

Racial Equity and Social Justice (RESJ) Impact Statement

BILL 49-20: HUMAN RIGHTS AND CIVIL LIBERTIES – DISCRIMINATION IN RENTAL HOUSING – FAIR CRIMINAL HISTORY AND CREDIT SCREENINGS

SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 49-20 to narrow racial and social disparities in access to affordable housing by race and ethnicity.

BACKGROUND

The primary goal of Bill 49-20 is to reduce bias against homeless persons in the rental housing market; the secondary goal is to reduce bias against justice-involved persons in the same market. The potential for bias against homeless and justice-involved persons is especially pronounced in the affordable housing market where demand exceeds supply, particularly for individuals with extremely low incomes.¹

As noted by the Job Opportunities Task Force, “a criminal record is acquired upon arrest, whether or not a person is ever convicted of a crime. Anything that occurs after arrest is documented on an individual’s criminal record, and in Maryland, will remain publicly visible until the charges and dispositions are expunged. Mere acquisition of a criminal record, even if an individual is released immediately after arrest, charges are dropped and the individual is never found guilty of a crime, triggers numerous collateral consequences.”²

An estimated 4 out of 5 private landlords utilize background checks to screen out applicants with criminal records.³ This practice disadvantages the formerly homeless due to the criminalization of homelessness where people without housing are punished for doing things in public that every person has to do, such as sleep or rest.⁴ The use of automated criminal background checks among rental applicants also over identifies the number of justice-involved persons due to records that reflect arrests and dropped charges rather than convictions and flawed screening reports that misidentify individual criminal records.⁵

The criminalization of homelessness places formerly homeless individuals at risk for experiencing the collateral consequences of criminal convictions in accessing housing and other benefits.⁶ Collateral consequences refer to social and economic barriers for justice-involved individuals that deny or restrict benefits otherwise available to others. For example, federal law bans access to public housing for certain types of convictions and grants discretion to local housing authorities to deny housing based on any criminal activity.

It is estimated that more than 1.5 million Marylanders, roughly 25%, have a criminal record.⁷ Thus the collateral consequences of having a criminal record in accessing rental housing may affect a significant proportion of County residents beyond individuals impacted by homelessness.



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Bill 49-20 would prohibit landlords from seeking information about applicants' arrest and conviction records prior to making a conditional offer. It would also prohibit the consideration of an applicant's criminal record for the following offenses when making an official offer for housing:

- Arrests for matters that did not result in a conviction
- Convictions of theft as a misdemeanor
- Convictions for trespass orders
- Convictions for refusal to leave public buildings or grounds
- Convictions for indecent exposure
- Convictions for public urination
- Convictions for open container violations
- Convictions for possession of marijuana as a misdemeanor or civil violation
- First conviction for disturbing the peace or disorderly conduct
- Vehicle law violations
- Conviction of a misdemeanor if at least two years have passed

Toward these ends, Bill 49-20 also:

- Prohibits a landlord from raising a quoted rent in certain circumstances;
- Requires a rental application to contain certain information about record checks conducted by housing providers;
- Generally amends the law regarding discrimination in housing and landlord-tenant affairs;
- Requires the Executive to inform prospective applicants and housing providers of their rights and responsibilities; and
- Requires alleged violations to be filed with the Office of Human Rights for enforcement.

The bill would clarify, however, that a landlord may inquire information and consider a prospective tenant's sex offender registry status, as well as sex offense arrests or convictions. The bill would also require a landlord who denies housing based on an applicant's criminal background to inform the applicant in writing and to give the applicant seven days to provide additional information.

DEMOGRAPHIC DATA

Understanding the potential impact of Bill 49-20 on racial equity and social justice requires understanding the demographics of persons who have experienced homelessness in Montgomery County. According to recent data Black residents are three- to four-times more likely than their population share to experience homelessness. Whereas, African Americans accounted for 19% of County residents in 2017:

- Black families with children accounted for 83% of homeless families in the County in 2018;⁸ and
- Black residents accounted for 64% of homeless persons in the County in 2019.⁹



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Understanding the RESJ impact of Bill 49-20 also requires understanding the demographics of justice-involved persons. Disaggregated data for arrests and/or convictions among the offenses prohibited from consideration in rental applications under this bill are not currently tracked. Yet data on arrests and traffic stops suggests that Black and Latinx residents are over-represented among justice-involved persons. For example:

- Black and Latinx persons each accounted for 19 – 20% of County residents in 2017 but accounted for 44% and 26% of arrests by the Montgomery County Police Department.¹⁰
- Approximately 38% of Black men and 25% of Latinx men in the County experienced a traffic stop by MCPD in 2019 compared to 17% of White men.

Finally, understanding the RESJ impact of Bill 49-20 requires understanding the demographics of persons most in need of affordable housing. Latinx and Black households are especially in need of affordable housing in Montgomery County compared to White and Asian households. For example:

- A majority of Black and Latinx households in the County (55% and 62%) expended more than 30% of their income on rents in 2017 compared to a minority of Asian and White households (43% and 45%).¹¹
- At the end of May 2020 in the Washington Metropolitan Area, 40% of Latinx residents and 24% of Black residents had not paid their last month's rent vs. less than 5% of Asian and White residents.¹²

ANTICIPATED RESJ IMPACTS

OLO anticipates that the implementation of Bill 49-20 will narrow racial and ethnic disparities in housing within the County because Black and Latinx residents are over-represented, both, among homeless and justice-involved persons who are impacted by collateral consequences and among those in need of affordable housing. More specifically:

- Black residents are over-represented among homeless individuals and families.
- Black and Latinx residents, and men in particular, are over-represented among justice-involved persons based on arrest rates and traffic stops. Some research has shown that homeless people of color are more likely to have an incarceration history than White homeless individuals.¹³
- Latinx and Black residents are over-represented among housing-insecure residents based on access to affordable housing and recent rental payment histories.

