

**MEMORANDUM**

September 5, 2014

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 36-14, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards

Bill 36-14, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards, sponsored by Councilmembers Elrich, Branson, Navarro, Council President Rice and Councilmember Riemer, was introduced on July 15. A joint Health and Human Services/Public Safety Committee worksession is tentatively scheduled for October 9 at 2:00 p.m.

Bill 36-14 would:

- (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;
- (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;
- (3) provide for enforcement by the Office of Human Rights and the Human Rights Commission;
- (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.

**Background**

***The "Ban the Box" Movement***

This bill would remove one of the barriers to employment facing persons with criminal records by prohibiting inquiry by certain prospective employers into job applicants' criminal history early in the hiring process. Similar policies or laws have been adopted or enacted in several state and local jurisdictions<sup>1</sup>, most recently the City of Baltimore in May of this year.<sup>2</sup>

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<sup>1</sup> While the implementation of "ban the box" policies has primarily been done through legislative action, some local jurisdictions have administratively adopted policies applicable to hiring by the jurisdiction.

These laws are known as “ban the box” laws, a reference to the prohibition on the use of a check-box on job applications indicating whether or not the applicant has a criminal record.

The movement to “ban the box” began with Hawaii in 1998, and there are now 11 States<sup>3</sup> and over 50 local jurisdictions that have adopted some form of “ban the box” legislation. There is substantial variance in the legislation of the different jurisdictions, but all reflect the view that the question of a job applicant’s criminal history should be deferred until later in the hiring process and not be utilized as an automatic bar to employment. The majority of the laws, including the State of Maryland’s law, apply only to public or government employers, but 18 of the local jurisdictions with “ban the box” policies have gone somewhat further and apply the restrictions to private contractors doing business with the respective jurisdictions. Going further still, five states<sup>4</sup> and six local jurisdictions<sup>5</sup> have banned the box for private employers.

The rationale for banning the box is fairly straightforward: when people with criminal histories are denied a fair chance at employment, the entire community pays the cost in the form of diminished public safety, increased government spending on law enforcement and social services, and reduced government revenue in the form of lost income and sales taxes. According to the U.S. Department of Justice’s Bureau of Justice Statistics (BJS), over 92 million Americans, roughly one in three adults, have a criminal history record involving an arrest or conviction.<sup>6</sup> Additionally, according to the BJS, nearly 700,000 people a year nationwide return to their communities from incarceration, and many are job seekers who are ready and able to become part of the work force.<sup>7</sup> For these people, a steady job is a critical factor in preventing recidivism.<sup>8</sup> The consequences of having a criminal record for job-seekers was recently chronicled in the Wall Street Journal (see ©23-31).

In addition to the general public safety benefit of reduced rates of recidivism, there is a twofold economic benefit associated with increasing employment of people with criminal records: decreased expenditures on law enforcement, corrections, and social services, and increased income and sales tax revenues. Decreasing recidivism would almost certainly result in a reduced overall crime rate, with a corresponding reduction in law enforcement and corrections costs. Raising the employment rate of persons with criminal histories would also increase the likelihood that they would fulfill their social and legal financial obligations, such as child

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<sup>2</sup> The Council of the District of Columbia is poised to enact its own “ban the box” law; Bill 20-642, the “Fair Criminal Records Screening Amendment Act of 2014” passed first reading 12-1 on June 3, 2014, and the Council may take final action on the bill as early as July 14.

<sup>3</sup> In 2013 and 2014 alone, six states enacted new “ban the box” legislation: California (2013), Illinois (2014), Maryland (2013), Minnesota (2013), Nebraska (2014), and Rhode Island (2013).

<sup>4</sup> Illinois, Massachusetts, Minnesota, Hawaii, and Rhode Island.

<sup>5</sup> Baltimore (2014), Buffalo (2013), Newark (2013), Philadelphia (2011), San Francisco (2014), and Seattle (2013). If Bill 20-642 is enacted in its current form, the District of Columbia would become the seventh local jurisdiction to ban the box for private employers.

<sup>6</sup> Dennis DeBacco and Owen Greenspan, *Survey of State Criminal History Information Systems*, 2008. Bureau of Justice Statistics (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics 2009). <https://www.ncjrs.gov/pdffiles1/bjs/grants/228661.pdf>

<sup>7</sup> Paul Guerino, Paige M. Harrison & William J. Sabol, *Prisoners in 2010*, NCJ 236096 (Bureau of Justice Statistics Dec. 2011). <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>

<sup>8</sup> Mark T. Berg and Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, *Justice Quarterly* (28), 2011, pp.382-410. <http://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf>

support, victim restitution, and court costs.<sup>9</sup> Also, economists have estimated that the lower overall employment rates of people with prison records or felony convictions cost the U.S. economy about 0.4 to 0.5 percent of GDP in 2008, or between \$57 and \$65 billion.<sup>10</sup> Part of this cost is borne by governments in the form of lost income taxes, and lower sales tax revenue resulting from reduced economic activity.

### **Bill 36-14**

Bill 36-14 would prohibit an employer in the County from inquiring into, or otherwise actively obtaining<sup>11</sup> the criminal history of an applicant for a job in the County before making a conditional offer of employment. It would also require the employer, in making an employment decision about an applicant or employee based on the applicant's or employee's arrest or conviction record, to conduct an individualized assessment, considering:

- only specific offenses that may demonstrate unfitness to perform the duties of the position sought by the applicant or held by the employee;
- the time elapsed since the specific offenses; and
- any evidence of inaccuracy in the record.<sup>12</sup>

The bill would require an employer deciding to base an adverse action<sup>13</sup> on an applicant's arrest or conviction record to:

- provide the applicant or employee with a copy of any criminal record report; and
- notify the applicant or employee of the prospective adverse action and the items that are the basis for the prospective adverse action.

If, within seven days of receiving the required notice of prospective adverse action, the applicant or employee gives the employer notice of evidence of the inaccuracy of any item or items on which the prospective adverse action is based, the bill would require the employer to:

- delay the adverse action for a reasonable period after receiving the information; and
- reconsider the prospective adverse action in light of the information.

Finally, the bill would require an employer to give an applicant or employee written notice of a final adverse action within seven days of taking the action.

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<sup>9</sup> Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility*, The Pew Charitable Trusts, 2010.

