



Committee: Joint
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #HousingJustice

AGENDA ITEM #11A
 December 8, 2020
Introduction

SUBJECT

Bill 49-20, Human Rights and Civil Liberties – Discrimination in Rental Housing – Fair Criminal History and Credit Screenings

Lead Sponsors: Councilmembers Glass and Katz
 Co-Sponsors: Councilmembers Jawando, Rice, Navarro and Riemer

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Bill introduction

DESCRIPTION/ISSUE

Bill 49-20 would:

- prohibit a landlord from raising a stated rent in certain circumstances;
- require a rental application to contain certain information about record checks conducted by a housing provider;
- prohibit certain inquiries regarding criminal histories in rental housing applications;
- prohibit consideration of certain arrests and convictions in rental housing decisions; 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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M E M O R A N D U M

December 3, 2020

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 49-20, Human Rights and Civil Liberties – Discrimination in Rental Housing – Fair Criminal History and Credit Screenings

PURPOSE: Introduction – no Council votes required

Bill 49-20, Human Rights and Civil Liberties – Discrimination in Rental Housing – Fair Criminal History and Credit Screenings, sponsored by Lead Sponsors Councilmembers Glass and Katz, and Co-Sponsors Councilmembers Jawando, Rice, Navarro and Riemer, is scheduled to be introduced on December 8, 2020.¹ A public hearing is tentatively scheduled for January 12, 2021 at 1:30 p.m.

Bill 49-20 would:

- prohibit a landlord from raising a stated rent in certain circumstances;
- require a rental application to contain certain information about record checks conducted by a housing provider;
- prohibit certain inquiries regarding criminal histories in rental housing applications;
- prohibit consideration of certain arrests and convictions in rental housing decisions;
- and
- generally amend the law regarding discrimination in housing and landlord-tenant affairs.

BACKGROUND

The purpose of the bill is to mitigate discrimination and other impediments to permanent housing, especially for homeless individuals who might have histories of certain low-level misdemeanors such as a first conviction for disorderly conduct.

SPECIFICS OF THE BILL

The bill would bring “ban the box” requirements – which are familiar in the employment law context – into rental housing in the County. The bill would accomplish several objectives.

First, it would prohibit a landlord from conducting a criminal record check of a prospective tenant until after a conditional offer of housing has been made to the prospective tenant.

Second, the bill would prohibit inquiring into, or making housing decisions based upon, certain arrests or misdemeanors. Specifically, a landlord would not inquire into or consider whether:

- (1) the applicant has been arrested for, or has an arrest record for, a matter that did not result in a conviction; or
- (2) the applicant has an arrest record or a conviction record for, or otherwise has been accused of:
 - (A) trespass under §§ 6-402 or 6-403 of the Criminal Law Article of the Maryland Code;
 - (B) theft as a misdemeanor under § 7-104 of the Criminal Law Article of the Maryland Code;
 - (C) a refusal or failure to leave public buildings or grounds under § 6-409 of the Criminal Article of the Maryland Code;
 - (D) indecent exposure under § 11-107 of the Criminal Article of the Maryland Code;
 - (E) public urination under § 32-17-A of this Code;
 - (F) an open container violation under § 10-125 of the Criminal Law Article of the Maryland Code;
 - (G) possession of marijuana as a misdemeanor or civil violation under Title 5 of the Criminal Article of the Maryland Code;
 - (H) a first conviction of disturbance of the peace or disorderly conduct under § 10-201 of the Criminal Law Article of the Maryland Code;
 - (I) a vehicle law violation under the Transportation Article of the Maryland Code;
 - (J) except as provided in subsection (g), a conviction of a misdemeanor if at least 2 years have passed since:
 - (i) the date of the conviction; and
 - (ii) the date that any period of incarceration for the misdemeanor ended; or
 - (K) a matter for which records:
 - (i) are confidential under § 3-8A-27 of the Courts and Judicial Proceedings Article of the Maryland Code; or
 - (ii) have been expunged under §§ 10-101 – 10-110 of the Criminal Procedure Article of the Maryland Code.

