



Committee: PHP
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #HousingJustice

AGENDA ITEM #1
June 18, 2024
Public Hearing

SUBJECT

Bill 8-24, Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings - Amendments

Lead Sponsor: Councilmember Sayles

Cosponsors: Councilmembers Glass and Katz

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; to receive testimony

DESCRIPTION/ISSUE

Bill 8-24 would:

- require posting a notice regarding the use of criminal arrest and conviction in rental housing decisions;
- clarify a certain addendum or statement is required for rental applications;
- require annual reporting of certain disaggregated data related to rental applications;
- require a landlord retain a rental application addendum for a certain period;
- require a landlord provide to the County as part of the annual rental housing survey a completed criminal and credit screening addendum; and
- generally amend the law regarding discrimination in housing and landlord-tenant affairs.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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| Bill 8-24 | © 1 |
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M E M O R A N D U M

June 13, 2024

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 8-24, Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings – Amendments

PURPOSE: Public hearing – no votes expected

Bill 8-24, Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings - Amendments, sponsored by Lead Sponsor Councilmember Sayles is scheduled to be introduced on March 5, 2024.¹ A public hearing will be scheduled for June 18, 2024. The bill will be considered by the Planning, Housing, and Parks (PHP) Committee on July 15, 2024.

Bill 8-24 would:

- require posting a notice regarding the use of criminal arrest and conviction in rental housing decisions;
- clarify a certain addendum or statement is required for rental applications;
- require annual reporting of certain disaggregated data related to rental applications;
- require a landlord retain a rental application addendum for a certain period;
- require a landlord provide to the County as part of the annual rental housing survey a completed criminal and credit screening addendum; and
- generally amend the law regarding discrimination in housing and landlord-tenant affairs.

BACKGROUND

The purpose of the bill is to strengthen compliance with “ban the box” requirements and improve renter’s knowledge as it related the use of criminal background check or credit screening during the application of rental housing.

The Council passed the Housing Justice Act in 2021, which prohibits a housing provider from conducting during the rental application process, a criminal background check or credit history before making an offer for rent to a prospective tenant. In addition, it prohibits the housing provider from inquiring into, or making housing decisions based upon, certain arrests or misdemeanors.

The Housing Justice Act, among other things, requires the housing provider clearly discloses in a rental application:

- (1) the processes the provider uses to inquire into the criminal history and credit history of an applicant; and
- (2) requirements of the provider regarding an applicant's credit history and criminal record report.²

The issue here is – whether with certainty and full transparency that each prospective applicant who is denied rental housing was actually informed of their rights during the application process. The law requires disclosure but lacks the ability to verify that a housing provider actually complied.

The Office of Human Rights and Human Rights Commission has the authority to investigate a housing discrimination complaint by an aggrieved applicant.³ However, a complaint may be limited if it lacks sufficient documentation to support a claim, or in the alternative, an applicant may never raise a complaint simply because they were not aware of their rights.

Bill 8-24 seeks to provide improve compliance by requiring record-keeping of addendums by the landlord and for the Department of Housing and Community Affairs (DHCA) to collect and store annually signed addendums by existing tenant(s).

SPECIFICS OF THE BILL

Bill 8-24 would require a landlord to post a notice where applicants are solicited for rental housing (whether paper or online posting), a statement that reads:

“In accordance with Section 27-15A, a housing provider may not ask questions related to criminal arrest or a conviction before a conditional offer for rent is made to an applicant unless otherwise permitted by law.”

The law under Chapter 27-15A already requires disclosure, but the Bill would specifically require a housing provider include **a statement or addendum with every rental application** that outlines the process and use of criminal arrest, convictions, and credit screenings in a rental housing decision (see lines 41-45). The addendum must be signed and dated by the applicant. DHCA (Office of Landlord and Tenant Affairs) already provides an addendum for landlords to include with the rental application. See © 5.

A housing provider must retain a copy of the completed disclosure addendum for at least one (1) year from the date of application for every applicant that applied for the rental housing. The addendum is subject to review by the Office of Human Rights, upon request.

For any existing tenant in the rental unit, at time the rental survey data is completed and submitted to DHCA (survey deadline is April 1), the landlord is required to upload electronically

² Montgomery County Code § 27-15A.

