




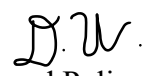
October 11, 2023

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: David Williams 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-090-2023 Fair Criminal Record Screening Standards

CB-090-2023 (*proposed and sponsored by Council Members Burroughs, Oriadha, and Hawkins*)

Assigned to the Government Operations and Fiscal Policy (GOFP) Committee

AN ACT CONCERNING FAIR CRIMINAL RECORD SCREENING STANDARDS for the purpose of prohibiting certain employers from conducting a criminal background check or otherwise inquiring into an applicant's criminal record until the conclusion of a first interview; requiring certain employers to provide prior notice to an applicant when rescinding an offer of employment providing for enforcement by the Executive Director of the Human Relations Commission; and generally regulating the use of criminal records in the hiring process by certain employers.

Fiscal Summary

Direct Impact

Expenditures: No additional expenditures likely.

Revenues: No revenue impact likely.

Indirect Impact

Potentially favorable.

Legislative Summary:

CB-090-2023, proposed and sponsored by Council Members Burroughs, Oriadha, and Hawkins, was presented on September 19, 2023, and referred to the Government Operations and Fiscal Policy Committee. This Bill would modify the County's existing Fair Criminal Record Screening Standards to make minor technical changes throughout the law and expressly prohibit the County, acting as an employer, from inquiring of a potential employee whether that person has consumed or used cannabis.

Background/Current Law:

Current County law

The Fair Criminal Record Screening Standards were enacted under CR-006-2015.¹ Current law generally prohibits a prospective private sector employer, and the County, when acting as an employer, from the following:

- requiring an applicant to disclose their criminal history on the application, including their arrest or conviction record;
- inquiring about an applicant's arrest record, conviction record, or if they have been accused of a crime prior to the first interview;
- inquiring to others about an applicant's criminal history before the first interview; and
- retaliating against any person who opposes alleged violations of the law or someone who files a complaint, testifies, or assists in any investigation pursuant to the law in any way.

When making decisions about employment, the employer may only consider certain offenses that demonstrate unfitness for the position, the time elapsed since the offenses were committed, and any evidence of inaccuracy on the record. If any employer rescinds an offer for any reason

¹ Prince George's County [CR-006-2015](#)

pertaining to any applicant's criminal or arrest record prior to rescission of the offer, the employer must:

- notify the applicant in writing with the intent to rescind the offer and provide the items being used to make that decision;
- provide the applicant with a copy of their criminal history; and
- delay rescinding an offer for seven days to allow the applicant to appeal the decision by alerting the employer to any inaccuracies. The applicant must receive this notice in writing from the employer.

The law exempts employers from its provisions in the following situations:

- applicants to public safety agencies or positions in the judgment of the County that have access to confidential or proprietary business or personal information, money, or items of value or involve emergency management;
- inquiries that are authorized/required by federal, state, or County law; and
- applicants who apply to agencies that provide services to minors and vulnerable adults.

Enforcement of the law is the responsibility of the Director of the Office of Human Rights, and that agency is responsible for adhering to annual reporting requirements composed of demographic data on all complainants, the number of investigations conducted, and the disposition of all investigations.

Decriminalization of cannabis in Maryland:

The Maryland Cannabis Administration was established in 2014 to implement the state's medical marijuana cannabis program.² In 2022, Maryland voters approved Question 4 in a referendum on the recreational use of cannabis, which took effect on July 1, 2023.³ Legislative efforts are currently being taken to provide relief to those who may experience or have already experienced socioeconomic setbacks due to cannabis-related incidents such as loss of employment opportunities due to drug screenings or incarceration.

Resource Personnel:

- Pleshette Monroe, District 8

Discussion/Policy Analysis:

² [Maryland.gov – Maryland Cannabis Administration](https://www.maryland.gov/govexec/maryland-cannabis-administration)

³ Maryland State Board of Elections-[Maryland Question 4](https://www.maryland.gov/elections/maryland-question-4)

Formerly incarcerated people earn less than their non-incarcerated counterparts, making socioeconomic advancement more difficult under those circumstances.⁴ Lack of socioeconomic opportunity leads to increased recidivism if formerly incarcerated persons cannot develop skills/experience in the legitimate employment market. The current law is aimed at allowing those who have been incarcerated the opportunity to access gainful employment and avoid being stigmatized or excluded by their criminal record.

CB-090-2023 would make several grammatical and technical modifications to *Subtitle 2. Administration* §2-231.02 through 2-231.08.⁵ The substantive change that CB-090-2023 would make to the existing law is that it would prohibit the County from “making any inquiry into whether the Applicant or Potential Applicant⁶ has ever partaken in the consumption or use of Cannabis or Marijuana.”⁷ Significantly, this new provision would apply to applicants for jobs with public safety agencies and other sensitive County positions, as it is specifically excluded from the general exemption of the application of the existing law.

Prohibiting inquiries into prior cannabis use would align the County employment practices with the new legal status of cannabis. Including this prohibition in public safety agency hiring practices would remove what has been an obstacle to filling vacant law enforcement provisions. This may increase the speed with which law enforcement vacancies are filled.

Fiscal Impact:

- *Direct Impact*

Enactment of CB-090-2023 should not cause any direct fiscal impact on the County. This Bill is a modification of existing legislation and should not require additional resources or personnel.

- *Indirect Impact*

Enactment of CB-090-2023 may have a favorable indirect impact by increasing the reducing the number of instances in which users of a legal substance are denied the opportunity of employment with the County. Additionally, improvement in the filling of law enforcement vacancies is likely to have a favorable indirect impact.

⁴ Prison Policy Initiative-[Employment Data](#)

⁵ Prince George’s County-[Fair Criminal Record Screening Standards](#)

⁶ A definition of “Potential Applicant” is added by CB-090-2023 and means “a person that intends to submit an application.”

⁷ “Cannabis/Marijuana” is defined in the Bill as “the plant *Cannabis sativa* L. and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of greater than 0.3% as defined in Md. Code Ann., Criminal Law § 5-101.”

- *Appropriated in the Current Fiscal Year*

No.

Effective Date of the Proposed Legislation:

The Act shall take effect forty-five (45) days after it becomes law.

If you require additional information or have questions about this fiscal impact statement, please reach out to me via phone or email.