The bill would expressly clarify, however, that a landlord may inquire into and consider a prospective tenant's sex offender registry status, as well as any sex offense arrests or convictions.

Third, the bill would require a landlord who denies housing based upon an applicant's criminal background to inform the applicant in writing and give the applicant 7 days in which to provide additional information. A violation of the "ban the box" requirements in rental housing would be subject to enforcement by the Office of Human Rights under Chapter 27 of the Code.

Lastly, the bill would prohibit a landlord from increasing rent that is included on a completed rental application within 7 calendar days of the application. This provision of the bill would be enforced by the Department of Housing and Community Affairs.

This packet contains:

Bill 49-20

Legislative Request Report

Circle #

1

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F:\LAW\BILLS\2049 Landlord Tenant Criminal History Checks\Intro Memo.Docx

Bill No. 49-20
Concerning: Human Rights and Civil Liberties – Discrimination in Rental Housing – Fair Criminal History and Credit Screenings
Revised: 11/20/2020 Draft No. 6
Introduced: December 8, 2020
Expires: Jun 28, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Glass and Katz
Co-Sponsors: Councilmembers Jawando, Rice, Navarro and Riemer

AN ACT to:

- (1) prohibit a landlord from raising a stated rent in certain circumstances;
- (2) require a rental application to contain certain information about record checks conducted by a housing provider;
- (3) prohibit certain inquiries regarding criminal histories in rental housing applications;
- (4) prohibit consideration of certain arrests and convictions in rental housing decisions; and
- (5) generally amend the law regarding discrimination in housing and landlord-tenant affairs.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Sections 27-14

By adding

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

By amending

Montgomery County Code
Chapter 29, Landlord-Tenant Affairs
Section 29-28

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 27-14 and 29-28 are amended, and Section 27-15A is**
2 **added, as follows:**

3 **27-14. Applicability of division.**

4 (a) This division does not apply to:

5 (1) The rental or leasing of a part of a dwelling in which the owner is
6 residing; provided, that the dwelling must continue to be used by
7 the owner thereof as a bona fide residence for [himself or herself]
8 the owner and any member of [his or her] the owner's family;
9 provided further, that the dwelling does not contain more than
10 two (2) rental or leasing units.

11 (2) The rental or leasing of a dwelling by any religious corporation,
12 association, or society to a person of a particular religion whose
13 rental or leasing therein is connected with the carrying on by such
14 corporation, association, or society of its purely religious
15 activities.

16 * * *

17 (d) The prohibitions in this division against discriminating because of
18 source of income do not prohibit:

19 (1) (A) a commercially reasonable verification of a source and
20 amount of income, or

21 (B) a commercially reasonable evaluation of the stability,
22 security, and creditworthiness of any source of income; or

23 (2) (A) except as provided in Section 27-15A, the eviction of or
24 refusal to rent to any person because of that person or a
25 family member's drug-related criminal activity or violent
26 criminal activity, or

27 (B) the refusal to consider income derived from any criminal
 28 activity.

29 * * *

30 **27-15A. Fair criminal history and credit screenings in rental housing.**

31 (a) *Definitions.* As used in this Section:

32 *Applicant* means a person who applies to lease or rent housing in the
 33 County. *Applicant* includes any person who resides or will reside with a
 34 person who applies to lease or rent housing in the County.

35 *Arrest record* means information indicating that a person has been
 36 apprehended, detained, taken into custody, held for investigation, or
 37 otherwise restrained by a law enforcement agency or military authority
 38 due to an accusation or suspicion that the person committed a crime.

39 *Conditional offer* means an offer of housing conditioned solely on:

- 40 (1) the results of an inquiry into the applicant's criminal record; or
 41 (2) another contingency expressly communicated to the applicant at
 42 the time of the offer.

43 *Conviction record* means information regarding a sentence arising from
 44 a verdict or plea of guilty or *nolo contendere*, including a sentence of
 45 incarceration, a fine, a suspended sentence, and a sentence of probation.

