



# Celebrating Banning the Box in Higher Education in California



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*By Dr. Noel Vest, Andrew Winn, Sonja Tonnesen-Casalegno, and Emily Blake*



Students at the University of California, Berkeley. ([source](#))

## Banning the Box Movement

The United States leads the world in incarceration and criminal convictions. Approximately seventy-one million, or roughly one in three adults, have criminal convictions and are subject to discrimination on the basis of that conviction. This is widely documented in the areas of employment, housing, and access to services. Justice system-impacted people face some of the largest hurdles in their quest to rehabilitate and integrate back into society. That needs to change.

The Ban the Box (BTB) movement in workforce, housing, and higher education advocates for removing barriers to reentry and economic success. Seventy percent of colleges in the United States report asking applicants about criminal history on admissions applications. Importantly, two-thirds of applicants that have a conviction history do not go on to finish college applications once they get to the criminal history question.

There is a direct correlation between career attainment and the level of education that someone earns, especially in a job market that continues to migrate away from low-skill jobs. About 25% of all previously-incarcerated people are without a high school diploma or equivalent, and it is compounded with a 27% unemployment rate (pre-pandemic). Increasing access to higher education is essential to uplifting vulnerable populations, and those with an incarceration history are some of our most vulnerable. To add to the economic exclusion that people with conviction histories face, they must also contend with a myriad of other exclusionary laws that are meant to perpetuate state-sanctioned discrimination, and systematically exclude people from fully participating within society. But this reality can begin to change through laws and policies that increase access to opportunity and inclusion across all areas of life.

## California's Big Win

On August 6th, California became the fifth state in the U.S. to pass legislation that bans the box in higher education admissions, joining

Colorado, Louisiana, Maryland, and Washington. California's Senate Bill (SB) 118 is a step towards removing archaic laws that seek to economically disenfranchise people with conviction histories. This new law bans all segments of postsecondary education, except for professional degrees and law enforcement basic training programs, from inquiring about a prospective student's criminal history on an initial application form or at any time during the admissions process. Institutions of higher education must make any necessary changes to their application process to comply with the new law by the Fall term of the 2021–22 academic year.

This win was made possible by the leadership of California State Senator Nancy Skinner and a coalition of directly impacted students, campus advocates, civil rights attorneys and allies, including representatives from Root & Rebound, Project Rebound, Unlock Higher Ed, Time for Change Foundation, Anti-Recidivism Coalition, and Underground Scholars.

Before the passage of this new law, California's public colleges and universities did not ask about arrest or conviction history in undergraduate admissions applications. While this practice was not required by law, none of the state's three public college systems — which include the University of California (UC), California State University (CSU), and California Community College (CCC) systems — explicitly asked about arrest or conviction history on initial college applications. However, before passage of this new law, many private colleges and universities, as well as both public and private graduate-level and vocational programs, had asked

about and considered arrest and conviction histories at some point in the admissions process in California.

By increasing access to higher education for justice system-impacted students in California, our state gains from more diverse perspectives in higher education, talent and growth potential for the workforce, greater civic participation, and the leadership potential of students who have unique and valuable experiences to share. California's law is a monumental win for the Ban the Box in Higher Education movement as it is the first to specifically cover both public *and* private schools as well as graduate school programs.

Importantly, the bill in California does not allow for “carve-outs” for certain categories of convictions. Research consistently shows that individuals with conviction histories, specifically violent conviction histories, are not a threat to public safety on college campuses and these individuals are no more likely to commit crimes on college campuses than other students. All formerly incarcerated people deserve the opportunity to further their education, and society as a whole will benefit from their success.

## National Landscape

Removing barriers to educational attainment is not solely a California issue, it is national in scope. Organizations like the Common App, a standardized college application form used by more than 800 colleges and universities

nationally, began asking the question about convictions in 2006, but made the question optional beginning on their 2019–20 application.

Furthermore, in 2020, the Common App dropped the questions about student disciplinary records because of a similarly disparate impact on Black, Latinx, and other applicants of color. Asking the conviction question on applications is arbitrary, and for qualified students, the answer is not a predictor of future behavior and does not increase the safety of campuses or communities near campuses. Despite the Common App's evolution, many colleges and universities persist in this archaic and racially discriminatory practice of asking about conviction history.