³ [Office of Human Rights - Ban the Box - Home Page \(montgomerycountymd.gov\)](http://montgomerycountymd.gov)

a copy of the signed addendum for the unit reported in the survey. DHCA will be the repository for the completed addendum(s).

Lastly, the bill requires the Office of Human Rights to collect and report the following data to the Council, by October 1, every year. The disaggregated data points include:

- (1) the number complaints received by the Office of Human Rights regarding the denial of rental application by a housing provider;
- (2) the specific reason an application under paragraph (1) was denied;
- (3) the number of complaints filed with the Office of Human Rights for failure to comply with this Section;
- (4) the number of complaints filed under this Section compared to other types of discriminatory complaints received by the Office of Human Rights; and
- (5) any other related data pertinent to this Act.

SUMMARY OF IMPACT STATEMENTS

Economic Impact

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 8-24 would have an insignificant impact on economic conditions in the County in terms of the Council's priority economic indicators. Councilmembers may want to reconsider the data collection requirement in the Bill to determine if the value of information attained justifies the minor administrative expense landlords may incur by providing it. (© 6).

Climate Assessment

The Office of Legislative Oversight (OLO) anticipates Bill 8-24 will have no impact on the County's contribution to addressing climate change as the Bill is proposing changes intended to improve compliance with an existing law. (© 9).

Racial Equity & Social Justice Impact

The Office of Legislative Oversight (OLO) anticipates Bill 8-24 will have a positive impact on racial equity and social justice (RESJ) in the County. (© 12).

Fiscal Impact

Expenditures are expected to increase to accommodate up to 2.00 FTEs for the required staff support by HRC (approximately \$196,000 in the first year). Minimal operating expenditures are expected to increase for the software/database to maintain housing providers, track complaints, and to perform data analysis. This bill is not expected to impact County revenues. (© 18).

This packet contains:

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Bill No. 8-24
Concerning: Human Rights and Civil
Liberties – Fair Criminal History and
Credit Screenings - Amendments
Revised: 2/29/2024 Draft No. 3
Introduced: March 5, 2024
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Sayles
Cosponsors: Councilmembers Glass and Katz

AN ACT to:

- (1) require posting a notice regarding the use of criminal arrest and conviction in rental housing decisions;
- (2) clarify a certain addendum or statement is required for rental applications;
- (3) require a landlord retain a rental application addendum for a certain period;
- (4) require a landlord provide to the County as part of the annual rental housing survey a completed criminal and credit screening addendum;
- (5) require annual reporting of certain disaggregated data related to rental applications; and
- (6) generally amend the law regarding discrimination in housing and landlord-tenant affairs.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Section 27-15A

Montgomery County Code
Chapter 29, Landlord-Tenant Affairs
Sections 29-28 and 29-51

The County Council for Montgomery County, Maryland approves the following Act:

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

1 **Sec. 1. Sections 27-15A, 29-28, and 29-51 are amended, as follows:**

2 **27-15A. Fair criminal history and credit screenings in rental housing.**

3 * * *

4 (b) *Transparency of criminal history and credit requirements in rental*
5 *applications.*

6 (1) A housing provider must disclose in any rental application:

7 (A) the processes the provider uses to inquire into the criminal
8 history and credit history of an applicant; and

9 (B) requirements of the provider regarding an applicant's credit
10 history and criminal record report.

11 (2) The housing provider must not alter the processes and
12 requirements under paragraph (1) for an applicant whose
13 application is pending.

14 (3) A housing provider must retain for one year from the date of the
15 rental application, a copy of each applicant's completed addendum
16 that details the process under paragraph (1). Upon request, the
17 addendum may be subject to inspection and review by the Director
18 of the Office of Human Rights.

19 * * *

20 (m) Posting of notice. A housing provider must post a notice in a conspicuous
21 place where details regarding an application for rental housing are
22 customarily posted, whether paper form or electronic posting, that reads:
23 "In accordance with Section 27-15A, a housing provider may not ask
24 questions related to criminal arrest or a conviction before a conditional
25 offer for rent is made to an applicant unless otherwise permitted by law."

