



**Committee:** Joint  
**Committee Review:** At a future date  
**Staff:** Christine Wellons, Legislative Attorney  
**Purpose:** To receive testimony – no vote expected  
**Keywords:** #BanTheBox

AGENDA ITEM #9  
September 15, 2020  
**Public Hearing**

## SUBJECT

Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments

Lead Sponsor: Councilmember Jawando

## EXPECTED ATTENDEES

Members of public

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Public Hearing

## DESCRIPTION/ISSUE

Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments, would:

- alter definitions regarding fair criminal record screening standards;
- prohibit certain inquiries regarding criminal records;
- prohibit consideration of certain arrests and convictions in employment decisions; and
- generally amend the law regarding criminal record screenings.

## SUMMARY OF KEY DISCUSSION POINTS

- N/A

### This report contains:

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**MEMORANDUM**

September 10, 2020

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments

PURPOSE: Public Hearing – no Council votes required

Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments, sponsored by Lead Sponsor Councilmember Jawando, was introduced on July 29, 2020.<sup>1</sup> A joint Public Safety/Health & Human Services Committee worksession is tentatively scheduled for September 23 at 1:30 p.m.

Bill 35-20 would:

- alter definitions regarding fair criminal record screening standards;
- prohibit certain inquiries regarding criminal records;
- prohibit consideration of certain arrests and convictions in employment decisions; and
- generally amend the law regarding criminal record screenings.

**BACKGROUND**

In 2014, the Council enacted “Ban the Box” legislation, Bill 36-14, which prohibited employers of 15 or more FTEs in the County from conducting a criminal background check of a job applicant, or otherwise inquiring about the criminal or arrest history of an applicant, prior to the completion of a first interview.

Bill 35-20 would expand the scope of the original legislation by prohibiting background checks until after a conditional job offer has been extended. The bill also would prevent inquiries about certain crimes altogether. In addition, it would redefine “employer” to include any employer with one or more FTEs in the County.

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<sup>1</sup># BanTheBox

**SPECIFICS OF THE BILL**

Bill 35-20 would accomplish three purposes. First, for purposes of criminal background checks of prospective employees, the bill would redefine employer as follows:

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

Second, the bill would prohibit any inquiries by employers into whether:

- (1) the applicant has been arrested for, or has an arrest record for, a matter that did not result in a conviction; or
- (2) the applicant has an arrest record or a conviction record for, or otherwise has been accused of:
  - (A) a first conviction of:
    - (i) trespass under §§ 6-402 or 6-403 of the Criminal Law Article of the Maryland Code;
    - (ii) disturbance of the peace under § 10-201 of the Criminal Law Article of the Maryland Code; or
    - (iii) assault in the second degree under § 3-203 of the Criminal Law Article of the Maryland Code;
  - (B) a conviction of a misdemeanor if at least 3 years have passed since:
    - (i) the date of the conviction; and
    - (ii) the date that any period of incarceration for the misdemeanor ended; or
  - (C) a matter for which records:
    - (i) are confidential under § 3-8A-27 of the Courts and Judicial Proceedings Article of the Maryland Code; or
    - (ii) have been expunged under §§ 10-101 – 10-110 of the Criminal Procedure Article of the Maryland Code.

Third, the bill would require the Executive to adopt regulations, “including regulations necessary to inform prospective employees and employers of their rights and responsibilities under Section 27-72.”

<u>This packet contains:</u>	<u>Circle #</u>
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Bill No. 35-20  
Concerning: Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments  
Revised: 10/31/2019 Draft No. 2  
Introduced: July 29, 2020  
Expires: January 29, 2022  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Jawando

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**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:*

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

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

*Inquiry* or *Inquire* does not include:

- (1) a question about an applicant’s conviction record or arrest record when the existence of the record is [voluntarily] disclosed by the applicant voluntarily and not in response to a question by the employer; or
- (2) a question about an applicant’s employment history shown on the application or the applicant’s resume.

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

- (1) the employment being sought; or
- (2) the applicant’s qualifications.

