

# CHAPTER 9-3500. FAIR CRIMINAL RECORD SCREENING STANDARDS<sup>1</sup>

## § 9-3501. Legislative Findings and Purpose.

(1) The City Council of the City of Philadelphia finds that:

(a) Persons with criminal records suffer from pervasive discrimination in many areas of life – employment, housing, education, and eligibility for many forms of social benefits; and

(b) As of 1999, more than 71 million people nationwide had criminal records and are reported to experience lifelong discrimination because of their past convictions, and Pennsylvania has a higher corrections population than all but eight states, resulting in large numbers of people whose backgrounds include past criminal convictions and/or imprisonment; and

(c) It is estimated that approximately one-fifth of Philadelphia's population has some type of Criminal Record.

(d) Nearly 3200 people are released from the Philadelphia Prison System annually and it holds an average daily population of 8500 people – each one released burdened by and shadowed with a criminal record of some type; and

(e) The percentage of people of color convicted and incarcerated nationwide exceeds the percentage of their representation in the population as a whole, which disproportionately impacts their lives, families and communities; and

(f) Criminal background checks by employers have increased at a record rate, with a vast majority of employers in the U.S. now screening their workers for criminal records; and

(g) Formerly-incarcerated people represent a group of job-seekers, ready to contribute and add to the work force; and

(h) Lack of employment is a significant cause of recidivism; people who are employed are significantly less likely to be re-arrested; and

(i) Obstacles to employment for people with criminal records and other barriers to re-entry are creating permanent members of an underclass that threatens the health of the community and undermines public safety.

(j) This legislation concerns a sensitive and highly controversial subject, and should not be construed to require an employer to hire someone with a criminal record, nor to

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<sup>1</sup> Added, Bill No. 110111-A (approved April 13, 2011), effective July 12, 2011.

limit an employers ability to choose the most qualified and appropriate applicant for the employment opportunity at hand.

(k) This legislation is intended to give the individual with a criminal record an opportunity to be judged on his or her own merit during the submission of the application and at least until the completion of one interview.

(2) It is the intent and purpose of this Chapter:

(a) to assist the successful reintegration of formerly-incarcerated people back into the community by removing barriers to gainful employment after their release from prison;

(b) to enhance the health and security of the community by assisting people with criminal records to provide for their families and themselves; and

(c) to ensure that, within the City of Philadelphia, just and fair measures are implemented and practiced when screening and identifying persons who may or may not have criminal records.

## **§ 9-3502. Definitions.<sup>2</sup>**

As used in this Chapter the following terms have the following meanings:

(1) “*Applicant.*” Any person considered or who requests to be considered for employment by an employer.

(2) “*City agency*” means the City, or any City department, agency, board or commission.

(3) “*Conditional offer of employment*” means an offer by an employer to hire an applicant, which may be withdrawn only if the employer subsequently determines that the applicant (i) has a conviction record which, based on an individualized assessment as required by § 9-3504(2), would reasonably lead an employer to conclude that the applicant would pose an unacceptable risk in the position applied for; or (ii) does not meet other legal or physical requirements of the job.

(4) “*Conviction*” shall mean any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation or a sentence of unconditional discharge.

(5) “*Employment*” means any occupation, vocation, job, work for pay or employment, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay. “Employment” shall not, for the purposes of this Chapter, include membership in any law enforcement agency, or domestic services in or about the private home in which the employer resides, as defined in the Pennsylvania Minimum Wage Act, 43 P.S. §

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<sup>2</sup> Amended, Bill No. 150815 (approved December 15, 2015), effective March 14, 2016.

333.101, and its regulations at 34 Pa. Code § 231.1(b).

(6) “*Inquiry*” means any direct or indirect conduct intended to gather information, using any mode of communication.

(7) “*Criminal Justice Agency*” means any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function; and agencies whose principal function relates to the administration of criminal justice, including but not limited to organized State and municipal police departments, local detention facilities, correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, and public agencies that provide care, guidance and control to adjudicated delinquents.