[http://www.pewtrusts.org/~media/Imported-and-Legacy/uploadedfiles/pes\\_assets/2010/CollateralCosts1.pdf.pdf](http://www.pewtrusts.org/~media/Imported-and-Legacy/uploadedfiles/pes_assets/2010/CollateralCosts1.pdf.pdf)

<sup>10</sup> John Schmitt and Kris Warner, *Ex-offenders and the Labor Market*, Center for Economic and Policy Research, 2010. <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>

<sup>11</sup> This prohibition would "ban the box" on the application itself, prohibit the employer from conducting a background check, and prohibit the employer from inquiring of the applicant or any other person whether the applicant has an arrest record or conviction record.

<sup>12</sup> This requirement is consistent with enforcement guidance issued in 2012 by the United States Equal Employment Opportunity Commission (EEOC) regarding employers' use of criminal background information in making employment-related decisions. [http://www.eeoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf)

<sup>13</sup> "Adverse action" is defined in the bill as follows: to fail or refuse to hire, to discharge or not promote a person, or to limit, segregate, or classify employees in any way which would deprive a person of employment opportunities or otherwise adversely affect the person's employment status.

Bill 36-14 exempts from its provisions inquiries or adverse actions expressly authorized by an applicable federal, State, or County law or regulation, as well as the County Department of Police, the County Department of Corrections and Rehabilitation, and employers providing programs, services, or direct care to minors or vulnerable adults.

The County Office of Human Rights would be responsible for enforcement of the law. An applicant or employee would be able to file a complaint with the Office of Human Rights and obtain an adjudicatory hearing before the Human Rights Commission.

This packet contains:	<u>Circle #</u>
Bill 36-14	1
Legislative Request Report	10
Fiscal and Economic Impact statement	11
County Attorney Memorandum	18
<i>Wall Street Journal</i> Article	23

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Bill No. 36-14  
Concerning: Human Rights and Civil Liberties – Fair Criminal Record Screening Standards  
Revised: July 10, 2014 Draft No. 4  
Introduced: July 15, 2014  
Expires: January 15, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**AN 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;
- (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;
- (3) provide for enforcement by the Office of Human Rights and the Human Rights Commission;
- (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

<b>Boldface</b>	<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] XI, or XII, the case review board  
40 may order the payment of damages (other than punitive damages) and  
41 any other relief that the law and the facts warrant, such as:

42 (1) compensation for:

43 \* \* \*

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

46 \* \* \*

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

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

55 to mitigate the consequences of the violation (such as income  
56 from alternate employment or unemployment compensation  
57 following employment discrimination); and

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

61 (b) Civil penalties.

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

66 \* \* \*

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

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

69 \* \* \*

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

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

72 (a) Findings.

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

77 (2) According to the BJS, nearly 700,000 people a year return to their  
78 communities from incarceration, and many are job seekers who  
79 are ready and able to become part of the work force.

80 (3) Studies indicate that job applicants are often precluded from even  
 81 getting an interview when applications require disclosure of  
 82 whether the applicant has a criminal record.

83 (4) Lack of employment is a significant cause of recidivism, which  
 84 threatens public safety and disrupts the financial and general  
 85 stability of affected families and communities.

86 (5) Increased government expenditures on law enforcement and  
 87 social programs, necessitated by the inability of people with  
 88 criminal records to find gainful employment, are an impediment  
 89 to the County reaching its potential for economic growth.

90 (6) Increasing employment of people with criminal records improves  
 91 public safety and reduces the financial burden on government.

92 (b) *Purpose.*

93 It is the purpose of this Article to:

94 (1) assist in the successful reintegration into the workforce of people  
 95 with criminal records by removing barriers to employment; and

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

99 (c) *Definitions. As used in this Article:*

100 Adverse action means to fail or refuse to hire, to discharge or not  
 101 promote a person, or to limit, segregate, or classify employees in any  
 102 way which would deprive a person of employment opportunities or  
 103 otherwise adversely affect the person's employment status.

104 Applicant means a person who is considered or who requests to be  
 105 considered for employment in the County by an employer.

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

110 Conditional offer means an offer of employment that is conditioned  
111 solely on:

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

114 (2) another contingency expressly communicated to the  
115 applicant at the time of the offer.

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

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

121 Director means the Executive Director of the Office of Human Rights  
122 and includes the Executive Director's designee.

123 Employment means:

124 (1) any work for compensation; and

125 (2) any form of vocational or educational training, with or  
126 without compensation.

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

129 Employer means any person, individual, proprietorship, partnership,  
130 joint venture, corporation, limited liability company, trust, association,  
131 or other entity operating and doing business in the County that employs  
132 10 or more persons full-time in the County. Employer includes the

133 County government, but does not include the United States, any State,  
 134 or any other local government.

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

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

139 **27-72. Prohibited Inquiries; Retaliation.**

140 (a) Inquiry on application. An employer must not require an applicant or  
 141 potential applicant to disclose on an employment application the  
 142 existence or details of the applicant's or potential applicant's arrest  
 143 record or conviction record.

144 (b) Preliminary inquiry into criminal record. In connection with the  
 145 proposed employment of an applicant, an employer must not, at any  
 146 time before a conditional offer of employment is made:

147 (1) require the applicant to disclose whether the applicant has an  
 148 arrest record or conviction record, or otherwise has been accused  
 149 of a crime;

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

151 (3) inquire of the applicant or others about whether the applicant has  
 152 an arrest or conviction record or otherwise has been accused of a  
 153 crime.

154 (c) Retaliation. An employer must not:

155 (1) retaliate against any person for:

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

157 (B) filing a complaint, testifying, assisting, or participating in  
 158 any manner in an investigation, proceeding, or hearing  
 159 under this Article; or

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

161 **27-73. Employment decisions; adverse actions based on criminal record.**

162 (a) In making an employment decision based on an applicant's or  
 163 employee's arrest record or conviction record, an employer must  
 164 conduct an individualized assessment, considering only specific  
 165 offenses that may demonstrate unfitness to perform the duties of the  
 166 position sought by the applicant or held by the employee, the time  
 167 elapsed since the specific offenses, and any evidence of inaccuracy in  
 168 the record.

169 (b) If an employer intends to base an adverse action on an item or items in  
 170 the applicant's or employee's arrest record or conviction record, before  
 171 taking the adverse action the employer must:

172 (1) provide the applicant or employee with a copy of any criminal  
 173 record report; and

174 (2) notify the applicant or employee of the prospective adverse action  
 175 and the items that are the basis for the prospective adverse action.

