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The District of Columbia Fair Criminal Record Screening Amendment Act of 2014:

THE WORK AND ENFORCEMENT BY THE DC OFFICE OF HUMAN RIGHTS



MAY 2019

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This report would not have been possible without the fantastic team that put it all together. For more than a year, OHR staff worked diligently to build this report and we are very grateful for the contributions made by our sister offices and agencies throughout the District of Columbia government.

First and foremost, we would like to thank our champions who work hard every day to ensure there is strong infrastructure in Washington, DC for returning citizens coming home. This includes the staff at the Mayor's Office on Returning Citizen Affairs (MORCA) and the Department of Employment Services (DOES), as well as community partners and independent employers who make it a priority to hire job applicants and give them a second chance. OHR would also like thank returning citizens who strive to help their peers and community members succeed every day. We would also like to thank Mayor Muriel Bowser, without whose leadership and support our work would not have been possible.

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FOREWORD



The District of Columbia Office of Human Rights (OHR) was founded over 40 years ago with the purpose of ending discrimination and increasing equality for all, including residents and visitors. Our primary role is to uphold and enforce the DC Human Rights Act of 1977, which aims to make the District a place free of bias in all forms and settings. Washington, DC's diversity is a part of what makes it great, and we work to maintain and promote equity and access to justice for all. It is a human right to be treated fairly and equally, regardless of differences in identity, life experiences, and beliefs. Among a number of other anti-discrimination laws, OHR is responsible for the enforcement of the Fair Criminal Record Screening Act of 2014 (FCRSA).

The FCRSA is one of the only "Ban the Box" laws in the country with a fine structure and an enforcement arm which is the Office on Human Rights and the Commission on Human Rights. The District's FCRSA has become a model for the country. The FCRSA makes it unlawful for employers to look into a job applicant's criminal background prior to a conditional offer of employment. Through proactive, community-based work, our office works to make sure returning citizens are able to secure employment in the District, free of discrimination or prejudice. Criminal justice reform has begun to move to the forefront in many communities around the country grappling with how to address the needs of individuals coming back into their communities after incarceration. As a part of this reform in Washington, DC, there have been policy initiatives, proposed legislation, campaigns, and services geared towards addressing barriers to reintegration. These campaigns are designed to address business culture, educate the public, and create opportunities to ensure our returning citizens are afforded an opportunity to succeed.

Mayor Bowser has consistently supported the right of all returning citizens to work and have a fair shot at starting over. Fair-chance hiring practices, along with additional policies and agency incentives put into place during the Bowser administration, have begun to show promising effects as many returning citizens have taken active employment roles in areas that were once thought of as prohibited employment for individuals with criminal backgrounds. In this report, we outline the history that led to passage of the Act and OHR's work on enforcement, as well as successes and challenges as we continue this important work.

Washington, DC stands firmly in its values of diversity, inclusion, and respect for all peoples. As you will read in the pages that follow, returning citizens themselves played a major role in creating and establishing reform, and we are indebted to them for their vision and commitment to this work over many decades.

We invite you to learn more about OHR's broad enforcement work by visiting ohr.dc.gov and welcome you to join us in the work of protecting the civil and human rights of all who work in, live in, or visit the District of Columbia.

A handwritten signature in black ink, reading "Mónica Palacio".

Mónica Palacio
Director, DC Office of Human Rights

PURPOSE



Mayor Muriel Bowser announcing plans to overhaul the criminal record sealing process through legislative reforms at a press conference; September 2017.

OHR has been entrusted with enforcement of the Fair Criminal Record Screening Amendment Act of 2014 (FCRSA), and in the four years since the law was passed, this office has worked steadfastly to educate the community, including businesses and individuals, and to secure compliance with the law. OHR has educated communities on their rights and created the infrastructure needed within our agency to ensure that FCRSA cases are efficiently and effectively investigated, analyzed, and resolved.

OHR is proud to issue this report, which highlights the work that has been done to enforce the law, including seeking compliance and sharing data on the number of inquiries and complaints filed with OHR from the law's effective date to the end of the 2018 calendar year. The statute has had profound effects on the employment landscape for returning citizens in Washington, DC, and we are pleased to present our findings in this report.

BACKGROUND AND HISTORY

Over a decade ago, a grassroots collective of formerly incarcerated individuals and their families launched a national civil rights campaign for returning citizens. This collective, called “All of Us or None,” sought to ban questions about a person’s criminal history from job applications and interviews. The group believed banning criminal background inquiries on job applications would increase access to employment, address racism, reduce recidivism, and affirm the human dignity of returning citizens.¹ They found that one in four adults in the United States had a conviction history and thus, faced pervasive barriers to housing and employment.² Further, according to the collective, communities of color were particularly hit hard by mass incarceration and discrimination in the workplace, subjecting them to a double barrier in seeking employment.³ The collective urged local and state governments to ban criminal history questions and background checks from public and private job applications, while asking employers to consider an applicant’s qualifications and character before their criminal history.⁴



A “Ban the Box” rally in Washington, D.C. Photo courtesy of Legal Services for Prisoners with Children.

In 2006, Ward 8 DC Councilmember Marion Barry first introduced legislation entitled “Human Rights for Ex-Offenders Act” aimed at addressing employment discrimination for men and women returning from incarceration who were seeking employment. It was widely believed that employers were screening out applicants who checked the box asking if they were ever convicted of a crime on job applications. For many years, the legislation was met with lengthy public hearings, which included a plethora of groups and individuals testifying for and against the legislation, and in 2009, it culminated in one of the longest public hearings on record.

In 2010, members of the former incarcerated community and advocates from the DC Volunteer Lawyers Project, the Public Defender Service, and several faith organizations lobbied Ward 5 DC Councilmember Harry Thomas, Jr. to introduce legislation that contained one of the original asks of the 2006 human rights legislation introduced by Marion Barry. This legislation, which targeted public-sector jobs, would remove the box from the DC2000 job application and allow an individual to be interviewed prior to performing a background check.

In 2011, in the company of five pioneering states, the District of Columbia passed the returning citizens Public Employment Inclusion Amendment Act of 2010, which restricts a public employer from inquiring into the criminal history of certain job applicants.⁵ After the passage of the 2010 law, the District government found that 76 percent of job applicants with a criminal record were suitable for employment, and without this new law in place, these individuals would have most likely been disqualified for employment solely based on their criminal background.⁶ However, this law did not affect private employers in Washington, DC and did not offer any legal remedy to aggrieved applicants.



John A. Wilson Building, home of the municipal offices and chambers of the Mayor and the Council of the District of Columbia; June 2015

In 2014, the District of Columbia took a leap forward and passed the more comprehensive Fair Criminal Records Screening Amendment Act (FCRSA), also popularly known as “Ban the Box.” The FCRSA expanded the prohibition against criminal background inquiries, extended coverage to private employers, and established legal remedies for applicants. After years of persistent advocacy by local organizations, the Mayor’s Office on Returning Citizen Affairs (MORCA), and returning citizens from across the city, the DC Council passed the new statute in 2014 with the intent of assisting in “the successful reintegration of previously incarcerated persons into the community by removing barriers to gainful employment.”

