



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2026 Session
SB0180

Evidence - Interception of Oral Communications - Fair Housing Testing

Bill Summary

This bill establishes that it is lawful for a person to intercept an oral communication if (1) the person is working as a fair housing tester for a fair housing testing program operated by the federal government, the State, a local government, or a “nonprofit civil rights organization”; (2) the person is a party to the communication; and (3) the interception is being made for the purpose of obtaining evidence of a fair housing violation under federal, State, or local law.

Racial Equity Impact Statement

Fair housing testers routinely gather evidence of discrimination through interactions with housing providers. The bill’s exemption from existing prohibitions on recording/intercepting oral communications without the consent of all parties will grant fair housing testers and civil rights organizations further opportunities to investigate housing discrimination based upon protected status. State and national-level data show that individuals with disabilities make up the largest category of complaints of housing discrimination followed by complaints based on race or national origin. The complaint data suggests that the bill’s provisions would benefit individuals facing housing discrimination in the State to the extent that more robust testing leads to increased enforcement, more deterrence, or other corrective actions. However, dispositive data on the relationship between fair housing testing programs and any resulting increase in compliance is not readily available to determine any specific impacts.

Analysis

Under existing law, it is unlawful to willfully intercept (without consent), endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication. It is also unlawful to disclose or otherwise use information received under these circumstances. Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine.

This bill would establish a limited exemption authorizing fair housing testing programs and enforcement organizations to intercept oral communications. Individuals and organizations authorized by the bill to intercept oral communications would include those working as a fair housing tester for a fair housing testing program operated by the federal government, the State, a local government, or a nonprofit civil rights organization. The individual intercepting the oral communication must be a party to the communication, and the interception must be made for the purpose of obtaining evidence of a fair housing violation under federal, State, or local law. In addition, any intercepted oral communications may be used only for the purpose of enforcing federal, State, or local fair housing laws, and may not be used as evidence in any trial, hearing, or other proceeding, in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State or a political subdivision of the State. The bill defines a nonprofit civil rights organization as a qualified fair housing enforcement organization or a fair housing organization, as defined under 24 C.F.R. § 125.103, or an organization incorporated under Maryland law as a private, tax-exempt civil rights organization that has at least two years of experience in complaint intake, complaint investigation, and testing for fair housing violations or enforcement of meritorious claims.

Chapter 751 of 2021 requires the Department of Housing and Community Development (DHCD) to administer its programs and activities to “affirmatively further fair housing.” It further establishes that local jurisdictions have a duty to affirmatively further fair housing and requires DHCD to explore ways to ensure it is collaborating with and supporting nonprofit and governmental entities devoted to furthering fair housing and improving compliance with the Fair Housing Act of 1968.

Fair Housing Testing

Fair housing testing, generally, is an investigation involving one or more persons who initiate contact with a person or entity to gather information about their housing policies and/or practices and how they compare with the requirements of fair housing laws. Fair housing testing seeks to uncover an array of discriminatory practices, such as (1) discouraging prospective tenants from obtaining information about, viewing, or renting/buying any dwelling; (2) misrepresenting the availability of housing; (3) withholding information regarding the availability of housing; (4) steering persons seeking housing to other locations; or (5) providing different terms or conditions related to housing.

