



Advancing Gender Equity for Justice-Impacted Women in the Aftermath of COVID-19

By Akua Amaning | March 29, 2021

This issue brief contains a correction.

Women's History Month is a time to celebrate the accomplishments of women and recognize the vast contributions they have made to U.S. society. Although there is much to celebrate, Americans must also recognize and acknowledge the many challenges that women continue to face. Policymakers must also consider what legislation is needed to ensure that women are provided with the opportunity to establish economic security and build thriving futures for themselves and their families. This is especially true for women who have been affected by the criminal justice system.

The justice system affects more women today than ever before, forcing far too many to navigate life with the collateral consequences that stem from a criminal record.¹ Each year, nearly 2 million women are released from jail or prison with a criminal history that denies them access to employment, housing, education, and other fundamental resources necessary for successful reentry into society.² Moreover, most resources for reentry that are available are geared toward men and often do not address the specific challenges that women face. Policies that can help justice-impacted women build a successful future are always critical, but the COVID-19 pandemic has made their importance more apparent than ever before.

The pandemic has devastated the U.S. economy, with more than 18 million people claiming unemployment benefits as of February 2021 and millions more earning less income to provide for themselves and their families.³ The global health crisis and resulting economic recession have disproportionately affected women—particularly women of color—due to the fact that women are overrepresented in service sector occupations, which have been hit hardest by shutdowns.⁴ Since February 2020, women have lost a net 5.1 million jobs, accounting for 53.5 percent of total net job losses since the start of the pandemic.⁵ In addition, women are struggling to manage increased caregiving responsibilities at home; along with job losses, these responsibilities have contributed to more than 2.3 million women leaving the labor force since the start of the pandemic, compared with 1.8 million

men who have left the labor force over the same period.⁶ The fact that the pandemic has so disproportionately affected women is what led Dr. C. Nicole Mason to label the COVID-19-induced recession a “shecession.”⁷ Although the rising availability of vaccines may help bring an end to the spread of the virus, if policymakers do not make an effort to ensure widespread access to high-quality jobs and build an infrastructure of care, any recovery will be slow—and the economic impacts for women will be evident for years to come.

For justice-impacted women, the pandemic has surfaced and exacerbated additional struggles. The stigma of a criminal record can make building a successful future nearly impossible, especially for women of color. As policymakers begin the work of rebuilding the U.S. economy, it is imperative that they go beyond restoring an inequitable status quo. Instead, they must pursue a recovery informed by gender and racial equity by adopting bold, progressive policies that will help as many people as possible return to the workforce. Implementing policies that will eliminate barriers to employment for justice-impacted individuals is a significant first step toward ensuring that women can successfully reenter society. This will not only help the nation’s economic recovery as a whole but also allow these women to contribute to their communities and build prosperous lives.

Over the past several years, many justice reform advocates have recognized how easily a criminal record can hinder future progress, underscoring the need for policy solutions that will help eliminate barriers to quality job opportunities and give justice-involved individuals a fair chance to earn a decent living. This issue brief discusses the unique challenges that women with a criminal record face when trying to enter the workforce. It also highlights several practical, effective solutions currently advancing across the nation that will help justice-impacted women establish economic security and successful futures for themselves and their families.

Women with a criminal record face particularly devastating collateral consequences in the labor market and workforce

Discussions related to the criminal justice system often overlook the system’s impacts on women. Women currently account for more than 1 million people in the criminal justice system’s total supervised population, including probation and parole.⁸ The percentage of annual arrests of women rose from 15 percent of total arrests in 1980 to 27 percent in 2019.⁹ Within nearly the same time period, the incarceration rate of women grew by 700 percent—two times the growth rate for men.¹⁰ Many incarcerated women enter the justice system with a number of challenges including limited education, food and housing insecurity, low incomes, poor physical and mental health, and single parenthood.¹¹ And despite the fact that overall state prison populations have decreased in recent years, the rate of incarceration for women is still growing.¹²

The impacts are even more pronounced among women of color, who represent a large portion of incarcerated women. Black and Hispanic women are overrepresented in prisons and jails, making up 30 percent and 16 percent of the total number of incarcerated women, respectively. Combined, however, they make up only 24 percent of women in the United States.¹³