The FCRSA gives OHR exclusive enforcement authority that includes investigating complaints of alleged violations and certifying probable cause findings to the Commission on Human Rights. The Commission determines whether there has been a violation of the law, and if so, assesses fines.

OVERVIEW OF THE LAW

The FCRSA was enacted to assist in the successful reintegration of previously incarcerated persons into the community by removing barriers to gainful employment. Unlike other non-discrimination laws that OHR enforces, FCRSA applies only to employers in Washington, DC with 11 or more employees and where employment opportunities are located in the District of Columbia. The law prohibits covered employers from asking a job applicant about or requiring a job applicant to disclose the individual's arrest and criminal accusation records at any time during the application and hiring process. It also prohibits inquiries about an applicant's criminal conviction record prior to extending a conditional offer of employment; this includes direct or indirect questions on job applications as well as questions during interviews.

After a conditional offer of employment has been extended, the employer *may* only ask about a person's criminal conviction record—not arrests. Furthermore, if an employer takes an adverse action as a result of the conviction record, such as rescinding the offer of employment, it may do so *only* if the decision was for a "legitimate business reason" consistent with the specific set of criteria set forth in the law. Violations of the law should be reported to OHR.⁷

WHAT DOES THE LAW SPECIFICALLY LIMIT OR REQUIRE?

FCRSA provides that employers may not, at any time, make an "inquiry" about or require an applicant to disclose or reveal, information regarding:

- Arrest record; or
- Charges, complaints, or indictments that are not pending at the time of the inquiry or did not result in a conviction.

It also provides that, prior to a conditional offer of employment, employers may not make an "inquiry" about or require an applicant to disclose or reveal information regarding:

- Convictions.

"Inquiry" is defined as any "direct or indirect conduct intended to gather criminal history information from or about an applicant using any method, including application forms, interviews, and criminal history checks." This means then that an employer may not ask on a job application or during an interview whether the applicant has ever been arrested, convicted of a crime, or spent the night in jail. It also means that employers may not require an applicant to disclose the prohibited information on an employment application form. For example, an employment application which requires an applicant to "authorize" an employer to conduct a broad pre-employment criminal background check may violate the law as it may amount to conduct intended to gather prohibited information, such as arrest record, charges, and convictions prior to a conditional offer of employment.

Once a conditional offer of employment has been extended, employers may ask about or obtain information about criminal convictions, and only convictions, not arrests nor any other criminal information.

However, if an employer withdraws an offer or takes another form of adverse action after extending a conditional offer, it may only do so for a "legitimate business reason." The statute provides the following factors to be considered in making such decisions:

- The time between job offer and conviction;
- The age of the applicant when the offense occurred;

- The relationship between the offense and the duties of the job, including the applicant's fitness or ability to perform the duties;
- The frequency and seriousness of the offense;
- Any evidence of good conduct or mitigating information provided by the applicant.

Finally, if the employer does take an adverse action, the employer must provide the applicant with a notice of how to file a complaint with the OHR; and upon request by the applicant, the employer must provide a copy of all records relied upon in taking the adverse action within 30 calendar days of the request

WHO IS CONSIDERED AN APPLICANT?

The law has defined an applicant as “any person considered or who requests to be considered for employment by an employer.”⁸ OHR has interpreted this definition to include a person who obtains and begins to fill out an employment application but does not submit the application because it contained an unlawful inquiry.

For example, if a job seeker picks up a paper application at a store and begins to fill out the form, but does not complete or submit the application because of a prohibited question or conduct on the form, that job seeker is considered an applicant under the law. Similarly, if the job seeker begins an online application, but does not complete it due to the unlawful question or statement on the application, the job seeker is still considered an applicant, even though they did not actually submit the application.

WHO IS EXEMPT FROM THE FCRSA?

The law does not apply to federal government employers or in the following instances:

- Where federal or District law or regulations require consideration of an applicant's criminal history for the purposes of employment;
- Where a position has been specifically designated by the employer as part of a program or obligation that is designed to encourage the employment of those with criminal histories; or
- Where the facility's or employer's primary purpose is to provide programs, services or direct care to minors or vulnerable adults.

Exemptions are determined on a case-by-case basis. For example, an employer may have certain positions which are exempt from the law, but this does not mean that the employer is categorically exempt from the law for all positions.

WHAT IS THE PROCESS ONCE A COMPLAINT IS FILED AT OHR AND HOW DOES THE FINE STRUCTURE WORK?

After a complaint is filed and OHR docket the case, OHR schedules a mandatory mediation, as we do with all cases under our jurisdiction, and investigation will begin. The steps for filing a complaint at OHR are listed on page 16.

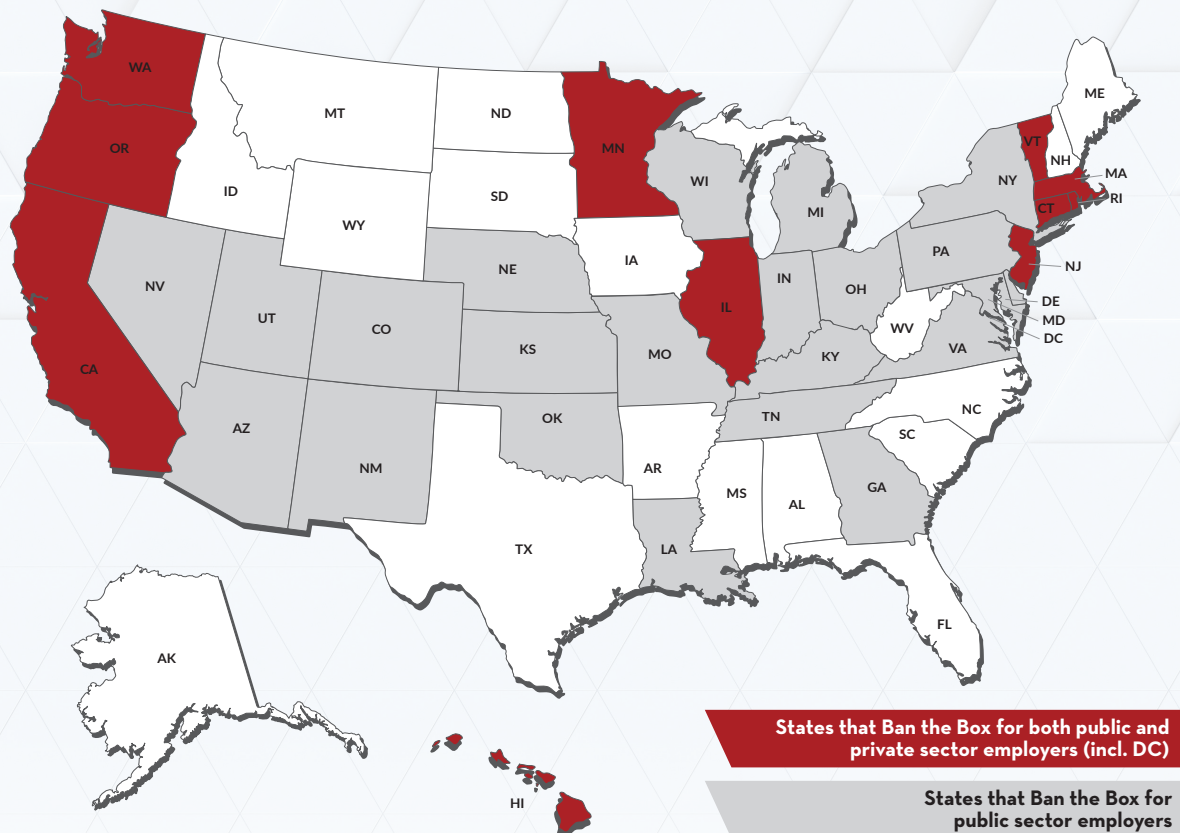
During mediation, the parties may decide to settle a matter, and in some cases, complainants are offered monetary compensation. It should be noted that any monetary compensation provided to the complainant is freely provided by the employer and does not constitute a fine.