176 (c) If, within 7 days after the employer provides the notice required in  
 177 subsection (b) to the applicant or employee, the applicant or employee  
 178 gives the employer notice of evidence of the inaccuracy of any item or  
 179 items on which the prospective adverse action is based, the employer  
 180 must:

181 (1) delay the adverse action for a reasonable period after receiving  
 182 the information; and

183 (2) reconsider the prospective adverse action in light of the  
 184 information.

185 (d) Within 7 days after taking final adverse action based on the arrest or  
186 conviction record of an applicant or employee, an employer must notify  
187 the applicant or employee of the final adverse action in writing.

188 **27-74. Exemptions.**

189 (a) The prohibitions and requirements of this Article do not apply if the  
190 inquiries or adverse actions prohibited by this Article are expressly  
191 authorized by an applicable federal, State, or County law or regulation.

192 (b) The prohibitions of this Article do not apply to the County Police  
193 Department or the County Department of Corrections and  
194 Rehabilitation.

195 (c) The prohibitions of this Article do not apply to an employer that  
196 provides programs, services, or direct care to minors or vulnerable  
197 adults.

198 **27-75. Enforcement.**

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

201 **Sec. 2. Effective Date.**

202 This Act takes effect on January 1, 2015.

203 *Approved:*

204

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Craig L. Rice, President, County Council

Date

205 *Approved:*

206

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Isiah Leggett, County Executive

Date

## LEGISLATIVE REQUEST REPORT

Bill 36-14

*Human Rights and Civil Liberties – Fair Criminal Record Screening Standards*

<b>DESCRIPTION:</b>	This bill would remove one of the barriers to employment facing persons with criminal records by prohibiting inquiry by certain prospective employers into job applicants' criminal history early in the hiring process. It would also require employers to perform an individualized assessment when making employment decisions based on an applicant's or employee's criminal record, and allow an applicant or employee time to correct errors in the criminal record prior to an adverse action being taken regarding their employment.
<b>PROBLEM:</b>	When people with criminal histories are denied a fair chance at employment, the entire community pays the cost in the form of diminished public safety, increased government spending on law enforcement and social services, and reduced government revenue in the form of lost income and sales taxes.
<b>GOALS AND OBJECTIVES:</b>	To ensure that people with criminal records have a fair chance in seeking employment by requiring that the question of a job applicant's criminal history be deferred until later in the hiring process and not utilized as an automatic bar to employment.
<b>COORDINATION:</b>	Office of Human Rights, Human Rights Commission and Office of Human Resources
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Josh Hamlin, Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Civil penalty and equitable relief.



ROCKVILLE, MARYLAND

MEMORANDUM

September 3, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance *MJK  
KFB*

SUBJECT: Council Bill 36-14, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph Adler, Director, Office of Human Recourses  
David Platt, Department of Finance  
Robert Hagedoorn, Department of Finance  
Corey Orlosky, Office of Management and Budget  
Alex Espinosa, Office of Management and Budget  
Felicia Zhang, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

## **Fiscal Impact Statement**

### Council Bill 36-14, Human Rights and Civil Liberties -Fair Criminal Record Screening Standards

#### **1. Legislative Summary.**

- 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;
- 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;
- provide for enforcement by the Office of Human Rights and the Human Rights Commission;
- authorize the Human Rights Commission to award certain relief;
- generally regulate the use of criminal records in the hiring process by certain employers.

#### **2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

It would appear in most instances where similar legislation is in place in cities, counties and states, significant data does not exist to estimate what our experience may be in Montgomery County. Many of these laws were recently enacted and have not seen a lot of complaints filed. The city of Philadelphia first enacted their "Ban the Box" ordinance in 2011 and since that time received approximately 50-75 cases. Many of the cases were filed shortly after the ordinance was enacted and the agency has seen a leveling off of complaints since that time. No new staff were hired at the beginning of their program. The duties and responsibilities of the new program were absorbed by existing staff and have been manageable for the last four years of the program.

While we have no way of predicting what we might anticipate in Montgomery County, the Philadelphia experience suggest that we could see a fair number of complaints filed early after establishing the law and then a very modest number of complaints over time. If this remains true then the number of cases could be processed by existing staff and would present no major expenditures or adverse impact on current services and staff. However, since extensive reliable data does not exist the Executive will revisit the impact on staffing once the law has been implemented and some activity can be analyzed.

For OHR, there may have to be changes to the current applicant tracking system to deal with this regulation. At this time, we do not know how extensive the changes to the system would be or what they would cost. In addition, staff including HR Specialist, Recruitment & Selection Manager and a County Attorney are involved in processing, reviewing and notifying applicants of their background results/status. Any additional workload would be either absorbed by the department, or handled with temporary workers or contractors, depending on volume.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

Expenditures over the next 6 fiscal are estimated to be flat and consistent with current budget projections.

Although the cost of any required outreach cannot be estimated at this time, the fiscal impact of outreach is expected to be limited to the first year of the bill.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Increase in the number of anticipated complaints, which could impact both HRC and OHR.

**6. An estimate of the staff time needed to implement the bill.**

It is expected that this bill will require an undetermined amount of additional staff time in order to implement, but HRC and OHR will utilize existing staff resources to absorb the additional workload.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

HRC and OHR will utilize existing staff resources to absorb the additional workload.

**8. An estimate of costs when an additional appropriation is needed.**

Additional appropriations are not anticipated to be needed at this time.

**9. A description of any variable that could affect revenue and cost estimates.**

Variables that could affect cost estimates include the cost and scope of outreach and possible increase in staff which cannot be estimated at this time. The number of enforcement actions in any given year is also subject to wide variability.

**10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

For HRC, although the bill allows for damages and other equitable relief per violation, actual relief or revenue cannot be estimated at this time. Furthermore, not all enforcement actions may result in complaints. In addition the cost of any needed outreach cannot be estimated at this time.

**11. If a bill is likely to have no fiscal impact, why that is the case.**

The departments involved believe they can handle any increased workload resulting from this legislation, based on preliminary indications from other jurisdictions implementing similar legislation.

**12. Other fiscal impacts or comments.**

Assumptions and estimates regarding revenues and expenditures are approximate only.

