

An Assessment of Companies' Policies for the Use of Criminal Records in Employment Decisions

Summary

This briefing examines the use of criminal information in hiring decisions by companies. This includes a discussion of the background and legislation surrounding the issue as well as implications for investors. The policies of 49 large companies are assessed using a transparent grading methodology based on best practice policies.

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1. Background

It is believed that anywhere from a quarter to a third of Americans have criminal records (although no reliable system exists to track numbers of current records). Many of them are qualified individuals who do not pose any significant risk in the workplace. Having a criminal record carries an often unwarranted stigma that limits a person's ability to be absorbed back into the community and obtain employment.

The Criminal Offender Record System, CORI for short, is the record of arrests, convictions and verdicts amassed by *anyone* who comes into contact with the Massachusetts court system (even if the case is dismissed or if the person subsequently receives a not-guilty disposition). The purpose of using CORI in employment decisions is to determine the degree of risk the person poses to the

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particular workplace, but thoughtful consideration of this risk does not always take place. Employers often consider the mere existence of the report, regardless of its content, as sufficient cause for disqualifying prospective job applicants. However, the offense listed in a CORI report does not always correspond to the actual criminal conduct, and it rarely provides sufficient information to evaluate the risk a person poses to the workplace. Flaws in the CORI system contribute to recidivism by making it very difficult for CORI record holders to find employment.

2. Legislation

Since November 2010, Massachusetts employers are no longer able to ask any criminal history questions on their initial written applications as a result of so-called "ban the box" legislation. In the event an employer conducts a CORI check further in the recruitment process, they will need to notify the prospective employee of any information which would negatively affect the hiring process. This legislation aims to stop employers from screening out candidates solely on the basis of their criminal history information. Massachusetts state law enforcement officials supported the legislation to change the system of criminal background checks, especially how and when employers could access these records.

Hawaii prohibits public and private employers from inquiring about an applicant's criminal history until after a conditional offer of employment has been made. Many cities and states including Minnesota, New Mexico, and Connecticut have passed similar legislation applicable to public employers. While the details of these laws are all different, it is clear from pending legislation in other states and cities that large legal changes in criminal record discrimination are afoot.

If a position is not sensitive in nature, employers do not hold additional liability for

criminal record holders if due diligence has been performed. This protection should be reassuring to employers that are committed to second chances and reintegration of a segment of our labor force. Sensitive positions include those involving vulnerable populations such as children or the elderly, unsupervised access to people's homes, access to personal data or large sums of cash. Due diligence includes checking references and calling former employers and, although not a requirement, can involve checking criminal records. If there is a record, employers should take the circumstances and the nature of the job into account. For the majority of positions, there is no expectation under the law that criminal records be checked.

3. Ramifications for investors

The stable employment of people with criminal records is not just a question of social justice and public safety but also an economic and workforce development matter. The employment of low risk, qualified applicants with criminal records is an opportunity to address some of the country's pressing economic and labor challenges while continuing to protect vulnerable populations. The widespread use of "no-hire" policies with regard to anyone with a criminal record is an enormous structural flaw in America's labor market.

Investors are worried that unless companies implement a more thoughtful review of their hiring process, Massachusetts' CORI reforms will only have a marginal effect on improving the employment prospects of those with records. They adamantly argue that the opportunity for stable employment is a deterrent to criminal conduct and recidivism. The sheer number of people with criminal records means that if companies won't consider hiring those with records, the chance of those companies getting access to the best employees plummets.

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4. Company evaluation

In December of 2010, letters of enquiry signed by 22 investors were sent to 110 public companies that were identified as having operations in Massachusetts as a response to the 'ban the box' legislation which took effect in November 2010. This briefing examines the criminal backgrounds check policies adopted by the 49 respondent companies to present an overview of how companies are using criminal information with regards to their hiring practices.

Sixteen key indicators were identified to assess companies' policies towards criminal checks and company responses were benchmarked against this best practice. Companies were scored according to how closely their policies approximated best practice and assigned grades (no evidence, limited, intermediate, good, and advanced) for their policy standards. The methodology of assessment is described in further detail in Section 7.

