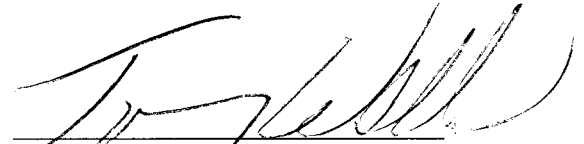


Chairman Phil Mendelson



Councilmember Tommy Wells



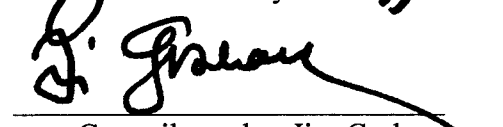
Councilmember Marion Barry



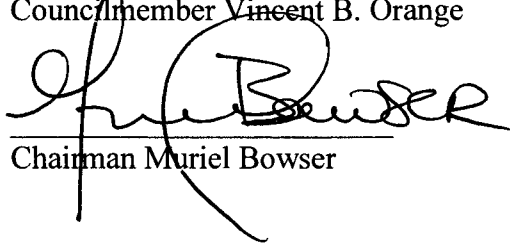
Councilmember Kenyan McDuffie



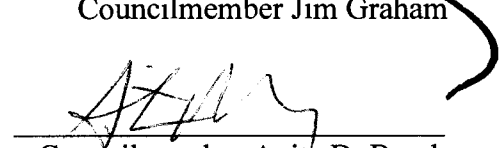
Councilmember Vincent B. Orange



Councilmember Jim Graham



Chairman Muriel Bowser



Councilmember Anita D. Bonds

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Tommy Wells introduced the following bill, which was referred to the Committee on _____.

To amend the Re-entry Facilitation Amendment Act of 2012 to assist the successful reintegration of formerly incarcerated people into the community by removing barriers to gainful employment; to prohibit the consideration of a job applicant's arrest record during the hiring process; to restrict an employer's inquiry into a job applicant's prior convictions before a conditional offer of employment; to establish fines for violations of this act; and to give authority for enforcement to the Office of Human Rights.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fair Criminal Record Screening Act of 2014".

Sec. 2. The Re-entry Facilitation Amendment Act of 2012, effective June 15, 2013 (D.C. Law 19-319; codified in scattered cites in the D.C. Official Code), is amended by adding a new section 2a to read as follows:

44 “Sec. 2a. Fair Criminal Record Screening.

45 “(a) Definitions.

46

47 “For the purposes of this section, the term:

48

49 “(1) “Adverse action” means a decision by an employer to reject an otherwise
50 qualified job applicant, or to discharge, suspend, discipline, demote, or deny a promotion to an
51 employee.

52 “(2) “Applicant” means any person considered or who requests to be considered
53 for employment by an employer.

54 “(3) “Arrest” means being apprehended, detained, taken into custody, held for
55 investigation, or restrained by a law enforcement agency due to an accusation or suspicion that
56 the person committed a crime.

57 “(4) “Conviction” means any sentence arising from a verdict or plea of guilty
58 or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of
59 probation or a sentence of unconditional discharge.

60 “(5) “Employer” means any person, company, corporation, firm, labor
61 organization, or association that employs more than 10 employees in the District of Columbia.

62 “(6) “Employment” means any occupation, vocation, job, or work for pay,
63 including temporary or seasonal work, contracted work, contingent work
64 and work through the services of a temporary or other employment agency; or any form
65 of vocational or educational training with or without pay, where the physical location of the
66 prospective employment is in whole or substantial part, within the District of Columbia.

67 “(7) “Inquiry” means any direct or indirect conduct intended to gather

68 information from or about the applicant, candidate or employee, using any mode of
69 communication, including application forms, interviews, and criminal history checks.

70 “(8) “Offer of employment” means an expression of readiness to employ an
71 applicant.

72 “(b) Prohibition of unfair discrimination against persons arrested for one or more criminal
73 offenses.