46 *Criminal record report* means a record of a person's arrest and
 47 conviction history obtained from any source.

48 *Housing provider* means any person, individual, proprietorship,
 49 partnership, joint venture, corporation, limited liability company, trust,
 50 association, or other entity offering to sell, rent, or provide housing in
 51 the County. *Housing provider* includes the County government, but
 52 does not include the United States, any State, or any other local

53 government. *Housing provider* does not include a lessor of property
 54 under Section 27-14(a) or a lessor of an accessory dwelling unit.

55 *Inquiry* or *inquire* means any direct or indirect conduct intended to
 56 gather information, using any mode of communication. *Inquiry* or
 57 *inquire* does not include a question about an applicant's conviction
 58 record or arrest record when the existence of the record is disclosed by
 59 the applicant voluntarily and not in response to a question.

60 (b) *Transparency of criminal history and credit requirements in rental*
 61 *applications.*

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

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

65 (B) requirements of the provider regarding an applicant's
 66 credit history, arrest history, and conviction history.

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

70 (c) *Criminal records inquiry on application.* A housing provider must not
 71 require an applicant to disclose on a rental application the existence or
 72 details of the applicant's arrest record or conviction record.

73 (d) *Preliminary inquiry into criminal record.* A housing provider must not,
 74 at any time before the extension of a conditional offer to the applicant:

75 (1) require the applicant to disclose whether the applicant has an
 76 arrest record or conviction record, or otherwise has been accused
 77 of a crime;

78 (2) conduct a criminal record check regarding the applicant; or

79 (3) inquire of the applicant or others about whether the applicant has
 80 an arrest record or conviction record or otherwise has been
 81 accused of a crime.

82 (e) *Prohibition against inquiry into certain criminal records.* A housing
 83 provider must not at any time require an applicant to disclose, conduct a
 84 criminal record check solely to determine, or otherwise inquire of the
 85 applicant or others, whether:

86 (1) the applicant has been arrested for, or has an arrest record for, a
 87 matter that did not result in a conviction; or

88 (2) the applicant has an arrest record or a conviction record for, or
 89 otherwise has been accused of:

90 (A) trespass under §§ 6-402 or 6-403 of the Criminal Law
 91 Article of the Maryland Code;

92 (B) theft as a misdemeanor under § 7-104 of the Criminal Law
 93 Article of the Maryland Code;

94 (C) a refusal or failure to leave public buildings or grounds
 95 under § 6-409 of the Criminal Article of the Maryland
 96 Code;

97 (D) indecent exposure under § 11-107 of the Criminal Article
 98 of the Maryland Code;

99 (E) public urination under § 32-17-A of this Code;

100 (F) an open container violation under § 10-125 of the Criminal
 101 Law Article of the Maryland Code;

102 (G) possession of marijuana as a misdemeanor or civil
 103 violation under Title 5 of the Criminal Article of the
 104 Maryland Code;

- 105 (H) a first conviction of disturbance of the peace or disorderly
 106 conduct under § 10-201 of the Criminal Law Article of the
 107 Maryland Code;
- 108 (I) a vehicle law violation under the Transportation Article of
 109 the Maryland Code;
- 110 (J) except as provided in subsection (g), a conviction of a
 111 misdemeanor if at least 2 years have passed since:
- 112 (i) the date of the conviction; and
- 113 (ii) the date that any period of incarceration for the
 114 misdemeanor ended; or
- 115 (K) a matter for which records:
- 116 (i) are confidential under § 3-8A-27 of the Courts and
 117 Judicial Proceedings Article of the Maryland Code;
 118 or
- 119 (ii) have been expunged under §§ 10-101 – 10-110 of
 120 the Criminal Procedure Article of the Maryland
 121 Code.
- 122 (f) Consideration of Certain Records Prohibited. Except as provided in
 123 subsection (g), a housing provider must not base a rental decision upon
 124 any item in an arrest record or a conviction record described under
 125 subsection (e).
- 126 (g) Consideration of Sex Crimes Permitted. A landlord may:
- 127 (1) inquire into an arrest record or conviction record for:
- 128 (A) a crime of a sexual nature under Title 3 of the Criminal
 129 Law Article of the Maryland Code; or

130 (B) a violation of Sections 11-102, 11-103, 11-104, 11-305, or
 131 of Title 2, Subtitle 3, of the Criminal Law Article of the
 132 Maryland Code;

133 (2) inquire into an applicant's presence on a sex offender registry;
 134 and

135 (3) base a rental decision upon an arrest record or conviction record
 136 under paragraph (1) of this subsection, or upon an applicant's
 137 presence on a sex offender registry.

