

# MEMORANDUM

Agenda Item No. 7(R)

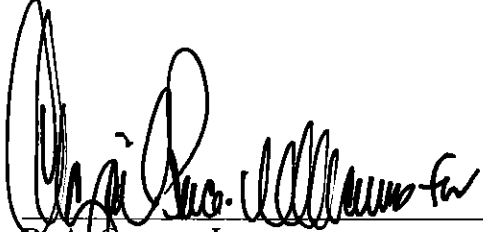
**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** (Second Reading 10-6-15)  
June 2, 2015

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Ordinance eliminating questions regarding criminal history from all County employment applications; establishing screening practices for the use of criminal history information in County employment decisions; creating section 2-31 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsors Chairman Jean Monestime, Commissioner Daniella Levine Cava, Commissioner Barbara J. Jordan and Commissioner Audrey M. Edmonson, and Co-Sponsor Commissioner Dennis C. Moss.



R. A. Cuevas, Jr.  
County Attorney

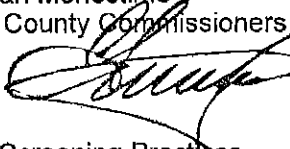
RAC/smm

# Memorandum



Date: October 6, 2015

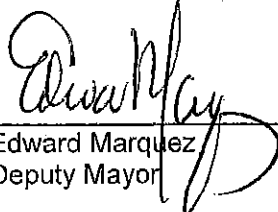
To: Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

From: Carlos A. Gimenez  
Mayor 

Subject: Ordinance Establishing Screening Practices

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The proposed Ordinance creates Section 2-31 of the Code establishing screening practices for the use of criminal history information in County employment decisions and eliminating questions regarding criminal history from all County employment applications. Implementation of this ordinance will not have a fiscal impact on the County.

  
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Edward Marquez  
Deputy Mayor

Fis07115



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 6, 2015

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 7(R)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_\_, 3/5's \_\_\_\_\_, unanimous \_\_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 7(R)  
10-6-15

ORDINANCE NO. \_\_\_\_\_

ORDINANCE ELIMINATING QUESTIONS REGARDING CRIMINAL HISTORY FROM ALL COUNTY EMPLOYMENT APPLICATIONS; ESTABLISHING SCREENING PRACTICES FOR THE USE OF CRIMINAL HISTORY INFORMATION IN COUNTY EMPLOYMENT DECISIONS; CREATING SECTION 2-31 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, the ability of individuals with criminal records to successfully reintegrate into their communities contributes to reduced recidivism, strengthens families, and leads to safer communities; and

**WHEREAS**, research studies have found that securing stable employment is a significant factor for individuals with criminal records to attain successful reintegration with their communities; and

**WHEREAS**, the National Employment Law Project estimates that 70 million American adults have arrests or convictions in their past that can impact their ability to obtain employment; and

**WHEREAS**, employment applications often ask individuals whether they have any prior criminal arrests and/or convictions; and

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

**WHEREAS**, there are other, more reliable methods that an employer may use to inquire about a prospective applicant's criminal history, such as conducting a criminal background check after the applicant has been selected as a finalist for the position based upon their qualifications; and

**WHEREAS**, many state and local governments have instituted policies whereby inquiries into an applicant's criminal history will not be conducted until after an applicant has been considered for the position based upon their qualifications; and

**WHEREAS**, according to a report from the National Employment Law Project, such legislation has been passed in 16 states, 79 cities (including Jacksonville, Pompano Beach, St. Petersburg, Tampa, and Tallahassee), 21 counties, and Washington D.C.; and

**WHEREAS**, the "My Brother's Keeper" Task Force created by President Barack Obama has also recommended eliminating questions regarding criminal history from employment applications in order to give applicants a fair chance and an opportunity to be judged on their merits; and

**WHEREAS**, the removal of questions concerning an applicant's criminal history from any County employment application would not impact the County's ability to make informed hiring decisions because hiring managers can still review criminal history information obtained from an applicant's background check and assess its potential relevance to job responsibilities after the applicant has been selected as a finalist for the position based upon their qualifications; and

**WHEREAS**, this Board simply wishes to give full and fair consideration in employment for individuals with a criminal history and assist in the successful reintegration of those individuals who are the most qualified applicants for open positions within Miami-Dade County,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Section 2-31 of the Code of Miami-Dade County, Florida is hereby created to read as follows:<sup>1</sup>

**Sec. 2-31. Criminal history screening practices.**

(a) *Definitions.* The following definitions shall apply.

