

AMENDED COPY AS OF 5/29/2019

Intro. Res. No. 1319-2019

Laid on Table 3/26/2019

Introduced by Presiding Officer Gregory and Legislator Gonzalez

**RESOLUTION NO. -2019, ADOPTING LOCAL LAW
NO. -2019, A LOCAL LAW TO ENSURE A SECOND CHANCE
IN SUFFOLK COUNTY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 26, 2019, a proposed local law entitled, "**A LOCAL LAW TO ENSURE A SECOND CHANCE IN SUFFOLK COUNTY**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2019, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO ENSURE A SECOND CHANCE IN SUFFOLK
COUNTY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the County of Suffolk is committed to protecting the human rights of all its residents and seeks to assist in the rehabilitation of people with criminal records and ensure healthier, safer communities.

This Legislature also finds and determines that presently the County's human rights law prohibits employment discrimination based on an individual's prior involvement in criminal proceedings. Current law protects employers from actions in negligent hiring if they follow the safeguards in place under current law.

This Legislature further finds and determines that a movement is underway throughout the nation to strengthen laws against discrimination based on a person's prior involvement in the criminal justice system in order to improve employment outcomes for these citizens. Currently, approximately three-fourths of the United States population lives in a jurisdiction that has "Ban the Box".

This Legislature also finds that approximately 1 in 3 Americans has a criminal record. Furthermore Suffolk County has the largest parole population in New York State, representing people with at least one felony conviction.

This Legislature finds that statistics show that disclosing an arrest (which is illegal to ask) or conviction on a job application reduces the likelihood of being called for an interview by 50%, regardless of an applicant's merits or the relevance of such conviction to the job duties.

This Legislature determines that when individuals with convictions obtain employment it is good for the economy and for business. As a result this: increases individual tax contributions in both sales and income tax; avoids costs in the form of spending on criminal justice and social services agencies; prevents victim costs; and overall reduces recidivism.

This Legislature also finds that removing the conviction history “check box” from applications is a proven method of increasing employment opportunities for individuals with criminal convictions; instead of having their application discarded on the basis of one answer, applicants are able to obtain interviews and employment regardless of their conviction status. This also aids in reducing the stigma and bias associated with individuals with a criminal background, and works towards ending structural discrimination.

This Legislature further finds that fair chance employment policies like “Ban the Box” are endorsed by the United State Equal Employment Opportunity Commission, and have been adopted in 33 states, over 150 cities and counties and by many private employers like Target, Walmart, Starbucks Facebook and Koch Industries.

This Legislature also acknowledges that “Ban the Box” has been adopted in many counties in New York State including: Albany, Buffalo, Dutchess, Ithaca, Kingston, Newburgh, New York City, Rochester, Syracuse, Tompkins, Ulster, Westchester, Woodstock and Yonkers. In fact, Suffolk County is one of the few counties in the lower New York region that does not have a “Ban the Box” initiative.

This Legislature also determines that Suffolk County should join the growing number of governments that prohibit conviction history check boxes on employment applications to increase employment opportunities for all County residents. Employers should not request the information until a provisional offer is provided to the applicant.

Therefore, the purpose of this law is to amend Chapter 528 of the Suffolk County Code to prohibit inquiry into criminal arrests (already prohibited) or convictions on employment applications until a conditional offer of employment is extended.

Section 2. Amendments.

Chapter 528 of the SUFFOLK COUNTY CODE is hereby amended as follows:

Chapter 528. Human Rights.

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Article II. Unlawful Discriminatory Acts

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§ 528-7. Unlawful discriminatory practices in employment.

A. It shall be an unlawful discriminatory practice:

* * * *

(13) Arrest and Conviction records; employer inquiries.

- (a) For any employer, employment agency or agent thereof to declare, print, circulate or cause to be declared, printed or circulated any solicitation, advertisement or publication which expresses, directly or indirectly, any**

limitation or specification in employment based on a person's record of arrest not then pending or criminal conviction;

- (b) For any employer to make any inquiry or statement related to the arrest or criminal conviction of any person who is in the process of applying for employment with such employer or agent thereof until such employer or agent has extended a conditional offer of employment to the applicant. For the purposes of this Subsection (A)(13) applicants seeking temporary employment at a temporary help firm, as defined in New York Labor Law § 916(5), an offer to be placed in the temporary help firm's general applicant pool shall constitute a conditional offer of employment. "Inquiry" shall be defined for the purposes of Subsection (A)(13) as any question communicated to an applicant, in writing or otherwise, or any search of publicly available records or consumer reports that are conducted for the purpose of obtaining an applicant's background information regarding (i) an arrest record; (ii) a conviction records, or (iii) a criminal background check.
- (c) After extending an applicant a conditional offer of employment, an employer, employment agency or agent thereof may inquire about the applicant's arrest or conviction record in accordance with Subsection (A)(12)(b). Before taking any adverse employment action based on such inquiries, the employer, employment agency or agent thereof shall:

 - (i) provide a written copy of the inquiry to the applicant in a manner to be determined by the Commission;
 - (ii) perform an analysis of the applicant under Article 23-A of New York Correction Law and provide a written copy of such analysis within ten business days of receiving the analysis to the applicant in a manner to be determined by the Commission, which shall include, but not be limited to, supporting documents that formed the basis for an adverse action based on such analysis and the employer's or employment agency's reasons for taking any adverse action against such applicant; and
 - (iii) after giving the applicant the inquiry and analysis in writing, the employer, employment agency or agent thereof shall provide the applicant with at least seven business days to respond, holding the position open during that time.
- (d) An applicant shall not be required to respond to any inquiry or statement that violates this section and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective employment.
- (e) The requirements of this Subsection (A)(13) shall not apply to any actions taken by an employer or agent thereof pursuant to any federal, state or local law which requires criminal background checks for employment purposes or bars employment based on criminal history.
- (f) These requirements shall not apply to any actions taken by an employer or agent with respect to applications for employment as a police officer or peace

officer as defined in New York Criminal Procedure Law, or at a law enforcement agency, defined as including, but not limited to, police departments, fire rescue and emergency services, the Sheriff's office, the District Attorney's office and the Department of Probation.

- (g) The provisions of this Subsection (A)(13) shall be enforceable against public agencies, as defined in Article 23-A of New York Correction Law, which are subject to the jurisdiction of the Commission through a proceeding brought pursuant to Article 78 of the New York Civil Practice Laws and Rules. The provision as applied to employers which are not public agencies shall be enforced by the administrative proceedings of the Commission.

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Section 3. Applicability.

This law shall apply to actions occurring on or after the effective date of this law.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect 120 days after its filing in the Office of the Secretary of State.

[] Brackets denote deletion of existing language
— Underlining denotes addition of new language

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: