



## Senate Bill 514

### Landlord and Tenant – Residential Leases – Prospective Tenant Criminal History Records Check (Maryland Fair Chance Housing Act)

Hearing in the Senate Judicial Proceedings Committee

On February 6, 2025

#### Position: FAVORABLE with Sponsor's Amendments

*Maryland Legal Aid submits its written and oral testimony on SB0514 at the request of bill sponsor Senator Shaneka Henson.*

Maryland Legal Aid (MLA) is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. Our offices serve residents in each of Maryland's 24 jurisdictions and handle a range of civil legal matters, the most prominent of which is housing. MLA Tenant Right to Counsel Project represented renters in over 4,600 eviction cases in 2024. Because we know that our clients face a tight rental market in which housing opportunities are continually out of reach, Maryland Legal Aid urges this Committee to report **favorably** on SB 514, the Fair Chance in Housing Act, **with the Sponsor's amendments**.

SB 514 would curtail the denial of rental housing opportunities based on applicants' criminal histories and prohibit advertising that discourages individuals with a criminal history from applying. The bill prohibits the use of criminal background checks in the initial application phase and permits the use of conviction history only after an applicant has been qualified and extended a conditional offer to lease. This balanced approach is already in effect in New Jersey, Washington, D.C., New York City, and Chicago. In Maryland, Montgomery County enacted a "Ban the Box" policy in 2021. A statewide Fair Chance in Housing law would dramatically improve access to rentals for many formerly incarcerated renters.

#### **1 million Marylanders impacted**

As of 2022, the number of U.S. residents who have a criminal record of some kind reached 116.4 million,<sup>1</sup> up from an estimated 100 million in 2016.<sup>2</sup> The Clean Slate Initiative reports that in 2019 more

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<sup>1</sup> Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems*, 2022, 3 (Sept. 2024), available at <https://www.ojp.gov/pdffiles1/bjs/grants/309360.pdf>.

<sup>2</sup> U.S. Department of Housing and Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Act Standards on the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, (Apr. 16, 2026) ("HUD Guidance"), available at <https://www.fairhousingnc.org/document/hud-guidance-on-criminal-records-and-fair-housing-act-april-4-2016/> citing, Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal*

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than one million Marylanders, or approximately 22 percent of the state population, had some type of criminal legal system involvement.<sup>3</sup> In Maryland, “incarcerated people... are disproportionately from Baltimore City” while “some areas of the state — like the southern Eastern Shore and Hagerstown — are also disproportionately affected by incarceration.”<sup>4</sup>

When individuals are released from prisons and jails, their access to safe, secure, and affordable housing is critical to successful reentry to society.<sup>5</sup> “Researchers have found that formerly incarcerated individuals are far more likely to be homeless than the general public”<sup>6</sup> and that “formerly incarcerated people are most likely to be homeless in the period shortly after their release.”<sup>7</sup> When individuals attain stable housing after incarceration, they “are more likely to reintegrate into their communities and less likely to end up back in prison than their formerly incarcerated peers in more precarious housing situations.”<sup>8</sup> By making housing opportunities more available, the Fair Chance in Housing Act provides a crucial support in the social and economic rehabilitation of reentering individuals.

The highest impact of this Fair Chance policy would occur just after an individual’s release from incarceration. One study has found that “people who spent two years or less in the community were more than twice as likely to be homeless as those who had been out of prison for four years or longer.”<sup>9</sup>

SB 514 eliminates the possibility of lease application denials based on charges, arrests, and low-level offenses. The bill would aid Marylanders like MLA’s client Aje Brown. In the summer of 2024, Ms. Brown applied for housing at an apartment complex in the City of Frederick. She has a criminal record that consists of a single crime. Ms. Brown was convicted in February 2019 for misdemeanor theft and

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*History Information Systems*, 2012, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

<sup>3</sup> The Clean Slate Initiative, “Clean Slate Initiative Data Dashboard,” accessed Feb. 3, 2025, <https://www.cleanslateinitiative.org/data>.

<sup>4</sup> Justice Policy Institute, *WHERE PEOPLE IN PRISON COME FROM: THE GEOGRAPHY OF MASS INCARCERATION IN MARYLAND* (June 2022), available at <https://www.justicepolicy.org/research/where-people-in-prison-come-from-the-geography-of-mass-incarceration-in-maryland>.