The discriminatory enforcement of having a criminal record also suggests that Black and Latinx residents will benefit disproportionately from this bill. For example, a study examining private District of Columbia-area housing providers when considering applicants with similar criminal backgrounds found that potential White tenants experienced preferential treatment 47% of the time.¹⁴ White applicants received more sympathetic reactions when disclosing their criminal record and were more often encouraged to apply, despite their criminal records, than Black applicants.¹⁵ The same study also found that property agents imposed tougher criminal records screening criteria and sometimes higher fees on Black applicants than White applicants.¹⁶



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Black and Latinx residents are also more likely to benefit from the exclusion of inaccurate tenant screenings that unfairly flag them as having criminal histories that would be reduced under this bill. Tenants and consumer attorneys note that errors can have an outsize effect on people with common names that often include communities of color who have fewer unique last names. For example, the New York Times notes that more than 12 million Latinx persons in the U.S. share just 26 surnames according to the Census.¹⁷

METHODOLOGIES, ASSUMPTIONS AND UNCERTAINTIES

This RESJ impact statement and OLO's analysis relies on several sources of information. They include:

- How Automated Background Checks Freeze Out Renters, New York Times, May 28, 2020¹⁸
 - Racial Equity Profile, Montgomery County, Office of Legislative Oversight, 2019¹⁹
 - Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities: Brief Before the U.S. Commission on Civil Rights, Briefing Report, June 2019²⁰
 - Housing for Criminal Justice Involved Individuals in the District of Columbia, Criminal Justice Coordinating Council, 2019²¹
 - The Criminalization of Poverty: How to Break the Cycle through Policy Reform in Maryland, Job Opportunities Task Force, January 2018²²
 - Housing Not Handcuffs Fact Sheet: The Top Five Ways Criminalization of Homelessness Harms Communities (National Law Center on Homelessness and Poverty)²³
 - Collateral Consequences of Criminal Convictions Judicial Bench Book, American Bar Association²⁴
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RECOMMENDED AMENDMENTS

The County's 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.²⁵ This RESJ statement, however, does not offer recommended amendments because the Bill 49-20 as currently drafted aligns well with its intended goals of reducing racial and social disparities in housing.

COMMUNITY ENGAGEMENT

The bill's sponsors engaged in a number of conversations with County government and community-based stakeholders to develop this bill, including meetings with representatives from:

- Montgomery County Department of Health and Human Services
 - Montgomery County Office of Human Rights
 - Montgomery County Department of Housing and Community Affairs
 - Interfaith Works
 - Montgomery County Coalition for the Homeless
 - AOBA
 - Montgomery Housing Alliance
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CAVEATS

Two caveats to this statement should be noted. First, estimating the impact of legislation on racial and social inequities in Montgomery County is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than to 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 Dr. Elaine Bonner-Tompkins drafted this RESJ impact statement with assistance from Dr. Theo Holt.

¹ According to the U.S. Commission on Civil Rights June 2019 briefing report, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* - the National Low Income Housing Coalition estimates that only 35 affordable rental units exist for every 100 "extremely low-income" households. (<https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>)

² The *Criminalization of Poverty: How to Break the Cycle through Policy Reform in Maryland*, Job Opportunities Task Force, January 2018 (https://jotf.org/wp-content/uploads/2018/08/cop-report-013018_final.pdf)

³ Ibid.

⁴ See *Housing Not Handcuffs Fact Sheet: The Top Five Ways Criminalization of Homelessness Harms Communities* by the National Law Center on Homelessness and Poverty (<https://nlchp.org/wp-content/uploads/2018/10/criminalization-one-pager.pdf>)

⁵ See *the Criminalization of Poverty* and <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>

⁶ See *Collateral Consequences of Criminal Convictions Judicial Bench Book*, American Bar Association (<https://www.ncjrs.gov/pdffiles1/nij/grants/251583.pdf>)

⁷ *The Criminalization of Poverty: How to Break the Cycle through Policy Reform in Maryland*, Job Opportunities Task Force, January 2018

⁸ <https://www.nccf-cares.org/wp-content/uploads/2019/03/InvisibleAndHomeless.pdf>

⁹ https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2020/20200210/20200210_PHEHHS1.pdf

¹⁰ Jupiter Independent Research Group "Racial Equity Profile Montgomery County," Montgomery County Office of Legislative Oversight, July 2019. <https://www.montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/RevisedOLO2019-7.pdf>

¹¹ Ibid.

¹² <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/COVID-19Recovery-Evictions.pdf>

¹³ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*

¹⁴ Equal Rights Center study cited in *Collateral Consequences*

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>

¹⁸ Ibid.

¹⁹ <https://www.montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/RevisedOLO2019-7.pdf>

²⁰ <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>

²¹ <https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/Housing%20for%20criminal%20justice%202020.pdf>

²² https://jotf.org/wp-content/uploads/2018/08/cop-report-013018_final.pdf

²³ <https://nlchp.org/wp-content/uploads/2018/10/criminalization-one-pager.pdf>

²⁴ <https://www.ncjrs.gov/pdffiles1/nij/grants/251583.pdf>

²⁵ Montgomery County Council, Bill No. 27-29 Racial Equity and Social Justice, Effective on March 2, 2020, Montgomery County, Maryland. <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/RacialEquity/Bill27-19.pdf>.

