not shown (see discussion in text).

$p < .10$. * $p < .05$. ** $p < .01$. *** $p < .001$.

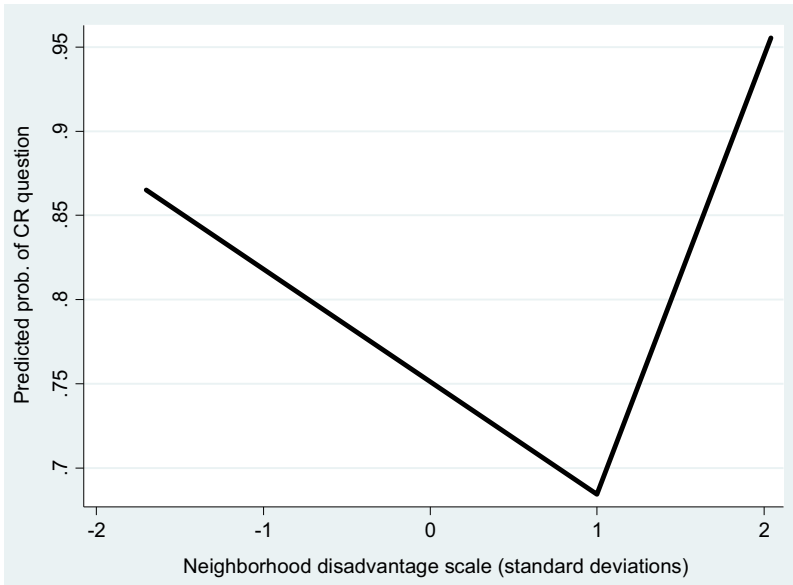
question. In Table 2, this is shown as a significant negative linear effect from the scale minimum of -1.70 SD to the knot at 1 SD ($p < .05$) and a significant positive linear relationship from 1 SD to the maximum of 2.05 ($p < .05$). Figure 3 displays this effect more intuitively in terms of predicted probabilities. At the minimum (that is, in the most advantaged areas), the predicted probability of asking any criminal record question is 0.87. From the minimum to 1 SD, the probability decreases to a low of 0.68 before increasing to a probability of 0.96 at the (most disadvantaged) maximum.

Model 2 of Table 2 shows the results for asking about felonies only and for asking about lesser offenses, each relative to not asking. The results for diverse employees, position type, and the neighborhood disadvantage scale parallel those of the binary model, such that the same factors are associated with asking more specific criminal record questions. For neighborhood disadvantage, we again show the predicted values in Figure 4. The same knot fit the data best, such that employers in the least and most disadvantaged neighborhoods

other parts of the distribution. We found no other spline to be statistically significant on both sides of the knot or to fit the data better.

FIGURE 3

Predicted Probability of Asking Criminal Record Question on Application by Neighborhood Disadvantage Scale



are the most likely to ask either type of question, although we note that the slopes for a lesser offense are only marginally significant. The only difference between the equations concerns online advertising: Employers that advertised online were less likely to ask about lesser offenses relative to not asking ($p < .01$).³

Relative to applications for restaurant jobs, applications for retail, warehouse and labor, and hotel positions were more likely to contain criminal record questions. More diverse establishments and those located in the most and least disadvantaged neighborhoods were similarly likely to ask about both felony-level and lesser criminal records. Next, we consider the effects of the presence of these questions on those without a criminal record.

