



# CITY OF PHILADELPHIA

## CITY COUNCIL

### **Bill No. 200479**

### **Fact Sheet**

On September 17, 2020, Councilman Curtis Jones, Jr. introduced Bill No. 200479, which proposes an update to Philadelphia’s “Fair Criminal Records Screening” ordinance, better known as the “Ban the Box” law. The bill will be considered by the City Council’s Committee on Public Safety on November 23, 2020 at 9:30am.

Bill No. 200479 will update the current protections offered by the “Ban the Box” law by:

- 1) Apply the law to **current employees** (not just applicants)
- 2) Clarify that the law applies to **third-party employers and independent contractors**
- 3) Prevent the consideration of **summary offenses**
- 4) Allow for **damages to be awarded directly to the aggrieved party** (instead of the City)

### **What is the history of the Ban the Box law?**

#### **2012 – Original Legislation Implemented**

- Only applied to employers with at least 10 employees.
- Employer could conduct background check after the first interview.
- No private right of action.

#### **2016 – Councilman Jones Offers Major Amendments**

- Applies to employers with at least one (1) employee.
- Employer can only consider criminal history in the past seven years, AND only after a conditional offer of employment.
- Private right of action for complainant with the Human Relations Commission or Court of Common Pleas depending on outcome of investigation.

#### **2019 – Councilwoman Gym Offers Juvenile Amendments**

- Juvenile arrests and adjudications cannot be considered.

## What process must employers follow under the current law?

*Under the current law, employers are required to follow the below process:*

- Employer interviews applicant for position. **Employer may not ask about criminal history at this time.**
- Employer decides applicant is an appropriate candidate for position and offers the applicant a **conditional offer of employment**. The condition may be the **criminal background screening**.
- **The employer can now do a criminal background screening.** However, the employer may only consider convictions that have occurred in the **past 7 years**. The employer can not consider arrests that have not resulted in a conviction.
- The employer may only **withdraw the conditional offer** of employment if, after an assessment, the employer reasonably concludes that a **conviction within the 7 years** would pose an **unacceptable risk in the position applied for**.
- **In this assessment, the employer must consider:**
  - The nature of the offense;
  - The time that has passed since the offense;
  - The applicant's employment history before and after the offense and any period of incarceration;
  - The particular duties of the job being sought;
  - Any character or employment references provided by the applicant; and
  - Any evidence of the applicant's rehabilitation since the conviction.
- If after conducting the required assessment the **employer makes the determination to withdraw the conditional offer of employment**, then the employer must send their decision in writing to the applicant with a copy of the background report used to make the decision.
- The employee then has (10) days to provide the employer with an explanation of the record, proof that it is wrong, or proof of rehabilitation.

## **What process must employers follow if the provisions of Bill No. 200479 are implemented?**

If the requirements of Bill No. 200479 are implemented, then an employer must treat its current employees with the same deference as it must give a new applicant to a position. This means, when an employer is assessing the suitability of a current employee for continued employment, re-employment, termination, promotion, or a raise, then the employer must consider the employee's qualifications and may only consider the past 7 years of the employee's criminal record as it pertains to the position at hand.

## **What happens if an applicant or employee believes the employer violated the provisions of the Ban the Box law?**

If an applicant or employee believes that an employer has violated the requirements of the law, that individual can file a complaint with the Philadelphia Human Relations Commission (HRC). The HRC will then have one year to investigate complaint. If the HRC does not finish its investigation within one year, they can provide the complainant with a right to sue letter, and the complainant can sue the employer in the Court of Common Pleas. If the HRC finishes its investigation within one year and believes the employer may have violated provisions of the law, the HRC can hold its own hearing and issue a decision.

## **Who decides whether a conviction would pose an unacceptable risk for a specific position?**

The employer ultimately makes this decision using the assessment that is stated within the law. If a complainant's case is reviewed by the HRC or the Court of Common Pleas, then a "reasonableness standard" will be applied to assess whether the employer's decision was legitimate based on the duties of the position, the nature of the conviction, and what information the employer considered during the required assessment.

## **Can an employer provide applicants or current employees with notice that they will conduct a criminal background check in accordance to what is allowed by the law?**

Yes.

## **Will employers still be able to run background checks of current employees to apprise themselves of new convictions?**

Yes. Our office is currently working on an amendment that will clarify that an employer is still allowed to conduct criminal screenings of current employees for the purposes of being apprised of new incidents and may make employment decisions based on new incidents that the employer reasonably believes poses a risk to the employee's current position.

### **What is a third-party employer?**

A third-party employer is any third-party person or entity that facilitates the relationship of work for pay between two other parties. For example, businesses like Uber or Care.com would qualify under the updated definition. At the time the Ban the Box law originally went into effect, these employers were not operating in Philadelphia on as large of a scale as they do now.

### **Why can't an employer consider summary offenses?**

A summary offense is the **most minor type of criminal offense** defined in the Pennsylvania criminal code. These are offenses for which an individual would not typically be arrested or face jail time, and instead only receives a CVN, such as disorderly conduct or loitering.

Adding this provision will also be in line with current interpretation of State Law. Chapter 18, Section 9125(b) of PA's Consolidated Statutes states:

- Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

### **What will Bill No. 200479 change with respect to what relief can be awarded if an employer violates the law?**

Bill No. 200479 would allow the Court of Common Pleas to award liquidated damages, equal to the payment of the maximum allowable salary for the job subject to the complaint for a period of one month. Total liquidated damages shall not exceed five thousand dollars (\$5,000).

### **Will state or federal law requiring background checks still apply?**

Yes. An employer must still conduct criminal background checks when required by state or federal law.