<sup>5</sup> See, e.g., S. Metraux, et al. “Incarceration and Homelessness,” in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research*, #9 (D. Dennis, et. al. eds., 2007), available at, <https://www.huduser.gov/portal/publications/pdf/p9.pdf> (explaining “how the increasing numbers of people leaving carceral institutions face an increased risk of homelessness and, conversely, how persons experiencing homelessness are vulnerable to incarceration.”).

<sup>6</sup> Rachel M. Cohen, “Will limiting criminal background checks make rental housing fairer?” *Vox*, 14 June 2023, available at <https://www.vox.com/policy/23750632/housing-landlords-renter-fair-chance-criminal-record-background-check>.

<sup>7</sup> Prison Policy Initiative, “Nowhere to Go: Homelessness among formerly incarcerated people,” 23 Feb. 2024, available at <https://www.prisonpolicy.org/reports/housing.html>.

<sup>8</sup> *Supra* n.1.

<sup>9</sup> *Supra* n.2.

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sentenced to six months in jail, all of which was suspended. She served only 18 months of supervised probation.

More than five years after her conviction, Ms. Brown’s application for the apartment was denied on the basis of having a criminal record. Maryland Legal Aid attempted to appeal this denial. We raised mitigating factors, such as the minor severity of the offense, its misdemeanor status, and the fact that Ms. Brown had reformed. In response, the landlord reasoned simply that those factors do not matter. “Our policy is, if you have a criminal record within the last seven years, your application will be denied and there is nothing we can do about it.”

For a misdemeanor, from five years ago, Ms. Brown was denied housing. SB 514 would make sure that cannot happen again.

### ***Tenant screening under SB 514***

The Fair Chance in Housing Act does not completely ban the use of criminal records in tenant screening. Instead, the bill provides a three-stage process for tenant screening:

1. The landlord may conduct an initial screening based largely on non-criminal factors.<sup>10</sup>
2. Then, if the landlord extends a conditional offer of a lease to the applicant, a secondary screening that assesses conviction history:
  - Landlords would be able to screen, without any “lookback” limitations, for convictions for murder in the first degree and human trafficking.
  - Landlords would be able to screen, within a 2-year “lookback” limitation, for convictions for sex offenses, child pornography, kidnapping, and arson.
  - Landlords would not be able to deny applicants based on arrests and criminal history that did not involve a conviction.
3. Based on conviction history, the landlord may withdraw the conditional offer if it is “necessary to fulfill a substantial, legitimate, and non-discriminatory interest.” SB 514 would require the landlord to notify the applicant of the specific reason for withdrawal and notify the applicant of the reassessment process. The applicant may then seek reassessment based on evidence of mitigating factors.

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<sup>10</sup> In the first screening stage, a HUD-regulated landlord may request specific information to establish eligibility for federally assisted housing, namely: conviction history related to manufacture of methamphetamine on the premises of federally assisted housing and lifetime registration for a sex offense.

### ***Reassessment of mitigating factors***

The reassessment stage is especially important to the second-chance objective of this legislation.

The applicant has 30 days to request from the landlord a copy of all information that factored into the landlord's withdrawal of the offer and may appeal the withdrawal of the conditional offer by providing the landlord evidence of mitigating factors, rehabilitation, or inaccuracies in the conviction history. The landlord's reassessment of the withdrawal decision must take into account seven factors:

1. The nature and severity of the criminal offense;
2. The age of the applicant at the time that the criminal offense occurred;
3. The amount of time that has elapsed since the criminal offense occurred;
4. Information regarding rehabilitation and good conduct since the criminal offense occurred;
5. The degree to which the criminal offense, if it were to reoccur, would negatively impact the safety of the property and other tenants;
6. Whether the criminal offense occurred on or was connected to a property leased to the applicant; and
7. Any other mitigating factors.

Notably, SB 514 does not prescribe timelines for the reassessment phase, other than providing applicants the 30-day period to request information about the withdrawal of the conditional offer, nor does the bill require the landlord to keep a unit available to the applicant during the reassessment.

