Bill No. 35-20  
Concerning: Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments  
Revised: 11/10/2020  
Draft No. 4  
Introduced: July 29, 2020  
Enacted: November 10, 2020  
Executive: November 20, 2020  
Effective: February 19, 2021  
Sunset Date: None  
Ch. 35, Laws of Mont. Co. 2020

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND  

Lead Sponsor: Councilmember Jawando

AN ACT to:  
(1) alter definitions regarding fair criminal record screening standards;  
(2) prohibit certain inquiries regarding criminal records;  
(3) prohibit consideration of certain arrests and convictions in employment decisions; and  
(4) generally amend the law regarding criminal record screenings.

By amending  
Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Sections 27-71, 27-72, and 27-75

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The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 27-71, 27-72, and 27-75 are amended as follows:

27-71. Findings and purpose; definitions.

(c) Definitions. As used in this Article:

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

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

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

Employer means any person, individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity operating and doing business in the County that employs [15] 1 or more persons [[full-time]] in the County. Employer includes the County government, but does not include the United States, any State, or any other local government.

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

Inquiry or Inquire does not include:

(1) a question about an applicant’s conviction record or arrest record when the existence of the record is [voluntarily] disclosed by the applicant voluntarily and not in response to a question by the employer; or
(2) a question about an applicant’s employment history shown on the
application or the applicant’s resume.

[Interview means any direct contact by the employer with the applicant,
whether in person or by telephone or internet communication, to
discuss:
(1) the employment being sought; or
(2) the applicant’s qualifications.

Interview does not include:
(1) written correspondence or email; or
(2) direct contact made for the purpose of scheduling a discussion.]

* * *

27-72. Prohibited inquiries; retaliation.

* * *

(b) Preliminary inquiry into criminal record. In connection with the
proposed employment of an applicant, an employer must not, at any
time before the [conclusion of a first interview] extension of a
conditional offer to the applicant:
(1) require the applicant to disclose whether the applicant has an
arrest record or conviction record, or otherwise has been accused
of a crime;
(2) conduct a criminal record check on the applicant; or
(3) inquire of the applicant or others about whether the applicant has
an arrest record or conviction record or otherwise has been
accused of a crime.

(c) Prohibition against inquiry into certain criminal records. In connection
with the proposed employment of an applicant, an employer must not at
any time require an applicant to disclose, conduct a criminal record
check to determine, or otherwise inquire of the applicant or others, whether:

(1) the applicant has been arrested for, or has an arrest record for, a matter that did not result in a conviction; or

(2) the applicant has an arrest record or a conviction record for, or otherwise has been accused of:

(A) a first conviction of:

(i) trespass under §§ 6-402 or 6-403 of the Criminal Law Article of the Maryland Code; or

(ii) disturbance of the peace under § 10-201 of the Criminal Law Article of the Maryland Code; or

(iii) assault in the second degree under § 3-203 of the Criminal Law Article of the Maryland Code;

(B) a conviction of a misdemeanor if at least 3 years have passed since:

(i) the date of the conviction; and

(ii) the date that any period of incarceration for the misdemeanor ended; or

(C) a matter for which records:

(i) are confidential under § 3-8A-27 of the Courts and Judicial Proceedings Article of the Maryland Code; or

(ii) have been expunged under §§ 10-101 - 10-110 of the Criminal Procedure Article of the Maryland Code.
(d) **Consideration of Certain Records Prohibited.** An employer must not base a hiring or promotion decision upon any item in an arrest record or a conviction record described under subsection (c).

[[c)] (e) **Retaliation.** An employer must not:

1. retaliate against any person for:
   1. lawfully opposing any violation of this Article;
   2. filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this Article; or
2. obstruct or prevent enforcement or compliance with this Article.

**Sec. 27-74. Exemptions.**

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

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

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

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

**27-75. Enforcement and Regulations.**

(a) A person aggrieved by an alleged violation of this Article may file a complaint with the Director under Section 27-7.
(b) The Executive must adopt Method (2) regulations to implement the provisions of this Article, including regulations necessary to inform prospective employees and employers of their rights and responsibilities under Section 27-72.
Approved:

_________________  11/12/2020
Sidney Katz, President, County Council  Date

Approved:

_________________  11/20/2020
Marc Elrich, County Executive  Date

This is a correct copy of Council action.

_________________  11/20/2020
Selena Mendy Singleton, Clerk of the Council  Date