

1 WHEREAS, according to the Equal Employment Opportunity Commission, many
2 arrests do not lead to criminal charges, nor are they proof that a criminal activity has
3 occurred; and

4 WHEREAS, placing questions regarding criminal history on an employment
5 application can create a chilling effect that discourages individuals with criminal records
6 from applying for positions for which they may be qualified and where their prior
7 convictions may not have any relevance to the position; and

8 WHEREAS, there are other, more reliable methods that an employer may use to
9 inquire about a prospective applicant's criminal history, such as conducting a criminal
10 history background check; and

11 WHEREAS, many state and local governments have instituted policies to delay
12 criminal history inquiries until after a conditional offer of employment has been
13 made; and

14 WHEREAS, such policies are in place in 21 states and over 100 cities and
15 counties (including Jacksonville, Miami-Dade County, Pompano Beach, St. Petersburg,
16 Tampa, and Tallahassee); and

17 WHEREAS, a number of major corporations including Bed Bath & Beyond,
18 Koch Industries, Home Depot, Target, and Walmart also understand the value of these
19 policies and have chosen to implement such policies; and

20 WHEREAS, the National League of Cities and the National Association of
21 Counties have highlighted such policies and other local models that facilitate reentry for
22 individuals with criminal records; and

23 WHEREAS, President Obama has directed federal agencies to "Ban the Box" for
24 all federal hiring, delaying criminal history inquiries until later in the hiring process; and

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1 WHEREAS, President Obama recently called on Congress to eliminate questions
2 regarding criminal history from employment applications for federal hiring and hiring by
3 federal contractors; and

4 WHEREAS, the Fair Chance Act has been introduced in the United States
5 Senate and the United States House of Representatives and is cosponsored by senior
6 Republicans and senior Democrats in both chambers; and

7 WHEREAS, all people should have a fair chance to compete for employment
8 opportunities; and

9 WHEREAS, eliminating questions concerning an applicant's criminal history from
10 a County employment application would not impact the County's ability to make
11 informed decisions because the County would still be able to review the criminal history
12 information obtained from the applicant's background check after the applicant has been
13 selected as a finalist for a position; and

14 WHEREAS, the Board desires to give full and fair consideration in employment to
15 the most qualified applicants for employment with the County, including those
16 individuals with a criminal history,

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18 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
19 BROWARD COUNTY, FLORIDA:

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21 Section 1. Section 26-125 of the Broward County Code of Ordinances is
22 hereby created to read as follows:

23 [Underlining omitted]

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1 **Sec. 26-125. Criminal History Screening Practices.**

2 (a) Definitions.

3 (1) *Applicant* means a person who applies for employment with Broward
4 County.

5 (2) *Broward County* means the government of Broward County, its
6 departments, divisions, and offices.

7 (3) *Criminal history* means any information related to an arrest or criminal
8 charges against the applicant, proceedings related to the applicant's arrest
9 or criminal charges, and disposition of the applicant's arrest or criminal
10 charges.

11 (4) *Criminal history background check* means requesting, with a goal of
12 obtaining, information about an applicant's criminal history from third party
13 sources.

14 (5) *Finalist* means an applicant who has been preliminarily determined by
15 Broward County to meet the qualifications for the position and has
16 interviewed for the position.

17 (6) *Initial application for employment* means any document, whether in paper
18 or electronic form, that Broward County requires an applicant to submit to
19 express the applicant's interest in County employment.

20 (7) *Position* means the particular job with Broward County sought by the
21 applicant.

22 (b) Criminal history background checks.

23 (1) Except as otherwise required under state or federal law, Broward County
24 will not inquire about an applicant's criminal history and will not seek an

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1 applicant's authorization to conduct a criminal history background check
2 until the applicant is selected as a finalist and has interviewed for the
3 position. A criminal background check shall be performed prior to the
4 County making an offer of employment to any finalist.

5 (2) Except as otherwise required under state or federal law, Broward County
6 will not advertise positions with a statement that an individual with a
7 criminal history may not apply for the position or place on the application
8 for employment that an individual with a criminal record may not apply.