26 (n) Annual reporting. By October 1 of each year, the Director of Office of
27 Human Rights, may coordinate with the Director of Department of

Housing and Community Affairs, to provide an annual report to the County Council that includes disaggregated data on the following:

- (1) the number complaints received by the Office of Human Rights regarding the denial of rental application by a housing provider;
- (2) the specific reason an application under paragraph (1) was denied;
- (3) the number of complaints filed with the Office of Human Rights for failure to comply with this Section;
- (4) the number of complaints filed under this Section compared to other types of discriminatory complaints received by the Office of Human Rights; and
- (5) any other related data pertinent to this Act.

29-28. Leasing requirements generally.

* * *

(h) *Rental applications.* A rental application must:

- (1) comply with the requirements of Section 27-15A[.]; and
- (2) include a statement or addendum, signed, and dated by the applicant, that details the processes for screening criminal history and credit report as required under Section 27-15A(b)(1).

* * *

29-51. Rental housing data collection.

* * *

(e) The housing data collected must be used to measure the supply and availability of rental housing, as well as other operating characteristics. Each landlord must provide the following to the County:

- (1) The location of each rental facility, including the zip code;
- (2) Structure type;
- (3) Year built;

- 55 (4) Distribution of units by standard bedroom sizes;
- 56 (5) The number of units by bedroom size that were re-rented during
- 57 the month;
- 58 (6) The number of vacant days applicable to those units;
- 59 (7) The rent charged for each rental unit;
- 60 (8) The rent charged for each re-rented unit before vacancy; [and]
- 61 (9) The new turnover rent charged for each re-rented unit[.]; and
- 62 (10) A copy of the addendum or statement provided under Section 29-
- 63 28(h) only for the tenant currently renting the unit reported under
- 64 this Section. If the rental housing is reported as vacant or not
- 65 offered for rent, the landlord is required to specify that no rental
- 66 application was provided within the last 12 months.

* * *

ADDENDUM TO RENTAL APPLICATION

Criminal History and Background Screening

This addendum **must** be presented as part of a rental application and acknowledged by applicant.

Applicant _____

Print Name

Applicant _____ Initial _____

Signature

Date _____

1. The landlord has attached the following steps/processes that the landlord will follow regarding inquiries into criminal history and credit history in evaluating this application to determine your eligibility to rent:

- The landlord may not require the applicant to disclose any criminal background history unless the landlord has made a conditional offer to the applicant.
- The landlord may **only** conduct a criminal background check concerning the applicant **after** the landlord has made a conditional offer to lease the property to the applicant.
- These processes cannot be changed during the application process.

Applicant Initial: _____

2. The landlord **must not** require applicant to reveal any arrest or criminal record prior to making a conditional offer to rent.

Applicant Initial: _____

3. The landlord may not raise the rent offered in this application within 7 days after receiving the completed application.

Per Section 27-15A and 29-28 (h) and (i), Montgomery County Code. Call 240-777-0311 if you have questions.

<https://mcgov.sharepoint.com/teams/DHCA/Housing/Landlord-Tenant/Shared Documents/Publications/Other/criminal history addendum.docx>

Economic Impact Statement

Montgomery County, Maryland

Bill 8-24

Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 8-24 would have an insignificant impact on economic conditions in the County in terms of the Council’s priority economic indicators. As noted under Discussion Items of this analysis, Councilmembers may want to reconsider the data collection requirement in the Bill to determine if the value of information attained justifies the minor administrative expense landlords may incur by providing it.

BACKGROUND AND PURPOSE OF BILL 8-24

Passed in 2021, the County’s Housing Justice Act “prohibits a housing provider from conducting...a criminal background check or credit history before making an offer for rent to a prospective tenant.”¹ The law also prohibits housing providers from gathering information about or making housing decisions based on certain arrests or misdemeanors, such as trespassing, misdemeanor theft, and open container violations, among others.²

The purpose of Bill 8-24 is to strengthen the compliance of housing providers to the Housing Justice Act and improve understanding among renters of their rights under the law. If enacted, Bill 8-24 would make the following changes to the Housing Justice Act:³

