

Expedited Bill No. 36-14
Concerning: Human Rights and Civil
Liberties – Fair Criminal Record
Screening Standards
Revised: October 9, 2014 Draft No. 6
Introduced: July 15, 2014
Enacted: October 28, 2014
Executive: _____
Effective: January 1, 2015
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Elrich, Branson and Navarro, Council President Rice, and Councilmember
Riemer

AN EXPEDITED ACT to:

- (1) prohibit certain employers from conducting a criminal background check or otherwise inquiring into an applicant's criminal record before [[making a conditional offer of employment]] **the conclusion of a first interview;**
- (2) require certain employers to provide prior notice to an applicant [[or employee]] when [[taking an adverse action concerning the applicant's or employee's employment]] **rescinding a conditional offer;**
- (3) provide for enforcement by the Office of Human Rights and the Human Rights Commission; and
- (4) [[authorize the Human Rights Commission to award certain relief; and
- (5)]] generally regulate the use of criminal records in the hiring process by certain employers.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Sections 27-7 and 27-8

By adding

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Article XII, Fair Criminal Record Screening Standards

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 27-7 and 27-8 are amended and Chapter 27, Article**
2 **XII is added as follows:**

3 **27-7. Administration and enforcement.**

4 (a) *Filing complaints.* Any person subjected to a discriminatory act or
5 practice in violation of this Article, or any group or person seeking to
6 enforce this Article or Articles X, [or] XI, or XII, may file with the
7 Director a written complaint, sworn to or affirmed under the penalties of
8 perjury, that must state:

- 9 (1) the particulars of the alleged violation;
10 (2) the name and address of the person alleged to have committed the
11 violation; and
12 (3) any other information required by law or regulation.

13 * * *

14 (f) *Initial determination, dismissal before hearing.*

15 (1) The Director must determine, based on the investigation, whether
16 reasonable grounds exist to believe that a violation of this Article
17 or Articles X, [or] XI, or XII, occurred and promptly send the
18 determination to the complainant and the respondent.

19 (2) If the Director determines that there are no reasonable grounds to
20 believe a violation occurred, and the complainant appeals the
21 determination to the Commission within 30 days after the
22 Director sends the determination to the complainant, the Director
23 promptly must certify the complaint to the Commission. The
24 Commission must appoint a case review board to consider the
25 appeal. The board may hear oral argument and must:

- 26 (A) dismiss the complaint without a hearing;
27 (B) order the Director to investigate further; or

28 (C) set the matter for a hearing by a hearing examiner or the
29 board itself, and consider and decide the complaint in the
30 same manner as if the Director had found reasonable
31 grounds to believe that a violation of this Article or
32 Articles X, [or] XI, or XII, occurred.

33 (3) If the Director determines that there are reasonable grounds to
34 believe a violation occurred, the Director must attempt to
35 conciliate the matter under subsection (g).

36 * * *

37 **27-8. Penalties and relief.**

38 (a) *Damages and other relief for complainant.* After finding a violation
39 of this Article or Articles X[[,]] [or] or XI, [[or XII,]] the case review
40 board may order the payment of damages (other than punitive
41 damages) and any other relief that the law and the facts warrant, such
42 as:

43 (1) compensation for:

44 * * *

45 (F) financial losses resulting from the discriminatory act or a
46 violation of [Article] [[Articles]] Article X [[or XII]]; and

47 * * *

48 (2) equitable relief to prevent the discrimination or the violation of
49 Articles X[[,]] [or] or XI, [[or XII,]] and otherwise effectuate the
50 purposes of this Chapter;

51 (3) consequential damages, such as lost wages from employment
52 discrimination or a violation of [Article] [[Articles]] Article X
53 [[or XII]] or higher housing costs from housing discrimination,
54 for up to 2 years after the violation, not exceeding the actual

55 difference in expenses or benefits that the complainant realized
56 while seeking to mitigate the consequences of the violation (such
57 as income from alternate employment or unemployment
58 compensation following employment discrimination); and

59 (4) any other relief that furthers the purposes of this Article or
60 Articles X[[,]] [or] or XI, [[or XII,]] or is necessary to eliminate
61 the effects of any discrimination prohibited under this Article.

62 (b) Civil penalties.

63 (1) In addition to any damages awarded to any person under
64 this [[article]] Article, the case review board may require any person,
65 except the County, who has violated this [[article]] Article or Article
66 XII to pay to the County as a civil penalty:

67 * * *

68 (E) for each violation of Article XII, up to \$1,000;

69 (F) for any other violation, \$500.

70 * * *

71 **27-70 Enforcement.**

72 * * *

73 **ARTICLE XII. Fair Criminal Record Screening Standards.**

74 **27-71. Findings and Purpose; Definitions.**

75 (a) Findings.

