

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

1 previously questioned, apprehended, taken into custody or detention, held for investigation,
2 arrested, charged with, indicted or tried for any felony, misdemeanor, or other offense pursuant
3 to any law enforcement or military authority other than for offenses that are sexually related.”.

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

5 “4(A) “Conviction record” includes information indicating that an individual has
6 been adjudicated by a court of competent jurisdiction of any felony, misdemeanor, or other
7 offense, has been adjudicated delinquent, has been less than honorably discharged, or has been
8 placed on probation, fined, imprisoned, placed on extended supervision, or paroled pursuant to
9 any law enforcement or military authority for any offenses other than criminal convictions that
10 are sexually related.”.

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

12 “(25A) “Rational relationship” means considering the following factors when
13 determining whether there is a rational relationship between arrest record or conviction record
14 and the duties and responsibilities of the position sought:

15 “(A) The public policy of the District to encourage the employment of
16 persons previously convicted of criminal offenses;

17 “(B) The specific duties and responsibilities necessarily related to the
18 employment sought;

19 “(C) The bearing, if any, that the criminal offenses for which the person
20 was previously convicted will have on his or her fitness or ability to perform one or more duties
21 or responsibilities of the position:

22 “(D) The time which has elapsed since the occurrence of the criminal
23 offense;

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

3 “(F) The seriousness of the offense;

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

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

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

10 “Sec. 206. Rulemaking.

11 “The Mayor shall issue rules to implement the provisions of the Human Rights for Ex-
12 Offender Amendment Act of 2007. The proposed rules shall be submitted to the Council for a
13 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council
14 recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by
15 resolution within this 90-day review period, the proposed rules shall be deemed approved.”.

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

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

18 (A) the lead-in text is amended by striking the phrase
19 “matriculation,” and inserting the phrase “matriculation, arrest record, or conviction record,” in
20 its place.

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

22 (C) Paragraph (4) is amended by adding a new subparagraph (D) to
23 read as follows:

1 conviction record that bears a rational relationship to the duties and responsibilities of the
2 particular position or membership;

3 “(2) The position applied for involves law enforcement or
4 unsupervised contact with children or the elderly;

5 “(3) The arrest record, or conviction was for the crime of murder,
6 arson, robbery, assault with a deadly weapon and a sex offense and the duties and responsibilities
7 of the employee bears a rational relationship to the arrest record, or conviction record;

8 “(4) The records are sealed and a court finds that an employer had
9 no knowledge of the prior arrest record, or conviction record;

10 “(5) An employer relies on evidence of a pardon, the expungement
11 of a criminal conviction from another jurisdiction, or a certificate by a judge of the Superior
12 Court of the District of Columbia, a Court Services and Offender Supervision Agency, or the
13 Chief Probation Officer of a United States District Court who has supervised the applicant’s
14 probation and determined that the ex-offender has achieved a degree of rehabilitation that would
15 indicate that the applicant would not be incompatible with the welfare of society; or

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

17 “(I) A court;

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

19 “(III) A law enforcement agency;

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

22 “(V) A licensed school, day care center, before or
23 after school facility, recreation center, or other educational or child protection agency or facility,

1 nursing home, assisted-living facility, or any other facility specializing in providing care or
2 services for children or the elderly; or

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

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

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

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

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

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

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

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

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

21 “(d) Nothing in this chapter involving housing for ex-offenders shall apply to persons
22 subleasing property.”.

1 “(e) Nothing in this chapter shall apply to felony arrests or convictions involving the
2 destruction of real property falling within a period that shall not exceed the most recent 2 years,
3 excluding periods of incarceration; or any crime against children or the elderly.”

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

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

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

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

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

12 Sec. 4. Fiscal impact statement.

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

16 Sec.5. Effective date.

17 This act shall take effect following approval by the Mayor (or in the event of veto by the
18 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
19 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
20 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(1)), and publication in the District of
21 Columbia Register.

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