

FOR THE  
**RECORD**

Exploring Police Records and Employment in New Brunswick



Funding for this report was provide by the  
New Brunswick Law Foundation.

John Howard Society of  
Southeastern New Brunswick

## **Table of contents**

<b>1. INTRODUCTION</b>	<b>3</b>
<b>2. BACKGROUND</b>	<b>5</b>
<b>3. RESEARCH FINDINGS</b>	<b>8</b>
3.1 EMPLOYER PROFILE	8
3.2 EMPLOYER POLICIES AND PRACTICES IN NEW BRUNSWICK	9
<b>4. SUMMARY AND RECOMMENDATIONS</b>	<b>17</b>
4.1. RESEARCH HIGHLIGHTS	19
5.2 RECOMMENDATIONS	20
<b>5. SELECTED BIBLIOGRAPHY</b>	<b>21</b>

Link to French data <https://jhssenb-research.typeform.com/report/Gn5F4X/QfTRQaKukq3xOgmj>

Like to English data <https://jhssenb-research.typeform.com/report/qcfPL5/IYGqPHNdt8DEELvj>

## 1. Introduction

Many people believe that once an offender has completed a jail or prison sentence, they are free to walk away, and leave the experience behind them. However, this is far from reality. Any adult convicted of an offence in Canada incurs a criminal record, which can follow them indefinitely.

A criminal record *check* is a query, based on name and date of birth, of active criminal files in the RCMP national repository of criminal records. It is used to determine the possible existence of a criminal record. (RCMP, Criminal Records Power Point Presentation 2018).

The practice of keeping detailed police records has been part of the Canadian criminal justice infrastructure for over a century (Kilgour, 2013). Their existence is grounded in a legitimate interest of the justice system to protect the community from potential harm. However, there is a conflicting societal interest when the goal, such as that of the John Howard Society of Southeastern New Brunswick (JHSSNB), is offender rehabilitation and integration.

As Waddams (1997) notes, the law must straddle the line between the rights of the individual and those of the community; familiar territory for legal thought yet growing increasingly complex in the realm of criminal records. The dilemma requires a balance between the interests of society in protecting its members from harm, and the human rights of offenders and societal benefits intrinsic in successful rehabilitation. It is a balance that has proved elusive.

An individual with a criminal record can face many challenges including access to housing, education, and training and volunteer opportunities. But as Bell (2014) notes: *“By far, the most serious and pervasive collateral consequence faced by former prisoners is employment discrimination.”*

In Fall of 2018, the JHSSNB carried out a survey of New Brunswick employers to talk about their hiring and employment policies and practices in terms of people with criminal records. The survey was based on one carried out by the John Howard Society of Ontario in February

2018,<sup>1</sup> and was used with permission. The survey aimed at uncovering employer practices and opinions on police records in New Brunswick. Employers were recruited from a variety of industries and locations across the province, and a total of 34 employers responded to the survey.

The JHS Ontario survey confirmed that there is a wide spectrum of people who suffer the collateral consequences of criminal records. *“The stigma associated with a record – and the labelling of someone as an ‘ex-offender’ or ‘ex-con’ – can follow an individual around long after any formal sentence has ended. This stigma also impacts people who have been convicted of nothing – legally innocent people.”* This study also found that *“race, criminal justice involvement, and employment intersect to create unique and systemic barriers for many Ontarians.”*<sup>2</sup>

In New Brunswick, at a time when many employers are facing critical labour force shortages, there is an economic value in addressing the issue of employment discrimination.

---

<sup>1</sup> *The Invisible Burden. Police Records and the Barriers to Employment in Toronto.* Produced by the Centre of Research, Policy & Program Development at the John Howard Society of Ontario, February 2018. Available on the JHSO website [www.johnhoward.on.ca](http://www.johnhoward.on.ca).

<sup>2</sup> Ibid.

## 2. Background

As part of this research, a literature review was carried out. A selected bibliography is included in Section 6 of this report.

Police records are divided according to the nature of information sought. The most common type of check is the criminal record check. The check will disclose all prior convictions as well as charges. Criminal record checks are further divided into name-based and certified checks. If a name-based check is insufficient to confirm identity, authorities will resort to a certified check, which uses fingerprints to negate the effects of name and date of birth similarities (RCMP, Types of Criminal Background Checks, 2018). It is important to note that stayed or withdrawn charges should theoretically not appear on criminal record checks, although that is not always the case.

Another, more extensive type of record is the Vulnerable Sectors check. This sort of check is reserved for screening participants interested in a position that puts them in close proximity to vulnerable populations (such as children and seniors). More precisely, the position, paid or voluntary, must put someone in *“a position of trust or authority”* (Criminal Records Act, R. 2018).

The third party must therefore prove that a Vulnerable Sectors check is required given the responsibility over vulnerable populations. It is unclear to what extent gatekeeping of Vulnerable Sector checks is actually practiced. The Vulnerable Sectors check reveals information that standard criminal checks would not, namely, suspended records (i.e., records that have been “sealed” through application by the offender) for sexual offences (RCMP, Types of Criminal Background Checks, 2018).

There exists a third type of record, known as a police information check (RCMP, Types of Criminal Background Checks, 2018). Visitors to their website are advised to contact local police for additional information.

Offenders can apply for the removal of a record, but the application process is notoriously difficult, and entails a \$631 fee, an 1,100% increase from its 2010 equivalent (McAlesse, 2017). Lengthy waiting periods are also included in the application process. Summary

convictions, which generally carry a fine of no more than \$5,000 or a six-month jail term, impose a five-year waiting period on individuals seeking record suspension. Indictable offences, which are more severe and therefore bring longer sentences than summary convictions, translate into a 10-year waiting period. These waiting periods begin once sentence requirements have been fulfilled. In other words, offenders are followed by their records for years after their societal debt is repaid. Additionally, persons with sexual offences against a child, or three sentences of two years or more are never eligible for suspensions (Canada, 2016). Theirs is a life sentence.

