


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



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Kwame R. Brown  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi  
Chief Financial Officer 

**DATE:** March 10, 2011

**SUBJECT:** Fiscal Impact Statement - "Human Rights for Ex-Offenders Amendment Act of 2011"

**REFERENCE:** Bill Number 19-17, As Introduced

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**Conclusion**

Funds are not sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation would not have impact on the FY 2011 budget, but would result in increased costs of at least \$639,503 over the FY 2011 through FY 2014 period.

The implementation of the proposed legislation is subject to the inclusion of its fiscal effect in the approved budget and financial plan.

**Background**

The proposed legislation would amend the Human Rights Act of 1977<sup>1</sup> to prohibit discrimination in employment, housing, and education based on a person's arrest or conviction record. Specifically, the proposed legislation would require the following changes to current D.C. code:

- Adds an "arrest record, or conviction record" to list of classes protected from discrimination,
- Defines "arrest record" and "conviction record" to include any type of criminal arrest or conviction, including military offenses, but excluding those offenses and criminal convictions that are sexually related,
- Defines "rational relationship" when determining a rational relationship between arrest or conviction record and the duties and responsibilities of the position sought,

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<sup>1</sup> D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*, effective December 13, 1977

- Provides six exemptions<sup>2</sup> to the general provisions against consideration of an individual's arrest or conviction record in connection with hiring, termination, or terms, conditions, or privileges of employment or membership.
  - Provides two exceptions<sup>3</sup> to the general provisions against consideration of an individual's arrest or conviction record in connection with housing and commercial space.

If enacted, the legislation would take effect subject to the inclusion of its fiscal effect in the approved budget and financial plan.

### 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 under the jurisdiction of District law. Under the D.C. Human Rights Act of 1977 and subsequent amendments 19 classes are protected from unlawful discrimination in employment, housing, public accommodations, and educational institutions.<sup>4</sup> The addition of "arrest record or conviction record" would raise the number of protected classes to 20.

When a discrimination complaint case is presented, OHR must docket the case and determine if the complaint meets jurisdictional requirements. Then OHR attempts to mediate the case before a full investigation occurs. If the case is not mediated successfully, OHR conducts an investigation to

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<sup>2</sup> It would not be an unlawful discriminatory practice if:

1. The arrest record or conviction record (a) bears a rational relationship to the duties and responsibilities of the particular position or membership, (b) falls within the most recent 10 years, excluding periods of incarceration, (c) the prospective employer has withdrawn a conditional offer of employment, where the prospective employee has an arrest record, or conviction record that bears a rational relationship to the duties and responsibilities of the particular position or membership;
2. The position applied for involves law enforcement or unsupervised contact with children or the elderly;
3. The arrest record, or conviction was for the crime of murder, arson, robbery, assault with a deadly weapon or a sex offense and the duties and responsibilities of the employee bears a rational relationship to the arrest record, or conviction record;
4. The records are sealed and a court finds that an employer had no knowledge of the prior arrest record, or conviction record;
5. An employer relies on evidence of a pardon, the expungement of a criminal conviction from another jurisdiction, or a certificate of rehabilitation by a judge or a District or federal agency; or
6. The employer is a court, a prosecutor, a law enforcement agency, a licensing agency with respect to an offense that may disqualify a person from obtaining the license, a licensed school, day care center, before or after school facility, recreation center, or other educational or child protection agency or facility, nursing home, assisted-living facility, or any other facility providing care/services for children or the elderly, or a government employer or commission regarding employment of a judicial officer, or a senior-level, executive-grade government position.

<sup>3</sup> It would not be an unlawful discriminatory practice involving housing for ex-offenders if:

1. A person is subleasing property;
2. The offense is a felony arrest or conviction involving destruction of real property within the most recent 2 years, excluding periods of incarceration, or it is any crime against children or the elderly.

<sup>4</sup> The 19 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, status as a victim of an intra-family offense, and place of residence or business.

determine if there is probable cause. Next, OHR 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 ("Commission"). It is reasonable to expect that adding a category to the protected classes in the District would increase the workload of OHR and the Commission by increasing the number of intakes, mediations, investigations, conciliations, and adjudications.<sup>5</sup>

A comparison to other jurisdictions reveals that the scope of the proposed legislation would make the District one of only five other states that ban discrimination by public and private employers against people with conviction records.<sup>6</sup> In addition, the proposed legislation would ban discrimination based on arrest or conviction records in the areas of housing, public accommodations, and education.

