

**Final Testimony for SB 57.pdf**

Uploaded by: Charles E. Sydnor III

Position: FAV

CHARLES E. SYDNOR III, ESQ.  
*Legislative District 44*  
Baltimore County

DEPUTY MAJORITY WHIP

Judicial Proceedings Committee  
Executive Nominations Committee

*Joint Committees*

Administrative, Executive, and  
Legislative Review

Children, Youth, and Families

Senate Chair, Legislative Ethics

*Chair*

Baltimore County Senate Delegation



James Senate Office Building  
11 Bladen Street, Room 216  
Annapolis, Maryland 21401  
410-841-3612 · 301-858-3612  
800-492-7122 Ext. 3612  
Charles.Sydnor@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony for SB 57  
Evidence – Wiretapping and Electronic Surveillance –  
Fair Housing Testing  
Before the Judicial Proceedings Committee  
January 30, 2024**

Good afternoon, Chair Smith, members of the Judicial Proceedings Committee,

Senate Bill 57 (“SB 57”) provides for the use of electronic surveillance as an evidentiary gathering technique to protect against housing discrimination. This testimony will provide why SB 57 is necessary for the protection and security of our constituents’ civil rights. Senate Bill 57 adds an additional, limited exception where the interest of justice requires the interception of wire, oral, and electronic communication.

As reported by the National Fair Housing Alliance in its 2023 Fair Housing Trends Report,

- There were 33,007 fair housing complaints received in 2022 – the highest number of complaints ever reported in a single year;
- Overall complaints were 5.74 percent higher than the previous year;
- Complaints based on source of income and domestic violence increased;
- Even with this record-setting number of complaints, most incidents of housing discrimination go undetected or unreported.

To help address these unfortunate trends, SB 57 is intended to strengthen Federal and State enforcement of fair housing laws by exempting from the scope of the State’s wiretapping statute work performed by authorized fair housing testers. “Fair housing testing refers to the use of testers who, without any bona fide intent to rent, sell or purchase a property, pose as prospective renters, sellers, or buyers of residential real estate for the purpose of determining whether housing providers and others are complying with the Fair Housing Act”<sup>1</sup> and similar state laws like those within Maryland civil rights provisions in Md. Code Ann., State Gov’t § 20-101, *et seq.* In 2021,

---

<sup>1</sup> [Fair Housing Initiative Program - Education and Outreach Initiative - Test Coordinator Training | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#).

the United States Department of Housing and Urban Development (“HUD”) built upon existing law through the Affirmatively Furthering Fair Housing Act (“AFFH”), which amended the prior Fair Housing Act of 1968, requiring “program participants to proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in opportunities, and foster inclusive communities free from discrimination.”<sup>2</sup> While Maryland has very stringent housing discrimination laws in place, documenting discrimination and gathering evidence in action has its barriers. One of those barriers is our current limits of the Maryland Wiretap Act, Md. Code Ann., CTS. & JUD. PROC. § 10-401, *et seq.* While federal and state law in many states allow a single party to a communication to record the communication without the knowledge or consent of other parties; Maryland is in a minority of states who do not.<sup>3</sup>

Senate Bill 57 does two things. First, SB 57 introduces and defines the term “nonprofit civil rights organization” but limits the kinds of organizations that may qualify as a nonprofit civil rights organization under the Maryland Wiretap Act to either:

1. a qualified fair housing enforcement organization<sup>4</sup> or a fair housing organization<sup>5</sup> as defined under 24 C.F.R. §125.103; or
2. an organization incorporated under Maryland law as a private, tax-exempt civil rights organization that has at least 2 years’ experience in:
  - a. complaint intake;
  - b. complaint investigation; and
  - c. testing for fair housing violations or enforcement of meritorious claims.

The federal regulation which is used to help define what a “nonprofit civil rights organization.” Comes from Part 125 of HUD’s regulations; it establishes the rules around its Fair Housing Initiatives Program.<sup>6</sup> Under this regulation testers must be trained in testing procedures and

---

<sup>2</sup> <https://www.hud.gov/AFFH>. Last visited 1/22/2024.

<sup>3</sup> *See, e.g.*, Recording Phone Calls and Conversations: 50-State Survey, available at <https://www.justia.com/50-state-surveys/recording-phone-calls-and-conversations/> (a majority of 36 states permit one-party consent to record including the District of Columbia, West Virginia, Virginia, and Delaware(although there is a conflict between statutes)).

<sup>4</sup> A qualified fair housing enforcement organization means “any organization, whether or not it is solely engaged in fair housing enforcement activities, that (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for Fair Housing Initiative Program assistance.

For the purpose of meeting the 2-year qualification period for the activities included in paragraph (2) of this definition, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 2 years. It is also not necessary for the activities to have been conducted for 2 consecutive or continuous years. An organization may aggregate its experience in each activity over the 3-year period preceding its application to meet the 2-year qualification period requirement.” 24 C.F.R. §125.103.

<sup>5</sup> A fair housing organization means “any organization, whether or not it is solely engaged in fair housing enforcement activities, that: (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Upon the receipt of Fair Housing Initiative Program funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.” 24 C.F.R. §125.103.

<sup>6</sup> While noting each of these requirements, one requirement, 24 CFR 125.107(a) is currently under review by HUD.

techniques.<sup>7</sup> Testers are barred from having “an economic interest in the outcome of the test”;<sup>8</sup> “be a relative of any party in [the] case”;<sup>9</sup> “have had any employment history or other affiliation, within one year, with the person or organization to be tested”;<sup>10</sup> or “be a licensed competitor of the person or organization to be tested.”<sup>11</sup>

Second, under the proposed §10-402(c)(12), SB 57 creates a narrow, limited the exception to the Maryland Wiretap Act for specially defined fair housing testers. In sum, SB 57 would create the 12<sup>th</sup> narrow, limited exception to the scope of the Maryland Wiretap Act which already exempts other specialized persons for specific public policy purpose. This amendment and narrow addition of actors except from the scope of the Maryland Wiretap Statute is extremely important in helping to enforce our fair housing laws not other for residents of Maryland but also honest landlords and real estate professionals who do not discriminate but are put at a competitive disadvantage by those who do discriminate.

There are some qualified organizations that provide testing to root out fair housing violators including the Economic Action Maryland (“EAM”). EAM’s mission is to champion “economic rights, equal opportunity, and housing justice through advocacy, research, and direct service.” It addresses unlawful and unfair discrimination in housing through its fair housing program in an effort to root out discrimination in housing and ensure everyone has the right to fair housing. To accomplish the aforementioned, the EAM relies on fair housing testing to conduct its fair housing work. During these tests, fair housing testers present themselves as potential renters to landlords where there is a concern or there has been report of unfair or deceptive treatment. The testers report what experiences they encountered and EAM will review the results to determine if there is probably cause for unlawful housing discrimination. If discrimination is found, further investigation and evaluation may be needed to ensure compliance with AFFH.

Senate Bill 57 would give nonprofit civil rights organization the reliable evidence needed to successfully help uphold our fair housing laws. Due to the nature of our all-party consent laws fair housing testers are prohibited from recording their conversations during their testing and using the recordings as evidence. This presents a tremendous hurdle in effective enforcement of discrimination cases, making fair housing laws nearly unenforceable. To help cure such deficiencies, SB 57 incorporates the use of audio recording in fair housing (civil rights) testing, providing the documentation needed to prosecute discrimination cases and ensure Maryland’s housing marketplace is free from discrimination and residents and honest merchants alike are not harmed by those who seek to discriminate without review.

According to the HUD and based on its experience investigating fair housing complaints:

testers today generally audio and/or video record their testing experiences, meaning that the recordings—not the testers’ testimony—are of utmost importance in most fact-finding

---

<sup>7</sup> 24 CFR 125.107(b).

<sup>8</sup> 24 CFR 125.107(c)(1).

<sup>9</sup> 24 CFR 125.107(c)(2).

<sup>10</sup> 24 CFR 125.107(c)(3).

<sup>11</sup> 24 CFR 125.107(c)(4).

hearings. Recording fair housing tests has become ubiquitous as cost of devices and technology has gone down and the utility of such recordings has become evident... In many cases, sharing recorded evidence of fair housing testing facilitates early resolution and settlement, negating the need to interrogate tester credibility. And in housing discrimination cases that go to trial, the main role of testers as witnesses is to introduce the recorded evidence of the interaction, not to recount their experience in detail. In short, testing evidence often speaks for itself and a tester merely needs to be credible enough for the judge or jury to believe their testimony that the recording being presented is an authentic recording of the events at issue in the case.<sup>12</sup>

In closing, at the end of last year, Frederick County pledged to help 28 households work with the Maryland Commission on Civil Rights to investigate claims that housing voucher recipients were charged more than other tenants in the same complex.<sup>13</sup> One can only imagine the strength this case would have if a nonprofit civil rights organization's testers, equipped with the tool provided under this legislation, would have experienced such an act the apartment complex is accused. This legislation is needed here in Maryland and the time was yesterday.

For the aforementioned reasons I have provided, implore you to vote favorably for SB 57.

---

<sup>12</sup> The Federal Register, *Removing Criminal Conviction Restrictions for Testers in FHIP – and FHAP-Funded Testing Programs*, Office of Fair Housing and Equal Opportunity, HUD <https://www.federalregister.gov/documents/2023/10/31/2023-23678/removing-criminal-conviction-restrictions-for-testers-in-fhip--and-fhap-funded-testing-programs>.

<sup>13</sup> [https://www.fredericknewspost.com/news/crime\\_and\\_justice/county-helping-households-pursue-discrimination-claims/article\\_07e29b57-b501-5a46-8fcc-7861b56cdb67.html](https://www.fredericknewspost.com/news/crime_and_justice/county-helping-households-pursue-discrimination-claims/article_07e29b57-b501-5a46-8fcc-7861b56cdb67.html)

**Sample Cases of Rental and Sales Discrimination based on Race, Color, National Origin, Familial Status and Religion and Rental and Sales Discrimination based on Disability resolved with Testing:<sup>14</sup>**

On December 29, 2021, the court entered a [consent decree](#) in *United States v. Lone Wolf Housing Authority* (W.D. Okla.). The [complaint](#), filed on December 15, 2020, alleged that the defendants discriminated on the basis of race in violation of the Fair Housing Act and Title VI of the of the Civil Rights Act of 1964 when they rejected a housing application from complainant and her minor child on the pretext of lack of available housing and when they further misrepresented the availability of housing to a [Black tester](#) after showing numerous available units to the white companion tester. The consent decree requires defendants to pay \$75,000 in monetary damages to the complainant, her child, and the fair housing organization that conducted testing. The Housing Authority must also implement nondiscriminatory procedures, train all employees and board members on fair housing, maintain records of applications and availability, and report to the United States on their compliance with the terms of the Consent Decree. The case was referred to the Division after the Department of Housing and Urban Development received a complaint, conducted an investigation, and issued a charge of discrimination.

