

**2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**

**HB 1282**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1282  
1/17/2019  
30981

- Subcommittee  
 Conference Committee

Committee Clerk: Carmen Hart

### Explanation or reason for introduction of bill/resolution:

Relating to limitations on public employer consideration of criminal background

### Minutes:

Attachments 1, 2, 3, 4, 5, 6

**Chairman Kasper** opened the hearing on HB 1282.

**Rep. Schneider** appeared in support. Attachment 1 (:21-8:17) Attachments 2 and 3 are informational handouts.

**Rep. Johnston:** Could this potentially waste public treasure and time if you can't consider a criminal history or record up until the time of the interview?

**Rep. Schneider:** I think it is a pretty small tradeoff if you think of the cost to the state in time and treasure of re-incarcerating a person. It probably is exceeding \$45,000 a year.

**Rep. Johnston:** In Section 3, it states a public entity can notify an applicant that they might not qualify. With that premise, would they still have to consider them for the interview process before they consider their criminal history for the disqualification purposes?

**Rep. Schneider:** If they are not one of those agencies that are allowed by statute to consider background checks.

**Rep. Schauer:** Would this be for individuals with felonies specific on their record?

**Rep. Schneider:** Yes, they would have felonies, because they would have been incarcerated.

**Rep. Schauer:** If you don't tell somebody up front what is going on, could it actually be more of a negative by the time you get to the interview?

**Rep. Schneider:** I think it would be fairer if criminal background checks are required by a statute, and individuals be informed of that. What has happened is actually kind of the reverse of that. We are telling people by having that box checked, it compels those who have felonies

to say I am not wanted or welcomed and they are not going to consider me anyway so why go through the application process.

**Rep. Rohr:** This bill is for public employers only. Lately, many bills we have been hearing have criminal background check requirements. What percentage do you think we are talking about in the public sector that would fall into this bill?

**Rep. Schneider:** You are correct that in the last few sessions we have added a lot of requirements of background checks particularly where there are some youth groups who are institutionalized or vulnerable in other ways. Still there is a substantial number of unfilled jobs in our state that could be impacted positively by this.

**Rep. P. Anderson:** By checking the box, are we telling felons they can't be rehabilitated?

**Rep. Schneider:** I think that is a real and serious issue. It does drive people away that have been rejected before and who might have outstanding qualifications for that position. It tells them that their criminal convictions are being considered before their qualifications really have to shine at an interview process.

**Rep. Vetter:** Is this applicant wasting his time? Maybe this ban the box thing should be for employers that would possibly hire a felon. Is that a concern?

**Rep. Schneider:** It depends. Just because you have a criminal conviction doesn't mean a background check would eliminate you too. What we are trying to address here is any prejudice and unwelcomed insinuation that folks would not be considered for jobs when in fact they would be.

**Rep. P. Anderson:** Could you give us an example of a Class C felony which is the lowest felony.

**Rep. Schneider:** Generally, they would be the nonviolent, non-personal cases.

**Rep. P. Anderson:** Checking the box could be higher felonies.

**Rep. Schneider:** Many of the folks who do the hiring have a tendency to assume the worst.

**Rep. Hoverson:** Are you trying to give somebody a chance to let their qualifications be a convincing element to the employer?

**Rep. Schneider:** Correct.

**Rep. Rohr:** I am not sure we need Line 17. The labor commissioner may investigate a claim of any violation of this section. If the box is removed, can you expound on that?

**Rep. Schneider:** That might be instructive to people who are reading the law that somebody is going to be looking at it. From a legal standpoint, we could live without it.

**Rep. Laning:** Regarding Line 4, I had a friend who this would apply to. What good would the investigation do? There is no penalty here.

**Rep. Schneider:** In the case of your friend's firing, in California, Nebraska, or Minnesota, he might have had a chance to dispute that firing. In this bill it is only applying to public employers.

**Rep. Johnston:** When you check the box, do you have to list what the felony is for?

**Rep. Schneider:** No. Different jurisdictions may treat that differently. There isn't a requirement for uniform application, but in the applications that I saw there was not an explanation.

**Rep. Johnston:** It depends what the public entity is?

**Rep. Schneider:** Yes.

**Rep. Johnston:** I would think that would be the filter that they could use.

**Rep. B. Koppelman:** I work in the construction field and am sympathetic to this. Is this the right approach to what you are trying to do here? Would another approach be requiring the state employers to say check the box and requiring the applicant to explain? Would it not serve the same purpose?

**Rep. Schneider:** I appreciate that you go out of your way to hire felons, but a lot of times it is not even important that you know that. I would defer to the larger corporations that have paid serious attention to the studies that say it becomes a disqualifying factor. Target, Walmart, and Koch Industries has found that.

**Chairman Kasper:** The bill applies only to public employees at this time, not private.

**Rep. B. Koppelman:** Is it your goal that this be a first step to possibly requiring businesses to eliminate the box?

**Rep. Schneider:** A lot of states have expanded beyond where we are going, but I can't really speak for ND going further than the private sector. I am pretty sure we are not ready to do that at this point. Public employers could serve as good examples where we could see there are problems with this or that it works well.

**Rep. Louser:** Regarding Section 1, if we were to pass this, the employer notifies the applicant and selected for an interview. I am guessing it is going to be a phone call. At that point, they make the disclosure that the criminal record is going to be considered. Does the applicant do?

**Rep. Schneider:** Communication between the parties happens. It gives the person the opportunity to say what has happened in their lives and they have changed and would be a good employee. Besides being called ban the box, it also is called fair chance.

**Rep. Louser:** This is disclosed in a pre-interview?

**Rep. Schneider:** Not necessarily. This bill gives the person a chance to apply for a job without being disqualified and a chance for an interview just as anyone else who had the good qualifications to get in. After that, it doesn't dictate what the decisions are or what the processes are.

**Chairman Kasper:** Lines 7, 8, 9 states the employer cannot inquire until the applicant has been selected for an interview. Is their potential in this process where the employer asked about the criminal activity during an interview and made a decision to not hire that employee to create additional right of action by that employee to bring an action against the employer for discrimination?

**Rep. Schneider:** No. The action can be taken to eliminate that person any point after the interview. There can be an inquiry. There can be a background check. There doesn't need to be. Convictions and criminal records are not protected under the law. There would not be that liability.

