



RESEARCH REPORT

# Criminal Background Checks and Access to Jobs

**A Case Study of Washington, DC**

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# Executive Summary

In March 2017, we published a report on how criminal background checks create additional barriers to work for people who have been involved in the justice system. The report shows that criminal background checks, in their current forms, are problematic on multiple fronts. Prospective job candidates with certain court records may be inappropriately ruled out because records that did not result in a conviction may nonetheless appear on background check reports. Employers relying on criminal background checks may be unnecessarily limiting their prospective employee pool, and the applicants they do consider may have criminal histories missed by the background checks.

This report examines the collateral consequences specific to job opportunities using Washington, DC, as a case study. Following the national trends highlighted in the previous report, criminal background checks can limit the pool of jobs that people with criminal histories in Washington, DC, qualify for and can lead to high unemployment for that population. But criminal background checks are only part of the story; in Washington, DC, local regulations and the nature of the labor market add their own limitations to the employment opportunities for people with criminal records.

Limited data make it difficult to estimate exactly how many people in Washington, DC, are affected by having criminal backgrounds, but that information is critical to understanding the scale of the issue. Based on data obtained and analyzed for this report, we estimate that approximately 68,000 people in Washington, DC, have criminal records, and just over half of those have a corresponding conviction. That means that nearly half the people whose court records are publicly available in the Washington, DC, system have no recorded conviction and still could be denied employment because of flaws in the criminal background check processes.

Examining local regulations and DC's labor market reveals that justice-involved people—whether formerly incarcerated or not—face significant challenges finding work in the city. Some local regulations limit the jobs these people can qualify for; even the recent “ban the box” legislation, which applies only to businesses with 11 or more employees, has significant exemptions. Most online job postings in Washington, DC, call for high education levels or many years of experience, while only 4 percent of people exiting prison in Washington, DC, have college degrees. Whether incarcerated or not, justice-involved people average fewer years of job experience, more gaps in employment, and lower educational attainment.

Finally, the report looks at practices that could help justice-involved people secure jobs. These programs, some through the city's government and others through local nonprofits, include the

provision of job training and legal recourses for justice-involved people who may have been unfairly denied employment. We conclude with suggestions for future research to better inform current policy, maintain a sense of the scale of the issue, and improve system-level responses.

# Criminal Background Checks and Access to Jobs: A Case Study of Washington, DC

Nationwide, an estimated 1 in 3 adults have criminal records.<sup>1</sup> Chief among the many well-established collateral consequences these records produce is the challenge of finding a job. Employers may be reluctant to give opportunities to people with certain criminal histories and often conduct background checks to minimize threats to workplace and public safety.<sup>2</sup> People with criminal records are barred from some jobs outright because of restrictions imposed by the national and local regulations. Even when regulations are not the problem, the jobs themselves may be: many require levels of experience and education that justice-involved people often lack.

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## BOX 1

### People with Criminal Records

Anyone who has come into documented contact with the criminal justice system has a criminal record. A criminal record does not necessarily imply criminal conduct; for example, someone with a criminal record may have been arrested but never charged or convicted. Throughout this report, we use “people with criminal records” broadly and clarify when referring to specific touch points, such as incarceration or a recent return from prison.

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The employment challenge for people who have served time in correctional facilities is particularly acute: according to a recent 14-state survey, 76 percent of respondents were unemployed five years after their release (deVuono-powell et al. 2015). In line with that national trend, roughly 3 in 4 Washingtonians entering community supervision were unemployed in 2015 and thus unlikely to contribute to the local economy (CCE 2016). Since unemployment is one of the most significant contributors to recidivism, not having a job puts people who have served time in custody at increased risk: one study found that more than 60 percent of people released from Washington DC’s Department of Corrections are rearrested within three years (Nakamura and Weiss 2012).

While many factors play into the proliferation of barriers to employment for people with criminal records, flaws in the criminal background check process are often significant. Employers who conduct criminal background checks may rely on fingerprint-based records linked to the FBI database or on commercial companies that conduct background checks manually or through the bulk purchase of data.<sup>3</sup> Both methods can produce inaccurate and incomplete reports. Of particular concern is that background checks may show arrests and charges that did not lead to convictions, thereby inappropriately creating employment challenges for those who were never charged or whose criminal charges were dropped. In addition, employers commonly receive inaccurate criminal history reports. For example, some misdemeanors may be incorrectly classified as felonies, potentially leading employers to rescind job offers.<sup>4</sup>

Washington, DC's efforts to limit the dissemination of arrest records to prevent such employment barriers date back to 1967, when the city government commissioned a report on how readily available arrest records were affecting unemployment. The findings of that report led to the creation of the Duncan Ordinance, a regulation that continues to limit the release of arrest records.<sup>5</sup> Since then, local government and policymakers have passed laws such as ban-the-box legislation to reduce employment challenges for people with criminal records, including restricting when a criminal background check can be conducted (ODCA 2016).

But background checks only come into play once a person with a criminal record has applied for a job; for many people with criminal histories in Washington, DC, the pool of jobs they can even apply for is small. People who have spent time in custody are particularly less likely to have the higher education jobs often required, let alone the years of employment experience many positions require.

This study examines how background checks, local and national regulations, and the nature of the Washington, DC's labor market create hurdles for justice-involved people looking for jobs. First, we estimate the number of Washington, DC, residents with criminal records to determine how many people are affected by the issue. Then we dive into the ways they are affected, analyzing the policy landscape to determine how heavily local regulations affect the job opportunities of justice-involved people and identifying aspects of Washington, DC's labor market that limit employment opportunities for people with criminal records. We contextualize the issue by describing its total impact on vulnerable groups and communities, and we conclude by describing programs and practices under way that could help mitigate the challenges, along with the opportunities for further research to better inform policy and practice.

## Affected Population

Researchers and policymakers have struggled to calculate the number of Washington, DC, residents who have criminal records, as well as the number who have been convicted of a crime. The District's criminal justice data is fragmented because of gaps in reporting by both police and the courts. The issue is compounded by Washington DC's transient housing and employment landscape: many people live in Washington, DC, short term for work or education, or they commute daily between Washington, DC, and nearby Maryland and Virginia for work.