- **Require notice to renters of Housing Justice Act rights.** The Bill would require housing providers to post a visible notice that informs prospective renters that, unless otherwise permitted by law, a housing provider cannot “ask questions related to criminal arrest or conviction before a conditional offer for rent is made.”
- **Require housing providers to obtain a signed addendum from each prospective tenant and submit documentation to the Department of Housing and Community Affairs (DHCA).** The Bill would require housing providers to include an addendum in every rental application that is signed and dated by the applicant that “outlines the process and use of criminal arrest, convictions, and credit screenings in a rental housing decision.” Housing providers must retain the signed addenda for each applicant for at least one year from the application date and submit the signed addenda for each existing tenant to DHCA annually.
- **Require the Office of Human Rights to collect and report certain data points annually.** The Bill would require the Office of Human Rights to report several data points to the Council by October 1st of every year, including the number and nature of complaints related to rental application denials and the number of complaints filed for violations of the Housing Justice Act, among others.

¹ Introduction Staff Report for Bill 8-24.

² Montgomery County Code, Sec. 27-15A.

³ Introduction Staff Report for Bill 8-24

The Council introduced Bill 8-24, Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings – Amendments, on March 5, 2024.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Bill 8-24 on residents and private organizations in terms of the Council’s priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.⁴ OLO expects that certain landlords or property managers would incur minor administrative expenses involved with posting a notice informing prospective renters of the Housing Justice Act, attaining signed criminal and credit screening addendums as part of the rental application, or submitting signed addendums as part of the process for landlords to complete the Annual Rental Housing Survey. For this reason, OLO concludes that the Bill would have an insignificant impact on economics conditions in the County in terms of the Council’s priority economic indications.

VARIABLES

Not applicable

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Not applicable

DISCUSSION ITEMS

Councilmembers may want to reconsider the data collection requirement in the Bill to determine if the value of information attained justifies the minor administrative expense landlords may incur by providing it. The Bill would require landlords to submit copies of addenda for tenants currently renting units. While this data may demonstrate landlords are complying with the policy, the data would not indicate whether individuals were denied rental housing because of their criminal records. Uploading addenda for individuals whose applications were denied would do so.

WORKS CITED

“[Introduction Staff Report for Bill 8-24, Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings - Amendments.](#)” Montgomery County Council. Introduced March 5, 2024.

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements.](#)s

Montgomery County Code. [Sec. 27-15A, Fair Criminal History and Credit Screenings in Rental Housing.](#)

⁴ Montgomery County Code, Sec. 2-81B.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

AUTHOR

Stephen Roblin (OLO) prepared this report.

Climate Assessment

Office of Legislative Oversight

Bill 8-24: Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings - Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 8-24 will have no impact on the County's contribution to addressing climate change as the Bill is proposing changes intended to improve compliance with an existing law.

BACKGROUND AND PURPOSE OF BILL 8-24

Passed in 2021, the County's Housing Justice Act "prohibits a housing provider from conducting...a criminal background check or credit history before making an offer for rent to a prospective tenant."¹ The law also prohibits housing providers from gathering information about or making housing decisions based on certain arrests or misdemeanors, such as trespassing, misdemeanor theft, and open container violations, among others.²

The purpose of Bill 8-24 is to strengthen the compliance of housing providers to the Housing Justice Act and improve understanding among renters of their rights under the law. If enacted, Bill 8-24 would make the following changes to the Housing Justice Act:³

- **Require notice to renters of Housing Justice Act rights.** The Bill would require housing providers to post a visible notice that informs prospective renters that, unless otherwise permitted by law, a housing provider cannot "ask questions related to criminal arrest or conviction before a conditional offer for rent is made."
- **Require housing providers to obtain a signed addendum from each prospective tenant and submit documentation to the Department of Housing and Community Affairs (DHCA).** The Bill would require housing providers to include an addendum in every rental application that is signed and dated by the applicant that "outlines the process and use of criminal arrest, convictions, and credit screenings in a rental housing decision." Housing providers must retain the signed addenda for each applicant for at least one year from the application date and submit the signed addenda for each existing tenant to DHCA annually.
- **Require the Office of Human Rights to collect and report certain data points annually.** The Bill would require the Office of Human Rights to report several data points to the Council by October 1st of every year, including the number and nature of complaints related to rental application denials and the number of complaints filed for violations of the Housing Justice Act, among others.