**Rep. C. Johnson:** Would public schools fall under this?

**Rep. Schneider:** I don't think so, but that would be important to know.

**Chairman Kasper:** We will ask Seth, the law intern, to find in code the definition of a public employer. Is your goal to be just state employees?

**Rep. Schneider:** Public employers at the various levels, state, county, city.

**Chairman Kasper:** We probably should have a friendly amendment.

**Rep. Schneider:** That probably is a good idea.

**Rep. Rohr:** Can the job description requirements on the public job openings list a criminal background check as a requirement?

**Rep. Schneider:** It is not limited if you give the person an interview. You can still do a criminal background check.

**Rep. Rohr:** I am thinking about the embarrassment of the individual.

**Rep. Schneider:** I think a lot of us are thinking that any time you have an agency or entity that is required by statute to do a background check, that disqualifies people who have felonies, and it doesn't. It just requires you to do the background check.

**Rep. Karls:** We are working on a bill in judiciary called pass the trash, so that school boards cannot pass a teacher who has committed some kind of crime in their district, giving them a going recommendation, and hope that they get a job in another district.

**Rep. Schneider:** That has been an interesting bill throughout the country. Many of the cosponsors on this bill happen to be on the judiciary committee.

**Rep. Louser:** Section I reads the public employer may not inquire until the applicant has been selected for an interview. The applicant is going to have to be notified they have been selected for an interview. If the employer has already made the determination that a criminal conviction is a non-qualifier, why would we wait until the interview to tell the applicant that is the case? I am wondering if there is a way to say if they have been selected, that is the point where they are notified?

**Rep. Schneider:** Again, the intent of the bill is to give them the opportunity to show where it should not be an automatic disqualifier.

**Rep. Louser:** For all of those employers where it is going to be an automatic disqualifier, are they going to have to come before this committee and tell us that is going to be a condition of employment?

**Chairman Kasper:** The goal is to provide the opportunity for that employee to have an interview and show the employer what they are really like.

**Rep. Laning:** Normally, a job opening is accompanied with a job description. Do you see any problem with that job description stating whether a felony background will eliminate you from that consideration?

**Rep. Schneider:** There is a provision in there where there is exemption for certain entities. There are private employers who just say they are not going to deal with anybody that has a felony background. That is why the ban the box measures were created in various states, so we think a little more broadly. If the person is well qualified enough to get an interview, listen.

**Chairman Kasper:** Lines 14-16 states your concern would be available to be given to that employee.

**Sister Kathleen Atkinson, Director of Ministry on the Margins,** appeared in support. Attachment 4. (43:46-49:04)

**Rep. Hoverson:** Are you aware of any percentages at how many people have a prior record, get jobs, do okay, and do not repeat?

**Sister Kathleen:** I can speak about the people I know and work with. We have worked with 170 people in the last 5 years. We have 3 back in incarceration after 5 years.

**Rep. Hoverson:** For 165 of them, was having a job a part?

**Sister Kathleen:** Having a job is huge. What it does is breaks that cycle. All of us need to have food, clothing, and shelter. I do believe most people prefer to get it legally and positively as a contributing member of society and working and earning it. If that is not possible, then

the other alternatives either end up being a return to the criminal logical behavior or a reliance on a social system.

**Travis Engelhardt, Director of Human Resources for the Department of Corrections and Rehabilitation,** appeared in support. Attachment 5. (52:32-57:24)

**Rep. Louser:** I am sensing maybe your procedures are the model for what we should do. At what point during the process with these three examples does the applicant learn they would be disqualified based on a prior conviction? Is it during an interview or application? When are they told they would be disqualified?

**Mr. Engelhardt:** Right now every one of our job postings has the box question. If this were to pass, we would remove that question for our jobs that do not have the ban of employment. For example, every time we hire a parole officer, we would still have that question on there.

**Chairman Kasper:** When would you notify that person where you did remove that box?

**Mr. Engelhardt:** We wouldn't kick them out of the pool because of the criminal background history. If they were not to get the job, it would be the traditional methods of after an interview or if they weren't selected for an interview. For our positions that don't have the absolute bans, obviously by statute we have to run those criminal backgrounds and we are still going to. At that point it is more of an informational piece.

**Rep. B. Koppelman:** Why couldn't we remove DOCR out of Section 2 given what Section 3 of the bill says?

**Mr. Engelhardt:** It would create slight inefficiencies for us. If we had a position where we knew certain criminal convictions or offenses would bar them from employment, not knowing that right up front, we could end up wasting time later on by doing an interview, that whole process. It certainly is not a majority of our positions.

**Rep. B. Koppelman:** Should No. 2 be more broad?

**Mr. Engelhart:** I would say the USCR(?) has no preference either way.

**Rep. Louser:** Does the job posting show there is a restriction before the applicant applies?

**Mr. Engelhart:** We put a general statement on our job posting that states must pass a criminal background check. What you are talking about still requires us, where a criminal offense does ban them from employment for that job, we do have to contact them that they are not eligible for employment with the DOCR.

**Rep. Louser:** That is upon receiving the application?

**Mr. Engelhart:** The way we do it at the DOCR wouldn't be immediate. The job posting would close on a certain date. We would then score and review all the applications to make sure they meet minimum qualifications. We do that assessment, score, and rank them out. If we had ten applicants and wanted to interview the top five and applicant No. 10 had a

criminal conviction that would bar them from employment, we would never contact them and tell them they weren't able to work for the DOCR because of the criminal conviction. We would contact No. 6, 7, 8, 9 and 10 and tell them they haven't been selected for an interview, but please try again later.

Chairman Kasper closed the hearing.

**Chairman Kasper:** The law intern found the definition of public employee, but not public employer. Attachment 6. I asked him to contact the legislative council.

**Rep. Schneider:** Would you include public schools?

**Chairman Kasper:** Legislative council has not found a specific definition of public employer so we need to define in the bill who we want this to apply to.

A subcommittee was formed consisting of Rep. Schneider, Rep. Laning, and Rep. P. Anderson.