### ***No redundancy with HUD guidance***

While the Department of Housing and Urban Development (HUD) has issued guidance about the non-discriminatory use of criminal history in the tenant screening process, those guidance documents do not provide an enforceable procedure. SB 514 provides that procedure.

HUD's November 2015 Notice PIH 2015-19 cautions public housing agencies (PHAs) and federally assisted housing owners against the use of arrest records as the sole basis for denying housing and reminds those housing providers that HUD does not require "one strike" screening policies. The guidance suggests best practices for criminal history screening, such as

- Allowing applicants to present mitigating circumstances
- Adopting "lookback" periods of 12 to 24 months for certain criminal offenses
- Adopting assessment factors, such as the length of the conviction, recovery or rehabilitations, and whether the applicant's offense relates to the safety of other residents.

These best practices are included in SB 514.

Additionally, HUD's Office of General Counsel issued guidance in April 2016 on how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real estate related transactions. The guidance also "addresses how the discriminatory effects and disparate treatment

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methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual’s criminal history.”<sup>11</sup>

While some landlords may have responded to HUD guidance by proactively establishing internal business procedures to avoid the risk of discrimination claims related to criminal history screening, applicants have no statutory means to ensure fair enforcement of those internal procedures.

### ***Preventative and enforceable approach to fair housing***

At present, only the Fair Housing Act and its state law analog restrict the use of criminal background in the tenant screening process. Those antidiscrimination laws prohibit the use of criminal history in so far as that use is proxy for discrimination against a protected class.<sup>12</sup> However, antidiscrimination laws offer relief *after* the discrimination has occurred, and their remedies are encumbered by the substantial time and resources necessary to bring civil rights claims. To pursue a claim under Maryland’s Fair Housing Act, an applicant must first go through an administrative review process before they can file their case in court.<sup>13</sup> Then the applicant must demonstrate not only that the landlord denied the housing opportunity based on criminal history, but also that this use of the criminal history had a discriminatory impact on a protected class.<sup>14</sup>

By contrast, SB 514 offers a preventative approach to limiting the use of criminal history and preventing the discriminatory harm of blanket “no criminal record” policies. The Fair Chance approach restricts the use of criminal history from the outset of the lease application process, ensuring that potential applicants have, from the start, a fair chance to be evaluated.

Additionally, SB 514 includes two critical enforcement mechanisms: the complaint process via the Maryland Office of the Attorney General as well as the court complaints for violations of the Consumer Protection Act. These tools will prove invaluable to giving the Fair Chance policy teeth in the rental housing market.

### **Protections against liability**

SB 514 would also protect prospective landlords who give an applicant a second chance from liability for having done so. The bill would preclude findings of liability against a landlord for having rented a unit to a person with a criminal record or their decision not to obtain a criminal history record check. SB 514

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<sup>11</sup> National Reentry Resource Center, “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” April 4, 2016, <https://nationalreentryresourcecenter.org/resources/office-general-counsel-guidance-application-fair-housing-act-standards-use-criminal>.

<sup>12</sup> See *id.*

<sup>13</sup> *Connolly v. Lanham*, 685 F.Supp.3d 312, 334-336 (D. Maryland, 2023), interpreting Md. State Gov. §§20-705, 20-707, and 20-1013 (concluding that “[i]n combination with the administrative exhaustion doctrine, the state legislature’s editorial changes indicate a requirement to first exhaust administrative remedies” before seeking judicial relief).

<sup>14</sup> See *supra* note 11.

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also mandates that the Maryland Attorney General develop a “Model Notice” that landlords would use to notify prospective tenants of their rights regarding the use of their criminal background checks. This Model Notice will help ensure uniformity across the state.

For all the reasons state above, Maryland Legal Aid urges the Committee to report **FAVORABLE, with the Sponsor’s amendments**, on Senate Bill 514.

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*Appendix A: Flowchart of Fair Chance lease application process*

*Appendix B: Definitions of criminal offenses covered in the Fair Chance bill*



## APPENDIX A: Lease Application Process in SB 514

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### STAGE 1

#### 1. Application Submission and Initial Screening

- Prospective tenant submits a lease application.
- Landlord assess the applicant based on consumer reports, rental history, debts, and many other non-criminal factors.
- Landlord may not inquire about criminal history before extending a conditional offer – except for federally assisted housing.

