



Committee: Joint HHS/PS
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #BanTheBox

AGENDA ITEM #1A
July 29, 2020
Introduction

SUBJECT

Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments

Lead Sponsor: Councilmember Jawando

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Bill introduction

DESCRIPTION/ISSUE

Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments, would:

- alter definitions regarding fair criminal record screening standards;
- prohibit certain inquiries regarding criminal records;
- prohibit consideration of certain arrests and convictions in employment decisions; and
- generally amend the law regarding criminal record screenings.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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MEMORANDUM

July 24, 2020

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments

PURPOSE: Introduction – no Council votes required

Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments, sponsored by Lead Sponsor Councilmember Jawando, is scheduled to be introduced on July 29, 2020.¹ A public hearing is tentatively scheduled for September 15 at 1:30 p.m.

Bill 35-20 would:

- alter definitions regarding fair criminal record screening standards;
- prohibit certain inquiries regarding criminal records;
- prohibit consideration of certain arrests and convictions in employment decisions; and
- generally amend the law regarding criminal record screenings.

BACKGROUND

In 2014, the Council enacted “Ban the Box” legislation, Bill 36-14, which prohibited employers of 15 or more FTEs in the County from conducting a criminal background check of a job applicant, or otherwise inquiring about the criminal or arrest history of an applicant, prior to the completion of a first interview.

Bill 35-20 would expand the scope of the original legislation by prohibiting background checks until after a conditional job offer has been extended. The bill also would prevent inquiries about certain crimes altogether. In addition, it would redefine “employer” to include any employer with one or more FTEs in the County.

¹# BanTheBox

SPECIFICS OF THE BILL

Bill 35-20 would accomplish three purposes. First, for purposes of criminal background checks of prospective employees, the bill would redefine employer as follows:

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.

Second, the bill would prohibit any inquiries by employers into 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;
 - (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.

Third, the bill would require the Executive to adopt regulations, “including regulations necessary to inform prospective employees and employers of their rights and responsibilities under Section 27-72.”

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Bill No. 35-20
Concerning: Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments
Revised: 10/31/2019 Draft No. 2
Introduced: July 29, 2020
Expires: January 29, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

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

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:

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:

* * *

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.

27 *Interview* does not include:

- 28 (1) written correspondence or email; or
- 29 (2) direct contact made for the purpose of scheduling a discussion.]

30 * * *

31 **27-72. Prohibited inquiries; retaliation.**

32 * * *

33 (b) *Preliminary inquiry into criminal record.* In connection with the
34 proposed employment of an applicant, an employer must not, at any
35 time before the [conclusion of a first interview] extension of a
36 conditional offer to the applicant:

- 37 (1) require the applicant to disclose whether the applicant has an
- 38 arrest record or conviction record, or otherwise has been accused
- 39 of a crime;
- 40 (2) conduct a criminal record check on the applicant; or
- 41 (3) inquire of the applicant or others about whether the applicant has
- 42 an arrest record or conviction record or otherwise has been
- 43 accused of a crime.

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

- 49 (1) the applicant has been arrested for, or has an arrest record for, a
- 50 matter that did not result in a conviction; or
- 51 (2) the applicant has an arrest record or a conviction record for, or
- 52 otherwise has been accused of:

- 53 (A) a first conviction of:
- 54 (i) trespass under §§ 6-402 or 6-403 of the Criminal
- 55 Law Article of the Maryland Code;
- 56 (ii) disturbance of the peace under § 10-201 of the
- 57 Criminal Law Article of the Maryland Code; or
- 58 (iii) assault in the second degree under § 3-203 of the
- 59 Criminal Law Article of the Maryland Code;
- 60 (B) a conviction of a misdemeanor if at least 3 years have
- 61 passed since:
- 62 (i) the date of the conviction; and
- 63 (ii) the date that any period of incarceration for the
- 64 misdemeanor ended; or
- 65 (C) a matter for which records:
- 66 (i) are confidential under § 3-8A-27 of the Courts and
- 67 Judicial Proceedings Article of the Maryland Code;
- 68 or
- 69 (ii) have been expunged under §§ 10-101 – 10-110 of
- 70 the Criminal Procedure Article of the Maryland
- 71 Code.
- 72 (d) Consideration of Certain Records Prohibited. An employer must not
- 73 base a hiring or promotion decision upon any item in an arrest record or
- 74 a conviction record described under subsection (c).
- 75 [(c)] (e) Retaliation. An employer must not:
- 76 (1) retaliate against any person for:
- 77 (A) lawfully opposing any violation of this Article;

78 (B) filing a complaint, testifying, assisting, or participating in
79 any manner in an investigation, proceeding, or hearing
80 under this Article; or

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

82 * * *

83 **27-75. Enforcement and Regulations.**

84 (a) A person aggrieved by an alleged violation of this Article may file a
85 complaint with the Director under Section 27-7.

86 (b) The Executive must adopt Method (2) regulations to implement the
87 provisions of this Article, including regulations necessary to inform
88 prospective employees and employers of their rights and responsibilities
89 under Section 27-72.

LEGISLATIVE REQUEST REPORT

Bill 35-20

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

DESCRIPTION:	<ul style="list-style-type: none">• Bill 35-20 would:• alter definitions regarding fair criminal record screening standards;• prohibit certain inquiries regarding criminal records;• prohibit consideration of certain arrests and convictions in employment decisions; and• generally amend the law regarding criminal record screenings.
PROBLEM:	Inequitable criminal records screening practices
GOALS AND OBJECTIVES:	Prevent background checks prior to the extension of a conditional offer of employment; prevent inquiries into certain types of arrests and convictions; require regulations; and define terms.
COORDINATION:	
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
EVALUATION:	
EXPERIENCE ELSEWHERE:	Commonwealth of Massachusetts
SOURCE OF INFORMATION:	
APPLICATION WITHIN MUNICIPALITIES:	Chapter 27 of the Code is not applicable in certain municipalities.
PENALTIES:	Remedies as described under Chapter 27 of the County Code



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

WILL JAWANDO
COUNCILMEMBER
AT-LARGE

M E M O R A N D U M

TO: Councilmembers

FROM: Will Jawando, Councilmember 

DATE: July 23, 2020

SUBJECT: Introduction of legislation to Amend “Ban the Box”

On July 28, 2020 I will be introducing Bill XX-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments. The majority of Montgomery County’s businesses are small businesses, with 70 percent of all county establishments carrying 15 or fewer employees on payroll. The current law requiring “ban the box” does not apply to businesses with less than 15 employees. This serves to impose greater difficulty upon those residents seeking employment who have an arrest or conviction on their records. While the prohibition would be in effect for the majority of the hiring process, this amendment, as in the case with the original bill, would not prohibit job candidates from being asked about an arrest or their criminal record prior to the final job offer.

The proposed legislation requires the:

- 1) Alteration of the definitions regarding fair criminal record screening standards;
- 2) Prohibition of certain inquiries regarding criminal records;
- 3) Prohibition of consideration of certain arrests and convictions in employment decisions;
and
- 4) Generally amend the law regarding criminal record screenings.

A 2018 report on formerly incarcerated people shows that their unemployment rate was over 27 percent nationally. When you overlay disparate statistics and incarceration rates for black and brown residents, a broader picture shows the status quo continues disparate outcomes for employment. This legislation is especially important now, as these disparities have been magnified during the global pandemic and recession.

If you have any questions or if you would like to co-sponsor the Act, please contact Fatmata Barrie in my office. Thank you in advance for your consideration.