

By Legislators Johns and Smith

Intro. No. \_\_\_\_\_

MOTION NO. \_\_\_\_\_ OF 2023

**PROVIDING THAT LOCAL LAW (INTRO. NO. 203 OF 2023) ENTITLED “MONROE COUNTY FAIR CHANCE EMPLOYMENT ACT” BE ADOPTED**

BE IT MOVED, that Local Law (Intro. No. 203 of 2023) entitled “Monroe County Fair Chance Employment Act” be adopted.

File No. 23-0181.LL

ADOPTION: Date: \_\_\_\_\_

Vote: \_\_\_\_\_

By Legislators Johns and Smith

Intro No. 203

LOCAL LAW NO. \_\_\_\_ OF 2023

**ENACT A LOCAL LAW ENTITLED “MONROE COUNTY FAIR CHANCE EMPLOYMENT ACT”**

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

**Section 1. Title.** This local law shall be known as the “Monroe County Fair Chance Employment Act.”

**Section 2. Legislative Intent.**

- A. The Legislature finds that those with a criminal history regularly face discrimination in many areas of life, including employment.
- B. The Legislature further finds that studies indicate that stable employment is one of the best predictors of post-conviction success.
- C. The Legislature further finds that the ability of individuals with a criminal history to successfully reintegrate into their communities and find employment improves public safety and benefits local taxpayers, as less crime leads to safer communities, strengthens families, and saves taxpayers money on costs associated with law enforcement and incarceration.
- D. The Legislature determines that those who have been incarcerated have paid their debt to society and should be afforded a fair opportunity to reenter the workplace. Individuals with a criminal history should not be discriminated against once they are released from prison and should be evaluated for employment based upon their qualifications to perform a job, rather than their criminal history.
- E. The Legislature determines that individuals with a criminal history represent a workforce with skills to contribute and a desire to add value to their communities.
- F. The Legislature determines that the main goal of a criminal justice system should be rehabilitation and that once individuals reenter society, they should be treated fairly and without discrimination based on a prior conviction.
- G. The Legislature finds that employment discrimination based on criminal history can affect anyone regardless of race, religion, national origin, gender, or sexual orientation. However, African Americans are disproportionately hurt by discrimination based on criminal history due to a long history of policies that have led to African Americans being incarcerated at rates more than five times that of Whites, and more than two and a half times that of Hispanics.
- H. The Legislature determines that due to a criminal justice system in which minorities are incarcerated at much higher rates than Whites, African Americans and Hispanics bear the brunt of employment discrimination based on criminal history.
- I. The Legislature finds that nine municipalities and three counties in the state of New York have implemented policies to protect job applicants against potential discrimination, including New York City, Buffalo, and Rochester.

- J. The Legislature further finds that over twenty states and more than one hundred municipalities and counties throughout the United States across all political lines have implemented policies to protect job applicants from potential discrimination.
- K. The Legislature further finds that New York Correction Law does not prohibit employers from inquiring about criminal history on employment applications. Because the vast majority of applications are discarded during an initial review for a variety of reasons, it makes it extremely difficult for an applicant to prove that he or she was not hired due to his or her criminal history. In addition, many applicants simply will not apply for a position if they are required to disclose their criminal history on an employment application.
- L. Therefore, the purpose of this local law is to ensure that everyone receives a fair chance in seeking employment with Monroe County, regardless of one's arrest record or criminal history.

**Section 3. Purpose.** The purpose of this section is to ensure that applicants for positions with Monroe County are not unfairly discriminated against because of prior criminal history during the application process.

**Section 4. Definitions.** As used in this section:

"Adverse Action" means to refuse to hire or promote, to discharge an individual from his or her employment, or revoke an applicant's conditional offer of employment.

"Applicant" means any person considered or who requests to be considered for employment by the County.

"Application Process" means the period of time beginning when an applicant inquires about employment with the County or submits an employment application to the County, and ends when the applicant is provided a conditional offer of employment or the County chooses not to offer the applicant a conditional offer of employment.

"Arrest" means a record or action by any jurisdiction that does not result in a conviction, or any encounter with a law enforcement agency that does not result in a conviction. This includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for an investigation by a law enforcement, police, or prosecutorial agency.