Past attempts have estimated that roughly 60,000, or one in eight,<sup>6</sup> DC residents have criminal records. A more recent estimate puts the number 10 percent higher, at 67,000 residents, but the methodology was imprecise (Cognato et al. 2015). For this report, we first estimate the number of people in Washington, DC, with any kind of criminal history by applying the percentage of people nationwide with criminal records to the adult Washington, DC, population. We then use summary statistics of the Washington, DC, court conviction rates to estimate a share of convicted people. However, this methodology assumes that everyone with a criminal history was processed through the court system; it does not account for people who were arrested but never indicted.

To address the data inconsistencies, and to understand what information employers may be seeing in background checks, we accessed publicly available court records from 2007 to 2016. We found over 68,000 people, or approximately 1 in 7 DC residents,<sup>7</sup> whose criminal records from the past 10 years are publicly available in the Washington, DC, courts system (figure 1). However, just under 35,000 people, or 1 in 14, have a recorded conviction in the past 10 years (figure 2). In other words, nearly half of people with criminal records may not have been convicted of a crime, but they may still be flagged in criminal background reports submitted to employers.

FIGURE 1

### Share of People with Court Records in Washington, DC, 2007–16



FIGURE 2

Share of People with Criminal Convictions in Washington, DC, 2007–16



Our estimates are likely conservative<sup>8</sup> because background reports sent to employers can include criminal incidents dating back much longer than 10 years. In practice, this means that employers frequently receive reports that list charges without dispositions for periods of well over a decade.

A closer look at the type of offenses associated with Washington, DC, criminal court records over the past 10 years provides further insights. At 43 percent, misdemeanors make up the largest share of all cases (table 1). They also have one of the lowest conviction rates: approximately 62 percent of misdemeanor cases do not result in convictions. An additional 33 percent of felony cases are not attached to convictions. The United States Attorneys reported a similar pattern using one year of data: in fiscal year 2015, 64 percent of felony cases and 39 percent of misdemeanor cases resulted in convictions.<sup>9</sup> Many private criminal background check companies using these publicly available court records may not differentiate between cases that do and don't result in conviction in their reports to employers, thus putting a large share of prospective job candidates who were not found guilty at a disadvantage.

TABLE 1

Washington, DC, Conviction Rate by Criminal Case Type, 2007–16

Case type	Total cases	Number that resulted in convictions	Percentage that resulted in convictions
Misdemeanor	47,848	18,063	38
Traffic	25,803	12,858	50
Felony II	13,206	8,580	65
Domestic violence	12,776	4,709	37
Other	8,143	3,564	44
Felony III	3,667	2,666	73
Felony I	916	651	71
<b>All</b>	<b>112,359</b>	<b>51,091</b>	<b>45</b>

Source: Authors' analysis of 2007–16 District of Columbia court cases available online.

Notes: "Other" includes case types such as District Court cases (all closed via certification to USDC) or criminal contempt. Some of these case types are vague and appear to encompass a wide variety of charges, including unlawful possession of ammunition, failure to pay a Metro fee, and filing a false police reports.

Our interviews with government and nonprofit stakeholders have confirmed that incomplete reports with missing disposition data or extremely dated incidents are still shared with employers. Compounding the issue is the routine practice of overcharging: to give themselves leverage, prosecutors initially file more serious charges, which are often dropped in plea-bargaining or during the trial (Yu and Dietrich 2012). Background reports that include only the initial charges can unnecessarily inflate the perception of a criminal background by including numerous or serious charges that were eventually dropped. This may negatively influence employers' perceptions of otherwise suitable candidates. According to one interviewee: "Even if the record is eventually corrected, it is difficult to undo the damage caused by initial errors in criminal history reports. The employers' perspective of the applicant is irreparably damaged."

Compounding the issue are the incomplete records maintained by the FBI. As we reported in March 2017, only 43 percent of arrests submitted by the Washington, DC, government to the FBI include a final case disposition.<sup>10</sup> In contrast to the court records accessed by private background check companies, in which nearly half of people were not found guilty, the FBI database excludes outcomes for more than half of the recorded cases. Reports containing arrest information only can be still shared with employers, despite Equal Employment Opportunity Commission regulations that do not allow such release of incomplete information.

## Barriers to Work in Washington, DC

The employment barriers for people with criminal records in Washington, DC, include local regulations around background checks, regulations that restrict an already limited pool of jobs for justice-involved people, and increasing labor market requirements. "Ban the box" legislation may reduce those barriers, but exemptions to the law limit how well it helps people with criminal records secure jobs and avoid discrimination by prospective employers.

### Regulations

In Washington, DC, the Duncan Ordinance governs when and which types of arrest records can be released to employers. The ordinance was enacted in 1967, when the issue of criminal background checks and employment was as relevant as it is today,<sup>11</sup> then amended in 2012 and 2014. Per the Duncan Ordinance, only arrest records that led to a conviction or a court-mandated forfeiture of

collateral can be released to prospective employers.<sup>12</sup> Records released to employers must also relate to offenses for which the sentence was completed or the collateral was forfeited in the past 10 years.<sup>13</sup>

The Duncan Ordinance covers arrest records, but not court records. Records of all criminal cases (including initial appearance charges as well as indictments) dating back to the 1980s are available on the Washington, DC, courts website. In addition, the burden of addressing violations often falls on job seekers. Low-income people who may have trouble accessing competent legal counsel are often left at a disadvantage; they have limited options to file a complaint when their records are being unfairly shared, and the process can be complicated to navigate and prohibitively time consuming, particularly for people desperately seeking jobs.

Regulations also restrict the number of jobs accessible to people with criminal records. The National Inventory of the Collateral Consequences of Conviction lists 632 local DC regulations that present consequences for justice-involved people. Most of these regulations (377 instances, or 60 percent) relate to employment.<sup>14</sup> As many as 41 percent of these employment statutes, or 154 of 377, can lead to an automatic denial of employment.

The list of regulations details an extensive range of jobs and occupational licenses that people with criminal records are restricted from or face additional scrutiny in pursuing. And when occupational licenses could provide access to more stable or higher-wage jobs, access to those licenses is further limited for justice-involved people because of their cost and extensive training requirements. For example, a barber and cosmetology license requires 500 hours of barber school, 2,000 hours in training and a \$230 fee (Bement, Diaz, and Schroder 2017). People with criminal records are unlikely to undertake extensive and costly training, especially when they may ultimately be denied an occupational license.