- (1) *Applicant* means a person who applies for employment with Miami-Dade County.
- (2) *Criminal history* means any information related to criminal charges against the applicant, proceedings related to the applicant's criminal charges and disposition of the applicant's criminal charges.
- (3) *Criminal history background check* means the process of obtaining information about an applicant's criminal history through third party sources.
- (4) *Finalist* means an applicant conditionally selected for a position pending a criminal history background check.
- (5) *Initial application for employment* means any document, whether in paper or electronic form, that Miami-Dade County requires an applicant to submit prior to being selected as a finalist for a position.
- (6) *Position* means the particular job with Miami-Dade County sought by the applicant.

(b) *Criminal history background checks.*

- (1) Except as otherwise provided by state or federal law, Miami-Dade County will not inquire about an applicant's criminal history and will not seek an applicant's authorization to conduct a criminal history background check unless and until the applicant is selected as a finalist for a position.
- (2) Except as otherwise provided by state or federal law, Miami-Dade County shall not advertise positions with a statement that an individual with a criminal

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<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

record may not apply for the position or place on the application that a person with a criminal record may not apply.

- (3) Miami-Dade County will make the finalist a conditional offer of employment, contingent upon a successful criminal history background check, as determined by Miami-Dade County.
- (4) If, after making a conditional offer of employment to an applicant, Miami-Dade County determines that the applicant has been convicted of a crime, Miami-Dade County shall consider the following factors when determining whether the conviction disqualifies the applicant for the position:
  - a. The nature of the conviction;
  - b. The time that has elapsed since the conviction;
  - c. Whether there is a relationship between the conviction and the position's duties and responsibilities and the bearing, if any, the conviction may have on the applicant's fitness or ability to perform one or more such duties and responsibilities and whether the duties of employment would place a co-worker or the public in potential danger; and
  - d. Any information produced by the applicant or produced on his or her behalf regarding his or her rehabilitation and good conduct.
- (5) If, after making a conditional offer of employment, Miami-Dade County determines that the applicant has been arrested or charged but not convicted of a criminal offense and the criminal case is not actively pending, Miami-Dade County shall not use that information as a basis for declining to make an offer of employment or for withdrawing the conditional offer of employment.
- (6) If, after making a conditional offer of employment to an applicant, Miami-Dade County determines that the applicant has had a criminal conviction expunged or sealed from his or her record, received a pardon, or that charges were dismissed pursuant to successfully completing a pretrial intervention or pretrial diversion program, Miami-Dade County shall not use that information as a basis for declining to make an offer of employment or for withdrawing the conditional offer of employment.
- (7) If Miami-Dade County determines that the finalist's criminal history is cause for potential withdrawal of the conditional offer of employment, the finalist will be notified and given an opportunity to respond within five business days of notification of cause for potential withdrawal. Miami-Dade County will consider any additional information provided in writing by the finalist.

- (8) If, after review of additional information submitted by the finalist, Miami-Dade County determines that the applicant's criminal history is disqualifying and a cause for withdrawal of conditional offer of employment, the applicant will be provided with a written letter of rejection specifically stating the evidence presented and reasons for rejection.
- (9) Miami-Dade County's selection and hiring decisions are final and are not subject to appeal.

(c) *Limiting provisions.*

- (1) Any of the practices outlined in subsection (b) shall not apply if additional or conflicting screening practices or requirements regarding criminal history are required by state or federal law.
- (2) Nothing in this section requires Miami-Dade County to hire an applicant with a criminal record, nor limits Miami-Dade County's ability to select the most qualified applicant for a position.
- (3) Nothing in this section prohibits Miami-Dade County from denying employment based on a criminal conviction determined in accordance with the practices outlined in this section to be relevant to the position sought.
- (4) Nothing in this section creates a cause of action for any applicant with regard to hiring or selection for employment.

(d) *Implementation.* The Miami-Dade County Human Resources Department, its successor department, and other applicable departments shall have 90 days from the effective date of this ordinance to develop and implement any policies necessary to ensure full compliance with this section.

**Section 2.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 3.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The section of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.



**Section 4.** This ordinance shall be become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:

APW

Prepared by:

MBV

Michael B. Valdes

Co-Prime Sponsors: Chairman Jean Monestime  
Commissioner Daniella Levine Cava  
Commissioner Barbara J. Jordan  
Commissioner Audrey M. Edmonson  
Co-Sponsor: Commissioner Dennis C. Moss