



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

NORA VARGAS
First District

JOEL ANDERSON
Second District

TERRA LAWSON-REMER
Third District

MONICA MONTGOMERY STEPPE
Fourth District

JIM DESMOND
Fifth District

DATE: August 27, 2024, and September 10, 2024

19

TO: Board of Supervisors

SUBJECT

AN ORDINANCE TO ADD CHAPTER 27 TO DIVISION 1 BUSINESS REGULATIONS, OF TITLE 2 LICENSES, BUSINESS REGULATIONS, AND BUSINESS TAXES OF THE COUNTY CODE OF REGULATORY ORDINANCES RELATING TO PRIVATE EMPLOYERS' USE OF CRIMINAL HISTORY IN EMPLOYMENT DECISIONS (8/27/24 – First Reading; 9/10/24- Second Reading unless ordinance is modified on second reading) (DISTRICTS: ALL)

OVERVIEW

On March 12, 2024 (20), the County of San Diego (County) Board of Supervisors (Board) directed the Chief Administrative Officer (CAO) to explore the feasibility of establishing a local enforcement mechanism for the California Fair Chance Act through the Office of Labor Standards and Enforcement (OLSE) and return to the Board in 120 days with a draft ordinance. The action was included as part of the workplan of an agenda item on the Alternatives to Incarceration (ATI) program, the County's collaborative focus on actions to increase positive outcomes and reduce incarceration for at-risk and justice-involved individuals who do not pose a public safety threat.

The ATI work plan put into action a previous Board action on October 19, 2021 (3), which directed staff to develop data-driven alternatives to incarceration for people who do not pose a public safety threat. In light of data and community input reflecting high needs and barriers among local justice-involved populations in accessing employment, the work plan included an action item enabling the OLSE to launch employer and job-seeker outreach to increase awareness of the Fair Chance Act (FCA).

In collaboration with community groups and organizations representing business groups who support formerly incarcerated people, OLSE identified efforts the County could take to expand support and reduce the barriers to employment obstacles for people in our region.

Today's request is for the Board to approve the introduction of an ordinance adding Chapter 27 to Title 2 of the County Code of Regulatory Ordinances. If approved, the ordinance will be scheduled for adoption on September 10, 2024. If the proposed ordinance is altered on August 27, 2024, then on that date a subsequent meeting date will be selected for the ordinance's adoption.

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Additionally, the ordinance would authorize OLSE to reduce barriers to employment by conducting investigations regarding allegations of violations of the San Diego County Fair Chance Ordinance and providing educational outreach services to businesses in the unincorporated area.

RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER

On August 27, 2024:

1. Approve the introduction of the Ordinance (first reading):

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If, on August 27, 2024, the Board takes action as recommended on item 1 above, then on September 10, 2024:

2. Consider and adopt the Ordinance (second reading):

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EQUITY IMPACT STATEMENT

Establishing a local Fair Chance Ordinance (Ordinance) is a crucial step toward providing justice-involved individuals with fair employment opportunities. By creating a streamlined process for lodging complaints about discriminatory hiring practices, the County demonstrates its commitment to supporting those seeking to reintegrate into the workforce. Nationally and in San Diego County, arrest and incarceration disproportionately impact people of color and those who are low-income, disabled, experiencing homelessness, or have behavioral health needs. For example, San Diego County jail data indicate that Black individuals composed more than 21% of the average daily jail population in 2023, while only 5.6% of San Diego County's overall population are Black, according to 2020 Census data.

SUSTAINABILITY IMPACT STATEMENT

The proposed action to add Chapter 27 to Title 2 of the County Code of Regulatory Ordinances contributes to many of the County of San Diego's Sustainability Goals: engage the community,

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provide just and equitable access, and protect health and well-being. In terms of sustainability in equity, economy, and health/well-being, it will impact the communities and socio-economic groups historically burdened by wage theft by providing thousands of dollars to make ends meet and possible job transition or period of unemployment and help keep the local economy strong.

