

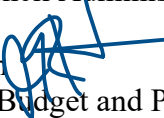


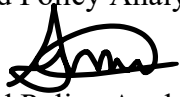
October 13, 2023

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: Shalene Miller-Whye 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-097-2023

CB-097-2023 (*Proposed by:* Council Members Burroughs and Oriadha)

Assigned to the Committee of Planning, Housing, and Economic Development Committee (PHED)

AN ACT concerning Returning Citizens Fair Chance to Housing for the purpose of alleviating housing discrimination suffered by returning citizens and those with criminal convictions is their quest for adequate and suitable housing by prohibiting landlords from making inquiries into a prospective tenant's criminal history.

Fiscal Summary

Direct Impact:

Expenditures: No direct expenditure impact is expected.

Revenues: No direct revenue impact.

Indirect Impact:

Potentially favorable.

Legislative Summary:

CB-097-2023 was proposed by Council Members Burroughs and Oriadha on October 3, 2023, and referred to the Planning, Housing and Economic Development Committee (PHED). This Bill would prohibit landlords from inquiring about a prospective tenant’s criminal history. CB-097-2023 seeks to limit housing discrimination against returning citizens and those with criminal convictions with the following provisions:

- Not allowing housing providers ¹to make inquiries or consider previous arrests if there was not a conviction; for some offenses, they can be considered if they have occurred within seven years of the application.
 - Not allowing housing providers to make inquiries into an application arrest, convictions, or pending accusation until a conditional offer is made.
 - Allowing applicants to submit complaints to the Office of Human Rights for investigation into if discrimination has occurred in the application process.
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Current Law/Background:

There are currently no protections against discrimination in housing for citizens who have a criminal history.

Division 12, Subdivision 1, describes the purpose of the Office of Human Rights as “a function of the County government to foster and encourage the growth and development of the County in such a manner that all persons shall have an equal opportunity to pursue their lives free of discrimination imposed because of race, religion, color, sex, national origin, age, occupation, marital status, political opinion, personal appearance, sexual orientation, disability, familial status, or gender identity. Discriminatory practices based upon the foregoing criteria are declared to be contrary to the public policy of the County.”²

Further, Division 12, Subdivision 5, Section 2-210 prohibits the following in housing, “refuse to sell, lease, sublease, rent, assign, or otherwise transfer; or refuse to negotiate for the sale, lease, sublease, rental, assignment or other transfer of the title, leasehold, or other interest in any housing; or represent that housing is not available for inspection, sale, lease, sublease, rental, assignment,

¹ means a landlord, an owner, lessor, sublessor, assignee, or their or its agent, or other person receiving or entitled to receive rents or benefits for the use or occupancy of any Rental Dwelling Unit. Housing Provider includes the County government, but not the United States, the State, or any other local government.

² [DIVISION 12. - OFFICE OF HUMAN RIGHTS. | Code of Ordinances | Prince George's County, MD | Municode Library](#)

or other transfer when in fact it is so available; or otherwise make housing unavailable, deny, or withhold any housing from any person because of race, religion, color, sex, national origin, age (except as required by State or Federal law), occupation, marital status, political opinion, personal appearance, sexual orientation, disability, familial status, gender identity, immigration status, citizenship status, or source of income.”³

Resource Personnel:

- Jibril Brown, Legislative Officer
- Déjah Désirée Williams, Chief of Staff, Council District 8

Discussion/Policy Analysis:

There are several barriers facing those with criminal records and convictions; included in these barriers is housing insecurity, which can develop due to discrimination based on criminal record screenings. One in three people in the U.S. have a criminal record⁴; 35.9% are Maryland residents⁵, and approximately 254,044 are Prince George’s County residents.⁶

There are several reports of families being denied housing due to criminal convictions, leading to the rate of homelessness in those with criminal records.⁷ According to the Maryland Interagency Council on Homelessness, as of 2022, Prince George’s County’s homeless made up 11% of the state’s homeless population.⁸ While the number of those experiencing homelessness due to criminal records within the County is unknown, research shows that those with criminal records are ten times more likely to experience homelessness.⁹

Housing insecurity amongst those with criminal records is often exacerbated by current racial and ethnic disparities. Therefore, Black, Indigenous, and people of color are more likely to be affected by this issue.¹⁰