**Chairman Kasper:** Also consider what are the ramifications of removing Line 17.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1282  
1/17/2019  
31001

- Subcommittee  
 Conference Committee

Committee Clerk: Carmen Hart

### Explanation or reason for introduction of bill/resolution:

Relating to limitations on public employer consideration of criminal background

### Minutes:

Attachment 1

Subcommittee Rep. Schneider, Rep. Laning, and Rep. P. Anderson met on HB 1282. We have before us some suggested alternatives from legislative council. Attachment 1 was handed out.

**Rep. Laning:** I am interested in adding the public employer definition to include agency or instrumentality of state, county, or city government. I don't think we need the line about the labor commissioner. He already has the authority to investigate violations of code.

**Rep. Laning:** I would move that we amend the bill to add the definition of public employer to include instrumentality of state, county, or city government and also delete Line 4.

**Rep. P. Anderson** seconded the motion.

**Rep. Schneider:** I will have legislative council put this in proper format.

**Rep. Laning:** Do you want to add park districts?

**Rep. Schneider:** I do. I am fine with leaving out the school districts.

**Voice vote.** Motion carries.

The meeting was adjourned.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1282  
1/18/2019  
31047

- Subcommittee  
 Conference Committee

Committee Clerk: Carmen Hart

### Explanation or reason for introduction of bill/resolution:

Relating to limitations on public employer consideration of criminal background

### Minutes:

Attachment 1

**Rep. Schneider:** She went over the proposed amendment. Attachment 1. I would move passage of that amendment.

**Rep. Rohr seconded the motion.**

**Rep. Steiner:** When it says that the public employer definition includes an agency of the state, in the bill it says a public employer may not inquire. As we heard, there are a couple of jobs in the Department of Corrections where there is a bar against them. Is there a conflict with that language?

**Rep. Schneider:** The Department of Corrections is exempted out, so they are not affected. Other agencies that might have some limitations on that job can go into the job description.

**Voice vote. Motion carries.**

**Rep. Laning made a motion for a DO PASS AS AMENDED.**

**Rep. Steiner seconded the motion.**

**Rep. B. Koppelman:** Maybe we should simply say that the criminal background cannot disqualify an interview opportunity of an applicant that may otherwise be qualified for an advertised position.

**Chairman Kasper:** You are right about hope of a job applicant. The way the system works now, some employees have no hope or opportunity. The intent of the bill is to provide that opportunity for that employee. I think this is a good first step, and we are restricting it to the public employers that are outlined. The private sector can still do what they are doing.

**Rep. P. Anderson:** Christopher Dodson's group as well as the Americans for Prosperity are fully behind this bill.

**Rep. Hoverson:** I am for this bill in the sense that it is being public. I think we should make decisions for public and government employees. If there was a bill that came up trying to do this to the private industry, I would be strongly opposed.

**Rep. Karls:** While I can sympathize with all your opinions, I still go back to my experience on a state licensing board where we had the box. There were many situations where it was not a major felony. Once they explained it and showed their documentation, etc., we would issue a reciprocal license. I still feel the employer should have information. There is a need to know. Even though we are starting in the public sector, what happens next it will be in the private sector. I have a hard time supporting this bill.

**Chairman Kasper:** The employer will find out after the interview is granted. Then they can do the background check. It might take a little longer to find out.

**Rep. P. Anderson:** If Target and Walmart can do this, then I think the state of North Dakota can do this.

**Chairman Kasper:** We might disagree about that.

**Rep. Rohr:** Now there is such a need for workforce in North Dakota. When we had many job applications before, we would use that box to narrow down our applicants. I think this is a good bill.

**Rep. B. Koppelman:** What is the ultimate intent of this bill? Is this intended to be a first step to show the private sector that it could work so that we can force them to do it, or is it just simply to set an example and never intend to force the private sector to do this?

**Chairman Kasper:** We have to take the bill on the merits of the bill.

**Rep. B. Koppelman:** I am supportive of this effort, but I would be very opposed in any application in the private sector, because I think the private sector is starting to do this on their own because of the lack of people to fill positions.

**Chairman Kasper:** The bill does not impact the private sector.

**Rep. Schneider:** There are no plans to do that for the private sector.

**A roll call vote was taken. 11-2, 1 absent.**

**Rep. Laning will carry the bill.**

19.0749.01001  
Title.02000

Prepared by the Legislative Council staff for  
Representative Schneider  
January 17, 2019

DR 1/18/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1282

Page 1, line 17, replace "The labor commissioner may investigate a claim of any violation of this section" with "As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district"

Renumber accordingly



Date: 1-18-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1282**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.0749.01001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Schneider Seconded By Rep Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Pamela Anderson		
Vice Chair Vicky Steiner			Rep. Mary Schneider		
Rep. Jeff Hoverson					
Rep. Craig Johnson					
Rep. Daniel Johnston					
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Karen Rohr					
Rep. Austen Schauer					
Rep. Steve Vetter					

*Voice  
Vote  
motion carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 1-18-19  
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1282**

House Government and Veterans Affairs Committee  
 Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Laning Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	X	
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston		X			
Rep. Karen Karls		X			
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	A				
Rep. Steve Vetter	X				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Laning

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1282: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1282 was placed on the Sixth order on the calendar.

Page 1, line 17, replace "The labor commissioner may investigate a claim of any violation of this section" with "As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district"

Renumber accordingly

**2019 SENATE JUDICIARY**

**HB 1282**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1282  
3/4/2019  
#33111 (20:20)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 12.1-33 of the North Dakota Century Code, relating to limitations on public employer consideration of criminal background.

## Minutes:

3 Attachments
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**Chair Larson** opens the hearing on HB 1282. Senator Osland was absent.

## **Mary Schneider, District 21 Representative, testifies in favor (see attachment #1)**

**(5:10) Senator Myrdal:** I commend you for bringing this; I believe it is important legislation. Why did you leave out private? Is it to get it going and approach it at a later date?

**Representative Schneider:** Sometimes we're afraid of change in North Dakota. I thought it would be a good example to start with public employers and show that it had good results without a lot of extra work.

**Senator Luick:** Would the House be okay with us including private, or is it something we should just run with?

**Representative Schneider:** I think it would have been an issue in the House, but I do think it's good for our workforce, businesses and ex-offenders overall. However, I don't think the House is ready for that action. I will respect whatever you do with the bill.

**Vice Chairman Dwyer:** I see that the House specifically added that it doesn't apply to school districts. I'm sure that was an important part of their consideration.