Because these regulations are often vague, they impose more limitations than they need to. For example, 47 percent of the 377 employment regulations outlaw hiring people convicted of felonies, but few distinguish among the many crimes considered felonies under DC law. Only 15 percent of exclusionary regulations include language on “crimes of violence, including ‘person offenses,’” which narrows the focus to violent and dangerous felonies. Similarly, and in line with national trends, DC employment regulations do not closely relate the offense committed to the type of job or license for which a person can qualify. Examining whether all felony charges make people with criminal records unfit for all jobs could alleviate unnecessary barriers to work.

## Labor Market Requirements

The large number of jobs in Washington, DC, requiring high education levels and many years of experience is an added challenge for people with criminal records. Justice-involved people are likely to have lower educational attainment; and, if they have served time in custody, they may have long gaps in their job history and fewer total years of work experience.

The landscape of education attainment for people with criminal records in Washington, DC, is discouraging. According to a 2015 survey of people under Court Services and Offender Supervision Agency supervision, roughly 1 in 3 people reentering Washington, DC, after incarceration have less than a high school diploma or its equivalent, sharply contrasting with the 1 in 10 people in the general population at that education level.<sup>15</sup> As of October 2016, only 4 percent of people housed in Washington, DC, Department of Corrections facilities reported “college” as their highest educational attainment,<sup>16</sup> yet a large share of jobs in Washington, DC, requires a college degree or higher.

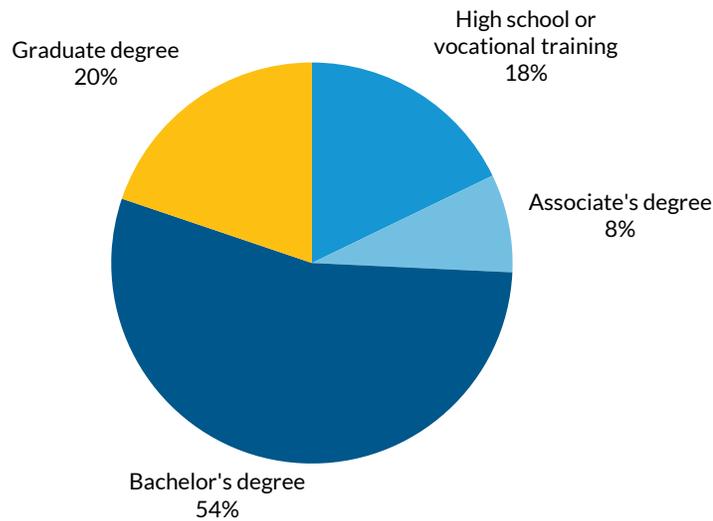
Data on justice-involved people’s years of work experience compared with the general population’s are limited. However, people with a history of incarceration generally have few years of work experience (Holzer 2007). Time in custody significantly limits opportunities for on-the-job experience, making people with criminal records less attractive candidates to potential employers. Attempting to regain status in the labor market after years lost in custody is a daunting task. Incomplete or inaccurate criminal background reports only exacerbate the issue.

To answer questions about labor demand and factors that define hiring practices in the region, we obtained an employer-specific labor market dataset for Washington, DC, through Burning Glass Technology.<sup>17</sup> Our analysis of these labor market data from 2012 to 2016 indicates that while employers’ requirements have remained consistent, the overwhelming majority of job postings (nearly 78 percent) require a postsecondary education.

Of all job postings in Washington, DC, published online in 2016, 18 percent require only a high school education or vocational training, while 75 percent require a bachelor’s degree or higher (figure 3). Remember that only 4 percent of people in Washington, DC, Department of Corrections facilities report having a college education. In addition, only 37 percent of available jobs require less than two years of experience (figure 4). These labor demand data indicate that the number of available jobs for qualified job seekers with criminal records is scant.

FIGURE 3

Available Job Postings in Washington, DC, by Required Educational Attainment, 2016

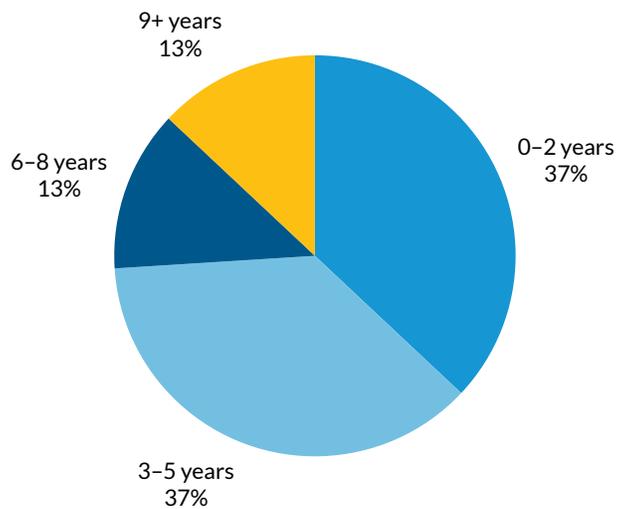


Source: Urban Institute analysis of Burning Glass data.

Note: Sample is 606,015 online job postings for the Washington, DC, Metropolitan Statistical Area, excluding those that do not specify educational attainment requirements.

FIGURE 4

Available Job Postings in Washington, DC, by Required Years of Experience, 2016



Source: Urban Institute analysis of Burning Glass data.

Note: Sample is 470,552 online job postings for the Washington, DC, Metropolitan Statistical Area, excluding those that do not specify years of required experience.

While the number of advertised postings has increased over the years, the share that requires a criminal background check has remained relatively consistent, averaging 18 percent from 2012 to 2016 (table 2). Background check requirements do not vary by educational attainment: 24 percent of job postings that require at least a high school education, and 24 percent that require at least a bachelor’s degree, also require background checks. Interestingly, the share of job postings requiring background checks has not changed since ban-the-box legislation was implemented in December 2014 (see the shaded rows in table 2). This may be because the law has a lagging effect or because it does not affect how employers advertise their vacancies. Whether employers choose to advertise the background check requirement or not, they may still request background checks after making someone a conditional offer of employment.

