

**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chair, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: JAN -9 2007

SUBJECT: Fiscal Impact Statement: "Human Rights for Ex-Offenders
Amendment Act of 2006"

REFERENCE: Bill Number 16-909 (Amended, Passed by Council 12/19/06)

Conclusion

Funds would need to be added to the FY 2007 through FY 2010 budget and financial plan to implement the provisions of the proposed legislation. The proposed legislation would result in increased costs to the District of Columbia of at least \$108,000 in FY 2007 and \$792,000 in the FY 2007 through FY 2010 period.

Background

The proposed legislation would amend the Human Rights Act of 1977 (D.C. Official Code § 12-1401.01 *et seq.*) to prohibit discrimination in employment, housing, public accommodations, and education based on a person's conviction record. Specifically, the proposed legislation would require the following changes to current D.C. statutes:

- Adds "conviction record" to list of classes protected from discrimination;
- Defines "conviction record" to include any type of criminal conviction except offenses that are "sexually related;"
- Provides four exceptions to the general provision against consideration of an individual's conviction record in connection with hiring, termination, or terms of employment:
 - The conviction record bears a (i) "rational relationship" to the particular responsibilities of the position under consideration (ii) conviction record falls within the most recent 10 years (excluding periods of incarceration); (iii) the

- position under consideration does not involve law enforcement or unsupervised contact with children; and (iv) the prospective employee has received a conditional offer of employment, which is withdrawn based on a conviction record bearing a rational relationship to employment responsibilities;
- A conviction record is sealed and an employer has no knowledge of the prior record;
 - An employer relies on some certification of rehabilitation for the individual; or
 - The employer is a court, a government prosecutor, a law enforcement agency, a licensing agency, a licensed educational or child protection facility, or government employer with respect to judicial officers.
- Provides an exception to "unlawful discriminatory practice" in housing and commercial space matters by excluding from a protected base felony convictions involving the destruction of real property in the most recent 2 years.

Under the D.C. Human Rights Act of 1977 (and subsequent amendments) there are 18 classes that are protected from unlawful discrimination in employment, housing, public accommodations, and educational institutions.¹ The addition of "conviction record" would raise the number of protected bases to 19.

Office of Human Rights Procedures

The primary fiscal impact of the proposed legislation relates to the operations of the Office of Human Rights (OHR), which receives, mediates, investigates, and adjudicates all discrimination complaints falling under the jurisdiction of District law. In FY 2004, there were 445 new cases received and docketed by OHR. If the legislation should result in an increase in litigation, the cases would be tried in D.C. Superior Court or federal court, which are funded by the Federal government. Roughly half of the 445 docketed cases were filed on the basis of discrimination by race, sex, national origin, retaliation, disability, or age.²

When a case is presented, OHR must docket the case and determine if the complaint meets jurisdictional requirements. Following that, OHR attempts to mediate the case before a full investigation occurs. If the case is not mediated successfully, then OHR conducts an investigation to determine if there is probable cause. OHR then attempts to resolve the case by conciliation. If conciliation does not work, the case goes to adjudication before the D.C. Commission on Human Rights. Thus, adding a category to the protected classes in the District would increase the workload of OHR by increasing the number of intakes, mediations, investigations, conciliations, and adjudications.³

¹ The 18 classes are: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, and place of residence or business.

² Data for FY 2006 are available but are not available by category. In FY 2006, the total number of cases docketed was 425 (Source: Communication with OHR, 1/8/07).

³ In cases involving alleged discrimination by District government entities, there could be additional costs to District resources because of the involvement of the Office of Attorney General (OAG) in investigating complaints and providing legal representation in any proceedings.

The scope of the proposed District legislation would make it one of only five other states that ban discrimination by public and private employers against people with conviction records.⁴ In addition, the proposed legislation would ban discrimination based on conviction records in the areas of housing, public accommodations, and education.⁵

Financial Plan Impact

The fiscal impact of the proposed legislation depends primarily on the number of new discrimination complaints that are expected to be generated by the addition of "conviction records" to the protected bases enumerated in the D.C. Human Rights Act of 1977.

The proposed legislation is estimated to result in increased costs to the District of at least \$108,000 in FY 2007 and approximately \$792,000 in the FY 2007 through FY 2010 period. In addition, the proposed legislation is likely to have unquantifiable costs to District of Columbia employers and housing providers.

Based on data from other jurisdictions, it is estimated that the addition of "conviction records" to the base of protected classes would result in at least 40 new discrimination complaints annually to OHR.⁶ The cost estimate in Table 1 is based on an analysis of the OHR local funds budget and the likely cost of an increased caseload.⁷

⁴ The five states are Hawaii, Kansas, New York, Pennsylvania, and Wisconsin. In addition, nine other states ban discrimination by public employers only against people with conviction records. Source: Legal Action Center, "Overview of State Laws Than Ban Discrimination By Employers," http://www.lac.org/toolkits/standards/Fourteen_State_Laws.pdf

⁵ The City of Madison, Wisconsin, also extends "conviction record" protection to employment, housing, and public accommodations (but not educational institutions). We were unable to find another city with a conviction record law as far-reaching as the one proposed in D.C.

⁶ Data on number of complaints filed were examined for Hawaii, Wisconsin, New York City, and Madison (WI). Like the proposed legislation in the District, each of these four jurisdictions' bans on discrimination allows for exceptions based on a "rational" or "substantial" relationship between the crime and the position sought. Based on these four jurisdictions, the percentage of employment complaints filed under "conviction record" discrimination ranges from 3% to 8% of all employment complaints filed. Because the proposed District law also covers public accommodations, housing, and educational institutions, the percentage filed is likely to exceed the percentage of cases in other jurisdictions. Thus, if 10% of the FY 2006 docketed complaints were filed on the basis "conviction record" discrimination, this would add an additional 40 cases to OHR's caseload.

⁷ This fiscal impact statement does not address the manner in which the courts will define the excluded class of "criminal convictions that are sexually related" for the purposes of implementing this legislation.

Table 1. Impacts to the Financial Plan of the Human Rights for Ex-Offenders Amendment Act of 2006 (\$ in thousands)					
Item	FY 2007	FY 2008	FY 2009	FY 2010	4-Year Total
Office of Human Rights	\$108	\$222	\$228	\$235	\$792

Note: Figures for FY 2007 reflect half-year estimates. Data for making cost estimates were based on the FY 2007 Budget and Financial Plan. This estimate assumes that OHR is operating at full capacity and does not have spare resources with which it can absorb an increased caseload. In FY 2006, there were 27 FTEs supported by a local fund budget of \$2.285 million in OHR. In addition, there were 425 cases docketed in FY 2006, thus meaning that there were 16 cases docketed per FTE. Thus an increase of 40 cases arising from the "convicted record" class would result in the need for 2.5 additional FTEs. At an average employment cost of \$85,000 per FTE, this would cost \$215,000 for the first full fiscal year. The figure for FY 2007 is based on a half-year estimate. Outyears are inflated by 3 percent per year.