

Expedited Bill No. 36-14  
Concerning: Human Rights and Civil  
Liberties – Fair Criminal Record  
Screening Standards  
Revised: October 9, 2014 Draft No. 6  
Introduced: July 15, 2014  
Enacted: October 28, 2014  
Executive: November 10, 2014  
Effective: January 1, 2015  
Sunset Date: None  
Ch. 36, Laws of Mont. Co. 2014

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

**AN EXPEDITED 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]] the conclusion of a first interview;
- (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]] rescinding a conditional offer;
- (3) provide for enforcement by the Office of Human Rights and the Human Rights Commission; and
- (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>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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:*



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

43 (1) compensation for:

44 \* \* \*

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

47 \* \* \*

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

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

55 difference in expenses or benefits that the complainant realized  
56 while seeking to mitigate the consequences of the violation (such  
57 as income from alternate employment or unemployment  
58 compensation following employment discrimination); and

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

62 (b) Civil penalties.

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

67 \* \* \*

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

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

70 \* \* \*

71 **27-70 Enforcement.**

72 \* \* \*

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

74 **27-71. Findings and Purpose; Definitions.**

75 (a) Findings.

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

- 80           (2) According to the BJS, nearly 700,000 people a year return to their  
81           communities from incarceration, and many are job seekers who  
82           are ready and able to become part of the work force.
- 83           (3) Studies indicate that job applicants are often precluded from even  
84           getting an interview when applications require disclosure of  
85           whether the applicant has a criminal record.
- 86           (4) Lack of employment is a significant cause of recidivism, which  
87           threatens public safety and disrupts the financial and general  
88           stability of affected families and communities.
- 89           (5) Increased government expenditures on law enforcement and  
90           social programs, necessitated by the inability of people with  
91           criminal records to find gainful employment, are an impediment  
92           to the County reaching its potential for economic growth.
- 93           (6) Increasing employment of people with criminal records improves  
94           public safety and reduces the financial burden on government.
- 95           (7) In 2012, the United States Equal Employment Opportunity  
96           Commission (EEOC) issued enforcement guidance regarding  
97           employers' use of criminal background information in making  
98           employment-related decisions, recommending that the use of  
99           such information is job related and consistent with business  
100           necessity.

101       (b) *Purpose.*

102       It is the purpose of this Article to:

- 103       (1) assist in the successful reintegration into the workforce of people  
104       with criminal records by removing improper barriers to  
105       employment; and

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

109           (c) Definitions. As used in this Article:

110           [[Adverse action means to fail or refuse to hire, to discharge or not  
 111           promote a person, or to limit, segregate, or classify employees in any  
 112           way which would deprive a person of employment opportunities or  
 113           otherwise adversely affect the person's employment status.]]

114           Applicant means a person who is considered or who requests to be  
 115           considered for employment in the County by an employer or a current  
 116           employee who requests to be considered for a promotion.

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

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

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

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

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

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

132 Director means the Executive Director of the Office of Human Rights  
133 and includes the Executive Director's designee.

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

136 Employer means any person, individual, proprietorship, partnership,  
137 joint venture, corporation, limited liability company, trust, association,  
138 or other entity operating and doing business in the County that employs  
139 [[10]] 15 or more persons full-time in the County. Employer includes  
140 the County government, but does not include the United States, any  
141 State, or any other local government.

142 Employment means:

- 143 (1) any work for compensation; and  
144 (2) any form of vocational or educational training, with or  
145 without compensation.

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

148 Inquiry or Inquire does not include:

- 149 (1) a question about an applicant's conviction record or arrest  
150 record when the existence of the record is voluntarily  
151 disclosed by the applicant; or  
152 (2) a question about an applicant's employment history shown  
153 on the application or the applicant's resume.

154 Interview means any direct contact by the employer with the applicant,  
155 whether in person or by telephone or internet communication, to  
156 discuss:

- 157 (1) the employment being sought; or  
158 (2) the applicant's qualifications.

159 Interview does not include:

- 160 (1) written correspondence or email; or  
 161 (2) direct contact made for the purpose of scheduling a  
 162 discussion.

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

165 **27-72. Prohibited Inquiries; Retaliation.**

166 (a) Inquiry on application. An employer must not require an applicant or  
 167 potential applicant to disclose on an employment application the  
 168 existence or details of the applicant's or potential applicant's arrest  
 169 record or conviction record.