### **Financial Plan Impact**

Funds are not sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation would not have a negative impact on the FY 2011 budget, as it is assumed the legislation would not be implemented until FY 2012. However, the legislation would result in an estimated cost of at least \$208,321 in FY 2012 and a cost of at least \$639,503 over the FY 2011 through FY 2014 financial plan period.

The fiscal impact of the proposed legislation is driven primarily by the number of new discrimination complaints that are expected to be generated by the addition of "arrest record or conviction record" to the list of protected classes enumerated in the D.C. Human Rights Act of 1977.

We estimate that under the proposed legislation an additional 100 to 130 cases would be filed with OHR each year. This estimate is based on the effect of similar legislation on OHR's workload. For example, "Criminal Background Checks for the Protection of Children Act of 2004"<sup>7</sup> requires criminal background checks for individuals seeking a paid or unpaid position with a District agency that provides direct services to children and youth. If a job applicant is denied employment based on the outcome of the background check, that applicant has to right to appeal the decision with the Commission. In FY 2010, OHR received 64 appeals as a result of this Act.<sup>8</sup>

The proposed legislation has a much larger scope, since it would protect individuals with conviction and arrest records from unlawful discrimination in employment in both the public and private sectors, as well as in housing, public accommodations, and educational institutions. As such, OHR could expect to see 50 to 100 percent more than the current appeals caseload, which would imply an addition of 100 to 130 cases.<sup>9</sup>

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<sup>5</sup> 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.

<sup>6</sup> The five states are Hawaii, Kansas, New York, Pennsylvania, and Wisconsin. Source: Legal Action Center, "Overview of State Laws That Ban Discrimination By Employers," [http://www.lac.org/toolkits/standards/Fourteen\\_State\\_Laws.pdf](http://www.lac.org/toolkits/standards/Fourteen_State_Laws.pdf)

<sup>7</sup> D.C. Law 15-353; D.C. Official Code §4-1501.01 et seq., effective April 13, 2005

<sup>8</sup> Source: Communication with OHR, March 8, 2011.

<sup>9</sup> This estimate is also consistent with the estimated complaint rate of .004 - .02% that resulted from the inclusion of the transgendered population as a protected group under the D.C. Human Rights Act in 2005. According to the OHR, the current estimated ex-offender population in DC is approximately 60,000. Assuming the addition of "arrest and conviction records" as a protected class would result in a similar high-end complaint rate, this new base would add an additional 120 complaints.

The average number of complaints filed with OHR each year currently stands at approximately 450.<sup>10</sup> OHR investigators have an average caseload of 50 to 60 cases each. In order to handle an additional 100 to 130 cases that could result from enactment of the legislation, OHR would need to hire two additional EEO specialists to perform investigation and mediation duties.

Additionally, the proposed legislation would result in an increase in the number of administrative hearings heard by the Commission, for which the OHR has budgetary oversight. Approximately 10 to 15 percent of complaints filed with OHR are referred to the Commission<sup>11</sup> for a hearing; therefore, an additional 100 to 130 complaints could result in approximately 10 to 20 more hearings each year. The Commission currently has three administrative judges on staff that handle about 22 hearings each. Given the projected increase in hearings, the Commission would need to hire a paralegal to assist the administrative judges perform the research and other work associated with the additional hearings.

The increased personnel costs are detailed below.

<b>Estimated Negative Fiscal Impact of Bill 19-17, the “Human Rights for Ex-Offenders Amendment Act of 2011”</b>					
	<b>FY 2011<sup>1</sup></b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>4-Year Total</b>
Personnel Costs <sup>2</sup>	\$0	\$208,321	\$215,247	\$215,936	\$639,503

**Table Notes:**

<sup>1</sup> It is assumed the legislation would be implemented starting in FY 2012.

<sup>2</sup> Total personnel costs include the salary and fringe benefits for two EEO Specialists and one paralegal. The estimate assumes a 3% cost-of living increase in FY 2013 and FY 2014; the estimate assumes a 2 percent annual increase in fringe benefit costs.

<sup>10</sup> Between FY 2008 and FY 2010, an average of approximately 450 complaints was filed annually. (Source: OHR, March 4, 2011.)

<sup>11</sup> Source: Communication with OHR on March 7, 2011.