74 “In connection with employment of any person, it shall be an unlawful discriminatory
75 practice for a private employer to at any time:

76 “(1) Make any inquiry about any person on the basis of any arrest or criminal
77 accusation made against such person, which is not then pending against that person and which
78 did not result in a conviction;

79 “(2) Require any person to disclose or reveal any arrest or criminal accusation
80 made against such person, which is not then pending against that person and which did not result
81 in a conviction; or

82 “(3) Take any adverse action against any person on the basis of any arrest or
83 criminal accusation made against such person, which is not then pending against that person and
84 which did not result in a conviction.

85 “(c) Prohibition of unfair discrimination against persons previously convicted of one or
86 more criminal offenses.

87 “In connection with the employment of any person, it shall be an unlawful discriminatory
88 practice for a private employer to:

89 “(1) Make any inquiry about a person regarding any criminal conviction prior to
90 making a conditional offer of employment;

91 “(2) Require any person to reveal or disclose any criminal conviction prior to
92 making a conditional offer of employment; or

93 “(3) Take any adverse action against the applicant on the basis of any criminal
94 conviction prior to making a conditional offer of employment.

95 “(d) Determination of a Legitimate Business Reason.

96 “(1) Following the extension of a conditional offer of employment, an employer
97 may only withdraw the conditional offer for a legitimate business reason.

98 “(2) The employer’s determination of a legitimate business reason must be
99 reasonable in light of the following factors:

100 “(A) The specific duties and responsibilities necessarily related to the
101 employment sought or held by the person;

102 “(B) The bearing, if any, the criminal offense or offenses for which the
103 person was previously convicted will have on his or her fitness or ability to perform one or more
104 such duties or responsibilities;

105 “(C) The time which has elapsed since the occurrence of the criminal
106 offense or offenses;

107 “(D) The age of the person at the time of the occurrence of the criminal
108 offense;

109 “(E) The frequency and seriousness of the criminal offense;

110 “(F) Any information produced by the person, or produced on his behalf,
111 in regard to his rehabilitation and good conduct since the occurrence of the criminal offense; and

112 “(G) The public policy that it is beneficial generally for ex-offenders to
113 obtain employment.

114 “(3) For the purposes of this section, an arrest can never serve as the basis for an
115 adverse action or withdrawing an offer of employment, and arrest records are to be given no
116 weight in the determination of whether a legitimate business reason exists to withdraw the offer.

117 “(e) Statement of Denial.

118 “If an applicant’s conditional offer is terminated, the applicant may request that the
119 employer provide the applicant within 30 days:

120 “(1) A copy of any and all records procured by the employer in consideration of
121 the applicant, including criminal records; and

122 “(2) A written Statement of Denial, which:

123 “(A) Articulates a legitimate business reason;

124 “(B) Specifically demonstrates consideration of each of the factors set
125 forth in subsection (b) of this section ;

126 “(C) Advises the applicant of his or her opportunity to file an
127 administrative complaint with the Office of Human Rights.

128 “(f) Exemptions.

129 “(1) The prohibitions of this section shall not apply:

130 “(A) Where any federal or District of Columbia law or regulation requires
131 the consideration of applicant’s criminal history for the purposes of employment;

132 “(B) To any positions designated by the employer to participate in a
133 federal or District of Columbia government program or obligation that is designed to encourage
134 the employment of those with criminal histories;

135 “(C) If the candidate voluntarily discloses any information regarding his or
136 her criminal history by unsolicited voluntary written or oral disclosure.

137 “(2) Nothing in this section shall be construed to affect any right an employer may
138 have with respect to an intentional misrepresentation in connection with an application for
139 employment made by a prospective employee or previously made by a current employee.

140 “(g) Retaliation.

141 “(1) It shall be unlawful for an employer to:

142 “(A) Interfere with, restrain, or deny the exercise of, or the attempt to
143 exercise, any right conferred under this section.

144 “(B) Retaliate against a job applicant or employee because the applicant or
145 employee has exercised in good faith the right to file a complaint with the Office of Human
146 Rights about any employer’s alleged violations of this statute, the right to cooperate in the Office
147 of Human Rights’ investigation, or the right to oppose any policy, practice, or act that is
148 unlawful under this section.