If the case is not resolved at mediation, OHR will continue the investigation. If OHR finds probable cause to believe the employer may have violated the law, the case will be forwarded to the Commission on Human Rights for a hearing on whether the employer violated the FCRSA.

If the Commission finds that the employer has violated the FCRSA, the Commission *must* impose the following fines:

- For employers with 11 to 30 employees, a fine of up to \$1,000.00;
- For employers with 31 to 99 employees, a fine of up to \$2,500.00; and
- For employers with 100 or more employees, a fine of up to \$5,000.00.

The law requires that half of this fine is awarded to the complainant and half is remitted to the DC Government General Fund.



HOW DOES THE DISTRICT OF COLUMBIA'S LAW COMPARE TO LAWS IN OTHER JURISDICTIONS?

Today, over 150 cities and counties have adopted similar laws to the FCRSA, often known as “Ban the Box” or fair-chance hiring laws. Eleven states and 17 cities include private employers as a group that must comply with fair-chance laws. Additionally, DC and 31 cities and counties include government contractors in the category of employers that must also be in compliance with their Ban the Box policies. The District’s law has been lauded as one of the most progressive, as it is one of the few with a fine structure attached.⁹

As of September 2018, 33 states have implemented Ban the Box policies: Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, and Wisconsin.¹⁰ According to the National Employment Law Project (NELP), almost 75 percent of the entire population of the United States lives in a jurisdiction where a Ban the Box law has been implemented.¹¹

OHR'S PHASES OF ENFORCEMENT

After the FCRSA was enacted in July 2014, OHR worked proactively and quickly to develop the phases of enforcement. The **first phase** focused on education and outreach. The **second phase** of the enforcement process involved building the infrastructure for filing, mediating, investigating, and adjudicating complaints. The **third phase** centered on ensuring effective investigation and case processing.

PHASE 1: EDUCATION AND OUTREACH

During the summer of 2014, OHR began education and outreach efforts while waiting for the FCRSA to pass congressional review. OHR developed and launched an FCRSA educational campaign that included the creation of fact sheets and other resources for returning citizens and the business community. These materials were made available on OHR's website.

A year later, OHR had distributed over **1,500 FCRSA information sheets**, and since then 8,500 more information sheets have been distributed. In addition, OHR has conducted **149 total trainings** and **113 events** to educate the community on FCRSA.

As of December 2018, the OHR website page with information about FCRSA and returning citizens had been visited **nearly 11,000 times** with **7,100 unique page views**. The resource page for employers had been visited **more than 4,000 times** by over **2,500 unique viewers**, and the resource page for applicants had been visited **more than 4,700 times** by over **3,200 unique viewers**.

From the time the law was passed, through December 2018, OHR had distributed over **10,000 FAQ sheets** to community members.

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Teresa Hodge (at right), the formerly incarcerated co-founder of Mission Launch, Inc poses with an attendee of Mission Launch's inaugural Rebuilding Reentry Social Justice Hackathon in Washington, DC; August 2014

Outreach to Returning Citizens Community

At the time the law passed, OHR had only limited interaction with the returning citizen community. One of the first partnerships OHR formed was with Mission Launch DC, which works to support formerly incarcerated individuals in Washington, DC. OHR participated in Mission Launch's Rebuilding Reentry Hackathon, an event with the purpose of problem-solving a variety of issues associated with the prison system and the challenges of reentry. Ahead of the enforcement of FCRSA, OHR pitched a reentry "problem" that needed a technological solution at the Hackathon. The problem included requesting an internet "scrub" of all employment applications for DC businesses that had questions about convictions, arrests, or pending charges as a mandatory field to apply. Though some coding cohorts worked on the problem and potential solution during the event, no tangible solution came out of it. However, OHR was able to use its participation in the event to gain contact with individuals and groups who were working on issues related to returning citizens, which led to increased success in extending outreach for FCRSA.

Since the passage of the law, OHR has created extensive and multilingual resources for job applicants. The FCRSA job application education section of our website includes the following resources:

- Fact sheet for job applicants in English, French, Spanish and Amharic;
- Sample template for requesting interview records in English and Spanish;
- "I am a Returning Citizen" video;
- "How the Law Works" video;
- Tailored complaint forms: Application (Type A) and Interview Process/Adverse Action (Type B) Complaint Forms in English and Spanish; and
- A copy of the Fair Criminal Record Screening Amendment Act of 2014.

The National Employment Law Project (NELP) reports that one of the challenges jobseekers face when filing a Ban the Box complaint is complex and difficult to understand complaint forms. Thus, when OHR designed our complaint forms, we sought to make the forms user-friendly with reduced legal jargon. To allow maximum accessibility to OHR's process, complainants are able to file the forms with OHR online, in person, or by mail. When requested and as needed, OHR also provides assistance with filling out the forms at our office.

Through FY18, OHR has conducted over 150 trainings for job applicants and potential job applicants. These trainings were delivered to:

- Returning citizens in the community;
- Returning citizens enrolled in Project Empowerment, a transitional employment program at the DC Department of Employment Services (DOES) that provides job readiness training, work experience, and job search assistance to District residents (OHR offers repeated trainings to DOES each year); and
- Incarcerated citizens at the U.S. Penitentiary, Hazelton in West Virginia (trainings have been delivered both in-person in WV and through video conference).

