



Harris County, Texas

1001 Preston St., Suite 934
Houston, Texas 77002

Commissioners Court

Request for Court Action

File #: 22-0292

Agenda Date: 1/4/2022

Agenda #: 273.

Department: County Attorney

Department Head/Elected Official: Christian D. Menefee

Regular or Supplemental RCA: Supplemental RCA

Type of Request: Discussion Item

Project ID (if applicable): N/A

Vendor/Entity Legal Name (if applicable): N/A

MWDBE Participation (if applicable): N/A

Request Summary (Agenda Caption):

Request by the County Attorney for consideration and adoption of an order establishing a Fair Chance Policy for those applying for jobs with Harris County.

Background and Discussion: N/A

Expected Impact: N/A

Alternative Options: N/A

Alignment with Goal(s): N/A

- _ Justice and Safety
- _ Economic Opportunity
- _ Housing
- _ Public Health
- _ Transportation
- _ Flooding
- _ Environment
- _ Governance and Customer Service

	YES	NO	ABSTAIN
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Presented to Commissioners Court

January 4, 2022

Approve: E/G

Prior Court Action (if any): N/A

Date	Agenda Item #	Action Taken

Location: N/A

Address (if applicable):

Precinct(s): Choose an item.

Fiscal and Personnel Summary			
Service Name	N/A		
	FY 21-22	FY 22	Next 3 FYs
Incremental Expenditures (do NOT write values in thousands or millions)			
Labor Expenditures	\$	\$	\$
Non-Labor Expenditures	\$	\$	\$
Total Incremental Expenditures	\$	\$	\$
Funding Sources (do NOT write values in thousands or millions)			
Existing Budget			
Choose an item.	\$	\$	\$
Choose an item.	\$	\$	\$
Choose an item.	\$	\$	\$
Total Current Budget	\$	\$	\$
Additional Budget Requested			
Choose an item.	\$	\$	\$
Choose an item.	\$	\$	\$
Choose an item.	\$	\$	\$
Total Additional Budget Requested	\$	\$	\$
Total Funding Sources	\$	\$	\$
Personnel (Fill out section only if requesting new PCNs)			
Current Position Count for Service	-	-	-
Additional Positions Requested	-	-	-
Total Personnel	-	-	-

Anticipated Implementation Date: N/A

Emergency/Disaster Recovery Note: Not an emergency, disaster, or COVID-19 related item

Contact(s) name, title, department: Neal Sarkar, Special Assistant County Attorney, Harris County Attorney’s Office

Attachments (if applicable):

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on January 4, 2022, with all members present except none.

A quorum was present. Among other business, the following was transacted:

ORDER ADOPTING FAIR CHANCE POLICY TO GOVERN HIRING PRACTICES FOR THOSE THAT APPLY TO JOBS WITH HARRIS COUNTY

Commissioner Ellis introduced an order and moved that Commissioners Court adopt the order. Commissioner Garcia seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The adopted order follows:

Whereas, millions of qualified job applicants across the country are unduly hindered by arrest and/or conviction records either by being discouraged from applying for employment by the very fact that this information is sought, or because of the manner in which such records are considered as part of one’s employment application; and

Whereas, to remove unfair barriers to employment of people with criminal histories, over 37 states and over 150 cities and counties have adopted policies adopting fair chance hiring policies, also known as “second chance hiring” policies or “ban-the-box” policies; and

Whereas, by eliminating consideration of arrest records that do not result in a conviction; sealed, dismissed, or expunged convictions; and misdemeanor convictions where no jail sentence can be imposed; and by limiting consideration of conviction records to only after a conditional offer has been extended and then only based on an individualized assessment as long as state and/or federal law allows, job applicants will be judged based on their merits and qualifications rather than arrest or conviction history; and

Whereas, because people of color are arrested, convicted, and incarcerated in numbers disproportionate to their representation the population as a whole and therefore criminal record exclusions have a disparate impact based on race and national origin; and

Presented to Commissioners Court

January 4, 2022

Approve: E/G

Whereas, people with criminal histories suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and

Whereas, people with criminal histories in Harris County are likely to be unemployed or underemployed though they have skills to contribute; and

Whereas, Harris County is committed to being an agent of change for its citizens and the development of its community; and

Whereas, stable employment is one of the best predictors of post-conviction success, thereby increasing public safety, a priority for Harris County; and