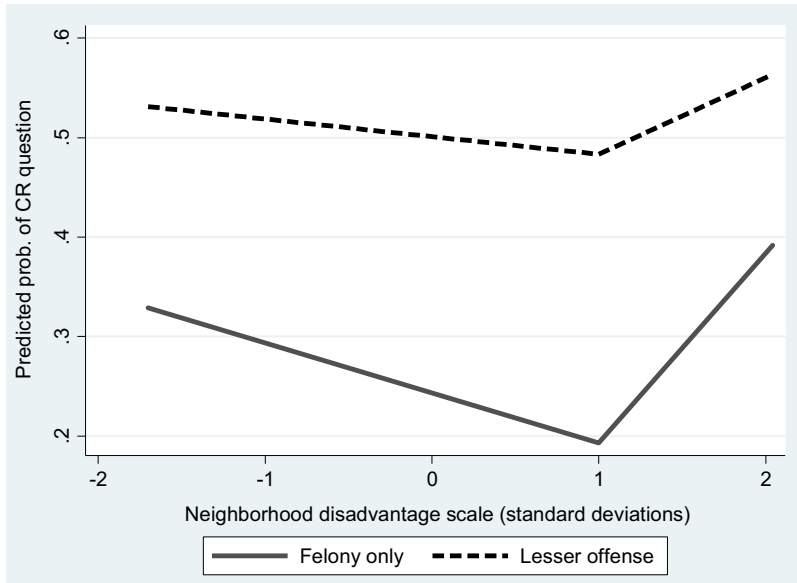
Do applicants with “clean” records fare better when there is a criminal record question?

Finally, we examine statistical discrimination in this context. According to this theory, employers make estimates about worker productivity on the basis of easily observed applicant characteristics, including race and sex (Becker, 1957). One concern with Ban

3. This effect was the only significant predictor in the equation considering the odds of asking a felony relative to a lesser offense (not shown in table). Those sites using online advertising were about 60% less likely to ask about a lesser offense relative to a felony ($[1 - e^{0.779-0.124}] \times 100\% = 59.5\%$, $p < .001$).

FIGURE 4

Predicted Probability of Asking Felony or Lesser Offense Criminal Record Question on Application by Neighborhood Disadvantage Scale



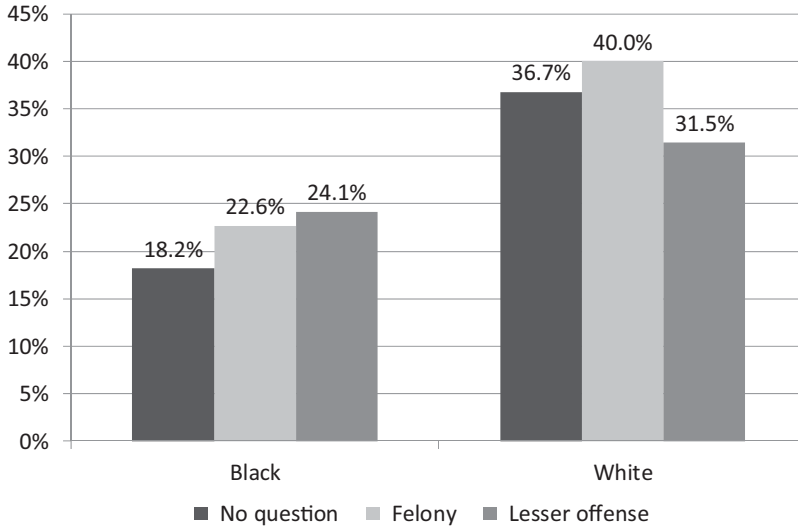
the Box policies is that in the absence of information to the contrary, employers might assume that African American men harbor a criminal record. Such an assumption would reduce their odds of securing employment because employers consider those with records, especially more severe records, to be poor workers (Lageson et al., 2015). If this is the case, the likelihood of employer statistical discrimination is directly tied to whether an application asks a criminal record question. If an African American male can answer “no” to a criminal record question that asks about even minor offenses (and, thus, mitigate any stereotypes the employer has assigned to him), this might increase the likelihood of an employer callback. In this scenario, we also expect lower employer interest in the *absence* of a criminal record question because employers might rely on discriminatory statistical calculations about African American applicants.

Our audit data address this hypothesis by comparing the callback rates for applicants with “clean” records by race and the type of criminal record question they confronted.⁴

4. The White and African American testers encountered the three question types with about equal frequency ($\chi^2 = 1.45$, $df = 2$, $p = .484$). For the White testers, they encountered no question, a felony question, and lesser offense question 23.9%, 28.8%, and 47.3% of the time, respectively. For the African American testers, these numbers were 21.0%, 25.8%, and 53.2%, respectively.