27 *Interview* does not include:

- 28 (1) written correspondence or email; or
- 29 (2) direct contact made for the purpose of scheduling a discussion.]

30 \* \* \*

31 **27-72. Prohibited inquiries; retaliation.**

32 \* \* \*

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

- 37 (1) require the applicant to disclose whether the applicant has an
- 38 arrest record or conviction record, or otherwise has been accused
- 39 of a crime;
- 40 (2) conduct a criminal record check on the applicant; or
- 41 (3) inquire of the applicant or others about whether the applicant has
- 42 an arrest record or conviction record or otherwise has been
- 43 accused of a crime.

44 (c) *Prohibition against inquiry into certain criminal records.* In connection  
45 with the proposed employment of an applicant, an employer must not at  
46 any time require an applicant to disclose, conduct a criminal record  
47 check to determine, or otherwise inquire of the applicant or others,  
48 whether:

- 49 (1) the applicant has been arrested for, or has an arrest record for, a
- 50 matter that did not result in a conviction; or
- 51 (2) the applicant has an arrest record or a conviction record for, or
- 52 otherwise has been accused of:

- 53                   (A) a first conviction of:
- 54                   (i) trespass under §§ 6-402 or 6-403 of the Criminal
- 55                   Law Article of the Maryland Code;
- 56                   (ii) disturbance of the peace under § 10-201 of the
- 57                   Criminal Law Article of the Maryland Code; or
- 58                   (iii) assault in the second degree under § 3-203 of the
- 59                   Criminal Law Article of the Maryland Code;
- 60                   (B) a conviction of a misdemeanor if at least 3 years have
- 61                   passed since:
- 62                   (i) the date of the conviction; and
- 63                   (ii) the date that any period of incarceration for the
- 64                   misdemeanor ended; or
- 65                   (C) a matter for which records:
- 66                   (i) are confidential under § 3-8A-27 of the Courts and
- 67                   Judicial Proceedings Article of the Maryland Code;
- 68                   or
- 69                   (ii) have been expunged under §§ 10-101 – 10-110 of
- 70                   the Criminal Procedure Article of the Maryland
- 71                   Code.
- 72                   (d) Consideration of Certain Records Prohibited. An employer must not
- 73                   base a hiring or promotion decision upon any item in an arrest record or
- 74                   a conviction record described under subsection (c).
- 75                   [(c)] (e) Retaliation. An employer must not:
- 76                   (1) retaliate against any person for:
- 77                   (A) lawfully opposing any violation of this Article;

78 (B) filing a complaint, testifying, assisting, or participating in  
79 any manner in an investigation, proceeding, or hearing  
80 under this Article; or

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

82 \* \* \*

83 **27-75. Enforcement and Regulations.**

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

86 (b) The Executive must adopt Method (2) regulations to implement the  
87 provisions of this Article, including regulations necessary to inform  
88 prospective employees and employers of their rights and responsibilities  
89 under Section 27-72.



## LEGISLATIVE REQUEST REPORT

Bill 35-20

*Human Rights and Civil Liberties – Fair Criminal Record Screening Standards – Amendments*

<b>DESCRIPTION:</b>	<ul style="list-style-type: none"><li>• Bill 35-20 would:</li><li>• alter definitions regarding fair criminal record screening standards;</li><li>• prohibit certain inquiries regarding criminal records;</li><li>• prohibit consideration of certain arrests and convictions in employment decisions; and</li><li>• generally amend the law regarding criminal record screenings.</li></ul>
<b>PROBLEM:</b>	Inequitable criminal records screening practices
<b>GOALS AND OBJECTIVES:</b>	Prevent background checks prior to the extension of a conditional offer of employment; prevent inquiries into certain types of arrests and convictions; require regulations; and define terms.
<b>COORDINATION:</b>	
<b>FISCAL IMPACT:</b>	Office of Management and Budget
<b>ECONOMIC IMPACT:</b>	Office of Legislative Oversight
<b>EVALUATION:</b>	
<b>EXPERIENCE ELSEWHERE:</b>	Commonwealth of Massachusetts
<b>SOURCE OF INFORMATION:</b>	
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Chapter 27 of the Code is not applicable in certain municipalities.
<b>PENALTIES:</b>	Remedies as described under Chapter 27 of the County Code




