

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2023 Legislative Session

Bill No. CB-090-2023

Chapter No. 69

Proposed and Presented by Council Member Burroughs

Introduced by Council Members Burroughs, Oriadha, Hawkins, Watson, Dernoga, Ivey,
Fisher, Franklin and Blegay

Co-Sponsors _____

Date of Introduction October 17, 2023

BILL

1 AN ACT concerning

2 Fair Criminal Record Screening Standards

3 For the purpose of prohibiting certain employers from conducting a criminal background check or
4 otherwise inquiring into an applicant’s criminal record until the conclusion of a first interview;
5 requiring certain employers to provide prior notice to an applicant when rescinding an offer of
6 employment providing for enforcement by the Executive Director of the Office of Human Rights;
7 and generally regulating the use of criminal records in the hiring process by certain employers.

8 BY repealing and reenacting with amendments:

9 SUBTITLE 2. ADMINISTRATION

10 Sections 2-231.02, 2-231.03, 2-231.04,
11 2-231.05, 2-231.06, 2-231.07 and 2-231.08

12 The Prince George’s County Code
13 (2019 Edition; 2022 Supplement).

14 SECTION 1. BE IT ENACTED by the County Council of Prince George’s County,
15 Maryland, that Sections 2-231.02, 2-231.03, 2-231.04, 2-231.05, 2-231.06, 2-231.07 and 2-231.08
16 of the Prince George’s County Code be and the same is hereby repealed and reenacted with the
17 following amendments:

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SUBTITLE 2. ADMINISTRATION.

DIVISION 12. HUMAN RELATIONS COMMISSION.

SUBDIVISION 10. FAIR CRIMINAL RECORD SCREENING STANDARDS.

Sec. 2-231.02. Legislative findings and declaration of purpose.

The County Council for Prince George's County, Maryland, hereby finds that over 92 million Americans, roughly one in three adults, have a criminal history record involving an arrest or conviction and nearly 700,000 people a year return to their communities from incarceration, and many are job seekers who are ready and able to become part of the work force; that studies indicate that job applicants are often precluded from even getting an interview when applications require disclosure of whether the applicant has a criminal record; that lack of employment is a significant cause of recidivism, which threatens public safety and disrupts the financial and general stability of affected families and communities; that increased government expenditures on law enforcement and social programs, necessitated by the inability of people with criminal records to find gainful employment, are an impediment to the County reaching its potential for economic growth; that increasing employment of people with criminal records improves public safety and reduces the financial burden on government; and that in order to effectively respond, the County Council for Prince George's County, Maryland hereby declares that it is the public policy of Prince George's County to assist in the successful reintegration of individuals with criminal records into the workforce by removing barriers to employment and enhance the health and safety of the community by assisting individuals with criminal records to lawfully provide for themselves and their families.

Sec. 2-231.03. Definitions.

(a) For purposes of this Subdivision, the following words and phrases shall have the following meanings indicated:

- (1) **Applicant** [shall] means a person who is considered or who requests to be considered for employment in the County by an employer.
- (2) **Arrest R[r]ecord** [shall] means information indicating that a person has been apprehended, detained, taken into custody, held for investigation, or otherwise restrained by a law enforcement agency or military authority due to an accusation or suspicion that the person committed a crime.

1 (3) **Cannabis/Marijuana** means the plant *Cannabis sativa L.* and any part of the plant,
 2 including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
 3 isomers, whether growing or not, with a delta-9-tetrahydrocannabinol
 4 concentration greater than 0.3% on a dry weight basis as defined in Md. Code Ann.,
 5 Criminal Law § 5-101.

6 (4) [(3)] **Conviction R[r]ecord** [shall] means information regarding a sentence arising
 7 from a verdict [or], a plea of guilty, a plea of nolo contendere, an Alford plea
 8 including a sentence of incarceration a fine, a penalty, a suspended sentence, [and]
 9 or a sentence of probation.

10 (5) [(4)] **Criminal R[r]ecord** report [shall] means a record of a person’s arrest and
 11 conviction history obtained from any source.

12 (6) **Director** means the Executive Director of the Office of Human Rights.

13 (7) [(6)] **Employment** [shall] means:

14 (A) Any work for compensation; and

15 (B) Any form of vocational or educational training, with or without compensation.

16 [(6)] [**Employee** shall mean a person permitted or instructed to work or be present by an
 17 employer in the County.]

18 (8) [(7)] **Employer** [shall] means any person, individual, proprietorship, partnership,
 19 joint venture, corporation, limited liability company, trust, association, or other
 20 entity operating and doing business in the County that employs twenty-five (25) or
 21 more persons full-time in the County. Employer includes the County government,
 22 but does not include the United States, any State, or any other local government.

23 (9) [(8)] **Inquiry or Inquire** [shall] means any direct or indirect conduct intended to
 24 gather information, using any mode of communication.

25 (10) **Potential Applicant** means a person that intends to submit an application.

26 (11) [(9)] **Vulnerable A[a]dult** [shall] means an adult who lacks the physical or mental
 27 capacity to provide for his or her own daily needs.

28 **Sec. 2-231.04. Prohibited inquiries; retaliation.**

29 (a) Inquiry on application. An E[e]mployer shall not require an A[a]pplicant or P[p]otential
 30 Applicant to disclose on an employment application the existence or details of the
 31 A[a]pplicant’s or Potential Applicant’s A[a]rrest R[r]ecord or C[c]onviction record.