Whereas, giving opportunities to individuals with arrest and/or conviction records to obtain gainful employment and will result in the following: (1) creating healthier and safer communities; (2) reducing childhood poverty; (3) facilitating individual rehabilitation and community reintegration; (4) reducing recidivism; (5) strengthening families; (6) reducing the hurdle to gainful employment for areas highly concentrated with people with criminal histories because residents of the community are no longer barred from being positive economic contributors in the community; (7) bolstering the pool of potential job applicants for hiring from within the community; thus, ensuring that the largest proportion of the local community can benefit; (8) helping provide financial support to families resulting in less dependency on insufficient food/housing subsidies; (9) demonstrating to those with criminal records that their community welcomes their full participation in local civil society while allowing those individuals to embrace their responsibility to the community; and by (10) assisting in protecting civil rights by not screening out people with criminal histories at the very onset of the job application process; and

Whereas, Harris County recognizes that state and/or federal laws, or County agreements governing access to certain databases, may require criminal history investigations and disqualification for certain positions, including positions that involve work with children, positions in law enforcement, and other sensitive positions; and

Whereas, Harris County will continue to comply with state and/or federal laws, or County agreements governing access to certain databases, in conducting required and necessary criminal history investigations, while also balancing the interest in providing opportunities for employment to those who have prior convictions in positions in which there are no statutory prohibitions against employment.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS that Harris County adopts a Fair Chance Policy to govern hiring practices for those that apply to jobs with Harris County, which is attached as Exhibit A.

This Order shall immediately go into force and effect upon execution by the Harris County Judge. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

EXECUTED this 4th day of January, 2022.

HARRIS COUNTY, TEXAS



County Judge Lina Hidalgo

ATTEST:



County Clerk Teneshia Hudspeth

(SEAL)



Harris County Fair Chance Policy

Findings:

Whereas, millions of qualified job applicants across the country are unduly hindered by arrest and/or conviction records either by being discouraged from applying for employment by the very fact that this information is sought, or because of the manner in which such records are considered as part of one's employment application; and

Whereas, to remove unfair barriers to employment of people with criminal histories, over 37 states and over 150 cities and counties have adopted policies adopting fair chance hiring policies, also known as "second chance hiring" policies or "ban-the-box" policies; and

Whereas, by eliminating consideration of arrest records that do not result in a conviction; sealed, dismissed, or expunged convictions; and misdemeanor convictions where no jail sentence can be imposed; and by limiting consideration of conviction records to only after a conditional offer has been extended and then only based on an individualized assessment as long as state and/or federal law allows, job applicants will be judged based on their merits and qualifications rather than arrest or conviction history; and

Whereas, because people of color are arrested, convicted, and incarcerated in numbers disproportionate to their representation the population as a whole and therefore criminal record exclusions have a disparate impact based on race and national origin; and

Whereas, people with criminal histories suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and

Whereas, people with criminal histories in Harris County are likely to be unemployed or underemployed though they have skills to contribute; and

Whereas, Harris County is committed to being an agent of change for its citizens and the development of its community; and

Whereas, stable employment is one of the best predictors of post-conviction success, thereby increasing public safety, a priority for Harris County; and

Whereas, giving opportunities to individuals with arrest and/or conviction records to obtain gainful employment and will result in the following: (1) creating healthier and safer communities; (2) reducing childhood poverty; (3) facilitating individual rehabilitation and community reintegration; (4) reducing recidivism; (5) strengthening families; (6) reducing the hurdle to gainful employment for areas highly concentrated with people with criminal histories because residents of the community are no longer barred from being positive economic contributors in the community; (7) bolstering the pool of potential job applicants for hiring from within the community; thus, ensuring that the largest proportion of the local community can benefit; (8) helping provide financial support to families resulting in less dependency on insufficient food/housing subsidies; (9) demonstrating to those with criminal records that their community welcomes their full participation in local civil society while allowing those individuals to embrace their responsibility

to the community; and by (10) assisting in protecting civil rights by not screening out people with criminal histories at the very onset of the job application process; and

Whereas, Harris County recognizes that state and/or federal laws, or County agreements governing access to certain databases, may require criminal history investigations and disqualification for certain positions, including positions that involve work with children, positions in law enforcement, and other sensitive positions; and

Whereas, Harris County will continue to comply with state and/or federal laws, or County agreements governing access to certain databases, in conducting required and necessary criminal history investigations, while also balancing the interest in providing opportunities for employment to those who have prior convictions in positions in which there are no statutory prohibitions against employment.

