

Banning “the Box”

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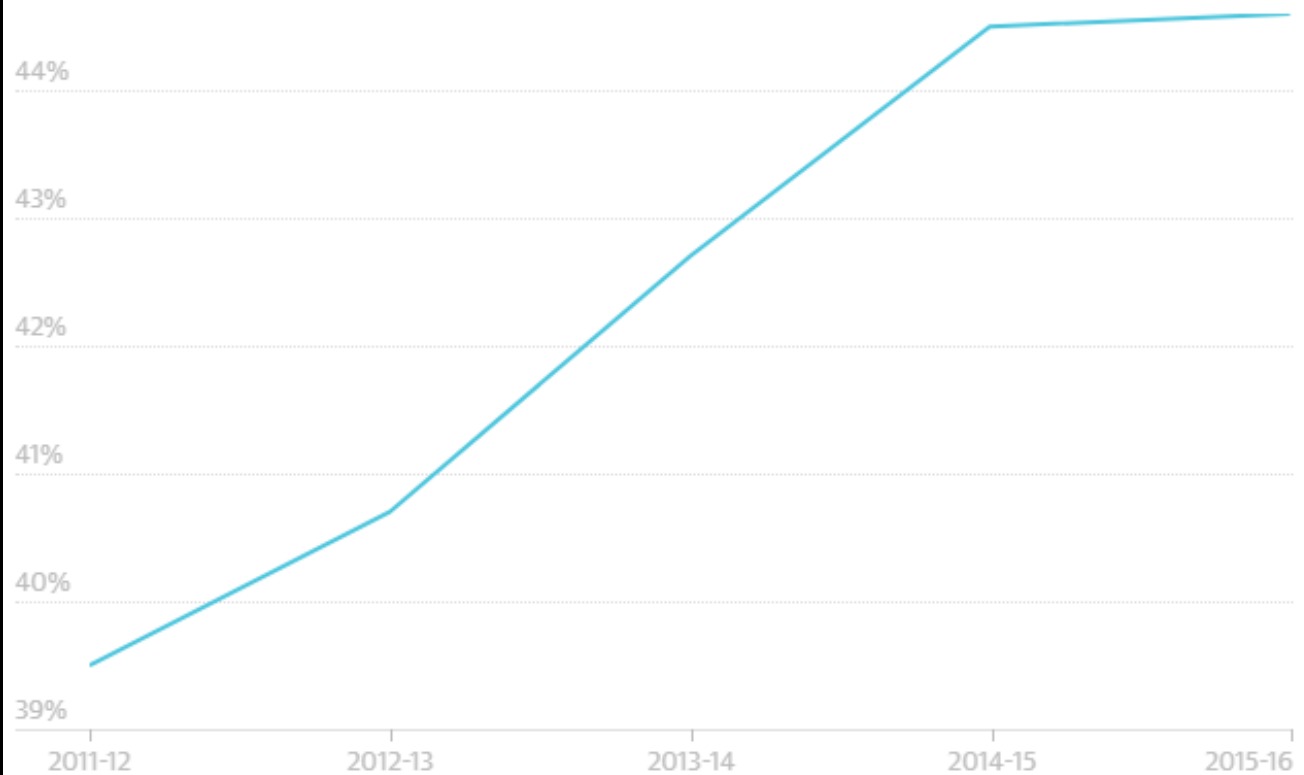
Recidivism

- Prisons in the United States are built with “revolving doors”
 - More than 83% of individuals released from state prisons recidivate within five years (Mean 21 months).
 - Approximately 1/2 of individuals released from state prisons recidivate within five years.
- Recidivism rates are increasing in Australia
 - As of 2016-16, 44.6% of all Australian prisoners returned within two years of release.
 - This reflects an increase from 39.5% in 2011-12