Outreach to the Business Community

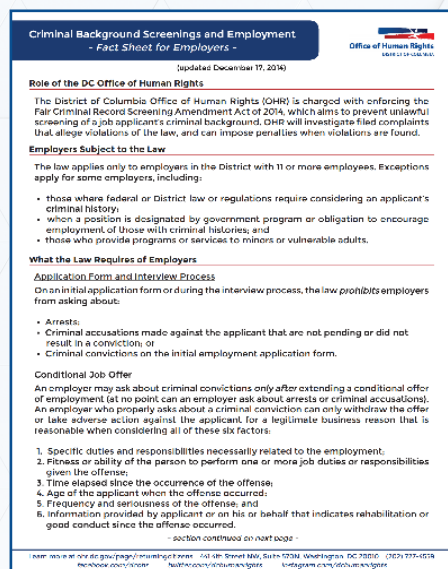
At OHR, we invest in public education and outreach to key stakeholders so that individuals know their rights and employers and business owners better understand their responsibilities. These investments, we believe, are an important tool in preventing violations of the laws we enforce, which then serves as a means to ending discrimination. In that vein, when FCRSA was enacted, OHR created a FCRSA Employer Education section on our website which included the following resources:

- Fact sheet for employers in English, French, and Spanish;
- Notice of the Right to File in English and Spanish;
- "I am a Returning Citizen" video to introduce the concept of a returning citizen;
- "What Employers Should Know" video;
- Fair Criminal Record Screening Amendment Act of 2014.

During FY18, OHR conducted 11 trainings with the business community. These trainings have been delivered to:

- Business owners at the Washington, DC Economic Partnership;
- Businesses enrolled in OHR's Business Training Series (these trainings are offered several times a year); and
- Businesses associated with the DC Chamber of Commerce.

OHR published information on FCRSA in the DC Economic Partnership's Business Guide, and partnered with the Greater Washington Hispanic Chamber of Commerce. Through the Chamber, OHR published information via the organization's listserv, which reached over 700 businesses in the DC Metro area.



OHR factsheet for DC employers that outlines new requirements under the Fair Criminal Record Screening Amendment Act of 2014.

Outreach to the Community-Based Organizations Supporting Returning Citizens

OHR currently has partnerships with the Court Services and Offender Supervision Agency (CSOSA) and the Department of Employment Services (DOES), specifically with the latter's Project Empowerment, with the goal of providing targeted outreach and training on FCRSA to returning citizens. In addition to working with returning citizens in the community and businesses, OHR also visited a number of penitentiaries through its partnership with CSOSA and provided FCRSA training to inmates preparing for reentry.



OHR presents on local Fair Chance laws to participants in the Project Empowerment training session at the DC Department of Employment Services, June 2018.



OHR speaking to soon-to-be released DC residents at Unites States Penitentiary at Hazelton, April 2016.

To date, OHR continues to make regular visits to correctional facilities in the region, as well as to DC Jail to provide outreach to current inmates who are likely to return to Washington, DC upon release. OHR has also worked with the Board of Elections and Ethics over the last two election cycles (2016 and 2018) to ensure that incarcerated District residents are registered to vote. Washington, DC is one of only a few cities in the United States that affords residents serving a misdemeanor sentence or who are awaiting trial for non-felony offenses the opportunity to vote, as well as automatically restores individuals' right to vote upon completion of their sentence.

PHASE 2: DEVELOPING FCRSA ENFORCEMENT INFRASTRUCTURE

In order to effectively enforce the new law, OHR trained agency staff and implemented a process for receiving and processing complaints. Guided by statutory provisions, it was determined that FCRSA cases would be processed in the same fashion as cases under the Human Rights Act, but using two separate forms. Below, we explain each step of this process.

I. How can a person file an FCRSA Complaint?

Complainants may file a complaint with OHR in person, by mail, or online using one or both of the following forms: (1) “Type A” Questionnaire Form; (2) “Type B” Questionnaire Form.

a. **Type A: Violations on Job Application**

Form Type A is used to allege the presence of unlawful criminal background questions or statements on job applications. For example, if an application requires authorization by the applicant to allow the employer to conduct a broad criminal background check, without clarifying that the background check will only occur after a conditional offer is extended and that it will only be limited to criminal conviction records, this may violate the FCRSA and Form Type A should be used to file the complaint.

b. **Type B: Other Violations (job interviews, pre-employment inquiries, post offer of employment inquiries, withdrawal of offer of employment)**

Form Type B is used to allege that unlawful criminal background questions were asked during the job interview process and before a conditional offer of employment was made, or to allege that based on the applicant’s criminal background information, the employer withdrew the initial conditional offer of employment or took an adverse action after a conditional offer of employment.

II. What is OHR’s jurisdiction?

To investigate complaints filed at OHR, we must first determine that we have jurisdiction over the case. Generally, OHR has jurisdiction over incidents that occurred in the District of Columbia and which were reported to OHR within **one year** of the alleged violation of the law or discovery thereof. A person cannot file a complaint if the violation occurred outside the District of Columbia. However, employers outside of the District may be subject to District laws, if the employer has locations or a worksite in the District and the position at issue is located in the District. Individuals filing complaints need not be residents of the District of Columbia. Applications from certain employers, such as federal government employers and employers that deal with care of minors or vulnerable adults, may be exempt from the law if they meet certain criteria set out in the law.

III. What is OHR’s administrative complaint process?

Consistent with the procedures set forth in the DC Human Rights Act, the accompanying regulations and OHR’s Standard Operating Procedures for Case Processing, OHR utilizes the following to process FCRSA complaints:

a. **Intake**

Once OHR receives the Intake Questionnaire, the agency will review the complaint to determine whether the agency has jurisdiction over the complaint and whether the complaint states a claim under the FCRSA. Thereafter, OHR will contact the complainant to schedule an intake interview. The purpose of the interview is to obtain more information

about the allegations asserted in the complaint. After the intake interview, OHR will either: (1) docket the complaint as a Charge of Discrimination (Type A, Type B, or Both); or (2) dismiss the complaint.

b. Mediation

Once the initial complaint is docketed as a Charge of Discrimination, OHR will serve the parties with a copy of the Charge and a date to participate in OHR's mandatory mediation. Mediation requires the parties to appear before a neutral mediator to attempt resolution of the case, prior to a full investigation.

It should be noted that settlement agreements reached as a result of OHR's mandatory mediation process are confidential and result in an amicable resolution to the legal matter referenced in the Charge of Discrimination. Agreements reached through mediation can include monetary settlements or other reparations such as a job offer, job reinstatement, employee training, or changes in business practices. Additionally, in FCRSA cases, OHR receives a commitment from the employer that it will ensure its job applications and/or hiring processes will comply with FCRSA requirements in the future. A settlement agreement does not stipulate fault, error, or violations. Parties often enter into settlement agreements to forego the cost and/or time involved with pursuing or defending against an administrative complaint at OHR.

Like any other cases processed at OHR, monetary settlements achieved in FCRSA cases are voluntary payments—not fines imposed by the District. Therefore, all settlement payments belong solely to the complainant and no amount of money is shared with the District.

c. Investigation

If mediation does not result in a resolution, OHR will proceed with full investigation of the Charge, although the investigation may commence as soon as the Charge is docketed. Investigation involves document gathering, information requests, interviewing witnesses, and site visits. Once the investigation is completed, OHR will issue a Letter of Determination (LOD) finding either: (1) probable cause to believe that an FCRSA violation has occurred; or (2) no probable cause to believe that an FCRSA violation occurred, in which case the matter will be dismissed. If a party is unsatisfied with the outcome, the party may pursue a request for reconsideration with OHR or file a petition for review in court.

