Councilmember Marion Barry

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Marion Barry introduced the following bill, which was referred to the Committee on ____________.

To amend the Human Rights Act of 1977 to prohibit employment, housing, and educational discrimination based upon arrest record, or conviction record, with certain exceptions based on the relationship of the arrest or conviction to the position sought, lack of knowledge of the conviction, reliance upon an authorized certification, a record of violent crimes, or positions specifically exempt.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Human Rights for Ex-Offenders Amendment Act of 2009”.

Sec.2. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 et seq.), is amended as follows:

(a) Section 101 (D.C. Official Code § 2-1401.01) is amended by striking the phrase “source of income, and” and inserting the phrase “source of income, arrest record, or conviction record, and” in its place.

(b) Section 102 (D.C. Official Code § 2-1401.02) is amended as follows:

(1) A new paragraph (2A) is added to read as follows:

“(2A) “Arrest record” includes information indicating that an individual has been
previously questioned, apprehended, taken into custody or detention, held for investigation,

arrested, charged with, indicted or tried for any felony, misdemeanor, or other offense pursuant
to any law enforcement or military authority other than for offenses that are sexually related.”.

(2) A new paragraph (4A) is added to read as follows:

“4(A) “Conviction record” includes information indicating that an individual has

been adjudicated by a court of competent jurisdiction of any felony, misdemeanor, or other

offense, has been adjudicated delinquent, has been less than honorably discharged, or has been

placed on probation, fined, imprisoned, placed on extended supervision, or paroled pursuant to

any law enforcement or military authority for any offenses other than criminal convictions that

are sexually related.”.

(3) A new paragraph (25A) is added to read as follows:

“(25A) “Rational relationship” means considering the following factors when
determining whether there is a rational relationship between arrest record or conviction record
and the duties and responsibilities of the position sought:

“(A) The public policy of the District to encourage the employment of

persons previously convicted of criminal offenses;

“(B) The specific duties and responsibilities necessarily related to the

employment sought;

“(C) The bearing, if any, that the criminal offenses for which the person

was previously convicted will have on his or her fitness or ability to perform one or more duties

or responsibilities of the position:

“(D) The time which has elapsed since the occurrence of the criminal

offense;
“(E) The age of the person at the time of the occurrence of the criminal
offense;

“(F) The seriousness of the offense;

“(G) Any information produced by the person, or produced on his or her
behalf, in regard to his or her rehabilitation and good conduct since the time of the occurrence of
the criminal offense; and

“(H) The legitimate interest of the public agency or private employer in
protecting the safety and welfare of specific individuals or of the general public and property.”.

(c) A new section 106 is added to read as follows:

“Sec. 206. Rulemaking.

“The Mayor shall issue rules to implement the provisions of the Human Rights for Ex-
Offender Amendment Act of 2007. The proposed rules shall be submitted to the Council for a
90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council
recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by
resolution within this 90-day review period, the proposed rules shall be deemed approved.”.

(d) Section 211 (D.C. Code Official Code §2-1402.11) is amended as follows:

(1) Section (a) is amended as follows:

(A) the lead-in text is amended by striking the phrase

“matriculation,” and inserting the phrase “matriculation, arrest record, or conviction record,” in
its place.

(B) Paragraph (3) is amended by striking the word “or” at the end.

(C) Paragraph (4) is amended by adding a new subparagraph (D) to

read as follows:
“(D) To inquire about or include in the overall evaluation an individual’s arrest record, or conviction record in connection with hiring, termination, or the terms, conditions, or privileges of employment or membership, except as provided in Section 212; or”.

(D) A new subparagraph (5) is added to read as follows:

“(5) For any person. To aid, abet, incite, compel, or coerce the accomplishment of any of the unlawful discriminatory practices forbidden by this part, or to attempt to do so.”.

(2) Section (b) is amended by striking the phrase “disability, arrest record, or conviction record,” in its place.

(e) Section 212 (D.C. Official Code § 2-1402.12) is amended as follows:

(1) A new paragraph (c) is added to read as follows:

“(c) It shall not be an unlawful discriminatory practice for an employer to inquire about or include in the overall evaluation an individual’s arrest record, or conviction record in connection with hiring, termination, or the terms, conditions, or privileges of employment or membership if:

“(1)(A) The arrest record, or conviction record bears a rational relationship to the duties and responsibilities of the particular position or membership;

“(B) The arrest record, or conviction record falls within a period that shall not exceed the most recent 10 years, excluding periods of incarceration; and

“(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 and 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 by a judge of the Superior
Court of the District of Columbia, a Court Services and Offender Supervision Agency, or the
Chief Probation Officer of a United States District Court who has supervised the applicant’s
probation and determined that the ex-offender has achieved a degree of rehabilitation that would
indicate that the applicant would not be incompatible with the welfare of society; or

“(6) The employer is one of the following:

“(I) A court;

“(II) A federal, state, or local prosecutor;

“(III) A law enforcement agency;

“(IV) A licensing agency with respect to an offense
that may disqualify a person from obtaining the license;

“(V) 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 specializing in providing care or services for children or the elderly; or

“(VI) A government employer or nominating or tenure commission with respect to employment of a judicial or quasi-judicial officer, or employment at a senior-level, executive-grade government position.”.

(2) A new paragraph (d) is added to read as follows:

“(d) Nothing in this act shall supersede any federal rule, regulation, or act.”.

(f) Section 221 (D.C. Official Code § 2-1402.21) is amended as follows:

(1) Section (a) is amended as follows:

(A) The lead-in text is amended by striking the phrase “source of income,” and inserting the phrase “source of income, arrest record, or conviction record,” in its place.

(B) Paragraph (5) is amended by striking the phrase “source of income,” and inserting the phrase “source of income, arrest record, or conviction record,” in its place.

(2) Section (b) is amended by striking the phrase “source of income,” and inserting the phrase “source of income, arrest record, or conviction record,” in its place.

(g) Section 224 (D.C. Official Code § 2-1402.24) is amended by adding new subsections (d) and (e) to read as follows:

“(d) Nothing in this chapter involving housing for ex-offenders shall apply to persons subleasing property.”.
“(c) Nothing in this chapter shall apply to felony arrests or convictions involving the
destruction of real property falling within a period that shall not exceed the most recent 2 years,
excluding periods of incarceration; or any crime against children or the elderly.”

(h) Section 241 (D.C. Official Code § 2-1402.41) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “source of income,”
and inserting the phrase “source of income, arrest record, or conviction record,” in its place.

(2) Paragraph (2) is amended by striking the phrase “religion,” and
inserting the phrase “religion, arrest record, or conviction record,” in its place.

Sec. 3. Inclusion in the budget and financial plan.

This act shall take effect subject to the inclusion of its fiscal effect in an approved budget
and financial plan.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal
impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the
Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(1)), and publication in the District of
Columbia Register.