TABLE 2

Available Job Postings in Washington, DC, by Criminal Background Check Requirement, 2012-16

Year	Postings requiring background checks	All job postings	Percentage requiring background checks
2012	77,372	434,357	18%
2013	78,995	545,474	14%
2014	107,793	557,037	19%
2015	168,836	842,858	20%
2016	149,639	787,515	19%

Source: Urban Institute analysis of Burning Glass data, accessed on May 4, 2017.

Note: Shading designates the period after DC implemented ban-the-box legislation in December 2014.

In summary, employer requirements continue to outpace the experience and educational attainment of people with criminal records. According to Burning Glass data, the four most common categories of jobs available for people with up to two years of experience and a high school education or vocational training are retail sales workers; first-line supervisors of retail sales workers; stock clerks and sales floor workers; and sales representatives, wholesale and manufacturing, except technical and scientific products. This list does not represent all the jobs available for people with criminal records because many employers who offer lower-skill jobs might not post vacancies online. Regardless, broad categories of jobs remain unavailable to people with criminal records and create additional restrictions for job seekers in Washington, DC.

## Ban the Box

Employers typically request criminal background checks from one of two places: the FBI, which draws from data tied to fingerprint-based arrest records collected by federal, state, and local law enforcement agencies; or one of the thousands of commercial background check vendors that collect data through various methods, often relying on matching individuals' information against state and local court records. Our previous [report](#) assessed each of these two options for convenience, speed, cost, and accuracy (Duane et al. 2017). Appendix B summarizes the results of that analysis, concluding that both options present unique challenges and limitations, and may restrict the pool of suitable candidates for employers while limiting people with records' access to jobs that are already scant.

To increase the employability of people with criminal records, the Washington, DC, City Council passed the Fair Criminal Record Screening Amendment Act of 2014 (FCRSA), commonly known as DC's ban-the-box legislation. Enacted in December 2014, FCRSA forbids employers from inquiring about arrests, criminal accusations, and criminal convictions on applications or during the interview process. The act's definition of inquiry includes criminal history checks of any kind.<sup>18</sup> Employers may ask about an applicant's criminal history only after they have extended a conditional offer of employment. The offer of employment can be withdrawn based on criminal history information only for a legitimate business reason,<sup>19</sup> a definition that is loosely defined and overly broad.

A report commissioned by the District of Columbia Auditor found that the District government increased its hiring of "returning citizens"—people who have served time in jail or prison and are reintegrating into society—by 33 percent after the law took effect (ODCA 2016). However, the small sample size of this survey significantly limits the generalizability of its findings. In addition, the authors acknowledge that such an increase in hiring of people with criminal records could be explained by other correlating factors, such as the mayor's initiative to increase the number of jobs available to "returning citizens."

A promising indication in the DC Auditor's study is that slightly more than half of surveyed employers reported supporting the spirit of the law, which they viewed as "providing increased opportunities to people with criminal records in order to decrease recidivism" (ODCA 2016, 21). However, it remains unclear how many employers ended up requesting criminal background checks at the end of the hiring process, nor what share ultimately rescinded job offers as a result of those checks. In the end, employers may still be denying jobs to people with criminal records after conducting background checks, regardless of whether the crime is related to the specific job or license.

While the ban-the-box initiative is well-intended, certain local exemptions limit its effectiveness. In addition to the fact that the law applies only to employers with more than 11 employees (DC Office of Human Rights 2014), three categories of jobs are exempt from the FCRSA:

1. positions required by federal or District law or regulations to consider an applicant's criminal history;
2. positions designated by government program or obligation to encourage employment of people with criminal histories; and
3. positions that provide programs or services to minors or vulnerable adults.

These provisions restrict access to jobs with employers such as the Department of Corrections, the Housing Authority, Excepted Service positions, jobs driving for-hire vehicles, and others.

In addition, 40 percent of employers reported not being aware of the law (ODCA 2016), indicating that current enforcement mechanisms are insufficient. Though limited in its effect size, the DC Auditor's study already points to the shortcomings of FCRSA. Further research on how many employers rescind job offers at the end of the hiring process because of information received through the criminal background checks would provide important contextual information about the impact of such laws.

## Impact

Restrictive regulations carry significant consequences for many residents. But a closer look at the issue reveals that Black and Brown as well as low-income people carry the heaviest burden. We examine how finding jobs for those with criminal history is further compounded by income and race, and we review the long-lasting effects on communities at large.

### Individual Consequences

Vulnerable groups who are known to come into frequent contact with the justice system face a greater possibility of being denied a job offer because of their criminal records. As multiple sources suggest, Washington, DC, residents who come into the most contact with the justice system are likely concentrated in Wards 7 and 8—also the parts of the city with the highest unemployment rates.<sup>20</sup>

## INCOME

Low-income people, who tend to be overrepresented in the criminal justice system, are also drastically disadvantaged in the job market. Many of the prerequisites for successful entry or reentry in the job market are predicated on access to resources. Stable housing, access to education, reliable transportation, and legal identification documents and other personal records are all important to obtaining and maintaining employment, but they require resources to facilitate. Thus, access to jobs with the lowest barriers to entry is critical for people living in poverty. In many instances, those jobs require low-level skills. One survey of formerly incarcerated people found that their four most common job categories were vehicle operator/delivery, manager/supervisor/foreman, food preparation workers, and janitors/cleaners (CCE 2011). Limiting employment opportunities by increasing the use of incomplete and often-inaccurate background checks will continue to disadvantage people who already face an extremely limited pool of available low-skill jobs. More research is needed to determine whether employers that offer low-skill jobs are increasingly conducting background checks and the types of checks they choose.