## **(7:10) Sister Kathleen Atkinson, Director of Ministry on the Margins, testifies in favor (see attachment #2)**

**Senator Luick:** What's your opinion on including private?

**Sister Atkinson:** Personally I like it, but my reality says if we can get this first step to happen, we can add it in later years. I believe that any action will move it better than trying to go too large.

**(13:20) Christopher Dods, ND Catholic Conference, testifies in favor**

**Dods:** In 2016 Pope Francis declared the year to be a year to reflect on mercy. The state is an actor of mercy because the state should reflect the idea that no one should be set aside completely because of their acts. They may not be qualified for a job, but no one should be judged entirely by their worst acts. That is the nature of mercy and the one thing the state can do- to give someone another chance. We strongly support this bill and the concept. We wouldn't mind seeing it go to private, but we do what's practical.

**(15:45) Travis Engelhardt, Director of Human Resources for the Department of Corrections and Rehabilitation, testifies in favor (see attachment #3)**

**Chair Larson closes the hearing on HB 1282.**

**Senator Myrdal: Motions for a Do Pass**  
**Senator Luick: Seconds.**

**A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.**

**Senator Myrdal will carry.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1282**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:     Adopt Amendment  
                            Do Pass     Do Not Pass     Without Committee Recommendation  
                            As Amended                            Rerefer to Appropriations  
                            Place on Consent Calendar  
 Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By Senator Myrdal                           Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total    (Yes) 5                           No 0

Absent 1

Floor Assignment Senator Myrdal

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1282, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1282 was placed on the Fourteenth order on the calendar.**

**2019 TESTIMONY**

**HB 1282**

# 1  
HB 1282  
1-17-19

Testimony of  
Representative Mary Schneider  
Before the  
**HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**  
**REPRESENTATIVE JIM KASPER, CHAIRMAN**

January 17, 2019

**HB 1282**

In recent sessions we've begun work in our House Judiciary Committee, in the Legislature, and in the state to improve our justice system generally, and our treatment of crime classifications and criminals. We have Justice Reinvented, Freedom Through Recovery and other efforts to improve the efficacy, efficiency and effectiveness of offender rehabilitation. Around the nation, programs have been tried, tested and implemented to assist in prison to community transitions, and prevent re-offending and recidivism.

One of those programs is "ban-the-box" legislation, rules which vary from state to state and in communities. Ban the box provisions are designed to give individuals with a criminal history a fair chance at employment. Banning the box requires removal of a checkbox on an initial employment application of the question, "Have you ever been convicted of a crime?" Removing that has the dual purpose of giving applicants some hope they won't be disqualified outright, and encouraging employers to consider a candidate's qualifications first, before exploring their potential criminal past.

There are more than 150 cities and counties that have such rules. Thirty-one states have laws that limit what you can ask of job applicants and when you can ask it. Twenty of those states ban public employers from a criminal check-off. Eleven apply to both private and public.

HB 1282 is designed to help employers meet potential good workers and reduce barriers to employment, so critical to ex-offenders. Overall, it is expected to be one tool to reduce recidivism, promote rehabilitation, and reduce crime.

Hawaii, the first state to ban the box, did so for both public and private employers, to minimize the social stigma of a criminal record, help ex-offenders acquire quality and stable employment, and address the nexus between unemployment and criminal behavior. Hawaii implemented the change in 1998 and studied its impact. After more than a decade and a half, they found it was 57% less likely that a felony charged was against a former offender. It's ban the box law was deemed extremely successful in lessening repeat felony offending.

Compared to Hawaii's efforts, HB 1282 is perhaps a baby step, just a start. Here's what it would do. It would prevent a public employer from inquiring into or considering a job applicant's criminal history on an initial employment application. If the person, based on their qualifications, is selected for an interview, an inquiry into the applicant's criminal record can be made then.

Here's what it doesn't do. HB 1282 doesn't apply to private employers--although private employers have found value in banning the box and have often chosen that path. Among those large corporations choosing to ban the box are Walmart, Target and Koch Industries. HB 1282 also doesn't preclude exceptions for corrections and rehabilitation, or other entities, agencies or departments that require background checks by statute, like law enforcement and work with children or vulnerable adults.

HB 1282 doesn't require any public employer to hire any ex-offender, and it doesn't preclude asking about or investigating criminal histories and convictions in interviews or at any point thereafter. It just gives a fair chance to an ex-offender, a chance that they can get their employment qualifications and credentials considered--that they can be considered for their potential and their achievements instead of being eliminated for their mistakes, chance that they can be considered for what they are, not what they've been. Thank you for considering a step that can make positive change, save money and reduce crime--and promote an expanded, quality workforce.

#1  
HB 1282  
1-17-19

Dear Valued Member of the North Dakota Legislature,

We are a group of Honors students from University of North Dakota, and we want to address a problem that we have found in our community. This year, we have spent over 50 hours doing work in Grand Forks, with our work mainly surrounding issues of socio economic class in the city. We believe our issue is in line with legislation already in our Century Code, and that it will benefit North Dakota communities and the economy greatly. Due to the legislative session that is upcoming next spring, we hope to bring this to your attention in hopes that you would be willing to address this issue in Bismarck. We believe that North Dakota must Ban the Box and eliminate the check box on applications requiring individuals to disclose if they have previous criminal convictions.

On the 31st of December 2017, the State of North Dakota had a prison population of 1,723 inmates. Under current policy, every one of those individuals who will be released will be subject to checking the box. This is extraordinarily problematic, as it creates a difficulty for individuals who have properly served their time to get a job, and get back on their feet, effectively extending their sentence. When individuals are unable to find work, they are also more likely to use support services in the state, using, instead of contributing, tax dollars. Finally, when we fail to provide sustainable and successful reentry programs for individuals who have finished their terms, they are likely to be reincarcerated.

These all place heavy burdens on the state, through both lost economic gains in the forms of taxes and forced economic losses through an increase in expenditures. These are burdens that do not need to exist. We strongly believe that this sort of action is not radically outside of laws already in our Century Code. North Dakota is a strong right to work state, and we are simply asking that the right to work be extended to individuals who have already served their legal sentence. An opportunity to bolster the work force in our great state is not something that should be taken lightly, and we hope you will be willing to address this next spring.