The Council introduced Bill 8-24, Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings – Amendments, on March 5, 2024.

ANTICIPATED IMPACTS

As the Bill is proposing changes intended to improve compliance with an existing law, OLO anticipates Bill 8-24 will have no impact on the County’s contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.⁴ OLO does not offer recommendations or amendments as Bill 8-24 is likely to have no impact on the County’s contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County’s contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County’s contribution to addressing climate change, specifically upon the County’s contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County’s adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ [Introduction Staff Report for Bill 8-24](#), Montgomery County Council, Introduced March 5, 2024.

² [Montgomery County Code § 27-15A](#)

³ Introduction Staff Report for Bill 8-24

⁴ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 8-24: HUMAN RIGHTS AND CIVIL LIBERTIES – FAIR CRIMINAL HISTORY AND CREDIT SCREENINGS – AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 8-24 will have a positive impact on racial equity and social justice (RESJ) in the County. Black and Latinx community members would disproportionately benefit from increased staffing dedicated for enforcement of the Housing Justice Act.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social inequities that have caused racial and social disparities.²

PURPOSE OF BILL 8-24

Passed in 2021, the County's Housing Justice Act "prohibits a housing provider from conducting...a criminal background check or credit history before making an offer for rent to a prospective tenant."³ The law also prohibits housing providers from gathering information about or making housing decisions based on certain arrests or misdemeanors, such as trespassing, misdemeanor theft, and open container violations, among others.⁴ The Housing Justice Act is intended "to mitigate discrimination and other impediments to permanent housing, especially for homeless individuals who might have histories of certain low-level misdemeanors."⁵

The purpose of Bill 8-24 is to strengthen the compliance of housing providers to the Housing Justice Act and improve understanding among renters of their rights under the law. If enacted, Bill 8-24 would make the following changes to the Housing Justice Act:⁶

- **Require notice to renters of Housing Justice Act rights.** The Bill would require housing providers to post a visible notice that informs prospective renters that, unless otherwise permitted by law, a housing provider cannot "ask questions related to criminal arrest or conviction before a conditional offer for rent is made."
- **Require housing providers to obtain a signed addendum from each prospective tenant and submit documentation to the Department of Housing and Community Affairs (DHCA).** The Bill would require housing providers to include an addendum in every rental application that is signed and dated by the applicant that "outlines the process and use of criminal arrest, convictions, and credit screenings in a rental housing decision." Housing providers must retain the signed addenda for each applicant for at least one year from the application date and submit the signed addenda for each existing tenant to DHCA annually.

RESJ Impact Statement

Bill 8-24

- **Require the Office of Human Rights to collect and report certain data points annually.** The Bill would require the Office of Human Rights to report several data points to the Council by October 1st of every year, including the number and nature of complaints related to rental application denials and the number of complaints filed for violations of the Housing Justice Act, among others.

The Council introduced Bill 8-24, Human Rights and Civil Liberties – Fair Criminal History and Credit Screenings – Amendments, on March 5, 2024.

OLO previously published RESJISs for Expedited Bill 38-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments and Bill 14-22, Police – Private Security Camera Program – Established.^{7,8} Please refer to the RESJIS for Expedited Bill 38-23 for more context on segregation and the racial wealth divide and the RESJIS for Bill 14-22 for more context on policing and racial equity.

HOMELESSNESS AND RACIAL EQUITY

Homelessness is a complex issue that can look many different ways. As explained by the National Health Care for the Homeless Council (NHCHC):

“[h]omelessness often connotes a specific image of a person’s living arrangement, usually associated with panhandling or sleeping in public spaces. But this stereotype is too narrow, reinforces stigma, and leaves out many who fit the Health and Human Services (HHS) definition.”⁹

An NHCHC infographic explains how according to various federal definitions, homelessness can range from living outside or living in a shelter to exiting incarceration or “doubling-up” with others in a temporary living arrangement. While there are multiple definitions for homelessness, NHCHC stresses “the instability of an individual’s living arrangements is critical to the definition of homelessness.”¹⁰