FISCAL IMPACT

Funds for this request are not included in the Fiscal Year (FY) 2024-25 CAO Operational Plan. If approved, this request will result in additional costs and revenue for the implementation of a local Fair Chance Ordinance program. Some funding will include revenue generated from penalties associated with the ordinance. As this program is established, the Office of Labor Standards and Enforcement will use existing resources and staff for the outlay of outreach and education related to the Fair Chance Act and the County's ordinance. As the program develops there may be future fiscal impacts to ensure timely response maintains pace with caseload, which staff would bring back to the Board for consideration and approval.

BUSINESS IMPACT STATEMENT

This Ordinance includes an educational program to provide businesses with the tools needed to adopt fair hiring practices. By participating and engaging with OLSE, businesses will gain valuable insights into the benefits of inclusive hiring practices. Not only does this Ordinance help in reducing recidivism rates by providing opportunities for individuals with criminal records, but it also contributes to fostering workplace diversity, which has been proven to enhance creativity and productivity within companies. By focusing on qualifications and skills rather than past histories, employers can create a more inclusive and equitable work environment that is beneficial to both the employees and the business as a whole.

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

In California, about one in five residents has a criminal record.¹ Formerly justice-involved individuals hold, on average, an unemployment rate of 27%, which is far higher than the total unemployment rate during the Great Depression.² Despite research showing employment for formerly incarcerated persons can improve public safety outcomes, and systems-impacted people perform as well as, or better than, employees without criminal records, they continue to face obstacles in finding gainful work.³

The number of employers conducting background checks has risen exponentially and has a critical impact on rates of employment for justice-involved individuals. This cycle continues to normalize

¹ [California criminal justice reform offers second chance - CalMatters](#)

² [Out of Prison & Out of Work | Prison Policy Initiative](#)

³ <https://www.shrm.org/about/press-room/new-shrm-cki-survey-highlights-value-workers-criminal-records>

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the stigma that those convicted of a crime are to be viewed with suspicion and judgment even after reentering the community from incarceration. Ensuring people affected by this system have equal access to employment, is critical to improving quality of life and is a key component in reducing recidivism.

In fact, 60% of recently released formerly incarcerated people are still likely jobless at the moment.⁴ As of 2019⁵, the average age of justice-involved individuals being released on parole for males is 39.6 years and females 37.9 years. Research shows that as of 2022⁶, the age group with the highest Labor Force Participation (LFP)⁷ rate is men aged 25–54, at 88.6%, followed by women aged 25–54 at 82.4%. The data shows that if the average age is around 40 for males and slightly younger for females, justice-involved individuals may still have a significant portion of their working lives ahead of them.

Local data collected or compiled as part of the Board of Supervisors directed Alternatives to Incarceration (ATI) initiative (Oct 19, 2021 (3)) confirms the high need for employment among justice involved populations in San Diego County. For example, employment and employment services was the number one need reported by individuals in custody and those in the community with current or former justice-involvement, in a community conducted by the San Diego Association of Governments (SANDAG) as part of the ATI review. Likewise, SANDAG found that 58 percent of justice-involved individuals seeking assistance at the District Attorney's CARE Center reported being unemployed.

It is crucial to provide employment opportunities upon release to facilitate successful reintegration into society and reduce recidivism rates. Justice-involved individuals face barriers to employment due to their criminal history, there is a risk of them being excluded from the economically active population, which could worsen issues of unemployment.

By addressing these barriers to employment, the County can improve employment outcomes, reduce recidivism rates, and support the successful reintegration of justice-involved individuals into our community.

Fair Chance Act and a Local Fair Chance Ordinance

In January 2018, the Fair Chance Act (FCA) was enacted in California to level the playing field for job candidates who may have previous convictions and seeking new employment upon reentry into the community. The FCA prohibits most employers from asking job candidates questions related to their criminal history until the employer has extended an offer of employment. Job offers

⁴ <https://www.prisonpolicy.org/blog/2022/02/08/employment/>

⁵ Offender Data Points for December 2019 (ca.gov), table 5.8.

⁶ <https://www.bls.gov/emp/tables/civilian-labor-force-participation-rate.htm>, table 3.3.

⁷ The U.S. Labor Force Participation (LFP) rate is the percentage of people aged 16 and older who are employed or actively looking for work.