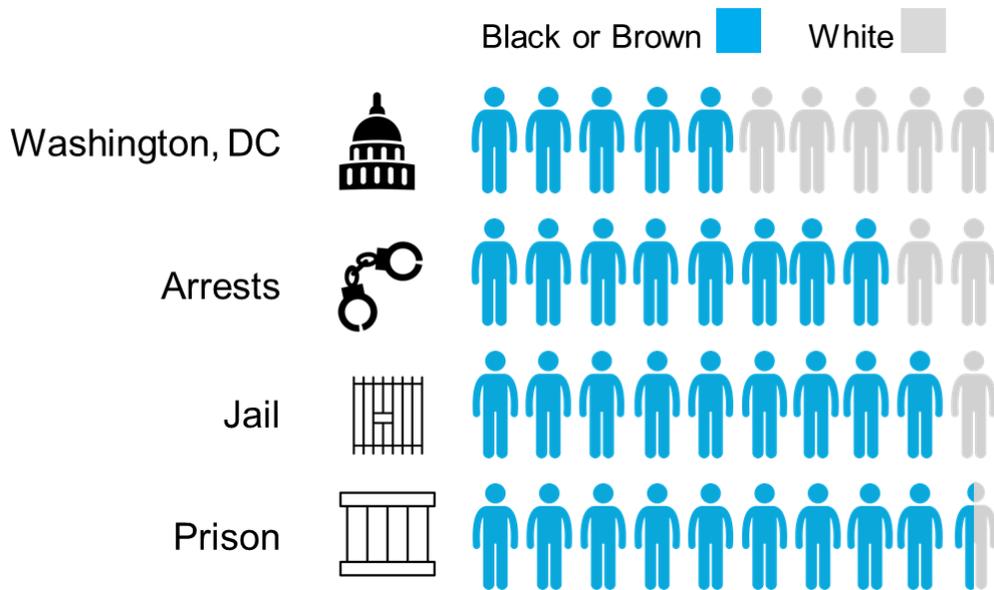
According to the DC Department of Corrections (2016), most people in jail lived in Wards 5, 7, and 8 before they were incarcerated. These same wards have the highest unemployment rates, the highest shares of people and families living in poverty, and the lowest mean and median household incomes in the city.<sup>21</sup> People from these communities experience more significant challenges in finding jobs.

## RACE AND ETHNICITY

Following the national trend, Black or ethnic minority residents are disproportionately represented across every part of the criminal justice system in Washington, DC—from arrests to jail to prison. One analysis revealed that although Black and Brown people make up less than half the population in Washington, DC, they accounted for 8 in 10 arrests between 2009 and 2011.<sup>22</sup> This disparity persists downstream in the criminal justice system: Black and Brown people make up as much as 89 percent of people, or approximately 9 in 10, who are housed in jail awaiting trial or already convicted of less serious charges (DC Department of Corrections 2016). Similarly, 96 percent of DC residents held on more serious charges in the Federal Bureau of Prisons are Black (CCE 2016). Figure 5 shows the persistent racial disparity in Washington, DC's criminal justice system that thereby places significant employment burdens on racial and ethnic minorities.

FIGURE 5

Racial Disparity across the Criminal Justice Continuum in Washington, DC



Sources: US Census Bureau; Washington Layers' Committee for Civil Rights and Urban Affairs (2013); DC Department of Corrections (2016); and Council of Court Excellence (2016).

Research has consistently indicated that race significantly affects employment decisions, with studies demonstrating that Black applicants are between 50 and 500 percent less likely to receive consideration than comparable White applicants.<sup>23</sup> Two separate studies find that prior felony convictions are more disadvantageous to Black job applicants than White applicants with the same qualifications and criminal record.<sup>24</sup>

The recently enacted FCRSA, which is meant to help people with criminal records, may have adverse outcomes for racial and ethnic minorities. While the impact of ban-the-box initiative has not been evaluated or empirically tested in Washington, DC, studies elsewhere have yielded mixed results,<sup>25</sup> with the most recent research findings suggesting that employers are “screening out” candidates of color earlier in the process, presumably based on biased assumptions of a criminal record rather than concrete knowledge of one (Agan and Starr 2016). Regardless of the stage of the hiring process, people with criminal records who are Black and low income face unique challenges when seeking jobs. And with proliferation in and limitations of the types of background checks, vulnerable groups risk being rejected by employers after the background check is conducted.

## Community Consequences

Criminal background checks often have long-lasting effects on communities. A closer look at the impact on Washington, DC, reveals an uneven distribution of damaging effects across the region's neighborhoods and families.

### UNEMPLOYMENT RATES

A lack of job opportunities resulting from burdensome criminal background check requirements can alter the economic health of the region. However, no empirical research studies such a relationship for the Washington, DC, region. As a proxy measure, we look at the neighborhoods with the highest concentration of justice-involved residents and examine these neighborhoods' unemployment rates.

According to the US Bureau of Labor Statistics, Washington, DC's unemployment rate in December 2015 was 6.4 percent,<sup>26</sup> which is 1.4 percentage points higher than the national unemployment rate of 5 percent for the same month.<sup>27</sup> However, looking at unemployment rates by wards shows an uneven distribution: Ward 7's unemployment rate was 11.2 percent, and Ward 8's was 14.4 percent. Wards 7 and 8 are where most people incarcerated in DC report having lived before they came into contact with the justice system and where they will likely return following their incarceration.<sup>28</sup>

Criminal background checks and subsequent denials in employment likely play a role in the high unemployment rates in these neighborhoods, but there are additional factors to consider. Future research is needed to better understand how criminal background checks influence unemployment rates in socioeconomically disadvantaged communities. More robust statistical analyses are needed to establish causation and to rule out other correlates.

### UPWARD MOBILITY

Potential denial of jobs based on criminal background checks is not an isolated episode in a person's lifetime; unfortunately, such obstacles can significantly hinder people's future economic prospects, and people with criminal histories often have children and families who suffer economic consequences. Children and partners suffer from diminished earnings or lose child support because their incarcerated family members receive little or no pay while incarcerated, and families often incur costs to visit and support their loved ones in custody.<sup>29</sup> By age 48, incarceration accounts for more than half of lost earnings among Whites, 41 percent among Hispanics, and 44 percent among Blacks (Pew Charitable Trust 2010). This trajectory shows that restricting the jobs available to people with a criminal record by conducting criminal background checks can have long-lasting, far-reaching effects—the collateral consequences more heavily concentrated in Wards 7 and 8 than in the rest of the city.

# Promising Practices

Through interviews with stakeholders, we learned about a significant effort to address collateral consequences and reduce barriers to work for people with criminal records in Washington, DC. While many gaps in data and evidence remain, some promising local practices and innovative solutions are worth noting. By overcoming existing barriers and enhancing employment opportunities for people with criminal records in Washington, DC, these promising practices aim to foster a more vibrant workforce that is integral to the continued, sustained economic growth of the region.

