7.

By Legislators Johns and Smith

Intro. No. ____

RESOLUTION NO. ____ OF 2023

FIXING A PUBLIC HEARING ON LOCAL LAW (INTRO. NO. ____ OF 2023) ENTITLED "MONROE COUNTY FAIR CHANCE EMPLOYMENT ACT"

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

Section 1. That there will be a public hearing at 6:18 P.M. on the 11th day of July, 2023, in the Legislative Chambers in the County Office Building, Rochester, New York on Local Law (Intro. No. ____ of 2023) entitled "MONROE COUNTY FAIR CHANCE EMPLOYMENT ACT".

Section 2. The Clerk of the Legislature is directed to give notice of the time and place of this public hearing, and a description of the proposed local law, to the news media within the County, and shall conspicuously post a copy of said notice in the office of the Clerk at least five days before said hearing. In addition, the Clerk shall cause said notice to be published once in the official newspapers of general circulation within the County at least five days before said hearing.

Section 3. This local law shall take effect in accordance with the provisions of the Municipal Home Rule Law and the Monroe County Charter.

File No. 23-0181.LL

ADOPTION: Date: _____ Vote: _____

Monroe County Legislature

Office of the President

SABRINA LaMAR
PRESIDENT

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No. 230131
Not to be removed from the Office of the Legislature Of Monroe County
Committee Assignment
URGENT -L

June 12, 2023

To The Honorable
Monroe County Legislature
407 County Office Building
Rochester, New York 14614

Subject: Enact a Local Law Entitled "Monroe County Fair Chance Employment Act"

Honorable Legislators:

Over ninety percent of human resource professionals conduct some sort of criminal background check during the hiring process. Applicants who indicate their criminal record on the initial job application are less likely to receive a callback interview. Researchers have found that among white applicants, 34% of applicants without a criminal record and 17% of those with criminal records were later contacted about a callback interview.

Among African Americans applicants, 14% of applicants without a criminal record and only 4% of those with criminal records were later contacted about a callback interview. The fact that a higher percentage of white applicants with a criminal record were contacted about a callback interview than black applicants without criminal records illustrates the extreme structural disadvantages that black applicants with criminal records face in the employment market.

There are an estimated 65 million adults in the United States with a criminal history. It has been well-documented that African Americans and Latinos are disproportionately represented at every stage of the criminal justice system. Application questions about criminal records guarantee that these Americans will have difficulty finding employment, especially members of minority communities.

The inability to find employment has a marked effect on these community members and their families. One study found that in the year after an incarcerated father is released, the total family income drops by approximately 15% from what it was before incarceration. Because of the stunted upward mobility of people with criminal records, they must often rely on family members and communities for support. Research has shown that 83% of the families of formerly incarcerated men had recently provided financial support to their family member, with half of those families reporting that this support was a financial challenge and 30% of these families reporting that this support was a "financial hardship." In sum, these studies and statistics illustrate the structural barriers faced by people with criminal records – a need that birthed the Ban the Box Movement.

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Hiring people with criminal records facilitates public safety by reducing recidivism rates. Studies show that gainful employment is the most successful intervention in decreasing recidivism. One study showed that two years after release, employed people were more than twice as likely to have not committed any additional crimes when compared to formerly incarcerated people who were unable to secure employment.

Statistical and anecdotal evidence illustrate that Ban the Box policies help dismantle the structural discrimination faced by people with records in the employment market. Formerly incarcerated people who were consistently employed throughout the year had a 16% recidivism rate compared to a 52.3% recidivism rate for all other Department of Correction releases. Fair hiring policies also benefit our communities in the form of increased tax revenue and public safety.

More than 150 cities and counties as well as 25 states have adopted Ban the Box policies to help the estimated 70 million people in the United States with a prior arrest or conviction record have a fair chance at employment. Albany County, Dutchess County, Suffolk County and New York City have all passed "ban-the-box legislation. Locally, the City of Rochester and the City of Buffalo have enacted similar legislation.

The RASE Commission report, in its section on job creation, recommended that Monroe County join the City of Rochester and Ban the Box. The report states: **"Having stable employment is essential to reintegrating those who have been involved with the justice system back into society. However, these individuals often report believing that they are automatically excluded from most jobs (including Civil Service), or that employers will not even consider them, based on a past criminal record. While this is often untrue, requirements and rules are typically vague around issues like a criminal record."**

The proposed local law will help Monroe County fill an estimated 800 vacant positions while ensuring that prospective applicants are not stigmatized and are not discouraged from applying for County positions simply because of a question on the front page of the application. It should also help in diversifying the County's workforce.

Removing the question from the application does not mean that a background check will not be conducted or that an employer cannot exercise appropriate due diligence, but just that it is delayed until later in the process. The legislation also provides exceptions for the Monroe County Sheriff's Department, the Monroe County Department of Public Safety, and positions for which it is already required by law to access criminal history information before the conditional offer stage.

This reform to the County's hiring policy is long overdue.

The specific legislative actions required are:

1. Schedule and hold a public hearing.

2. Adopt the local law as attached.

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This action is a Type II Action Pursuant to 6 NYCRR §617.5(c)(26) ("routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment") and is not subject to further review under the State Environmental Quality Review Act.

Enactment of this Local Law will have no impact on the revenues or expenditures of the current Monroe County budget.

Respectfully submitted,

Sabrina LaMar
President, Monroe County Legislature
Legislator, District 27

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By Legislator LaMar

Intro No.____
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.

_____ Committee; _____ – CV: _____
File No. 23-___.LL

ADOPTION: Date: _____ Vote: _____

ACTION BY THE COUNTY EXECUTIVE

APPROVED: _____ VETOED: _____

SIGNATURE: _____ DATE: _____

EFFECTIVE DATE OF LOCAL LAW: _____