The rising population of justice-impacted women has resulted in a mounting crisis. America's broken legal system has left far too many people with a criminal record that can impede their chances of contributing to the economy and building a successful future. For instance, a job can be difficult to come by when 9 in 10 employers use background checks in their hiring process.¹⁴ A study from the University of Michigan Law School found that job applicants with a criminal conviction are 60 percent less likely to receive a callback than those without a criminal history.¹⁵ Employment opportunities become even less available when considering licensing requirements. For instance, 1 in 4 jobs require an occupational license, which often requires a background check for approval.¹⁶ A criminal record can disqualify applicants from receiving the licensing credentials needed for a job, even when the applicant is well-qualified for the position. Similar challenges can also arise for someone trying to pursue an educational opportunity or obtain housing.¹⁷

The regular use of background checks perpetuates the negative stigmas often associated with having a criminal history and creates barriers to economic security that are difficult for all returning citizens—but especially women—to overcome. Prior to the pandemic, formerly incarcerated individuals faced an overall unemployment rate more than 5 times greater than that of the general population, and this rate was even higher for formerly incarcerated women, particularly women of color.¹⁸ Formerly incarcerated white women had an unemployment rate of 35 percent, while formerly incarcerated Black women faced a startling unemployment rate of 44 percent.¹⁹ Even when they are able to find employment, most formerly incarcerated women are limited to low-wage jobs, which generally have fewer barriers to employment than higher-paying jobs but offer few benefits and little opportunity for advancement.²⁰

The disparate impacts of the pandemic are leaving women out of work

The collateral consequences of a criminal record can create a number of hurdles that keep women in a cycle of poverty and recidivism. In the past year, the COVID-19 pandemic has exacerbated these challenges, with the effects of the resulting recession disproportionately affecting women.

Since February 2020, 2.3 million women have left the labor force and another 5.1 million have lost their jobs.²¹ The recession has hit women of color hardest. As of February 2021, Black and Hispanic women had the highest unemployment rates among women—8.9 percent and 8.5 percent, respectively—according to the latest U.S. Bureau of Labor Statistics jobs report.²² And while the unemployment rate for other racial and ethnic groups gradually decreased in the past few months, the rate of unemployment among Black women increased in January and February of 2021.

Millions of women have been laid off or pushed out of the labor force altogether due to increased caregiving responsibilities during the pandemic. Although the long-term effects of the “shecession” have yet to be seen, it is almost certain that many women and their families will experience a number of far-reaching setbacks, including economic insecurity, reduced savings and wealth, barriers to career advancement, food and housing insecurity, difficulty reentering the workforce, and more.²³ Women—particularly women of color, low-wage earners, and women with less education—may struggle to find jobs during this recession due to limited job openings and the reality that their skills may no longer match those needed in the workforce. As stated above, having a criminal record exacerbates these challenges for many formerly incarcerated women by putting them at a significant disadvantage in the current labor market, negatively affecting their chances of financial stability, and further hindering their opportunities for gainful employment.

The devastation to women’s employment will affect the overall stability of the U.S. economy and prospects for a full recovery. Prior to the pandemic, women held half of the total nonfarm jobs in the United States.²⁴ Women’s labor contributes an estimated \$7.6 trillion to the gross domestic product each year.²⁵ In 2020, the United States’ GDP decreased by 3.5 percent, the largest drop since 1946.²⁶ According to a National Association for Business Economics (NABE) survey, a near majority—49 percent—of the 235 economists surveyed expect that GDP will not return to prepandemic levels before 2022.²⁷ As the nation seeks to recover from the recession, supporting women’s return to and full participation in the labor force will be imperative for the growth of the entire U.S. economy.

