

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

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

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

1 **Sec. 1. Sections 27-71, 27-72, and 27-75 are amended as follows:**

2 **27-71. Findings and purpose; definitions.**

3 * * *

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

5 * * *

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

- 8 (1) the results of the employer's later inquiry into the applicant's
9 criminal record; or
10 (2) another contingency expressly communicated to the applicant at
11 the time of the offer.

12 * * *

13 *Employer* means any person, individual, proprietorship, partnership,
14 joint venture, corporation, limited liability company, trust, association,
15 or other entity operating and doing business in the County that employs
16 [15] 1 or more persons [[full-time]] in the County. Employer includes
17 the County government, but does not include the United States, any
18 State, or any other local government.

19 * * *

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

22 *Inquiry or Inquire* does not include:

- 23 (1) a question about an applicant's conviction record or arrest record
24 when the existence of the record is [voluntarily] disclosed by the
25 applicant voluntarily and not in response to a question by the
26 employer; or

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:

/s/ 11/12/2020

Sidney Katz, President, County Council Date

Approved:

/s/ 11/20/2020

Marc Elrich, County Executive Date

This is a correct copy of Council action.

/s/ 11/20/2020

Selena Mendy Singleton, Clerk of the Council Date