5. Snapshot of findings

No evidence	<ul style="list-style-type: none"> • Apple • Coach • Nike • Time Warner • Wholefoods
Limited	<ul style="list-style-type: none"> • A.C. Moore • Accenture • Adobe • Ahold USA • Bed, Bath & Beyond • BJ's Wholesale • Chapotle • Cisco • Citi • Comcast • CVS Caremark • Darden • Exxon Mobil

	<ul style="list-style-type: none"> • Family Dollar • Google • Heinz • Home Depot • Intel • Johnson & Johnson • JC Penney • Limited Brands • Macy's • McDonald's • McGraw Hill • Microsoft • National Grid • Nordstrom • Petsmart • Philips • Pitney Bowes • Regency Centers • Staples • State Street • The Cheesecake Factory • The Gap • TJX
Intermediate	<ul style="list-style-type: none"> • Alcoa • BP • Proctor & Gamble • Polo Ralph Lauren • Starbucks • Target • Waste Management
Good	<ul style="list-style-type: none"> • Royal Dutch Shell
Advanced	None

No companies achieved an advanced rating of their policies to deal with criminal records in employment decisions. Royal Dutch Shell disclosed the best policy of the respondent companies, the only company to achieve a "Good" rating. Starbucks and Proctor & Gamble narrowly missed out on a "Good" rating by having policies which didn't mention consideration of the age of the offense and if only convictions or pending criminal cases were considered (P&G) and if criminal checks were used only at the final hiring stage and if the applicant had the

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ability to contest the relevance of the background check (Starbucks), respectively.

Target, Alcoa, Microsoft, Polo Ralph Lauren, BP, and Waste Management achieved “Intermediate” grades for their use of criminal history information in hiring practices. The Gap and CVS had thoughtful aspects to their policies but didn’t quite reach an intermediate grading.

6. Best Practice examples

CVS Caremark:

CVS Caremark’s policy does not permit blanket exclusion of applicants with criminal conviction records, but instead requires a case-by-case analysis of such records. Section 1.6 of CVS Caremark’s criminal background check policy states in relevant part that: “Where a criminal conviction record exists, a good faith effort will be made by the Company to ascertain the potential risk that could be created should the individual be hired. The following factors shall be considered:

- The nature and gravity of the offense leading to the conviction
- Time that has passed since the conviction
-

All determinations regarding background check information will be made on a case-by-case basis, managed by the appropriate Loss Prevention Director (LPD) and Human Resources Director.”

Currently CVS Caremark considers “job-related” criminal convictions to be those that involve theft, violence, dishonesty and/or narcotics.

Starbucks

Starbucks does not consider arrest records, but only criminal convictions.

Starbucks does not disqualify candidates for any conviction, but instead the company considers both the type of offense and the

seriousness of the crime. Under the company’s criminal grading matrix, candidates are disqualified only if they have been convicted of one or more misdemeanors in the last three years, or one or more felonies in the last seven years. Even then, misdemeanor convictions for drug possession or for driving while intoxicated are not considered at all. (The only exception to the rule on DUI misdemeanors is for a few positions in our roasting plants which involve driving motor vehicles.)

Starbucks store managers are instructed to contact the company’s Partner Resources Support Center (PRSC) to ensure that information about criminal records is interpreted accurately and applied consistently. The human resource professionals in the PRSC are, in turn, trained to apply the company’s above-described criminal grading matrix to ensure a consistent and fair approach.

Applicants have an appeal process by which they can contest inaccuracies in their reported criminal background histories.

Gap, Inc

We do not consider CORI records in the hiring process for any job applicants in the U.S. unless: (1) the criminal conviction is directly related to the job sought, (2) the criminal record has not been sealed, expunged, or otherwise annulled, and (3) the offense was committed within the past 7 years.

In 2009, Gap Inc. also created a cross-functional Background Screening Committee to continually monitor, audit, and enhance the company’s existing protocols for hiring employees with CORI records. As part of those efforts, in 2011, this committee is rolling out a new training course for our company’s Recruiting team to emphasize our policy and procedures governing the use of CORI information in the hiring process.

For more information on best practice, see the National Employment Law Project’s pamphlet “[A Best Practices Guide for Employers](#)”.