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can be rescinded after an employer completes an individualized assessment based on specific criminal history disqualifying a person from that specific job.

Under current law, if a job candidate thinks an employer has violated the law, the job candidate has up to three (3) years to file a complaint with the California Civil Rights Department (CRD)⁸. With a local Fair Chance Ordinance (Ordinance), OLSE would have the authority to review, investigate, and correct the violation more expeditiously and keep employers accountable for discriminatory actions.

In conjunction with the California FCA, a local Ordinance will clarify candidates' rights, introduce additional compliance requirements due to gaps found in the FCA, and improve enforcement by introducing penalties for Ordinance violators. Under a local Ordinance, OLSE will be authorized to:

- **Streamline the Reporting Process:** Workers who think they have been discriminated against due to their criminal history can contact our office directly instead of the State.
- **Implement an Education Enforcement Program:** Conduct education and outreach to 413,130⁹ workers and 15,000¹⁰ employers across the unincorporated region on the FCA and Ordinance.
- **Governing Authority:**
 - Investigate claims from justice-involved job seekers who believe their employer violated the FCA and local Ordinance.
 - Support employers in correcting their hiring process that violates the FCA, while monitoring their efforts to ensure compliance with the law.
 - Issue statutory penalties to employers who do not wish to comply with the FCA and continue to violate the law. OLSE will assess all penalties based on the factors identified in the Ordinance and departmental regulations.
- **Fair Chance Ordinance Fund:** Allocate a portion of the fines collected to the affected candidates or employees. This will serve as a powerful incentive for victims to report injustices.

Implementing these measures, will not only hold employers accountable but also encourage greater transparency and accountability in the hiring practices of businesses across the County. A summary of the Ordinance program and complaint process is available as attachment C.

⁸ https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/11/Fair-Chance-Act-FAQ_ENG.pdf

⁹ https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/CHS/2022%20City%20Demographic%20Profiles_FINAL.pdf

¹⁰ https://labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data.html

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Local Fair Chance Ordinance Hiring Process

The proposed Ordinance is focused on addressing gaps in the current FCA. A detailed explanation of the current hiring and complaint process of the Fair Chance Act is part of attachment D. Below is a summary of the additional hiring requirements the local Ordinance would include:

Summary of Additional Hiring Recommendations

THE HIRING PROCESS	CALIFORNIA FAIR CHANCE ACT	SAN DIEGO COUNTY FAIR CHANCE ORDINANCE
Jurisdiction	California	Unincorporated areas of San Diego County, for business with 5 or more employees, or a candidate’s primary job location must average <u>two hours of work each week</u> within the unincorporated area.
The Job Application and Interview	Employers cannot ask any questions about a criminal record.	No change
The conditional job offer	Employers can ask about criminal background after a conditional job offer has been extended but recommend not looking beyond 7 years prior.	No change
The individualized assessment	Employers are required to perform an individualized assessment of the candidate/employee’s conviction history before consideration of rescinding a job offer.	If an employer decides to rescind a job offer based on a candidate’s conviction history, they must perform a written individualized assessment
The rescission of the offer, if necessary	If the employer intends to retract the job offer, a candidate will have five (5) business days to provide evidence of rehabilitation or dispute the accuracy of the conviction history.	The position must remain available (unless an emergency occurs) during the five (5) business day period and while the employer reviews evidence of rehabilitation.
Reassessment/Final Notification	If after considering any information provided by the candidate/employee, the employer still intends to revoke the job offer, the employer will provide notice to the candidate of that decision and direct all complaints to be filed with CRD.	Employers must also provide a written notice that complaints can be filed with OLSE.
Penalties	None	Penalties are created to deter employers from violating the ordinance.

Community Outreach and Engagement

Since 2021, OLSE has implemented outreach and education for employers and employees to learn about the FCA. Through a contracted partner, OLSE has provided a six-part training regarding FCA and associated laws, barriers justice-involved workers face, and frequently asked questions to more than 360 employers, including outreach materials in both English and Spanish. Staff is

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also partnering with justice-focused employment programs and the Sheriff's Department to educate previously incarcerated job seekers on their rights under the labor law. OLSE has facilitated more than 350 "Know Your Rights" seminars for justice-involved adults and transitional-age youth and engaged an estimated 400 incarcerated people at the Las Colinas and East Mesa reentry facilities through job fairs and training sessions.