It is unclear how many Canadians currently live under the invisible burden of a criminal record. The uncertainty is due to the lack of a standard definition of criminal record. Does it only include convictions? Are vulnerable sector checks and police information checks, in the jurisdictions they exist, included? The best estimate for Canadians living with criminal records is about 10% (Ashby, 2015), representing 3.6 million of our 36 million-strong population (StatsCan, 2018). Some estimates have ranged as high as 30% (Ashby, 2015). Such a large number is the product of American *“get tough on crime”* policies spilling over into Canada (Comack, 2015).

In addition to the increasing number of people with criminal records, employer affinity for checking these records is also increasing. In a recent American survey, most respondents (58%) reported being asked about criminal history, mostly directly on application forms. Indeed, recent numbers put estimates closer to 70% (Denver, 2018). National Canadian data is lacking, though some local studies have indicated a 51% usage rate with Ontario employers, and the city of Toronto saw a 7% rise of check requests from 2010 to 2012 (JHSO, 2018).

In the United States, the impacts of criminal records on employment are so severe that they can be seen on a macro scale. Schmitt and Warner (2010) have estimated that ex-offenders lower employment rates by as much as 6.9% (in the case of less-educated men) and that the overall impact on American GDP was as high as \$65 billion. A more recent but otherwise very similar study by Bucknor and Barber (2016) estimated the blow to GDP to be as large as \$87 billion in 2014. As the above numbers consider only those with felony convictions, the statistics are likely to be conservative.

No similar analysis has yet been conducted in Canada, but the comparatively high use of checks and the large population of record holders suggests that the same conclusion could be made (JHSO, 2018).

Incarceration already carries severe ramifications in the professional development of offenders. Institutionalization removes a person from the education system and the economy completely. Rapid industry shifts and increased specialization makes it difficult for those incarcerated to reintegrate into the labour market (Ward, 2000).

The record serves to prevent upward mobility for years to come. With waiting periods ranging from five years to life, the existence of a record can prevent access to employment indefinitely. This sort of punitive treatment unduly infringes on the rights of offenders, especially since most are held to have repaid their societal debt. It serves only to increase the risk of recidivism. Research shows that ex-offenders denied the right to earn a living legally, through paid employment, may often find other means to support themselves and their family.

### 3. Research findings

A total of 34 employers were interviewed (four in French; 30 in English). We have combined results. In this section, we report on key findings.

#### 3.1 Employer profile

The following three charts provide some detail on the companies and organizations interviewed.

Chart 1 shows the position of those interviewed within their organization.

The total is 35 because one respondent reported holding two positions.

No detail was provided on the “other” category.

Chart 2 shows head office location of the companies and organizations interviewed.

The bulk (65%) were based in Moncton. Only four people (13%) had a head office located outside New Brunswick.

Three people did not answer this question.

(It should be noted that percentages are based on total responses. Not all 34 people responded to all questions in this survey.)

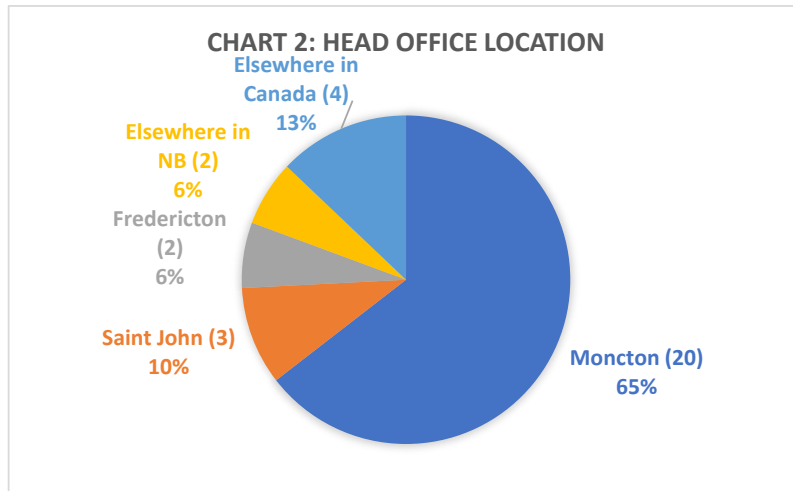
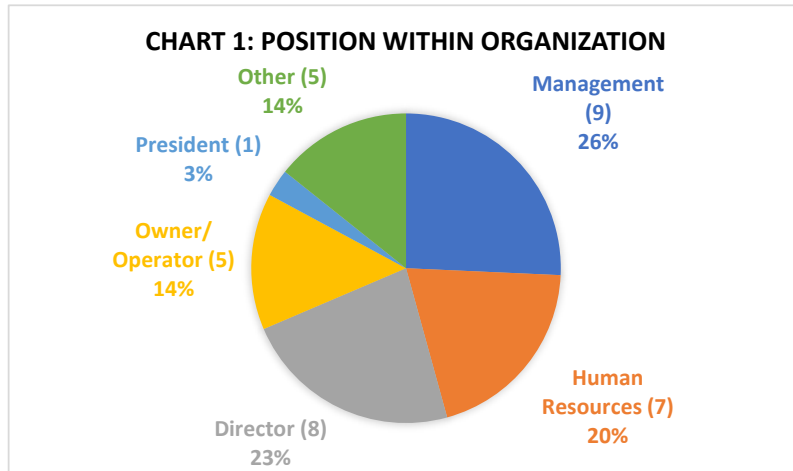
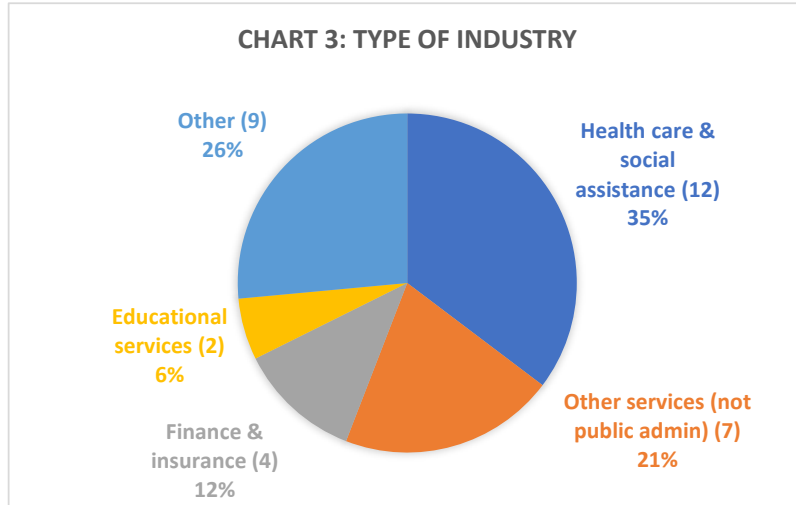