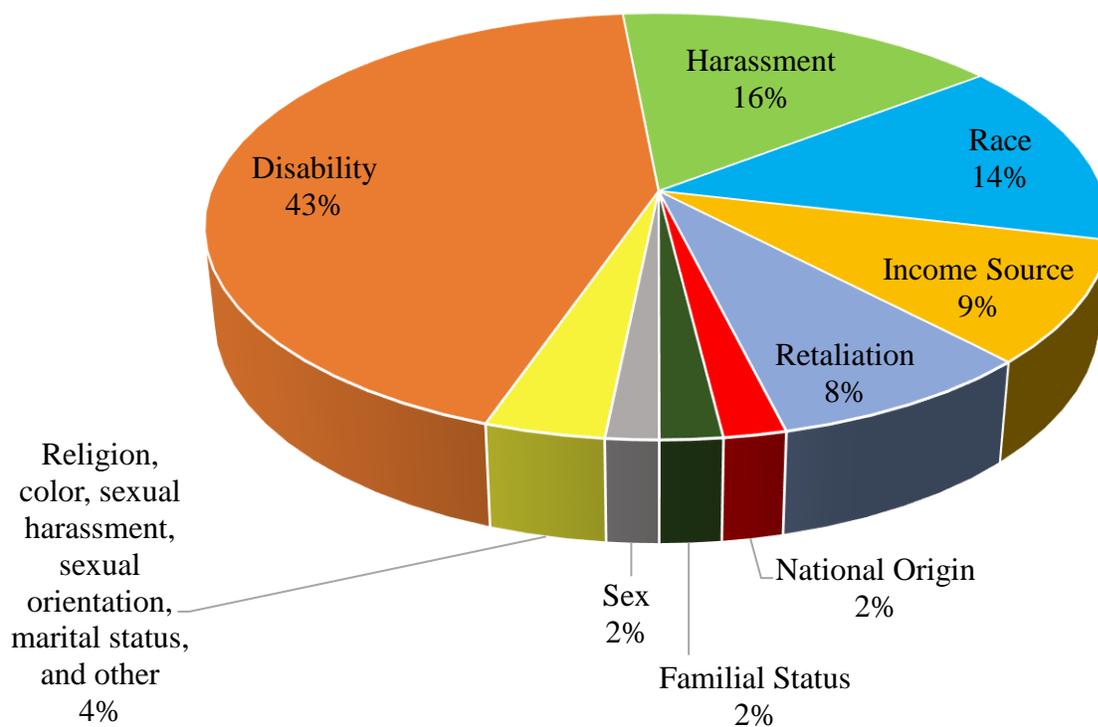
Fair housing testers are trained individuals who pose as prospective renters or buyers to gather information on fair housing violations by housing providers. By visiting the property, making observations, and speaking with housing agents, testers can obtain evidence on whether the provider is in compliance with nondiscrimination laws and whether they deny housing to people based on protected characteristics, such as race or disability.

Maryland and several other states do not allow one-party consent for the recording of in-person conversations. Supporters of fair housing testing programs argue that these all-party consent laws unfairly shield housing providers from having their commercial speech recorded even when that speech includes discriminatory misrepresentations and statements designed to discourage or deny housing opportunities to people based on race, national origin, or other protected characteristics. However, critics of one-party consent laws argue that nonconsensual recordings undermine the fundamental privacy rights guaranteed by all-party consent laws.

Impacts of the Bill

The Maryland Commission on Civil Rights (MCCR) receives inquiries and complaints regarding potential violations of the State’s housing discrimination laws. **Exhibit 1** shows the distribution of housing discrimination inquiries by biases that were received by MCCR in fiscal 2024. Of the 680 total housing discrimination inquiries received, 96 inquiries (14%) were based on race. MCCR describes an inquiry as the first step to filing a complaint. Most complaints begin with an online inquiry, but the inquiry itself does not constitute the formal filing of a complaint. MCCR staff follow up on inquiries before they are designated as formal complaints.

Exhibit 1
Housing Discrimination Inquiries
Fiscal 2024



Source: Maryland Commission on Civil Rights

Federal Housing Discrimination – Aggregate Complaints

In 2025, the National Fair Housing Alliance (NFHA) issued the annual Fair Housing Trends Report, which compiles fair housing complaints received by private, nonprofit fair housing organizations and government agencies. In 2024, a total of 32,321 housing discrimination complaints were received and investigated, representing a 21% increase over the past 10 years.

According to NFHA, disability-related complaints comprised the largest share (54.9%), followed by complaints alleging discrimination based on race (15.6%), sex (7.1%), national origin (5.7%), familial status (5.5%), color (2.4%), and religion (1.1%). Most complaints arose in the rental market, home sales, and mortgage lending categories. An “other” category accounted for 18.2% of complaints and reflected other protected class categories established by state and local agencies, such as age, sexual orientation, and criminal background. The largest portion of this category was complaints based on the source of income for prospective tenants, which was typically Section 8 or similar vouchers from government assistance programs.

The U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity is responsible for enforcing the Fair Housing Act’s requirements as well as other civil rights laws. HUD reports it received 1,566 discrimination complaints in 2024.