FIGURE 5

Callback Rate for Applicants Answering “No” to Criminal Record Question by Race and Type of Application Criminal Record Question (N = 416)



Notes. Within-race comparisons are nonsignificant. Between-race comparisons are significant for the “no question” and “felony” applications ($p < .05$). See text for more information.

Figure 5 shows this comparison for applicants who specifically answered “no” on applications with a criminal record question.⁵ For Whites, there is no clear pattern in the callback rate by question type. For African Americans, however, there is a nonsignificant but distinct gradient in the callback rate that is consistent with statistical discrimination. When there is no criminal record question, the callback rate for testers without records was approximately 18%. When the nonrecord tester answered “no” to a felony-level question, the callback rate was 23%. When the tester without a record answered “no” to an even lesser offense, the callback rate was 24%. Thus, as African American men were able to demonstrate on job applications that they did not have a criminal record of any type, they were called back at higher rates. It is important to note, however, that these within-race differences are not statistically significant, whether measured by a chi-square test of association ($\chi^2 = 0.604$, $df = 2$, $p = .739$) or the within-race pairwise comparison from a logistic regression with

5. Dropping the member of the pair who presented the record does not change the experimental nature of our analyses (see Cox, 1958; Heckman, 1998; Vuolo, Uggen, and Lageson, 2016). The design now conforms to a completely randomized design, where race of the tester is the experimental treatment. The criminal record application question is a covariate in this design, not an experimentally manipulated treatment.

an interaction term. Although we cannot conclude that those who do not ask a criminal record question are basing callback decisions on assumptions about criminal records among this group, the trend is at least supportive of this hypothesis.

Turning to the between-race differences, it is not simply that African Americans are called back at lower rates when there is no criminal record question, but that the ratio of White to African American callback rates is highest in the “no question” condition and closest to parity in the “lesser offense” condition. According to the pairwise comparisons from a logistic regression predicting callbacks, Whites are 2.6 times as likely to receive a callback among employers who do not ask about records compared with African Americans ($p < .05$). When employers ask about felonies only, Whites receive 2.3 times as many callbacks ($p < .05$). The odds ratio among employers who inquire about lesser offenses, however, is only 1.4 and nonsignificant.⁶

It is dangerous, if not irresponsible, to draw strong policy conclusions from nonsignificant findings. Given the rapid diffusion of Ban the Box and the critically important policy questions at stake, however, it seems equally irresponsible to ignore or “bury” the troubling pattern we observed. To place these findings in context, our results for African Americans are suggestive of statistical discrimination, although we caution that these within-race comparisons are nonsignificant. Whites are significantly more likely to receive callbacks relative to African Americans when employers either do not ask about records or ask about felonies only. When employers additionally ask about lesser offenses, however, the race differences in callback rates are not significant. This finding implies that for African American testers, the opportunity to show they have a completely clean record (including no misdemeanors or lesser offenses) may partially neutralize the effects of race. As we consider in the following section, such results may help inform Ban the Box proposals and related legislation around criminal histories and hiring practices.

Policy Discussion

This study draws on a unique sample of entry-level job applications to address several closely connected research questions: In the absence of Ban the Box, what criminal record questions are asked on job applications? What types of employers ask? And, what happens when employers do not ask? Our results motivate discussion of several important areas of policy, particularly regarding forms of Ban the Box legislation and the timing of and types of criminal record questions. We close with recommendations for how policies might strike a needed balance between preventing statistical discrimination against those with no records and promoting fair hiring practices for those with records.

6. We find similar results for the between- and within-race comparisons when the two question categories are collapsed, such that the comparison is between any question and no question. The between-race comparisons are nonsignificant, but Whites have a higher callback rate relative to African Americans when no question (odds ratio or OR = 2.6, $p < .05$) is asked compared with any question (OR = 1.7, $p < .05$).

Beginning with the first question, we found considerable diversity in the types of criminal record questions asked on applications. Although standardized questions about felonies were common, a sizeable proportion of employers asked no question at all (22%) and half queried a *lesser* offense in addition to a felony (51%). The latter questions about lesser offenses ranged across a diverse set of severity levels, such that a large percentage of the population would be required to answer affirmatively. Although rarer, some applications even asked about arrests, past and pending charges, or included vague phrasing (e.g., “for which a jail sentence could have been imposed”). A full 16% of felony questions and 39% of lesser offense questions included no time limit, so those who were ever convicted would face a permanent obligation to answer affirmatively when seeking positions with these employers. With less than 1% of applications specifying adult crimes only, applicants were left to their own discretion in deciding whether to divulge juvenile records.