On April 5, 2021, the court entered a [consent decree](#) resolving *United States v. Village Realty of Staten Island Ltd.* (E.D.N.Y.). The [complaint](#), filed on September 30, 2020, alleged that the defendants violated the Fair Housing Act (FHA) on the basis of race when Defendant Denis Donovan, a sales and rental agent at Village Realty, treated African-Americans who inquired about available rental units differently and less favorably than similarly-situated white persons. The complaint also alleged that Defendant Village Realty is vicariously liable for Donovan's discriminatory conduct. The consent decree requires the defendants to adopt nondiscriminatory standards and procedures, undergo fair housing training, contribute \$15,000 to a victim fund, and pay a civil penalty. The complaint was based on testing evidence developed by the Section's Fair Housing Testing Program.

On January 3, 2023, the court entered a [consent order](#) in *United States v. Perry Homes, Inc.* (W.D. Pa.). The [amended complaint](#), which was filed on October 8, 2021, alleged that defendants Perry Homes Inc., Robert Whittington and Allyson Whittington discriminated on the basis of disability in violation of the Fair Housing Act by implementing a policy of excluding emotional support animals from rental properties they owned or operated in Cranberry, Zelienople, and Harmony, Pennsylvania. The original complaint was filed on July 23, 2021. The case is based on a HUD complaint that was filed by Southwestern Pennsylvania Legal Services ("SWPLS"), a non-profit legal aid organization whose mission includes combating housing discrimination, after the organization conducted fair housing testing. The consent order requires the defendants to pay SWPLS \$15,000 in damages, to comply with the Fair Housing Act, adopt a reasonable accommodation policy, publicize the policy in applications, leases, tenant renewals, and in its rental office, provide training for its employees, and comply with other equitable terms. The case

---

<sup>14</sup> <https://www.justice.gov/crt/recent-accomplishments-housing-and-civil-enforcement-section#j%20rental%20and%20sales%20race%20and%20color>. Last visited 1/22/2024.

was referred to the Division after the Department of Housing and Urban Development (HUD) received the complaint, conducted an investigation, and issued a charge of discrimination.





**CDN SB57 FAVORABLE.pdf**

Uploaded by: Claudia Wilson Randall

Position: FAV



**Testimony**  
**SENATE BILL 57**  
**Senate Judicial Proceedings Committee**  
**January 30, 2024**  
**Position: FAVORABLE**

Dear Chairman Smith and Members of the Judicial Proceedings Committee:

The Community Development Network of Maryland (CDN) is the voice for Maryland's community development sector and serves nearly 200 member organizations. CDN—focuses on small affordable housing developers, housing counseling agencies and community-based non-profits across the state of Maryland. The mission of CDN is to promote, strengthen and advocate for the community development sector throughout Maryland's urban, suburban and rural communities.

SB57 - This bill would create a narrowly-tailored exemption to the all-party consent law. It would enable qualified organizations to conduct fair housing testing without all party consent.

Today, Maryland is behind 39 states when it comes to fair housing tests using the US. Department of Housing and Urban Development guideline for best practices. The guidelines recommend equipping testers with recording devices to faithfully and incontrovertibly capture interactions with housing agents.

Maryland's all party consent requirement means that fair housing organizations in the state cannot use recommended best practices. This creates significant challenges for Maryland fair housing organizations and for fair housing enforcement in the state. It doubles the cost of testing. Maryland organizations must hire two testers for each test. It makes testers must rely on their memory of the event to write a detailed report soon after the interaction. Maryland is one of only 11 states that don't allow one party recordings for fair housing.

Fair housing tests are crucial for:

**Detection of Discrimination:** Fair housing tests help detect instances of housing discrimination based on factors such as race, ethnicity, gender, disability, familial status, and other protected characteristics  
**Enforcement of Fair Housing Laws:** These tests play a critical role in enforcing fair housing laws and regulations and documenting instances of discrimination, authorities can take legal action against individuals or entities that violate fair housing laws.

**Policy Evaluation:** The data collected through fair housing tests can be used to evaluate the effectiveness of existing fair housing policies. If discrimination is consistently identified, it may indicate a need for new policies to address specific issues.

We ask for your favorable report on SB 57.

Submitted by Claudia Wilson Randall, Executive Director, Community Development Network

**Anne Arundel County \_FAV\_SB 57.pdf**

Uploaded by: Ethan Hunt

Position: FAV



January 30, 2024

**Senate Bill 57**

**Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing**

**Senate Judicial Proceedings Committee**

**Position: FAVORABLE**

Anne Arundel County **SUPPORTS** Senate Bill 57 – Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

This Bill will significantly enhance efforts to combat unlawful housing discrimination by removing the two-party consent requirement for recording conversations for fair housing testers. Fair housing testing is the best tool for uncovering unlawful housing discrimination, yet Maryland remains at a significant disadvantage compared to most other states, which do not have a two-party consent requirement. As a result, fair housing testers in other states are able to record their interactions with housing providers, something that this Bill would permit.

Housing discrimination increases residential segregation, the racial wealth gap, the homeownership gap, and the gap in intergenerational income mobility, while decreasing access to opportunity. Even with local and state laws to prevent housing discrimination, housing discrimination complaints have been increasing and increased in 2021 to the highest number in at least 25 years. Fair housing testing, when fully utilized to be most effective, addresses both the difficulty in identifying and the difficulty in proving discrimination, as people who have been discriminated against often do not know the discrimination has occurred, may not complain for a variety of reasons, and the difficulty of proving the validity of the complaint without objective evidence.

Given the significant problems created by housing discrimination and the growing number of complaints of housing discrimination, every tool available to investigate and enforce compliance with fair housing laws should be employed. Permitting the recording of fair housing tests without requiring the consent of the subject of the test would allow fair housing testing to be used to its full potential. For all of these reasons, I respectfully request a **FAVORABLE** report on Senate Bill 57.

A handwritten signature in blue ink, appearing to read "Steuart Pittman".

Steuart Pittman  
County Executive

# **Testimony.FredFreiberg.MarylandJudicialProceedings**

Uploaded by: Fred Freiberg

Position: FAV

**Testimony of Fred Freiberg to the Senate Judiciary Committee SB57:  
Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing**

**Position: Favorable - January 30, 2024**

The Honorable Senator William C. Smith, Jr.,  
Chair, Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401

cc: Judicial Proceedings Committee Members and Committee Staff

Chairperson Smith and Judiciary Proceedings Committee Members:

I write as a fair housing practitioner with 48 years of experience conducting undercover fair housing testing investigations to voice my unequivocal support for SB57 which is intended to carve out an exemption to the all-party consent requirement for recording conversations under Maryland law. This legislation would permit fair housing testers working with Qualified Fair Housing Organizations (QFHOs), recognized civil rights organizations, or public fair housing enforcement agencies to gather recorded evidence of their interactions with housing providers to aid with the enforcement of fair housing laws.

Testing, as courts have uniformly recognized, is an investigative tool used to gather evidence in fair housing cases. A test involves one or more persons who inquire about housing opportunities. The investigations are covert in nature and designed to compare the conduct of providers of housing or housing-related services to the requirements of fair housing laws. Often two or more testers are matched on a test making it possible to observe how home seekers of different races, national origins, etc. are being treated in the housing market. The value of testing is that it is uniquely capable of identifying whether all types of housing consumers are receiving the same information, service, treatment, and access to housing opportunities or housing services without regard to any of the protected characteristics under local, state, and federal fair housing laws.

Since 1976, I have supervised over 12,000 testing investigations in more than twenty states. I have personally been involved in more than 1,500 undercover testing investigations. I have been named as a witness in nearly five hundred fair housing cases and I have provided sworn deposition and trial testimony on roughly seventy occasions. I am considered one of the leading experts in the nation on the use of testing to uncover and document discrimination in fair housing and civil rights cases.

I was a founder and the first Executive Director of the Metropolitan Milwaukee Fair Housing Council (MMFHC) which opened its doors in 1978. By 1979, we began equipping our testers with concealed microcassette recorders. The decision to do this was prompted by the fact that, too often, testers testified that they spoke with a housing provider and described what was said, and the housing provider would testify that the testers were lying and, in some cases, denied that the interaction even took place. The subsequent use of recorders removed any doubt about what housing providers told testers of different races because now there was an *exact oral account* on a recording that captured the interaction. The MMFHC went on to file hundreds of fair housing cases supported with recorded testing evidence and established a significant track record of successful outcomes.

In late 1990, I moved to Baltimore, Maryland and briefly served as Associate Director of Baltimore Neighborhoods, Inc. (BNI). I was responsible for the oversight of BNI's fair housing testing program. I left the organization after five months to pursue a better career opportunity. One factor that motivated me to leave was the fact that I could not equip testers with concealed recorders to document their experiences. I recognized that building a vigorous and effective fair housing testing and enforcement program was going to be difficult, if not impossible, given that Maryland law required all-party consent to record conversations.

In 1991, I was hired to establish and direct the first fair housing testing program in the Civil Rights Division of the U.S. Department of Justice (DOJ). The decision to equip testers with recorders was made at the inception of the testing program. In the first seven years of DOJ's testing program, dozens of pattern and practice cases were brought by the Department using recorded testing evidence. While at DOJ, recording technology changed and microcassette recorders were replaced with far superior digital recorders. I received training on how to effectively use digital recorders in testing and how to preserve and control digitally recorded evidence so that it would be admissible in a court of law.

In 2004, I co-founded the Fair Housing Justice Center (FHJC), a regional civil rights organization based in New York City. I helped to construct and direct a robust testing program at FHJC which has employed and trained over two hundred testers, mostly professional actors. As New York State is one of the thirty-nine states that allow one-party consensual recording, FHJC testers use concealed digital recorders to record their telephonic and in-person communications with housing providers. FHJC investigations have aided in the filing of more than 155 fair housing lawsuits and most have included testing evidence. These cases have opened more than 80,000 housing units to previously excluded populations along with a total payment of \$54 million in damages and penalties. In August 2021, I stepped down as FHJC's Executive Director and now work part-time for the FHJC as its National Field Consultant.

I began working in the fair housing field in 1976 and can attest to the fact that the nature of housing discrimination has dramatically changed. Since fair housing laws were enacted, most housing providers have learned about their legal responsibilities and the possible enforcement consequences for non-compliance. Rather than follow the law, violators try, in a variety of ways, to conceal their discriminatory conduct. The overt discrimination that I routinely saw on tests in the 1970's eventually became more subtle as housing providers cleverly devised techniques to elude detection. As time passed, the characterization of housing discrimination as a "slammed door" had to be replaced with the image of a "revolving door" where unsuspecting home seekers are politely escorted in, out of, and away from the desired housing without even knowing that discrimination occurred. To respond to these changes, testing organizations have had to become more sophisticated in how to conduct these undercover investigations. Those of us who have worked in any of the thirty-nine one-party consent states have learned that the more extensive use of recorders to gather evidence in testing investigations often makes it possible to unravel discriminatory schemes and more easily document the illegal conduct.

