



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](#)¹ 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](#)² 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

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

² <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.