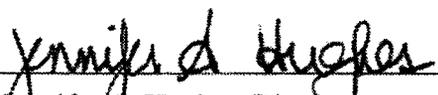
HRC cannot estimate with certainty the number of enforcement actions performed and actual cases filed in a given year.

**13. The following contributed to and concurred with this analysis:**

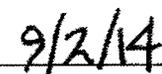
Jim Stowe, Director, Office of Human Rights (HRC)

Melissa Voight Davis, Office of Human Resources (OHR)

Corey Orlosky, Office of Management and Budget

  
\_\_\_\_\_

Jennifer A. Hughes, Director  
Office of Management and Budget

  
\_\_\_\_\_

Date

**Economic Impact Statement  
Bill 36-14, Human Rights and Civil Liberties –  
Fair Criminal Screening Standards**

**Background:**

This legislation would:

- 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;
- 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;
- provide for enforcement by the Office of Human Rights and the Human Rights Commission;
- authorize the Human Rights Commission to award certain relief; and
- generally regulate the use of criminal records in the hiring process by certain employers.

**1. The sources of information, assumptions, and methodologies used.**

*Ex-offenders and the Labor Market*, Center for Economic and Policy Research (CEPR) – cited herein as the CEPR study. The study is also cited in Council Staff memorandum dated July 11, 2014.

*Employment after Prison: A Longitudinal Study of Releases in Three States*, Justice Policy Center, Urban Institute – cited herein as the UI study.

The Department of Finance (Finance) reviewed the literature cited above in preparing the economic impact statement. The review will cite the conclusions in each study to determine the economic impact on Bill 36-14, or “ban the box” legislation, on employment, spending, saving, investment, incomes, and property values in the County.

**2. A description of any variable that could affect the economic impact estimates.**

The CEPR study estimates “that ex-offenders lower overall employment rates are as much as 0.8 to 0.9 percentage points. These employment losses ... impose a substantial cost on the U.S. economy in the form of lost output of goods and services. In GDP terms, we (CEPR) estimate that in 2008 these employment losses cost the country \$57 to \$65 billion per year.” However, Finance’s review of the study cannot determine the sole economic benefit of prohibiting inquiries by prospective employers about an applicant’s criminal history and whether that history was a felony conviction or time in prison. The study states that “an extensive body of research has established that a felony conviction or time in prison makes individuals significantly less employable” but does not address the causes such as pre-prison employment history, education, having an in-prison job, general employment rates and opportunities in local areas, and age of ex-offender.

**Economic Impact Statement**  
**Bill 36-14, Human Rights and Civil Liberties –**  
**Fair Criminal Screening Standards**

The UI study conducted a longitudinal study in order to “explore the reality of finding employment after release from prison.” The UI study sampled 740 men recruited from 2002 to 2003 in Illinois and 2004 to 2005 in Ohio and Texas. The study focused on addressing: What factors influence whether former prisoners find work in the year after release? The survey asked questions of the sample two months after release and eight months after release. The survey found:

- Two months after release, many respondents had difficulty finding employment and the majority (70 percent) felt that their criminal record had affected their job search. Many people felt that background checks inhibited their ability to acquire a job and thought employers did not want to hire someone with a criminal record.
- The most successful strategy for employment upon release from prison was to return to the former employer.
- In the same two-month period, the study reports that although the majority of respondents felt their criminal record had impacted their job search, 87 percent of those employed said their current employer knew about their criminal history.
- Eight months after release, many participants in the study were still searching for a job. The majority (71 percent) again said that their criminal history affected their ability to obtain a job. While the majority reported that their criminal history made the job hunt more difficult, 80 percent of employed respondents said their employer knew about their criminal history.

The findings from the UI study are that 70 percent of the respondents to the survey two months after release felt that background checks inhibited their ability to acquire a job. After eight-months after release, a majority of respondents reported that their criminal history still made the job hunt more difficult.

The UI study reached the following conclusions:

- One important finding was the particular vulnerability of ex-offenders finding employment were those without previous work experience;
- The hiring process is a large hurdle for more returning prisoners;
- Restrictions on convicted persons working in certain types of jobs impede the process of finding a job especially after 9/11;
- A majority of respondents felt that many employers did not feel comfortable hiring individuals with a criminal record, and the study concluded that having to provide criminal history information before the interview process eliminates many job opportunities for former prisoners; and

**Economic Impact Statement**  
**Bill 36-14, Human Rights and Civil Liberties –**  
**Fair Criminal Screening Standards**

- Giving employers the opportunity to meet and speak with job applicants before discovering their criminal history has the potential to improve job outcomes for former prisoners.

The conclusions in the CEPR and UI studies show that employment opportunities for job candidates with a criminal record are more challenging than for other candidates which results in a lower employment for this population, although it is unclear to what degree the criminal record as opposed to pre-criminal record employment and education factors contribute to the job hunt challenges.

**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

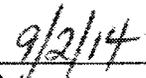
Both studies confirm that having a criminal record and having to notify prospective employers of that status will have a high probability of adversely impacting this population's ability to obtain employment. Therefore, eliminating the notification of a criminal record at the initial stages of employment application may have a positive economic impact on the target population, i.e., ex-offenders. Even though the CEPR study estimates a significant national economic and employment impact for the target population, there is no estimate for the "net" impact on the overall national economy. Unless the recommended changes in the studies and in Bill 36-14 result in more employment demand and economic activity, there would, at best, be an employment substitution effect with no measurable economic impact on overall employment, spending, savings, incomes, and property values.

**4. If a Bill is likely to have no economic impact, why is that the case?**

Please see paragraph #3.

**5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.**

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

  
\_\_\_\_\_  
Date



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Joe Adler, Director  
Office of Human Resources

VIA: Marc P. Hansen *MPH/EBJ*  
County Attorney

FROM: Edward B. Lattner, Chief *EBJ*  
Division of Human Resources & Appeals

DATE: August 11, 2014

RE: **Bill 36-14, Human Rights & Civil Liberties – Fair Criminal Record  
Screening Standards**

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**I. Summary:**

Bill 36-14 is accurately summarized in Josh Hamlin's July 11, 2014, introduction packet. Bill 36-14 would prohibit an employer in the County from inquiring into, or otherwise actively obtaining the criminal history of an applicant for a job in the County before making a conditional offer of employment. It would also require the employer, in making an employment decision about an applicant or employee based on the applicant's or employee's arrest or conviction record, to conduct an individualized assessment, considering only:

- specific offenses that may demonstrate unfitness to perform the duties of the position sought by the applicant or held by the employee;
- the time elapsed since the specific offenses; and
- any evidence of inaccuracy in the record.