7. Grading Methodology

	No evidence	Limited	Intermediate	Good	Advanced
Requirements	<i>Not enough for Limited</i>	<i>Policy + any two policy elements</i>	<i>Policy + required policy elements</i>	<i>Public Policy + required policy elements</i>	<i>All indicators</i>
Policy					
Disclosed policy?		•	•	•	•
Public policy?				•	•
Policy elements					
Compliance with the law			•	•	•
No blanket ban			•	•	•
No box on application in Massachusetts			•	•	•
No box on application in any state			•		•
Criminal background checks only at final stage		•		•	•
Checks only for sensitive positions			•		•
Only convictions/pending cases considered				•	•
Nature of offense considered		•	•	•	•
Age of offense considered				•	•
Copy of check given to applicant			•	•	•
Ability to contest accuracy				•	•
Ability to contest relevance			•	•	•
List of disqualifying offenses				5	•
Proactive hiring					•
Systems					
Requirements	<i>No indicators</i>	<i>Any indicator</i>	<i>Any two indicators</i>	<i>Any three indicators</i>	<i>All indicators</i>
Communication of policy					•
Responsibility for policy			•	•	•
Training		•		•	•
Monitoring			•	•	•
Remedies for non-compliance				•	•

8. Company assessment tables

	A. C. Moore	Accenture	Adobe	Ahold USA	Alcoa	Apple	Bed Bath & Beyond	BJ's Wholesale Club Inc.	BP	Chipotle	Cisco	Citi	Coach	Comcast	CVS Caremark	Darden	ExxonMobil	Family Dollar	Google	Heinz	Home Depot	Intel	JCPenney	Johnson & Johnson
Policy																								
Disclosed policy?	•	•	•	•	•		•	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•
Public policy?																								
Policy elements																								
Compliance with the law	•	•	•	•	•		•	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•
No blanket ban		•	•	•	•			•	•	•	•			•	•	•	•		•	•	•	•		•
No box on application in Massachusetts	•	•	•	•	•		•	•	•	•				•	•	•		•		•	•	•	•	•
No box on application in any state		•							•															
Criminal background checks only at final stage									•			•			•							•		
Checks only for sensitive positions														•										
Only convictions/pending cases considered					•			•	•			•		•	•		•				•	•		•
Nature of offense considered				•	•			•	•	•		•		•	•	•	•		•	•	•	•		•
Age of offense considered				•					•			•		•	•							•		•
Copy of check given to applicant					•																			
Ability to contest accuracy					•																			
Ability to contest relevance																								
List of disqualifying offenses															•									
Proactive hiring																								
Policy Grade	Limited	Limited	Limited	Limited	Intermediate	No Evidence	Limited	Limited	Intermediate	Limited	Limited	Limited	No Indicators	Limited	Limited	Limited	Limited	Limited	Limited	Limited	Limited	Limited	Limited	Limited

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	Limited Brands	Macy's	McDonald's	McGraw-Hill	Microsoft	National Grid	Nike	Nordstrom	P&G	Petsmart	Philips International B.V.	Pitney Bowes	Polo Ralph Lauren	Regency Centers	Royal Dutch Shell	Staples	Starbucks	State Street	Target	The Cheesecake Factory	The Gap Inc.	Time Warner	TJX	Waste Management	Whole Foods Market
Policy																									
Disclosed policy?	•	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	
Public policy?																									
Policy elements																									
Compliance with the law	•	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•
No blanket ban	•	•	•		•			•	•				•	•	•		•		•					•	•
No box on application in Massachusetts	•	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	
No box on application in any state					•				•					•	•									•	
Criminal background checks only at final stage		•							•				•	•	•									•	
Checks only for sensitive positions					•								•												
Only convictions/pending cases considered													•	•	•		•		•		•			•	
Nature of offense considered	•							•	•				•		•		•		•		•			•	
Age of offense considered	•												•		•		•				•			•	
Copy of check given to applicant									•				•		•		•								
Ability to contest accuracy									•						•		•		•						
Ability to contest relevance									•						•				•						
List of disqualifying offenses																	•								
Proactive hiring																									
Policy Grade	Limited	Limited	Limited	Limited	Limited	Limited	No Evidence	Limited	Intermediate	Limited	Limited	Limited	Intermediate	Limited	Good	Limited	Intermediate	Limited	Intermediate	Limited	Limited	No Evidence	Limited	Intermediate	No Evidence

9. Appendix

Sample investor letter to companies

December XX, 2010

To Whom It May Concern

As socially responsible investors, we are writing to you not only to share our concerns about the widespread and untrained use of criminal records in employment decisions, but also to learn what XXXX is doing to dismantle this systematic barrier to employment.