## Project Empowerment

**Project Empowerment** is a transitional employment program, managed by the DC Department of Employment Services, that helps job seekers with multiple barriers to employment successfully enter the workforce. Participants receive three weeks of intensive job readiness training and up to six months of subsidized employment with the goal of securing permanent, unsubsidized employment. In addition to job readiness training and job search assistance, Project Empowerment provides supportive services such as adult basic education, job coaching, and occupational skills training. Since 2002, the program has served more than 11,000 residents, averaging about 700 residents a year, the vast majority of whom are returning citizens.

The program has notable results. Over the years, program staff have established strong partnerships with local employers of various sizes and industries. Project Empowerment alumni have also earned a reputation as reliable employees. In 2016, nearly 58 percent of participants were able to obtain unsubsidized jobs, putting them on a path of sustained employment, a linchpin to successful reintegration. Though preliminary findings are promising, future research on the retention rates of unsubsidized employment, the broader impact on long-term recidivism, and economic growth in the most affected DC wards could provide valuable insights.

## Aspire to Entrepreneurship Program

Washington, DC's Department of Small and Local Business Development has collaborated with the DC Department of Employment Services, the DC Mayor's Office of Returning Citizen Affairs, the Federal Court Services and Offender Supervision Agency, and the nonprofit Capital Area Asset Builders on a pilot program that supports returning citizens in creating and operating local businesses. Because of the

collateral consequences facing justice-involved residents face when they seek well-paying jobs, the DC government is experimenting with innovative solutions to create income opportunities from alternative sources for returning citizens. To become successful entrepreneurs, participants learn about financial literacy, lean business concepts, marketing, business management, and development through a six-month, paid intensive business development program provided by the nonprofit Changing Perceptions. Returning citizens also receive a matched-saving account and help with the complicated, sometimes costly process of obtaining general and specialized business licenses. Today, [Aspire](#) has trained 13 people with a plan to expand the program up to 50–100 participants through 2017.

## Neighborhood Legal Services Program

The [Neighborhood Legal Services Program](#) (NLSP) is a nonprofit that helps Washington, DC, residents. In partnership with the DC Public Libraries, NLSP holds free legal clinics several times a month where attorneys offer advice and representation to job seekers who experience barriers to employment. In many cases, job seekers turn to NLSP after they have been denied employment because of a criminal history or other background check. Attorneys educate job seekers about their rights and explain relevant laws such as ban the box and avenues to sealing or expunging records.

## Conclusion

Employers often conduct criminal background checks on prospective job seekers, but the results of such checks are unreliable and can create additional barriers to employment for people who are already hard to employ. In Washington, DC, the job prospects for such vulnerable groups are often further complicated by regulations around criminal background checks, local employment regulations that restrict the pool of available jobs, and increasing labor market requirements. Our report shows that employment barriers negatively impact the person seeking work *and* the community at large.

While this report has identified promising local practices that may help improve the outlook for vulnerable DC residents seeking employment, more research is needed to inform future policy. Policymakers would benefit from more robust evidence on how different types of criminal background check requirements vary based on job industry; whether employers that require lower educational attainment and fewer years of experience conduct criminal background checks more often; and,

importantly, a better estimate of people with criminal records who are denied employment based on inaccurate and incomplete criminal background reports in Washington, DC.

# Appendix A. Court Data Methodology

We accessed data from records made available on the District of Columbia Courts' [website](#). The main objective of analyzing these data was to estimate how many people have a criminal record available online and understand the type of disposition—that is, “convicted” and “not convicted.” Our methodology for estimating this population is based on conservative assumptions and choices, which are documented below.

We accessed the District of Columbia Courts' website to pull all criminal cases from January 1, 2007 to December 31, 2016, including felonies (levels I, II, III), misdemeanors, domestic violence, traffic offenses, and criminal contempt. The raw data included approximately 151,000 criminal cases. We screened out approximately 39,000 cases and drilled down to **112,359** cases, which were the focus of our analysis.

## Excluded Data

1. The raw data file contained about 42,530 rows with no available case number, plaintiff, and defendant fields. Owing to the lack of any unique identifying information, these rows had to be dropped from analysis. It is hard to estimate how many cases these data represent, but we estimate that those 42,530 corresponded to roughly 800 cases.
2. We also excluded several other categories of data:
  - » 16,406 post and forfeit proceedings
  - » 6,352 warrant proceedings
  - » 8,924 fugitive cases

Post and forfeit proceedings were not included in this analysis, per Title 5, Chapter 3A. According to Subchapter III, § 5–335.01 of the DC Code, a post and forfeit resolution is not to be equated to a criminal conviction. Warrant proceedings and fugitive cases were removed owing to the complexity and lack of clarity in the corresponding disposition information as well as the likelihood that their inclusion may have caused incidents to be counted more than once.

3. We excluded 6,642 cases that were still open or reopened and undergoing appeal.

## Matching “Messages” to “Cases”

On the District of Columbia Courts’ website, any action taken or events related to the case is recorded in the “Messages” field. Many cases had dozens of associated messages detailing how the case unfolded. These messages include charges filed and dropped, motions filed, and hearings scheduled. Below is an example of what the data associated with one case could look like:

YYYY CMD XXXXXX: District of Columbia Vs. Lastname, Firstname	
Case Type: Misdemeanor	File Date: mm/dd/yyyy
Status: Closed	Status Date: mm/dd/yyyy
Disposition: Dismissed - DWP	Disposition Date: mm/dd/yyyy

Docket Date	Description	Messages
mm/dd/yyyy	Charge Disposed - DWP	Case Dismissed for Want of Prosecution
mm/dd/yyyy	Stay Away Order Filed	Stay Away Order Filed
mm/dd/yyyy	Charge Filed	Charge Filed: Unlawful Entry

We reformatted the data to match observations to cases. Other than description and message, all other variables were identical within each case number, enabling us to use the index to drop all but one observation of each case number for analyses that did not involve the description or message variables. Below is a visual depiction of this index system. As a quality check, the data were reshaped from “long” to “wide” format so all information associated with one individual case was in one observation (or row) of data.

casenumber	names	casetype	filedate	status	statusdate	disposition	dispositiondate	description	message	index
A	x	x	x	x	x	x	x	i	i	1
A	x	x	x	x	x	x	x	ii	iii	2
A	x	x	x	x	x	x	x	iii	iii	3
B	y	y	y	y	y	y	y	iv	iv	1
B	y	y	y	y	y	y	y	v	v	2

↓

casenumber	names	casetype	filedate	status	statusdate	disposition	dispositiondate	description	message	index
A	x	x	x	x	x	x	x	i	i	1
B	y	y	y	y	y	y	y	iv	iv	1

## Counting People

Court records are stored by case number, not by the person involved in the case, leading to some limitations with analyses. We made three decisions to arrive at our estimate of 68,000 people:

1. The variables with defendant names were cleaned. For example, “John A. Smith” was changed to “John A Smith” without a period to account for differences in punctuation.