Today, racial discrimination in housing, in most instances, is so subtle that ordinary consumers have no way of knowing they have been discriminated against. If consumers are unaware that they have been victimized by an act of housing discrimination, they do not file complaints. If no complaints are filed, no enforcement action is taken by government enforcement agencies and the discrimination simply continues. The "invisibility" of housing discrimination ensures its sustainability. The only way to document and compare how home seekers of different races or national origins are being treated is to conduct pro-active systemic testing investigations.

Given the more nuanced and stealth-like nature of contemporary housing discrimination, it is imperative, in my view, that testers record their conversations with housing providers so that those initially reviewing the test results and the triers of fact who decide the outcome of the case can hear the *exact words* used by the tester and housing provider during a test. I have attended many fair housing trials where judges or juries heavily relied on the recorded evidence to help them determine whether the discriminatory conduct occurred as alleged in violation of fair housing laws. Recorded evidence enhances our ability to hold housing providers accountable for their discriminatory conduct and makes it possible for plaintiffs to prevail in cases, even where subtle discrimination is occurring.

In September 2022, I penned an article in Shelterforce about this critical issue.<sup>1</sup> Recording laws in eleven states, including the State of Maryland, are currently hobbling efforts to enforce fair housing laws effectively and vigorously by making it unlawful for testers to record conversations with housing providers. These restrictive all-party consent requirements prevent fair housing law enforcement organizations from

---

<sup>1</sup> <https://shelterforce.org/2022/09/06/press-record-to-catch-fair-housing-violators-if-you-can/>



gathering the strongest possible evidence in housing discrimination cases and chills the ability of testers to assist others to exercise their rights under fair housing laws.

I urge Maryland to show leadership on this issue. There is an opportunity to demonstrate to the other ten states requiring all-party consent to record that carving out an exception for fair housing testers is not going to violate any privacy rights. Testers typically speak with rental agents, landlords, real estate agents, loan officers and others who engage in commercial speech when discussing the products and services that they are offering in the open marketplace. Housing providers who persist in lying to and deceiving people based on race, national origin, or other protected characteristics about the availability of housing, the terms and conditions, whether housing is available to show, etc. are not deserving of any protection by the State.

As I only recently learned about the hearing you have scheduled for tomorrow, I regret that I am unable to attend virtually or in-person. I will, however, make myself available in the future to answer any questions that your committee or staff may have regarding my written testimony. I appreciate the fact that you are seriously considering this important modification to Maryland law to facilitate the use of concealed recorders by fair housing testers. If this bill passes the Maryland legislature and is enacted into law, it will most certainly strengthen the enforcement of fair housing laws throughout the State of Maryland.

Thank you for the opportunity to provide this testimony.

*Fred Freiberg*

Fred Freiberg  
27-28 Thomson Ave.  
Long Island City (Queens), New York 11101

# **SB57.MCCR Testimony Fair Housing.Wiretapping.01.30**

Uploaded by: Gerald Ford

Position: FAV



# State of Maryland Commission on Civil Rights

*Respect...Integrity...Effective Communication*

**Governor**  
Wes Moore

**Lt. Governor**  
Aruna Miller

**Commission Chair**  
Stephanie Suerth, MPA,  
CCEP

**Commission Vice Chair**  
Janssen E. Evelyn, Esq.

**Commissioners**  
Diane E. Bernier  
Eileen M. Levitt, SPHR,  
SHRM-SCP  
Angela Scott, Esq  
Magdalena S. Navarro,  
MSc  
Jeff Rosen  
Gina McKnight-Smith,  
PharmD, MBA  
Isabella Firth Shycoff

**Officers**  
**Executive Director**  
Alvin O. Gillard

**Deputy Director**  
Cleveland L. Horton II

**General Counsel**  
Glendora C. Hughes

January 30, 2024

## **Senate Bill 57 – Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing Position: Support**

Dear Chairperson Smith, Vice Chair Waldsteicher and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, health services, and state contracts based on race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

Senate Bill 57 amends Sections 10-401(13) and 10-402(c)(12) of the Courts and Judicial Proceedings Article to allow persons working as fair housing testers to intercept communications for the purpose of obtaining evidence of a fair housing violation. This bill applies only to fair housing testers from the government or a nonprofit civil rights organization who are also a party to the communication.

Fair housing testers are trained individuals who discreetly 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 fair laws, or whether they are denying housing to people based on protected characteristics, such as race or disability.

Maryland is one of only eleven states that requires all parties’ consent to record communications. The current requirement in Maryland prohibits testers from recording their own interactions with housing providers or forces them to get the consent of the potential violator, thus defeating the purpose of the test. SB 57 would provide a limited one-party recording exception to Maryland’s general all-party consent rule. This carve out would align with the majority of other states that permit interception when the recorder is a party to the conversation.

One-party recording laws have proven effective in discovering fair housing violations. A 2019 study in New York—a one-party consent state—recruited housing testers to record their meetings with real estate agents and found that the testers of color were subjected to differential treatment more than white testers. Black testers experienced this discrimination 49% of the time, Latino testers 39% of the time, and Asian testers 19% of the time. In

***“Our vision is to have a State that is free from any trace of unlawful discrimination.”***

William Donald Schaefer Tower, 6 Saint Paul Street, Suite 900, Baltimore, Maryland 21202-1631  
Phone: 410-767-8600 · Toll Free: 1-800-637-6247 · Maryland Relay: 711 · Fax: 410-333-1841  
Website: [mccr.maryland.gov](http://mccr.maryland.gov) · E-Mail: [mccr@maryland.gov](mailto:mccr@maryland.gov)

addition to revealing violations, documenting testers' interactions through recordings also reduces issues with credibility, truthfulness, and accuracy. Such recorded evidence helps promote fairer outcomes both for prospective tenants and for providers.

Additionally, allowing testers to gather recordings of conversations is vital to pursuing difficult cases that otherwise may fail due to a lack of corroborating evidence. For example, landlords may tell prospective tenants with Section 8 vouchers that their building is not HUD-approved for Section 8 housing, while in reality, HUD does not provide blanket Section 8 approval to entire properties. Instead, Section 8 eligibility is individual to a particular person, who may generally seek housing at any private housing property. But evidence of these misrepresentations is hard to come by. SB 57's exception is therefore needed to substantiate investigations and put an end to fair housing rights violations.

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on SB 57. Thank you for your time and consideration of the information contained in this letter. MCCR looks forward to the continued opportunity to work with you to improve and promote fair housing and civil rights in Maryland.

**SB57JJ.pdf**

Uploaded by: Jeniece Jones

Position: FAV



Jeniece Jones, Executive Director  
Public Justice Center  
201 North Charles Street, Suite 1200  
Baltimore, Maryland 21201  
859.907.1022  
jonesj@publicjustice.org

---

## **SB47: Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing**

**Hearing before the Senate Judicial Proceedings Committee on January 30, 2024**

### **Position: SUPPORT (FAV)**

---

I write in my professional capacity as the current Executive Director of the Public Justice Center (PJC) in Maryland and former Executive Director of Housing Opportunities Made Equal (HOME) of Greater Cincinnati, Ohio. This testimony is in support of SB57/HB392, which seeks to authorize fair housing testers to legally intercept communications under specific conditions.

The PJC actively works towards instigating systemic changes to establish a society founded on justice. Our focus is on utilizing legal avenues to remove barriers that impede economic and racial equity, through our various projects. The Human Right to Housing Project at PJC is our pivotal initiative aimed at safeguarding tenants from unlawful eviction practices, ensuring the maintenance of habitable housing conditions, and confronting exploitative landlord behaviors.

My seven years of experience at HOME is highlighted by the indispensable role of fair housing testing in unearthing and documenting hard to detect discriminatory practices in housing. In Ohio, fair housing testers are allowed to intercept communications during housing transactions. By authorizing fair housing testers to lawfully intercept communications, SB57/HB392 would offer a vital instrument for identifying and confronting covert discrimination that restricts access to safe, affordable, and quality housing in Maryland. Furthermore, this legislation incentivizes property managers to place greater emphasis on fair housing training, ensuring their staff are well-versed in legal compliance and best practices. This proactive approach in management fosters a more informed and equitable housing market, directly contributing to enhanced housing stability and the economic growth of Maryland families. Access to stable housing is a cornerstone for the well-being and economic advancement of families, and this bill could play a critical role in ensuring such access.

The essence of SB57/HB392 is in alignment with the objectives of the PJC. It provides a substantial legal framework to reinforce our endeavors in ensuring fair housing practices. This bill passage would be key to ensure fairness and equality in housing, which is central to the PJC's mission of promoting economic and racial justice.

**BaltimoreCounty\_FAV\_SB0057.pdf**

Uploaded by: Jennifer Lynch

Position: FAV



JOHN A. OLSZEWSKI, JR.

*County Executive*

JENNIFER AIOSA

*Director of Government Affairs*

AMANDA KONTZ CARR

*Legislative Officer*

WILLIAM J. THORNE

*Legislative Associate*

**BILL NO.:**            **SB 57**

**TITLE:**                Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

**SPONSOR:**            Senator Sydnor

**COMMITTEE:**        Judicial Proceedings

**POSITION:**           **SUPPORT**

**DATE:**                January 30, 2024

Baltimore County **SUPPORTS** Senate Bill 57 – Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing. This legislation would make it lawful for a person to intercept a wire, oral, or electronic communication if 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.

Baltimore County believes this legislation would provide a public benefit by helping to proactively combat housing discrimination and its discriminatory effects by allowing fair housing testers to record their conversations and interactions with housing professionals engaged in providing rental housing, mortgage lending and home sales services. The County is currently contracted with non-profit housing organizations that engage in these types of fair housing testing activities, and passage of this legislation would help enhance that effort. At this time, fair housing testers are not considered law enforcement, and because Maryland is one of eleven states that requires two party consent, this type of interception is currently prohibited. This legislation would allow Baltimore County to better enforce federal, state and local fair housing laws as a key tool for ensuring equity, fairness and transparency.