As you are no doubt aware, Massachusetts recently passed new legislation around CORI (Criminal Offender Record Information) reform which is aimed at increasing private employment opportunities for people with criminal records. Among other things, the new laws include a "ban the box" provision which bars employers from requiring applicants to check a box if they have a criminal history. This provision became effective on November 4th, 2010.

We support this legislation for the following reasons:

- While CORI is vital to the functioning of the criminal justice system, it is vital to remove barriers to employment for qualified applicants who do not pose a threat to employees, clients, or the general public.
- The stable employment of people with criminal records is not just a question of social justice and public safety but also an economic and workforce development matter.
- The successful transition of offenders from incarceration to the community, including the opportunity for stable employment, is vital as a deterrent to criminal conduct and recidivism.

The undersigned coalition of shareholders and investment managers requests a written response detailing how XXXX deals with the issue of hiring people with CORI records. We realize that many companies still do not have established non-discrimination policy statements and procedures for qualified applicants with unrelated criminal records. To this end, we would like to request a meeting with those within XXXX who have been tasked with looking into this important issue so that we can answer any questions they may have around putting together appropriate policies and government sponsored programs, as well as concerns over liability, etc.

We appreciate your time in carefully considering the issues discussed in this letter and attached information sheet. Please let us know the steps XXXX is taking with regards to hiring people with CORI records , including specific actions in response to CORI reform, by contacting Sonia Kowal at Zevin Asset Management: Phone: (617) 742-6666, Email: sonia@zevin.com , Mail: suite 1040, 50 Congress St, Boston, MA 02109.

Sincerely,

Sonia Kowal
Director of Socially Responsible Investing
Zevin Asset Management, Inc

Signatories:

Zevin Asset Management

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Kelly Bates
Executive Director
Access Strategies Fund

Anne Ellinger
Founder
Zing Foundation

Connie Brookes
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Sister Carole Lombard, CSJ
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Foundation

Ann Grinnell
Trustee
MA Grinnell Foundation

Karla Nicholson
Executive Director
Haymarket People's Fund

Major Neill Franklin
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Law Enforcement Against
Prohibition

FAQ document sent to companies

Frequently asked questions about CORI reform

What is CORI and why does it need to be reformed?

The Criminal Offender Record System, CORI, for short, is the record of arrests, convictions and verdicts amassed by **anyone** who comes into contact with the court system (even if the case is dismissed or if the person subsequently receives a not-guilty disposition). The purpose of using CORI in employment decisions is to determine the degree of risk the person poses to the particular workplace, but thoughtful consideration of this risk does not always take place. Employers often consider the mere existence of the report, regardless of its content, as sufficient cause for disqualifying prospective job applicants. However, the offense listed in a CORI report does not always correspond to the actual criminal conduct, and it rarely provides sufficient information to evaluate the risk a person poses to the workplace. Flaws in the CORI system contribute to recidivism by making it very difficult for CORI record holders to find employment. Massachusetts state law enforcement officials supported the legislation to change the system of criminal background checks, especially how and when employers could access these records. Please note that the CORI system is independent of the Sex Offender Registry Information (SORI) system and that CORI reforms will not affect the SORI system.

Which legislative reforms will affect the use of CORI records at my company?

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While much of the new law relate to administrative changes in the systems (such as sealing records, granting/limiting access to records), at least one portion of the law will impact almost all Massachusetts employers – ‘ban the box’. Effective on November 4, 2010, employers will no longer be able to ask any criminal history questions on their initial written applications. In the event an employer conducts a CORI check further in the recruitment process, they will need to notify the prospective employee of any information which would negatively affect the hiring process. It is important to note that this “ban the box” provision exempts employers who are statutorily prohibited from hiring ex-offenders.

Will ‘ban the box’ reform help?

This legislation aims to stop employers from screening out candidates solely on the basis of their criminal history information. The legislation should improve the chances of people with criminal records finding employment which hopefully will have the knock-on effect of making the Commonwealth safer by reducing crime recidivism rates.