Ban the Box policies are now reshaping the impact of such distinctions, although these policies vary widely in the many states and cities that have thus far adopted them, and such policies still only apply to a minority of employers (NELP, 2016a). Moreover, even under Ban the Box, many applicants must still reveal a considerable range of information before, during, and after they apply for positions. These differences imply within-applicant variability, such that a single applicant will likely be screened out of employment opportunities to varying degrees at different employers. Where Ban the Box is not yet the law, we encourage states and municipalities to address this seemingly unrelated assortment of questions.

Policy recommendations in this area must be treated as provisional until Ban the Box is more rigorously evaluated in multiple jurisdictions. Based on the current state of knowledge, our most basic recommendation is to continue to encourage employers to delay inquiries about criminal records until at least the interview or finalist stage, if not the stage at which a conditional offer of employment is extended (consistent with the NELP’s recommendations [2015] and President Obama’s 2015 call for an Executive Order for federal employers [White House, 2015]). This would effectively remove criminal records questions from most job applications but permit employers to make subsequent inquiries. We will return to the issue of statistical discrimination in the absence of application inquiries. For employers who continue to place such questions on job applications in states and municipalities where they are legally permitted to do so, we recommend the following.

First, we suggest more explicit distinctions between adult and juvenile records. Asking adults about adult records and juveniles about juvenile records may be appropriate, such that indiscretions in the teenage years do not unduly influence long-term employment opportunities. Second, given the great number of employers who do not specify a time span, we suggest placing a clear time limit on criminal records questions (“e.g., within the past 5 years”). This limit is particularly important given the diminishing odds of reoffense over time; employers and the public have little to gain in disqualifying applicants based on

older offenses (Kurlychek, Brame, and Bushway, 2006; Pager, 2006). Third, in light of race and sex differences in the prevalence and effect of criminal records (Kohler-Hausmann, 2013; Pager, 2007), we suggest removing inquiries about less serious offenses and offenses not directly tied to job duties. Fourth, in light of great geographic, race, and class disparities in arrest, we suggest that such inquiries be limited to “conviction histories” rather than to arrests or accusations of misconduct.

Because questions are not uniformly distributed across employer and job characteristics, applicants are discredited unevenly across employers. This is the topic of our second research question: We found that the same factors predicted whether employers queried a felony only or an additional lesser offense, such that the distinction is really between those employers that do not ask and those that ask about any criminal record question. The results for position type demonstrated that hiring managers for restaurant and office positions were much less likely to ask a criminal record question than were hiring managers for retail, warehouse or labor, and hotel positions. In light of past studies that showed that criminal background checks are driven by employer fears of liability (Finlay, 2009), misunderstandings of legal responsibility (Bushway, Stoll, et al., 2007; U.S. EEOC, 2012), monitoring cost concerns (Finlay, 2009), and distrust of criminals (Bushway, Briggs, et al., 2007), these results make sense. In these three position types, employees may have broad, unmonitored exposure to valuable merchandise or property. For example, in hotel positions, employees may have unsupervised access to guest rooms and are trusted to act responsibly. In restaurants and offices, the opportunity for theft is either limited, of limited value, or difficult in the presence of many co-workers. Employers are therefore less likely to screen for criminal records in these contexts, although we recognize that employers in some industries are legally obligated to check records (Stoll and Bushway, 2008). Those employers who advertise their job postings online were more likely to either not ask or only ask about a felony, relative to lesser offenses. Further research into this unexpected finding is clearly merited as the application and hiring process is rapidly moving online.

