

Form revised: December 12, 2012

### **FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Legislative	Councilmember Bruce Harrell Patricia Lee 386-0078	

**Legislation Title:**

AN ORDINANCE seeking to increase public safety and job assistance through reducing criminal recidivism and enhancing positive reentries to society by prohibiting certain adverse employment actions against individuals who have been arrested, convicted, or charged with a crime; and adding Chapter 14.17 to the Seattle Municipal Code.

**Summary of the Legislation:** This legislation serves as a substitute for CB 117583 which was introduced and referred to the Council's Public Safety, Civil Rights and Technology Committee on September 17, 2012.

This legislation recognizes and seeks to balance three equally important interests:

- The need and desire of individuals with a criminal history or conviction record to obtain employment,
- The public's interest in reducing recidivism and increasing public safety, and
- An employer or business owner's responsibility and interest in protecting their business operations, reputation, employees and customers as well as the public at large.

As outlined below this legislation bans employment practices that automatically exclude applicants with a criminal history or conviction record from consideration for employment, prescribes when and what criminal history can be considered in making employment decisions and the exclusive monetary penalty if the ordinance is violated.

**When can an employer perform a criminal background check?**

- Application forms, advertisements, employment practices and processes can not automatically or categorically exclude all individuals with any arrest or conviction record from consideration for a job that will be performed in whole or in part, at least 50% of the time, in the City of Seattle.
- An employer may perform a criminal background check or request that information from a job applicant after an employer completes an initial screening of applicants or resumes to eliminate unqualified applicants.

**State and Federal requirements and collective bargaining agreement provisions remain the same.**

- State and Federal requirements such as the Title VII of the 1964 Civil Rights Act as amended, the Washington State Fair Credit Reporting Act, RCW 19.182 as amended, the Washington State Criminal Records Privacy Act or state laws regarding criminal background checks including those related to individuals with access to children or vulnerable persons, or law enforcement are not changed or diminished. In the event of a conflict, state and federal requirement shall supersede the requirements of this chapter.

**What and how can an individual's criminal history can be considered?**

The term "tangible adverse employment action" is used to describe an employer's decision not to hire an otherwise qualified applicant, or to fire, suspend, discipline, demote or deny a promotion to an employee.

- Arrest. An arrest is not proof a person has engaged in unlawful conduct. An employer may not base a tangible adverse employment decision on the fact of an arrest but may inquire about the conduct relating to the arrest. Employers may not carry out a tangible adverse employment action solely based on the conduct relating to an arrest unless the employer has a legitimate business reason, defined below, for taking such action.
- Convictions and pending convictions. Employers can not take an adverse employment action solely based on an employee or applicant's conviction or pending conviction record unless the employer has a legitimate business reason for taking such action.

A legitimate business reason is defined as

A "legitimate business reason" shall exist where, based on information known to the employer at the time the employment decision is made, the employer believes in good faith that the nature of the criminal conduct underlying the conviction or the pending criminal charge either:

- (1) Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or
- (2) Will harm or cause injury to people, property, or business assets, and the employer has considered the following factors:
  - a. the seriousness of the underlying criminal conviction or pending criminal charge, and;
  - b. the number and types of convictions or pending criminal charges, and;
  - c. the time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration, and;
  - d. any verifiable information related to the individual's rehabilitation or good conduct, and;
  - e. the specific duties and responsibilities of the position sought or held, and;
  - f. the place and manner in which the position will be performed.

Before taking a tangible adverse employment action solely based on an employee's or applicant's criminal conviction record, pending criminal charge or conduct relating to an arrest record, the employer shall identify the record(s) or information they are relying on and give the applicant or employee a reasonable opportunity, two business days, to explain or correct that information. Employers may, but are not required to, hold open a position beyond that to resolve questions or issues about an individual's criminal conviction record.

### **Remedy**

- This ordinance does not create a private cause of action.
- The exclusive remedy for a violation of these requirements is a notice of infraction and offer of assistance from the Seattle Office for Civil Rights (SOCR) for the first violation, a monetary penalty capped at \$750 for the second offense and a monetary penalty capped at \$1000 for a subsequent offense. SOCR's attorney's fees may be awarded.
- Similar to the authority the SOCR Director has under the Unfair Employment Practices section of the Seattle Municipal Code, the SOCR Director has the authority to initiate investigation and enforcement procedures when SOCR has reason to believe an employer has violated these provisions.

### **Implementation and Oversight**

SOCR will convene a panel of stakeholders including members of the employer, social service, legal community and the Seattle Human Rights Commission to help develop the appropriate guidelines and regulations to implement this ordinance.

SOCR will maintain data on the number of complaints filed, demographic information on the complainants, the number of investigations it conducts and the disposition of every complaint and investigation and submit this data to the City council every six months for the two years following the effective date of this ordinance.

### **Background:**

Employment is a key factor in helping individuals with a previous criminal history re-establish themselves as productive members of society. However, individuals often find that their criminal records prevent them from obtaining or even applying for employment. Continued unemployment interferes with their rehabilitation and contributes to criminal recidivism and thus jeopardizes the safety of the entire community and increases the cost of the criminal justice system.

In 2011 in Washington State there were over 17,000 individuals in the state's 12 prison facilities and over 16,000 offenders in the community under the supervision of the Department of corrections. There are also large racial disparities in the incarceration rates with the result that employment practices that exclude employment opportunities because of criminal history may have a disparate impact on certain racial groups.

Employers also have a well founded interest in providing a safe environment for their employees and customers and protecting their business assets. However, hiring standards may exclude from

consideration or hiring individuals who present no risk in the specific employment setting.

The City of Seattle, and State of Washington, as well as other jurisdictions, already provide restrictions on the use of criminal background history in employment decisions.

**X This legislation does not have any financial implications.**

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
Seattle's Office for Civil Rights will develop Director's Rules and will implement this ordinance which will add to the responsibilities of existing staff.
- b) **What is the financial cost of not implementing the legislation?** The intended goal of this ordinance is to provide employment opportunities to ex-offenders thereby reducing criminal recidivism and public safety costs.
- c) **Does this legislation affect any departments besides the originating department?**  
  
Seattle Office for Civil Rights, Hearing Examiner
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
- e) **Is a public hearing required for this legislation?**  
  
No
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**  
  
No
- g) **Does this legislation affect a piece of property?**  
  
No.
- h) **Other Issues:**

**List attachments to the fiscal note below:**

None