Accordingly, Baltimore County urges a **FAVORABLE** report on SB 57 from the Senate Judicial Proceedings Committee. For more information, please contact Jenn Aiosa, Director of Government Affairs at [jaiosa@baltimorecountymd.gov](mailto:jaiosa@baltimorecountymd.gov)



# **CRD testimony SP 57.pdf**

Uploaded by: Jonathan Smith

Position: FAV

**CANDACE MCLAREN LANHAM**  
*Chief Deputy Attorney General*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**LEONARD HOWIE**  
*Deputy Attorney General*



**ANTHONY G. BROWN**  
*Attorney General*

**CHRISTIAN E. BARRERA**  
*Chief Operating Officer*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**PETER V. BERNS**  
*General Counsel*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.  
(410) 576-7036

WRITER'S DIRECT DIAL NO  
(410) 576-7844

**Testimony of Jonathan M. Smith, Chief of the Civil Rights Division**  
**Before the Senate Judicial Proceedings Committee**  
**In Support of Senate Bill 57**  
**January 30, 2024**

Senate Bill 57, if enacted, will provide an important tool to address housing discrimination in Maryland. The bill will allow a very limited exception to the two-party consent requirement to record a conversation for the purposes of testing in aid of the enforcement of fair housing laws. In some cases, the recording of a fair housing test will be the best evidence admissible in court that discrimination is occurring and will facilitate effective remediation. On behalf of the Civil Rights Division of the Office of the Attorney General of Maryland, I offer support for the Bill.

Marylanders are protected from discrimination in housing by state, local, and federal law. It is illegal to deny someone equal access to housing based on a broad range of demographic characteristics, including race, gender, sexuality, gender identity, disability, or familial status. Just last year, the General Assembly extended protections against discrimination to include persons who use a government voucher to pay rent when it enacted the Housing Opportunities Made Equal or "HOME" Act.

Nevertheless, housing discrimination in Maryland continues to persist. Maryland is amongst the most diverse state in the nation,<sup>1</sup> yet it remains highly segregated.<sup>2</sup> Segregation has

---

<sup>1</sup> <https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html>

<sup>2</sup> Maryland Segregation Map, [https://hdpulse.nimhd.nih.gov/data-portal/physical/map?race=00&race\\_options=raceall\\_1&sex=0&sex\\_options=sexboth\\_1&age=001&age\\_options=ag](https://hdpulse.nimhd.nih.gov/data-portal/physical/map?race=00&race_options=raceall_1&sex=0&sex_options=sexboth_1&age=001&age_options=ag)

an impact on every aspect of life. The ability to live where one chooses affects access to nutrition or health care,<sup>3</sup> defines what school a student can attend, limits access to work or transportation, and impacts recreational and cultural opportunities. Housing discrimination also impacts the value of a home based on the race of the owner, which has a serious impact on wealth inequality and the creation of generational wealth.<sup>4</sup>

Fair housing testing has long been used to root out discrimination. Testing involves the use of trained individuals who apply for housing to measure whether persons with a particular protected characteristic are treated differently than a person without the characteristic. Often, this will involve matched pairs – persons who are similarly situated except for the tested demographic characteristics – to measure whether they receive the same information or opportunity.

Testing was a strategy pioneered by Dr. Martin Luther King in Chicago. In 1966, before the enactment of the Fair Housing Act, Dr. King helped found the Chicago Open Housing Movement which recruited Black volunteers to apply for housing in real estate offices only to be told that the listed properties in white neighborhoods were unavailable and steered to Black areas of the City.<sup>5</sup> The evidence from these tests were an important part of the record that led to the passage of the Fair Housing Act after Dr. King’s assassination.

The Courts have long recognized testing evidence in fair housing cases. More than 40 years ago in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), the Supreme Court found that testers who were subject to racial steering violated the Fair Housing Act. Since then, testing evidence has been routinely used in state and federal courts. It is a common practice by both fair housing organizations and government enforcement agencies.<sup>6</sup>

Discrimination has become more subtle. No longer are there signs posted on the lawn of an apartment building that Blacks or Jews or other racial groups are not welcome and restrictive covenants have long been outlawed. Landlords, persons selling real estate, and homeowner associations have found other ways to exclude persons with demographic characteristics that they deem “undesirable.” People in protected classes are not told that they are not welcome because of their race gender, family status, sexuality, gender identity, or disability. Instead, they

---

eall\_1&statefips\_options=area\_states&demo=01005&demo\_options=res\_seg\_2&physicaltopic=100&physicaltopic\_options=physical\_2&statefips=24

<sup>3</sup> Huang SJ, Sehgal NJ (2022) Association of historic redlining and present-day health in Baltimore. PLoS ONE 17(1): e0261028. <https://doi.org/10.1371/journal.pone.0261028> (last visited January 24, 2024).

<sup>4</sup> D. Kamin, Home Appraised With a Black Owner: \$472,000. With A White Owner: \$750,000, New York Times (August 18, 2022); <https://www.nytimes.com/2022/08/18/realestate/housing-discrimination-maryland.html> (last visited January 28, 2024)

<sup>5</sup> N. Moore, The Test Used to Expose Housing Discrimination and Its Chicago Roots, WBEZ (December 19, 2018); <https://www.wbez.org/stories/the-test-used-to-expose-housing-discrimination-and-its-chicago-roots/5c44b3ac-562c-455f-946d-04530985555ed> (last visited January 28, 2024).

<sup>6</sup> The Civil Rights Division of the United States Department of Justice has a Fair Housing Testing program. See, <https://www.justice.gov/crt/fair-housing-testing-program-1>

are told that the property is no longer available, that they must pass an onerous background check, or that the cost is higher than advertised. Without testing, an applicant or prospective purchaser does not know that the next white person who walks through the door will be told something very different.

Testing can be performed without a recording. The testimony of the tester is important evidence. However, a recording of the conversation is much stronger. The judge or jury can hear directly what is said, conflicts in testimony can be resolved, and lapses in memory avoided. The existence of recorded evidence will reduce the need for litigation and promote the early and effective resolution of disputes.

During the last legislative session, the General Assembly gave the Attorney General the power to enforce all State and federal civil rights laws. To implement this authority, the Attorney General has created the Civil Rights Division and we are in the process of setting up the office. The elimination of housing discrimination will be one of our key priorities. Fair housing testing will be an important approach in the development of the docket. The enactment of Senate Bill 57 will facilitate our work and allow us to be more efficient and effective.

**SB57\_MoCoDHHS\_Frey\_FAV.pdf**

Uploaded by: Leslie Frey

Position: FAV



# Montgomery County

## Office of Intergovernmental Relations

---

**ROCKVILLE: 240-777-6550**

**ANNAPOLIS: 240-777-8270**

---

**SB 57**

**DATE: January 30, 2024**

**SPONSOR: Senator Sydnor**

**ASSIGNED TO: Judicial Proceedings**

**CONTACT PERSON: Leslie Frey**

**(leslie.frey@montgomerycountymd.gov)**

**POSITION: FAVORABLE (Department of Health and Human Services)**

---

### **Evidence - Wiretapping and Electronic Surveillance - Fair Housing Testing**

Senate Bill 57 makes it lawful for a person to intercept a wire, oral, or electronic communication if the person is working as a fair housing tester for a fair housing testing program operated by the federal, state, or local government or a non-profit civil rights organization, so long as the person is party to the communication and the interception is made for the purpose of obtaining evidence of a fair housing violation under federal, state, or local law.

The Montgomery County Department of Health and Human Services (MCDHHS) supports Senate Bill 57 as it is a commonsense action to ensure that those working to ensure fair housing practices are followed can do their jobs and document wrongdoing by landlords. Currently, it is very difficult to collect evidence of landlords who violate fair housing laws and/or source of income discrimination laws that is admissible in court proceedings. MCDHHS receives numerous reports of landlords telling prospective renters that they do not accept housing vouchers, however, the prospective renters do not have this evidence of discrimination in writing. Being able to record conversations between local governments administering fair housing programs and acting as fair housing testers and landlords in order to obtain evidence of discrimination would help the County enforce fair housing and source of income laws that protect renters.

We respectfully urge the committee to issue a favorable report on Senate Bill 57.

**SB 57 - Fair Housing - FAV - REALTORS.pdf**

Uploaded by: Lisa May

Position: FAV



## **Senate Bill 57 – Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing**

### **Position: Support**

Maryland REALTORS® takes all allegations of discrimination in the housing market seriously. As a result, we offer our support for SB 57, to allow for greater testing of potential fair housing violations in the state.

While the federal Fair Housing Act was passed 56 years ago, reports of discrimination persist today in areas of the home buying and selling process, as well as in the provision of rental housing. The Maryland Commission on Civil Rights 2023 Annual Report outlines continued Fair Housing complaints in the areas of disability discrimination, harassment, and race, and that those inquiring about possible discrimination are disproportionately Black, Muslim, and Female.

When this bill was introduced in the 2023 Session, Maryland REALTORS® requested amendments to more clearly define which organizations could use wire and video surveillance and for what purposes such testing may be conducted. SB 57 includes both of those clarifications, and now more closely aligns with federal requirements as instituted by the U.S. Department of Housing and Urban Development (HUD).

At all levels of the REALTOR® organization, there is a renewed awareness of those issues, and a determined focus on addressing them. We thank the sponsor for his efforts to reduce any bias which may occur in the housing market and respectfully ask for your support of Senate Bill 57.

**For more information contact  
lisa.may@mdrealtor.org or christa.mcgee@mdrealtor.org**



# **SB0057 ACDS Support - Fair Housing Testing.pdf**

Uploaded by: Lisa Sarro

Position: FAV



## **SB 57 - Evidence – Wiretapping & Electronic Surveillance – Fair Housing Testing**

**Hearing before the Senate Judicial Proceedings Committee on January 31, 2024**

**Position: SUPPORT (FAV)**

---

**SUPPORT: Senate Bill 57 will substantially enhance efforts to prevent unlawful housing discrimination in Maryland by allowing fair housing testers working for a government or nonprofit civil rights organization to use an effective fair housing testing method currently in use by the United States Department of Justice, the United States Department of Housing and Urban Development (HUD) and the vast majority of U.S. States.**

ACDS serves as Anne Arundel County’s nonprofit housing and community development agency, helping Anne Arundel County residents and communities thrive through the provision of safe and affordable housing opportunities, programs to prevent and end homelessness, and community development initiatives. As part of fulfilling this role, ACDS works with the County to affirmatively further fair housing in Anne Arundel County to ensure that housing opportunities are available and accessible to all County residents.