2. For instances when one person had multiple cases, the same indexing system described above was used to count the number of unique names that appeared in the dataset.
3. We counted only one instance of the first and last name if it appeared several times. For example, if there were multiple cases with defendants named John Smith, our analysis assumes every instance of John Smith refers to the same person, the likelihood of which is questionable.

## Understanding Convictions

We analyzed 112,359 of cases by type—felony, misdemeanor, domestic violence, traffic, and so on—to understand which categories of these cases had dispositions that could be interpreted as “convictions.” Table A.1 breaks down of how all the disposition types listed by the courts in the raw data were categorized for analysis. We grouped types of cases as “convicted” and “not convicted” as shown below. We assumed that four types of “conviction” (Guilty-plea judgment guilty, Guilty-court trial, Guilty-jury trial, and Security forfeited) represent the type of disposition that can appear on a criminal background report as allowed by local regulations.

**TABLE A.1**  
**Categorization of Disposition Types**

Convicted	Not convicted	Other
Guilty-plea judgment guilty	Closed-no papered	Certified-to Family Division
Guilty-court trial	Dismissed	Closed-case certified to USDC
Guilty-jury trial	Dismissed-case disposed-YRA <sup>a</sup>	Consolidated-case consolidated
Security forfeited	Dismissed-DWP	Not Guilty-by reason of insanity
	Dismissed-no probable cause	
	Dismissed-prosecution abated	
	Guilty-904 guilty plea <sup>b</sup>	
	Not Guilty-Acquittal	
	Not Guilty-Court trial	
	Not Guilty-Jury trial	
	Dismissed-Nolle-diversion	
	Dismissed-Nolle-prosequi	
	Dismissed-plea agreement	

<sup>a</sup>Convictions set aside per DC Code Title 24 Chapter 9 Subchapter I § 24-906, Youth Rehabilitation Act

<sup>b</sup>Convictions set aside per DC Code Title 48 Chapter 9 Subchapter IV § 48-904.01

# Appendix B. Strengths and Limitations of FBI and Commercial Background Checks

Strengths	Limitations
<b>FBI: Based on comparing fingerprints against its data system</b>	
<p><b>Precise identification</b>—Biometric information produces unique reports for <i>job seekers</i> and cannot be falsified:</p> <ul style="list-style-type: none"> <li>■ Mostly eliminates the risk of <i>false positives</i> (attaching a criminal record to the wrong person).</li> <li>■ Mostly eliminates the risk of <i>false negatives</i> (overlooking a criminal record when one exists).</li> </ul> <p><b>Arrests</b> reported from local jurisdictions are mostly accurate:</p> <ul style="list-style-type: none"> <li>■ Still, Equal Employment Opportunity Commission guidance restricts <i>employers</i> from making hiring decisions based solely on arrest records when court disposition information is missing.</li> </ul>	<p><b>Incomplete records with missing case dispositions</b>—Local courts and law enforcement agencies report their data inconsistently:</p> <ul style="list-style-type: none"> <li>■ Arrests with <i>no adjudication or conviction</i> may remain on a <i>job seeker's</i> record.</li> <li>■ State and local agencies may not screen out <i>nonserious charges</i>.<sup>a</sup></li> </ul> <p><b>Variations in update frequency</b>—State and local law enforcement agency policies vary significantly on how often to report information to the FBI:</p> <ul style="list-style-type: none"> <li>■ <i>Job seekers' sealed or expunged records</i> may be wrongfully revealed to employers.</li> <li>■ Case outcomes may remain in the FBI database beyond a state's legal requirements.</li> </ul> <p><b>Speed</b>—Reports for people with no criminal background can take 24–48 hours, but others can take 4–6 weeks (or, in some cases, 12–14 weeks).</p>
<b>Commercial vendors: Based on matching demographic information</b>	
<p><b>Reduced burdens</b> for <i>job seekers</i> and <i>employers</i>:</p> <ul style="list-style-type: none"> <li>■ <i>Job seekers</i> do not have to go to an approved location to get fingerprinted or navigate the online submission system.</li> <li>■ Reports can be returned to employers <b>faster</b> than FBI reports, making employer decisions timelier.</li> <li>■ <b>Fees vary</b> significantly by vendor but usually come at no cost to the <i>job seeker</i>.</li> </ul>	<p><b>Non-unique identifying information</b>—Accidental or intentional submission of false or misleading identifiers could produce incorrect record matching:</p> <ul style="list-style-type: none"> <li>■ Increases the possibility of <i>false positives</i>.</li> <li>■ Increases the possibility of <i>false negatives</i>.</li> </ul> <p><b>Variation in accuracy of information</b>—Accuracy depends on the selected vendor among thousands available. Commercial databases may be updated infrequently and may wrongfully reveal sealed or expunged records, making <i>employer</i> decisions difficult:</p> <ul style="list-style-type: none"> <li>■ Depend on online public records and the purchase of court and state repository data, which are inconsistent and not always available.</li> <li>■ Restrictions requiring commercial companies to update databases are not strictly enforced.</li> </ul> <p><b>Incongruence of records</b> protected by the Fair Credit Reporting Act with <b>research on which candidates pose risks</b> to the job or the public.</p>