Gender equality must be a cornerstone of any efforts to ensure that all women are given an equal opportunity to contribute and build toward a successful future. While 41 percent of the experts surveyed by NABE believe that the job market will return to prepandemic levels by 2022, 34 percent do not expect a full recovery before 2023.²⁸ For justice-impacted women who were already disadvantaged in the job market, two years is entirely too long to wait for quality job opportunities. A person’s chances of successfully reentering society and rebuilding their lives significantly decrease the longer it takes them to find a job.²⁹ If justice-impacted women are going to have a meaningful chance to build toward future success for themselves and their families, lawmakers must work to remove the barriers that impede access to gainful employment.

Policy proposals to ensure that justice-impacted women are given an opportunity to succeed

Several existing criminal justice reform policies, if enacted across the country, would support millions of women with a criminal record in finding gainful employment and ensure that they are not left behind in the nation's recovery efforts. Clean slate, fair chance licensing, and ban the box measures are just three policies that have already made positive impacts in many jurisdictions. At a time when so many people are in need of resources and support, the implementation of such policies will help ensure that justice-impacted people—especially women—are no longer excluded from employment opportunities.

Clean slate policies

Automatic record expungement, also known as “clean slate,” is an essential tool that seals an eligible person's criminal record. Clean slate policies increase access to record clearance by allowing individuals to bypass the typically lengthy, bureaucratic, and expensive petition-based process for a circumscribed set of offenses after an individual meets all the conditions of their sentence and the required waiting period has elapsed.³⁰ The specific criteria for automatic record expungement vary by state.

An expunged record can help prevent the discrimination and stigma that stem from previous arrests or convictions. It can also help ensure that employers, agencies, landlords, and other decision-makers appropriately evaluate an applicant based on their skills and relevant qualifications. Measures such as clean slate are important for all justice-impacted individuals but especially for the growing number of women who face the challenges of a criminal record with even fewer reentry resources than their male counterparts.

Several states have already implemented clean slate legislation, and others are following suit. In 2018, Pennsylvania became the first state to pass automatic record-clearing measures.³¹ The state's law requires the automatic sealing of eligible nonviolent misdemeanors after 10 years.³² Prior to the enactment of the law, only 6.5 percent of individuals who were eligible filed petitions to clear their records.³³ Less than a year after enactment, more than 35 million cases were sealed, helping close to 1 million people—52 times greater than the number of misdemeanors sealed through a petition process.³⁴

Due to clean slate's infancy, its impacts are not yet fully realized. However, the law has already exceeded expectations in Pennsylvania and will provide many justice-impacted individuals with an equitable opportunity to build a prosperous future for themselves as they navigate the challenges of reentry and the pandemic recovery. Utah enacted its own clean slate measure in 2019, and in 2020, Michigan passed clean slate legislation that expanded automatic record expungement to include certain felonies, making it the most comprehensive measure passed in the

United States thus far.³⁵ As the interest in clean slate grows across the nation, other states are working to advance their own versions of automatic record-clearing laws, including Connecticut, Oregon, Delaware, Louisiana, and Texas.³⁶ Federal lawmakers are also learning from the states: The last Congress introduced the Clean Slate Act, which would create the first federal record-clearing remedy, sealing of certain felony records and establishing an automated record-sealing process for certain federal drug offenses.³⁷ Additionally, as part of his plan to advance racial equity, President Joe Biden pledged during his campaign to help states adopt “smart data infrastructure to support second chances.”³⁸

Fair chance licensing laws

Fair chance licensing laws prohibit restrictions that deny occupational licenses to individuals solely based on their criminal records, opening pathways for people with records to join licensed professions. Today, 1 in 4 jobs require an occupational license; as the number of licensed professions grows, so does the need to expand access for record-holding individuals.³⁹ Many state licensing laws and regulations allow licensors to deny applicants occupational licenses or certifications because of their criminal history. There are currently more than 27,000 licensing restrictions at the state level, and each state has an average of 56 occupational licensing laws with mandatory restrictions for people with a felony conviction.⁴⁰ These restrictions deny justice-impacted people from job opportunities within many well-paying professions.

Licensing restrictions can be particularly limiting for formerly incarcerated women, who disproportionately work in fields that are more regulated and therefore more likely to require certification or licensing, such as health care, child care, and education.⁴¹ Of the 10 fastest-growing occupations, six fall under health care and personal care support, which are overwhelmingly women-dominated fields.⁴² As these professions continue to grow, even more job opportunities could be denied to justice-impacted women if measures are not put in place to alleviate the difficulties of obtaining a license or certification to work.

