



**Written Testimony of David Wheaton  
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**Submitted to the Judicial Proceedings Committee of  
the Maryland State Senate  
In Connection with the March 11, 2026 Hearing**

My name is David Wheaton, and I am an attorney with the Legal Defense Fund (LDF). LDF offers the following testimony in support of Maryland Senate Bill 937, which will ensure the hundreds of thousands of Marylanders with a history of involvement with the criminal legal system have fair access to housing. Everyone deserves a fair chance to find a safe, stable place to live. Right now, background checks can prevent people with criminal records from accessing housing even after they've served their time and are ready to be responsible tenants. Due to discriminatory policies and practices at every stage of the criminal legal system, Black people are disproportionately subject to arrest, prosecution, and incarceration.<sup>1</sup>

While housing is essential to putting people on the path to stability, Marylanders who have contact with the criminal legal system face unjustified barriers to accessing safe and quality housing. A survey found nearly eight out of 10 formerly incarcerated individuals reported ineligibility or denial of housing because of their or a loved one's conviction history.<sup>2</sup> SB 937 can help Marylanders, including thousands of Black Marylanders, with a history of involvement with the criminal legal system find safe and affordable housing that will set them on the path of successful reentry into society. SB 937 ensures Maryland landlords will conduct an individualized assessment when screening potential applicants with prior criminal legal contact. The bill would prohibit Maryland landlords from requesting unnecessary information related to an applicant's criminal history prior to extending a conditional offer while permitting them to request information on certain convictions once a conditional offer is made; prohibit landlords from considering distant past convictions and arrests or charges which did not result in a

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<sup>1</sup> Pew Research, *Racial Disparities Persist in Many U.S. Jails*, (May 16, 2023), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/05/racial-disparities-persist-in-many-us-jails>

<sup>2</sup> Saneta deVuono-powell, et al., *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, Forward Together, Research Action Design (Sept. 2015), <https://www.whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>

conviction; and allow tenants to correct inaccurate information found on their criminal history screening report. LDF urges the committee give SB 937 a favorable report out of committee on behalf of these Marylanders and their families.

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest civil rights law organization. Since its inception, LDF has worked to ensure fair housing opportunities for Black communities. Some of LDF's early victories in the Supreme Court stemmed from cases such as *Shelley v. Kramer*, 334 U.S. 1 (1948), and *McGhee v. Sipes*, 334 U.S. 1 (1948), which held the state enforcement of racially-restrictive covenants violated the Equal Protection Clause. In the decades since those victories, LDF has continued to challenge public and private policies and practices that deny Black people safe and quality housing and free from discrimination.

My testimony will highlight how criminal history restrictions in housing disproportionately exclude Black Maryland residents and have a limited bearing on a prospective tenant's housing success; how landlords frequently rely on inaccurate, incomplete, or outdated court records to deny housing to people with criminal records; how SB 937 can improve public safety by reducing recidivism; and, finally, how SB 937 pushes back against the actions of the Trump administration, which has made it more likely that landlords will unjustly people who have criminal records.

### **I. Criminal History Restrictions Disproportionately Exclude Black People from Housing and Have Limited Bearing on a Prospective Tenant's Housing Success**

Criminal history restrictions disproportionately exclude Black people from housing, despite having a limited, if any, relationship with whether someone is or would be a good tenant. Nearly one in five adults in Maryland have an arrest or conviction record.<sup>3</sup> This number is rapidly increasing, as at least 83,000 different people are booked into local jails in Maryland each year.<sup>4</sup> Unfortunately, due to systemic disparities throughout the criminal legal system, a disproportionate percentage of the Black population have been arrested and incarcerated. Black people are arrested at higher rates than white people, and a significant number of those arrests do not result in convictions.<sup>5</sup> Furthermore, Black Marylanders are incarcerated at a rate 5.3 times higher than white people.<sup>6</sup> Black Marylanders also make up 31% of state residents, but 52% of people in jail and 69% of people in prison.<sup>7</sup> One in five Black Marylanders born in 2001 is likely to be incarcerated in their lifetime compared to one in 29 white Marylanders.<sup>8</sup>

Importantly, the vast majority of these individuals will return home to their communities and will need access to safe and affordable places to live. In 2019, Maryland released 86,653

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<sup>3</sup> The Clean Slate Initiative, *Resource Guide: For Maryland Journalist* (2020), <https://www.cleanslateinitiative.org/maryland#:~:text=Right%20now%2C%201%20in%20every.an%20arrest%20or%20conviction%20record>.