At the probable cause stage, OHR's duty is to consider all information relating to the allegations in order to determine whether the complainant's claims are reasonable.

d. Conciliation and Formal Hearing

If OHR finds probable cause (and the request for reconsideration, if any, is denied), the case will be set for mandatory conciliation. Conciliation is second opportunity to resolve the case without a formal hearing, similar to mediation. If conciliation does not resolve the case, it will be set for a formal hearing on the merits with the Commission on Human Rights, which will issue the final agency decision and assess damages.

PHASE 3: FCRSA ENFORCEMENT AND RELATED DATA

The Fair Criminal Records Screening Amendment Act went into effect on December 17, 2014 and it was anticipated that the law would bring 140 new cases to OHR each year.¹² In actuality, OHR received **530 new complaints** and docketed **365 Charges of Discrimination in FY15**, the first partial fiscal year (December 2014 – September 2015). These figures far surpassed even the actual number of complaints received in the first year in other jurisdictions. The National Employment Law Project (NELP) praised the provisions in the District’s FCRSA and OHR’s enforcement of the new law as a “national model” for Ban the Box with “innovative outreach and effective enforcement.” It attributed the high number of complaints in FY15 to “exceptional outreach of OHR and the fine structure.”¹³

“OHR’s focus on cultivating community trust led it develop an accessible, transparent complaint process that was thorough yet responsive.”

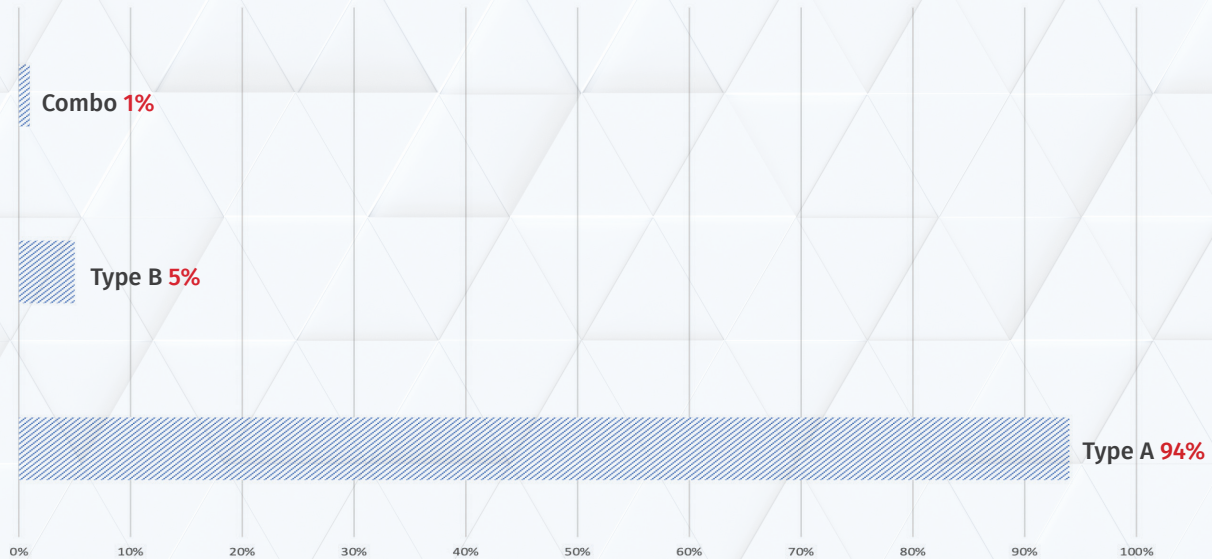
National Employment Law Project,
Fair Chance Implementation Case Study, June 2015

The large influx of FCRSA cases increased OHR’s overall docket in FY15 by 113%, with a total of 1075 Charges docketed in OHR’s inventory. Of these, 365 were FCRSA Charges, representing 69 percent of the 113 percent increase in total docketed Charges. This trend continued in FY16 with OHR receiving **659 initial FCRSA complaints and docketing 401 cases**.¹⁴ In FY17, OHR received **503 FCRSA complaints and docketed 193 Charges of Discrimination**. In FY18, as a result of greater compliance with the law by employers, and better understanding of the law by both employers and job applicants, the number of complaints received decreased to 119 and that year, OHR docketed 89 cases.

Total Number and Types of Initial Complaints Filed Since Effective Date

As of September 30, 2018,¹⁵ OHR had received a **total of 1,824 initial FCRSA complaints** since the law went into effect in December 2014. Of these, the overwhelming majority (1,709 complaints) consisted of “Type A” complaints alleging presence of unlawful criminal background questions on job applications. A small six percent (104 complaints) were “Type B,” alleging unlawful criminal background questions during the job interview process, before a conditional offer of employment, or adverse action taken after conditional offer of employment. Finally, the data shows that one percent (11 complaints) of the total filed alleged a combination of Type A and Type B complaints.

TYPES OF INITIAL COMPLAINTS FILED

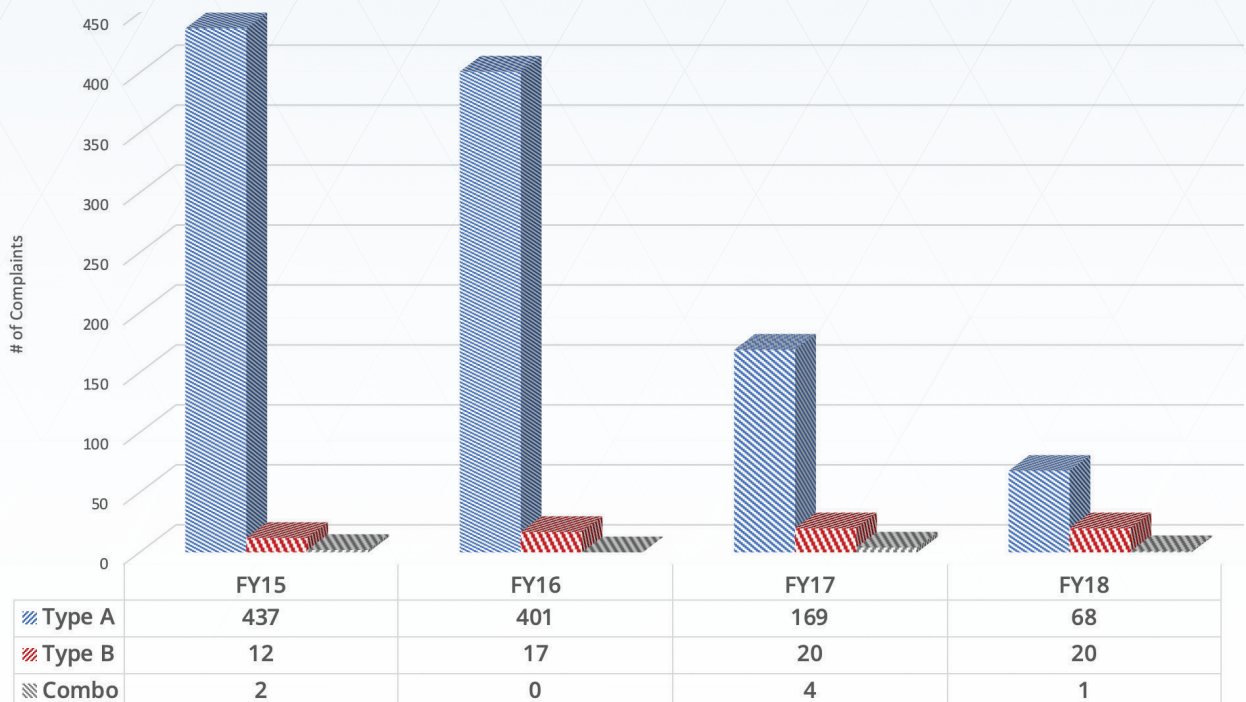


Total Number and Types of Charges Docketed Since Effective Date

From December 2014 to September 30, 2018, OHR had docketed 1,151 Charges of Discrimination under FCRSA. Of the total docketed Charges, 1075 were Type A, 69 were Type B, and seven Charges were a combination of both types.