Throughout numerous trainings and workshops, OLSE has continuously heard from job seekers who found promising employment but were denied the position after a background check showcased their criminal histories. Unfortunately, since the County does not have authority, OLSE can only refer job seekers to the Civil Rights Department to file a claim, which could take more than a year to be reviewed.

As part of the development of the proposed Ordinance, OLSE held one-on-one meetings and sought input from community groups, reentry service providers supporting justice-involved workers, and organizations representing business groups. All stakeholders were generally in support of the local Ordinance because it provides OLSE with the local authority to conduct investigations and issue penalties on employers who do not follow the law. Stakeholders also emphasized the need to continue informing and educating businesses and workers about fair chance hiring practices. Stakeholders expressed interest in the incorporated area of San Diego be included as part of the Ordinance, however, they understand that it is not under County jurisdiction.

OLSE also held three (3) town halls allowing space for each interest group to provide their feedback on the proposed Ordinance and an opportunity to share their stories on employment barriers and challenges. These town halls were geared towards justice-involved people, employers who support justice-involved, and the general community. Three voluntary surveys were also available on our website, one for each of those three populations, if they wanted to provide additional feedback. For the justice-involved survey, 18 out of 20 respondents said they were familiar with the FCA, 9 were denied employment due to background checks and 0 submitted a complaint. For the community survey, 8 out of 10 said they were familiar with the FCA, and 5 out of 10 had not seen job postings that include language that "qualified applicants with arrests or conviction records are encouraged to apply". Attachment E provides all survey results.

Although the FCA aims to facilitate the process for formally incarcerated to have a second chance at employment, it alone cannot promise equitable treatment of workers or responsible conduct from employers. A local Ordinance will hold employers responsible for their actions, emphasizing enforcement measures in our region and provide reassurance to workers. This will benefit employers by offering clear guidelines and helping them comprehend expectations, leading to improved practices. For workers, it will ensure that their rights are upheld and enforced. By blending education with accountability, this ordinance establishes a safer and more equitable environment, benefiting the entire community.

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LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed actions support the Equity, Justice, and Innovation Initiatives in the County of San Diego's 2024-2029 Strategic Plan by advancing opportunities for economic growth and development to all individuals and the community, contributing to a system of restorative justice that strives to repair harm to victims and the community at large, and by fostering a new idea and implementing best practices to achieve organizational excellence.

Respectfully submitted,



EBONY N. SHELTON
Chief Administrative Officer

ATTACHMENT(S)

ATTACHMENT A - AN ORDINANCE TO ADD CHAPTER 27 TO DIVISION 1 BUSINESS REGULATIONS, OF TITLE 2 LICENSES, BUSINESS REGULATIONS, AND BUSINESS TAXES OF THE COUNTY CODE OF REGULATORY ORDINANCES RELATING TO PRIVATE EMPLOYERS' USE OF CRIMINAL HISTORY IN EMPLOYMENT DECISIONS (Clean Copy)

ATTACHMENT B - AN ORDINANCE TO ADD CHAPTER 27 TO DIVISION 1 BUSINESS REGULATIONS, OF TITLE 2 LICENSES, BUSINESS REGULATIONS, AND BUSINESS TAXES OF THE COUNTY CODE OF REGULATORY ORDINANCES RELATING TO PRIVATE EMPLOYERS' USE OF CRIMINAL HISTORY IN EMPLOYMENT DECISIONS (Informational Copy)

ATTACHMENT C- SUMMARY OF PROPOSED ORDINANCE

ATTACHMENT D - SUMMARY OF ORDINANCE COMPLAINT PROCESS

ATTACHMENT E –SUMMARY OF CALIFORNIA FAIR CHANCE ACT (FCA) HIRING PROCESS

ATTACHMENT F – SUMMARY OF SURVEY RESULTS FOR FAIR CHANCE ORDINANCE