<sup>4</sup> Prison Policy Initiative, *Maryland Profile*, (2022), <https://www.prisonpolicy.org/profiles/MD.html>

<sup>5</sup> Prison Policy Initiative, *Racial and ethnic disparities: Research and statistics on racial and ethnic disparities in the criminal legal system*, (February 21, 2026), [https://www.prisonpolicy.org/research/racial\\_and\\_ethnic\\_disparities/](https://www.prisonpolicy.org/research/racial_and_ethnic_disparities/)

<sup>6</sup> Leah Wang, *Updated Data and Charts: Incarceration Stats by Race, Ethnicity, and Gender for All 50 States and D.C.*, Prison Policy Initiative (Sept. 27, 2023), [https://www.prisonpolicy.org/blog/2023/09/27/updated\\_race\\_data/#compare](https://www.prisonpolicy.org/blog/2023/09/27/updated_race_data/#compare)

<sup>8</sup> Vera Institute for Justice, *Incarceration Trends in Maryland*, (2018),

<https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-maryland.pdf>

<sup>8</sup> Vera Institute for Justice, *Incarceration Trends in Maryland*, (2018),

<https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-maryland.pdf>

people from local jails and state prisons.<sup>9</sup> As discussed further below, many housing providers exclude prospective tenants based on prior criminal legal contact—yet there is little evidence such contact is predictive of whether someone will pay rent or cause an actionable nuisance.<sup>10</sup> As the Supreme Court has recognized:

[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense.<sup>11</sup>

In 2016, the U.S. Department of Housing and Urban Development (HUD) similarly acknowledged “the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual”<sup>12</sup> and exclusions based on prior arrests alone are impermissible in all circumstances.<sup>13</sup> Research has repeatedly shown criminal convictions are not a good predictor of housing success.<sup>14</sup> Most recently, in 2019, economist Cael Warren conducted a study of 10,500 households in Minnesota and Wisconsin and found that most types of criminal convictions had no significant effect on housing outcomes.<sup>15</sup> As a result, as HUD explained in 2016, unreasonable criminal history exclusions can violate the federal Fair Housing Act because they disproportionately exclude Black and Latinx people and are not related to a legitimate purpose.<sup>16</sup>

## II. Landlords Frequently Rely on Inaccurate, Incomplete, or Outdated Court Records to Deny Housing to People who Have Previous Criminal Records.

Landlords routinely rely on information regarding criminal legal contact from tenant screening companies which use algorithmically-generated recommendations to evaluate

<sup>10</sup> Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>.

<sup>11</sup> *Schwartz v. Bd of Bar Examiners*, 353 U.S. 232, 241 (1957); see also *United States v. Berry*, 553 F.3d 273, 282 (3d Cir. 2009) (“[A] bare arrest record – without more – does not justify an assumption that a defendant has committed other crimes and it therefore cannot support increasing his/her sentence in the absence of adequate proof of criminal activity.”); *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006) (“[A] mere arrest, especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct.”).

<sup>12</sup> U.S. Dep’t of Hous. & Urban Dev., *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*, Apr. 4, 2016, [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

<sup>13</sup> *Id.* at 5.

<sup>14</sup> Jack Tsai PhD & Robert A. Rosenheck, *Incarceration Among Chronically Homeless Adults: Clinical Correlates and Outcomes*, *Journal of Forensic Psychology Practice*, Vol. 12 Issue 4, (August 2, 2012),

<https://www.tandfonline.com/doi/abs/10.1080/15228932.2012.695653>; Seema L. Clifasefi, Daniel K. Malone, & Susan E. Collins, *Exposure to project-based Housing First is associated with reduced jail time and bookings: Author links open overlay panel*, *International Journal of Drug Policy*, Vol. 24 Issue 4, (July 2013),

<https://www.sciencedirect.com/science/article/abs/pii/S0955395912001533?via%3Dihub>; Daniel K. Malone, *Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders*, *Psychiatric Services* Vol. 60 No. 2, (Feb. 2009),

<https://psyciatryonline.org/doi/pdf/10.1176/ps.2009.60.2.224>

<sup>15</sup> Cael Warren, *Success in Housing: How Much Does Criminal Background Matter?* 19–22 (2019),

[https://www.wilder.org/sites/default/files/imports/AEON\\_HousingSuccess\\_CriminalBackground\\_Report\\_1-19.pdf](https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf).

The authors caution that their study likely overstates the increased risk to housing outcomes from the other four types of convictions, since they could not control for many other factors that could be contributing to housing outcomes.