Recidivism - AUS

Recidivism in Australia

Percentage of prisoners who returned to prison within two years



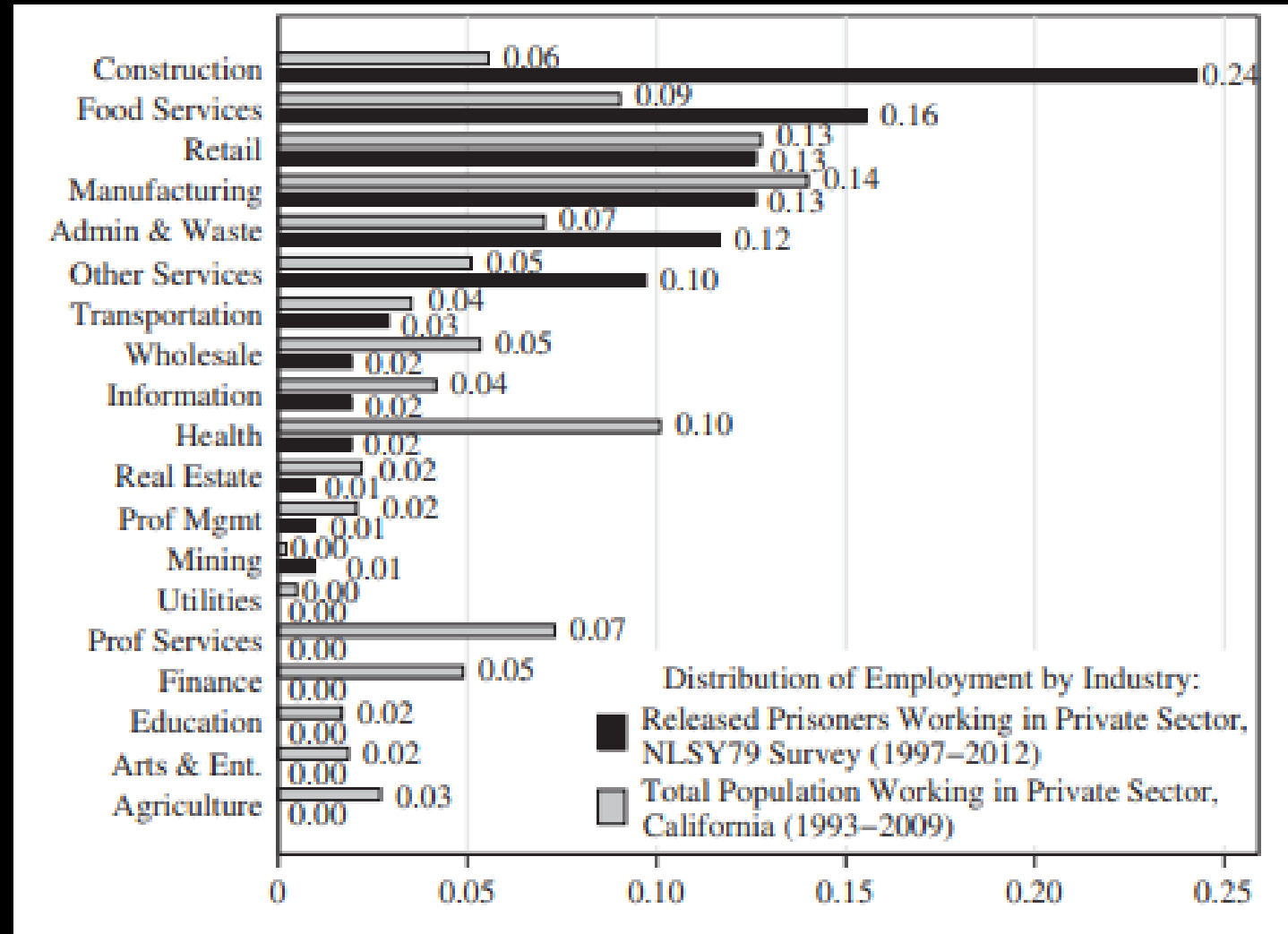
Guardian graphic | Source: Report on Government Services, 2017



Re-Entry Challenges

- Offenders undoubtedly face a number of challenges:
 - Social challenges and stigmatization
 - Housing challenges
 - Financial challenges
 - Incarcerated offenders in the United States make between 0.00USD-1.41USD/hour in forced labor
 - Unable to save-up money as they are required to purchase basic necessities at inflated prices: 2 tampons = 40hours of work
- However, arguably the biggest challenge is meaningful employment

Employment By Sector





The Criminal Record – USA

- Arguably the biggest challenge to “meaningful employment” for ex-offenders is their criminal record.
- An ex-offender’s criminal record is a permanent fixture for the remainder of their life unless meeting jurisdiction-specific criteria for expungement.
 - Usually very minor offenses after a lengthy waiting period.
- Approximately 82% of employers conduct a criminal background check prior to employment.
 - Some are mandated by law, but the majority are employer-driven (civil liability issues).