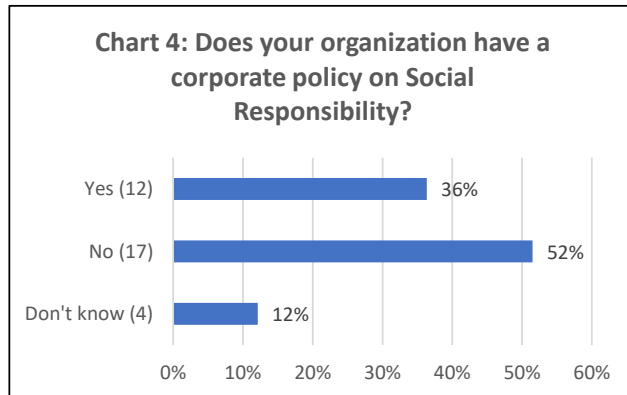


Chart 3 shows the types of industries represented in the group. The "other" includes Arts, entertainment and recreation; Construction; Information and culture industries; Professional, scientific and technical services; Real estate/rental and leasing; Retail trade; and Wholesale trade.

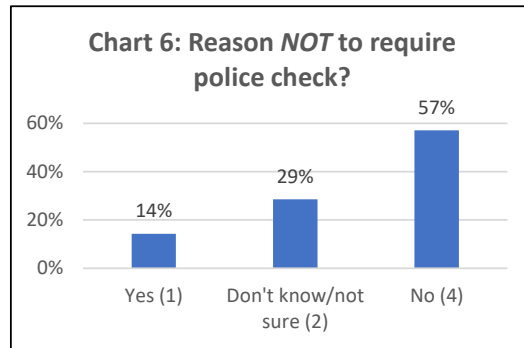
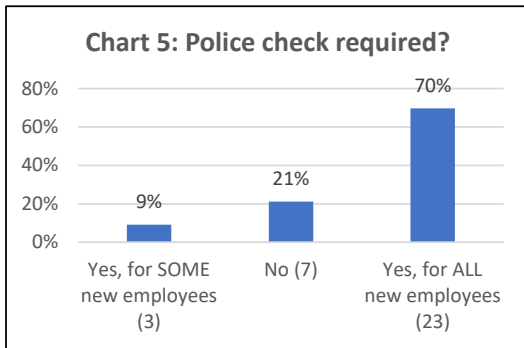


### 3.2 Employer policies and practices in New Brunswick

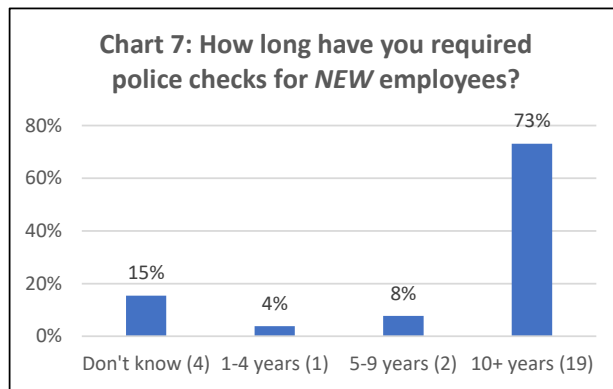
Respondents were asked whether their organization has a corporate policy on Social Responsibility. Chart 4 shows responses. More than 50% said no, and 12% did not know. (Note: one person did not respond to this question.)



Respondents were asked if their organization requires any form of police background check for new employees. Chart 5 shows that 70% require a police check for all new employees. They were asked then if there is a specific reason their organization decided **not** to request a police background check, and Chart 6 shows results. Some 57% said they did not have a specific reason; almost 30% didn't know. (Note: Only seven of 34 interviewed responded to this question.)



Respondents were asked how long they have required police background checks for new employees, and 73% said 10 years or more. Putting these charts together, it appears that the majority of respondents require a police background check, and have done so for 10 years or more. Of those who responded, close to 90% said they didn't have a particular reason or didn't know if there was a reason when they *do NOT* ask for a police check. (Note: Only 26/34 responded to this question.)



Respondents were also asked if their organization ever considered using police background checks during the hiring process (i.e., before the person is actually hired)? Only seven of 34 people responded to this question; all seven said no.