Neighboring Jurisdictions with Similar Legislation

Washington, D.C. enacted similar legislation. D.C. Act 21-677 was signed into law in 2017 to remove barriers to housing for those with pending criminal accusations or prior convictions. The

³ [DIVISION 12. - OFFICE OF HUMAN RIGHTS. | Code of Ordinances | Prince George's County, MD | Municode Library](#)

⁴ [Preventing and Removing Barriers to Housing Security for People With Criminal Convictions - Center for American Progress](#)

⁵ <https://bjs.ojp.gov/library/publications/survey-state-criminal-history-information-systems-2020>

⁶ https://data.census.gov/table/ACSST5Y2020.S0101?t=Age+and+Sex&g=040XX00US24_050XX00US24033

⁷ [Preventing and Removing Barriers to Housing Security for People With Criminal Convictions - Center for American Progress](#)

⁸ [Report Title/ Subtitle \(maryland.gov\)](#)

⁹ [How the Criminal Legal System Exacerbates Racial Housing Disparities | Enterprise Community Partners](#)

¹⁰ [How the Criminal Legal System Exacerbates Racial Housing Disparities | Enterprise Community Partners](#)

provisions of D.C.'s 'Fair Criminal Record Screening for Housing Act of 2016 are very similar. Notably, D.C. includes additional crimes to be considered within seven years of the application. Through Act 21-677, D.C.'s Office of Human Rights is also required to submit an annual report of the complaints as well as the investigations done during the reporting period.¹¹

Montgomery County has also introduced similar legislation, Bill 49-20 was signed into law in 2021, also known as the Housing Justice Act. The provisions of this bill are like those outlined in CB-097-2023. However, 49-20 does not have a seven-year consideration for convictions for certain crimes and lists crimes, such as vehicle law violations and trespassing, that housing providers must not consider in the application process. The only crimes indicated to be considered by housing providers are sex crimes.¹²

CB-097-2023

To negate this, the provisions of CB-097-2023¹³ would require, based on Section 13-150.02, that housing providers refrain from inquiring about information on previous arrests from applicants that did not result in a conviction. Further, housing providers would not be allowed to make inquiries or require an applicant to disclose an arrest, conviction, or pending conviction prior to a conditional offer. In this, it would also require that housing providers disclose eligibility criteria, including financial, employment, and rental history, in writing before accepting an application fee.

In Section 13-150.03, this Bill would require that housing providers make conditional offers prior to considering an applicant's conviction and may only consider a list of different 27 crimes that have occurred within seven years of the application date. This includes the following crimes¹⁴:

- Arson in the first or second degree under §§ 6-102 or 6-103 of the Criminal Law Article of the Maryland Code;
- Adult sexual displays under §§ 11-102, 11-103, 11-104, 11-104.01, or 11-105 of the Criminal Law Article of the Maryland Code;
- Indecent Exposure under § 11-107 of the Criminal Law Article of the Maryland Code
- House of Prostitution under § 11-303 of the Criminal Law Article of the Maryland Code;
- Receiving earnings of prostitute under § 11-304 of the Criminal Law Article of the Maryland Code;
- Using building, structure, or conveyance for prostitution or assignation under § 11-307 of the Criminal Law Article of the Maryland Code;
- Abduction of child under 16 under § 11-305 of the Criminal Law Article of the Maryland Code;
- Injury to or interference with property - Acting with intent to hinder defense-related activity under § 9-702 of the Criminal Law Article of the Maryland Code;

¹¹ [B21-0706 - Fair Criminal Record Screening for Housing Act of 2016 \(dccouncil.gov\)](#)

¹² [Housing Justice Act, Montgomery County](#)

¹³ [Prince George's County Council - Reference No. CB-097-2023 \(legistar.com\)](#)

¹⁴ [Prince George's County Council - Reference No. CB-097-2023 \(legistar.com\)](#) pg. 3, lines 26-31. pg. 4, lines 1-31, pg. 5, lines 1-22.