Purpose:

This Harris County Fair Chance Policy (the “Fair Chance Policy”) is adopted by Harris County Commissioners Court to ensure that Harris County’s hiring practices: (1) do not unfairly deny people with arrest and conviction records employment with the County; (2) encourage reintegration and rehabilitation of people with criminal histories in order to create stronger, healthier, and safer communities; (3) address challenges with community members being denied gainful employment on account of criminal history; and (4) use criminal history checks fairly and in a way that is limited to convictions relevant to the position in question and consistent with business necessity.

Scope:

The Fair Chance Policy applies to all departments with unelected department heads that report to Commissioners Court. It is further urged that each elected official in Harris County adopt this policy for their respective offices.

Fair Chance Hiring:

Section 1. Policy

Harris County Departments will consider Applicants for employment opportunities based on their qualifications, skills, and experience related to the position sought. The Departments:

- 1) shall not include on job applications any question seeking an Applicant’s criminal history, ***unless*** the position is in a law enforcement department, in which case such information may be solicited;
- 2) shall conduct criminal history checks on Applicants ***only if and after*** the Department has extended a conditional offer of employment to the Applicant. However, criminal history checks may be performed at an earlier point in the hiring process for positions in which

state or federal law,¹ or County agreements governing access to certain databases,² require a criminal history check and/or disqualification of certain Applicants based on the results of that check;

- 3) shall not consider an Applicant's records of arrest if not followed by a conviction (unless charges are pending during the criminal history check, in which case it may be considered as indicated by this policy); sealed, dismissed, or expunged convictions; or misdemeanor convictions where no jail sentence can be imposed; and
- 4) unless the Applicant is determined to be unqualified for the position due to state or federal law, or County agreements governing access to certain databases, may only deny an Applicant employment based on a prior conviction(s) if the Department makes a good faith determination that the conviction(s) is relevant to the position such that its consideration is appropriate and, then, only after an individualized assessment of the Applicant's situation that leads to a determination that the Applicant is no longer deemed suitable for the position.

If a criminal history check yields information that is of concern to the Department, the Applicant will be informed of the conviction(s) that are the basis for concern and be provided an opportunity to present information regarding inaccuracy, mitigating circumstances, and rehabilitation; the Applicant's situation will then be assessed on an individualized basis, unless, again, the Applicant is ineligible due to state or federal law, or County agreements governing access to certain databases.

Section 2. Definitions

2.01 "Applicant" means a person who has filed an employment application for a position with the County.

2.02 "County" means Harris County, Texas.

2.03 "Department" means any Harris County Department to which this policy applies; namely (1) any department with an unelected department head that reports to Harris County Commissioners Court, and (2) any department of an elected official who has adopted this policy.

2.04 "Disqualification" means to be determined to be unsuitable for hire or to revoke an Applicant's conditional offer of employment.

2.05 "HR" means the human resources group within each of the respective Harris County Departments.

Section 3. Existing Law

¹ For example, under Texas law: (1) people with criminal histories are disqualified from being an officer for any law-enforcement agency anywhere in the state (Tex. Occ. Code § 1701.312(a)); and (2) individuals with certain convictions are barred from working in certain facilities serving the elderly, those with disabilities, or those with terminal illnesses (Tex. Health & Safety Code § 250.006).

² For example, agreements governing access to the FBI's Criminal Justice Information Services Division (CJIS).

The County and its Departments will comply with state and/or federal law requiring criminal history checks for certain positions, for dictating certain disqualifying offenses, and all other relevant existing law or obligation. In addition, certain sensitive positions will continue to require criminal history checks including those that require the following: (1) unsupervised contact with children under 18; (2) unsupervised contact with the elderly or disabled; and (3) unsupervised handling of hazardous substances.

Section 4. Considering Conviction History in Employment Decisions

4.01 Posting. All job announcements and position descriptions shall contain the following statement if the position requires a criminal history check, unless otherwise required by state or federal law, or County agreements governing access to certain databases: “This position is subject to a criminal history check. Only relevant convictions will be considered and, even when considered, may not automatically disqualify the candidate.”

4.02 Job Applications. Job applications shall not inquire into an Applicant’s conviction history unless permitted by this policy. Qualified Applicants, including those with criminal histories, shall be considered.