It should be noted that the numbers above represent the number of Charges of Discrimination *alleging* violations, not *findings* of violations.

CASES DOCKETED



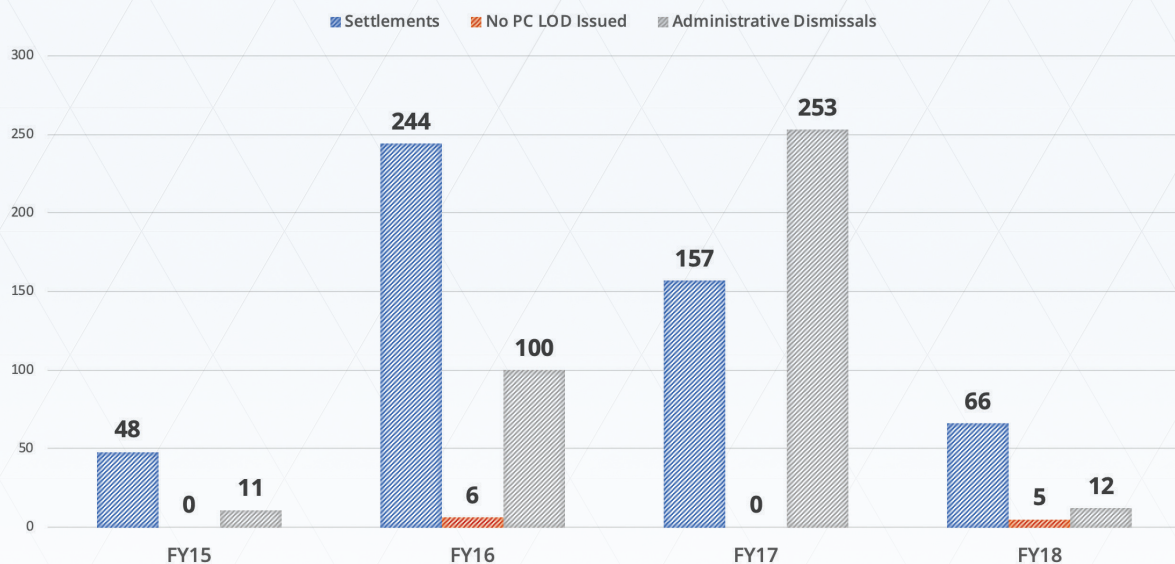
Total Number of Cases Resolved

At the close of FY 2018 (September 30, 2018), OHR had **resolved or closed a total of 944 cases** since the effective date of the law in December 2014. As of December 2018, **110 Charges were open for investigation.**

Closed cases consist of the following three general types of closures:

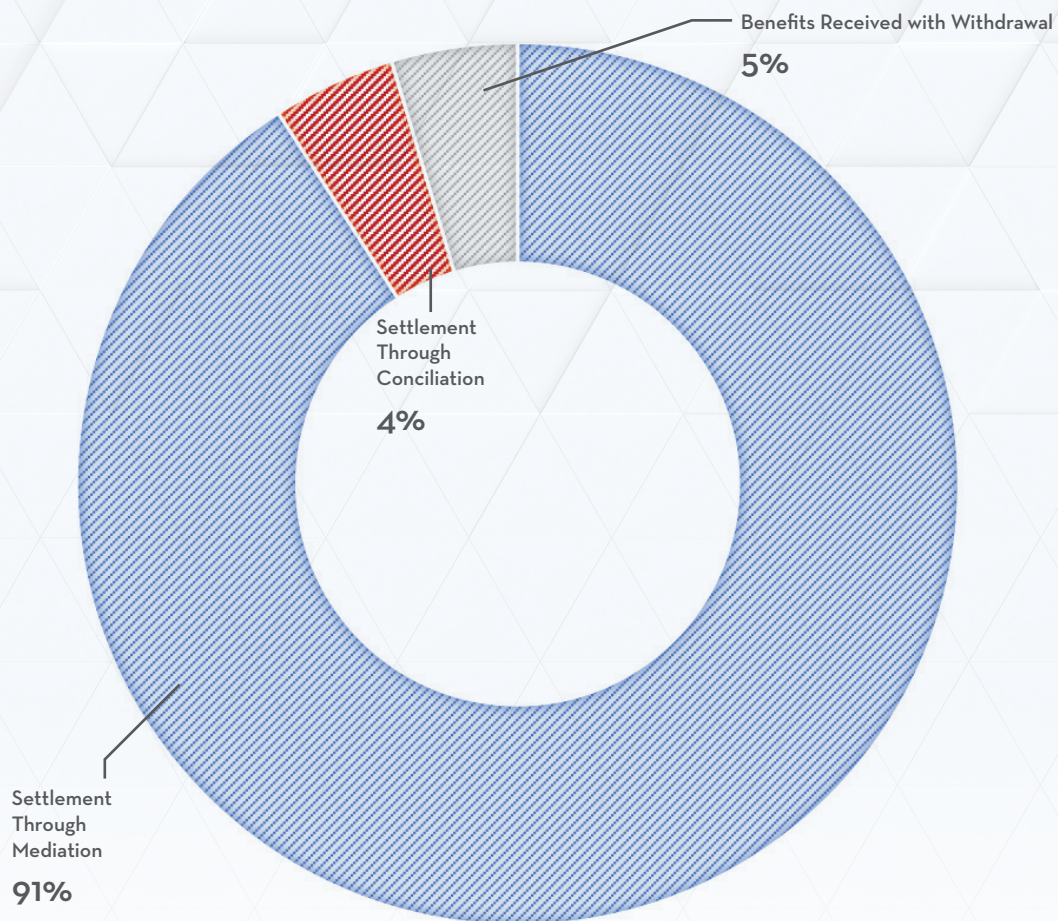
- **Settlements (via mediation, conciliation after a probable cause finding, or other agreements by the parties):** Cases closed as a result of a settlement agreement through OHR's mediation, a resolution agreement through OHR's conciliation process after a finding of probable cause, or complainant's withdrawal of the case as a result of certain benefits the complainant was able to obtain from respondent.
- **No Probable Cause Findings:** Cases closed as a result of OHR's finding after an investigation that there is no probable cause to believe a violation occurred.
- **Administrative Closures:** Cases closed without an investigation pursuant to OHR's statutory authority, including administrative convenience,¹⁶ dismissals for failure to state a claim, and withdrawal by complainant.