76 (1) The U.S. Department of Justice’s Bureau of Justice Statistics
77 (BJS) estimates that over 92 million Americans, roughly one in
78 three adults, have a criminal history record involving an arrest or
79 conviction.

- 80 (2) According to the BJS, nearly 700,000 people a year return to their
81 communities from incarceration, and many are job seekers who
82 are ready and able to become part of the work force.
- 83 (3) Studies indicate that job applicants are often precluded from even
84 getting an interview when applications require disclosure of
85 whether the applicant has a criminal record.
- 86 (4) Lack of employment is a significant cause of recidivism, which
87 threatens public safety and disrupts the financial and general
88 stability of affected families and communities.
- 89 (5) Increased government expenditures on law enforcement and
90 social programs, necessitated by the inability of people with
91 criminal records to find gainful employment, are an impediment
92 to the County reaching its potential for economic growth.
- 93 (6) Increasing employment of people with criminal records improves
94 public safety and reduces the financial burden on government.
- 95 (7) In 2012, the United States Equal Employment Opportunity
96 Commission (EEOC) issued enforcement guidance regarding
97 employers' use of criminal background information in making
98 employment-related decisions, recommending that the use of
99 such information is job related and consistent with business
100 necessity.

101 (b) Purpose.

102 It is the purpose of this Article to:

- 103 (1) assist in the successful reintegration into the workforce of people
104 with criminal records by removing improper barriers to
105 employment; and

106 (2) enhance the health and safety of the community by assisting
107 people with criminal records to lawfully provide for themselves
108 and their families.

109 (c) Definitions. As used in this Article:

110 [[Adverse action means to fail or refuse to hire, to discharge or not
111 promote a person, or to limit, segregate, or classify employees in any
112 way which would deprive a person of employment opportunities or
113 otherwise adversely affect the person's employment status.]]

114 Applicant means a person who is considered or who requests to be
115 considered for employment in the County by an employer or a current
116 employee who requests to be considered for a promotion.

117 Arrest record means information indicating that a person has been
118 apprehended, detained, taken into custody, held for investigation, or
119 otherwise restrained by a law enforcement agency or military authority
120 due to an accusation or suspicion that the person committed a crime.

121 Conditional offer means an offer of employment or an offer of a
122 promotion that is conditioned solely on:

123 (1) the results of the employer's later inquiry into the
124 applicant's criminal record; or

125 (2) another contingency expressly communicated to the
126 applicant at the time of the offer.

127 Conviction record means information regarding a sentence arising from
128 a verdict or plea of guilty or nolo contendere, including a sentence of
129 incarceration, a fine, a suspended sentence, and a sentence of probation.

130 Criminal record report means a record of a person's arrest and
131 conviction history obtained from any source.

132 Director means the Executive Director of the Office of Human Rights
133 and includes the Executive Director's designee.

134 Employee means a person permitted or instructed to work or be present
135 by an employer in the County.

136 Employer means any person, individual, proprietorship, partnership,
137 joint venture, corporation, limited liability company, trust, association,
138 or other entity operating and doing business in the County that employs
139 [[10]] 15 or more persons full-time in the County. Employer includes
140 the County government, but does not include the United States, any
141 State, or any other local government.

142 Employment means:

- 143 (1) any work for compensation; and
144 (2) any form of vocational or educational training, with or
145 without compensation.

146 Inquiry or Inquire means any direct or indirect conduct intended to
147 gather information, using any mode of communication.

148 Inquiry or Inquire does not include:

- 149 (1) a question about an applicant's conviction record or arrest
150 record when the existence of the record is voluntarily
151 disclosed by the applicant; or
152 (2) a question about an applicant's employment history shown
153 on the application or the applicant's resume.

154 Interview means any direct contact by the employer with the applicant,
155 whether in person or by telephone or internet communication, to
156 discuss:

- 157 (1) the employment being sought; or
158 (2) the applicant's qualifications.

159 Interview does not include:

- 160 (1) written correspondence or email; or
161 (2) direct contact made for the purpose of scheduling a
162 discussion.

163 Vulnerable adult means an adult who lacks the physical or mental capacity to
164 provide for his or her own daily needs.

165 **27-72. Prohibited Inquiries; Retaliation.**

166 (a) Inquiry on application. An employer must not require an applicant or
167 potential applicant to disclose on an employment application the
168 existence or details of the applicant's or potential applicant's arrest
169 record or conviction record.

170 (b) Preliminary inquiry into criminal record. In connection with the
171 proposed employment of an applicant, an employer must not, at any
172 time before [[a conditional offer of employment is made]] the
173 conclusion of a first interview:

174 (1) require the applicant to disclose whether the applicant has an
175 arrest record or conviction record, or otherwise has been accused
176 of a crime;

177 (2) conduct a criminal record check on the applicant; or

178 (3) inquire of the applicant or others about whether the applicant has
179 an arrest record or conviction record or otherwise has been
180 accused of a crime.