9 (3) If the finalist has been convicted of a crime, and Broward County, in its
10 sole discretion, determines that the crime for which the finalist was
11 convicted is job related, Broward County may decline to offer employment
12 consistent with business necessity.

13 (4) A finalist's criminal history revealing an arrest does not establish that
14 criminal conduct has occurred, and therefore, a decision not to offer
15 employment solely based on criminal history revealing an arrest is not job
16 related and consistent with business necessity. However, Broward
17 County may decline to offer employment based on criminal history
18 revealing an arrest or pending charges if a review of the conduct
19 underlying the arrest or pending charges justifies the refusal of
20 employment.

21 (5) If Broward County declines to offer employment because of a finalist's
22 criminal history, Broward County shall provide a copy of the finalist's
23 criminal history and notify the finalist, in writing, providing Broward
24 County's assessment of how the criminal history relates to the job and why

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1 it has determined the criminal history to be inconsistent with its business
2 necessities. The finalist may respond, in writing, within five (5) business
3 days of notification to contest the accuracy of the reported information
4 and, if applicable, to provide relevant evidence of mitigating circumstances
5 or rehabilitation.

6 (6) After reviewing any information provided by the finalist, Broward County,
7 in its sole discretion, may proceed with its selection and hiring decision,
8 including declining to offer employment to a finalist.

9 (7) Broward County's selection and hiring decisions are final and not subject
10 to appeal.

11 (c) Exemptions and Limitations.

12 (1) The criminal history screening practices in this section shall not apply if
13 additional or conflicting screening practices or requirements regarding
14 criminal history background checks are required by state or federal law.

15 (2) Additionally, the criminal history screening practices in section (b)(1) and
16 (b)(2) shall not apply to the following positions:

17 a. All positions in the Aviation Department;

18 b. All positions in the Port Everglades Department;

19 c. Operator, mechanic, and coach service attendant positions in the
20 Transit Division;

21 d. All positions that come into contact with children, the
22 developmentally disabled, and vulnerable adults; and

23 e. All directors, chiefs, deputy directors, and assistant directors of an
24 office, department, or division.

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1 (3) Nothing in this section requires Broward County to hire an applicant with a
2 criminal record or limits Broward County's ability to select the most
3 qualified applicant for a position.

4 (4) Nothing in this section limits Broward County's ability to require
5 contingencies for an offer of employment such as making an offer
6 contingent on the successful completion of a drug screening or physical
7 examination.

8 (5) Nothing in this section creates a cause of action for any applicant with
9 regard to hiring or selection.

10 (d) Implementation. The County Administrator, or designee, shall have ninety
11 (90) days after the effective date of this Ordinance to develop and implement any
12 policies necessary to ensure full compliance with this section.

13 Section 2. SEVERABILITY.

14 If any portion of this Ordinance is determined by any Court to be invalid, the
15 invalid portion shall be stricken, and such striking shall not affect the validity of the
16 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
17 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
18 or circumstance(s), such determination shall not affect the applicability hereof to any
19 other individual, group, entity, property, or circumstance.

20 Section 3. INCLUSION IN CODE.

21 It is the intention of the Board of County Commissioners that the provisions of
22 this Ordinance shall become and be made a part of the Broward County Code; and that
23 the sections of this Ordinance may be renumbered or relettered and the word
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1 "ordinance" may be changed to "section," "article," or such other appropriate word or
2 phrase in order to accomplish such intentions.

3 Section 4. EFFECTIVE DATE.

4 This Ordinance shall become effective as provided by law.

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6 ENACTED June 14, 2016

7 FILED WITH THE DEPARTMENT OF STATE June 16, 2016

8 EFFECTIVE June 16, 2016

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11 Approved as to form and legal sufficiency:
12 Joni Armstrong Coffey, County Attorney

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By /s/ Adam Katzman 06/15/16
Adam Katzman (date)
Assistant County Attorney

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AMK/RBG/mm
06/15/16
Ban the Box Ordinance
#16-403

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