Many elected officials and state lawmakers across the political spectrum have called for fair chance licensing measures to limit record-based or arbitrary licensing requirements, and a number of states have already taken action. In the past five years, at least 30 states have enacted 39 laws that help limit the use of individuals’ criminal history for licensing decisions.⁴³

Ban the box and fair chance hiring policies

Fair chance hiring policies encompass all measures that prohibit record-based discriminatory practices and therefore help ensure people’s criminal records are not factored into employment decisions. Prior to the 21st century, the employ-

ment laws of only three states addressed employers' use of arrest or conviction records in hiring decisions.⁴⁴ However, since then, a number of states have adopted laws and regulations that limit the use of criminal records in such decisions. Most notable among these are ban the box policies.

Ban the box policies—first championed by All of Us or None, a national civil rights movement of formerly incarcerated people and their families—prohibit employers from asking applicants about their criminal history before an employment offer has been made, giving applicants with a record a better chance of being hired without the stigma of their past.⁴⁵ Thirty-six states, the District of Columbia, and more than 150 cities and counties have adopted ban the box measures that apply to all public employers.⁴⁶ Fourteen states and 20 cities have gone even further, extending their ban the box measures to private sector employers as well.⁴⁷

Ban the box laws have also been implemented at the federal level. Last year, Congress passed the Fair Chance Act, which prohibits federal employers and private employers who contract with the government from making any inquiry into an applicant's criminal history until they extend a conditional offer.⁴⁸ The federal measure also establishes an appeals process to help hold employers who violate the provision accountable. The new law goes into effect this year and is expected to help an estimated 700,000 people.⁴⁹ Federal lawmakers are now working to encourage all states to enact their own ban the box measures. This month, Rep. Maxine Waters (D-CA) and Rep. David Trone (D-MD) introduced the Workforce Justice Act of 2021.⁵⁰ The legislation would require states to establish their own ban the box measures in order to remain eligible for vital criminal justice funding. Although ban the box measures do not preclude an employer from reviewing an applicant's criminal record later in the hiring process, they can significantly reduce discriminatory actions that stem from the stigma of a criminal record, as well as help ensure that all job applicants are given a fair chance to prove their qualifications, regardless of their background.⁵¹

Bills that carry clean slate, fair chance licensing, and ban the box provisions are already making waves across the nation, at both the state and federal levels. However, justice-impacted people cannot receive the full protections of these bills until they become laws. Particularly in the face of the disproportionate and devastating economic impacts of the coronavirus pandemic, women with a criminal record need these measures to ensure equal opportunities and reach economic stability for themselves and their families.

Conclusion

The United States needs as many people employed as possible to help rebuild the economy, and this cannot be achieved without the full participation of women in the workforce. Millions of women have lost their jobs or been forced to leave the labor force altogether, which will inevitably have huge impacts that last long after the pandemic. These effects are particularly devastating for justice-impacted women.

For justice-impacted women, especially women of color, the process of returning to their communities can feel like a never-ending, uphill battle. Criminal records can impede their access to employment opportunities, educational advancement, housing security, health care, and other key resources. Now, as millions of women face the economic fallout of the COVID-19 pandemic, it is imperative that U.S. leaders implement gender-equitable recovery measures that support opportunities for financial growth and help topple barriers that stand in the way of gainful employment. Clean slate, fair chance licensing, and fair chance hiring policies are all actions rooted in justice reform that would help ensure that women with a criminal record face fewer barriers to quality job opportunities. These measures can help advance an equitable recovery that leaves no woman behind.

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The author would like to extend special thanks to Rebecca Vallas, Margarita Jorge of the Clean Slate Initiative, Robin Bleiweis, Osub Ahmed, and Diana Boesch for their contributions to this issue brief.

** **Correction, March 31, 2021:** This issue brief has been updated to clarify the provisions of the federal Clean Slate Act.*

Endnotes

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