**MONTGOMERY COUNTY COUNCIL**  
**ROCKVILLE, MARYLAND**

**WILL JAWANDO**  
**COUNCILMEMBER**  
**AT-LARGE**

**M E M O R A N D U M**

**TO:** Councilmembers

**FROM:** Will Jawando, Councilmember 

**DATE:** July 23, 2020

**SUBJECT:** Introduction of legislation to Amend “Ban the Box”

On July 28, 2020 I will be introducing Bill XX-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards - Amendments. The majority of Montgomery County’s businesses are small businesses, with 70 percent of all county establishments carrying 15 or fewer employees on payroll. The current law requiring “ban the box” does not apply to businesses with less than 15 employees. This serves to impose greater difficulty upon those residents seeking employment who have an arrest or conviction on their records. While the prohibition would be in effect for the majority of the hiring process, this amendment, as in the case with the original bill, would not prohibit job candidates from being asked about an arrest or their criminal record prior to the final job offer.

The proposed legislation requires the:

- 1) Alteration of the definitions regarding fair criminal record screening standards;
- 2) Prohibition of certain inquiries regarding criminal records;
- 3) Prohibition of consideration of certain arrests and convictions in employment decisions;  
and
- 4) Generally amend the law regarding criminal record screenings.

A 2018 report on formerly incarcerated people shows that their unemployment rate was over 27 percent nationally. When you overlay disparate statistics and incarceration rates for black and brown residents, a broader picture shows the status quo continues disparate outcomes for employment. This legislation is especially important now, as these disparities have been magnified during the global pandemic and recession.

If you have any questions or if you would like to co-sponsor the Act, please contact Fatmata Barrie in my office. Thank you in advance for your consideration.

# Economic Impact Statement

Office of Legislative Oversight

## Bill 35-20

## Human Rights and Civil Liberties – Fair Criminal Record Screening Standards – Amendments

### SUMMARY

The Office of Legislative Oversight (OLO) believes that enacting Bill 35-20 would have the potential to economically benefit Montgomery County residents who have criminal records but will likely have little economic impact on the County as a whole.

### BACKGROUND

Since 2015, the “Ban the Box” ordinance, or the Fair Criminal Records Screening Standards Law, has sought to “assist in the successful reintegration into the workforce [of] people with criminal records by removing improper barriers to employment.”<sup>1</sup> If enacted, Bill 35-20 would expand the scope of the ordinance in an attempt to address inequitable criminal records screening practices among employers in the County.<sup>2</sup> The Bill would expand the ordinance’s scope by making three changes. First, it would apply the ordinance to employers with one or more full-time employees (FTEs) in the County, not just employers of 15 or more FTEs, as the current ordinance does.<sup>3</sup> Second, it would prohibit employers from conducting background checks on applicants until after a conditional job offer has been extended.<sup>4</sup> And, third, it would prohibit inquiries into a set of specified crimes.<sup>5</sup> Enforcement of the ordinance would continue to be based on complaints filed by persons alleging violations.<sup>6</sup>

### METHODOLOGIES, ASSUMPTIONS and UNCERTAINTIES

Ultimately, the economic benefits of Bill 35-20 to residents with criminal records would depend on an *uncertain* outcome—the expanded “Ban the Box” ordinance resulting in employers hiring residents with criminal records who would not have otherwise been hired. OLO is unable to predict if this outcome would occur due to questions surrounding business compliance with “Ban the Box” ordinances and employers using race as a proxy for the likelihood of candidates having a criminal record.<sup>7</sup> In the below analysis, OLO staff used no

<sup>1</sup> Office of Human Rights, “Ban the Box,” Montgomery County, Maryland, [https://www.montgomerycountymd.gov/humanrights/Ban\\_the\\_Box.html](https://www.montgomerycountymd.gov/humanrights/Ban_the_Box.html).