We thank you for taking the time to read this letter and are more than willing to work with you to help move a legislative project forward. As individuals who have worked in our community extensively this spring, we know and understand the positive effects this would have across out state. Please feel free to contact us with any questions you may have.

Signed,

Ashley Anderson, Grace Rerick, Anthony Patregnani, and Ryan Gilbertson

Contact: [ryan.gilbertson@und.edu](mailto:ryan.gilbertson@und.edu), C: (612) 965-8285

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# The Effect of Hawaii's Ban The Box Law on Repeat Offending

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## Abstract

The social stigma accompanying an official criminal record hinders the ability of an individual to acquire quality and stable employment, which is problematic because of the often reported nexus between unemployment and criminal behavior. Ban the box laws that limit an employer's use of criminal background checks during the hiring process are being established across the country to help integrate ex-offenders into the labor force. The current study investigates whether Hawaii's 1998 ban the box law reduced repeat offending in Honolulu County. Logistic regression results show that a criminal defendant prosecuted in Honolulu for a felony crime was 57 % less likely to have a prior criminal conviction after the implementation of Hawaii's ban the box law. By mollifying the social stigma attached to a criminal record during the hiring process, Hawaii's ban the box law proved to be extremely successful in attenuating repeat felony offending.

## Keywords

Ban the box laws Criminal record Social stigma Labeling theory  
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# Does Your State Ban the Box with Job Applications? What You Need to Know

By: Shanna Wall | Hiring & Onboarding

*This article was updated on 12/28/2018.*

Across the nation, laws restricting employers from asking job candidates about criminal histories are on the rise. As of September 2017, more than 150 cities and counties and 29 states have adopted laws that limit what you can ask job applicants.

Known as “ban-the-box” legislation, the new rules are designed to give individuals with a criminal history a fair chance at employment. Removing the question “*Have you ever been convicted of a crime?*” from job applications encourages employers to consider a candidate’s qualifications first, rather than rejecting someone outright because of a criminal past.

Yet, in most cases, the laws go beyond just requiring you to remove a check box from application forms. Understanding and complying with fair-chance hiring laws can be confusing, especially if they contradict or overlap with existing anti-discrimination laws. How do you know if you’re covered? Here’s an overview with some tips to help you comply.

## Does It Apply to My Business?

If you’re in a major urban area, chances are high that ban-the-box laws apply to your business. More than two-thirds of the U.S. population — at least 226 million people — live where some form of ban-the-box or fair-chance policy applies.

### **BASED ON THE RESULTS OF HRDIRECT’S SMALL BUSINESS HIRING PRACTICES SURVEY**

28% respondents said their state does not enforce ban-the-box laws. Yet, 50 of those respondents (63%) were incorrect and ARE in states that ban the box.

In states or cities that have passed this legislation, you can’t inquire about an applicant’s criminal record until the job interview — or, in some cases, after a position has been offered to the applicant. You also may need to delay background checks until then.

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● **These twenty states have ban-the-box laws that apply only to public employers:**

- Arizona
- Colorado
- Delaware
- Georgia
- Indiana
- Kansas
- Kentucky
- Louisiana
- Maryland
- Michigan
- Missouri
- Nebraska
- Nevada
- New Mexico
- New York
- Ohio
- Oklahoma

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- Pennsylvania
- Tennessee
- Utah
- Virginia
- Washington
- Wisconsin

However, these eleven states restrict both public and private sector employers from asking about criminal records on job applications:

- California
- Connecticut
- Hawaii
- Illinois
- Massachusetts
- Minnesota
- New Jersey
- Oregon
- Rhode Island
- South Carolina
- Vermont

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## • Washington

You also may be restricted from asking questions about certain types of convictions, non-conviction arrests or expunged records.

Even if your state isn't on the list, you shouldn't assume these laws don't apply to you. Fifteen cities and counties have taken the lead in creating ban-the-box laws that extend to private employers. These include: Austin, Baltimore, Buffalo, Chicago, Columbia (MO), District of Columbia, Kansas City, Montgomery County (MD), New York City, Philadelphia, Portland (OR), Prince George's County (MD), Rochester, San Francisco, Seattle, and Spokane. In addition, many other cities and counties have laws restricting when you can conduct a criminal background check. In most cases, you can only do a check after you've made a conditional offer of employment or have selected final candidates.

## How to Comply with Ban-the-Box Laws

*To be clear:* You're not required to hire someone with a criminal record. Ban-the-box legislation isn't intended to force employers to hire someone with a criminal background over other qualified candidates, but rather to create a fairer decision-making process. It shifts the criminal history inquiry from the initial application stage until later in the hiring process, during an interview or after you extend a conditional job offer.

How can you be confident you're in compliance? First, check your state and local laws. Then make sure you're using an attorney-approved, state-specific job application. Next, modify your hiring procedures to delay any inquiry about criminal history until it's legally allowed.

## Get State-Specific Application Help

With the right tools, you can be certain you're satisfying the latest ban-the-box laws when hiring. The Job Application Smart App automatically complies with your state's requirements so you're always up to date. And it helps protect you from avoidable and costly legal mistakes. Proper applications can be sent securely online to more candidates — eliminating handwritten forms and extending your recruiting reach, thereby creating a more efficient screening process.

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## DID YOU KNOW?

- The first state to pass a ban-the box-law was Hawaii, removing the criminal history question for both public and private sector employers in 1998.
- Philadelphia was the first major city to ban the box for public and private employers in 2011.
- Certain industries and jobs are exempt from ban-the-box laws, such as positions in child care, health care, law enforcement and finance.

### KEY TAKEAWAYS:

- 11 states and 15 cities and counties (including the District of Columbia) have adopted laws requiring private employers to ban the box and fairly consider applicants with criminal records.
- More than 150 cities and counties also have fair-chance hiring laws related to criminal records.
- In ban-the-box states, cities or counties, you cannot ask about criminal history on job applications (but may be able to do so later in the hiring process).
- You may need to delay criminal background checks until after you make a conditional job offer.
- You're not required to hire an individual with a criminal record.

