

# “BAN THE BOX”

Presented by

Sophia G. Long  
Deputy Attorney General  
(702) 486-3165  
slong@ag.nv.gov



Office of the Attorney General  
555 E. Washington Avenue  
Suite 3900  
Las Vegas, Nevada 89101

# **“BAN THE BOX”**

## **WHAT WE WILL COVER**

- History and overview of Ban the Box legislation
- Nevada AB384 from the 79<sup>th</sup> (2017) Legislative session
- EEOC and NERC guidance
- Suggested language and best practices

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## Fair Chance Policy:

- “Removing criminal inquiries from job applications eases hiring barriers and creates a fair chance to compete for jobs...allows employers to judge applicants on their qualifications first, without the stigma of a record.”
- Estimated 70 million U.S. adults with arrests or conviction records, many of whom are turned away from jobs despite their skills and qualifications
- Hiring barriers
- Disparate impact on minorities: “African Americans and Latinos are arrested at a rate of 2 to 3 times their proportion to the general population”

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- Employment boosts the economy
- Employment significant factor in reducing re-offending
- Research suggests once an employer had the chance to examine the qualifications of an applicant, the employer was more willing to hire the applicant
- Hawaii first state; Philadelphia first city
- Question now banned in 34 states and over 150 cities and counties
- Common reference to any criminal history restrictions

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## NEVADA

- AB384 (2017) NRS 284, effective January 1, 2018
  - Prohibits **public** employers from asking applicants about criminal history on an *initial* job application
  - Exception: peace officers, firefighters and any position that entails physical access to a computer or other equipment used to access CJIS or the NCIC
- Refers to criminal history questions on job applications:
  - Have you ever been convicted of a crime?  YES  NO
  - Must include statement that:
    - A record of conviction will not necessarily bar the applicant from employment

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## WHEN TO CONSIDER CRIMINAL HISTORY:

- Can only consider criminal history of an applicant in the classified/unclassified service after:
  - The final interview;
  - A conditional offer made; or
  - Has been certified by the Administrator (unclassified: of Human Resources)
    - Certified: NRS 284.265
- Effectively delays criminal history inquiry until later in the hiring process

**TIP:: May inform the applicant of specific criminal history that would disqualify an applicant pursuant to state or federal law**

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## WHAT TO CONSIDER: CONVICTIONS ONLY!!

Must include a statement that:

- Time since the conviction
- Nature and severity of the offense
- Nature of the job
- Age of person at time of offense
- Evidence of rehabilitation

**TIP:: Must have a clear connection why the criminal record makes the applicant unfit for the job**

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## WHAT NOT TO CONSIDER:

- Arrests not resulting in convictions
- Convictions that were dismissed, expunged or sealed
- Infraction or misdemeanor that did not result in jail time
  - Stayed sentence?



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## **BEFORE RESCINDING AN OFFER BASED ON CRIMINAL HISTORY**

- Provide written notice of the specific items in the background check report that is considered job related AND a copy of the report
- Allow applicant an opportunity to explain the facts and circumstances and/or challenge the report
- Background checks may contain inaccuracies or errors
- Follow the Fair Credit Reporting Act, and any state requirements
- Hold the position open until the review is complete

**TIP:: Allow the applicant to include letters of recommendation and certificates from programs or education**

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## RESCINDING AN OFFER BASED ON CRIMINAL HISTORY:

- Not required to hire those with a criminal background *if job related*
- Provide the applicant with *written notice* including:
  - Specific items in the background check report that is considered job related which is the reason for the rescission
  - Notification that the applicant may discuss the rescission with the Director of Human Resources or designee

**NRS 284.281(3); NRS 284.283(3):** *may* rescind a conditional offer of employment extended to an otherwise qualified person who has criminal charges pending against him or her that were filed within the previous 6 months.

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## EEOC and NERC guidance

- Never refuse an applicant just because of a criminal conviction unless job-related or safety concern
- Employers **MUST** not treat applicants differently during the hiring process
- Violations are considered an unlawful employment practice.
  - May file a complaint with NERC
  - [http://detr.state.nv.us/PDFS/Ban the Box Guide.pdf](http://detr.state.nv.us/PDFS/Ban_the_Box_Guide.pdf)
  - Sample letters

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## Suggested language and Best Practices

- Avoid stigmatizing language: “ex-offenders”, “ex-felons”
  - Instead use “people with records”
- Avoid blanket exclusions on the application: “clean background only”, “must pass a background check”
  - Instead use “a background check will be conducted for this position”
  - MUST include notice that “a record of conviction will not necessarily bar the applicant from employment” and the considering factors
- Remove provision to include “voluntary disclosure” of background check information from the application, including self-reporting

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QUESTIONS  
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