



Bill No: SB 635—Landlords and Prospective Tenants - Residential Leases - Criminal History Review (Maryland Fair Chance in Housing Act)

Committee: Judicial Proceedings

Date: 3/7/2024

Position: Favorable with Amendments

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's Counties.

Senate Bill 635 alters the number of years to review an individual's criminal history from 7 years to 3 years for tenant screening. A housing provider may require a prospective resident to disclose whether the individual is required to register as a sex offender under federal or State law. Housing providers may not: 1) Review or request a third party to review more than the previous 3 years of any criminal history of a prospective resident; 2) Publish or cause to be published any oral or written statement that would reasonably discourage a prospective resident with a criminal history from applying for a lease. A housing provider denying a prospective resident's lease application must provide the individual with a physical document stating each reason for denial.

AOBA commends the bill sponsor for considering legislation ensuring the successful reintegration of previously incarcerated individuals. Many of AOBA's members allow returning citizens to be productive members of society by providing them access to housing, one of the most basic needs. However, AOBA's concerns are focused on the implementation of the legislation as proposals restricting the process by which housing providers consider information obtained during a background screening may inhibit members' ability to find a safe and secure home for residents and the employees, they serve which will subject our members to legal liability.

AOBA believes the bill reflects a misunderstanding of how rental housing providers use criminal history records to evaluate potential tenants. Many AOBA members only run a prospective tenant through the Multi-state Sex Offender (MSSO) Registry; as such, they would never know if a resident had a record unless they have committed a sex offense.

Members who perform more robust criminal background checks do not have a blanket rejection of an applicant based on previous incarceration. Instead, criminal background checks are individualized assessments conducted by 3rd party companies, using agreed-upon standards based on criminal convictions related to *specific crimes* that pose a particular danger to the community and have occurred within a set period. For instance, AOBA members do not screen for simple possession of a controlled substance or loitering but are vigilant about specific acts of violence. Members have acknowledged racial bias and discrimination in incarceration and have reworked their screening practices to ensure that they allow people a second chance at life after serving their time for crimes. Provided those crimes do not pose a serious threat to the community, which members are charged with protecting. Further, this bill creates confusion by providing protected class status for individuals with a criminal record while continuing the expectation that our members should reject tenancy for individuals who threaten health, safety, or property. Thus, the bill creates potential liability for a rental housing provider any time a previously incarcerated individual's rental application was rejected for any reason, which the Maryland Commission would address on Civil Rights, the courts, and the threat of fines or imprisonment.

HUD's Stance on Screening for Resident's with a Criminal Record

Moreover, the Department of Housing and Urban Development provides [Guidance for housing providers concerning the Fair Housing Act](#) and how it applies to using criminal history by providers to vet prospective residents. To take it back a little, in June 2015, the Supreme Court officially recognized a disparate impact theory as a method for bringing a lawsuit under the Fair Housing Act (FHA). The Court's decision reflected that a plaintiff may challenge housing practices as having a discriminatory effect without showing intent. Before this ruling, the disparate impact theory was unsuccessful in challenging discriminatory housing practices. After the Supreme Court's ruling, HUD developed Guidance on how fair housing laws can apply to policies that exclude individuals with criminal records and to assist housing providers in best practices in for screening prospective residents without violating the FHA. To be clear, the guidelines outlined by HUD do not prohibit housing providers from conducting criminal screenings on applicants; instead, the Guidance provides an overview of HUD's position on how disparate impact lawsuits could proceed against housing providers who do not have justified criminal screening policies. For example, the Guidance states that housing providers must support their use of criminal background tests with "substantial, legitimate, and non-discriminatory" factors such as the safety of the residents, employees, and property. Therefore, the recommended best criminal screening practices, in light of the Guidance, suggest that housing providers carefully consider what types of offenses pose the greatest threat to their interests, including, but not limited to, convictions for violent offenses against people or property, a pattern of illegal drug use that threatens health, safety, or right to peaceful enjoyment of the premises by other residents, or sex offenses. AOBA members with a robust system for criminal screening reflecting legitimate concerns posed by the particular types of offense, HUD's Guidance does not greatly impact members' operations. On that same note, policies that automatically exclude applicants

with prior convictions, HUD's Guidance should be considered, and screening practices should be revamped to ensure a nexus to the criminal offense.

Revise Legislation to Tailor to HUD's Guidance

AOBA recommends that this bill mirror HUD's Guidance. AOBA urges the Committee to consider amending the bill to mirror the federal Guidance and its suggestions, including implementing written criminal conviction screening policies. This amendment would ensure that housing providers, both private and public, have consistency in their application processes. Without this change, there would be discrepancies in how subsidized residents are processed during the application phase versus how residents applying for market-rate units are processed.

For instance, Public Housing Authorities (PHA) are mandated by law, even after HUD's Guidance, to deny admission to applicants for certain offenses, including if there is a reasonable cause to believe that the applicants' pattern of illegal drug use threatens the health, safety, or right to peaceful enjoyment of the premises by other residents. Even if a housing authority applicant has a criminal record unaffected by the mandatory prohibitions, there are other considerations, similar to what the Guidance and legislation proffer, which must be considered before accepting the applicant. The statutory and regulatory exclusions demonstrate that the federal government acknowledges the concerns faced by housing providers in determining whether an applicant is suitable to live in its facilities amongst other residents.

AOBA makes the following recommendations to this legislation:

- Page 2, Line 23 remove, “3” and add “5 for non-violent offenses and 15 years for certain violent offense.”
 - AOBA doesn't support a blanket three-year look-back period for all crimes because some crimes have patterns that can be traced beyond the three years. We recommend language to increase the number of years to look back to identify patterns of crimes, especially domestic violence or financial crimes.
 - Page 2, Line 19, Add “Exemptions from nondisclosure: Manufacture, possession with intent to distribute, distribution of all drugs, excluding marijuana. Assault degree for First, Second, Third, Degree. Burglary in the first degree. Assault with intent to commit mayhem or with a dangerous weapon. Fraud, Credit Card Fraud, Insurance Fraud in the First and Second Degree, Forgery, Rape, Arson, Malicious burning, destruction, or injury of another's property, and Burglary.”
 1. AOBA recommends adding this language as housing providers must have the ability to screen for applicants with a history of manufacturing and distributing illicit drugs that do not include marijuana. AOBA members have reported some residents utilizing

the property to traffic such illicit drugs and creating a dangerous environment for the community.

- Page 2, Line 15, Adds "A housing provider shall have immunity from any claims related to actual or constructive knowledge of an applicant's pending criminal accusation or criminal conviction obtained as a result of an inquiry under this act, provided that the applicant became a tenant or occupant of the housing provider's housing accommodation."
 - This amendment provides a safety net for housing providers operating according to the law and protects them from lawsuits.

- A preemption clause that precludes local jurisdictions from enacting ordinances and requires local governments to align policies with the State.
 - Different localities, especially in Montgomery and Prince George's Counties, have their own laws regulating returning citizens. AOBA supports language for the State to preempt local laws that may conflict with the state law.

- Page 2, Line 29, OR electronic letter..."
 - AOBA seeks to amend the bill, allowing housing providers to send denial letters electronically, as this is standard practice.

For these reasons AOBA requests a favorable with amendments report on SB 635. For further information contact Ryan Washington, AOBA Manager of Government Affairs, at 202-770-7713 or rwashington@aoba-metro.org .