**Despite local State and federal laws prohibiting discrimination in housing, the problem persists and in fact complaints regarding discrimination in housing are rising significantly.** The [National Fair Housing Alliance 2023 Trends Report](#)<sup>1</sup> reports that housing discrimination complaints increased in 2022 to the highest number of complaints ever in a single year, an increase that comes on the heels of a record number of discrimination complaints made in 2021. Similarly, the 2023 annual report of the [Maryland Commission on Civil Rights](#)<sup>2</sup> reveals a *significant spike in fair housing complaints in Maryland in each of the years since the start of the COVID-19 pandemic, through and including 2023.*

**Fair housing testing is the most effective tool for uncovering evidence of housing discrimination.** Because buyers and renters have no way of knowing how others are treated by housing providers, and also because buyers and renters are often too embarrassed, humiliated or even fearful to report instances of discrimination, reliance on renters and buyers to uncover instances of housing discrimination is ineffective for rooting out discrimination in housing. In contrast a comprehensive fair housing testing program, in which two individuals – one a member of a protected class, and the other not a member of a protected class - who separately seek the same housing service from the same housing provider within a short period of time, is a tremendously effective way to identify discrimination. Although currently prohibited in Maryland, most fair housing testing

---

<sup>1</sup> <https://nationalfairhousing.org/resource/2023-fair-housing-trends-report/>

<sup>2</sup> <https://mccr.maryland.gov/Pages/Publications.aspx>

programs involve recording the interactions of the testers and the subject(s) being tested. As stated by HUD recently in an [entry for the Federal Registry](#):

***“Based on HUD's experience investigating fair housing complaints, testers today generally audio and/or video record their testing experiences, meaning that the recordings—not the testers' testimony—are of utmost importance in most fact-finding hearings. Recording fair housing tests has become ubiquitous as cost of devices and technology has gone down and the utility of such recordings has become evident...***

***...In many cases, sharing recorded evidence of fair housing testing facilitates early resolution and settlement, negating the need to interrogate tester credibility. And in housing discrimination cases that go to trial, the main role of testers as witnesses is to introduce the recorded evidence of the interaction, not to recount their experience in detail. In short, testing evidence often speaks for itself and a tester merely needs to be credible enough for the judge or jury to believe their testimony that the recording being presented is an authentic recording of the events at issue in the case.”*** [Emphasis added.]

**Maryland's wiretapping law requires consent of all parties for recording conversations, so fair housing testing is much less effective in Maryland than in most other states**, both in terms of cost and in terms of use as a tool for education, settlement and enforcement of fair housing laws. This bill would change that by creating a narrowly drafted carve out to allow fair housing testers working with governments and civil rights nonprofit organizations to record tests which, in turn, would help the State and local jurisdictions to better fulfill their obligations to affirmatively further fair housing.

The Office of the Public Defender has expressed concerns that allowing the recording of conversations in the context of fair housing testing could ultimately be used in the context of criminal matters. **Our support for this bill would not change if an amendment were made to specifically prevent the use of fair housing test recordings to support criminal charges.**

With reports of housing discrimination rising faster than ever before, every tool available to ensure enforcement of fair housing laws needs to be put to use. By allowing the recording of fair housing tests without requiring the consent of the subject of the test, this bill would allow fair housing testing to be used to its full potential.

**For the reasons noted above, ACDS urges the Committee to issue a FAVORABLE report on SB 57.**

# **SB57 - Fair Housing Tests Bill (1).pdf**

Uploaded by: Marceline White

Position: FAV

# Improving the Accuracy of Maryland's Fair Housing Tests

## Background

Fair housing tests are controlled assessments to identify and document discrimination in the housing market. Fair housing testing employs individuals to pose as prospective tenants or homeowners to gather information to determine whether or not a provider is complying with state and federal laws related to fair housing.

Fair housing tests are crucial for

1. **Detection of Discrimination:** Fair housing tests help detect instances of housing discrimination based on factors such as race, ethnicity, gender, disability, familial status, and other protected characteristics.
2. **Enforcement of Fair Housing Laws:** These tests play a critical role in enforcing fair housing laws and regulations. By documenting instances of discrimination, authorities can take legal action against individuals or entities that violate fair housing laws.
3. **Policy Evaluation:** The data collected through fair housing tests can be used to evaluate the effectiveness of existing fair housing policies. If discrimination is consistently identified, it may indicate a need for stronger enforcement or the development of new policies to address specific issues.



## Problem

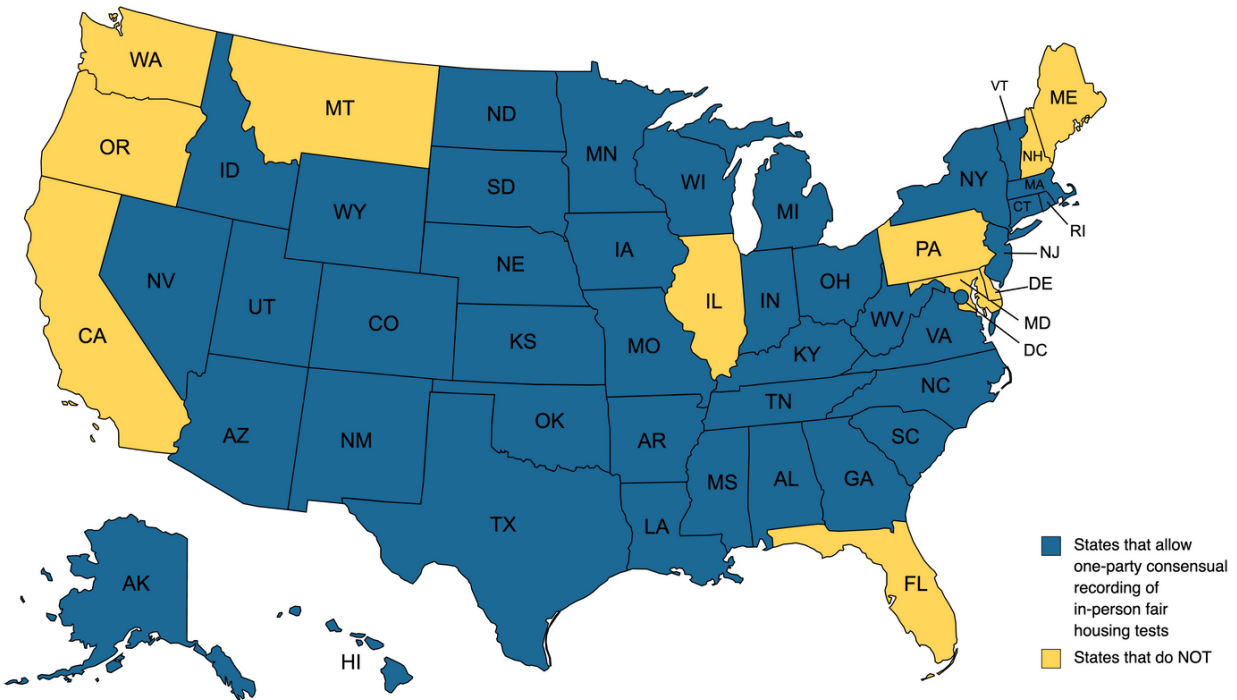
- **The Department of Housing and Urban Development (HUD) recommends equipping testers with recording devices** to faithfully and incontrovertibly capture their interactions with housing agents.
- **Maryland's all party consent requirement means that fair housing organizations in the state cannot use recommended best practices.** This creates a number of challenges for Maryland fair housing organizations and for fair housing enforcement in the state.
- **It doubles the cost of testing.** Instead, fair housing organizations in Maryland must hire two testers for each test, compared to one for each test in other states-doubling the cost of testing because one tester must lead the interaction with the provider while the other listens closely to write down a detailed record of the conversation afterwards.
- **Testing results are less effective.** Our testers must rely on their memory of the event to write a detailed report soon after the interaction.
- **Maryland is one of 11 states that don't allow one party recordings for fair housing tests.**

## Solution - HB392/SB57

This bill would create a narrowly-tailored exemption to the all-party consent law. It would enable qualified organizations to conduct fair housing without all party consent.

# Improving the Accuracy of Maryland's Fair Housing Tests

Maryland is behind **39** states when it comes to the efficacy of fair housing tests using HUD's recommended best practices



## Benefits of Passing HB392/SB527

- **Strengthens fair housing enforcement & justice in Maryland.** The ability to document test experiences through audio recordings provides incontrovertible evidence of illegal housing discrimination, as witnessed in over 12,000 tests conducted across 20 states. Recorded evidence has played a pivotal role in successful fair housing cases, influencing judges and juries to hold defendants accountable for discriminatory conduct.
- **Protects Testers and Housing Providers.** Having an exact account of a conversation protects testers from any credibility or bias as well as protects housing providers from false allegations, misunderstandings, or faulty memories of testers.
- **Efficient Allocation of Resources.** Saves fair housing organizations money because they can reduce the number of testers used, thereby saving using city, county, state, and federal funds more efficiently and effectively. The use of recorders also allows organizations to maintain the highest investigative standards.
- **There is no right to privacy that would preclude this.** The Department of Justice's Civil Rights Division uses one-party recorders in Maryland and across the country. The commercial discussions that take place are taking place in commercial spaces so should not be considered private.

# Support HB392/SB527

# **Testimony - Wiretapping Bill SB57 2024 .pdf**

Uploaded by: Marceline White

Position: FAV



**Testimony to the Senate Judiciary Committee**  
**SB57: Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing**  
**Position: Favorable**

January 30, 2024

The Honorable Senator William Smith, Chair  
Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401

cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances economic rights and equity for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

I am here in strong support of SB57 and thank Sen. Sydnor for introducing the legislation. SB57, creates a narrowly-tailored exemption to the all-party consent law to enable fair housing organizations to more effectively test and enforce Maryland’s anti-discrimination laws.

Fair housing testing employs individuals to pose as prospective tenants or homeowners to gather information to determine whether or not a provider is complying with state and federal laws related to fair housing. Fair housing testing is crucial for: detecting discrimination, enforcing fair housing laws, and evaluating the effectiveness of existing policies.

The Department of Housing and Urban Development (HUD) recommends equipping testers with recording devices for fair housing testing. Today, to do so would violate Maryland’s all-party consent law.

Thirty-nine other states allow certified fair housing organizations to record conversations without two-party consent. Maryland lags behind these states in passing this exemption and notably in its fair housing enforcement.

There are a number of reasons to pass SB 57. It will:

- **Strengthens fair housing enforcement & justice in Maryland.** The ability to document test experiences through audio recordings provides incontrovertible evidence of illegal housing discrimination
- **Protects Testers and Housing Providers.** Having an exact account of a conversation protects testers from any credibility or bias as well as protects housing providers from false allegations, misunderstandings, or faulty memories of testers.





# ECONOMIC ACTION MD

- **Efficient Allocation of Resources.** Saves fair housing organizations money because they can reduce the number of testers used, thereby saving using city, county, state, and federal funds more efficiently and effectively. The use of recorders also allows organizations to maintain the highest investigative standards.
- **There is no right to privacy that would preclude this.** The Department of Justice's Civil Rights Division uses one party recorders in Maryland and across the country. The commercial discussions that take place are taking place in commercial spaces so should not be considered private.

