

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 545\*

Short Title: Fair Chance Hiring.

(Public)

Sponsors: Senator J. Davis (Primary Sponsor).

Referred to: Rules and Operations of the Senate

April 3, 2019

1 A BILL TO BE ENTITLED  
2 AN ACT DIRECTING STATE AGENCIES TO ADJUST EMPLOYMENT PRACTICES TO  
3 REDUCE BARRIERS TO EMPLOYMENT FOR INDIVIDUALS WITH A CRIMINAL  
4 HISTORY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 6 of Chapter 126 of the General Statutes is amended by adding  
7 a new section to read:

8 "**§ 126-20. State agency hiring practices; criminal histories.**

9 (a) Definitions. – The following definitions apply in this section:

10 (1) Applicant. – Any individual considered for, or who requests to be considered  
11 for, employment with the State or any current State employee considered for,  
12 or who requests to be considered for, another position in State employment.

13 (2) Criminal history. – A State or federal conviction of a crime, whether a  
14 misdemeanor or felony. The term includes a record of arrests that have not  
15 resulted in a conviction and those that have resulted in a favorable disposition  
16 such as a dismissal or a verdict of not guilty.

17 (3) Inquiry. – Any direct or indirect conduct intended to gather information, using  
18 any mode of communication.

19 (b) Findings and Purpose. – The General Assembly finds that the ability to procure  
20 meaningful employment is essential to reinstating good citizenship for individuals who have a  
21 criminal record. The General Assembly declares that the State encourages the successful  
22 reintegration of people with a criminal history and recognizes that reducing barriers to  
23 employment for persons with a criminal history is a matter of statewide concern. The purpose of  
24 this section is to implement hiring practices that will increase employment opportunities and will  
25 reduce recidivism and improve community stability.

26 (c) Scope. – This section applies to all State agencies and positions in State government  
27 employment, except that this section does not apply to any of the following:

28 (1) A position for which State or federal law specifically disqualifies an applicant  
29 with a record of conviction for one or more specified offenses.

30 (2) A position the duties of which are related to the investigation, apprehension,  
31 detention, or post-release supervision of individuals suspected or convicted of  
32 committing criminal offenses, including law enforcement officers,  
33 correctional officers, and probation and parole officers.

34 (d) Applicant Criminal History. – An applicant shall not be asked to disclose, orally or in  
35 writing, information concerning the applicant's criminal record or history, including any inquiry



1 on any employment application, until the applicant has (i) received a conditional offer of  
2 employment and (ii) signed the appropriate waiver authorizing release.

3 (e) Opportunity to Respond. – If a background check has been lawfully completed and a  
4 criminal history exists, the State agency must inform the applicant of a potential adverse  
5 employment decision based on the background check report and must provide the applicant an  
6 opportunity to respond with information pertaining to the following factors prior to a final  
7 decision:

8 (1) That the applicant was not correctly identified in the background check report  
9 or that the report is otherwise inaccurate.

10 (2) Potentially mitigating circumstances of the conviction or convictions.

11 (3) The applicant's efforts toward rehabilitation.

12 (f) Consideration. – If a background check has been lawfully completed and a criminal  
13 history exists, the following criteria shall be considered by the State agency before either  
14 proffering or denying an offer of employment:

15 (1) The nature and gravity of the offense.

16 (2) The length of time that has elapsed since the offense occurred.

17 (3) The age of the person at the time of the conviction.

18 (4) Whether the offense is reasonably related to the duties and responsibilities of  
19 the employment sought by the applicant.

20 (5) Whether the position offers the opportunity for the same or a similar offense  
21 to occur.

22 (6) Whether the position involves direct responsibility for the care of individuals  
23 susceptible to abuse or mistreatment because of the individual's  
24 circumstances, including the individual's age, disability, frailty, mental health  
25 disorder, developmental disability, or ill health.

26 (7) Any information pertaining to the degree of rehabilitation that may have taken  
27 place in the applicant.

28 (g) Record of Arrest or Expungement. – A record of arrest that did not result in conviction  
29 or a record which has been expunged shall not be the basis for disqualification from public  
30 employment.

31 (h) Violations of This Section. – A grievance concerning an alleged violation of this  
32 section may be brought by an applicant under G.S. 126-34.01 and G.S. 126-34.02.

33 (i) Data Collection. – Each State agency shall maintain a record of (i) the number and  
34 percentage of applicants given a conditional offer of employment who are thereafter determined  
35 to have a criminal history and (ii) the number and percentage of the aforementioned applicants  
36 who have a criminal history who receive a final offer of employment from the agency. Each State  
37 agency shall report this information annually to the Office of State Human Resources. By April  
38 1, 2021, and then annually thereafter, the Office of State Human Resources shall compile this  
39 information and make it available to the public.

40 (j) Construction. – Nothing in this section shall be construed to require the performance  
41 of a criminal history background check when one is not otherwise required by law or policy.

42 (k) Non-State Employers. – The General Assembly encourages comparable hiring  
43 practices among local governments and private employers operating in the State."

44 **SECTION 2.** G.S. 126-34.02(b) is amended by adding a new subdivision to read:

45 "(b) The following issues may be heard as contested cases after completion of the agency  
46 grievance procedure and the Office of State Human Resources review:

47 ...

48 (7) Criminal history. – A grievance arising under G.S. 126-20 that is related to an  
49 applicant's or State employee's criminal history."

50 **SECTION 3.** G.S. 126-5 is amended by adding a new subsection to read:

1        "(c15) Notwithstanding any other provision of this Chapter, the provisions of G.S. 126-20  
2 apply to all State employees and applicants for State employment, except as specifically excluded  
3 by that section."

4                **SECTION 4.** This act is effective when it becomes law and applies to positions  
5 posted for State employment on or after that date.