



Gabriela Dickson La Rotta
Paralegal
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 230
dicksonlarottag@publicjustice.org

HB 1163: Human Relations - Protections Against Discrimination - Criminal Records

Hearing before the House Judiciary Committee on March 9, 2023

Position: Favorable

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Human Right to Housing Team provides advice and representation to hundreds of tenants facing eviction each year. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work. Our Race Equity Team works to demonstrate to people in power the impact of their decisions on communities of color and low-income communities. PJC supports HB 1163 and requests a **FAVORABLE** report.

Black and Latine people are disproportionately impacted by mass incarceration. People of color have long been the targets of the carceral system. They are routinely perceived as dangerous and violent by law enforcement, prosecutors, and the judiciary.¹ These perceptions place them at an increased risk for incarceration, a pattern borne out by national data. Black Americans are incarcerated around five times more than white Americans. Latines are likewise imprisoned at a rate higher than white people, although the disparity is not as wide.² The result of this systemic discrimination is a disproportionately high population of people of color with criminal records, which impede their ability to access housing and employment.

Housing providers discriminate against applicants with criminal records. Housing security is a key stabilizing factor in the life of a formerly incarcerated person. Studies of people on probation have shown that housing insecurity is closely linked with higher

¹ *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. The Sentencing Project. Available at: www.sentencingproject.org/.

² *Id.*

rates of recidivism.³ Often, formerly incarcerated people are denied housing due to their criminal record and are forced into homelessness, which only increases their interactions with law enforcement and increases the risk they will be imprisoned again.⁴ Many individuals with criminal records are trapped in a cycle of homelessness and imprisonment that cuts them off from economic stability and safety.

HB 1163 would bring Maryland in line with national priorities. The Department of Housing and Urban Development (HUD) has recognized the impact of housing discrimination against criminal record holders and people of color. In 2016, HUD released guidance on whether denying housing to those with criminal records violates the Fair Housing Act (FHA).⁵ Crucially, HUD noted that people of color are more likely to have criminal records due to racially discriminatory practices by law enforcement. Having a criminal record is not a protected category under the FHA, but the FHA may be violated if the denial of these applicants falls disproportionately on a protected category, such as people of a specific race or ethnicity.⁶ In 2022, HUD expanded on this guidance in a memo advising private housing providers not to consider criminal records when considering prospective tenants.⁷

Banning the Box was not enough. In 2020, General Assembly passed HB 994, which prohibited employers with 15 or more full-time employees from discriminating against applicants with prior criminal records.⁸ Although this bill increased discrimination protections for formerly incarcerated people, it has the potential to limit opportunities for Marylanders of color. Over the past decade, state legislatures across the country have implemented “Ban the Box” laws, so named because they ban employers from asking applicants to tick the box denoting whether or not they have a criminal record. In the ensuing years, researchers have studied the implementation of these laws, and have determined that although they decrease the unemployment rate among formerly incarcerated people, they inadvertently encourage racial discrimination.⁹ Much as the

³ *The Effect of Housing Circumstances on Recidivism*. Criminal Justice and Behavior. Available at: www.journals.sagepub.com/.

⁴ *Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It*. The Urban Institute. Available at www.urban.org/.

⁵ *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. U.S. Department of Housing and Urban Development. Available at: www.hud.gov/.

⁶ *Id.*

⁷ *Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. U.S. Department of Housing and Urban Development. Available at: www.hud.gov/.

⁸ *Maryland Criminal Record Screening Complaint (Ban the Box) - Employment Standards Service (ESS)*. Maryland Department of Labor. Available at: www.dllr.state.md.us/

⁹ *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*. The Quarterly Journal of Economics. Available at: www.academic.oup.com/.

legal system perceives people of color as violent and criminal, employers perceive Black and Latine applicants as more likely to have a criminal background. In lieu of denying people with criminal records, employers discriminate against applicants of color. A study conducted New York and New Jersey after Ban the Box legislation was implemented found that white applicants received callbacks 43 percent more than Black applicants, when prior to the legislation the gap between both groups had been 7 percent.¹⁰

Marylanders of color deserve a fair shot. Once a person has served their time and is released from prison, they have completed the sentence that our justice system deemed sufficient for their crime. Marylanders with criminal records deserve an opportunity to build a life for themselves after prison and contribute to society. HB 1163 would prohibit housing providers and employers, as well as public accommodations, from discriminating against people with criminal records, which would afford much-needed opportunities to this population and strengthen protections for Black and Latine people.

Please issue a report of **FAVORABLE** on HB 1163. If you have any questions, please contact Gabriela Dickson La Rotta, dicksonlarottag@publicjustice.org, 410-625-9409, ext. 230.

¹⁰ *Id.*