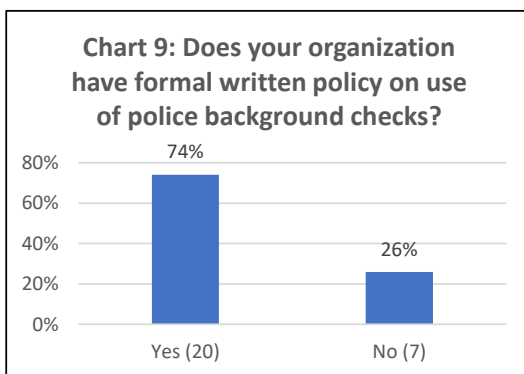
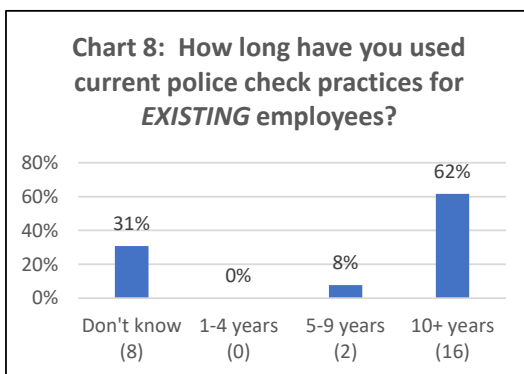
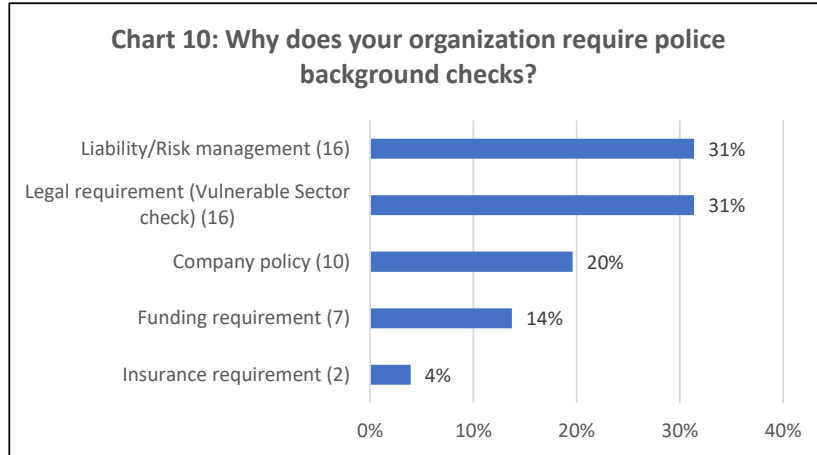
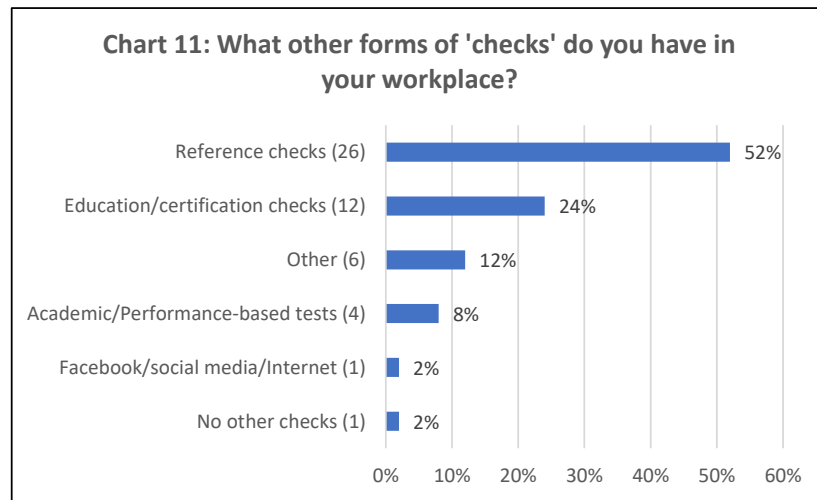


Chart 8 shows that 62% of respondents have used police checks for *existing* employees for 10 years or more. Respondents reported a number of reasons for requiring police background checks, the most common of which are liability/risk management and legal requirements.

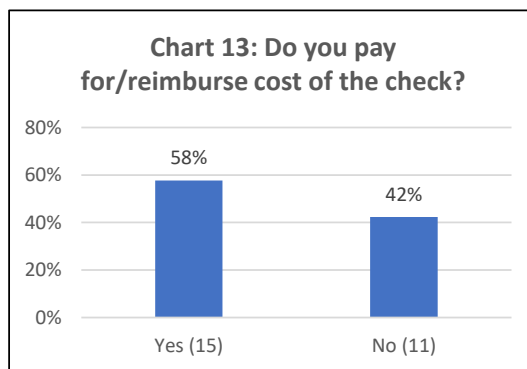
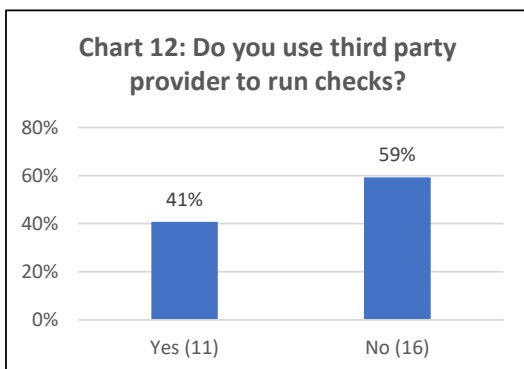


The most popular forms of other 'checks' done in workplaces are reference checks and education/certification checks.



Very few employers report checking on social media such as Facebook or Twitter. Only one person reported doing no other kinds of checks on new or existing employees.

Note that both Charts 10 and 11 have roughly 50 responses because respondents gave more than one answer.

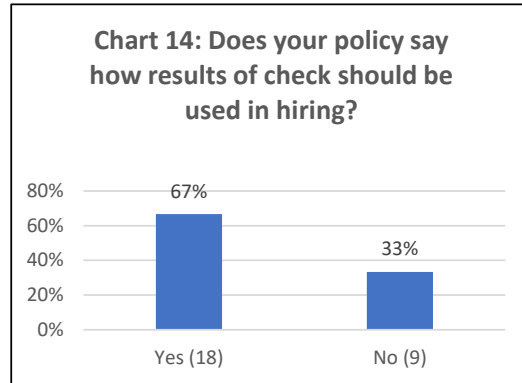


Charts 12 and 13 are fairly self-explanatory. Almost 60% of respondents do not use third party providers to run checks, and almost 60% pay for the cost of the check.