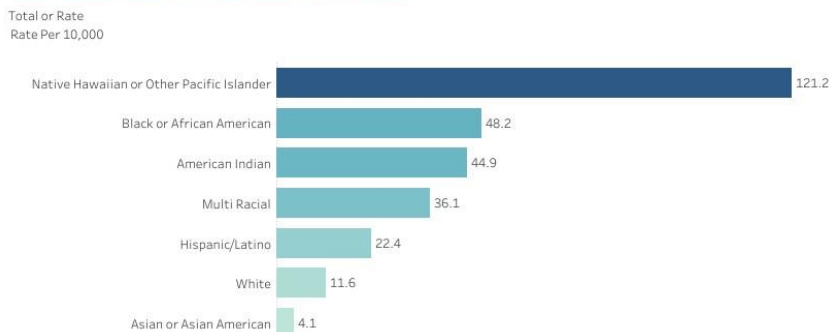
As of January 2022, over 500,000 people in the United States were experiencing homelessness.¹¹ While this issue affects many people, racial inequities such as segregation and the racial wealth divide – established over centuries by government policies and practices such as exclusionary zoning, the exclusion of Black, Indigenous and Other People of Color (BIPOC) from federal homeownership programs, and racial restrictive covenants –¹² have created stark racial disparities in who experiences housing insecurity and homelessness. The most recent State of Homelessness Report from the National Alliance to End Homelessness shows that Native American, Black, and Native Hawaiian or Other Pacific Islander people across the country experience homelessness at 3 to 10 times the rate of White people (Figure 1).¹³

RESJ Impact Statement

Bill 8-24

Figure 1: Rates of Homelessness per 10,000 People by Race and Ethnicity, United States.

Counts and Rates by Race / Ethnicity, 2022



Source: U.S. Department of Housing and Urban Development, 2022 Annual Homeless Assessment Report to Congress (AHAR); U.S. Census Bureau, 2022 Population Estimates.

Source: [National Alliance to End Homelessness](#), State of Homelessness: 2023 Edition.

BIPOC community members are also disproportionately impacted by homelessness locally. As of 2023, 625 single people and 269 people in families (including adults and children) were unhoused.¹⁴ Data summarized in Table 1 demonstrates Black people are overrepresented among people experiencing homelessness in the County. While Black community members account for 19 percent of the population, they account for 60 percent of unhoused people who are single and 73 percent of unhoused people in families. Native American community members are also overrepresented among single people experiencing homelessness. Conversely, White and Asian community members are underrepresented among people experiencing homelessness in the County, while Pacific Islander people are proportionately represented.

Table 1: Unhoused Single People and People in Families by Race and Ethnicity, Montgomery County¹⁵

| Race and ethnicity | Percent of Unhoused Single People | Percent of Unhoused People in Families | County Population |
|--------------------|-----------------------------------|--|-------------------|
| Asian | 3.5 | 1.9 | 15.3 |
| Black | 59.8 | 72.9 | 18.5 |
| Native American | 8.5 | 2.6 | 0.4 |
| Pacific Islander | 1.1 | 0.7 | 0.0 |
| White | 27.0 | 21.9 | 46.6 |

Source: [2023 Point in Time Survey](#), Services to End and Prevent Homelessness, Montgomery County Department of Health and Human Services and [Table DP05](#), 2022 American Community Survey 5-Year Estimates, Census Bureau.

Homelessness and criminal justice. As observed by researchers at the Urban Institute, “being forced to live outside can lead to citations or arrests for low-level offenses like loitering or sleeping in parks” that makes it more likely for unhoused people to interact with the criminal justice system.¹⁶ A study by the Prison Policy Initiative found that formerly incarcerated people were nearly 10 times more likely to experience homelessness than the general public.¹⁷ According to the Bureau of Justice Assistance, there are four factors that create a self-perpetuating cycle of homelessness and justice involvement: the criminalization of survival behaviors; difficulty exiting the justice system; restrictions on obtaining housing; and an increased risk of supervised violations.¹⁸

RESJ Impact Statement

Bill 8-24

In a policy brief on the criminalization of homelessness, the National Homelessness Law Center described how, “ordinances regulating the use of public space have long been used to exclude marginalized persons based on race, national origin, and economic class.”¹⁹ The interaction of historic racial inequities in policing and criminal justice²⁰ with racial inequities in housing puts BIPOC at higher risk of entering the cycle of homelessness and justice involvement. The study from the Prison Policy Initiative found that formerly incarcerated Black women and men each experience the highest rates of sheltered and unsheltered homelessness.²¹

