

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: \_\_\_\_\_  
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

<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:*



27 (2) a question about an applicant’s employment history shown on the  
28 application or the applicant’s resume.

29 [Interview means any direct contact by the employer with the applicant,  
30 whether in person or by telephone or internet communication, to  
31 discuss:

32 (1) the employment being sought; or

33 (2) the applicant’s qualifications.

34 Interview does not include:

35 (1) written correspondence or email; or

36 (2) direct contact made for the purpose of scheduling a discussion.]

37 \* \* \*

38 **27-72. Prohibited inquiries; retaliation.**

39 \* \* \*

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

44 (1) require the applicant to disclose whether the applicant has an  
45 arrest record or conviction record, or otherwise has been accused  
46 of a crime;

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

48 (3) inquire of the applicant or others about whether the applicant has  
49 an arrest record or conviction record or otherwise has been  
50 accused of a crime.

51 (c) Prohibition against inquiry into certain criminal records. In connection  
52 with the proposed employment of an applicant, an employer must not at  
53 any time require an applicant to disclose, conduct a criminal record

54 check to determine, or otherwise inquire of the applicant or others,  
 55 whether:

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

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

60 (A) a first conviction of:

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

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

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

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

69 (i) the date of the conviction; and

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

72 (C) a matter for which records:

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

76 (ii) have been expunged under §§ 10-101 – 10-110 of  
 77 the Criminal Procedure Article of the Maryland  
 78 Code.

79           (d)    Consideration of Certain Records Prohibited.   An employer must not  
 80           base a hiring or promotion decision upon any item in an arrest record or  
 81           a conviction record described under subsection (c).

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

- 83           (1)    retaliate against any person for:
  - 84           (A)    lawfully opposing any violation of this Article;
  - 85           (B)    filing a complaint, testifying, assisting, or participating in
  - 86           any manner in an investigation, proceeding, or hearing
  - 87           under this Article; or
- 88           (2)    obstruct or prevent enforcement or compliance with this Article.

89    **Sec. 27-74. Exemptions.**

- 90           (a)    The prohibitions and requirements of this Article do not apply if the
- 91           inquiries prohibited by this Article are expressly authorized by an
- 92           applicable federal, State, or County law or regulation.
- 93           (b)    The prohibitions and requirements of this Article do not apply to the
- 94           County Police Department, the County Fire and Rescue Service, or the
- 95           County Department of Corrections and Rehabilitation.
- 96           (c)    The prohibitions and requirements of this Article do not apply to an
- 97           employer that provides programs, services, or direct care to minors or
- 98           vulnerable adults.
- 99           (d)    The prohibitions and requirements of this Article do not apply to an
- 100          employer hiring for a position that requires a federal government
- 101          security clearance.

102   **27-75. Enforcement and Regulations.**

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

105           **(b)**   The Executive must adopt Method (2) regulations to implement the  
106                   provisions of this Article, including regulations necessary to inform  
107                   prospective employees and employers of their rights and responsibilities  
108                   under Section 27-72.

Approved:

 \_\_\_\_\_ 11/12/2020  
Sidney Katz, President, County Council Date

Approved:

\_\_\_\_\_  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

\_\_\_\_\_  
Selena Mendy Singleton, Clerk of the Council Date