Strengths	Limitations
<b>Both types of background checks</b>	
<p><b>Increased workplace and public safety:</b></p> <ul style="list-style-type: none"> <li>■ Example 1: Barring people convicted of predatory offenses from working in day care centers, schools, nursing homes, and hospital.</li> <li>■ Example 2: Barring people convicted of fraud or money laundering from working for financial institutions.</li> </ul> <p>When reported accurately, <i>employers</i> can make <b>better informed</b> decisions that support employment and ensure the safety of employees and the public.</p>	<p><b>Missing disposition data</b>— <i>Job seekers</i> may be penalized for an arrest that never resulted in charges or conviction:</p> <ul style="list-style-type: none"> <li>■ <i>Employers</i> may make uninformed decisions about a job seeker’s record, unnecessarily limiting their hiring pool.</li> </ul> <p>Mismatch between reported criminal offenses and the type of job the applicant is applying for.</p> <p>Additional barrier to employment for <i>job seekers</i> that does not necessarily make workplaces safer.</p> <p><b>Release of arrest</b> records may be allowed beyond seven years or when the state’s statute of limitation expired placing additional burdens on prospective employees.</p> <p><b>Potential jeopardizing of public safety</b>— Prohibits people who otherwise pose no risk to the job from accessing jobs when employment could prevent recidivism.</p> <p><b>Burdens</b> to correct incomplete records fall <i>on job seekers</i> who might not have enough time within the short hiring time frame.</p>

**Source:** Marina Duane, Nancy G. La Vigne, Emily Reimal, and Mathew Lynch, *Criminal Background Checks: Impact on Employment and Recidivism* (Washington, DC: Urban Institute, 2017).

<sup>a</sup> See Joe Palazzolo, “FBI No Longer Checks Its Records for ‘Nonserious’ Crimes,” Law Blog, *Wall Street Journal*, October 12, 2015, <http://blogs.wsj.com/law/2015/10/12/fbi-no-longer-checks-its-records-for-nonserious-crimes/>.

# Notes

1. See SEARCH (2015).
2. Lester S. Rosen, “Background Check Strategies for Reducing Insider Threats After Hiring,” Employment Screening Resources, September 9, 2016, <http://www.esrcheck.com/Articles/Background-Check-Strategies-for-Reducing-Insider-Threats-After-Hiring/203/>.
3. See National Employment Law Project (2014) and Yu and Dietrich (2012).
4. According to an interview with Neighborhood Legal Services Program staff, April 2017.
5. According to the Committee to Investigate the Effects of Police Arrest Records on Unemployment in the District of Columbia, Report 9 (1967).
6. See CCE (2011) and Clinton Yates, “Returning citizens’ are still one of D.C.’s most marginalized and motivated groups,” *Washington Post*, January 16, 2015, [https://www.washingtonpost.com/news/local/wp/2015/01/16/returning-citizens-are-still-one-of-d-c-s-most-marginalized-and-motivated-groups/?utm\\_term=.07caae636ea8](https://www.washingtonpost.com/news/local/wp/2015/01/16/returning-citizens-are-still-one-of-d-c-s-most-marginalized-and-motivated-groups/?utm_term=.07caae636ea8).
7. The population of Washington, DC, was 672,228 in 2015. Subtracting the 17.6 percent of the DC population ages 18 and younger and the 11.5 percent ages 65 and older leaves a total of 476,610. See <https://www.census.gov/quickfacts/table/PST045216/11>.
8. Appendix A details our data analysis methodology and its limitations.
9. See Offices of the United States Attorneys (n.d.), p. 65.
10. See SEARCH (2015).
11. According to the Committee to Investigate the Effects of Police Arrest Records on Unemployment in the District of Columbia, Report 9 (1967).
12. Arrest records are defined as those provided under Code of the District of Columbia § 5-113.02, which outlines record-keeping procedures for the Metropolitan Police Department for individuals charged with committing criminal offenses.
13. 1 DCMR § 1004.
14. See the National Inventory of Collateral Consequences of Conviction, Council of State Governments Justice Center, accessed June 11, 2017, <https://niccc.csgjusticecenter.org/search/?jurisdiction=13>.
15. See CSOSA (2016); and “Quick Facts: District of Columbia,” US Census Bureau, accessed May 2, 2017, <https://www.census.gov/quickfacts/table/PST045216/11>.
16. See DC Department of Corrections (2016).
17. The Burning Glass dataset offers unique insight into labor market demand, but it has limitations. It relies on daily analysis of online job postings, so it does not factor in employment opportunities that are not published online. It also does not show how employers make hiring decisions after advertising an open position. In addition, the dataset classifies jobs based on frequency of postings rather than reflecting employers’ true tendency and frequency of hiring.
18. Code of the District of Columbia § 32-1341 (8).
19. DC Office of Human Rights (2014). The law defines six factors that can constitute a legitimate business reason: specifics duties and responsibilities necessarily related to the employment; fitness or ability to perform job duties or responsibilities given the offense; time elapsed since the occurrence of the offense; age of the

applicant when the offense occurred; frequency and seriousness of the offense; and information that indicates rehabilitation or good conduct since the offense occurred.

20. See Washington Lawyers' Committee for Civil Rights and Urban Affairs (2013) and Justice Policy Institute (2010).
21. "American Community Survey (ACS) Estimates," DC Office of Planning, accessed June 11, 2017, <https://planning.dc.gov/page/american-community-survey-ac-s-estimates>.
22. See Washington Lawyers' Committee for Civil Rights and Urban Affairs (2013).
23. The studies [including Bendick, Jackson, and Reinoso (1994); Bertrand and Mullainathan (2004); Pager (2003); Pager and Western (2005); and Turner Fix, and Struyk (1991)] are compiled and reviewed in Pager (2007).
24. See Pager (2007) and Pager, Western, and Sugie (2009).
25. See Agan and Starr (2016); Doleac and Hansen (2016); Shoag and Veuger (2016); and Stacy and Cohen (2017).
26. "Local Area Unemployment Statistics Map," Bureau of Labor Statistics, accessed June 11, 2017, <https://data.bls.gov/map/MapToolServlet>.
27. "Labor Force Statistics from the Current Population Survey," seasonal unemployment rates series, Bureau of Labor Statistics, accessed June 11, 2017, <https://data.bls.gov/timeseries/LNS14000000>.
28. See DC Department of Corrections (2016) and CCE (2016).
29. See Geller, Garfinkel, and Western (2011); and Lee, Porter, and Comfort (2015).

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