138 (h) *Rescission of a conditional offer based on criminal record.*

139 (1) If a housing provider intends to rescind a conditional offer based
 140 on an item or items in the applicant's arrest record or conviction
 141 record, before rescinding the conditional offer the provider must:

142 (A) provide the applicant with a copy of any criminal record
 143 report;

144 (B) notify the applicant of the intention to rescind the
 145 conditional offer and the items that are the basis for the
 146 intention to rescind the conditional offer; and

147 (C) delay rescinding the conditional offer for 7 days to permit
 148 the applicant to give the housing provider notice of
 149 inaccuracy of an item or items on which the intention to
 150 rescind the conditional offer is based.

151 (2) If a housing provider decides to rescind a conditional offer based
 152 upon the arrest record or conviction record of an applicant, the
 153 provider must notify the applicant of the rescission of the
 154 conditional offer in writing.

155 (i) *Retaliation. A housing provider must not:*

156 (1) retaliate against any person for:

- 157 (A) lawfully opposing any violation of this Section; or
- 158 (B) filing a complaint, testifying, assisting, or participating in
- 159 any manner in an investigation, proceeding, or hearing
- 160 under this Section; or

161 (2) obstruct or prevent enforcement or compliance with this Section.

162 (j) A person aggrieved by an alleged violation of this Section may file a

163 complaint with the Director of the Officer of Human Rights under

164 Section 27-7.

165 (j) The County Executive:

166 (1) may adopt Method (2) regulations to implement the provisions of

167 this Section; and

168 (2) must endeavor to inform prospective applicants and housing

169 providers of their rights and responsibilities under this Section.

170 (k) Exemption. The prohibitions and requirements of this Section do not

171 apply if the inquiries prohibited by this Article are expressly required by

172 an applicable federal or State law or regulation.

173 **Sec. 29-28. Leasing requirements generally.**

174 * * *

175 (h) Rental applications. A rental application must comply with the

176 requirements of Section 27-15A.

177 (i) A landlord must not increase the rent included on a completed rental

178 application:

179 (1) within 7 calendar days of the application; or

180 (2) based upon any discriminatory purpose prohibited under Chapter

181 27, including the source of income of the prospective tenant.

182 **Sec. 2. Short Title.** This Act may be referred to as the Housing Justice Act.

LEGISLATIVE REQUEST REPORT

Bill 49-20

Human Rights and Civil Liberties – Discrimination in Rental Housing – Fair Criminal History and Credit Screenings

DESCRIPTION:	Bill 49-20 would: <ul style="list-style-type: none">• prohibit a landlord from raising a stated rent in certain circumstances;• require a rental application to contain certain information about record checks conducted by a housing provider;• prohibit certain inquiries regarding criminal histories in rental housing applications;• prohibit consideration of certain arrests and convictions in rental housing decisions; and• generally amend the law regarding discrimination in housing and landlord-tenant affairs.
PROBLEM:	Discriminatory rental housing practices, especially as applied to homeless individuals.
GOALS AND OBJECTIVES:	Establish “ban the box” requirements related to criminal histories of rental applicants.
COORDINATION:	OHR, DHCA
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
EVALUATION:	
EXPERIENCE ELSEWHERE:	City of Detroit
SOURCE OF INFORMATION:	Christine Wellons, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Chapter 27 applies in most municipalities, including Gaithersburg and Rockville
PENALTIES:	Enforcement under Chapter 27 and Chapter 29