The Housing and Civil Enforcement Section of the Department of Justice (DOJ) is responsible for enforcing the Fair Housing Act and Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations. The 1988 Fair Housing Amendments Act expanded the DOJ’s authority, allowing it to bring cases when HUD issues a “charge” of discrimination, enabling a complainant to go to federal court. DOJ’s Housing and Civil Enforcement Section filed 44 cases in 2024. Of the 44 cases, 10 involved race and/or national origin discrimination.

Conclusion

Fair housing testers interact directly with landlords, property managers, and other housing providers to determine the prevalence of discriminatory housing practices. The bill would allow testers and civil rights groups to record oral communications without obtaining consent by creating an exception to the all-party consent requirements under existing law. This would expand their ability to investigate potential discriminatory actions based on protected characteristics.

Available State and national complaint data indicate that disability-related claims make up the largest share of housing discrimination complaints, followed by complaints based on race or national origin. This suggests that the bill could benefit individuals in Maryland who experience these forms of discrimination to the extent that expanded testing leads to stronger enforcement or corrective measures. However, there is no clear, conclusive data demonstrating that fair housing testing programs directly lead to measurable increases in overall compliance with housing laws.

Information Sources: Maryland Commission on Civil Rights; Department of Housing and Community Development; The National Fair Housing Alliance; Department of Legislative Services

Analysis by: Rafael Regales

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Appendix – Maryland Demographics

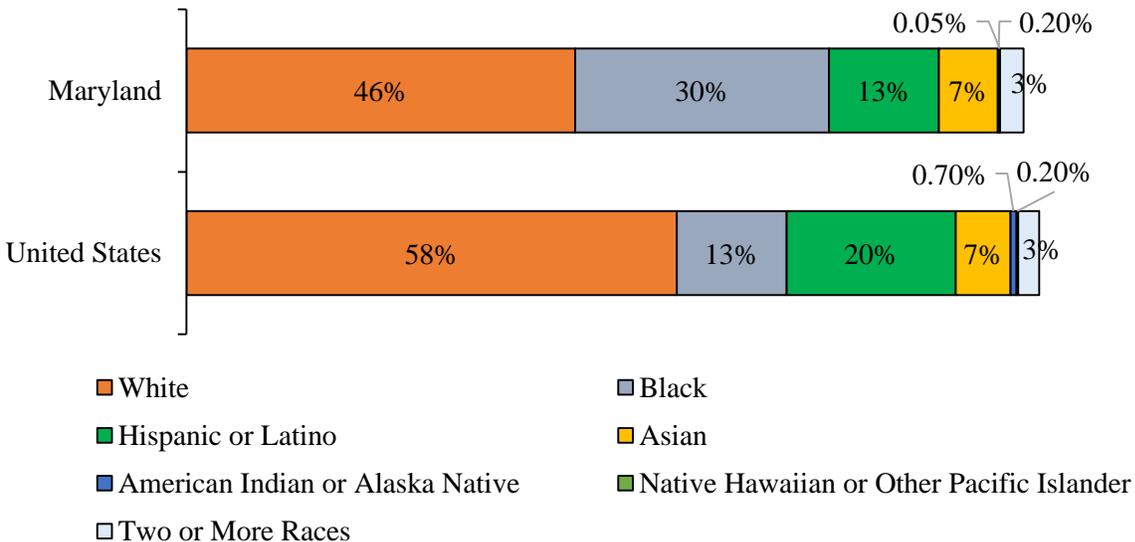
Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. Maryland remains one of the most racially and ethnically diverse states in the nation and is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). While no single racial or ethnic group constitutes a majority, racial minorities as a group constitute a majority of the State’s population. This diversity underpins the analytical framework used in racial equity impact notes (REIN), which seek to identify potential disparities that may be exacerbated or created by proposed criminal justice legislation.

Methodology Update

Beginning in 2025, REIN will use annual population estimates from the U.S. Census Bureau’s Population Estimates Program (PEP) as the basis for disparity and disproportionality calculations. This methodological update reflects best practices in demographic analysis, as PEP data incorporate births, deaths, and migration to provide the most current population counts between censuses. Although the estimates are more temporally responsive, they do not materially change the proportionate racial and ethnic breakdown observed in the 2020 census. Instead, they conservatively reflect population changes since 2020 while preserving the overall demographic composition of the State.

**U.S. and Maryland Population by Race and Ethnicity
2024 Population Estimates**



Note: Percentages do not total 100% due to rounding.

Source: U.S. Census Bureau