

Ban the Box Consideration

PURPOSE

The purpose of this document is to provide information and recommendations in response to Commissioner Holmes request to remove the question on the initial employment application regarding prior criminal convictions (termed “ban the box”) and delay that question to a later stage in the application and recruitment process.

HISTORY ON BAN THE BOX INITIATIVES

In the early 2000s, organizers in San Francisco and Boston began urging local governments to remove questions about convictions from job applications so that people can be judged first on their qualifications. Just over a decade later, over 100 jurisdictions have adopted ban-the-box and fair chance policies.

‘Ban the Box,’ refers to the policy of removing the conviction history check-box from job applications. The following table indicates jurisdictions in North Carolina that have implemented ban the box. See Appendix 1 for more information on North Carolina Ban the Box Initiatives and Appendix 2 for information nationally.

Ban the Box Initiatives in North Carolina						
NC Location	Background check only after conditional offer or selected as finalists	EEOC criteria	Dept. that Conducts Background	Right to appeal (A) or provides copy of background check report (C)	Sheriff/law enforcement/Public Safety exempt	Date Implemented
City of Charlotte		X	Hiring	A,C		Feb 2014
City of Durham	X	X	Hiring		X	Feb 2011
Cumberland County		X	HR			Sep 2011
Durham County		X	HR	A, C	X	Oct 2012
Town of Carrboro		X	HR		X	Oct 2012
Town of Spring Lake		X	HR			Jun 2012

CURRENT WAKE COUNTY PROCESS

The Wake County Government application for employment includes the following question and statement: “Have you ever been convicted of any unlawful offense, other than a minor traffic violation? Please note, a conviction record will not necessarily exclude you from consideration.”

If an applicant has a conviction, before being denied consideration of employment a number of factors are considered which include:

- The nature and gravity of the offense;
- The date of the offense;

- The age of the applicant at the time of the conviction;
- The circumstances surrounding the commission of the offense, if known
- The nexus between the criminal conduct of the applicant and the job responsibilities of the position

For example, an applicant convicted of embezzlement would not be considered for a position in Finance, but may be able to work in another department. However, before an applicant is denied employment based upon a criminal offense, a discussion takes place between the hiring department and Human Resources. It is important to note that the County has hired applicants who have checked “yes” to the conviction question.

Wake County does not require a criminal background check on all positions. Each Department in Wake County has identified those positions either required by law or that are so sensitive in nature to require a background check. (See below chart). The type of information that may be collected as part of a background check is based on the duties and requirements of the position and may include a criminal background check, motor vehicle record, sexual offender registry check, reference check, credit history, drug screening, credentials, education and social security verification and e-verify.

It should be noted that removing the box could delay a department’s ability to make a hiring decision if the County receives information that would exclude an applicant later than sooner. Ultimately; however, it would not prevent the department from receiving the information regarding the criminal background of an applicant and making a decision on an applicant’s employment suitability for a particular job.

The North Carolina Department of Justice and the North Carolina Sheriffs’ Education and Training Standards set the qualifications for employment and retention of law enforcement including standards addressing the minimum age, education physical standards and mental status, citizenship, and good moral character (N.C. General Statute §17C-10). In addition, Chapter 12 of the North Carolina Administrative Code controls the extent, scope and use of a background investigation and further places specific eligibility limitations on an applicant’s prior criminal history.

It should also be noted that applicants for the Sheriff and CCBI Department are requested to complete supplemental application materials that do ask a question regarding an applicant’s conviction during the early stages of the employment process. This supplemental application is mandatory and part of the certification process for all law enforcement personnel.