The Criminal Record – AUS

- AUS provides for “spent conviction” sentencing schemes in every state except Victoria.
 - After a certain period of time, depending on jurisdiction, an individual's criminal record is wiped-clean.
 - In Victoria, spent convictions are determined by the police.
 - The goal is to allow ex-offenders to “move on” with their lives.
- In Western Australia and the ACT, it is unlawful to discriminate against job applicants based upon their spent convictions.



The Criminal Record – AUS

- Tasmania and the Northern Territory are the only states and territories where it is clearly unlawful to decide not to hire someone for a job because of their criminal record.
 - Unless there is an inherent requirement of the job the person cannot do because they have a criminal record.
- Those living outside of Tasmania or the NT can technically contest an employer's decision not to hire them b/c of a criminal record to the Australian Human Rights Commission.
 - The Commission does not have the power to force an employer to hire someone or award any monetary damages.



Changes in U.S. Criminal Record Laws

- In 1998 Hawaii became the first U.S. state to “ban-the-box” as applied to both public and private employment.
 - The law prohibits employers from inquiring into an applicant’s criminal history until after a conditional offer of employment has been made.
 - The offer may be withdrawn if the applicant’s conviction bears a “rational relationship” to the duties and responsibilities of the position sought.
 - Under the law, employers may only consider an employee’s conviction record within the most recent ten years, excluding periods of incarceration.



Changes in U.S. Criminal Record Laws

- In effect, “ban-the-box” legislation was designed to provide applicants a fair chance at employment by removing the conviction history question from job applications and delaying background checks until later in the hiring process.
 - Generally, this has applied to public-sector employment.
 - However, 13 states have mandated the removed of conviction history questions for PRIVATE employers.
- 3/4 of the U.S. population live in a jurisdiction that has some form of “ban-the-box” or fair-chance policy.



Results of Shifting Policies

- Positive Outcomes:
- Ex-offenders have a better (but not staggering) chance of getting hired if a job application does not include questions about criminal history
 - A study by Case Western Reserve University found increased employment of residents in high-crime U.S. neighborhoods by up to 4%.
 - Employment increases in communities that “banned the box” were particularly large in the public sector and in lower-wage jobs
 - Again raises the issue of “meaningful employment”
 - “Banning the box” promoted “**upskilling**”—increases in education and experience requirements—as employers substitute criminal-background questions for others to determine an applicant’s qualifications.

Results of Shifting Policies

- The same study reveals negative outcomes:
 - Women—especially African-American women—were hired less often in communities that “banned the box”
 - It is likely an increase in the hiring of black men came at the detriment of black women.
 - BTB policies significantly increase the gap between white and black applicants in callback rates.
 - Black applicants without criminal records see a substantial drop in callback rates after BTB, which their white counterparts do not see.
 - Meanwhile, white applicants with criminal records see a substantial increase in callbacks, which their black counterparts do not see.
- May be premised on data suggesting 1/3 of black men will fall under the control of the U.S. CJ system at some point.



Conclusions

- While “BTB” legislation in the United States has led to upskilling and has had some impact on employment rates:
 - Most jobs are low-skill, low-paid, or public sector and thus not “meaningful.”
 - Employers increase already rampant bias and racism in the hiring process.
- However, it may be a good addition to AUS’s existing “spent conviction” hiring practices in states and territories other than Tasmania and the NT where racial divides are not as severe as in the USA – especially with increasing recidivism rates.
 - Combined, spent conviction practices and ban-the-box legislation as implied by the AUS Human Rights Commission.



Conclusions

- “Spent conviction” policies may be a good addition to BTB legislation in the U.S. BUT FOR the rampant racism already existing in employment practices.
- Instead, to be successful, the U.S. should adopt policies similar to Tasmania and the Northern Territory where it is clearly unlawful to decide not to hire someone for a job because of their criminal record.
 - This, combined with existing civil rights legislation banning the consideration of race in hiring practices, may be enough to overcome, at least some, of the discriminatory practices in the U.S. leading to high rates of recidivism.



Final Thought

“We lose our right to be surprised [at]the high recidivism rate in the country if we refuse to hire folks who have taken responsibility for their crimes and have done their time.”

- Greg Boyle

American Clergyman

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