<sup>16</sup> U.S. Dep’t of Hous. & Urban Dev., *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*, Apr. 4, 2016, [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

potential tenants. The information tenant screening companies provide on criminal records is often inaccurate and incomplete. According to a 2022 study by the Urban Institute, close to 90 percent of landlords reported they checked a prospective tenants' past history, including their criminal legal contact, when deciding on a prospective applicant.<sup>17</sup>

Unfortunately for tenants, criminal record information is often highly inaccurate, whether from public government sources or private databases.<sup>18</sup> Frequent errors in criminal record data include outdated information (e.g., showing criminal charges which have since been dropped or expunged), mismatched records due to similar names, and missing outcome or disposition data.<sup>19</sup> States vary in the rate at which arrest records are missing the outcome or disposition of the case; the national average is 69% of arrest records missing outcome data.<sup>20</sup> Tenant screening companies often rely on automatic web scraping technologies to pull criminal record information from a variety of sources and can introduce even more inaccuracy by patching together outdated information or mismatching information to the wrong people.<sup>21</sup> An analysis of private criminal record information found 96-100% of the 101 people participating in the study had at least one error in their background check, and three-quarters of participants were falsely connected to a criminal record which did not appear in their official government record.<sup>22</sup>

Inaccuracies in criminal records also disproportionately impact Black people. A 2020 U.S. Department of Labor study found 33% of Black participants had at least one inaccuracy in their criminal record compared to just 18% of white participants, meaning Black participants were almost twice as likely to have an inaccurate record.<sup>23</sup> Moreover, some tenant screening companies rely on “name-only” matches or “wildcard” searches, gathering information from people who share the same few letters of a name.<sup>24</sup> According to an investigation by *The Markup* and the *New York Times* and a report from the Consumer Financial Protection Bureau these reports can include criminal or eviction records from different people with similar names—a problem which occurs more frequently with Black or Latino applicants.<sup>25</sup>

<sup>17</sup> Abby Boshart, *How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing*, URBAN INST. (Dec. 21, 2022), <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing>

<sup>18</sup> Sarah Lageson, *Criminally Bad Data: Inaccurate Criminal Records, Data Broker, and Algorithmic Injustice*, University Illinois Law Review, Vol.5, (2023), <https://illinoislawreview.org/wp-content/uploads/2023/10/Lageson.pdf>

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Sarah Lageson, *The problem with criminal records: Discrepancies between state reports and private-sector background checks*, Criminology Vol. 62, Issue 1, (February 2024), <https://onlinelibrary.wiley.com/doi/10.1111/1745-9125.12359>

<sup>23</sup> U.S. Department of Labor, *Criminal Record Inaccuracies and the Impact of a Record Education Intervention on Employment-Related Outcomes*, (Jan. 2, 2020), [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/LRE\\_WellsFinalProjectReport\\_December2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/LRE_WellsFinalProjectReport_December2020.pdf)

<sup>24</sup> CONSUMER FINANCIAL PROTECTION BUREAU, TENANT BACKGROUND CHECKS MARKET 19 (2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf)

<sup>25</sup> Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>; Consumer Financial Protection Bureau, *Tenant Background Checks Market*, (November, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf)

### III. Reducing Criminal History Screenings for Housing can Help Decrease Homelessness for Individuals and their Families and Improve Public Safety by Reducing Recidivism.

As a result of unnecessary housing restrictions, formerly incarcerated people are more than 10 times more likely to be unhoused than the general public.<sup>26</sup> Yet research shows stable housing can reduce recidivism and its associated social costs and improve public safety.<sup>27</sup> Alternatively, there is no evidence policies that restrict housing access for people with criminal records improve public safety, and evidence suggests denying housing access to formerly incarcerated people is associated with increased recidivism.<sup>28</sup> Because of laws which criminalize homelessness and poverty (e.g., vagrancy laws, trespassing laws, etc.), housing insecurity increases the risk someone will be rearrested for quality-of-life offenses and face future criminal legal contact, fueling a cycle of criminalization and housing insecurity.<sup>29</sup> People who are homeless are 11 times more likely to be arrested than people who are housed.<sup>30</sup> Housing insecurity and homelessness can also exacerbate other risk factors for recidivism. For example, homelessness makes it more difficult for formerly incarcerated people to secure and maintain work or educational opportunities.<sup>31</sup> Proposed legislation like SB 937 can address these barriers, making communities in Maryland safer. Additionally, refusing housing opportunities to people with criminal records increases the risk of housing insecurity and homelessness for them and their families.<sup>32</sup> Homelessness disproportionately affects Black Maryland residents: On a given night, 5,865 Marylanders experience homelessness and statewide, 54% of homeless households in Maryland are Black and other people of color.<sup>33</sup> Incarceration compounds these disparities, and Black formerly incarcerated people are about 1.6 times as likely to be homeless as white formerly incarcerated people.<sup>34</sup>

### IV. SB 937 Has the Opportunity to Help Marylanders with a Past History of Involvement with the Criminal Legal System have Fair Access to Housing and Improve Public Safety.

