

BULLETIN: USE OF CRIMINAL HISTORY IN PRINCE GEORGE'S COUNTY

The County Council of Prince George's County, Maryland recently passed "An Act Concerning Returning Citizens Fair Chance to Housing" (the "Act").¹ The Act takes effect on January 29, 2024, and restricts the use of criminal history in tenant screening.

This Bulletin provides a brief overview of this new law in Prince George's County, Maryland. Housing providers should review the complete Act with their legal or compliance team.

WRITTEN DISCLOSURES BEFORE COLLECTING AN APPLICATION FEE

Before collecting an application fee, housing providers must give the applicant:

- (1) written notice of all eligibility criteria (including financial, employment, rental, and other criteria); and
- (2) a written statement that the applicant may provide evidence to show inaccuracies in their criminal history information and any evidence of rehabilitation or other mitigating factors.

WHEN CRIMINAL HISTORY INFORMATION CAN BE CONSIDERED

Housing providers must not request a criminal screening report, ask about criminal history, or consider an applicant's criminal history information until:

- (1) the applicant is qualified under the housing provider's other criteria; and
- (2) the housing provider sends the applicant a conditional offer of housing letter providing an offer to rent that is contingent on a subsequent criminal history search or any other lawful eligibility criteria.

WHAT CRIMINAL HISTORY INFORMATION CAN BE CONSIDERED

After the conditional offer is made, housing providers can consider ONLY the following permitted criminal history information:

- (1) Convictions (not arrests or pending accusations);
- (2) That occurred within seven (7) years of the application date; and
- (3) That are for one or more of the crimes listed in the Act. The complete list is in the Act, and includes:
 - Arson;
 - Murder, attempted murder, or manslaughter;
 - Certain property crimes;
 - Certain sexual assault crimes, prostitution, and child pornography;
 - Certain crimes relating to counterfeit currency; and
 - Offenses relating to participating in criminal organizations.

WHEN THE CONDITIONAL OFFER CAN BE WITHDRAWN

The conditional offer can be withdrawn based on permitted criminal history information ONLY IF:

- (1) The housing provider has considered any additional information provided by the applicant; and
- (2) The housing provider determines that, on balance, withdrawal achieves a substantial, legitimate, nondiscriminatory interest. When making that determination, the provider must consider:
 - Nature and severity of the offense;
 - Applicant's age at the time of the offense;
 - Time elapsed since the conviction;
 - Evidence of rehabilitation or good conduct since the conviction;

¹ Bill No. CB-097-2023 created Sections 13-150 through 13-150.6 of the Prince George's County Code. See <https://princegeorgescountymd.legistar.com/View.ashx?M=F&ID=12334521&GUID=549FACFA-FB22-4168-BCE8-B9F514C6734A>.

- Degree to which the offense, if it reoccurred, would negatively impact the safety of other tenants and property; and
- Whether the criminal offense was connected to property that was rented or leased by the applicant.

If the conditional offer is withdrawn, the housing provider must provide the applicant with written notice that includes:

- (1) The specific reason for withdrawal of the conditional offer; and
- (2) Notice of the applicant's right to file a Complaint with the Office of Human Rights.

The applicant then has twenty (20) days to request a copy of all information that the housing provider relied on in making the decision. If the applicant requests that information, the housing provider must provide it within ten (10) days.

Applicants that believe there has been a violation of the Act may file a Complaint with the Office of Human Rights, which can award damages for violations.

QUESTIONS HOUSING PROVIDERS SHOULD ASK WHEN EVALUATING THEIR TENANT SCREENING PROCESSES

Considering the Act, housing providers may want to evaluate their tenant screening processes and consider:

- Is your screening process customized to determine if applicants are otherwise qualified before reviewing criminal history information, and to consider any additional information provided by an applicant?
- Do your applicant qualification criteria comply with the law (e.g., only considering offenses listed in the Act)?
- How will you determine whether there is a substantial, legitimate, nondiscriminatory interest to justify withdrawing a conditional offer, while considering any additional information provided by an applicant?
- Contact the RentGrow Client Services Team if you need assistance reviewing your current criteria or making any updates or modifications recommended by your legal or compliance teams.

This Brief Review was prepared for general information purposes only, does not constitute legal advice, must not be acted upon as such, and is subject to change without notice. Always consult a lawyer or qualified housing expert for legal or compliance advice.