SB57 strengthens Maryland's ability to enforce fair housing laws statewide, uphold the highest evidentiary standards in court, protect housing testers and providers, and make Maryland the fortieth state in the country to better equip fair housing organizations to root out discrimination and make Maryland a more just place for all to live.

For all these reasons, we support SB57 and urge a favorable report.

Best,

Marceline White  
Executive Director

**DRMTestimonySb57.pdf**

Uploaded by: Maya Rosenberg

Position: FAV



Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211

Phone: 410-727-6352 | Fax: 410-727-6389

[www.DisabilityRightsMD.org](http://www.DisabilityRightsMD.org)

## Disability Rights Maryland

Senate Judicial Proceedings

January 30, 2024

**SB 57 – Evidence - Wiretapping and Electronic Surveillance - Fair Housing Testing**

**POSITION: SUPPORT**

Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the federally designated Protection and Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. DRM works to increase opportunities for Marylanders with disabilities to be part of their communities and live in safe, affordable, and accessible housing.

DRM **supports** SB 57 as an effective measure to support fair housing enforcement in Maryland. SB 57 allows for the collection of communications by fair housing testing and enforcement organizations if the communications are made to obtain evidence of a fair housing violation under federal, state, or local law. The collection of communications as evidence of fair housing violations by a fair housing enforcement organization or agency would support Maryland's policy of fair housing for all by allowing for the collection of the strongest possible evidence for the enforcement of Maryland's fair housing law.

The enforcement of federal, state, and local fair housing laws is critically important for persons with disabilities. Individuals with disabilities continue to face disproportionately high levels of discrimination in housing. Disability discrimination complaints make up 53.26% of complaints made to federal, state, and local agencies.<sup>1</sup> Other reports reinforce the continued discrimination faced by people with disabilities in housing.<sup>2</sup> The consequence of housing discrimination for people with disabilities frequently means continued residency in segregated and expensive facilities, unsafe living environments, or even homelessness.

SB 57 should not be misconstrued as a *carte blanche* to collect communications from housing providers. The statute applies only to qualified Fair Housing Initiative Programs designated by the United States Department of Housing and Urban Development and other qualified fair housing enforcement organizations. The collection of communications is only part of the investigatory tools used by fair housing organizations and agencies. Organizations and agencies rely on numerous fact-finding and investigative tools to identify systemic fair housing violations, including complaints from victims of housing discrimination. Like other enforcement agencies, FHIPs and qualified fair housing enforcement agencies follow the facts and evidence in their

---

<sup>1</sup> NATIONAL FAIR HOUSING ALLIANCE, ADVANCING A BLUEPRINT FOR EQUITY: 2023 FAIR HOUSING TRENDS REPORT. In FY 2023, 48% of all housing cases received by the Maryland Commission on Civil Rights alleged disability discrimination. MARYLAND STATE COMMISSION ON CIVIL RIGHTS, 2023 ANNUAL REPORT, available at [https://mccr.maryland.gov/Documents/publications/MCCR\\_Annual%20report%202023.pdf](https://mccr.maryland.gov/Documents/publications/MCCR_Annual%20report%202023.pdf)

<sup>2</sup> EQUAL RIGHTS CENTER, DISCONNECTED: HOUSING DISCRIMINATION AGAINST THE DEAF AND HARD OF HEARING (2012), available at <https://delldhub.gacec.delaware.gov/pdf/Disconnected.pdf>; UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF POLICY DEVELOPMENT AND RESEARCH, RENTAL HOUSING DISCRIMINATION ON THE BASIS OF MENTAL DISABILITIES: RESULTS OF A PILOT TEST, <https://www.huduser.gov/portal/sites/default/files/pdf/MentalDisabilities-FinalPaper.pdf>



Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211

Phone: 410-727-6352 | Fax: 410-727-6389

[www.DisabilityRightsMD.org](http://www.DisabilityRightsMD.org)

enforcement efforts. Therefore, the collection of communications can be equally incriminating or exculpatory for housing providers.

For the above-stated reasons, DRM **supports** SB 57.

Please do not hesitate to contact me at the information below with any questions regarding this testimony.

David A. Prater  
Managing Attorney  
Disability Rights Maryland  
1500 Union Ave.  
Suite 2000  
Baltimore, MD 21211  
[davidp@disabilityrightsmd.org](mailto:davidp@disabilityrightsmd.org)  
443-692-2500

# **SB57 - NAACP Testimony.pdf**

Uploaded by: NaShona Kess

Position: FAV



# NAACP

*Maryland*  
STATE CONFERENCE

**Testimony to the Senate Judiciary Committee**  
**SB 57: Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing**  
**Position: Favorable**

January 30, 2024

The Honorable Senator William Smith, Chair  
Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401

Honorable Chair Smith and Members of the Committee:

The Maryland State Conference of the NAACP is an organization that advocates equity for all, including individuals and their families. Every person has a right to fair housing free of discriminatory practices and that requires the ability for The Department of Housing and Urban Development to investigate fair housing complaints, and for them to ensure that providers are compliant with state and federal laws.

We are in favor of SB 57 and thank Senator Sydnor for introducing this legislation as one of the ways to ensure compliance is the ability to specifically and accurately identify any instances of discrimination is by posing as a prospective tenant and having the ability to record the interaction with the provider.

Now, let's be clear, there is an interest in protecting individuals from being unknowingly surveilled, but this is instance is very different. It is very narrowly tailored to fair housing testing, and it will take place in a commercial setting so the recording will not infringe on one's personal right to privacy. This bill with Strengthen fair housing enforcement & justice in Maryland, it protects testers, and it protects housing providers from bias and false allegations while also being efficient in the allocation of resources.

For these reasons, we support SB57 and strongly urge your support to protect all the citizens of Maryland.

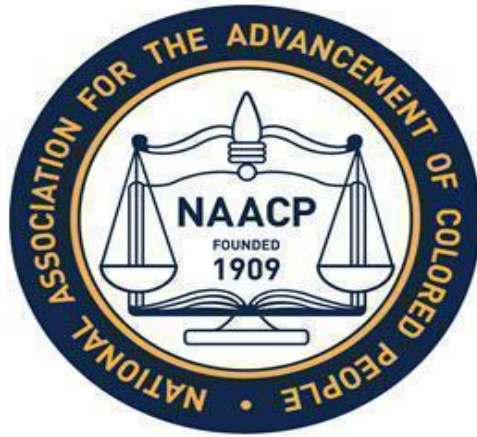
In Service,

NaShona Kess  
Executive Director

# **SB0057 Favorable vote.pdf**

Uploaded by: Ryan Coleman

Position: FAV



# Randallstown

P.O. Box 731 Randallstown, MD 21133

Jan 26, 2024  
Immediate Release

Contact: Ryan Coleman, President  
[randallstownnaacp@gmail.com](mailto:randallstownnaacp@gmail.com)

## **Randallstown NAACP supports SB 0057-Evidence - Wiretapping and Electronic Surveillance - Fair Housing Testing**

For most people, the equity that a house generates is their only wealth-building tool to be used to fund old age and/or as an inheritance for their children. However, the opportunity to utilize this wealth-building tool is not available to Black homeowners in the same way as it is to White homeowners. Homes in Black neighborhoods do not appraise for the same amount as similar homes in White neighborhoods, and by not appraising for the same amount, Black homeowners miss out on this additional wealth. This loss of wealth continues to perpetuate the racial wealth divide..

SB 0057 makes the tools available to stamp out discrimination in housing. **The Randallstown NAACP requests a favorable vote on SB 0057.**



# **MD Testing Law Testimony Sara Pratt.pdf**

Uploaded by: Sara Pratt

Position: FAV

**Written Testimony of Sara Pratt**  
**SB 0057**  
**Supporting Passage of the Legislation**

In 1977, I participated in the first national fair housing testing audit funded by HUD. I was working with the Kentucky Commission on Human Rights, and we used audit-based testing to identify whether there was discrimination based on race or national origin in rental and sales transactions. I went on to work as Director of Fair Housing Enforcement at HUD, and while at HUD, part of my job was overseeing the Fair Housing Initiatives Program (FHIP), which funds private fair housing organizations nationally, as well as the Fair Housing Assistance Program (FHAP), which supports fair housing enforcement by state and local governments. I retired from HUD in 2015 as Deputy Assistant Secretary for Fair Housing Enforcement and Programs. I am currently Counsel with the law firm of Relman Colfax PLLC in Washington, D.C. and I evaluate and litigate cases based on testing evidence. I am testifying on my capacity as someone who has worked on fair housing issues, and on testing specifically, for over 45 years. I am testifying on my own behalf and not on behalf of my employer or any organization.

I have reviewed over 5000 tests for discrimination in fair housing cases over my career, including tests of real estate sales and rental practices, as well as lending and homeowners insurance practices. I was an expert witness on testing in the case of *NFHA v. Prudential Insurance Company*, 208 F. Supp. 2d 46 (D.D.C. 2002).

I also authored *Discrimination Against Persons with Disabilities: Testing Guidance for Practitioners* (<https://www.hud.gov/sites/documents/dss-guidebook.pdf>) for a national Housing Discrimination Study project conducted by the Urban Institute under contract for HUD. I have overseen testing in circumstances where testers' experiences were recorded and those where they were not recorded.

Following the passage of the Fair Housing Act in 1968, in the 1970s and 80s fair housing organizations became increasingly active across the country. In addition to educating and training property owners, real estate companies, and the public about fair housing laws, fair housing organizations also conducted testing and filed court actions to enforce these laws.

As fair housing organizations have continued to operate in the decades since, testing by the government and by fair housing organizations and state and local agencies has been a critical tool in identifying and addressing discriminatory conduct.

HUD initiated a fair housing enforcement demonstration project beginning on January 1, 1980 and ending on December 31, 1981 to identify what role fair housing organizations could play in working with HUD. Through the project, HUD funded nine groups over a two-year period to receive complaints, conduct testing related to complaints, and develop testing-based studies of discrimination in their communities.<sup>1</sup> The project demonstrated the critical role of testing—with funding to conduct testing, every organization increased its volume of complaints and supported

---

<sup>1</sup> HUDUSER, The Fair Housing Demonstration Project, 1983, available at <https://www.huduser.gov/portal/Publications/pdf/HUD%20-%203093.pdf>.

enforcement, while producing a large number of studies of discrimination in local communities. HUD concluded, “The principal result of the experimental ‘fair housing study’ activity was that it demonstrated that testing can be a highly productive device for identifying and developing hard evidence concerning the more blatant and pervasive forms of unlawful discrimination.”