4.03 Notice. Once an individual has been recommended for hire, HR will be notified, and HR shall send the selected individual a conditional offer letter, notice of this policy, and a request for authorization to conduct a criminal history check, if so required.

4.04 Limitation of Conviction History. HR shall not consider the following criminal history in relation to a criminal history check: (1) records of arrest not followed by a conviction subject to the final sentence of this section; (2) sealed, dismissed, or expunged convictions; or (3) misdemeanor convictions where no jail sentence can be imposed. Arrests that are pending and unresolved at the time of the criminal history check may be considered as set forth in § 4.05, below.

4.05 Conviction History Inquiry. HR shall only consider relevant convictions, or the conduct underlying relevant criminal charges pending at the time of the criminal history check, unless state or federal law, or County agreements governing access to certain databases, explicitly require that certain convictions are automatic bars to employment. Otherwise, no Applicant shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a relevant conviction—that is, that it warrants Disqualification. In determining if a conviction is relevant, HR shall consider:

- (a) The nature and gravity of the conduct at issue;
- (b) Whether the conduct at issue is directly related to the duties and responsibilities of that employment position, including the legal requirements and sensitivity of the position;
- (b) Whether the position offers the opportunity for the same or similar conduct to occur;
- (c) Whether circumstances leading to the conduct for which the Applicant was convicted will recur in the position; and

- (d) The length of time since the conduct at issue occurred.

4.06 Pre-Disqualification Notice. If an Applicant's conviction history contains information that may be the basis for a Disqualification, HR shall:

- (a) Identify for the Applicant the conviction(s) that are the basis for the potential Disqualification;
- (b) Notify the Applicant of their opportunity to respond with evidence of mitigation or rehabilitation evidence, and provide examples of relevant information; and
- (c) Provide the Applicant with an individualized assessment as described below.

4.07 Individualized Assessment. A conviction shall not be the basis for a Disqualification if the Applicant can show satisfactory evidence of mitigation or rehabilitation to demonstrate fitness for the position, unless state or federal law, or County agreements governing access to certain databases, require otherwise. The Applicant shall have ten (10) business days after issuance of the Pre-Disqualification Notice to respond with any information rebutting the basis for the Disqualification, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. HR shall not make the final employment decision until the expiration of the 10-day period for the Applicant to respond. An Applicant's failure to respond may result in withdrawal of the condition offer of employment.

4.08 Evidence of Mitigation or Rehabilitation. Evidence of mitigation or rehabilitation that may be considered include, but is not limited to, the following:

- (a) The facts or circumstances surrounding the offense or conduct;
- (b) The number of offenses for which the individual was convicted;
- (c) Evidence that the Applicant performed the same type of work, post-conviction, with no known incidents of criminal conduct;
- (d) The length and consistency of employment history before and after the offense or conduct;
- (e) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime;
- (f) Evidence showing compliance with terms and conditions of probation or parole;
- (e) Rehabilitation efforts (e.g., education/training);
- (f) Employment or character references and any other information regarding fitness for the particular position;
- (g) Whether the individual is bonded under a federal, state, or local bonding program; and
- (h) Any other indicators that the Applicant is unlikely to repeat criminal conduct.

4.09 Final Notice. If HR makes a Disqualification, the Applicant shall be informed of the final decision, the appeal process, and that the Applicant may be eligible for other County positions.

4.10 Appeal. Applicants may appeal the Disqualification to the head of the Department considering the Applicant. Applicants must appeal within seven (7) days of receipt of the Final Notice by sending a letter addressed to the head of the Department, copying the relevant HR contact, with an explanation for why Disqualification is not warranted along with any supporting documentation. The Department then has twenty (20) days to make a final decision.

4.11 Confidentiality. Any information pertaining to the Applicant's criminal history check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the County or any of its departments, or its vendors, to any other entity, except as required by law.

4.12 Promotion and Coordination. The County will partner with local programs to help those with criminal records to convey this Fair Chance Policy, to encourage participation from these entities to help find Applicants, and to obtain their assistance with issues that arise from the hiring of persons with criminal histories.

4.13 Data Collection. The Harris County Administrator's Office, with HR, will develop data collection strategies and performance measures to collect baseline data that helps evaluate the success of this Fair Chance Policy for report to Commissioners Court during the budget process.

4.14 Effective Date. This policy will go into full force and effect sixty (60) days from the date of the Commissioners Court meeting at which this policy is adopted.