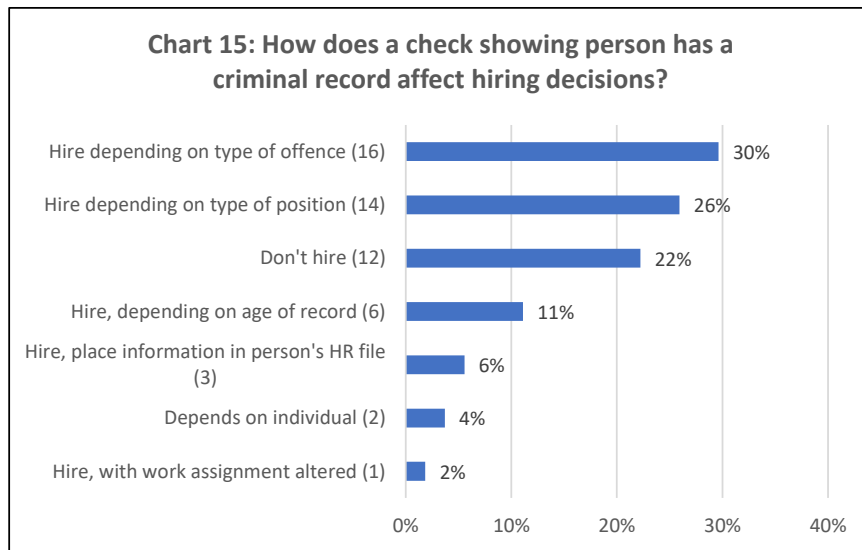
(Again, it will be noted that only 27 out of 34 respondents answered the question in Charts 12, 13 and 14.)

Two-thirds of respondents said that their company policy spells out how the results of the police check should be used in hiring.

Chart 15 on the following page shows the various ways in which having a criminal record will impact a hiring decision.



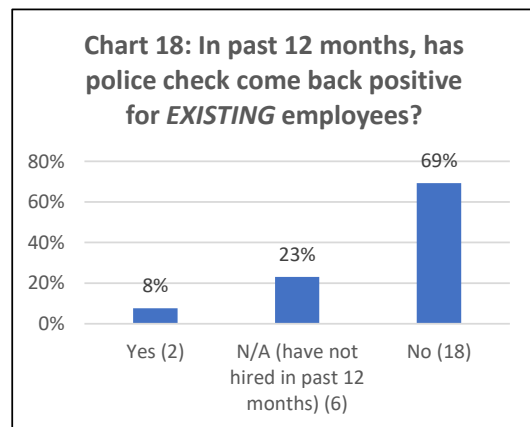
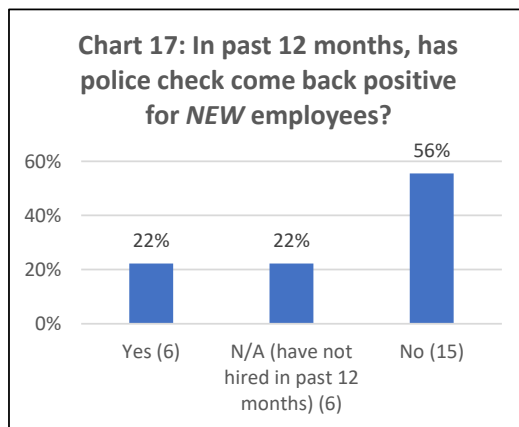
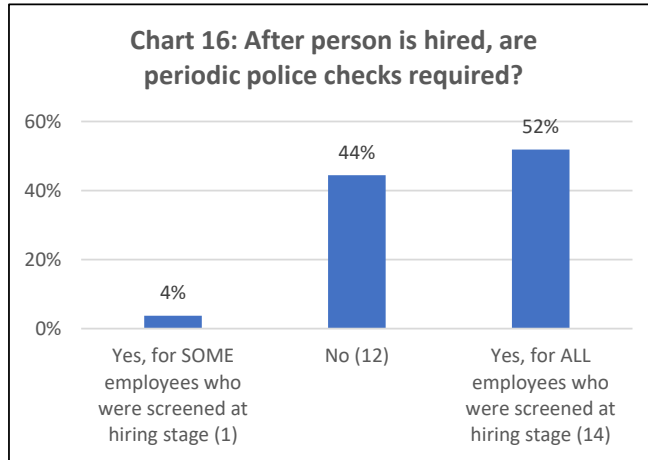
Thirty per cent of employers said that the decision to hire will depend on the type of offence, and another 26% said it will depend on the type of position being hired for. Twenty-two per cent said they would not hire someone with a criminal record.



Over 50% said that periodic police checks are required for all employees who were screened at the hiring stage, as Chart 16 shows.

Over the past 12 months, employers reported that 22% of police checks came back positive for new employees, and only 8% came back positive for existing employees.

(Note, again, that not all 34 employers interviewed responded to these questions.)



Respondents were asked, if a police background check came back positive for an existing employee, what was your usual response? Only one person (out of 34) answered this question. They said, “terminate.” (No chart provided.)

Almost half of respondents agreed that they have knowingly employed someone with a criminal record, and 75% said that their experience with hiring an individual with a criminal record was about the same as any other employee. Thirteen per cent (albeit, only two people) said the experience was better; 6% said it was “*much better.*”