170 (b) Preliminary inquiry into criminal record. In connection with the  
 171 proposed employment of an applicant, an employer must not, at any  
 172 time before [[a conditional offer of employment is made]] the  
 173 conclusion of a first interview:

174 (1) require the applicant to disclose whether the applicant has an  
 175 arrest record or conviction record, or otherwise has been accused  
 176 of a crime;

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

178 (3) inquire of the applicant or others about whether the applicant has  
 179 an arrest record or conviction record or otherwise has been  
 180 accused of a crime.

181 (c) Retaliation. An employer must not:

182 (1) retaliate against any person for:

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



184 (B) filing a complaint, testifying, assisting, or participating in  
 185 any manner in an investigation, proceeding, or hearing  
 186 under this Article; or

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

188 **27-73.** **[[Employment decisions; adverse actions]] Rescission of a**  
 189 **conditional offer based on criminal record.**

190 (a) [[In making an employment decision based on an applicant's or  
 191 employee's arrest record or conviction record, an employer must  
 192 conduct an individualized assessment, considering only specific  
 193 offenses that may demonstrate unfitness to perform the duties of the  
 194 position sought by the applicant or held by the employee, the time  
 195 elapsed since the specific offenses, and any evidence of inaccuracy in  
 196 the record.

197 (b)]] If an employer intends to [[base an adverse action]] rescind a  
 198 conditional offer based on an item or items in the applicant's [[or  
 199 employee's]] arrest record or conviction record, before [[taking the  
 200 adverse action]] rescinding the conditional offer the employer must:

201 (1) provide the applicant [[or employee]] with a copy of any criminal  
 202 record report; [[and]]

203 (2) notify the applicant [[or employee]] of the [[prospective adverse  
 204 action]] intention to rescind the conditional offer and the items  
 205 that are the basis for the [[prospective adverse action]] intention  
 206 to rescind the conditional offer; and

207 (3) delay rescinding the conditional offer for 7 days to permit the  
 208 applicant to give the employer notice of inaccuracy of an item or  
 209 items on which the intention to rescind the conditional offer is  
 210 based.

211 ~~[(c)]~~~~[(b)]~~ [[If, within 7 days after the employer provides the notice required  
 212 in subsection (b) to the applicant]] ~~[[or employee,]]~~ ~~[[the applicant]]~~ ~~[[or~~  
 213 ~~employee]]~~ [[gives the employer notice of evidence of the inaccuracy of  
 214 any item or items on which the]] ~~[[prospective adverse action]]~~  
 215 [[intention to rescind the conditional offer is based, the employer  
 216 must]][:

217 (1) ~~[[delay]]~~ ~~[[the adverse action]]~~ ~~[[rescinding the conditional offer~~  
 218 ~~for a reasonable period after receiving the information]]~~[: and  
 219 (2) reconsider the prospective adverse action in light of the  
 220 information]][:]

221 ~~[(d)]~~~~[(c)]~~ [[Within 7 days after]] ~~[[taking final adverse action]]~~ ~~[[rescinding~~  
 222 ~~the conditional offer]]~~

223 (b) If an employer decides to rescind a conditional offer based on the arrest  
 224 record or conviction record of an applicant ~~[[or employee]],~~ ~~[[an]]~~ the  
 225 employer must notify the applicant ~~[[or employee]]~~ of the ~~[[final~~  
 226 ~~adverse action]]~~ rescission of the conditional offer in writing.

227 ~~[(d)]~~(c) Except as provided in this Section regarding the rescission of a  
 228 conditional offer, nothing in this Article requires an employer to give  
 229 notice to an applicant of any action of the employer or the basis for any  
 230 action.

231 **27-74. Exemptions.**

232 (a) The prohibitions and requirements of this Article do not apply if the  
 233 inquiries ~~[[or adverse actions]]~~ prohibited by this Article are expressly  
 234 authorized by an applicable federal, State, or County law or regulation.

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

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

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

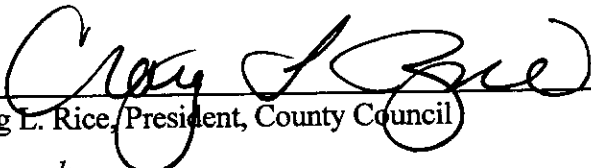
244 **27-75. Enforcement.**

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


247 **Sec. 2. Expedited Effective Date.**

248 The Council declares that this legislation is necessary for the immediate  
249 protection of the public interest. This Act takes effect on January 1, 2015.

250 *Approved:*

251  10/29/14  
Craig L. Rice, President, County Council Date

252 *Approved:*

253  November 10, 2014  
Isiah Leggett, County Executive Date

254 *This is a correct copy of Council action.*

255  11/10/14  
Linda M. Lauer, Clerk of the Council Date