In 1984, HUD sponsored a national conference directed at discussion of fair housing testing.<sup>2</sup> With over 250 participants including fair housing organization representatives, FHAP agencies, researchers and government officials, the topics included individual and systemic testing strategies, standing of fair housing organizations, and enforcement strategies. Reports from that conference confirmed an elevated level of effective use of testing to support enforcement and identified typical defenses raised against testing. Defenses that testing was entrapment,<sup>3</sup> claims that testers violated an agent's right to be free from unreasonable searches<sup>4</sup>, arguments that tester activity constituted interference with economic relations, trespass, unjust enrichment, and libel have been rejected.

Courts have also increasingly recognized the role fair housing organizations and their testers play in fair housing enforcement. The Supreme Court has recognized the importance of testers in identifying discrimination and has recognized that testers have standing to sue for fair housing act violations. *See Havens Realty Corp., v. Coleman*, 455 U.S. 363, 373 (1982).

Indeed, by 1983, courts were increasingly likely to consider, and rely upon, evidence collected by testers. As the Federal Court of Appeals for the Seventh Circuit recognized in *Richardson v. Howard*, 712 F.2d 319, 321-22 (7th Cir. 1983) (citations and footnote omitted), “This court and others have repeatedly approved and sanctioned the role of ‘testers’ in racial discrimination cases. It is frequently difficult to develop proof in discrimination cases and *the evidence provided by testers is frequently valuable, if not indispensable . . . The evidence provided by testers both benefits unbiased landlords by quickly dispelling false claims of discrimination and is a major*

---

<sup>2</sup> HUD Conference on Fair Housing Testing, *available at* <https://www.huduser.gov/portal/sites/default/files/pdf/HUD-Conference-on-Fair-Housing-Final-Summary-Report.pdf>

<sup>3</sup> Testing is not entrapment because the concept of entrapment is not applicable because all that a tester does is to offer “a favorable opportunity” for a violation to occur. *Newbern v. Lake Lorelei, Inc.*, 308 F. Supp. 407, 415 (S.D. Ohio 1968) (in addressing fair housing claims brought under 42 U.S.C. §§ 1981-1982, the court, analogizing to the use of informants in criminal cases, found that entrapment did not arise because informers merely provide “a favorable opportunity” for discrimination to occur); *Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich. 1975) (rejecting entrapment defense).

<sup>4</sup> There is no reasonable expectation of privacy when a tester participates in an application process that is open to members of the public. In effect, the landlord has consented to showing the tester the property and discussing it with the tester. *See also, U.S. v. Wisconsin*, 395 F. Supp. 732 (D. WI. 1975), state government effort to restrict testing activity inconsistent with the Fair Housing Act and prohibited under the Supremacy Clause, holds that a prohibition on testing “chills the exercise of the right to equal housing opportunity” and is “an obstacle to the accomplishment of the principal objective of Congress in passing the Fair Housing Act, that is, to provide fair housing throughout the United States.”

*resource in society's continuing struggle to eliminate the subtle but deadly poison of racial discrimination."*

My personal recent review of the reported cases where courts and administrative law judges relied on testing evidence showed that in virtually all cases with testing evidence, judges credited the evidence and relied on that evidence in making decisions.

Testers are routinely trained to be objective observers of the experiences they encounter during a test; they are trained to present themselves as bona fide applicants for housing, they are given particular assignments by a test coordinator and provided with test-appropriate income and employment information and instructed about what type of unit they are interested in and what their qualifications. In effect, they are indistinguishable from other applicants for housing. Testers must record their interactions, and new technology has made it easier to record testing evidence through telephone calls and in person.

There are significant advantages to recording testing transactions that strengthen fair housing enforcement and increase the efficacy of testing evidence:

First, recording assures that details of a transaction are accurately captured. It can be difficult for a tester to recall everything that happens during the course of a test. A recording assures that all of the details are documented and that any concern that discrimination has occurred can be verified.

Second, recording assures that testers are operating as they are trained to operate, as if they were real applicants, following the background they were assigned and asking the appropriate questions for the test. Reviewing a recording of a test is one way to provide quality assurance in the testing process.

Third, when a recording is admissible in court proceedings, it is valuable and reliable evidence about discrimination, and it may be available when a tester has moved out of town or is otherwise no longer available to testify.

Finally, such credible evidence helps to encourage parties to resolve complaints outside of court, because parties are more readily able to come to an agreement on the underlying facts.

In short, the evidence that courts have already found to be reliable and usable in fair housing cases is even more reliable and helpful to cases when it has been recorded.

Forty states<sup>5</sup> have single person consent laws that permit recording of communications relating to testing. Fair housing groups in those jurisdictions routinely use various electronic recording strategies to document telephone and in person tests. I have seen time and again the crucial role that such recordings play in helping defendants, judges, and juries identify, understand, and respond to housing discrimination.

We support the authority that would be given in SB 57 to permit single party consent for recording fair housing testing communications. The bill would align Maryland with positions

---

<sup>5</sup> Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

taken by 40 other states and bring its position in alliance with those states. It would allow recorded tests to be used in judicial and administrative proceedings. It would encourage earlier settlements and more clear understandings about how discrimination may be occurring. And it would contribute to stronger enforcement of fair housing laws across Maryland.

# **ERC SB 57 Testimony.pdf**

Uploaded by: Susie McClannahan

Position: FAV



January 29, 2024

## **Equal Rights Center Urges Passage of SB 57**

The Equal Rights Center (ERC) is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of Greater Washington, D.C. and nationwide. For almost forty years, the ERC has used civil rights testing as a tool to pursue enforcement of the Fair Housing Act and state and local fair housing laws in its service area, which includes the state of Maryland, District of Columbia, Northern Virginia, and Jefferson County, West Virginia. The Equal Rights Center appreciates this opportunity to submit testimony to the Senate Judicial Proceedings Committee regarding SB 57.

**The Equal Rights Center supports the passage of SB 57 Evidence-Wiretapping and Electronic Surveillance – Fair Housing Testing because the bill would strengthen our ability and our clients’ abilities to hold housing providers accountable for illegal housing discrimination in Maryland.**

Civil rights testing is an effective, objective, and credible investigative tool to collect data about discrimination in our communities. It usually involves one or more people covertly engaging in a transaction or interaction. Fair housing testing would usually include one or more people covertly engaging in a housing-related transaction or interaction, such as renting or buying a home. For example, fair housing testing may be used to identify potential discrimination by a property manager, leasing agent, or other real estate professional towards a renter or homebuyer as they attempt to rent or buy a home.

Advocates have been using testing to uncover discrimination for at least sixty years – in the 1960s Dr. King used testing as a strategy to uncover housing discrimination as part of the Chicago Freedom Movement. Testing is still used today by civil rights organizations, such as the ERC, to identify discrimination, especially more subtle forms of discrimination which may be difficult for an individual to recognize on their own. For example, comparing the experiences of similarly situated Black and white testers as they interact with a landlord can help uncover problems like different terms and conditions being offered on the basis of race. Civil rights testing is critical for collecting data on compliance with civil rights laws.

Furthermore, civil rights testing is specifically allowable under federal law. The Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) use testing to uncover systemic discrimination. HUD also funds multi-million-dollar programs that support testing efforts by non-profit organizations. The program was created in 1987 and has provided funds for fair housing organizations nationwide to conduct testing in their service area. The ERC

has received such funding for many years, and its fair housing program includes testing investigations throughout Maryland.

The ERC is unable to record tests in Maryland because Maryland requires two-party consent to record. Instead, testers must write detailed narratives of their experiences, relying on memory and notes taken during the test. **Though our testers are trained extensively in accurate and objective report writing, we know there is always the potential that someone will question a report's credibility in a way that a recording would not be.** Furthermore, testing in Maryland is more resource intensive because it takes testers much more time to write complete narratives than if they were able to record their interactions.

On the other hand, Virginia, West Virginia, and the District of Columbia only require the consent of one party to record fair housing tests. When the ERC conducts tests in D.C., Virginia and West Virginia, testers typically use audio recordings to record their interactions with housing providers. ERC staff listen to the recordings to determine if there is evidence of discriminatory policies, statements, and/or practices. If the ERC determines steps must be taken to hold the housing provider accountable, the presence of the recording can significantly increase the likelihood of a positive outcome. The recording helps address the often stark power imbalance between the victim of discrimination and housing provider. It is more difficult for the housing provider to challenge the credibility of the victim of discrimination or the organization bringing forward the complaint when the discrimination is recorded for all parties to hear.

Everyone stands to benefit when fair housing tests are recorded. Test recordings will only provide stronger evidence that fair housing compliant housing providers are following their obligations. In our experiences, being confronted with recorded evidence of illegal discrimination has led non-compliant housing providers to be more willing to mitigate the harm they've caused quickly. Human rights offices in one party consent jurisdictions report to the ERC that test recordings significantly aid with their investigations of fair housing complaints. Finally, individual clients have shared that they feel more prepared to navigate the often lengthy administrative complaint process if there is testing evidence that substantiates their allegations.

**Recordings should not be a prerequisite for proving housing discrimination, but they can play a critical role in demonstrating what discrimination sounds like.** As a result, we urge lawmakers in Maryland to take advantage of all the tools at their disposal when it comes to stamping out illegal discrimination by passing SB 57.



# **MMHA - 2024 - SB 57 - wiretap fair housing - final**

Uploaded by: Aaron Greenfield

Position: UNF



**Bill Title:** Senate Bill 57, Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

**Committee:** Judicial Proceedings Committee

**Date:** January 30, 2024

**Position:** Unfavorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Bill Summary: The bill allows a person to intercept a wire, oral or electronic communication if the person is working as a fair housing tester for such a program operated by the Federal Government, the State, local government or non-profit civil rights organization. The person must be a party to the communication and the interception is for the purpose of obtaining a fair housing violation under federal, state or local law.

Background: In an unprecedented manner, Senate Bill 57 expands the Wiretap Statute to a non-criminal context. Current law allows such interception as “evidence” against the person making the communication by (1) an “investigative or law enforcement officer” or acting under the direction of one and (2) the target has to be alleged to be committing some type of crime – and serious crimes as specifically enumerated in the statute.

The reason it is defined this way is because the Wiretap Statute is very explicitly intended “to prevent, in non-criminal situations, the unauthorized interception of conversations where one of the parties has a reasonable expectation of privacy”. Bodoy v. N. Arundel Hosp., 945 F. Supp. 890, 899 (D. Md. 1996), aff’d, 112 F.3d 508 (4th Cir. 1997). Basically, the only way you can overcome the reasonable expectation of privacy guaranteed by the Fourth Amendment is when you have probable cause that the person is engaged in the commission of a crime. As a result, in those situations where law enforcement is allowed to wiretap, they FIRST have to show that they have probable cause to interfere with someone's reasonable expectation of privacy by obtaining a court order to be allowed to do the wiretap. So, there is even a “check” on the power of law enforcement to do a wiretap. For example, even in the criminal context, the court has found that to allow a wiretap (in a criminal context) just based on a desire to learn the identity of “higher ups” is to defy legislative intent and to render nugatory the provision of the Maryland Wiretapping and Electronic Surveillance Law that commands a showing of probable cause. Baldwin v. State, 1980, 413 A.2d 246, 45 Md. App. 378, cert. granted 288 Md. 733, 288 Md. 743, aff’d 426 A.2d 916, 289 Md. 635, cert. denied 102 S. Ct. 295, 454 U.S. 852, 70 L.Ed.2d 144.



