

# Killing jobs and judgment

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Society's drive to substitute law and regulation for personal judgment and experience continues apace.

Consider new legislation in the Rhode Island General Assembly to ban an employer from asking a job seeker if he or she has a criminal record until "after determining that an applicant is a finalist or making a conditional offer of employment." After that point it would be illegal to deny a job applicant "based on his criminal record except if ... there is a direct relationship between one or more of the criminal offenses and employment sought."

Precisely how one would make that decision on the basis of these murky guidelines is unclear. Yet another layer of opaque regulatory micromanagement to discourage job creation in Rhode Island! Much time in the State House is spent drafting turgid laws that would be hard to enforce and would hurt the economy.

The proposed law adds yet more complexity, uncertainty and bureaucracy to situations in which potential employers should be allowed to exercise their judgment, on the basis of their knowledge of their business and, yes, their intuition and general experience. Presumably most people who have reached the level of being allowed to hire people have some judgment and most people are fair. A few are not. But you cannot control all relationships in life with mathematical precision.

Yes, committing crimes does tend to hurt one's career potential. No way around that. Most of us have baggage, and hope for the possibility of a second or third chance. Most of us get such chances at various times. But employers have the right to know as much as possible about an applicant's relations with society in general and the criminal-justice system in particular.

Meanwhile, consider The Journal's Feb. 14 story "Speakers urge ban on conviction question," which discusses 54-year-old John Prince, who complained he couldn't get a job because of felony convictions. But the last of these legal issues came 10 years ago, when Mr. Prince was a not young 44. He can't assign all his problems to youthful indiscretion. Why wouldn't a rational employer be leery of hiring Mr. Prince?

In matters of behavioral history, let employers decide who's best for the needs of the enterprise. Sometimes discriminating against someone with a criminal record is the rational thing to do. Only the potential employer would know.

## **Assembly approves 'ban the box' legislation**

STATE HOUSE – The General Assembly has approved legislation that will prohibit prospective employers from including questions on job applications regarding arrests, charges or criminal convictions.

The legislation provides exceptions to that rule in certain cases: if a federal or state law or regulation creates a mandatory or presumptive disqualification based on a person's conviction of one or more specified criminal offenses, or if a fidelity bond is required and an individual's conviction of one or more specified offenses could prevent obtaining such a bond.

All other potential employers would only be allowed to probe a job applicant's criminal background at the first personal interview following the application process, and any time thereafter.

The legislation applies to employers with at least four employees.

Passed today by the House of Representatives was Senate bill ([2013-S0357A](#)) by Sen. Harold M. Metts (D-Dist. 6, Providence), which had already been approved by the Senate and now goes to the governor. The House also passed a companion bill, ([2013-H5507A](#)) by Rep. Scott A. Slater (D-Dist. 10, Providence), which now goes to the Senate for consideration.

"This legislation provides basic protections from discrimination for people with a criminal record," said Representative Slater (D-Dist. 10, Providence). "In a state with a very high recidivism rate, an individual who has committed a crime and paid for that mistake needs stability to move on with his or her life, and a job provides that stability. Impediments to those individuals getting a job for which they are otherwise qualified just help continue the cycle of repeat incarceration."

Banning the box, said Representative Slater, gives individuals seeking a job "a chance to be considered on their qualifications, not immediately rejected from consideration because of a wrong decision in their past for which they have paid their debt to society."

"People who have made mistakes need to be able to move on, to move forward with their lives and we need to change our laws to allow them, even encourage them, to do so," said Senator Metts. "They are not being allowed to do so if every job application they fill out looks like an instant dead-end because of that one question about criminal history. They might not be able to change their past, but their past should not determine their future or prevent them from having a better one."

If enacted, the legislation would take effect on January 1, 2014.

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