Wake County Current Procedures			
Department	Background Checks Conducted	Employee/ Vendor/Both	Type of Background: Criminal/Credit/Driving/ Drug Test/Sex Offender/Reference Education/Credentials/All
Board of Election	No	N/A	N/A
Budget	No	N/A	N/A
CCBI	Yes	Both	Criminal/Credit/Driving/ Drug Test/Reference Education/Credentials
Communications	No	N/A	N/A
Community Services	Yes	Some Employees As Required By Law	Criminal and Sex Offender Registry
County Attorney	Yes	Employee	Credentials
County Manager	Yes	Senior leadership	Criminal/Credit/Reference Education/Credentials
Emergency Management	No	N/A	N/A
EMS	Yes	Yes	Criminal/Driving/Credentials
Environmental Services	Yes	N/A	Credentials
Facilities Design and Construction	Yes	N/A	Credentials
Finance	Yes	Both	Criminal/Credit/ Education/Credentials depending on position requirements
Fire Services	Yes	Employee	Criminal/Driving/Credentials
GSA	Yes	Both	Criminal/Credit/Reference Education/Credentials
Human Resources	No	N/A	N/A
Human Services	Yes	Employee	Criminal/Credit/ Education/Credentials depending on position requirements
Information Services	Yes	Employee	Criminal/Credit/ Education/Credentials depending on position requirements
Register of Deeds	Yes	Yes	Criminal/Drug/Reference
Revenue	Yes	Employee	Credit
Sheriff Department	Yes	Both	Criminal/Credit/Driving/ Drug Test/Reference Education/Credentials

Appendix 1: Details of Ban the Box Initiatives in North Carolina

1. Carrboro, NC (ordinance applies to Town)

- ✓ Banned the box
- ✓ Incorporates EEOC language into selection criteria

On October 16, 2012, the Carrboro Board of Alderman voted unanimously to ban the box on Town of Carrboro job applications. The Orange County Partnership to End Homelessness initially proposed the measure.

2. Charlotte, NC (Administrative policy applies to city)

- ✓ Banned the box

On February 28, 2014 Charlotte City Manager Ron Carlee announced that the City had “banned the box” for City applications. The Charlotte Human Resources director said she expected the number of applications for city jobs to increase as a result of the decision.

3. Cumberland County (Fayetteville, NC area; applies to County)

- ✓ Banned the box

On September 6, 2011, the Cumberland County Commissioners unanimously voted to ban the box and implement a new pre-employment background check policy.

4. Durham County, NC (Durham, NC area; administrative policy applies to County)

- ✓ Banned the box
- ✓ Background check only after applicant selected for hire
- ✓ Incorporates EEOC language into selection criteria
- ✓ Right to appeal denial of employment
- ✓ Provides copy of background check report

Effective October 1, 2012, the County will not inquire into an applicant’s criminal history on an initial employment application form, unless explicitly mandated by law. The threshold for inquiry is after an applicant’s credentials have been reviewed, it has been determined that the applicant is otherwise qualified for a position, and the applicant has been recommended for hire by the department where the vacancy exists. Records of criminal arrests, dismissals, or convictions which have been expunged may not be used. The policy explicitly incorporates language from the 2012 updated EEOC guidance—for example, applicants are provided the opportunity for an individualized assessment.

5. City of Durham, NC (administrative hiring policy applies to City)

- ✓ Banned the box
- ✓ Background check only after conditional offer

In February 2011, the City of Durham removed questions about criminal history from all employment applications. Potential employees who have been given a conditional offer of employment are subject to a background check as are volunteers. Background investigations are

conducted on applicants for public safety positions, financially sensitive positions, and positions in direct contact with minors before applicants are placed in finalist status.

6. Spring Lake, NC (administrative hiring policy applies to Town)

- ✓ Banned the box
- ✓ Incorporates EEOC language into selection criteria

Effective June 25, 2012, the Town of Spring Lake adopted a comprehensive statement of policy regarding criminal background checks for positions with the Town. According to the policy, an applicant's conviction will be reviewed on a case-by-case basis. The policy offers one of the most comprehensive lists of factors to determine whether there is a "substantial relationship between the conviction and the position" and whether the applicant should be excluded.