181 (c) Retaliation. An employer must not:

182 (1) retaliate against any person for:

183 (A) lawfully opposing any violation of this Article;

184 (B) filing a complaint, testifying, assisting, or participating in
 185 any manner in an investigation, proceeding, or hearing
 186 under this Article; or

187 (2) obstruct or prevent enforcement or compliance with this Article.

188 **27-73. [[Employment decisions; adverse actions]] Rescission of a**
 189 **conditional offer based on criminal record.**

190 (a) [[In making an employment decision based on an applicant's or
 191 employee's arrest record or conviction record, an employer must
 192 conduct an individualized assessment, considering only specific
 193 offenses that may demonstrate unfitness to perform the duties of the
 194 position sought by the applicant or held by the employee, the time
 195 elapsed since the specific offenses, and any evidence of inaccuracy in
 196 the record.

197 (b) If an employer intends to [[base an adverse action]] rescind a
 198 conditional offer based on an item or items in the applicant's [[or
 199 employee's]] arrest record or conviction record, before [[taking the
 200 adverse action]] rescinding the conditional offer the employer must:

201 (1) provide the applicant [[or employee]] with a copy of any criminal
 202 record report; [[and]]

203 (2) notify the applicant [[or employee]] of the [[prospective adverse
 204 action]] intention to rescind the conditional offer and the items
 205 that are the basis for the [[prospective adverse action]] intention
 206 to rescind the conditional offer; and

207 (3) delay rescinding the conditional offer for 7 days to permit the
 208 applicant to give the employer notice of inaccuracy of an item or
 209 items on which the intention to rescind the conditional offer is
 210 based.

211 ~~[(c)]~~~~[(b)]~~ ~~[[If, within 7 days after the employer provides the notice required~~
 212 ~~in subsection (b) to the applicant]]~~ ~~[[or employee,]]~~ ~~[[the applicant]]~~ ~~[[or~~
 213 ~~employee]]~~ ~~[[gives the employer notice of evidence of the inaccuracy of~~
 214 ~~any item or items on which the]]~~ ~~[[prospective adverse action]]~~
 215 ~~[[intention to rescind the conditional offer is based, the employer~~
 216 ~~must]]~~~~[:~~

217 ~~(1)]~~ ~~[[delay]]~~ ~~[[the adverse action]]~~ ~~[[rescinding the conditional offer~~
 218 ~~for a reasonable period after receiving the information]]~~~~]; and~~

219 ~~(2) reconsider the prospective adverse action in light of the~~
 220 ~~information]]~~~~[.]~~

221 ~~[(d)]~~~~[(c)]~~ ~~[[Within 7 days after]]~~ ~~[[taking final adverse action]]~~ ~~[[rescinding~~
 222 ~~the conditional offer]]~~

223 ~~(b) If an employer decides to rescind a conditional offer based on the arrest~~
 224 ~~record or conviction record of an applicant~~ ~~[[or employee]],~~ ~~[[an]]~~ ~~the~~
 225 ~~employer must notify the applicant~~ ~~[[or employee]]~~ ~~of the~~ ~~[[final~~
 226 ~~adverse action]]~~ ~~rescission of the conditional offer in writing.~~

227 ~~[(d)]~~~~(c)~~ ~~Except as provided in this Section regarding the rescission of a~~
 228 ~~conditional offer, nothing in this Article requires an employer to give~~
 229 ~~notice to an applicant of any action of the employer or the basis for any~~
 230 ~~action.~~

231 **27-74. Exemptions.**

232 ~~(a) The prohibitions and requirements of this Article do not apply if the~~
 233 ~~inquiries~~ ~~[[or adverse actions]]~~ ~~prohibited by this Article are expressly~~
 234 ~~authorized by an applicable federal, State, or County law or regulation.~~

235 ~~(b) The prohibitions and requirements of this Article do not apply to the~~
 236 ~~County Police Department, the County Fire and Rescue Service, or the~~
 237 ~~County Department of Corrections and Rehabilitation.~~

238 (c) The prohibitions and requirements of this Article do not apply to an
239 employer that provides programs, services, or direct care to minors or
240 vulnerable adults.

241 (d) The prohibitions and requirements of this Article do not apply to an
242 employer hiring for a position that requires a federal government
243 security clearance.


244 **27-75. Enforcement.**

245 A person aggrieved by an alleged violation of this Article may file a complaint
246 with the Director under Section 27-7.

247 **Sec. 2. Expedited Effective Date.**

248 The Council declares that this legislation is necessary for the immediate
249 protection of the public interest. This Act takes effect on January 1, 2015.

250 *Approved:*

251  10/29/14
Craig L. Rice, President, County Council Date

252 *Approved:*

253 _____
Isiah Leggett, County Executive Date

254 *This is a correct copy of Council action.*

255 _____
Linda M. Lauer, Clerk of the Council Date