TAGS: SMALL BUSINESS HR BEST PRACTICES, SMALL WORKFORCE WOES, YOUR HR QUESTIONS ANSWERED

About the Author

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**Shanna Wall**

Shanna supports legal research and content for the product development of next generation HR/compliance solutions at ComplyRight. Since graduating from St. Thomas University, School of Law, Shanna has practiced law for 8 years. She is a licensed attorney in Florida and Illinois. Her background also includes B2B sales and marketing as well as firsthand experience as a small business owner.

FUN FACT: Shanna's all-time favorite sports team is the St. Louis Cardinals.

Kathleen Atkinson, osb  
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**Committee Testimony for Ban the Box**  
**Government and Veterans Affairs Committee**  
9 am January 17, 2019

Mister Chairman, Members of the Government and Veterans Affairs Committee.  
Thank you for the opportunity to speak today.

My name is Sister Kathleen Atkinson. I serve as the director of *Ministry on the Margins*, an ecumenical, volunteer-based program serving over 700 people a week. Along with a food pantry, clothing pantry, and coffee house we are involved with 4 spiritual groups in the men's penitentiary, the *Free Through Recovery Program*, a Families of the Incarcerated Support Group, and two Prison2Society transition groups...one which we lovingly call the "Stay out of Jail Supper Club." In 2016, we worked with the Bismarck Mandan Chamber Leadership Class to develop a handbook for people seeking employment upon re-entry from incarceration. We are regularly involved with assisting people who have a criminal background to **attain and maintain** employment.

But let me stop speaking about us for a moment and invite you just to think about yourself...the varied experiences of your own life that has brought you to now. Think about your early interests in politics and in public service. Think about the jobs that helped you get to today...the mentors. And think about the failures from which you've learned....or even about the worst thing you've ever done – maybe as a young adult; maybe no one else even knows this part of your life experience.

SO – just turn to your neighbor and quickly tell them about the worst thing you've ever done and then we'll go on.

Okay?

Okay – let's not. But here's the thing.....*None of us wants to be known* by the worst action we have ever committed.

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That is exactly what the question "Have you ever been convicted of a crime" does to a job application. THAT BOX

1. Colors the qualifications of an individual; the myriad dimensions of educational, employment, life experience all get lost in that 'worst action' of years ago. HR Directors have told me that skimming through application after application, they slide off those **marked in the box** without even reading what or when the felony occurred.
2. It creates a barrier to second chance and rehabilitation that often leaves a person isolated and without hope – why even try – just to get rejected.
3. It imposes a lifetime sentence of minimum wage jobs and poverty not only on the individual but on their family. And so the cycle continues.

A criminal conviction? Any employer will and really should find it **when** they have decided that a person's qualifications for a job warrant an interview, past employment check and criminal background check.

That is important due diligence.

See, that is the purpose of House Bill No 1282.

It calls upon public employers to become leaders in this change.

To place a criminal conviction as **one** factor in an individual's lifetime and in their application for employment. **Not the** factor.

Thank you.

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**HOUSE BILL 1282**  
**House Government and Veterans Affairs Committee**  
**January 17, 2019**

TO: Representative Jim Kasper, Chairman, House Government and Veterans Affairs Committee, and Committee Members

I, Travis Engelhardt, Director of Human Resources for the Department of Corrections and Rehabilitation (DOCR), submit this testimony in support of House Bill 1282 on behalf of the DOCR.

The DOCR fully supports HB 1282, even though the new section to NDCC chapter 12.1-33 does not apply to the DOCR. You may wonder why the DOCR supports legislation that does not apply to the DOCR, but we do in fact comply with the intent of HB 1282 to a large extent already. The DOCR hires and employs people with a criminal record in many different roles. However, the reason the DOCR is exempt from this legislation is because it has positions that are subject to different state and federal criminal history record background requirements.

- The DOCR works with adult and juvenile individuals the court system has put in our custody or supervision and management, so the DOCR must comply with the federal Prison Rape Elimination Act (PREA). (42, U.S.C. § 15601, et. seq.) Under PREA, the DOCR may not employ someone convicted of an offense involving sexual abuse to work directly with adults or juveniles.
- The federal Lautenberg Amendment, 18 U.S.C. Section 922(g)(9)), prohibits an individual who has committed an offense involving domestic violence from owning or possessing a firearm for the individual's lifetime. This effectively precludes the individual from serving as a peace officer and working in DOCR posts that require a firearm. The DOCR has several jobs, including Parole and Probation Officers, who are licensed peace officers, and there are also various ranks of Correctional Officer posts within our adult maximum and medium security facilities that require firearms.
- Various DOCR employees must have access to criminal history record information, which is confidential and governed by state law (including N.D. Admin. Rule 10-13-06-03 and the state's criminal history record information system, CJIS) and federal requirements in 28 C.F.R. Part 20, which governs access to the FBI's National Crime Information Center (NCIC).

With all of this in play the DOCR still interviews and hires applicants with a criminal history when we are not precluded from hiring the individual by state or federal law. What matters most is whether the applicant is simply the best person for the job. HB 1282 is especially important as many current employers use electronic application systems exclusively, which means clicking in "the box" and indicating a criminal history, often prevents an employers' opportunity to meet with and talk to an applicant who has a criminal history, but otherwise qualified.

In closing, HB 1282 simply allows people the opportunity to submit an application regardless of criminal history. This is not a mandate to hire, but simply a way to allow a foot in the employment door. The residents released from the DOCR deserve another chance in our workplaces. I work with many amazing people who believe strongly in our mission to provide opportunities for change. My coworkers choose to work difficult hours in tough environments to ensure that our residents are prepared for reintegration upon release, in order to become successful and productive members of society. Give our former residents and others in a similar situation a chance at an interview. We think you will be impressed by what you see and hear.

The ND DOCR respectfully requests your vote to pass House Bill 1282.

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**CHAPTER 34-11.1  
PUBLIC EMPLOYEES RELATIONS ACT**

**34-11.1-01. Definitions.**

In this chapter unless the context otherwise requires:

1. "Agency" means any department, institution, board, or other similar body of state government, or any political subdivision within the state.
2. "Appointing authority" means the individuals in any agency who have authority to fill job vacancies.
3. "Employee" means any person, whether employed, appointed, or under contract, providing services for the state, county, city, or other political subdivision, for which compensation is paid. "Employee" also includes a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision. "Employee" does not include:
  - a. A person elected to public office in the state or in a political subdivision.
  - b. A member of the legislative council.
  - c. A person holding an appointive statutory office.
  - d. One deputy or principal assistant for each elected official or appointive statutory official.
  - e. One secretary for each elected or appointive statutory official.
  - f. All members of the governor's staff.
4. "Organization" means any organized group of individuals working together for the common good of public employees and government.