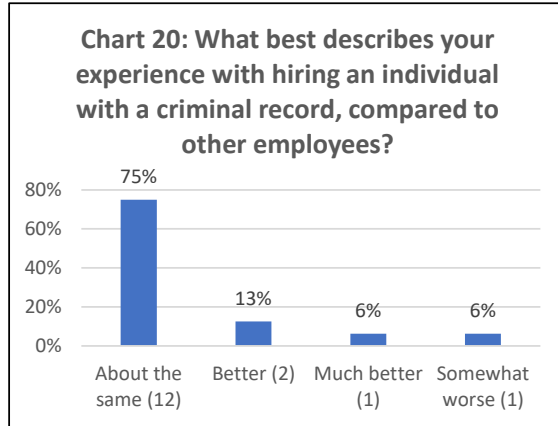
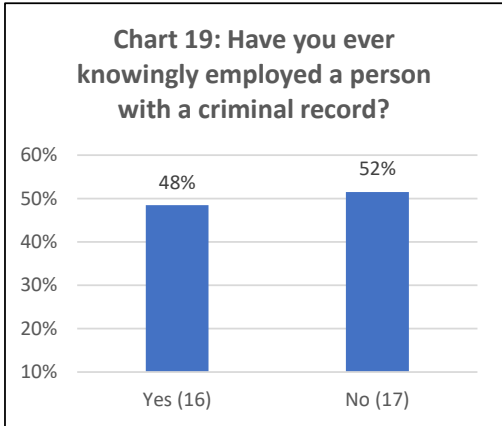
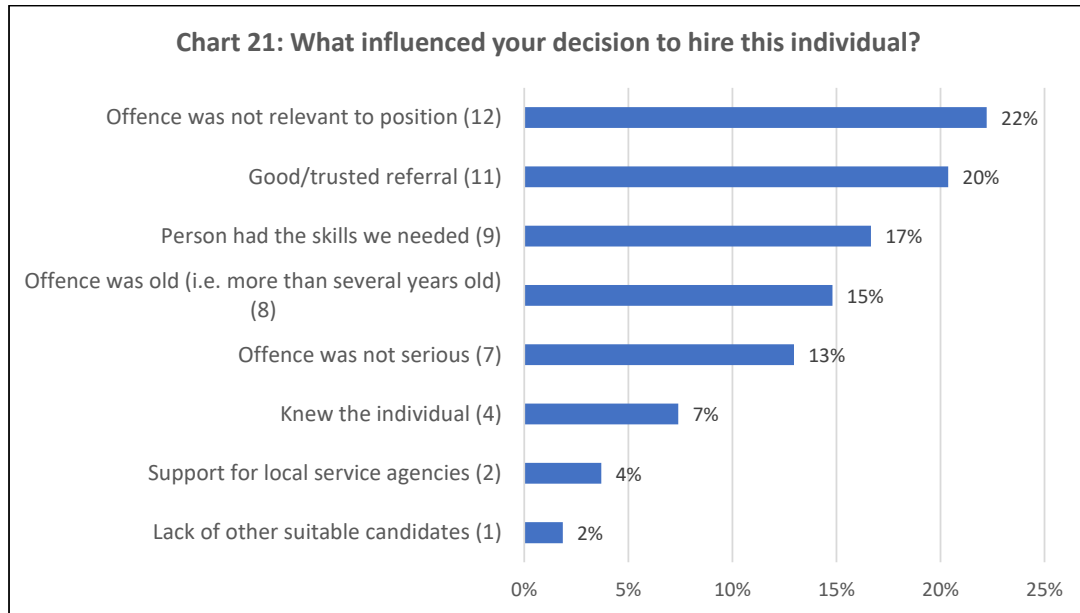
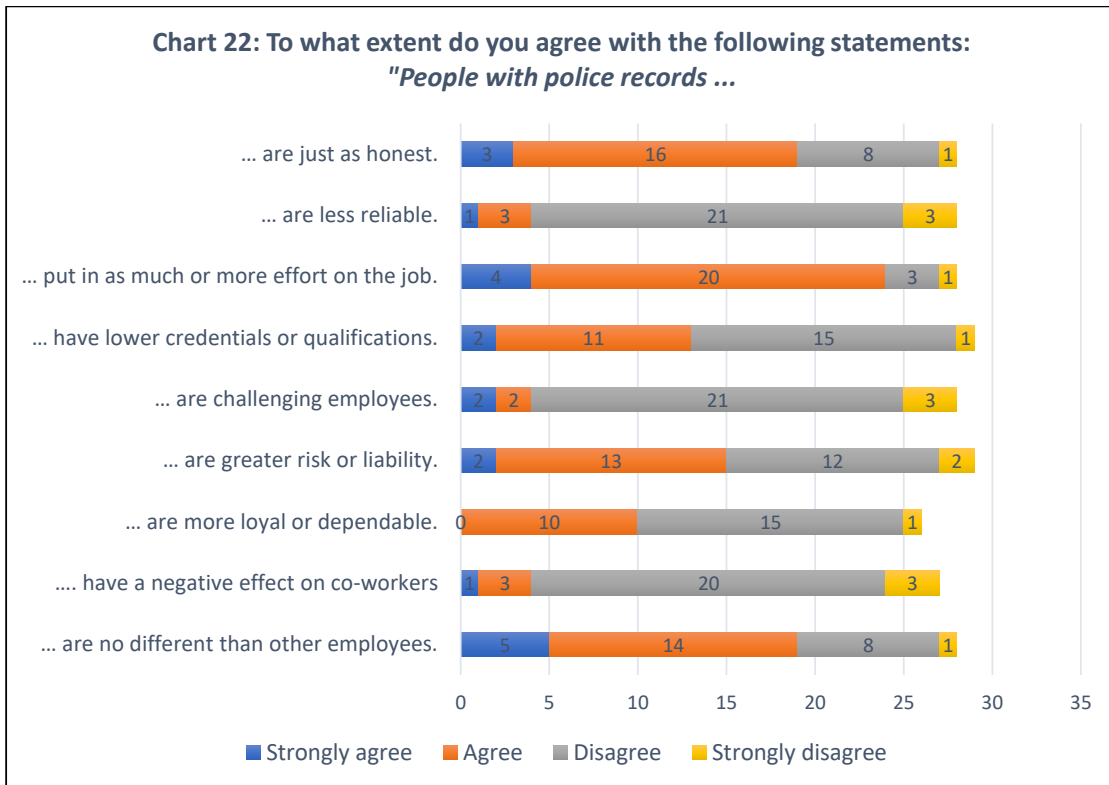