<sup>2</sup> Montgomery County Council, Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards – Amendments, Introduced on July 29, 2020, Montgomery County, Maryland, 6.

<sup>3</sup> *Ibid*, 2.

<sup>4</sup> *Ibid*, 3.

<sup>5</sup> *Ibid*, 3-4.

<sup>6</sup> *Ibid*, 5.

<sup>7</sup> Eillie Anzilotti, “How ‘Ban the Box’ Has Helped (and Hurt) the Job Prospects of People with Criminal Records,” *Fast Company*, November 15, 2018, <https://www.fastcompany.com/90267016/how-the-ban-the-box-movement-has-helped-and-hurt-the-job-prospects-of-people-with-criminal-records>; Margaret Barthel, “Employers Are Still Avoiding Former Inmates,” *The Atlantic*, November 5, 2019, <https://www.theatlantic.com/politics/archive/2019/11/are-states-complying-ban-box-laws/601240/>; and Alana

# Economic Impact Statement

## Office of Legislative Oversight

methodologies. The assumptions underlying the analysis are based on OLO staff judgment.

### VARIABLES

Variables that could affect the economic impacts of enacting Bill 35-20 are the following:

- Hiring rates of resident applicants with arrest or conviction records
- Household income for households with breadwinner(s) with records
- Cost of background checks

### IMPACTS

#### Businesses, Non-Profits, Other Private Organizations

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

OLO believes that enacting Bill 35-20 would have a minimal economic impact on private organizations in the County. The reduction in criminal record searches may reduce operating costs for some businesses. Also, businesses may improve their workforce by hiring qualified individuals who otherwise would have been weeded out of the hiring process. Beyond operating costs and workforce, OLO sees no direct connection between enacting Bill 35-20 and the Council's other priority indicators, namely property values, capital investment, taxation policy, economic development, and competitiveness.<sup>8</sup>

#### Residents

Workforce, property values, income, taxation policy, economic development, etc.

Enacting Bill 35-20 would not create new jobs. It would, instead, alter who is eligible and perhaps likely to receive jobs. OLO believes that enacting Bill 35-20 has the *potential* to economically benefit residents with criminal records. If residents gain employment who otherwise would not have, then these residents and their households would experience an increase in income. If this outcome is sufficiently large, then neighborhoods in the County with relatively higher concentrations of residents with criminal records could experience economic development gains. Beyond income and economic development, OLO believes enacting Bill 35-20 would have an insignificant impact on County residents in terms of the Council's other priority indicators.

### WORKS CITED

Anzilotti, Eillie. "How 'Ban the Box' Has Helped (and Hurt) the Job Prospects of People with Criminal Records." *Fast Company*. November 15, 2018, <https://www.fastcompany.com/90267016/how-the-ban-the-box-movement-has-helped-and-hurt-the-job-prospects-of-people-with-criminal-records>.

Barthel, Margaret. "Employers Are Still Avoiding Former Inmates." *The Atlantic*. November 5, 2019, <https://www.theatlantic.com/politics/archive/2019/11/are-states-complying-ban-box-laws/601240/>.

Samuels, "When Banning One Kind of Discrimination Results in Another," *The Atlantic*, August 4, 2016, <https://www.theatlantic.com/business/archive/2016/08/consequences-of-ban-the-box/494435/>.

<sup>8</sup> For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

# Economic Impact Statement

Office of Legislative Oversight

Montgomery County Council. Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 35-20, Human Rights and Civil Liberties – Fair Criminal Record Screening Standards – Amendments. Introduced on July 29, 2020. Montgomery County, Maryland.

Samuels, Alana. “When Banning One Kind of Discrimination Results in Another.” *The Atlantic*. August 4, 2016, <https://www.theatlantic.com/business/archive/2016/08/consequences-of-ban-the-box/494435/>.

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## CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent the OLO’s endorsement of, or objection to, the bill under consideration.

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## CONTRIBUTIONS

Stephen Roblin (OLO) drafted this economic impact statement.