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POSITION ON PROPOSED LEGISLATION

TO: The Honorable William C. Smith, Jr., Chairman, Senate Judicial Proceedings
BILL: Senate Bill 514
FROM: Hannibal Kemerer, Chief of Staff, Maryland Office of the Public Defender
POSITION: Favorable
DATE: February 6, 2025

The Maryland Office of the Public Defender urges the Judicial Proceedings Committee to issue a favorable report on Senate Bill 514, Senator Henson's bill to prohibit landlords from requiring criminal history information of prospective tenants *before* extending a conditional offer of a lease. In an era of significant housing shortages borne most harshly by individuals who are formerly justice-involved, it is incumbent upon policymakers like the Members of this august Committee to provide some relief to our most vulnerable community members. Senate Bill 514 is a step in the right direction and, therefore, worthy of passage.

There's a marked consensus amongst scholars that "[p]eople who were formerly incarcerated are 'ten times more likely to be homeless than the general public.'"¹ According to Rutgers Law Professor Norrinda Brown Hayat:

Research reveals that formerly incarcerated people are ten times more likely to be homeless than the general public. The rates of homelessness are highest among people who have been incarcerated more than once, recently released persons, persons of color, and women. Among recently incarcerated persons that are not actually on the street, significant numbers only have temporary housing and are living in hotels, motels, and transitional housing like shelters. We also know that homelessness increases the likelihood of the formerly incarcerated coming into additional contact with the criminal legal system: law enforcement punishes actions such as sleeping in public, panhandling, and public urination. Studies have found that the presence of state-sponsored resources to offset the symptoms of poverty,

¹ Ji Hyun Rhim, *Left at the Gate: How Gate Money Could Help Prisoners Reintegrate Upon Release*, 106 Cornell L. Rev. 783, 798 (March, 2021) (citing *Formerly Incarcerated People Are Nearly 10 Times More Likely to Be Homeless*, Nat'l Low Income Housing Coalition (Aug. 20, 2018), <https://nlihc.org/re-source/formerly-incarcerated-people-are-nearly-10-times-more-likely-be-homeless> [https://perma.cc/QF6L-2BAW]).

including homelessness, dramatically reduced the likelihood of formerly incarcerated persons reoffending.²

Landlords overwhelmingly utilize criminal background checks in determining whether to rent to prospective tenants. However, new studies reveal that “a criminal history is not statistically predictive of future risk posed by a tenant to safety and security.”³ Indeed, “Ehman and Reosti demonstrated that ex-offenders posed no greater danger than other tenants, challenging the principle of ‘foreseeability’ and the underlying assumption of the criminal screening regime.”⁴

If criminal background checks aren’t predictive of tenant risk, then landlords shouldn’t be able to utilize them without any guardrails. Senate Bill 514 provides just the type of guardrails necessary to ensure that people who have paid their debt to society are not unnecessarily and unfairly prevented from obtaining residential leases. This legislation provides a nuanced policy solution in an era of housing scarcity. **For these reasons, the Maryland Office of the Public Defender urges this Committee to favorably report Senate Bill 514.**

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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² Norrinda Brown Hayat, Housing the Decarcerated: COVID-19, Abolition & The Right to Housing, 110 Calif. L. Rev. 639, 656 (June, 2022) (internal citations omitted) (citing Lucius Couloute, Prison Pol’y Initiative, Nowhere to Go: Homelessness Among Formerly Incarcerated People (Aug. 2018), <https://prisonpolicy.org/reports/housing.html> [https://perma.cc/8USY-K3YQ], et al.).

³ Tom Sanley-Becker, Breaking the Cycle of Homelessness and Incarceration: Prisoner Reentry, Racial Justice, and Fair Chance Housing Policy, 7 U. Pa. J. L. & Pub. Aff. 257, 287 (May, 2022) (citing Merf Ehman and Anna Reosti, Tenant Screening in an Era of Mass Incarceration: A Criminal Record is No Crystal Ball, N.Y.U. J. Legis. And Pub. Pol’y Quorum 1, Mar 3, 2015).

⁴ *Id.* at 288.