

Fair Criminal Record Screening Policy

Objective:

Allowing for certain exemptions, all applicants will be considered for employment opportunities with Montgomery County based on the merits and quality of their education, training, experience and expertise as related to the position for which they are applying. It is the goal of the County to hire a broadly diverse pool of qualified and capable persons to work for the County and its residents, to the extent possible and permitted by law. In particular, this policy has been implemented to avoid the automatic exclusion of any and all persons who are qualified for a position, but have a criminal conviction in their background or history, without an appropriate review and thoughtful consideration.

Scope of Policy:

The County recognizes the applicability of Pennsylvania's Criminal History Record Information Act, 18 Pa.C.S. §9101, *et seq.*, ("the Act") and diligently strives to adhere to all relevant sections of this statute. To this end, the initial employment application and/or job posting form shall not require any applicants to disclose their prior criminal convictions at the outset. Rather, these documents shall contain a prominent notice informing applicants that a criminal background inquiry may be conducted for all applicants to certain jobs/positions within the County workforce, and that a criminal conviction will not automatically exclude them from consideration for a position. Such background inquiries may include, but are not limited to, Pennsylvania Child Abuse Clearances, State Police Criminal History reports, Criminal Court Docket reviews, and FBI clearances. In the normal processing scheme these criminal history reviews and evaluations, with few exceptions, will occur after a conditional offer of employment has been extended to the applicant, pursuant to this policy and past practice.

Exemptions to this policy shall apply to the Department of Corrections and the Court related departments, specifically Adult Probation, Juvenile Probation and Domestic Relations; as well as the (10) independently elected and operated Row Offices, which are

the Clerk of Courts, Controller, Coroner, District Attorney, Jury Commissioners, Prothonotary, Recorder of Deeds, Register of Wills, Sheriff, and Treasurer.

Procedural Requirements:

As stated above, the initial employment application and/or job posting form shall not require any applicants to disclose their prior criminal convictions at the outset. On these forms, as well as on the County's website, applicants will also be advised that a criminal conviction in their past will not automatically disqualify them from employment.

The County shall comply with all State and Federal laws regarding background checks and clearances for positions. Consequently, pursuant to Section 9125(b) of the Act, only an applicant's misdemeanor or felony conviction(s) will be considered in the hiring evaluation process, and then only to the extent the convictions are deemed relevant or related to his or her suitability for employment in the specific position sought. No employment decision will be based on mere arrests or on summary offenses, or any misdemeanor or felony charges not resulting in a conviction. It is specifically prohibited to base any employment decision on an applicant's misdemeanor or felony convictions, which do not relate to his or her suitability for employment in the position for which he or she has applied.

Review Standards and Protocol:

If it is established that a qualified applicant has a criminal history for a misdemeanor or felony conviction, the following factors shall be considered in determining if the person will ultimately be hired, if applicable: (a) the relationship to the job being applied for and the nature of the offense; (b) the number of convictions reported; (c) the grading of the offenses; (d) the length of time since the conviction(s) occurred; (e) the sentence ordered by the Court; (f) an applicant's employment history before and after the offense(s); and (g) the employment references provided by the applicant. This is not an exclusive or exhaustive list; other similar and appropriate factors may be taken into consideration in reaching a final hiring decision. Hiring Managers and other department staff involved in the review process of criminal history

information are strongly encouraged to seek assistance and input from the Human Resources Department and/or the Solicitor's Office to resolve any issues or concerns.

Notice in Writing:

If after due consideration of all available facts and information an applicant is not hired, based in whole or in part on any criminal history information, the applicant must be informed of such a decision in writing as follows:

- 1. Where criminal history information is obtained directly by the County, not using a third party Consumer Reporting Agency (CRA)** - As required by Section 9125(c) of the Act, the County shall supply to the applicant a copy of the criminal history document utilized in reaching a decision not to hire. Failure to notify an applicant in writing where the County decides not to hire the person, based in whole or in part on any criminal history information, is strictly prohibited. This mandatory written communication must be prepared in conjunction with and as approved by the Human Resources Department. The applicant shall have ten (10) business days after receipt of the letter and a copy of the criminal history document from the County, to respond to the County with any evidence of mitigation, error or rehabilitation. The County shall review all information and documentation received from the applicant. Further, it must report the result of this review process to the applicant within ten (10) business dates of receiving the submitted information.
- 2. Where criminal history information is obtained by a CRA** – On occasion, the County uses a CRA to obtain a consumer report containing criminal history information. Where that occurs, the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*, requires the following notices:
 - (a) Prior to obtaining the report from the CRA, the County shall provide to the applicant “clear and conspicuous” disclosures in writing, in a document that consists solely of the disclosures, that a consumer report may be obtained;
 - (b) Prior to taking an adverse action against an applicant based on information in the report, the County shall provide written notice to the applicant that the County is considering making an employment decision based in whole or

in part on information contained in the consumer report. That pre-adverse action written notice must include a copy of the applicant's consumer report. The applicant shall have ten (10) business days after receipt of the letter and a copy of the consumer report to respond to the County with any evidence of mitigation, error or rehabilitation; and

(c) After making a final decision not to hire the applicant based in whole or in part on criminal history information in the report, the Act requires the County to notify the applicant in writing that they are not being hired based in whole or in part on the applicant's criminal history information.

Failure to notify an applicant in writing both before the County takes an adverse action and then again after the County makes a final determination not to hire the applicant, based in whole or in part on any criminal history information, is strictly prohibited. These mandatory written communications must be prepared in conjunction with and as approved by the Human Resources Department.

Knowingly or unintentionally violating this policy is a serious violation of County policy and state law, which potentially may lead to civil litigation and possible penalties to the County and/or individual employees. As such, all failures to abide by the requirements of this policy will be investigated and will subject employees to disciplinary action up to and including termination of employment.

Nothing in this policy shall be deemed or construed to limit, impair or restrict the County's ability to select or not select any person for employment; and the County, through its employees and staff, retains sole and exclusive discretion and authority to hire personnel as it deems reasonable, appropriate and in its best interest, consistent with the County's obligations under state and federal laws.