The bill would require an employer deciding to base an adverse action on an applicant's arrest or conviction record to:

- provide the applicant or employee with a copy of any criminal record report; and
- notify the applicant or employee of the prospective adverse action and the items that are the basis for the prospective adverse action.

If, within seven days of receiving the required notice of prospective adverse action, the applicant or employee gives the employer notice of evidence of the inaccuracy of any item or items on which the prospective adverse action is based, the bill would require the employer to:

- delay the adverse action for a reasonable period after receiving the information; and
- reconsider the prospective adverse action in light of the information.

Finally, the bill would require an employer to give an applicant or employee written notice of a final adverse action within seven days of taking the action.

Bill 36-14 exempts from its provisions inquiries or adverse actions expressly authorized by an applicable federal, State, or County law or regulation, as well as the County Department of Police, the County Department of Corrections and Rehabilitation, and employers providing programs, services, or direct care to minors or vulnerable adults.

The County Office of Human Rights would be responsible for enforcement of the law. An applicant or employee would be able to file a complaint with the Office of Human Rights and obtain an adjudicatory hearing before the Human Rights Commission.

## II. Analysis

### A. Standard of review of employer's decision

Section 27-73(a) would require an employer, in making an employment decision [adverse action]<sup>1</sup> about an applicant or employee based on the applicant's or employee's arrest or conviction record, to conduct an individualized assessment, considering only:

- specific offenses [arrests or convictions]<sup>2</sup> that may demonstrate unfitness to perform the duties of the position sought by the applicant or held by the employee;
- the time elapsed since the specific offenses [arrests or convictions]; and
- any evidence of inaccuracy in the record.

I assume the intent of § 27-73(a) to require HRC, upon complaint, to determine not only whether the employer conducted an individualized assessment before taking an adverse action based upon an applicant's or employee's arrest or conviction record, but, more importantly, to require HRC to also determine **the correctness or quality of the adverse action taken by the**

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<sup>1</sup> As discussed below, the term "employment decision" is not defined in the bill. If the term is co-extensive with the term "adverse action," which is defined in the bill, then the bill should use the latter term.

<sup>2</sup> Again, as discussed below, the term "offenses" is not defined in the bill. It is assumed that the term refers to arrests or convictions.

**employer based upon the applicant's or employee's arrest or conviction record.** The latter inquiry is far broader than the former. If that is the intent, then the bill should provide a standard to guide HRC in its review of the employer's decision. For example, can HRC substitute its judgment for that of the employer's? Even in cases alleging discrimination the courts have eschewed acting as a "super personnel board" and refused to decide whether an employer's reasoning is wise, fair, or even correct. *Nerenberg v. RICA of S. Maryland*, 131 Md. App. 646, 675, 750 A.2d 655, 671 (2000). Thus, in a case where an employer has taken an adverse action based upon an applicant's or employee's arrest or conviction record, the bill could require HRC to give deference to the employer's business judgment. The important point is some standard should be spelled out in the law to guide HRC's review.

#### **B. Application to the county**

Because the merit system laws and the County's various labor contracts already afford applicants and employees the right to challenge an adverse action, this bill will create a duplicate and parallel channel of review.

**Applicants.** An unsuccessful applicant for a County position can file an appeal directly with the Merit System Protection Board, alleging that the County's decision was arbitrary, capricious, illegal, based on political affiliation, failed to follow announced examination and scoring procedures, or was based upon non-merit factors. § 33-9(c). This would include a complaint that an applicant's arrest or conviction did not demonstrate unfitness to perform the duties of the position sought.<sup>3</sup> Indeed, the Board has heard such complaints in the past.

**Employees.** The scope of grievable matters under the personnel regulations is quite broad, MCPHR § 34-4, and would include a complaint that the County took some adverse action based upon non-merit factors (e.g., an arrest or conviction that does not demonstrate unfitness to perform the duties of the position held).<sup>4</sup> For example, the personnel regulations allow an employee to file a grievance challenging a suspension pending investigation of a job-related offense. MCPHR § 33-3(f). The employee may appeal this disciplinary action to the Board.

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<sup>3</sup> Section 33-9(c) provides that the Merit Board will not hear an appeal from an applicant or employee alleging **discrimination prohibited by Chapter 27**; an applicant or employee must file such a complaint with the HRC as provided in Chapter 27. *See also* MCPHR § 35-2(d). Although the Merit Board lacks jurisdiction to resolve complaints alleging discrimination, a complaint from an applicant or employee that the County did not select him for a position, or took some other adverse action, based upon non-merit factors (e.g., an arrest or conviction that does not demonstrate unfitness to perform the duties of the position sought or held) is not a complaint alleging discrimination outside the Board's jurisdiction. Prohibited **discriminatory acts** are set out in Article I of Chapter 27. But Chapter 27 sets out other requirements and prohibitions that are not "discriminatory acts." *See* Article X ("Displaced Service Workers Protection Act") and Article XI ("County Minimum Wage"). The prohibitions in Bill 36-14, which would add Article XII ("Fair criminal records Screening Standards"), are not prohibited "discriminatory acts."

<sup>4</sup> A probationary or temporary employee may grieve a disciplinary action, except an oral admonishment, but may not appeal the CAO's decision to the Merit Board. MCPHR § 34-2(b). A bargaining unit employee would have to file a contract grievance under the applicable collective bargaining agreement if the County's action was covered by that agreement. MCPHR § 34-2(c).

Bill 36-14 would provide a duplicate and parallel channel of review before HRC, wasting County resources and raising the possibility of inconsistent results, because the actions prohibited by the Bill are already prohibited by the County's merit system law (and possibly the collective bargaining agreements, too). In the past, the County has avoided such duplication of efforts. For example, the personnel regulations provide that a bargaining unit employee may not file a merit system grievance over a matter covered in the collective bargaining agreement, but may file a grievance under the that agreement. MCPR § 33-2(c).<sup>5</sup> An applicant or employee alleging discrimination prohibited by Chapter 27 cannot appeal to the Merit Board, but must file a complaint with the HRC. MCPR § 35-2(d).