- Child pornography under § 11-207 of the Criminal Law Article of the Maryland Code;
- Sale or display of obscene item to minor under § 11-203 of the Criminal Law Article of the Maryland Code;
- Criminal organization activity under § 9-802 of the Criminal Law Article of the Maryland Code;
- Participation in criminal organization under § 9-804 of the Criminal Law Article of the Maryland Code;
- Criminal organization under § 9-805 of the Criminal Law Article of the Maryland Code; Representation of destructive device under § 9-505 of the Criminal Law Article of the Maryland Code;
- Escape in the second-degree device under § 9-405 of the Criminal Law Article of the Maryland Code;
- Exploitation of vulnerable adults under § 8-801 of the Criminal Law Article of the Maryland Code;
- Counterfeiting United States currency with intent to defraud under § 8-604 of the Criminal Law Article of the Maryland Code;
- Possessing or issuing counterfeit United States currency under § 8-604.1 of the Criminal Law Article of the Maryland Code;
- Malicious destruction under § 6-301 of the Criminal Law Article of the Maryland Code;
- Disarming a law enforcement officer under § 4-103 of the Criminal Law Article of Maryland Code;
- Manufacture or possession of destructive device § 4-503 of the Criminal Law Article of the Maryland Code;
- Rape in the first or second degree under §§ 3-303 or 3-304 of the Criminal Law Article of the Maryland Code;
- Attempted rape in the first or second degree under §§ 3-309 or 3-310 of the Criminal Law Article of the Maryland Code;
- Sexual offense in the third or fourth degree under §§ 3-307 or 3-308 of the Criminal Law Article of the Maryland Code;
- Murder in the first or second degree under §§ 2-201 or 2-202 of the Criminal Law Article of the Maryland Code;
- Attempt murder in the first or second degree under §§ 3-205 or 3-206 of the Criminal Law Article of the Maryland Code; or
- Manslaughter under § 3-207 of the Criminal Law Article of the Maryland Code.

Additionally, according to section 13-150.04 of this Bill, housing providers may withdraw a conditional offer after determining that the withdrawal is substantial, legitimate, and nondiscriminatory. If a withdrawal occurs, the housing provider must consider several factors when determining a nondiscriminatory interest, including the following:

- nature and severity of the criminal offense;
- the age of the applicant at the time of the criminal offense;
- the time which has elapsed since the criminal offense;

- any information produced by the applicant or on the applicant's behalf regarding the applicant's rehabilitation or good conduct since the criminal offense;
- the degree to which the criminal offense, if it reoccurred, would negatively impact the safety of the housing's providers, tenants, or property; and
- whether the criminal offense occurred on or was connected to property rented or leased by the tenant.

If a housing provider withdraws a conditional offer, the housing provider must provide a written notification with the reasons for the withdrawal of the conditional offer and a notice that advises the applicant to file a complaint with the Office of Human Rights. Within 20 days of the withdrawal, by request of the applicant, the housing provider must provide the applicant a copy of all information relied on when considering the decision within ten days of the request.¹⁵

Section 13-150.05 entails exclusions for this Bill. The provisions of this Bill will not apply to housing providers that own and occupy premises that include no more than three rental units, a rental housing unit owned and operated by a religious corporation, association, or society whose rental or leasing is connected with the operations of that corporation, association or society in a religious capacity, and lastly, where federal law or regulation or state law allows for denial of an applicant due to certain criminal convictions.¹⁶

Lastly, Section 13-150.06 of this Bill provides provisions for enforcement and penalties. This includes that those filing a complaint to the Office of Human Rights be an applicant's only and exclusive remedy, and those aggrieved by this complaint may not seek any private cause of action in any court based on a violation and that the Office of Human Rights may award damages to an aggrieved applicant.¹⁷

Fiscal Impact:

Direct Impact

Enactment of CB-097-2023 should not have a direct fiscal impact. It is likely that the agency can absorb additional enforcement actions.

Indirect Impact

Enactment of CB-097-2023 may have a favorable indirect fiscal impact if fines are issued based on discrimination in housing of those with criminal records, as well as the reduction of homelessness amongst those with criminal records who are experiencing housing insecurity due to their criminal record.

¹⁵ [Prince George's County Council - Reference No. CB-097-2023 \(legistar.com\)](#) pg. 5, lines 24-31. pg. 6 lines 1-16.

¹⁶ [Prince George's County Council - Reference No. CB-097-2023 \(legistar.com\)](#) pg. 6, lines 17-25.

¹⁷ [Prince George's County Council - Reference No. CB-097-2023 \(legistar.com\)](#) pg. 6, lines 26-31.

Effective Date of Proposed Legislation:

CB-075-2023 shall be effective forty-five (45) calendar days after it becomes law.

If you require additional information or have questions about this fiscal impact statement, please call me.