149 “(2) The protections afforded under this section shall apply to any person who
150 mistakenly but in good faith alleges violations of this chapter.

151 “(h) Enforcement; Remedies.

152 “(1)(A) A person claiming to be aggrieved by an unlawful discriminatory practice
153 prohibited by this section may elect to file an administrative complaint with the Office of Human
154 Rights, pursuant to the powers and procedures set forth in sections 301-312, 314-315, and 317 of
155 the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official
156 Code §§ 2-1403.01 - 2-1403.12, 2-1403.14 - 2-1403.15, and 2-1403.17).

157 “(B) The administrative remedies outlined in subsection (a) of this section
158 are exclusive. A person claiming to be aggrieved by an unlawful discriminatory practice shall
159 have no private cause of action in any court based on a violation of this section.

160 “(2) If the Commission of Human Rights finds that a violation of subsections (b)
161 or (c) has occurred, the Commission may impose the following penalties:

162 “(A) For violations that occur before January 1, 2015, the penalties are as
163 follows:

164
165 “(i) For the first violation, the Commission shall issue a written
166 warning to the employer that includes a notice regarding the penalties for subsequent violations;

167 “(ii) If a first violation is not remedied within 30 days of the
168 issuance of a warning, the Commission may impose up to a \$500 fine; and

169 “(iii) Subsequent violations before January 1, 2015, are subject to a
170 fine of up to \$500 per violation.

171 “(B) For violations that occur on or after January 1, 2015, the penalties are as
172 follows:

173 “(i) For employers that employ 11 to 30 employees, the
174 Commission may impose up to a \$1,000 fine;

175 “(ii) For employers that employ 31 to 99 employees, the
176 Commission may impose up to a \$2,500 fine;

177 “(iii) For employers that employ more than 100 employees, the
178 Commission may impose up to a \$5,000 fine.

179 “(3) If the Commission of Human Rights finds that a violation of subsection (g) of
180 this section has occurred:

181 “(A) The Commission may impose penalties as provided in paragraph (2)
182 of this subsection, and

183 “(B) The Commission may award the aggrieved person:

184 “(i) Back pay for lost wages caused by the violation of subsection
185 (g);
186 “(ii) Reinstatement;
187 “(iii) Compensatory damages; and
188 “(IV) Reasonable attorney’s fees.

189 “(i) Data Collection.

190 “The Office of Human Rights shall maintain data on the number of complaints filed
191 pursuant to this section, demographic information on the complainants, the number of
192 investigations it conducts, and the disposition of every complaint and investigation. This data
193 shall be submitted to the Council of the District of Columbia annually beginning 1 year from the
194 effective date of the Fair Criminal Record Screening Act of 2014, as introduced on January 7,
195 2014 (Bill 20-X).”.

196 Sec. 3. Public outreach.

197 (a) Section 4(c) of the Office on Ex-Offender Affairs and Commission on Re-Entry and
198 Ex-Offender Affairs Establishment Act of 2006, effective March 8, 2007 (D.C. Law 16-243;
199 D.C. Official Code § 24-1303), is amended as follows:

200 (1) Paragraph (6) is amended by striking the word “and” at the end.

201 (2) Paragraph (7) is amended by striking the phrase “responsibilities.” and
202 inserting the phrase “responsibilities; and” in its place.

203 (3) A new paragraph (8) is added to read as follows:

204 “(8) Develop and produce materials to inform returning citizens of their rights
205 under the Fair Criminal Record Screening Act of 2014, as introduced on January 7, 2014 (Bill
206 20-X).

207 Sec. 4. Fiscal impact statement.

208 The Council adopts the fiscal impact statement in the committee report as the fiscal
209 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
210 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

211 Sec. 5. Effective date.

212 This act shall take effect following approval by the Mayor (or in the event of veto by the
213 Mayor, action by Council to override the veto), a 30-day period of Congressional review as
214 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
215 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(1)), and publication in the District of
216 Columbia Register.