

## MEMORANDUM

To: Appointing Authorities, Department Heads, and Hiring Managers  
From: Tom Cheney, DHR Chief of Policy, Programs and Legislative Affairs  
Date: July 23, 2015  
Re: Ban the Box Hiring Policy Guidance

Pursuant to Executive Order 03-15, questions about criminal history will no longer be asked of applicants on the State job application. This policy applies to applicants, internal and external, for every State Executive Branch position. The only exception is that applicants for designated law enforcement positions and positions within the Department of Corrections shall continue to be asked certain criminal history questions on the initial application.

Hiring managers should proceed with their hiring process as usual, identifying applicants to interview and conducting interviews, without knowledge of an applicant's criminal history. Once the top candidate(s) have been identified, and after first interviews, if any, a Criminal Conviction History Declaration (CCHD) form shall also be provided to the candidate(s). The CCHD form will ask the same criminal history questions that the former State application asked, and give candidates an opportunity to explain their answer, if applicable. **The hiring manager shall not see an applicant's CCHD response until at least after the first round of interviews for a position.**

The hiring manager should not automatically exclude any applicant based on his or her answers on the CCHD form. Rather, if the applicant's answers indicate a criminal history, the hiring manager must perform an individualized assessment to determine whether the specific criminal history warrants exclusion from further consideration for the position. In performing this evaluation, the hiring manager should thoroughly consider the nature of the position sought and the connection between the convicted offense and the position.

The hiring manager should further consider:

- The nature and gravity of the offense
- The time that has passed since the offense or conduct; and
- The nature of the position sought

If warranted, hiring managers may make further inquiries and provide the candidate with an opportunity to explain or provide other justification as to why he or she should not be excluded from consideration for the specific position. Hiring managers who wish to exclude a candidate from consideration for a position after conducting this individualized assessment should only do so if exclusion is necessary for safe and efficient job performance.

A post-conditional-offer background check will still be performed on any position that requires a background check. The same individualized assessment as described above should be performed by managers when considering the results of background checks.

Understanding the distinct business needs of individual State Departments/Agencies, DHR is providing this memorandum as guidance for how each department/agency can best comply with Executive Order 03-15. It is up to each State Department/Agency to formulate a hiring protocol that conforms to the Executive Order and the guidance provided above, as recommended by the U.S. Equal Employment Opportunity Commission.

In order to assist State Agencies and Departments to fully and impartially comply with the spirit of the Executive Order, DHR makes the following recommendations:

1. Hiring managers provide (either personally or via DHR) the tax compliance and CCHD forms to the top candidates after the first round of interviews.
2. The Criminal Conviction History Declaration form is returned by the applicants directly to the DHR personnel, and not to the hiring manager.
3. DHR personnel will notify the hiring manager if an applicant declared a criminal history, and will assist the hiring manager in engaging in the above analysis when evaluating the applicants' responses.