We also found that more diverse job sites were more likely to ask a criminal record question. This finding might seem counterintuitive, but employers that draw from a more diverse labor pool may be making finer distinctions in screening applicants, in the interest of reduced liability and monitoring costs (Finlay, 2009). Indeed, employers with a diverse workforce are the most likely to call back African American applicants with a misdemeanor arrest record (Uggen et al., 2014), such that they do not seem to be using the question to screen low-level records. Given racial disparities in criminal justice populations, employers hiring from a diverse applicant pool are especially likely to encounter such records. For similar reasons, we expected and found that employers in the most disadvantaged neighborhoods were very likely to ask a criminal record question.

We also found, however, that employers in the *most* advantaged neighborhoods were also more likely to ask a criminal record question, relative to those in the middle of the distribution. This finding is in line with expectations from theories of defended

neighborhoods (Suttles, 1972). To the degree that they identify as neighborhood residents, employers in advantaged, mostly White neighborhoods might use criminal record questions to identify outsiders and prevent their encroachment on the neighborhood. Given racial differences in the likelihood of criminal records, the question might also be used indirectly, either intentionally or unintentionally, as a gatekeeping mechanism for racial “others.” In terms of policy, the greater probability for advantaged neighborhoods is particularly troublesome as it indirectly leads to a potentially segregated workforce and a spatial restriction on where disadvantaged applicants are likely to find work.

In the absence of a Ban the Box law, we expect that many with records will simply never make it past the application stage as a result of a criminal record question, and that this will disproportionately affect African American males as a considerable percentage of such applicants would be exposed as possessing a criminal record during the application process. For example, based on demographic life tables, Uggen et al. (2006) estimated that 33.4% of African American adult males have a felony conviction, relative to 8.1% of non-African American males. From our applications data, 77.6% of employers queried at least a felony offense. These numbers imply that approximately 25.9% of all applications by African American males would reveal a felonious criminal record at the application stage on average ($0.334 \times 0.776 = 0.259$), and with such applicants facing discrimination in the hiring process. By contrast, only 6.3% of all applications from non-African American males would expose such a record at the application stage or about a fourth of the rate at which African American males are revealed.⁷ As many studies have linked work with desistance from crime (e.g., Giordano et al., 2002; Sampson and Laub, 1990; Uggen, 2000; Uggen and Shannon, 2014), these screening mechanisms exert both general and racialized effects on reentry, recidivism, and desistance (see, e.g., D’Alessio, Stolzenberg, and Flexon, 2014). In light of the high “stakes” of this information, the effects of asking criminal records questions must be carefully weighed against the possible effects of not asking.

When we asked how Ban the Box might affect hiring, we encountered a nonsignificant but worrisome pattern for African American testers who presented no criminal record. African Americans with “clean” criminal histories had higher callback rates when they could explicitly answer “no” to a criminal record question and had an even higher callback rate when the application inquired about lesser offenses. Whites, on the other hand, had no consistent pattern by question presence and type. Although the within-race differences for African Americans are small and nonsignificant, they are troublesome nonetheless, particularly in light of the large and significant between-race comparisons when employers do not ask about lesser offenses.

7. This result should be taken as an approximation as each value is likely estimated with error. In addition, the calculations assume those with records and of each race apply to entry-level positions at a rate equal to their estimated proportion in the population. In fact, after continued failure, those with records may simply drop out of the labor market (Apel and Sweeten, 2010).

In this regard, it is notable that establishments with a more diverse workforce were significantly more likely to ask criminal background questions than were those with an all-White workforce. Theories of statistical discrimination (Arrow, 1973; Becker, 1957; Solinas and Stacer, 2015) and prior studies of background checks (Bushway, 2004; Holzer et al., 2004; Holzer, Raphael, and Stoll, 2006) would predict such results. If employers assume that African Americans harbor a record unless proven otherwise, they could either ask directly about such records or, in the absence of this information, discriminate more readily against African American applicants (Agan and Starr, 2016; Doleac and Hansen, 2016).

Were our own results statistically significant and replicated in other settings, they could present challenges to some forms of Ban the Box legislation. Racial discrimination based on the assumption of a record might then override concerns about discrimination based on an actual divulged record. Policy must strike the proper balance so that those with no records are not penalized and that those with records will face no undue discrimination. Such a balance also requires recognition of the large proportion of African Americans who do possess criminal records, such that the small differences in the callback rates for so-called “clean” testers by question type might be less consequential in the interest of reducing racial discrimination overall.