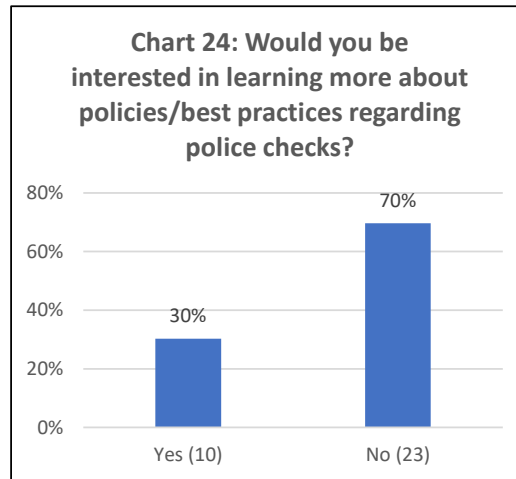
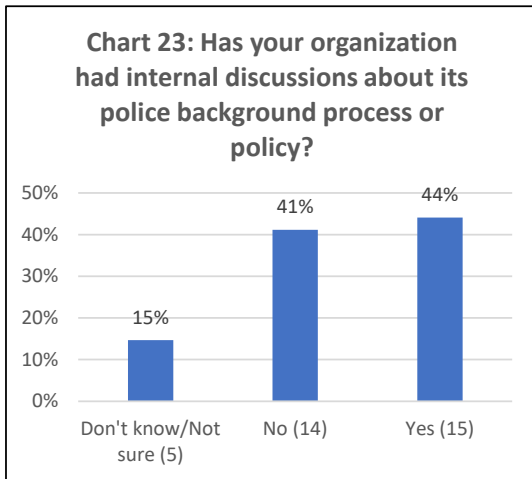
Chart 21 shows a variety of reasons why employers decided to hire someone with a criminal record. It is interesting to note that 17% of employers said that, despite having a criminal record, they would hire if the person had the skills they needed.





(Note, the above chart shows numbers of respondents, not percentages.) It is interesting to note that for every statement except one, the greatest number of respondents answered positively (e.g., people with criminal records are "just as honest," are NOT "less reliable," etc.)

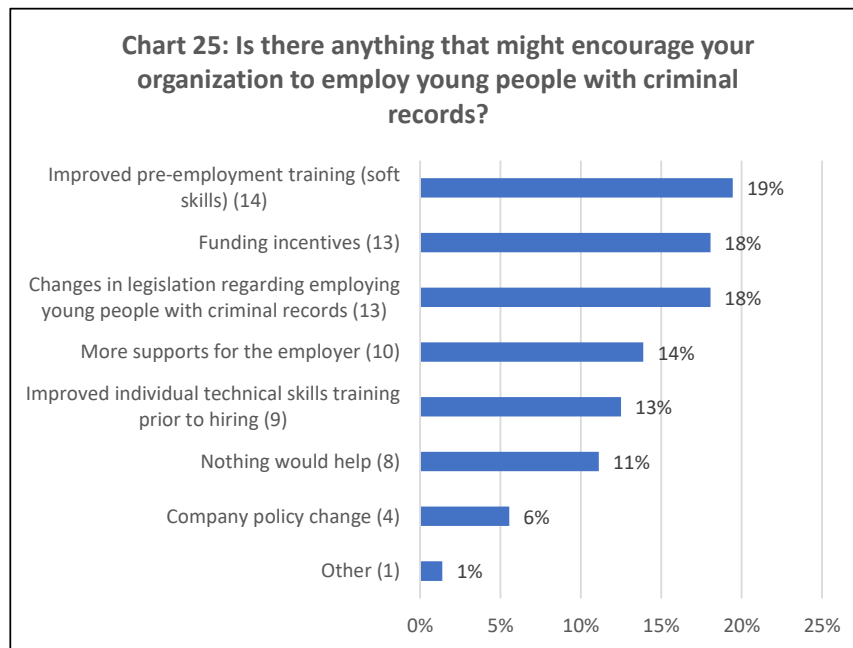
Respondents were almost equally split about whether their organization has had internal discussions about its police background process or policy. Chart 24 shows that 30% of respondents would like to learn more about best practices regarding police checks.



Finally, respondents were asked about ways in which they might be encouraged to employ more young people with criminal records.

They offered a number of ways including better training for technical and soft skills as well as financial incentives.

Only eight respondents (11% of those who answered) said there was nothing that would encourage them to hire young people with criminal records.





#### 4. Summary and recommendations

Anyone who has spent time in jail or prison in Canada faces major obstacles once they complete their sentence. Institutionalization has already removed them from educational and employment opportunities, with rapid industry shifts and technology changes making it more difficult to re-enter the workforce once they leave the institution.

But when they leave, they also carry their criminal record with them. The practice of keeping detailed police records has been part of the Canadian criminal justice system for over a century, intended as a way of theoretically protecting the community from potential harm. But there is a need to balance such protection with the human rights of offenders and societal benefits intrinsic in successful rehabilitation.

The John Howard Society of Southeastern New Brunswick (JHSSNB) works with ex-offenders on rehabilitation and re-integration into society. A key element to these goals is employment. But individuals with a criminal record face many challenges, the biggest of which is employment discrimination. They have a hard time finding a job, and this, at a time when New Brunswick employers are facing severe labour shortages.

The JHSSNB wanted to explore and understand NB employers' attitudes and practices in terms of employing people with criminal records. It undertook a survey during the Fall of 2018, using a questionnaire originally developed and used by the John Howard Society of Ontario. The survey was a "first step" to understanding what kinds of changes could be made to increase employment opportunities for JHS clients.

The survey found, for example, that 70% of employers require a police check for all *new* employees, and 62% have used police checks for *existing* employees, both for 10 years or more. The most common reasons for using police checks were because of the company's liability/risk management policy (31%) or legal requirements, such as Vulnerable Sectors checks (31%). Only four per cent (two people) reported that it is because of insurance requirements.