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 8-24 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered the demographics of community members who have been arrested and/or who have certain low-level convictions, since they could benefit from the proposed amendments to the Housing Justice Act. Data summarized in Table 2 suggests Black and Latinx community members are overrepresented among people who have been arrested in the County. While Black and Latinx people each account for 19 percent and 20 percent of the County population, they account for 48 percent and 30 percent of arrests by the Montgomery County Police Department (MCPD). White and Asian people are underrepresented among arrests, while Native American and Pacific Islander people are proportionately represented.

Table 2: MCPD Arrests by Race and Ethnicity, Montgomery County²²

| Race and ethnicity | Number of Arrests | Percent of Arrests | County Population |
|--------------------|-------------------|--------------------|-------------------|
| Asian | 532 | 2.7 | 15.3 |
| Black | 9,491 | 48.0 | 18.5 |
| Native American | 26 | 0.1 | 0.4 |
| Pacific Islander | 11 | 0.1 | 0.0 |
| White | 3,795 | 19.2 | 46.6 |
| Latinx | 5,890 | 29.8 | 20.0 |
| Unknown | 17 | 0.1 | N/A |

Source: OLO Analysis of [Police Arrests](#) from January 2021 to December 2023, DataMontgomery and [Table DP05](#), 2022 American Community Survey 5-Year Estimates, Census Bureau.

OLO could not find data disaggregated by race and ethnicity for the specific convictions covered by the Housing Justice Act. However, since Black people are overrepresented among people experiencing homelessness in the County (Table 1), they are likely overrepresented among people who have convictions that result from carrying out survival activities while unhoused.

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For the second question, OLO considered how Bill 8-24 could mitigate housing discrimination against people who are experiencing homelessness and/or who are justice system involved. It is uncertain how the specific provisions of this Bill would meaningfully reduce discrimination against these groups. However, according to the Fiscal Impact Statement, “Bill 8-24 will have a significant impact on staffing” with the Office of Human Rights estimating “that up to 2 Investigator I/II positions could be needed for investigation and enforcement efforts.”²³ Increased resources for staffing in the Office of Human Rights through Bill 8-24 could reduce housing discrimination through allowing more focused enforcement of the Housing Justice Act.

OLO anticipates Bill 8-24 will have a positive impact on RESJ in the County. Black and Latinx community members would disproportionately benefit from increased staffing dedicated for enforcement of the Housing Justice Act.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²⁴ OLO anticipates Bill 8-24 will have a positive impact on RESJ in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid.

³ [Introduction Staff Report for Bill 8-24](#), Montgomery County Council, Introduced March 5, 2024.

⁴ [Montgomery County Code § 27-15A](#)

⁵ [Introduction Staff Report for Bill 49-20](#), Montgomery County Council, Introduced December 8, 2020.

⁶ Introduction Staff Report for Bill 8-24

⁷ [RESJIS for Bill 38-23E](#), Office of Legislative Oversight, October 13, 2023.

⁸ [RESJIS for Bill 14-22](#), Office of Legislative Oversight, July 21, 2022.

⁹ Types of Homelessness, [National Health Care for the Homeless Council](#).

¹⁰ Ibid.

¹¹ [State of Homelessness: 2023 Edition](#), National Alliance to End Homelessness.

¹² RESJIS for Bill 38-23E citing [The Color of Wealth in the Nation's Capital](#), Urban Institute, November 1, 2016 and Richard Rothstein, *The Color of Law* (Liveright, 2017).

¹³ State of Homelessness: 2023 Edition

¹⁴ [2023 Point in Time Survey](#), Services to End and Prevent Homeless, Montgomery County Department of Health and Human Services.

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¹⁵ Separate estimates for Latinx people are not provided for this data point.

¹⁶ [Five Charts that Explain the Homelessness-Jail Cycle – and How to Break It](#), Urban Institute, September 16, 2020.