#### 2. Conditional Offer to Applicant

- If Landlord decides to move forward with the applicant, they extend a *conditional offer*, contingent on additional screening of certain conviction history.

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### STAGE 2

#### 3. Conviction History Check

- After the conditional offer, the landlord may check for specific *conviction* history:
  - First-degree murder convictions
  - Human trafficking convictions
  - Lifetime sex offender registry crimes
  - Convictions within prior 2 years for sex crimes, child pornography, kidnapping, and arson.

#### 4. Landlord Decision (Continue or Withdraw)

- If no disqualifying convictions are found, lease is approved.

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- If disqualifying convictions are found, landlord may withdraw the conditional offer **only if** necessary for a "substantial, legitimate, and nondiscriminatory interest."

#### 5. **Written Notice**

- If applicant is denied, the landlord must provide a written notice stating:
  - The specific reason for withdrawal.
  - The applicant's right to request additional information about the withdrawal and to appeal.

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### STAGE 3

#### 5. **Applicant's Response to Withdrawal** (Optional)

- Prospective tenant may request all information used in the decision to withdraw the conditional offer within 30 days after receiving notice of the withdrawal.
  - They may submit evidence to the landlord showing, inaccuracies in the criminal records, evidence of rehabilitation, and other mitigating factors.

#### 6. **Reassessment by Landlord**

- Landlord reviews tenant's evidence in light of multiple factors, such as:
  - Severity and nature of the offense.
  - Time elapsed since conviction.
  - Tenant's rehabilitation efforts.
  - Potential risk to other tenants.

#### 7. **Final Decision**

- If the appeal is successful, lease is approved.

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- If denied again, the tenant has the right to file a complaint with the Office of the Attorney General.



## APPENDIX B:

### DEFINITIONS FOR CRIMINAL OFFENSES COVERED UNDER SB 514

#### “FOREVER” LOOKBACK CONVICTIONS

##### First Degree Murder - Criminal Law Art. §2-201

- (a) A murder is in the first degree if it is:
  - (1) a deliberate, premeditated, and willful killing;
  - (2) committed by lying in wait;
  - (3) committed by poison; or
  - (4) committed in the perpetration of or an attempt to perpetrate:
    - (i) arson in the first degree;
    - (ii) burning a barn, stable, tobacco house, warehouse, or other outbuilding that:
      - 1. is not parcel to a dwelling; and
      - 2. contains cattle, goods, wares, merchandise, horses, grain, hay, or tobacco;
    - (iii) burglary in the first, second, or third degree;
    - (iv) carjacking or armed carjacking;
    - (v) escape in the first degree from a State correctional facility or a local correctional facility;
    - (vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article;
    - (vii) mayhem;

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(viii) rape;

(ix) robbery under § 3–402 or § 3–403 of this article;

(x) sexual offense in the first or second degree;

(xi) sodomy as that crime existed before October 1, 2020; or

(xii) a violation of § 4–503 of this article concerning destructive devices.

(b) (1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:

(i) imprisonment for life without the possibility of parole; or

(ii) imprisonment for life.

(2) Unless a sentence of imprisonment for life without the possibility of parole is imposed in compliance with § 2–203 of this subtitle and § 2–304 of this title, the sentence shall be imprisonment for life.

(c) A person who solicits another or conspires with another to commit murder in the first degree is guilty of murder in the first degree if the death of another occurs as a result of the solicitation or conspiracy.

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**Human Trafficking – Criminal Law Art. §3–1102.**

(a) (1) A person may not knowingly:

(i) take or cause another to be taken to any place for prostitution;

(ii) place, cause to be placed, or harbor another in any place for prostitution;

(iii) persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;

(iv) receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;

(v) engage in a device, scheme, or continuing course of conduct intended to cause another to

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believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious physical harm; or

(vi) destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to violate this subsection.

(2) A parent, guardian, or person who has permanent or temporary care or custody or responsibility for supervision of another may not consent to the taking or detention of the other for prostitution.

(b) (1) A person may not violate subsection (a) of this section involving a victim who is a minor.

(2) A person may not violate subsection (a) of this section with the use of or intent to use force, threat, coercion, or fraud.