Efforts regarding Ban the Box in Higher Education began in earnest in 2016 when the State University of New York system formally eliminated the criminal history box from its application process. The following year in 2017, Maryland became the first state to pass legislation; unfortunately, the Governor at the time vetoed the legislation. Advocates in Louisiana followed soon after with a bill that was passed and signed into law by the Governor in 2017. Efforts in Maryland ramped up and advocates were able to overcome the veto by passing the bill with a two-thirds majority in 2018. Inspired by the work in other states, supporters in Washington state and Colorado worked to pass legislation in their respective states in 2018 and 2019. Now, California becomes the fifth state to successfully pass Ban the Box in Higher Ed legislation, with the strongest legislation to date.

A direct result of these laws expanding to other states is that the lived experience from people most impacted by over-policed neighborhoods and by policies that create racial and socio-economic disparities will be represented in classrooms across the country. Indeed, with each state that passes this important legislation, the likelihood that the federal government and Department of Education address their own law and policy at the national level increases substantially.

## **What's Next — Nationally and California**

Ban the Box in Higher Education bills are still novel across the country, but there are five states that have introduced this legislation from 2017 to 2020: Illinois, Kentucky, Maine, New York, and Virginia. Additionally, Pennsylvania introduced new legislation this week (HB2952) with the hope of passing the law in the current 2-year legislative session. California's new law in SB 118 establishes a good model for other states and federal legislation.

On a federal level, Senator Schatz (HI) and Representative Richmond (LA) announced the Beyond the Box in Higher Education Act (Senate Bill 1338 and House of Representatives Bill 2563) in the 116th Congress (2019–2020). This Act would remove drug conviction questions from the Free Application for Federal Student Aid (FAFSA) and require the Department of Education to issue guidance and recommendations for institutions of higher education to remove criminal and juvenile justice questions from their

admission applications. The Senate Bill has 18 cosponsors and the House Bill has one cosponsor, so additional work and advocacy is required to pass this Act into law.

What's next for California? First and foremost, on-the-ground advocates, including the authors, are working to address the "professional degree" carve-out language in the law and ensure that colleges and universities implement it with as narrow a definition as possible. Since the law is only the floor and never the ceiling when it comes to best practices, implementation work includes campus training from on-the-ground experts with both lived experience and criminal justice system expertise. Education gatekeepers like admissions staff, career counselors, and program staff in campus networks supporting justice-impacted students can benefit from learning the requirements of SB-118 as well as how to adopt Ban the Box practices in professional degree-granting programs, regardless of the bill's carve-out that would permit them to do otherwise. Ultimately, all career fields and campuses will be enriched by the full and equal participation of justice-system-impacted people.

Although SB 118 is a powerful piece of legislation, it is only one law, versus the tens of thousands of laws nationally that prevent access to civil rights, housing, employment, services, financial wellness, and more. With more than 600,000 people released yearly, and the expectation of that number increasing for 2020, it has never been more important to address the higher

education inequities that millions of people must contend with locally, statewide, and nationally.

## About the Authors

Dr. Noel Vest is a formerly incarcerated scholar and postdoctoral fellow in the Systems Neuroscience and Pain Lab at the Stanford School of Medicine, advocating for social justice issues and public policy concerning prison reentry through Unlock Higher Education. Andrew Winn is a formerly incarcerated scholar serving as Project Rebound Director at Sacramento State. He graduated from UCLA, advancing Underground Scholars Initiative and the Justice Work Group. Sonja Tonnesen-Casalegno is the Deputy Director of Programs and a founding staff member of Root & Rebound, a team of advocates and activists with the vision of building opportunity and access to justice for people most harmed by mass incarceration. Emily Blake is a macro forensic social worker passionate about justice reform and supportive reentry through higher education pathways, currently serving as the Michelson 20MM Foundation's Smart Justice Program Officer.

Root & Rebound and Project Rebound were cosponsors of the Banning the Box in Higher Education bill in CA and Dr. Vest is leading statewide advocacy through Unlock Higher Education to pass Ban the Box in Higher

Education legislation nationwide. Michelson 20MM Foundation is proud to support Root & Rebound's [Incarceration to Education Initiative](#), convening a coalition of educators, formerly incarcerated students, educational institutions, partner nonprofits, allies, and government stakeholders around the ban the box in higher education CA campaign in 2019 and other policy initiatives. Michelson 20MM works in thought partnership with these leaders to remove barriers for justice-involved scholars as they pursue higher education and career success.

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