CASE CLOSURES



Of the 944 cases that OHR closed, 515 were closed through mediation, conciliation after a probable cause finding, or withdrawal by complainant with or without benefit. More specifically, of the 515, 12 cases were closed due to conciliatory settlements after OHR issued a probable cause finding. The 515 cases amounted to \$ 494,363.00 in settlement payments.

TOTAL FCRSA SETTLEMENTS OR BENEFITS



Furthermore, 11 cases were closed as a result of a no probable cause finding after an investigation, and 418 cases were administratively closed as a result of a failure to state a claim, administrative convenience, or withdrawals by complainant.

IMPACT OF THE FCRSA IN DC

OHR frequently receives questions regarding the impact of the law in the District. As OHR's data is limited to complaint figures, OHR is unable to address this question using statistical analysis. However, in search of a response to this query, OHR reached out to community stakeholders and interviewed business owners, employers, employment specialists who help returning citizens find employment, and returning citizens themselves to get a better view of how the District has been impacted by the law.

A few of these stories are highlighted below and our hope is that they will provide readers with a more comprehensive understanding of the FCRSA, both in terms of enforcement and of its impact in the community.

STORIES FROM BUSINESS OWNERS AND EMPLOYERS

Industry: Employment Services
Organization: Career Path DC

**CAREER
PATH
DC**

Career Path DC is a non-profit community service organization that offers pathways to employment to disadvantaged individuals in Washington, DC, such as youth, returning citizens, and individuals with low to moderate skillsets. The organization provides life and job readiness skills to these individuals, helping them become more marketable for employment opportunities in the District. Most notably, Career Path DC also serves the community by employing returning citizens. In fact, out of the organization's 53 employees, the majority (approximately 48) of their employees are returning citizens.

OHR spoke to **Charles Whitaker**, CEO of Career Path DC, who said:

*"Career Path DC is very open to returning citizens because I believe that if an individual is unable to work, that increases their chances of going back into the penal system . . . I noticed that once they got out and were able to transition to some meaningful employment, **their whole lives changed**. And once their lives changed, the people around them's [sic] lives changed, [and] also, their children, their parents, their brothers and sisters, because now they're able to be a productive member of society, and able to take care of themselves. And it takes the burden off of their families [...] Many of them are really good workers, and they just want a second chance, so when they get that second chance to come out and do something positive in society, they don't take it for granted."*

Industry: Hospitality
Individual: Tomas Penny

Thomas Penny, President of Donohoe Hospitality Services and former General Manager of the Courtyard Marriott Convention Center, discussed a personal connection he had with a returning Citizen who successfully transitioned into full employment:



*"[This particular returning citizen came out of prison after serving 22 years] and his first interview was with us and he had never worked before prior to this interview with us. You could see it in his eyes that he had the passion, he really wanted to be successful. We hired him, we gave him opportunity. And every day [he] would come to work he would just say 'Thank you, I'm just so grateful for this job.' That is uncommon. Most people are not telling you thank you every day, right? And this person would come to work an hour early, his uniform would be just immaculately pressed and he would come looking sharp. When customers would walk past him you could tell that he just sincerely was just grateful when it manifested itself in his service to the customers. And it manifested itself in his relationships with his coworkers. And you could just see and feel his enthusiasm and gratitude for the opportunity and as a result he was extremely successful. . . Without question, [the FCRSA] is helping [returning citizens]. At least they're getting interviews and they're not being disqualified or anything. **It's helping them with their confidence because they're getting callbacks, [...]** and some are [getting hired] because of the [law]."*

Industry: Construction
Individual: Otto Girr at Miller & Long Co., Inc.

Many returning citizens venture into construction work, and Otto Girr, Vice President of Human Resources at Miller & Long Co., Inc., spoke on the importance of being open to hiring returning citizens. In his words:



*"Just because someone comes from that background [with the criminal justice system], it doesn't mean that they don't have value. You have to look and give each person a chance and if they don't work out, they don't work out. The same as anybody else [who] wouldn't work out. But we also found that some of those folks did work out, they work out very well. And so everyone, if they're given a second chance, you'll be surprised that there's talent there in those groups. . . [We're] looking to attract, recruit, hire, retain, and train the best people we can find. **We would be limiting ourselves if we said 'I'm just going to exclude this group, just because of their background.'** And so some of these folks, I don't even look at it like that. . . We just look at [the individual], and whatever his background is, he paid his debt to society. And now he has the chance to have a career."*

Industry: Food
Organization: Ben & Jerry's

Ben & Jerry's is a company that prides itself on social justice work. The company states:

"We're always looking to attract the most motivated, smart, and qualified employees. The idea that you would be excluding a significant portion of the population simply because of a mistake that someone made at some point in their past takes a lot of potential talent off the table for us and for any company. Once someone has repaid their debt to society and is looking to rebuild their life and reenter the community, in many ways it seems to me that those people have the potential to be more motivated as employees, so I think from a business point of view, it seems awfully silly and short sighted to take a portion, a likely qualified portion, of potential employees off the table."



STORIES FROM RETURNING CITIZENS

Name: Lashonia Thompson-El
Employer/Organization: Mayor's Office on Returning Citizens Affairs (MORCA)
Founder of Women Involved in Reentry (WIRE)

Lashonia Thompson-El was incarcerated for 18 years, beginning when she was just 19 years old. Since her release, she has worked on restorative justice for returning citizens at MORCA and runs WIRE, with other formerly incarcerated women. Lashonia explained that WIRE is about community and creating a support system. She said that the District is better off now with the Ban the Box law, but that many returning citizens are still unemployed, and there needs to be a cultural shift in order to make tangible change.

"Since I was released, I was fortunate to be able to get several jobs within the DC government. I'm in grad school and I'm trying to learn all I can overnight, trying to rebuild my family overnight, trying to reintegrate into society overnight, because it literally feels like that. Even though you know you can't make up for lost time, you still, in your mind, can't help but try."



STORIES FROM EMPLOYMENT SPECIALISTS

Name: Alicia Jackson

Organization: Mayor's Office on Returning Citizens Affairs (MORCA)



Alicia Jackson is the workforce development specialist at MORCA. She is also a returning Citizen:

"[FCRSA] is opening up more doors because you don't have to disclose your criminal history until you're actually offered the job, so it has opened up a lot of opportunities for people...I would like [employers] to be more aware of what returning citizens are and just basically giving people a second chance despite a criminal background or mistakes they have made in the past...I have a lot of people who have a lot of different skills, but they're not given the opportunity because of some of the things that are on their background."