(c) (1) (i) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the misdemeanor of sex trafficking and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000 or both.

(ii) A person who violates subsection (a) of this section is subject to § 5-106(b) of the Courts Article.

(2) A person who violates subsection (b) of this section is guilty of the felony of sex trafficking and on conviction is subject to imprisonment not exceeding 25 years or a fine not exceeding \$15,000 or both.

(d) A person who violates this section may be charged, tried, and sentenced in any county in or through which the person transported or attempted to transport the other.

(e) (1) A person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in subsection (a) or (b) of this section is subject to the same penalties that would apply if the person had violated that subsection.

(2) A person who knowingly aids, abets, or conspires with one or more other persons to violate any subsection of this section is subject to the same penalties that apply for a violation of that subsection.

(f) It is not a defense to a prosecution under subsection (b)(1) or (e) of this section that the person did not know the age of the victim.

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## TWO-YEAR LOOKBACK CONVICTIONS

### Sexual Offenses – Criminal Law Art. Title 3, Subtitle 3

1. § 3–303. Rape in the First Degree
2. § 3–304. Rape in the Second Degree
3. § 3–307. Sexual Offense in the Third Degree
4. § 3–308. Sexual Offense in the Fourth Degree
5. § 3–309. Attempted Rape in the First Degree
6. § 3–310. Attempted Rape in the Second Degree
7. § 3–314. Sexual Conduct Between Correctional or Juvenile Justice Employee, Court-Order Service Provider, or Law Enforcement Officer and Person Responding to Employee During Employee's Official Duties
8. § 3–315. Continuing Course of Conduct Against Child
9. § 3–316. Rape and Sexual Offense—Venue
10. § 3–317. Rape and Sexual Offense—Charging Document
11. § 3–319.1. Evidence of Physical Resistance Not Required
12. § 3–323. Incest
13. § 3–324. Sexual Solicitation of Minors
14. § 3–325. Use of Personal Identifying Information to Invite, Encourage, or Solicit Another to Commit Sexual Crime

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### Child Pornography – Criminal Law Art. §11–207

(a) A person may not:

(1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;

(2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;

(3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;

(4) knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:

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(i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or

(ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or

(5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

(b) A person who violates this section is guilty of a felony and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 20 years or a fine not exceeding \$50,000 or both.

(c) (1) (i) This paragraph applies only if the minor's identity is unknown or the minor is outside the jurisdiction of the State.

(ii) In an action brought under this section, the State is not required to identify or produce testimony from the minor who is depicted in the obscene matter or in any visual representation or performance that depicts the minor engaged as a subject in sadomasochistic abuse or sexual conduct.

(2) The trier of fact may determine whether an individual who is depicted in an obscene matter, or any visual representation or performance as the subject in sadomasochistic abuse or sexual conduct, was a minor by:

(i) observation of the matter depicting the individual;

(ii) oral testimony by a witness to the production of the matter, representation, or performance;

(iii) expert medical testimony; or

(iv) any other method authorized by an applicable provision of law or rule of evidence.

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### **Kidnapping – Criminal Law Art. §3–502**

- (a) A person may not, by force or fraud, carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the State.
  - (b) A person who violates this section is guilty of the felony of kidnapping and on conviction is subject to imprisonment not exceeding 30 years.
  - (c) Kidnapping does not include the act of a parent in carrying a minor child of that parent in or outside the State.
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### **Arson – Criminal Law Art. 6–102**

- (a) A person may not willfully and maliciously set fire to or burn:
  - (1) a dwelling; or
  - (2) a structure in or on which an individual who is not a participant is present.
- (b) A person who violates this section is guilty of the felony of arson in the first degree and on conviction is subject to imprisonment not exceeding 30 years or a fine not exceeding \$50,000 or both.
- (c) It is not a defense to a prosecution under this section that the person owns the property.

### **Arson – Criminal Law Art. §6–103**

- (a) A person may not willfully and maliciously set fire to or burn a structure that belongs to the person or to another.
  - (b) A person who violates this section is guilty of the felony of arson in the second degree and on conviction is subject to imprisonment not exceeding 20 years or a fine not exceeding \$30,000 or both.
  - (c) It is not a defense to a prosecution under this section that the person owns the property.
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