

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.

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- **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

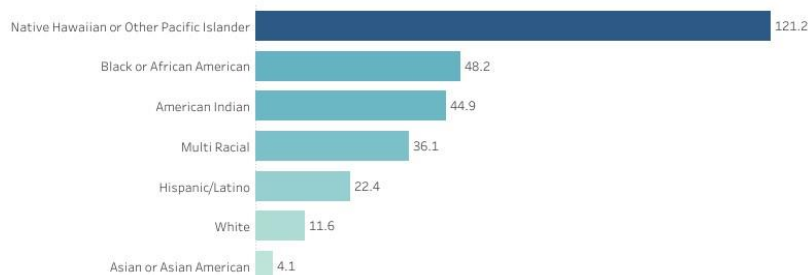
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Figure 1: Rates of Homelessness per 10,000 People by Race and Ethnicity, United States.

Counts and Rates by Race / Ethnicity, 2022

Total or Rate
Rate Per 10,000



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

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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.

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