¹⁷ Lucius Couloute, [“Nowhere to Go: Homelessness Among Formerly Incarcerated People,”](#) Prison Policy Initiative, August 2018.

¹⁸ [Responding to Homelessness](#), Police-Mental Health Collaboration (PMHC) Toolkit, Bureau of Justice Assistance, U.S. Department of Justice.

¹⁹ Eric S. Tars, [“The Criminalization of Homelessness,”](#) National Homelessness Law Center, 2021.

²⁰ RESJIS for Bill 14-22

²¹ Couloute

²² Latinx people are not included in other racial groups for this data point.

²³ Fiscal Impact Statement for Bill 8-24, Montgomery County Office of Management and Budget.

²⁴ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council



Fiscal Impact Statement

Office of Management and Budget

Bill 8-24

Human Rights and Civil Liberties - Fair Criminal History and Credit Screenings - Amendments

Bill Summary

Bill 8-24 requires landlords to post a notice visible to applicants stating the housing provider may not ask questions related to criminal arrest or a conviction before a conditional offer for rent is made and requires the housing provider to include a statement or addendum with every application that outlines the process and use of criminal arrest, convictions, and credit screening in a rental housing decision. This bill also requires landlords to provide the County a completed criminal and credit screening addendum as part of the annual rental housing survey. Landlords must also retain a copy of the completed addendum for one year from the date of the rental application, subject to review by the Office of Human Rights (HRC), upon request. In addition, Bill 8-24 requires HRC to provide an annual report to the County Council by October 1st every year that includes: (1) the number complaints received by HRC regarding the denial of rental application by a housing provider; (2) the specific reason an application was denied; (3) the number of complaints filed with HRC for failure to comply with this section; (4) the number of complaints filed under this section compared to other types of discriminatory complaints received by HRC; and (5) any other related data pertinent to this legislation.

Fiscal Impact Summary

Expenditures are expected to increase to accommodate up to 2.00 FTEs for the required staff support by HRC. Minimal operating expenditures are expected to increase for the software/database to maintain housing providers, track complaints, and to perform data analysis. This bill is not expected to impact County revenues.

| Fiscal Year | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | Total |
|--------------------|------|-------------|-------------|-------------|-------------|-------------|-------------|
| Personnel Costs | \$0 | \$185,206 | \$185,206 | \$185,206 | \$185,206 | \$185,206 | \$926,030 |
| Operating Expenses | \$0 | \$11,000 | \$0 | \$0 | \$0 | \$0 | \$11,000 |
| Total Expenditures | \$0 | \$196,206 | \$185,206 | \$185,206 | \$185,206 | \$185,206 | \$937,030 |
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Total Impact | \$0 | (\$196,206) | (\$185,206) | (\$185,206) | (\$185,206) | (\$185,206) | (\$937,030) |
| FTE | 0.00 | 2.00 | 2.00 | 2.00 | 2.00 | 2.00 | |

Fiscal Impact Analysis

There are approximately 109,000 housing rental units in the County, which includes approximately 80,000 units in nearly 700 multifamily properties and approximately 29,000 single family units. HRC asserts that Bill 8-24 will have a significant impact on staffing and estimates that up to 2 Investigator I/II positions could be needed for investigation and enforcement efforts. This analysis assumes that the bill will be effective starting FY25.

Staff Impact

Implementation of Bill 8-24 is expected to have a significant impact on staff time and duties, including investigating complaints, enforcement of landlord compliance, and the creation of a complaint registry system for report gathering and data collection/analysis. In addition, HRC will be tasked with the additional responsibility of



tracking: (1) the number of complaints received by HRC regarding the denial of a rental application by a housing provider; (2) the specific reason an application was denied; (3) the number of complaints filed with HRC for failure to comply with this section; (4) the number of complaints filed under this section compared to other types of discriminatory complaints received by HRC; and (5) any other related data pertinent to this legislation. HRC does not currently perform these functions and does not currently have the capacity to absorb these additional duties with its current complement, therefore additional resources may be required to support the enforcement of this legislation.

Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

Information Technology Impact

The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

Other Information

Later actions that may impact revenue or expenditures if future spending is projected

Contributors

Alicia A. Singh, Office of Management and Budget
James L. Stowe, Office of Human Rights

