



**MARYLAND  
LEGAL AID**

*Advancing  
Human Rights and  
Justice for All*

**SB0635 - Landlords and Prospective Tenants - Residential Leases - Criminal History Review (Maryland Fair Chance in Housing Act)**

Hearing before the Senate Judicial Proceedings Committee on March 7, 2024

**Position: FAVORABLE WITH AMENDMENTS**

*Maryland Legal Aid (MLA) submits its written and oral testimony on SB0635 at the request of bill sponsor Senator Chris West.*

MLA is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. We serve residents in each of Maryland's 24 jurisdictions and handle a range of civil legal matters, including housing cases and expungements of criminal records. MLA urges the Committee's Favorable With Amendment report on SB0635, which would – with amendments – alleviate barriers to housing opportunities that Marylanders with a criminal history encounter in the rental market.

The Fair Chance in Housing Act, SB0635, intends to curtail the denial of rental housing opportunities based on criminal history and prohibit advertising that discourages individuals with a criminal history from applying. MLA supports this policy because housing is crucial to the social and economic rehabilitation of reentering individuals. "Researchers have found that formerly incarcerated individuals are far more likely to be homeless than the general public"<sup>1</sup> and that "formerly incarcerated people are most likely to be homeless in the period shortly after their release."<sup>2</sup> When individuals attain stable housing after incarceration, they "are more likely to reintegrate into their communities and less likely to end up back in prison than their formerly incarcerated peers in more precarious housing situations."<sup>3</sup> In Maryland, "incarcerated people... are disproportionately from Baltimore City" while "some areas of the state — like the southern Eastern Shore and Hagerstown — are also disproportionately affected by incarceration."<sup>4</sup>

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<sup>1</sup> Rachel M. Cohen, "Will limiting criminal background checks make rental housing fairer?" Vox, 14 June 2023, available at <https://www.vox.com/policy/23750632/housing-landlords-renter-fair-chance-criminal-record-background-check>.

<sup>2</sup> Prison Policy Initiative, "Nowhere to Go: Homelessness among formerly incarcerated people," 23 Feb. 2024, available at <https://www.prisonpolicy.org/reports/housing.html>.

<sup>3</sup> Supra n.1.

<sup>4</sup> Justice Policy Institute, WHERE PEOPLE IN PRISON COME FROM: THE GEOGRAPHY OF MASS INCARCERATION IN MARYLAND (June 2022), available at <https://www.justicepolicy.org/research/where-people-in-prison-come-from-the-geography-of-mass-incarceration-in-maryland>.

### *Changes are needed to improve this legislation*

MLA urges the Committee to amend this legislation. We support the House Sponsor's amendment that adds an enforcement mechanism to the bill – namely, a cause of action under the Consumer Protection Act, which provides for enforcement by both the Attorney General and by individuals.

However, SB0635 requires further amendments that provide a cohesive procedure that effectuates this policy and adds transparency for both landlords and consumers.

Procedural steps such as a **conditional offer** and notice periods have been adopted in other Fair Chance jurisdictions. Yet, SB0635 lacks these fundamental components. The House Sponsor's amendments do not include them.

MLA supports additional (not yet proposed) amendments that

- limit the scope of criminal history that may not be considered as the basis for denial of a housing opportunity,
- remove the 3-year “lookback” period in the current version of the bill;
- bring consistency with exceptions under federal housing law,<sup>5</sup> and
- create a fair procedure by which landlords would make a conditional offer to lease, and only then consider the criminal history permitted under those exceptions in an individualized assessment.

Unlike Fair Chance laws in other jurisdictions, SB0635 does not require the landlord to consider additional information submitted by the applicant to contextualize the sex offense, for instance, by showing rehabilitation or other mitigating factors. SB0635 simply allows a blanket denial of anyone required to register as a sex offender.

### *A 3-year “lookback” period virtually ensures homelessness*

MLA does not support any “lookback” period, by which landlords may deny lease applications based on recent criminal history up to a certain number of years such as 3 years or 7 years. The highest impact of this Fair Chance policy would occur just after an individual's release from

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<sup>5</sup> See 24 C.F.R. §982.553.

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incarceration. One study has found that “people who spent two years or less in the community were more than twice as likely to be homeless as those who had been out of prison for four years or longer.”<sup>6</sup> Against this data, even a 2-year “lookback” period would not serve the purpose of the legislation.

As drafted, and under the House Sponsor’s amendments, SB0635 would allow denial of housing opportunities based on “any criminal history” within the prior three years – including an arrest without charge, a dropped charge, or participation in a diversion or treatment program. The bill should be amended to strike the three-year lookback period. Otherwise, SB0635 does not provide the Fair Chance in Housing that it proclaims.

***Suggested amendment to § 8–220***

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A LANDLORD MAY NOT REQUIRE A PROSPECTIVE TENANT TO DISCLOSE ANY CRIMINAL HISTORY IN AN APPLICATION FOR A LEASE.

(2) (I) AFTER A CONDITIONAL OFFER, A LANDLORD MAY REQUIRE A PROSPECTIVE TENANT TO DISCLOSE WHETHER THE INDIVIDUAL IS REQUIRED TO REGISTER AS A SEX OFFENDER UNDER FEDERAL OR STATE LAW.

(B) A LANDLORD MAY NOT PUBLISH OR CAUSE TO BE PUBLISHED ANY ORAL OR WRITTEN STATEMENT THAT WOULD REASONABLY DISCOURAGE A PROSPECTIVE TENANT WITH A CRIMINAL HISTORY FROM APPLYING FOR A LEASE.

(C) (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A LANDLORD SHALL NOT DENY HOUSING TO A PROSPECTIVE TENANT BASED IN WHOLE OR IN PART ON CRIMINAL HISTORY.

(2) (I) A LANDLORD MAY DENY HOUSING TO A PROSPECTIVE TENANT WHEN A FEDERAL LAW MANDATES THE DENIAL OF HOUSING BASED ON CERTAIN TYPES OF CRIMINAL HISTORY.

(II) AFTER A CONDITIONAL OFFER, A LANDLORD MAY DENY HOUSING TO A PROSPECTIVE TENANT WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER UNDER FEDERAL OR STATE LAW ONLY AFTER CONDUCTING AN INDIVIDUALIZED ASSESSMENT OF THE PROSPECTIVE TENANT AND DETERMINING THAT THERE IS A

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<sup>6</sup> Supra n.2.

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SUBSTANTIAL, LEGITIMATE AND NONDISCRIMINATORY BUSINESS REASON TO DENY HOUSING.

(D) THE ATTORNEY GENERAL’S OFFICE SHALL ADOPT REGULATIONS AND CREATE MODEL NOTICES TO EFFECTUATE THIS SUBSECTION.

**Maryland Legal Aid urges the Committee’s favorable report on SB0635.** If you have any questions, please contact:

Zafar S. Shah  
Assistant Advocacy Director – Tenants’ Right to Counsel Project  
zshah@mdlalab.org | (443) 202-4478

Gregory Countess  
Director of Advocacy for Housing and Community Economic Development  
gcountess@mdlalab.org | (410) 951-7687