Appendix 2: Nationwide Ban the Box Initiatives

Location	Employers			Background Checks Only For Some Positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
Arizona							
1. Tucson			X	X			
2. California (State Law)			X				
3. Alameda County			X				
4. Berkeley			X	X		X	
5. Carson			X				
6. Compton		X	X			X	
7. East Palo Alto			X				
8. Oakland			X	X	X	X	N,C,A
9. Pasadena			X				
10. Richmond		X	X	X			
11. San Francisco	X	X	X		X	X	N,C,A
12. Santa Clara County			X				
13. Colorado (State Law)			X			X	A
14. Connecticut (State Law)			X			X	N,C
15. Bridgeport			X			X	N,A
16. Hartford		X	X	X	X	X	N,A
17. New Haven		X	X		X	X	N,C,A
18. Norwich			X		X		
19. Delaware (State Law)			X			X	
20. New Castle County			X				
21. Wilmington			X		X		
Florida							
22. Clearwater			X			X	
23. Jacksonville			X		X	X	N,A
24. Pompano Beach			X				N,C
25. St. Petersburg			X				
26. Tampa			X		X		N
27. Tallahassee			X			X	
28. Georgia (State Law)			X				
29. Albany			X			X	N,A
30. Atlanta			X		X	X	N,C
31. Fulton County			X	X			N,C
32. Macon-Bibb County			X				N,C
33. Hawaii (State Law)	X	X	X		X	X	A
34. Illinois (State Law)	X	X	X				A
35. Chicago	X	X	X		X	X	A
Indiana							
36. Indianapolis		X	X			X	
Kansas							

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	Private	Vendors	Public				
37. Kansas City			X			X	
Kentucky							
38. Louisville		X	X			X	
Louisiana							
39. New Orleans			X	X			C
40. Maryland (State Law)			X				
41. Baltimore	X	X	X	X	X	X	A
42. Montgomery County	X	X	X				N,C,A
43. Prince George's County	X	X	X			X	N,C,A
44. Massachusetts (State Law)	X	X	X				N,C
45. Boston		X	X	X			N,A
46. Cambridge		X	X			X	N,C,A
47. Worcester		X	X	X		X	N,C,A
Michigan							
48. Ann Arbor			X		X	X	
49. Detroit		X	X				
50. East Lansing			X				
51. Genesee County			X		X		
52. Kalamazoo			X				
53. Muskegon County			X				
54. Minnesota (State Law)	X	X	X		X	X	N
55. Minneapolis			X	X		X	
56. St. Paul			X	X		X	
Missouri							
57. Columbia	X	X	X		X		A
58. Kansas City			X		X	X	
59. St. Louis			X	X			
60. Nebraska (State Law)			X				
61. New Jersey (State Law)	X	X	X				A
62. Atlantic City		X	X		X	X	N
63. Newark	X	X	X	X	X	X	N,C
64. New Mexico (State Law)			X			X	N
New York							
65. Buffalo	X	X	X		X		
66. New York		X	X				
67. Rochester	X	X	X		X		
68. Syracuse		X	X		X	X	N,C,A
69. Ulster County			X				
70. Yonkers			X				
North Carolina							
71. Carrboro			X			X	

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72. Charlotte			X			X	N,C,A
73. Cumberland County			X			X	
74. Durham City			X		X	X	
75. Durham County			X			X	N,C,A
76. Spring Lake			X			X	N
Ohio							
77. Akron			X			X	A
78. Canton			X				
79. Cincinnati			X			X	N,C,A
80. Cleveland			X				
81. Cuyahoga County			X			X	
82. Dayton			X			X	N
83. Hamilton County			X				
84. Massillon			X			X	
85. Summit County			X	X		X	
86. Youngstown			X		X		
Oregon							
87. Multnomah County			X			X	
88. Portland			X				
Pennsylvania							
89. Allegheny County					X	X	
90. Lancaster					X	X	
91. Philadelphia	X	X	X		X		A
92. Pittsburgh		X	X		X		N
93. Rhode Island (State Law)	X	X	X				
94. Providence			X				
Tennessee							
95. Hamilton County							
96. Memphis			X			X	N,C,A
Texas							
97. Austin			X	X			
98. Travis County			X	X	X	X	
99. Virginia (State Policy)			X			X	
100. Alexandria			X		X		
101. Arlington County			X				
102. Charlottesville			X				
103. Danville			X		X	X	
104. Fairfax County			X		X		
105. Fredericksburg			X		X	X	N
106. Newport News			X			X	
107. Norfolk			X			X	

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	Private	Vendors	Public				
108. Petersburg			X				
109. Portsmouth			X				
110. Richmond			X				
111. Roanoke			X				
112. Virginia Beach			X		X	X	
Washington							
113. Seattle	X	X	X	X			N,C,A
114. Spokane			X				
115. Washington D.C.	X	X	X		X	X	A
Wisconsin							
116. Dane County			X				
117. Milwaukee County			X				