### C. Timing issues

Proposed § 27-73(c) provides that an applicant or employee has seven days to respond after the employer provides notice of intent to base an adverse action upon a prior arrest or conviction. What if the employee does not respond within the seven days? The bill should specify whether an employee's failure to timely respond precludes the employee from filing a latter response from the employee and/or a filing complaint with HRC. Similarly, proposed § 27-73(d) provides that the employer must provide the employee notice within seven days of taking final adverse action based upon a prior arrest or conviction. What if the employer does not provide the required notice? Again, the bill should specify whether the employer's failure to timely response effectively reverses the adverse action or perhaps precludes the employer from offering a defense to any complaint before HRC. Either way, bear in mind that many employees and small employers will be unaware of these deadlines.

### D. Exemptions

Proposed § 27-74(b) provides that the bill does not apply to the County Police Department or the Department of Corrections and Rehabilitation. What about the sheriff or MCFRS?

## III. Specific Suggested Amendments:

Line 95: "removing improper barriers"

Lines 161 and 162: substitute "basing an adverse action" for "making an employment decision based." "Adverse action" is the term used later in line 169. "Adverse action" is a defined term; "employment decision" is not. If "employment decision" is intended as a synonym for "adverse actions" then the term "employment decision" should be defined as a separate term.

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<sup>5</sup> Thus, a law enforcement officer may not use the grievance procedure to appeal a matter for which there is a remedy or appeal under the Law Enforcement Officers' Bill of Rights. MCPR 33-2(f). The collective bargaining agreements also provide that an employee initiating a contract grievance challenging suspension or removal waives any right to have that action reviewed by the Merit Board. MCGEO Art. 10.3; IAFF Art. 38.17(a)(7).

Joe Adler  
August 11, 2014  
Page 5

Line 165: substitute “ arrests or convictions” for “offenses.”

Line 167: substitute “ arrests or convictions” for “offenses.”

If you have any concerns or questions concerning this memorandum please call me.

ebl

Enclosure (bill)

cc: Josh Hamlin, Legislative Attorney  
Bonnie Kirkland, Assistant CAO  
James Stowe, Executive Director, HRC  
Anne T. Windle, Associate County Attorney  
Erin Ashbarry, Associate County Attorney

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The Wall Street Journal, Print Edition, August 19, 2014

# As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime

## Even if Charges Were Dropped, a Lingering Arrest Record Can Ruin Chances of a Job

By Gary Fields and  
John R. Emshwiller

Aug. 18, 2014 10:30 p.m. ET



Jose Gabriel Hernandez was arrested after being falsely identified as a sexual predator. *Ben Sklar for The Wall Street Journal*

America has a rap sheet.

Over the past 20 years, authorities have made more than a quarter of a billion arrests, the Federal Bureau of Investigation estimates. As a result, the FBI currently has 77.7 million individuals on file in its master criminal database—or nearly one out of every three American adults.

Between 10,000 and 12,000 new names are added each day.

At the same time, an information explosion has made it easy for anyone to pull up arrest records in an instant. Employers, banks, college admissions officers and landlords, among

others, routinely check records online. The information doesn't typically describe what happened next.

Many people who have never faced charges, or have had charges dropped, find that a lingering arrest record can ruin their chance to secure employment, loans and housing. Even in cases of a mistaken arrest, the damaging documents aren't automatically removed. In other instances, arrest information is forwarded to the FBI but not necessarily updated there when a case is thrown out locally. Only half of the records with the FBI have fully up-to-date information.

"There is a myth that if you are arrested and cleared that it has no impact," says Paul Butler, professor of law at Georgetown Law. "It's not like the arrest never happened."



Precious Daniels of Detroit is part of a class-action lawsuit against the Census Bureau alleging that tens of thousands of African-Americans were discriminated against because of the agency's use of arrest records in its hiring process. *Fabrizio Costantini for the Wall Street Journal*

When Precious Daniels learned that the Census Bureau was looking for temporary workers, she thought she would make an ideal candidate. The lifelong Detroit resident and veteran health-care worker knew the people in the community. She had studied psychology at a local college.

Days after she applied for the job in 2010, she received a letter indicating a routine background check had turned up a red flag.

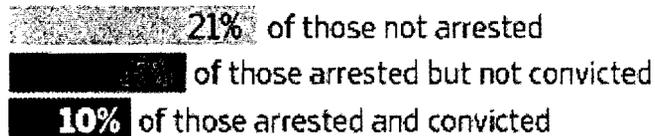
In November of 2009, Ms. Daniels had participated in a protest against Blue Cross Blue Shield of Michigan as the health-care law was being debated. Arrested with others for

disorderly conduct, she was released on \$50 bail and the misdemeanor charge was subsequently dropped. Ms. Daniels didn't anticipate any further problems.

## Impact | What happens after arrest

A national survey of youth indicates that being arrested by the age of 23, regardless of whether convicted, correlates with negative outcomes in one's life. Below, indicators of respondents who have been arrested (convicted and not convicted) compared with those not arrested.

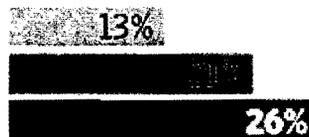
### Own a home at age 25



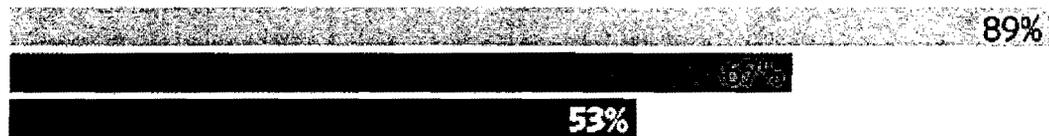
### Median income at age 25



### Household income below poverty line at age 25



### With high school diploma (or more)



### With college degree (or more)



Source: Tia Stevens Andersen of University of South Carolina's analysis of a National Longitudinal Survey of Youth conducted in 1997-2010 by the Labor Department which studied 8,984 people born in 1980-84

The Wall Street Journal

But her job application brought the matter back to life. For the application to proceed, the Census bureau informed her she would need to submit fingerprints and gave her 30 days to obtain court documents proving her case had been resolved without a conviction.

Clearing her name was easier said than done. "From what I was told by the courthouse, they didn't have a record," says Ms. Daniels, now 39 years old. She didn't get the job. Court officials didn't respond to requests for comment.

