In the U.S., any arrest or conviction may come with a life sentence. While this sentence may not be served in prison, it is served in exile from the rights and opportunities afforded to other individuals, including the opportunity to be employed. About 70% of employers in the U.S. conduct criminal background checks for all applicants, and many employers have adopted policies that rely on these background checks to bar a large swath of those with past criminal records from employment. Given the racial discrimination embedded in the criminal legal system, the use of criminal background checks disproportionately excludes Black people from employment. Through criminal background check policies, racial discrimination in the criminal legal system is compounded and imported into the employment sphere.

Despite strong bipartisan support for removing barriers to employment for people with criminal records, there is still a tremendous amount of work to do to ensure that people with records are allowed to work to support themselves and their families and contribute to society. Title VII litigation can be expensive and slow, and decisions are unpredictable. Therefore, it is imperative that advocates pursue multiple other avenues to combat the racially discriminatory impacts of criminal background checks in employment.

Over 30 states and 150 city/local governments have “Ban the Box” or other fair chance hiring laws that limit or delay when employers can conduct criminal background checks and include other protections for people with convictions, including banning disqualification from employment due to a prior non-job-related conviction. LDF proposes additional promising policy solutions to curb the harmful effects of criminal background checks.

**5 STEP ACTION PLAN**

1. Automatic record expungement
2. Fair chance funding to incentivize hiring people with records
3. Restricting the availability of background check information available to employers
4. Mitigating the harms of faulty background check information
5. Funding for re-entry services

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1) AUTOMATIC RECORD EXPUNGEMENT
Many states have recognized the harm that past criminal records pose on future employment and housing opportunities, and have passed measures to seal or expunge criminal records for certain offenses after a certain period of time has passed. Still, the process required to apply for record sealing or expungement can often be cumbersome and inaccessible for many. In a 2020 study of an expungement law in Michigan, researchers found that just 6.5% of people eligible for expungement obtained it within five years. As a result, more states are considering automatic expungement laws, eliminating administrative and cost burdens on the process of record expungement. The same Michigan study found that people who were able to have their records expunged had similarly low subsequent crime rates compared to the general population and experienced a 22% increase in wages within one year compared to their pre-expungement trajectories, demonstrating the benefits of record expungement when it is accessible. Additionally, information from sealed records can still show up on certain background checks, so it is important that automatic expungement is complete, permanent, and includes all types of offenses.

2) FAIR CHANCE FUNDING TO INCENTIVIZE HIRING PEOPLE WITH RECORDS
The Work Opportunity Tax Credit (WOTC) is a federal tax credit for employers who hire people who have barriers to employment, including people with a felony record. The WOTC should become a permanent federal policy (currently, it must be reauthorized by congress every six years). Additional measures to strengthen employer participation, such as education and outreach efforts, would be valuable.

3) RESTRICTING THE AVAILABILITY OF BACKGROUND CHECK INFORMATION AVAILABLE TO EMPLOYERS
Advocates have suggested limiting the background check information that is available to employers. Currently, the ease of obtaining this information provides an incentive for employers to rely on background check information without much regard for its efficacy or accuracy.

Because evidence clearly demonstrates that recidivism risk declines rapidly as time since a conviction passes, background checks should at least be time-limited to a narrowly defined look-back period. More critically, given the documented racial discrimination at every stage of the criminal legal system, we know that prior criminalization is a reflection of this structural bias and should therefore not be considered an informative indicator of an applicant’s potential job performance.

4) MITIGATING THE HARMS OF FAULTY BACKGROUND CHECK INFORMATION
Efforts should be made to mitigate the harms of the often-inaccurate information obtained through criminal background checks. For example, any person subject to a criminal background check should receive a copy of the results so that they can verify its accuracy before employers make hiring decisions. There should be stronger government regulation of private background check companies, which often rely on faulty public records information. Lastly, federal and state agencies can do more to actively enforce existing laws and mandates meant to ensure accuracy of background checks, such as the Fair Credit Reporting Act.

5) FUNDING FOR RE-ENTRY SERVICES
State and local governments have a responsibility to adequately fund re-entry services that include job readiness programming and paid transitional employment opportunities. Evidence demonstrates that re-entry programs that include paid transitional jobs can increase employment for people with prior criminal convictions and reduce the likelihood of future criminal legal contact.

Finally, it bear emphasis, that the most effective way to tear down discriminatory barriers to employment for people with criminal records is to decrease the number of people with criminal records. Policies that promote decriminalization, decarceration, and investments in community-based alternatives to policing will ultimately be the most effective in ensuring equity in employment opportunities.