"Conviction" means any sentence arising from a plea or verdict of guilty, including a sentence of incarceration, a suspended sentence, a sentence of probation, an unconditional discharge, or a diversion program.

"County" means the County of Monroe, its departments, administrative units, public officers, and employees.

"Criminal History" means an individual's prior criminal conviction and/or sentencing in New York State or any other jurisdiction.

**Section 5. Prohibition Against Unfair Discrimination.** The County shall not:

- A. Inquire about an applicant's criminal history during the application process.
- B. Inquire about an applicant's arrest record at any point in the application process or during any inquiry relating to criminal history; however the County shall not be prohibited from inquiring about pending criminal charges.
- C. Conduct a criminal history check of an applicant until after a conditional offer of employment is

made, unless otherwise required because of the nature of the position or by law.

#### **Section 6. Regulations Relating to Background Checks.**

- A. All County job announcements shall contain the following disclosure: "This position is subject to a background check for criminal convictions. Convictions will be considered but will not automatically disqualify the candidate. No criminal background check will occur until after a conditional offer of employment has been made, unless required prior to a conditional offer because of the nature of the position or otherwise required by law."
- B. The County shall not use the following criminal records in relation to a criminal background check: records of arrest not followed by a valid conviction, or records which reflect dismissed or expunged convictions, violations, and infractions; however the County shall not be prohibited from considering pending criminal charges.

#### **Section 7. Guidelines for Consideration of Criminal History and Revocation of Offer of Employment.**

- A. Unless a background check is required before a conditional offer of employment because of the nature of the position or otherwise required by law, the County shall send the applicant the following documents prior to conducting a background check or inquiring about an applicant's criminal history: (1) a conditional offer of employment, and (2) notice that a criminal history check will be conducted prior to the start of employment.
- B. The County shall not take adverse action against an individual due to the individual's criminal history unless such action is in conformance with Article 23-A of New York Correction Law, New York Human Rights Law, and the New York Family Court Act.
- C. Nothing in this local law shall be construed to prevent the County from taking adverse action against any applicant or denying employment for reasons other than such applicant's criminal history.

#### **Section 8. Exceptions.**

- A. The prohibitions in this local law shall not apply to the Monroe County Sheriff's Office, the Monroe County Department of Public Safety, the Monroe County Department of Aviation, the Monroe County District Attorney's Office, the Monroe County Children's Detention Center, and positions for which it is otherwise required by law to access criminal history information before a conditional offer is made.
- B. The prohibitions of this local law shall not apply if the inquiries or adverse actions prohibited herein are specifically authorized by any other applicable law. Additionally, nothing in this local law shall diminish the County's rights or responsibilities under Article 23-A of New York Correction Law.

#### **Section 9. Enforcement.**

- A. The Monroe County Department of Diversity, Equity, and Inclusion is authorized to enforce this local law, to promulgate additional rules and regulations, and take any and all other reasonable actions necessary to implement and enforce this local law. Any rules and regulations set forth in this local law and/or promulgated by the Monroe County Department of Diversity, Equity, and Inclusion shall be made available online in a manner approved by the Department of Diversity, Equity, and Inclusion.
- B. The Monroe County Department of Diversity, Equity and Inclusion shall be responsible for

conducting proper outreach about this local law.

**Section 10. Reverse Preemption.** This local law shall be null and void on the day that federal or statewide legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Monroe. The County Legislature may determine via resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

**Section 11. Severability.** If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be inconsistent with any federal or state statute, law, regulation or rule then the federal or state statute, law, regulation, or rule shall prevail. If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder of this local law which shall remain in full force and effect except as limited by such order or judgment.

**Section 12. Effective Date and Applicability.** This local law shall be effective immediately upon filing in the Office of the Secretary of State.

File No. 23-0181.LL

Matter of Urgency

ADOPTION: Date: \_\_\_\_\_

Vote: \_\_\_\_\_

ACTION BY THE COUNTY EXECUTIVE

APPROVED: \_\_\_\_\_ VETOED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

EFFECTIVE DATE OF LOCAL LAW: \_\_\_\_\_