Today, Ms. Daniels is part of a class-action lawsuit against the Census Bureau alleging that tens of thousands of African-Americans were discriminated against because of the agency's use of arrest records in its hiring process. Adam Klein, a New York-based plaintiff attorney, says a total of about 850,000 applicants received similar letters to the one sent to Ms. Daniels.

Representatives for the Census Bureau and the U.S. Justice Department declined to comment. In court filings, the government denied the discrimination allegation and said plaintiffs' method for analyzing hiring data was "unreliable" and "statistically invalid."

The wave of arrests has been fueled in part by unprecedented federal dollars funneled to local police departments and new policing tactics that condoned arrests for even the smallest offenses. Spending on law-enforcement by states and local governments hit \$212 billion in 2011, including judicial, police and corrections costs, according to the most recent estimates provided to the U.S. Census Bureau. By comparison, those figures, when adjusted for inflation, were equivalent to \$179 billion in 2001 and \$128 billion in 1992.

In 2011, the most recent year for which figures are available, the Bureau of Justice Statistics put the number of full-time equivalent sworn state and local police officers at 646,213—up from 531,706 in 1991.

A crackdown on what seemed like an out-of-control crime rate in the late 1980s and early 1990s made sense at the time, says Jack Levin, co-director of the Brudnick Center on Violence and Conflict at Boston's Northeastern University.

"Zero-tolerance policing spread across the country after the 1990s because of the terrible crime problem in late '80s and early 1990s," says Mr. Levin.

The push to put an additional 100,000 more officers on the streets in the 1990s focused on urban areas where the crime rates were the highest, says Mr. Levin. And there has been success, he says, as crime rates have fallen and the murder rate has dropped.

But as a consequence, "you've got these large numbers of people now who are stigmatized," he says. "The impact of so many arrests is catastrophic."

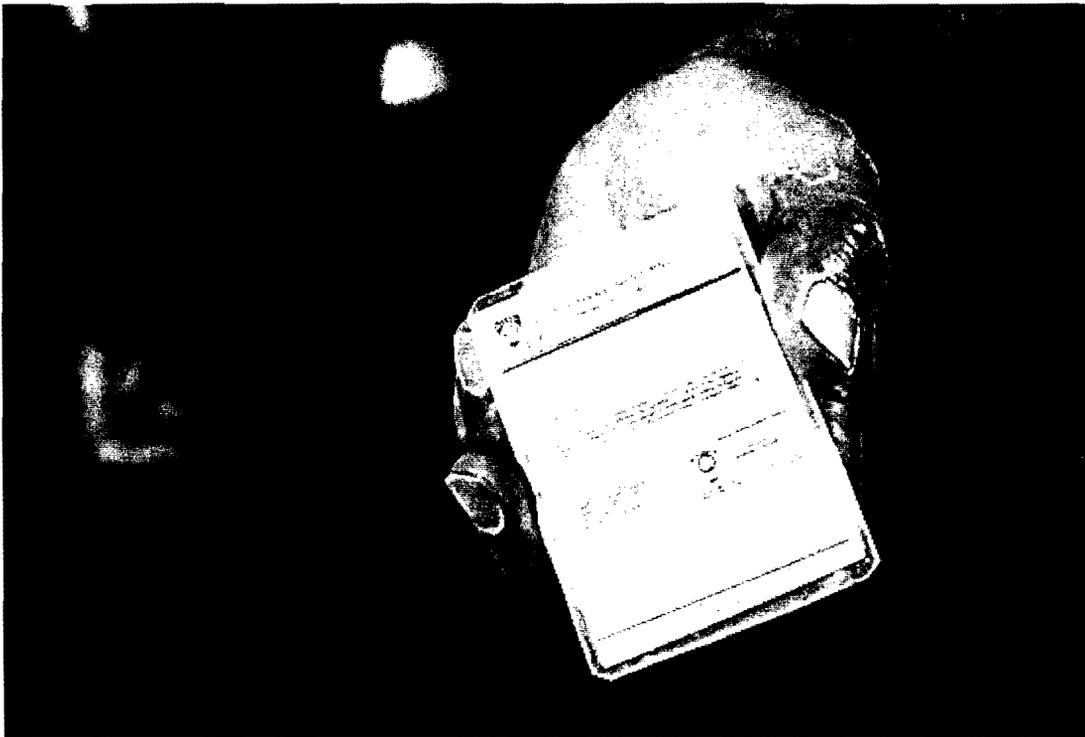
That verdict isn't unanimous. "We made arrests for minor infractions that deterred the more serious infractions down the road," says James Pasco, executive director of the Fraternal Order of Police, which represents about 335,000 officers. "We don't apologize for that. Innocent people are alive today and kids have grown up to lead productive lives because of the actions people took in those days."

At the University of South Carolina, researchers have been examining other national data in an attempt to understand the long-term impact of arrests on young people. Using information from a 16-year-long U.S. Bureau of Labor Statistics survey, researchers tracked

7,335 randomly selected people into their 20s, scrutinizing subjects for any brushes with the law.

Researchers report that more than 40% of the male subjects have been arrested at least once by the age of 23. The rate was highest for blacks, at 49%, 44% for Hispanics and 38% for whites. Researchers found that nearly one in five women had been arrested at least once by the age of 23.

They further determined that 47% of those arrested weren't convicted. In more than a quarter of cases, subjects weren't even formally charged.



Mr. Hernandez carries a laminated legal document from the Bexar County Sheriff's office confirming his innocence in case he is arrested in the future. *Ben Sklar for The Wall Street Journal*

It can be daunting to try to correct the record. In October 2012, Jose Gabriel Hernandez was finishing up dinner at home when officers came to arrest him for sexually assaulting two young girls.

Turns out, it was a case of mistaken identity. In court documents, the prosecutor's office acknowledged that the "wrong Jose Hernandez" had been arrested and the charges were dropped.

Once the case was dismissed, Mr. Hernandez assumed authorities would set the record straight. Instead, he learned that the burden was on him to clear his record and that he would need a lawyer to seek a formal expungement.

"Needless to say, that hasn't happened yet," says Mr. Hernandez, who works as a contractor. Mr. Hernandez was held in the Bexar County jail on \$150,000 bond. He didn't have the cash, so his wife borrowed money to pay a bail bondsman the nonrefundable sum of \$22,500, or the 15% fee, he needed to put up. They are still repaying the loans.