**34-11.1-02. Political activities.**

Except when on duty or acting in an official capacity and except as otherwise provided by state or federal law, no employee may be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

**34-11.1-03. Membership in organizations.**

No employee may be denied the right to be a member of an organization of employees or be intimidated or coerced in a decision to communicate or affiliate with an organization. Public employees have the right to request payroll deduction of dues for membership in an organization of employees.

**34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited -  
Furnishing false information - Department of labor and human rights.**

1. An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:
  - a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
  - b. The job-related misuse of public resources.
2. For having made a report under subsection 1, no employee will:
  - a. Be dismissed from employment.
  - b. Have salary increases or employment-related benefits withheld.
  - c. Be transferred or reassigned.
  - d. Be denied a promotion that the employee otherwise would have received.
  - e. Be demoted.
  - f. Be discriminated against in any term or condition of employment.
3. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee claiming reprisal under this section may appeal first to the human resource management services division and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to

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district court if the employee is not under the jurisdiction of the human resource management services division.

4. The department of labor and human rights shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. To receive assistance from the department of labor and human rights, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor and human rights under this subsection before proceeding under other provisions of this section.
5. An employee of the state may appeal a claim of reprisal under this section in the manner prescribed for a classified employee under chapter 54-44.3. This subsection does not apply to an employee under the jurisdiction of the state board of higher education or the judicial branch of government.

**34-11.1-04.1. Discrimination on basis of marital status in state employment prohibited - Exception.**

Each state employee is, if otherwise qualified, entitled to work with that state employee's spouse. A state agency may not discriminate against an employee or an applicant for employment, with respect to working conditions, workplace assignment, or other privileges of employment, merely because the spouse of that employee or applicant is also an employee of that state agency. Compliance with section 44-04-09 is not discrimination under this section.

**34-11.1-04.2. Employee representation at grievance proceeding.**

An employee who is a party to a work-related grievance proceeding may be accompanied, advised, and represented throughout the proceeding by another employee or by a representative chosen by the employee involved in the proceeding.

**34-11.1-05. Prohibited acts.**

No agency, appointing authority, organization, or employee may directly or indirectly:

1. Require or coerce any agency employee to participate in any way in any activity or undertaking unless the activity or undertaking is related to the performance of official duties.
2. Require or coerce any agency employee to make any report concerning any activities or undertaking unless the activity or undertaking is related to the performance of official duties.
3. Require any agency employee to invest or contribute earnings in any manner or for any purpose, except for participation in the employees retirement program.
4. Restrict or attempt to restrict after-working-hour statements, pronouncements, or other activities of any agency employee not otherwise prohibited by law which pertains to matters of public concern, if the employee does not purport to speak or act in an official capacity.
5. Restrict or attempt to restrict access of any employee to any member or committee of the legislative assembly.

**34-11.1-06. Penalties or threats prohibited.**

No employee may suffer a penalty or the threat of a penalty because that employee exercised rights under this chapter.

**34-11.1-07. Other rights or legal remedies unimpaired.**

Nothing in this chapter disparages, impairs, or limits any other right or legal remedy of an employee.

**34-11.1-08. Penalty.**

A violation of the provisions in this chapter is a class B misdemeanor.

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The general understanding of "public employer" most likely would include all levels of government, including park districts, school districts, etc. So, if they want to limit it, they could say something like "For purposes of this section, "public employer" means any agency or instrumentality of state government." If they want to include counties and cities, they could tweak it to say "agency or instrumentality of state, county, or city government."

↓  
County and  
City

*For purposes of this section public  
employer means an instrumentality of  
state, county, or city government,  
including Park Districts*

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19.0749.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Schneider  
January 17, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1282

Page 1, line 17, replace "The labor commissioner may investigate a claim of any violation of this section" with "As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district"

Renumber accordingly

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Testimony of  
Representative Mary Schneider  
Before the  
**SENATE JUDICIARY COMMITTEE**  
**SENATOR DIANE LARSON, CHAIRPERSON**

March 4, 2019

**HB 1282**

In recent years the legislature has worked to improve our justice system generally, and our treatment of crime classifications and criminals. We have Justice Reinvented, Freedom Through Recovery and other efforts to improve the efficacy, efficiency and effectiveness of offender rehabilitation. Around the nation, programs have been tried, tested and implemented to assist in prison to community transitions, and prevent re-offending and recidivism.

One of those programs is "ban-the-box" legislation, rules which vary from state to state and in communities. Ban the box provisions are designed to give individuals with a criminal history a fair chance at employment. Banning the box requires removal of a checkbox on an initial employment application of the question, "Have you ever been convicted of a crime?" Removing that has the dual purpose of giving applicants some hope they won't be disqualified outright, and encouraging employers to consider a candidate's qualifications first, before exploring their potential criminal past.

There are more than 150 cities and counties that have such rules. Thirty-one states have laws that limit what you can ask of job applicants and when you can ask it. Twenty of those states ban public employers from a criminal check-off. Eleven apply to both private and public.

HB 1282 is designed to help employers meet potential good workers and reduce barriers to employment, so critical to ex-offenders. Overall, it is expected to be one tool to reduce recidivism, promote rehabilitation, and reduce crime.

Hawaii, the first state to ban the box, did so for both public and private employers, to minimize the social stigma of a criminal record, help ex-offenders acquire quality and stable employment, and address the nexus between unemployment and criminal behavior. Hawaii implemented the change in 1998 and studied its impact. After more than a decade and a half, they found it was 57% less likely that a felony charged was against a former offender. Its ban the box law was deemed extremely successful in lessening repeat felony offending.

Compared to Hawaii's efforts, HB 1282 is perhaps a baby step, just a start. Here's what it would do. It would prevent a public employer from inquiring into or considering a job applicant's criminal history on an initial employment application. If the person, based on their qualifications, is selected for an interview, an inquiry into the applicant's criminal record can be made then.

