



Zafar Shah
Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 237
shahz@publicjustice.org

HB0521 – Landlord and Tenant – Repossession for Failure to Pay Rent – Shielding of Court Records

Hearing before the House Judiciary Committee,
March 2, 2022

Position: FAVORABLE WITH AMENDMENTS

The Public Justice Center (PJC) is a nonprofit public interest law firm that stands with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing and their rights to fair and equal treatment by Maryland’s landlord-tenant laws, courts, and agencies. We advocate to change the law regarding evictions and to demand the development of equitable and sustainable affordable housing. **With amendments proposed below, PJC supports HB0521** as a critical measure to protect renters from the long-lasting financial harm of COVID-19 and to increase their access to safe and stable housing during this important time of economic recovery.

HB0521 allows the shielding (defined in the bill as the equivalent of sealing) of eviction records in failure to pay rent cases (“FTPR”) that were filed during the COVID-19 pandemic from March 5, 2021 to January 1, 2022. **Over 530,000 FTPR actions were filed in that period** while renters were without work, waiting interminably for unemployment benefits, and applying for emergency rental assistance.

For many tenants, FTPR actions are routinely filed – each month, regardless of the tenants’ likelihood of paying the rent before the end of the month. Around 97% of FTPR actions typically result in a default judgment. Tenants pay late to avoid enforcement of the judgment as an actual eviction. This cycle of serial filing continued even during the pandemic.

Routine FTPR filings damage tenants’ consumer and rental history. Vendors such as CoreLogic and AppFolio access physical and electronic court records to produce data points that they then sell as risk assessments. A tenant who successfully redeemed possession by post-judgment payment is ultimately harmed by the record of the FTPR action when they are seeking new housing. **HB0521 would help renters avoid the loss of housing opportunities based on**

pandemic era FTPR records. For cases that were dismissed (no judgment for landlord), the bill would allow renters to petition for record shielding based on demonstrating that the late payment or non-payment had been due to income loss arising from the pandemic.

For cases in which judgment was entered for the landlord, the tenant's petition for shielding would be subject to an objection by the landlord or ex-landlord. In a hearing, the landlord or ex-landlord would need to show that the tenant's non-payment of rent had not been due to COVID-19-related income loss.

If a tenant's petition prevails, under HB0521, shielded records would open the door to housing opportunities that would be closed otherwise because of tenant screening and credit reporting.

Proposed amendments (attached)

Public Justice Center supports HB0521 with two friendly amendments: 1) to expand the period of coverage for FTPR actions filed during the COVID-19 pandemic; and (2)) to ensure that objections to shielding petitions are subject to meaningful scrutiny.

Amendment 1. Period of coverage

The end date for court filings covered by HB0521 is January 1, 2022, which appears to have been set well before the Omicron wave of the COVID-19 pandemic. The end date for coverage should reflect that Omicron extenuated the economic struggles of renter households. Additionally, the end date should also reflect the fact local Emergency Rental Assistance Programs have backlogs and await new rounds of federal funding. For these reasons, PJC suggests expanding the coverage period to May 31, 2022.

Amendment 2. Evidentiary standard for objection to petition

In its current form, HB0521 does not specify an evidentiary standard for objections raised by landlords or ex-landlords to petitions for shielding. To avoid frivolous or retaliatory objections, the bill ought to specify a high bar for the allegations set forth in objections. PJC suggests that a clear and convincing standard would deter inappropriate or weak objections.

Tenants of subsidized housing should not be excluded from HB0521

HB0521 currently applies to all tenants, regardless of whether their tenancies involved federal housing programs. We caution against any amendments that would seek to exclude renter households in public housing or those who utilize a rent subsidy program such as the Housing Choice Voucher Program.

Eviction record shielding under HB0521 would not violate federal regulations. In fact, the U.S. Interagency Council on Homelessness's 2013 guidance, [PHA Guide to Modifying Tenant Screening and Eligibility Policies and Procedures](#), describes that "[m]any [public housing agencies] are taking

steps to modify policies and procedures in order to reduce or remove these barriers. **Federal law gives substantial flexibility to [public housing agencies] and housing providers to adopt local policies regarding criminal backgrounds and other screening criteria.”**

There is no federal requirement on public housing agencies to review eviction records in the screening of prospective tenants for federally assisted housing. Indeed, such reviews of records place even more significant barriers on families attempting to enter or remain in federally subsidized programs, who are already qualified for these programs based on their status as families with extremely low income.

Tenants in federally assisted housing have certain requirements around recertification of their income on an annual basis or as their household income changes, which informs the amount of their monthly rental portion. Many tenants in federally assisted housing have struggled to complete these annual recertifications during the COVID-19 pandemic due to closures of state agencies and inaccessibility of on-site property management offices to complete recertification processes. As a result, tenants who may have lost employment or other income during the pandemic may face delays of weeks or even months before their monthly rental portion is adjusted to reflect their current household income. This leaves those renters struggling to catch up on back rent for months where they were unemployed or otherwise faced income loss. HB0521 should support federally subsidized tenants just as it does unsubsidized tenants in shielding their records.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee **issue a FAVORABLE WITH AMENDMENT report on HB0521**. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org (410) 625-9409 Ext. 237.

Attachment:

Proposed amendments

HB0521F – Amendments proposed by Public Justice Center

Amendment 1

On page 2 line 21, after “before,” strike “January 1, 2022” and substitute “May 31, 2022”

Amendment 2

On page 3 line 6, after “hearing,” insert “by clear and convincing evidence”