



HOMELESS PERSONS REPRESENTATION PROJECT

SB 635 – Landlords and Prospective Tenants – Residential Leases – Criminal History Review

(Maryland Fair Chance in Housing Act)

Judicial Proceedings Committee, March 7, 2024

Position: FAVORABLE WITH AMENDMENT

Homeless Persons Representation Project (HPRP) urges the Committee to support SB 635 with amendments. A Fair Chance in Housing law will help end homelessness in Maryland by increasing access to housing for individuals with criminal histories. HPRP is a non-profit that provides free civil legal services to Marylanders who are homeless or at risk of homelessness including providing expungement services and representing individuals denied housing due to criminal records.

Fair Chance in Housing laws increase public safety by providing access to stable housing to individuals with criminal histories many of whom experience homelessness. Far too many Marylanders are caught in the revolving door between homelessness and the criminal system. Formerly incarcerated persons are almost 10 times more likely to be homeless than the general public, with rates of homelessness especially high among people of color and women.¹ Large numbers of formerly incarcerated people also live in marginal and unstable housing like rooming houses, and motels. *Id.* A study in Baltimore found over 50,000 criminal cases for individuals in the homeless services system, with 48% of homeless individuals having at least one criminal case.² During the 2023 Point-In-Time Count in Baltimore City, 41% of unsheltered people reported having been in jail, prison, or juvenile detention.³ While we know that the primary solution to ending homelessness is safe, decent, affordable housing, such housing, even when available, remains out of reach for those with criminal system involvement. A recent article from the research arm of the Department of Housing and Urban Development (HUD) notes that, “criminal history is not a good predictor of housing success,” and that, “no empirical evidence exists to justify a ‘blanket exclusion’ of people with criminal histories from housing.”⁴ Policies and practices that deny housing to persons with criminal histories increase and prolong homelessness and do nothing to protect public safety.

SB 635 requires amendments to comply with Fair Housing law. Maryland’s racial disparities in the criminal justice system are one of the highest in the country-30 percent of Maryland residents are Black but 71 percent of incarcerated people are Black. HUD recognized these racial disparities and their harmful and discriminatory consequences when its Office of General Counsel issued guidance in 2016 explaining

¹ Nowhere to Go: Homelessness Among Formerly Incarcerated People, Prison Policy Initiative, <https://www.prisonpolicy.org/reports/housing.html>.

² Journey to Jobs: Understanding and Eliminating Barriers Imposed on Homeless Job Seekers, <https://www.journeyhomebaltimore.org/wp-content/uploads/2018/06/J2J-FINAL-REPORT.pdf>.

³ 2023 Baltimore City Point-In-Time County Report, p.10, <https://homeless.baltimorecity.gov/sites/default/files/Baltimore%20City%202023%20PIT%20Count%20Report.pdf>.

⁴ Tenant Screening With Criminal Background Checks: Predictions And Perceptions Are Not Causality, Office of Policy, Development & Research-HUD, <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>.

the application of the Fair Housing Act to the use of criminal histories by housing providers.⁵ HUD makes clear that a landlord with a policy or practice of excluding individuals based on prior arrests without a conviction “cannot satisfy its burden of showing that such a policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.” *Id.* As currently drafted SB 635 would permit landlords to screen for all criminal history in the previous 3 years, including arrests that did not result in conviction. An amendment is needed to prohibit landlords from denying housing based on arrests.

Some types of convictions may be considered in housing decisions, however, “a housing provider that imposes a blanket prohibition on any person with any conviction record—no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then” will be unable to meet its legal burden. *Id.* SB 635 needs further amendments to clarify that only convictions that indicate a demonstrable risk to resident safety and/or property will be considered, and to require landlords to conduct an individualized assessment of the prospective tenant before making a decision to deny housing. Individualized assessments must include consideration of mitigating information including: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence of good tenancy before or after the conviction; and evidence of rehabilitation efforts.

These provisions are required to comply with Fair Housing law and are standard provisions in Fair Chance in Housing laws throughout the country including New Jersey, Washington D.C., Seattle WA, Oakland CA, Cook County IL, New York City, and Montgomery County MD.

The 3 year look back period should be removed. HPRP objects to the provision of SB 635 that permits landlords to deny housing for a 3-year period. Look back periods are, in fact, homelessness periods. If it is lawful for individuals to be denied housing for 3 years, those individuals will likely be unhoused, and 3 years is a long time to be homeless. In fact, HUD characterizes individuals as being “chronically homeless” after only 12 consecutive months of homelessness.⁶ With homelessness rising to record numbers in 2023⁷, now is the time to expand access to housing to the greatest extent possible.

SB 635 requires an amendment to create a clear enforcement mechanism. SB 635 provides no remedy for prospective tenants whose rights are violated under the Fair Chance in Housing Act. HPRP recommends that SB 635 be amended to include the amendment submitted on the cross-filed bill, HB 964, which provides for enforcement under the Maryland Consumer Protection Act.

Individuals with criminal histories cannot thrive and contribute to their communities without safe, stable housing.

HPRP urges you to move favorable with amendments on SB 635. For more information, please contact Carolyn Johnson, Managing Attorney, at cjohnson@hprplaw.org or (410) 656-4886.

⁵ Office of General Counsel Guidance on the Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, HUD April 4, 2016, https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

⁶ 24 C.F.R. § 578.3

⁷ Fact Sheet: 2023 Annual Homelessness Assessment Report, Key Findings from the Point-In-Time Counts, https://www.hud.gov/sites/dfiles/PA/documents/Fact_Sheet_Summarized_Findings.pdf.