(8) “*License*” means any certificate, license, permit, authorization or grant of permission required by the City as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. “License” shall not, for the purposes of this Chapter, include any license, authorization or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(9) “*Private employer*” means any person, company, corporation, labor organization or association which employs any persons within the City of Philadelphia. It includes job placement and referral agencies and other employment agencies.

### **§ 9-3503. Prohibition Against Unfair Discrimination Against Persons Previously Arrested for One or More Criminal Offenses.**

(1) In connection with the licensing or employment of any person, it shall be an unlawful discriminatory practice for a City agency or private employer to knowingly and intentionally make any inquiry about or to take any adverse action against any person on the basis of any arrest or criminal accusation made against such person, which is not then pending against that person and which did not result in a conviction. It shall further be an unlawful discriminatory practice for a City agency or private employer to require any person to disclose or reveal any arrest or criminal accusation made against such person which is not then pending against that person and which did not result in a conviction.

### **§ 9-3504. Prohibition Against Unfair Discrimination Against Persons Previously Convicted of One or More Criminal Offenses.<sup>3</sup>**

(1) In connection with the licensing or employment of any person, it shall be an unlawful discriminatory practice for a City agency or private employer to make any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application process. The inclusion of such inquiry on an employment application shall be

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<sup>3</sup> Amended, Bill No. 150815 (approved December 15, 2015), effective March 14, 2016.

unlawful, whether or not certain applicants are told they need not answer the question. The application process shall begin when the applicant inquires about the employment being sought and shall end when an employer has extended a conditional offer of employment to the applicant. The inquiry prohibited by this Section shall include any question regarding the applicant's willingness to submit to a background check.

(a) If an applicant voluntarily discloses information regarding his or her criminal convictions during the application process, the employer may discuss the criminal conviction disclosed by the applicant at that time.

(b) An employer may give notice, to prospective applicants or during the application process, of its intent to conduct a criminal background check after any conditional offer is made, provided that such notice shall be concise, accurate, made in good faith, and shall state that any consideration of the background check will be tailored to the requirements of the job.

(2) No employer shall maintain a policy of automatically excluding any applicant with a criminal conviction from a job or class of jobs. A prospective employer shall not reject an applicant based on his or her criminal record, unless such record includes conviction for an offense that bears such relationship to the employment sought that the employer may reasonably conclude that the applicant would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the applicant is compelled by business necessity. An employer shall make a determination regarding such risk only after reviewing the applicant's specific record and the particular job being sought, and conducting an individualized assessment of the risk presented. Such assessment shall include:

- (a) The nature of the offense;
- (b) The time that has passed since the offense;
- (c) The applicant's employment history before and after the offense and any period of incarceration;
- (d) The particular duties of the job being sought;
- (e) Any character or employment references provided by the applicant; and
- (f) Any evidence of the applicant's rehabilitation since the conviction.

(3) A city agency or private employer may consider, for employment purposes, a prospective employee's conviction record only to the extent that the conviction occurred fewer than seven (7) years from the date of the inquiry. Any period of incarceration shall not be included in the calculation of the seven (7) year period.

#### **§ 9-3504a. Notice.<sup>4</sup>**

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<sup>4</sup> Added, Bill No. 150815 (approved December 15, 2015), effective March 14, 2016.

If an employer rejects an applicant for a job opening based in whole or in part on criminal record information, the employer shall notify the applicant in writing of such decision and its basis, and shall provide the applicant with a copy of the criminal history report. The employer shall allow the applicant ten (10) business days to provide evidence of the inaccuracy of the information or to provide an explanation.

### **§ 9-3505. Exemptions.**

(1) The prohibitions of this Chapter shall not apply if the inquiries or adverse actions prohibited herein are specifically authorized or mandated by any other applicable law or regulation.<sup>5</sup>

(2) The prohibitions of this Chapter shall not apply to a Criminal Justice Agency as defined herein.

(3) Nothing in this Chapter shall modify or waive the requirements and limitations on the use of criminal records in Pennsylvania pursuant to 18 Pa. C.S. § 9125.