“Tough on crime” measures have meant a large increase in people with CORI records who face significant barriers to employment. It is believed that anywhere from a quarter to a third of Americans have criminal records (although no reliable system exists either nationally or in Massachusetts to track numbers of current records). Many of them are qualified individuals who do not pose any significant risk in the workplace. Having a CORI record carries an often unwarranted stigma that limits a person’s ability to be absorbed back into the community and obtain employment especially given the often false perceptions about the person’s impact as an employee and the risks to the employer of hiring someone with a record. It is a common misperception that individuals with CORI records are dangerous or violent. However, only a very small percentage of the offender population have committed violent crimes. The vast majority of individuals with CORI records either have never served time or only served very short sentences. It is especially necessary in these trying economic times that ex-offenders become financially independent in order to be able to support their families and avoid becoming permanent burdens on the state’s limited resources.

Why is CORI reform important for my company?

The employment of low risk, qualified applicants with CORI records is an opportunity to address some of Massachusetts' pressing economic and labor challenges while continuing to protect vulnerable populations. The widespread use of "no-hire" policies with regard to anyone with a CORI record is an enormous structural flaw in our labor market. Our whole economy is less efficient because we are leaving a whole segment of society - with all their capacity and skills - sitting on the sidelines. CORI reforms will only have a marginal effect on improving the employment prospects of those with records unless companies like yours instigate a more thoughtful review of the hiring process of CORI record holders.

Proper training on how to review CORI reports is paramount in order not to disqualify qualified applicants. Currently CORI reports are not easy to decipher and employer confusion regarding the range of terms and abbreviations in the reports may cause employers to fall back on stereotypes about offenders, an instinctive reaction of fear or a generalized concern over liability and immediately reject the applicant from consideration.

Is there any precedent for 'banning the box' in Massachusetts?

Since 2006, the City of Boston has removed the criminal history question from all municipal job applications and required over 8,000 private city vendors to also revise their application forms and move criminal history inquiries to the last step in the hiring process.

Will CORI reform affect my company in other States?

Hawaii prohibits public and private employers from inquiring about an applicant's criminal history until after a conditional offer of employment has been made. Many cities and states including Minnesota, New Mexico, and Connecticut have passed similar legislation applicable to public employers. While the details of these laws are all different, it is clear from pending legislation in other states and cities that large legal changes in criminal record discrimination are afoot.

What about our legal liability in case someone with a criminal record commits a crime at work?

If a position is not sensitive in nature, employers do not hold additional liability for CORI record holders if due diligence has been performed. This protection should be reassuring to employers that are committed to second chances and reintegration of a segment of our labor force. Sensitive positions include those involving vulnerable populations such as children or the elderly, unsupervised access to people's homes, access to personal data or large sums of cash. Due diligence includes checking references and calling former employers and, although not a requirement, can involve checking CORI records and if there is a record, taking circumstances and the nature of the job into account. For the majority of positions, there is no expectation under the law that CORI records be checked.

What government sponsored programs are there to help firms who employ ex-offenders?

There are many benefits to hiring ex-offenders. Employers should know that ex-offenders are released back into society with many safeguards to ensure that they stay on the right side of the law. They are held under strict supervision and are tested for drugs regularly. In addition, the government has many programs in place which improve the financial circumstances around hiring an ex-offender. They include the Hiring Incentive Training Grant Program, the Work Opportunity Tax Credit, as well as a Federal Bonding program which works like an insurance policy to protect the employer against dishonesty by ex-offenders. There are many organizations that assist ex-offenders with developing work skills and finding employment that would be able to help you place and supervise qualified people with CORI records.

What can my company do to start the process of reviewing this issue?

As a Massachusetts employer, actions you should take include the following:

- Closely follow and comply with the changes in CORI legislation, including removing any criminal information questions from initial application forms
- Make sure your company is not violating Title VII of the Civil Rights Act whereby it is illegal to have a blanket ban on hiring people with criminal records
- Develop a hiring policy to assist in the reintegration and stable employment of qualified CORI record holders while acknowledging the dual interest of protecting the workplace and vulnerable populations
- Establish clear procedures for recruiters to follow, especially encouraging a full review of an applicant's history to consider whether a prospective employee, despite a CORI record, is an appropriate candidate for employment
- Train your recruiters to accurately interpret and manage the information contained in CORI reports
- Consider the positive aspects of hiring ex-offenders

By taking these steps, your company signals its commitment to local economic development and be at the forefront of assisting in the reintegration and stable employment of CORI holders who have not been convicted of a crime, those with a minor record, as well as reformed offenders.