Asked how the record check impacts hiring decisions, 30% said it depends on the type of offence, and 26% said it depends on the type of position. Only 22% said that they would not hire the individual, if the police check was positive.

Over the past 12 months, employers reported that 22% of police checks came back positive for new employees, and only 8% came back positive for existing employees.

Respondents were asked, if a police background check came back positive for an existing employee, what was your usual response? Only one person (out of 34) answered this question. They said, "terminate."

Almost half of respondents agreed that they have knowingly employed someone with a criminal record. Close to 90% reported that they had hired someone with a criminal record because the offence was either not relevant to the position, old or not serious (50%), that the person had a good/trusted referral (20%) or had the skills that the employer needed (17%). This obviously shows an openness on the part of employers surveyed to hiring someone with a criminal record.

Some 75% said that their experience with hiring an individual with a criminal record was *"about the same"* as hiring any other employee. Respondents were given a number of statements about *"people with police records..."*, and asked to what extent they agreed or disagreed. For every statement except one, the answers were positive. People with criminal records are *"just as honest"* as other employees, *"are NOT less reliable," "are NOT challenging employees"*, and *"do NOT have a negative effect on co-workers."*

These responses are very interesting. More work perhaps needs to be done to communicate this information more widely (i.e., on the JHS website, brochures, media releases).

Finally, employers were asked what would convince them to employ young people with criminal records. Some 32% said improved technical or "soft skills"; more funding incentives or other kinds of supports for the employer (32%). Only 11% (eight people) said "nothing would help."

#### 4.1. Research highlights

The following summarizes some of the key highlights of this research:

- 70% of employers indicated that they require a police background check for all new employees.
- 31% of employers indicated that they used police background checks as a Liability/Risk Management strategy.
- 42% of employers indicated that they do not pay for the cost of a police background check.
- 22% of employers indicated that they would not hire an individual with a record regardless of type/age of offence or employment position.
- 52% of employers indicated that they have never knowingly employed an individual with a criminal record.
- 75% of employers indicated that their experience hiring a person with a criminal record was about the same as hiring other employees without criminal records.

Reasons for hiring a person with a criminal record:

- 50% Offence was not relevant to the position, was old or not serious.
- 20% Good or trusted referral.
- 17% Individual had the skills that the employer needed.

Elements that would encourage employers to hire young persons with criminal records:

- 32% Improved individual technical skills/soft skills.
- 18% Funding incentives.
- 18% Changes in legislation regarding employment of young persons with criminal records.
- 14% More supports for employers.

## 4.2 Recommendations

Based on the research findings, we make the following recommendations:

- Education for Employers: Improved education and awareness for employers regarding issues related to criminal record checks, including recruitment and hiring best-practices, reliability of record checks, and retention of employees with criminal records.
- Education for Employees: Improved education and access to resources for individuals with conviction and non-conviction records, including job searching with a criminal record, disclosure of record, and understanding one's individual rights and protections. There is probably a need for more training in the "soft skills" area, for example, learning how to present oneself for the job, how to arrive on time etc.
- Communication about employers' experience: There is a lot of positive information uncovered in this survey, and consideration should be given to making it more widely available to other employers. For example, through the JHS website, media releases, social media or presentations to industry groups such as Chambers of Commerce.
- Legislation Change: Follow the lead of other provinces by strengthening Human Rights protection for individuals with conviction and non-conviction records in New Brunswick through advocacy and legislation change.
- Future Research: Further research is needed to understand the impact of police records on New Brunswickers' employability; the intersection of police records and race, gender, poverty, and other social factors; the potential impact of hiring incentives and other program initiatives to improve the hiring of individuals with records in New Brunswick; and, programs that might be available where employers and potential employees could be "matched" based on skill needs of the employer for a period of time, to give the employer a chance to evaluate and the employee a chance to "prove" him/herself.

## 5. Selected bibliography

- Ashby, M. (2015). *A Criminal Population: The 10% Question*. Retrieved from National Pardon Centre: <https://nationalpardon.org/a-criminal-population-the-10-question/>
- Barber, B. a. (2016). *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*. Washington: Center for Economic and Policy Research.
- Bell, S. (2014). The Long Shadow: Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy. *Western State Law Review*.
- Canada, P. B. (2016). *Applying for a Record Suspension? Information you Should Know*. Retrieved from Government of Canada: <https://www.canada.ca/en/parole-board/corporate/publications-and-forms/fact-sheets/applying-for-a-record-suspension-information-you-should-know.html>
- Comack, F. B. (2015). *The Impact of the Harper Government's "Tough on Crime Strategy": Hearing from Frontline Workers*. Manitoba: Canadian Centre for Policy Alternatives.
- Denver, P. B. (2018). Criminal Records and Employment: A Survey of Experiences and Attitudes in the United States. *Justice Quarterly*.
- JHSO, J. H. (2018). *The Invisible Burden Report*. Toronto: Metcalf foundation.
- Kilgour, L. (2013). Tracing the Lifecycle of Canadian Criminal Records. *Records Management Journal*, 136-148.
- McAlesse, S. L. (2017). *Reforming the Criminal Records Act*. Ottawa: The John Howard Society of Canada.
- RCMP. (2018). Criminal Records Power Point Presentation. *Royal Canadian Mounted Police*. Moncton: Government of Canada.
- StatsCan. (2018). *The Canadian Population at a Glance 2018*. Retrieved from Statistics Canada: <https://www150.statcan.gc.ca/n1/pub/12-581-x/2018000/pop-eng.htm>
- Waddams, S. (1997). *Introduction to the Study of Law, 8th Edition*. Toronto: Caswell.
- Ward, L. (2000). Internet Shopping, Consumer Search, and Product. *Journal of Product and Brand Management*, 6-20.
- Warner, J. S. (2010). *Ex-Offenders and the Labor Market*. Washington: Center for Economic Policy and Research.