Here's what it doesn't do. HB 1282 doesn't apply to private employers--although private employers have found value in banning the box and have often chosen that path. Among those large corporations choosing to ban the box are Walmart, Target and Koch Industries. HB 1282 also doesn't preclude exceptions for corrections and rehabilitation, or other entities, agencies or departments that require background checks by statute, like law enforcement and work with children or vulnerable adults.

HB 1282 doesn't require any public employer to hire any ex-offender, and it doesn't preclude asking about or investigating criminal histories and convictions in interviews or at any point thereafter. It just gives a fair chance to an ex-offender, a chance that they can get their employment qualifications and credentials considered--that they can be considered for their potential and their achievements instead of being eliminated for their mistakes, chance that they can be considered for what they are, not what they've been.

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Thank you for considering a step that can make positive change, save money and reduce crime--and promote an expanded, quality workforce.



Kathleen Atkinson, osb  
701.426.8747

**Committee Testimony for Ban the Box  
Government and Veterans Affairs Committee  
9 am January 17, 2019**

*Mandan*

*Senate Judiciary*

Mister Chairman, Members of the ~~Government and Veterans Affairs~~ Committee.  
Thank you for the opportunity to speak today.

My name is Sister Kathleen Atkinson. I serve as the director of *Ministry on the Margins*, an ecumenical, volunteer-based program serving over ~~700~~<sup>800</sup> people a week. Along with a food pantry, clothing pantry, and coffee house we are involved with 4 spiritual groups in the men's penitentiary, the *Free Through Recovery Program*, a Families of the Incarcerated Support Group, and two Prison2Society transition groups...one which we lovingly call the "Stay out of Jail Supper Club." In 2016, we worked with the Bismarck Mandan Chamber Leadership Class to develop a handbook for people seeking employment upon re-entry from incarceration. We are regularly involved with assisting people who have a criminal background to **attain and maintain** employment.

But let me stop speaking about us for a moment and invite you just to think about yourself...the varied experiences of your own life that has brought you to now. Think about your early interests in politics and in public service. Think about the jobs that helped you get to today...the mentors. And think about the failures from which you've learned....or even about the worst thing you've ever done - maybe as a young adult; maybe no one else even knows this part of your life experience.

SO - just turn to your neighbor and quickly tell them about the worst thing you've ever done and then we'll go on.  
Okay?

Okay - let's not. But here's the thing.....None of us wants to be known by the worst action we have ever committed.

That is exactly what the question "Have you ever been convicted of a crime" does to a job application. THAT BOX

1. Colors the qualifications of an individual; the myriad dimensions of educational, employment, life experience all get lost in that 'worst action' of years ago. HR Directors have told me that skimming through application after application, they slide off those **marked in the box** without even reading what or when the felony occurred.
2. It creates a barrier to second chance and rehabilitation that often leaves a person isolated and without hope – why even try – just to get rejected.
3. It imposes a lifetime sentence of minimum wage jobs and poverty not only on the individual but on their family. And so the cycle continues.

A criminal conviction? Any employer will and really should find it **when** they have decided that a person's qualifications for a job warrant an interview, past employment check and criminal background check.

That is important due diligence.

See, that is the purpose of House Bill No 1282.

It calls upon public employers to become leaders in this change.

To place a criminal conviction as **one** factor in an individual's lifetime and in their application for employment. Not the factor.

Thank you.

All need  
food  
skills  
clothing  
1. employ  
2. the system  
3. familiar  
illegally

**HOUSE BILL 1282**  
**Senate Judiciary Committee**  
**March 4, 2019**

TO: Senator Diane Larson, Chairman, Senate Judiciary Committee, and Committee Members

I, Travis Engelhardt, Director of Human Resources for the Department of Corrections and Rehabilitation (DOCR), submit this testimony in support of House Bill 1282 on behalf of the DOCR.

The DOCR fully supports HB 1282, even though subsection 2 on line 10 of the bill exempts the DOCR and a few other agencies. You may wonder why the DOCR supports legislation that does not apply to the DOCR, but we do in fact comply with the intent of HB 1282 to a large extent already. The DOCR does hire and employ people with a criminal record in many different roles. However, the reason the DOCR is exempt from this legislation is because it has positions that are subject to different state and federal criminal history record background requirements.

- The DOCR works with adult and juvenile individuals the court system has put in our custody or supervision and management, so the DOCR must comply with the federal Prison Rape Elimination Act (PREA). (42, U.S.C. § 15601, et. seq.) Under PREA, the DOCR may not employ someone convicted of an offense involving sexual abuse to work directly with adults or juveniles.
- The federal Lautenberg Amendment, 18 U.S.C. Section 922(g)(9)), prohibits an individual who has committed an offense involving domestic violence from owning or possessing a firearm for the individual's lifetime. This effectively precludes the individual from serving as a peace officer and working in DOCR posts that require a firearm. The DOCR has several jobs, including Parole and Probation Officers, who are licensed peace officers, and there are also various ranks of Correctional Officer posts within our adult maximum and medium security facilities that require firearms.
- Various DOCR employees must have access to criminal history record information, which is confidential and governed by state law (including N.D. Admin. Rule 10-13-06-03 and the state's criminal history record information system, CJIS) and federal requirements in 28 C.F.R. Part 20, which governs access to the FBI's National Crime Information Center (NCIC).

With all of this in play the DOCR still interviews and hires applicants with a criminal history when we are not precluded from hiring the individual by state or federal law. What matters most is whether the applicant is simply the best person for the job. HB 1282 is especially important as many current employers use electronic application systems exclusively, which means clicking in "the box" and indicating a criminal history, often prevents an employers' opportunity to meet with and talk to an applicant who has a criminal history, but otherwise qualified.

In closing, HB 1282 simply allows people the opportunity to submit an application regardless of criminal history. This is not a mandate to hire, but simply a way to allow a foot in the employment door. The residents released from the DOCR deserve another chance in our workplaces. I work with many amazing people who believe strongly in our mission to provide opportunities for change. My coworkers choose to work difficult hours in tough environments to ensure that our residents are prepared for reintegration upon release, in order to become successful and productive members of society. Give our former residents and others in a similar situation a chance at an interview. We think you will be impressed by what you see and hear.

The ND DOCR respectfully requests your vote to pass House Bill 1282.