### **§ 9-3506. Enforcement.<sup>6</sup>**

(1) The Philadelphia Commission on Human Relations (the “Commission”) shall administer and enforce this Chapter. The Commission is authorized to issue regulations in furtherance of its administration and enforcement authority.

(2) Each violation of this Chapter shall constitute a “Class III” offense and any person who violates this Chapter shall be subject to a fine as set forth in § 1-109(3).

(3) Any person injured by a violation of this Chapter may report such violation to the Commission. In order to exercise the private right of action provided under § 9-3508 of this Chapter, a person must first report the violation to the Commission within 300 calendar days of the unlawful act. In addition to the penalties authorized by § 9-3506(2), the Commission may issue an order directing an employer who has engaged in practices made unlawful by this Chapter to take affirmative action to redress the harms suffered by the complainant. The Commission may order remedies, including, but not limited to:

- (a) An order requiring the respondent to cease and desist such unlawful practice;
- (b) Any injunctive or other equitable relief;
- (c) Payment of compensatory damages;
- (d) Payment of punitive damages, not to exceed \$2,000 per violation;

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<sup>5</sup> Amended, Bill No. 150815 (approved December 15, 2015), effective March 14, 2016.

<sup>6</sup> Amended, Bill No. 150815 (approved December 15, 2015), effective March 14, 2016.

- (e) Payment of reasonable attorneys' fees.

### **§ 9-3507. Fair Criminal Record Screening Advisory Committee.**

(1) *Establishment.* The City Council hereby calls upon the Mayor to establish a nine (9) person committee entitled the "Fair Criminal Record Screening Advisory Committee," the purpose of which shall be to review the implementation and effectiveness of this Chapter and to make recommendations to the Mayor and City Council regarding this Chapter.

(2) *Members.* The Committee shall be composed of nine (9) members, (5) appointed by the Mayor and (4) appointed by City Council, provided that at least two appointees shall be people with criminal records, no more than four (4) appointees shall be members of the business community and at least one appointee must be appointed to represent the office of Inspector General and one appointee must be appointed to represent the Mayor's Office of Re-Integration Services ( R.I.S.E.).<sup>7</sup>

(3) *Meetings.* The Committee shall meet at least quarterly. All meetings shall be open to the public and will allow for public testimony on policies or conduct relating to this Chapter.

### **§ 9-3508. Private Right of Action.<sup>8</sup>**

(1) If within one (1) year after the filing of a complaint with the Commission, the Commission concludes that it has not found sufficient evidence of a violation to proceed further with an investigation, or has not entered into a conciliation agreement to which the complainant is a party, the Commission must notify the complainant that it is dismissing the case. On receipt of such a notice, if the complainant filed the complaint within 300 days of the unlawful act, the complainant may bring an action in a court of competent jurisdiction based on the right to fair criminal record screening standards granted by this Chapter.

(2) An action under this Section shall be filed within two years after the date of notice from the Commission closing the case. Any action so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.

(3) The court may grant any relief it deems appropriate, including the right to recover for each violation:

- (a) Compensatory damages;
- (b) Punitive damages;
- (c) Reasonable attorneys' fees;

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<sup>7</sup> Amended, Bill No. 130769 (approved December 4, 2013).

<sup>8</sup> Added, Bill No. 150815 (approved December 15, 2015), effective March 14, 2016.

(d) Court costs; and

(e) Such other relief, including injunctive relief, as the court may deem appropriate.

(4) Nothing in this Chapter limits the right of an injured person to recover damages under any other applicable law or legal theory.

**§ 9-3509. Posting Requirement.<sup>9</sup>**

Any employer subject to the terms of this Chapter shall post a summary of the Chapter requirements, in a form to be supplied by the Commission, in a conspicuous place on the employer's website and premises, where applicants and employees will be most likely to notice and read it.

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<sup>9</sup> Added, Bill No. 150815 (approved December 15, 2015), effective March 14, 2016.