1 (b) If the Employer is the County, then it is prohibited from making any inquiry into whether
 2 the Applicant or Potential Applicant has ever partaken in the consumption or use of
 3 Cannabis or Marijuana.

4 (c) [(b)] Preliminary inquiry into C[c]riminal R[r]ecord. In connection with the proposed
 5 E[e]mployment of an A[a]pplicant, an E[e]mployer shall not, at any time until the
 6 conclusion of a first interview:

- 7 (1) require the A[a]pplicant to disclose whether the A[a]pplicant has an A[a]rrest
 8 R[r]ecord or C[c]onviction R[r]ecord, or otherwise has been accused of a crime;
- 9 (2) conduct a C[c]riminal R[r]ecord check on the A[a]pplicant; or
- 10 (3) inquire of the A[a]pplicant or others about whether the A[a]pplicant has an
 11 A[a]rrest or C[c]onviction record or otherwise has been accused of a crime.

12 (d) [(c)] Retaliation. An E[e]mployer shall not:

- 13 (1) retaliate against any person for:
 14 (A) lawfully opposing any violation of this Subdivision;
 15 (B) filing a complaint, testifying, assisting, or participating in any manner in an
 16 investigation, proceeding, or hearing under this Subdivision; or
- 17 (2) obstruct or prevent enforcement or compliance with this Subdivision.

18 **Sec. 2-231.05. Employment decisions; rescission of an offer of employment based on criminal**
 19 **record.**

20 (a) In making an employment decision based on an A[a]pplicant's A[a]rrest R[r]ecord or
 21 C[c]onviction R[r]ecord, an E[e]mployer shall conduct an individualized assessment,
 22 considering only specific offenses that may demonstrate unfitness to perform the duties
 23 of the position sought by the A[a]pplicant, the time elapsed since the specific offenses,
 24 and any evidence of inaccuracy in the record.

25 (b) If an E[e]mployer intends to rescind an offer of E[e]mployment based on an item or
 26 items in the A[a]pplicant's A[a]rrest or C[c]onviction R[r]ecord, before rescinding the
 27 offer of employment the E[e]mployer shall:

- 28 (1) provide the A[a]pplicant with a copy of any C[c]riminal R[r]ecord report;
- 29 (2) notify the A[a]pplicant, in writing, of the intention to rescind the offer of
 30 employment and the items that are the basis for the intention to rescind the offer of
 31 employment; and

1 (3) delay rescinding the offer of employment for seven (7) days to permit the
 2 A[a]pplicant to give the E[e]mployer notice of inaccuracy of an item or items on
 3 which the intention to rescind the offer of employment is based. The A[a]pplicant
 4 must receive in writing from the E[e]mployer his or her right under this provision.

5 (c) If an E[e]mployer decides to rescind an offer of employment based on the A[a]rrest
 6 R[r]ecord or C[c]onviction R[r]ecord of an A[a]pplicant, the E[e]mployer shall notify
 7 the A[a]pplicant of the rescission of the offer of employment in writing.

8 **Sec. 2-231.06. Exemptions.**

9 (a) The prohibitions and requirements of this Subdivision shall not apply if the inquiries
 10 prohibited by this Subdivision are required or expressly authorized by an applicable
 11 Federal, State, or County law or regulation.

12 (b) The prohibitions and requirements of this Subdivision, with the exception of section 2-
 13 231.04(b) of this Subdivision, shall not apply to any County public safety agencies or to
 14 positions that, in the judgment of the County, have access to confidential or proprietary
 15 business or personal information, money or items of value, or involve emergency
 16 management.

17 (c) The prohibitions of this Subdivision shall not apply to an employer that provides
 18 programs, services, or direct care to minors or V[v]ulnerable A[a]dults.

19 **Sec. 2-231.07. Enforcement.**

20 (a) The [Executive] Director shall administer and enforce this Subdivision.

21 (b) A person aggrieved by an alleged violation of this Subdivision may file a written
 22 complaint with the [Executive] Director pursuant to Subtitle 2, Division 12 of the County
 23 Code.

24 (c) The [Executive] Director shall promulgate rules and regulations, subject to County
 25 Council approval by resolution, which shall govern the implementation and
 26 administration of this Subdivision within sixty (60) days of the effective date of this Act.

27 **Sec. 2-231.08. Reporting.**

28 (a) The Agency shall maintain data on the number of complaints filed pursuant to this
 29 Subdivision, demographic information on the complainants, the number of
 30 investigations it conducts, and the disposition of every complaint and investigation.

31 (b) The [Executive] Director shall provide the County Council and County Executive an

1 annual report on the number of complaints and the disposition of every complaint and
2 investigation on or before December 31 beginning fiscal year 2016 and each year
3 thereafter.

4 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
5 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
6 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
7 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words,
8 phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since
9 the same would have been enacted without the incorporation in this Act of any such invalid or
10 unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

11 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect on forty-five (45)
12 calendar days after it becomes law.

Adopted this 14th day of November, 2023.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga
Chair

ATTEST:

Donna J. Brown
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Angela D. Alsobrooks
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.