Second, and perhaps more importantly, can Ban the Box policies effectively eliminate the weak pattern of statistical discrimination we observed? One answer may lay in hybrid Ban the Box laws, such as that announced in 2015 for federal employers and implemented in 2014 for private and public employers in Minnesota, the site of our audit (a provision considered “model state legislation” by the National Employment Law Project, 2015). In Minnesota and elsewhere, employers can no longer ask a criminal record question on applications but can indeed conduct a criminal background check after selecting those who will be offered interviews. As previous audits showed convincingly, the opportunity to make direct contact with hiring authorities is a strong and consistent predictor of employer callbacks (Pager, 2007; Uggen et al., 2014). Getting to the interview stage is thus no empty gesture, in light of the strong and tangible effects of “getting a foot in the door.” Moreover, to the extent that employers are assured they can learn of criminal improprieties at a later stage, they may give African American applicants, with or without records, a fair chance to interview. That is, if employers are confident they can get information at the back end of the process, they may be less likely to make racialized statistical discrimination assumptions on the front end. Although this recommendation is admittedly speculative, such a scenario may represent the best middle ground.

We are aware of several limitations of our study. First, even though it is the first of its kind (to our knowledge), the application database is from a single labor market and the distribution of criminal record questions may vary from place to place. The specific distribution of questions we observed in applications for less-skilled, entry-level positions might also differ in other labor markets, such as the managerial or professional sector. That said, the entry-level sector we examine is directly relevant to many jobseekers with records

and to the use of job applications more generally. Second, although we used employer characteristics that were at our disposal via the original audit data collection, other traits may also predict who is likely to ask a record question (e.g., the size of the workforce), such that we are cognizant of potential omitted variable bias. Third, we do not directly compare the presence and absence of Ban the Box, but we rely on a comparison of employers that do and do not ask criminal record questions during a period that preceded Ban the Box legislation. Our results therefore cannot speak to pre-to-post Ban the Box changes in labor markets or employer practices. Nevertheless, our results should encourage future research on this topic.

Even with these limitations, this article provides a first glimpse into the presence and implications of criminal record questions on job applications. Even though much has been written about criminal background checks and the eventual callback decisions of employers, this first stage of the application process has been largely neglected. We have shown how this crucial entry point can be consequential as it represents the first information employers see regarding applicants. Many employers penalize applicants for low-level offenses and/or offenses occurring in the distant past, the limits of which should be an important part of policy discussions. Indeed, we hope these results and recommendations are considered as both employer background checks and efforts to regulate them grow more pervasive.

Appendix A: Distribution of Missing and Nonmissing Applications by Job Characteristics

Variable	Nonmissing	Missing	Statistical Test
Position Type (%)			$\chi^2 = 4.69, df = 5, n.s.$
Restaurant	34%	40%	
Office	7%	5%	
Retail	18%	21%	
Warehouse/labor	20%	19%	
Hotel	13%	8%	
Other	8%	7%	
Employees of Color (%)			$\chi^2 = 0.25, df = 1, n.s.$
No	57%	59%	
Yes	43%	41%	
Located in Twin Cities (%)			$\chi^2 = 0.63, df = 1, n.s.$
Suburbs	67%	64%	
In Minneapolis or St. Paul	33%	36%	
Employer Callback (%)			$\chi^2 = 0.07, df = 1, n.s.$
No	71%	72%	
Yes	33%	36%	
Neighborhood Disadvantage Scale (mean, SD)	-0.22 (0.81)	-0.13 (0.78)	$t = -1.30, n.s.$
<i>N</i>	416	189	

Appendix B: Neighborhood Disadvantage Scale First Factor Loadings (N = 170)

Variable	Loading
Percentage African American (logged)	0.808
Percentage below poverty (logged)	0.931
Index I crime rate (logged)	0.696
Percentage owning home	-0.857
Median household income	-0.838
Percentage of adults working	-0.792
Located in Minneapolis or St. Paul	0.596
Proportion Variance Explained	0.812

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