### SB 57 Violates the 4<sup>th</sup> Amendment:

1. Private Citizen: Outside of an “investigative or law enforcement officer”, current law reasonably allows such interception in the cases where there’s a switchboard operator, if all parties consent, if it involves a governmental emergency communications center in an emergency and ships/aircrafts/etc. with onboard communications to the ground. SB 57 creates a new exception by allowing any nonprofit civil rights organization” to wiretap. There is no precedent for allowing a private citizen to engage in the interception without any law enforcement involvement.
2. Crime: Under SB 57, the targeted individual is not alleged to have committed a crime which is the only way to overcome the reasonable expectation of privacy guaranteed by the Fourth Amendment. We are unaware of any violation of civil law that will overcome that expectation.
3. Probable Cause: In wiretap cases, “probable cause” must be communicated and evaluated by a neutral third party before the wiretap is allowed (i.e., a court order). This bill fails to provide this requirement and it would be highly unlikely that “probable cause” could even be articulated in a civil, fair housing case.
4. Other Investigative Means Failed: In requesting a wiretap, the law enforcement agency must proffer that other investigative means have failed (i.e., they’ve exhausted all other avenues of investigation). This is because a wiretap is such a serious intrusion into someone’s privacy – it is basically a means of last resort.

Allowing someone to intercept communications just for a fishing expedition or to “test” the landlord to see if they are engaging in housing discrimination would absolutely be unconstitutional and violate the Fourth Amendment because it’s just as likely they are going to end up intercepting a communication that the housing provider has reasonable expectation of privacy in and where the housing provider has done absolutely nothing wrong. And, where does this end? If this passes, who will be next? Bankers, journalists, tax professionals, elected officials?

### Lack of Training in SB 57

Lastly, law enforcement engaged in wiretapped interception undergo extensive initial training, re-education, document and evidence preservation, supervision and oversight. Specific recording protocol are in place to guide those in law enforcement investigation engaged in the recorded call process. There exist many aspects and required processes of intrusive wire intercept to insure what is recorded is authorized by the court order after judicial review to establish a crime is about to or is taking place. Law enforcement obtains court orders to conduct wire intercepts for specific periods of time, targeting specific individuals and is authorized with court order to capture specific communication after presenting probable cause to the court.



The bill makes no reference to many critical issues in the wiretap administrative process among them, verification and background of those to conduct wiretaps, training/education requirements, equipment and technology to be used, evidence preservation, evidence chain of custody, liability for unlawful intercepts or use of communication intercepted and confidentiality of wire intercept.

For these reasons, the Maryland Multi-Housing Association respectfully requests an unfavorable report on Senate Bill 57.

Please contact Aaron J. Greenfield at 410.446.1992 if you have any questions.

**RMI Testimony SB 57.pdf**

Uploaded by: Katherine Howard

Position: UNF

# REGIONAL MANAGEMENT INC.

## REGIONAL MANAGEMENT, INC. TESTIMONY IN OPPOSITION TO SB 57 January 31, 2024

Regional Management, Inc, (RMI) is a property management company which has, for over 60 years, managed over 5,000 units of affordable, market rate, residential properties in Baltimore City and County. RMI is a founding member of the Maryland MultiHousing Association.

RMI OPPOSES SB 57, Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing which is an unprecedented departure of current Maryland Law regarding electronic and Wiretap surveillance.

- This Bill **for the first time** takes electronic surveillance out of the realm of criminal law enforcement and Maryland Court supervision and places such sensitive and confidential surveillance in the hands of “non- profit” investigators, who have no training in this field.
- This Bill skirts current law which specifies that Maryland’s law is intended “to prevent, **in non-criminal situations**, the unauthorized interception of conversations **where one of the parties has a reasonable expectation of privacy**”. *Bodoy v. N. Arundel Hosp.*, 945 F. Supp. 890, 899 (D. Md. 1996), *aff’d*, 112 F.3d 508 (4th Cir. 1997).
- Please refer to the attachment, reprinted from [recordinglaw.com](http://recordinglaw.com) for a summary of Maryland’s recording laws and the very strict scrutiny with which this Legislature has tasked that these laws be implemented.

SB 57 seeks to take this narrowly drawn law, designed to protect our citizens’ privacy, whether they be human or corporate, and expand it into a realm which is a flagrant violation of their constitutional rights.

For these reasons Regional Management, Inc. **requests an UNFAVORABLE report.**

Katherine Kelly Howard, Esq.

General Counsel

## A Growing Repository of Local Laws United States Recording Laws

Reprinted from [recordinglaw.com](http://recordinglaw.com)\*:



### Maryland Recording Law Summary:

**Maryland's Wiretapping and Electronic Surveillance Act** stipulates that it is a [two-party consent state](#). In this state, it is a criminal offense to tape-record a conversation without the consent of all involved parties. Md. Code Ann., Cts. & Jud. Proc. § 10-402. This means that in Maryland you are not legally allowed to record a conversation you are taking part in unless all parties are in agreement. It is also forbidden to record someone with criminal or torturous intentions, and consent cannot be legally given in such situations.

Personal Conversations:

**You may not record conversations without the consent of all involved parties.**

However, Maryland law does make an exception in cases where the person or people communicating are doing so in an environment where they should not be under the expectation of privacy. For example, it is legal to record someone in a neighboring apartment if you can clearly hear them through the walls.

Maryland Video Recording Laws

No person is allowed to install or influence another person to install a camera on real property where a private residence is located for the purpose of conducting intentional secret observation of an individual inside the private residence. For example, it is illegal to install or use a surveillance camera to observe your neighbor while that neighbor is inside his or her private residence or inside his or her real property. Md. Code Ann., Crim. Law § 3-903(c)

However according to the state's laws, the following are not prohibited:

- Installation of a camera by an adult resident of a private residence.
- Installation of a camera in real property without the intention to secretly observe an individual inside the private residence.
- Installation of a camera with the intention of secretly observing an individual inside a private residence after obtaining consent from an adult resident or guardian of an adult resident.
- Lawful observation by a law enforcement officer conducting official duties.
- Filming conducted by a person or member of the media through the use of a camera that is clearly visible.
- Filming of a private residence through the use of a camera that is not located in the real property where the private residence is located.

Md. Code Ann., Crim. Law § 3-903(b)

Penalties:

Md. Code Ann., Cts. & Jud. Proc. § 10-402(b): Breaking the wiretapping law is considered a felony, punishable by no more than five years of prison time and a fine of up to \$10,000.

Md. Code Ann., Crim. Law § 3-903(d): Breaking the hidden camera law is considered a misdemeanor, punishable by up to a year in jail or a fine of \$2,500, or both.



**\*About Recordinglaw.com**

RecordingLaw.com is a website updated annually with local and regional recording laws. We will be starting with the United States then expanding to the rest of the world as research time permits.

Our information is researched through both physical and on-line sources with everything going through a final editor approval.

Disclaimer for RecordingLaw.com

If you require any more information or have any questions about our site's disclaimer, please feel free to contact us by email at [adam@recordinglaw.com](mailto:adam@recordinglaw.com).

Disclaimers for RecordingLaw

All the information on this website – <https://recordinglaw.com> – is published in good faith and for general information purpose only. RecordingLaw does not make any warranties about the completeness, reliability and accuracy of this information. Any action you take upon the information you find on this website (RecordingLaw), is strictly at your own risk. RecordingLaw will not be liable for any losses and/or damages in connection with the use of our website.

From our website, you can visit other websites by following hyperlinks to such external sites.

While we strive to provide only quality links to useful and ethical websites, we have no control over the content and nature of these sites. These links to other websites do not imply a recommendation for all the content found on these sites. Site owners and content may change without notice and may occur before we have the opportunity to remove a link which may have gone 'bad'.

**SB 57-AOBA--UNF.pdf**

Uploaded by: Ryan Washington

Position: UNF



**Bill No:** SB 57— Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

**Committee:** Judicial Proceedings

**Date:** 1/30/2024

**Position:** Unfavorable

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 57 allows an individual to intercept a wire, oral, or electronic communication as long as the individual serves as a fair housing tester for a program administered by the federal, state, or local government or nonprofit civil rights organization. The purpose of interception must be to obtain fair housing violations under existing statutes.

Under Maryland’s Wiretap Act, it is unlawfully to record any wire, oral, or electronic communications without the permission of all parties involved and one is a party to the conversation. This bill will create privacy concerns for AOBA members and its residents. If an individual representing a nonprofit organization intercepts a communication from a housing provider, they can inadvertently come across sensitive or confidential information on a resident that should not be disclosed to a third party without the knowledge or consent of a housing provider.

**For these reasons, AOBA requests an unfavorable report on SB 57.** For further information, contact Ryan Washington, AOBA’s Government Affairs Manager, at 202-770-7713 or email [rwashington@aoba-metro.org](mailto:rwashington@aoba-metro.org).

# **SB 57 - Letter of Information - Wiretapping and EI**

Uploaded by: Rachel London

Position: INFO



## Maryland Developmental Disabilities Council

CREATING CHANGE • IMPROVING LIVES

Senate Judicial Proceedings Committee

**SB 57: Evidence - Wiretapping and Electronic Surveillance - Fair Housing Testing**

**January 30, 2024**

**Letter of Information**

The Maryland Developmental Disabilities Council (Council) is an independent, public policy organization that creates change to make it possible for people with developmental disabilities to live the lives they want with the support they need. Our vision is that people with and without disabilities in Maryland live, learn, work, and play together.

The Council advocates for policies, practices, and funding that support more housing options that are affordable and accessible to people with disabilities. We also advocate for housing that allows people with and without developmental disabilities to live in the community together. We understand the intention of this bill aligns with our values of fair and inclusive housing for people with disabilities.

People with disabilities are a protected class under the federal and state housing and accommodation laws. However, fair housing complaints are disproportionately filed by people with disabilities. In 2019, 45% of housing complaints report to HUD were disability-based. The levels of complaints indicate fair housing is still not available for too many people with disabilities. More work needs to be done to promote inclusive housing in Maryland, like wider testing of fair housing in Maryland.

Contact: Dr. Stephanie Dolamore, Deputy Director, [SDolamore@md-council.org](mailto:SDolamore@md-council.org)