Exacerbating the situation are for-profit websites and other background-check businesses that assemble publicly available arrest records, often including mug shots and charges. Many sites charge fees to remove a record, even an outdated or erroneous one. In the past year Google has changed its search algorithm to de-emphasize many so called "mug-shot" websites, giving them less prominence when someone's name is searched.

On Friday, California Gov. Jerry Brown signed into law a bill making it illegal for websites to charge state residents to have their mug shot arrest photos removed.

In 2013, Indiana legislators approved one of the most extensive criminal record expungement laws in the country. The law was sponsored by a former prosecutor and had a range of conservative Republican backers. One had worked as a mining-company supervisor who frequently had to reject individuals after routine background checks found evidence of an old arrest.

"If we are going to judge people, we need to judge them on who they are now, and not who they were," says Jud McMillin, the bill's chief sponsor.

The "growing obsession with background checking and commercial exploitation of arrest and conviction records makes it all but impossible for someone with a criminal record to leave the past behind," concludes a recent report from the National Association of Criminal Defense Lawyers.

Further analysis by the University of South Carolina team, performed at the request of The Wall Street Journal, suggests that men with arrest records—even absent a formal charge or conviction—go on to earn lower salaries. They are also less likely to own a home compared with people who have never been arrested.

The same holds true for graduation rates and whether a person will live below the poverty line.

For example, more than 95% of subjects without arrests in the survey graduated high school or earned an equivalent diploma. The number falls to 84.4% for those who were arrested and yet not convicted.

Tia Stevens Andersen, the University of South Carolina researcher who performed the analysis, says the results are consistent with what criminologists have found. The data, especially when coupled with other studies, show that an arrest "does have a substantial impact on people's lives," she says. That is in part because "it's now cheap and easy to do a background check."

According to a 2012 survey by the Society for Human Resource Management, 69% of employers conduct criminal background checks on all job applicants. Fewer than that—about 58%—allow candidates to explain any negative results of a check.

Mike Mitternacht, the owner and president of Factory Service Agency Inc., a heating and air-conditioning company in Metairie, La., worries that if he turns down a job applicant because of a criminal record, he could be open to a discrimination claim. But hiring the person could leave him open to liability if something goes wrong. "I have to do the background checks and take my chances," says Mr. Mitternacht. "It's a lose-lose situation."



John Keir says he was fired from his job after failing to mention brushes with the law on his application. Found not guilty of a recent charge, he says he answered truthfully. *Steve Gates for The Wall Street Journal*

John and Jessica Keir, of Birmingham, Ala., have tried various means to combat their arrest stigma. In 2012 the married couple was accused of criminal mischief for scratching someone's car with a key. They were found not guilty at trial.

In January of last year, Ms. Keir, a law-school student, googled herself. "My mug shot was everywhere," she recalls. "I was just distraught."

Though she was in the top 15% of her first-year class at Cumberland School of Law School in Birmingham, she says about a dozen law firms turned her down for summer work. Since she rarely made it to the interview stage, she feared her online mug shots played a role. Eventually, she landed a summer position at the Alabama attorney general's office.

The couple says they paid about \$2,000 to various websites to remove their mug shots. It didn't work, Mr. Keir says. New mug-shot sites seemed to appear almost daily. Keeping up with them all was "like playing Whac-A-Mole," says Mr. Keir.

Ms. Keir, who is finishing her law degree at the University of Alabama, has been using Facebook, LinkedIn and Google to create enough positive Internet traffic to try to push down negative information lower in any search-engine results.

Meanwhile, her husband believes he has been caught up in a separate quagmire. Earlier this year Mr. Keir was hired by Regions Bank as an information security official. Weeks later, he says he was let go from his \$85,000 job for allegedly lying on his application.

The 35-year-old Mr. Keir says his firing resulted after failing to disclose his recent arrest record as well as a number of traffic violations during his teens that had branded him as a "youthful offender" in Alabama. He says he didn't lie on his application, and only recalls being asked about any criminal convictions.

A spokeswoman for Regions Bank, a unit of Regions Financial Corp., says the company couldn't discuss individual personnel matters, but says the bank sends applicant fingerprints to the FBI as part of criminal background check and asks candidates to answer questions about previous criminal charges and convictions.

Arrest issues don't necessarily abate with age.



Barbara Ann Finn lost out on a school cafeteria job last year after a background check turned up a 1963 hit on her record, which was a surprise to her. *Greg Kendall-Ball for The Wall Street Journal*

Late last year, Barbara Ann Finn, a 74-year-old great grandmother, applied for a part-time job as a cafeteria worker in the Worcester County, Md., school system.

"I was a single woman on a fixed income. I was trying to help myself," she recalls.

Along with the application came fingerprints and other checks—a process Ms. Finn dismissed as mere formality. After all, she had lived in the area since 1985, had worked in various parts of county government and served as a foster parent. Her background had been probed before.

So she was surprised by the phone call she received from the school district. Her fingerprints, she says she was told, had been run through both the state and FBI criminal databases. She was clear in Maryland, but the FBI check matched her prints to a 1963 arrest of someone with a name she says she doesn't recognize.

Barbara Witherow, a spokeswoman with the school district, confirms that Ms. Finn had applied for employment and that there were "valid reasons why" she wasn't considered.

Ms. Finn says she believes her problem might trace back to a 1963 episode when she and a girlfriend had gone to a clothing store in Philadelphia. The other woman began shoplifting, she says. Police took both of them into custody, Ms. Finn recalls, but she was released.

"I never heard any more about it and never thought any more about it," says Ms. Finn.

Michael Lee is executive director of the nonprofit Philadelphia Lawyers for Social Equity's Criminal Record Expungement Project and has been working on Ms. Finn's behalf for months.

The challenge, he says, is expunging a record no one can find.

An arrest record can only be removed if the local court system notifies the FBI that it should be taken out of the file. In Ms. Finn's case, the local authorities say they can't find the original record.

A Philadelphia District Court document obtained by Mr. Lee and reviewed by the Journal says Ms. Finn was never charged. A Pennsylvania State Police spokesman declined to comment.

Mr. Lee has asked for another background check from the state to try to put the matter to rest. Says Ms. Finn: "I don't want to die with a criminal record."

**Write to** Gary Fields at [gary.fields@wsj.com](mailto:gary.fields@wsj.com) and John R. Emshwiller at [john.emshwiller@wsj.com](mailto:john.emshwiller@wsj.com)