Name: Ed Moody

Organization: DC Department of Employment Services (DOES)



Ed Moody is a Program Navigator at the DOES. Moody works with returning citizens through a variety of programs, including Project Empowerment and Career Connections. He works with over 370 public and private employers in the District to help returning citizens secure employment:

"[FCRSA] gives candidates an opportunity to get in front of the employer and sell themselves individually, as opposed to being cast with that stigma of returning citizen or ex-con. They get to really put a human face with the application and the resume. I can say it definitely makes a difference because before they had banned the box, it was an automatic reject. At least now, they're getting an opportunity to sit in front of the employer for an interview, so I would say just based on that it's been a success . . . As it was before, they never got that opportunity. So that in itself is a win, a definite win."

NEXT STEPS FOR OHR

DEVELOPING AND IMPLEMENTING AN FCRSA COMPLIANCE PROGRAM

As the community gains better understanding of the law, the next step in OHR's enforcement of FCRSA is to focus on tracking compliance. To that end, OHR will build capacity and structure to sustain an FCRSA compliance program. OHR first conceived this mission in FY16 and we have since begun putting a compliance infrastructure in place. For example, in FY17, OHR began building a database that would contain information on employers who have amended their applications/application process, and are in compliance with or otherwise exempt from the law. To obtain this data, OHR instituted a policy which encouraged employers to inform OHR when they have updated their applications, when they have begun using the updated application, and to forward a copy of the updated application that is compliant with the FCRSA. The policy states that if an employer changed its application forms as a result of a complaint that was filed with OHR at least six months prior to a new allegation, and OHR has a copy of the compliant application, new complaints against the employer will be dismissed unless the complainant provides additional information showing that they were required to use the unlawful application. Through this new policy, OHR has collected and continues to collect numerous compliant applications from employers. It is OHR's hope that by the end of FY19, the database will be even more comprehensive.

CONCLUSION

In the four years since the passage of FCRSA, OHR has delivered hundreds of trainings, spoken to countless community members, businesses, and families, visited a number of correctional facilities, and processed over 1700 initial complaints. As FY19 continues, and with the newest fair-chance law for the District, the Fair Criminal Record Screening for Housing Act of 2016, OHR is preparing to connect further with the returning citizen community not only on employment barriers but also on housing barriers. OHR looks forward to meeting more businesses, residents, and families as the agency increases our training sessions, diversifies our reach through new business channels, and participates in community events. OHR and Washington, DC will continue to steadily enforce of FCRSA, collect data, holding employers accountable, and prioritize the success and wellbeing of returning citizens. Protecting the human rights of all persons within the District of Columbia is OHR's highest priority, and stopping arbitrary discrimination against formerly incarcerated persons is one of OHR's main missions.

OHR thanks Mayor Bowser for her continued support of OHR and the agency's work to ensure returning citizens have a fair chance at employment and housing. OHR also thanks the Mayor's Office on Returning Citizens Affairs, the Department of Employment Services, advocacy groups, and community members for their partnership with OHR.

DC GOVERNMENT RESOURCE LIST

The Mayor's Office on Returning Citizen Affairs (MORCA) has multiple initiatives to help returning citizens gain employment. These include:

- The DMV Pathways Initiative, a program that started in November of 2017 to help returning citizens obtain their driver's licenses and non-driver's IDs. Participants are able to either use a payout or a payment plan to help with the associated costs. Since the program started, there have been 342 participants.
- Record Sealing Clinics, which have up to 200 participants per clinic.
- Entrepreneurship Training, a partnership between MORCA and Aspire, to help returning citizens open their own businesses. Examples of such businesses include a bakery and a cleaning service.

The **Department of Employment Services** continues to provide support and training to returning citizens seeking employment through their Project Empowerment program. For more information on this program visit does.dc.gov.



MORCA Director Brian Ferguson congratulates a formerly incarcerated DC resident who received an achievement award for successful reentry at the Mayor's Office of Returning Citizens Affairs Annual Reentry Awards; June 2017.

ADDENDA

There are a variety of services, resources, and information available on the OHR's website (ohr.dc.gov). Paper copies of these resources are also available at the OHR Office (441 4th Street NW, 570 North, Washington, DC 20001).

RESOURCES FOR RETURNING CITIZENS

- Fact Sheet for Job Applicants
- Request for Records Template
- Know Your Rights Training
- Notice of Right to File
- File a Complaint
- Mediation Fact Sheet

RESOURCES FOR THE BUSINESS COMMUNITY

- Fact Sheet for Employers
- OHR Guidance for the Business Community
- OHR Enforcement Guidance

OTHER RESOURCES

- General FCRSA Fact Sheet
- 2016 District Auditor Report on the Impact of FCRSA
- OHR FY16 Annual Report
- OHR Facebook Page
- OHR's Complaint Process Flowchart

CITATIONS

1. “About Ban the Box,” bantheboxcampaign.org
2. “About Ban the Box,” bantheboxcampaign.org
3. “About Ban the Box,” bantheboxcampaign.org
4. “About Ban the Box,” bantheboxcampaign.org
5. D.C. Act 18-685; D.C. Code 1-620.41 et seq.
6. Committee Report on Bill 20-642, the “Fair Criminal Record Screening Amendment Act of 2014.” Council of the District of Columbia, Committee on the Judiciary and Public Safety Committee Report (May 28, 2014), 6.
7. D.C. Law 2-38; D.C. Code 2-1403.01 et seq.
8. Fair Criminal Record Screening Act, § 32-1341. Definitions.
9. Avery, Beth; Hernandez, Phil, “Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies,” National Employment Law Project, April 2018.
10. Avery, Beth; Hernandez, Phil, “Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies,” National Employment Law Project, April 2018.
11. Avery, Beth; Hernandez, Phil, “Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies,” National Employment Law Project, April 2018.
12. Committee Report on Bill 20-642, the “Fair Criminal Records Screening Amendment Act of 2014.” Council of the District of Columbia, Committee on the Judiciary and Public Safety Committee Report (May 28, 2014) at 18.
13. Polk, Zoe and Rodriguez, Michelle. National Employment Law Project, Policy Brief, June 2015: Fair Chance Implementation Case Studies for Government Agencies.
14. It should be noted that OHR docketed cases on a rolling basis and that this number does not reflect the number of charges docketed out of the number of initial complaints filed at OHR. The data simply shows that OHR was able to docket 401 cases that year, not that it was necessarily out of the 659 received that year. It also cannot be assumed that the remainder of the 659 cases were dismissed. The smaller number of cases docketed may be due to: withdrawal, settlement, or dismissal could have occurred after a complaint was initially filed with OHR and before it was docketed.
15. This report was meant to cover up to including FY17, but because the report could not be published until FY18, OHR has included FY18 data up until the mid-year point of March 30, 2018.
16. OHR has the prosecutorial discretion to dismiss a complaint for administrative convenience. This discretion provides OHR with the authority to decide how to expend its resources. Examples of such dismissals may include claims where the EEOC is investigating the matter, where OHR learns that the complainant has filed a similar claim in a court of competent jurisdiction, or where OHR simply does not have the resources to pursue the investigation.

All photos taken from the DC Office of Human Rights Facebook page, unless otherwise noted.

ohr.dc.gov

facebook.com/dcohr twitter.com/dchumanrights instagram.com/dchumanrights

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