SB 937 would prevent Maryland landlords from imposing unreasonable criminal exclusions that discriminate against people with past involvement with the criminal legal system. The bill would require landlords to first give a prospective tenant a conditional offer

<sup>26</sup> John Bae, *Opening Doors to Affordable Housing: The Low-Income Housing Tax Credit Program and People with Conviction Histories*, VERA INST. OF JUSTICE (April 2023), <https://www.vera.org/downloads/publications/Opening-It-mDoors-to-Affordable-Housing-Report.pdf>

<sup>27</sup> BAZELON CENTER FOR MENTAL HEALTH LAW, *DIVERSION TO WHAT? EVIDENCE-BASED MENTAL HEALTH SERVICES THAT PREVENT NEEDLESS INCARCERATION* 5 (2019), [http://www.bazelon.org/wp-content/uploads/2019/09/Bazelon-Diversion-to-WhatEssential-Services-Publication\\_September-2019.pdf](http://www.bazelon.org/wp-content/uploads/2019/09/Bazelon-Diversion-to-WhatEssential-Services-Publication_September-2019.pdf).

<sup>28</sup> Thomas Søbirk Petersen & Sebastian Jon Holmen, *Not in My Neighborhood: The Ethics of Excluding Ex-offenders from Housing*, Department of Philosophy and Science Studies, Roskilde University, (January 12, 2024), <https://link.springer.com/content/pdf/10.1007/s11572-023-09712-5.pdf>

<sup>29</sup> Human Rights Watch, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, (November 17, 2004), <https://www.hrw.org/report/2004/11/18/no-second-chance/people-criminal-records-denied-access-public-housing-o>

<sup>30</sup> Id.

<sup>31</sup> Andrea Miller, Briana Paige, & Allison Trochesset, *Collateral Consequences of Criminal Records*, Court Statistics Project, (November 12, 2021), [https://ncfsc-web.squiz.cloud/\\_data/assets/pdf\\_file/0031/70888/Collateral-Consequence-Caseload-Highlight-3.pdf](https://ncfsc-web.squiz.cloud/_data/assets/pdf_file/0031/70888/Collateral-Consequence-Caseload-Highlight-3.pdf)

<sup>32</sup> Kimberly Johnson, *Housing Access for People with Criminal Records*, National Low-Income Housing Coalition, (2020), [https://nlihc.org/sites/default/files/AG-2020/6-07\\_Housing-Access-for-People-with-Criminal-Records.pdf](https://nlihc.org/sites/default/files/AG-2020/6-07_Housing-Access-for-People-with-Criminal-Records.pdf)

<sup>33</sup> Maryland Department of Housing and Community Development, *Just Communities: Separate and Unequal Neighborhoods*, (October 2024), <https://dhcd.maryland.gov/Just-Communities/Documents/Baseline-Report.pdf>

<sup>34</sup> Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, Prison Policy Initiative, (August 2018), <https://www.prisonpolicy.org/reports/housing.html#appendixtable2>

before they can check someone's past criminal record. A landlord would be able to review income verifications and other screening criteria and then offer a prospective tenant a conditional offer. This is beneficial because landlords must first assess the tenant's other qualifications and decide whether the tenant is a good candidate before assessing a criminal background check. Most convictions would be restricted from the landlord to consider. The most serious convictions, like arson and kidnapping, would have a \_\_-year lookback period, starting after the conviction, preventing landlords from relying on stale information to exclude people. SB 937 would also ensure prior arrests or charges without ultimate convictions will no longer be able to be considered by landlords. Finally, the bill would allow tenants to correct any inaccurate information found on their criminal history screening report. With the rate of inaccuracies found in criminal records as discussed above, especially for Black residents, this will allow tenants more opportunities to challenge any inaccurate information and help them secure housing.

The proposed legislation thus limits landlords' ability to impose overbroad criminal history restrictions which disproportionately harms Black Maryland residents and have no bearing on tenant success. Additionally, SB 937 can improve public safety in Maryland by reducing the rate of recidivism for returning citizens and reduce homelessness within the state, benefiting all Marylanders.

**V. The Trump Administration withdrew critical guidance aimed at ensuring people with Prior Involvement with the Criminal Legal System are not discriminated against, SB 937 pushes back against the Trump Administration.**

As the Trump administration rolls back fair housing protections, SB 937 is needed to provide clarity and consistency for landlords and tenants. In September 2025, HUD withdrew prior guidance documents outlining how unjustified criminal history exclusions can violate the federal Fair Housing Act. HUD's removal of this guidance signals the agency will not prioritize enforcing these vital fair housing protections, which will negatively impact Black communities in Maryland. HUD also withdrew a proposed rule which would have limited how housing providers could make decisions based on criminal history.<sup>35</sup> While these actions do not change landlords' obligations under the federal Fair Housing Act, they make it more likely that people with criminal records will face unjustified policies that violate that law.

SB 937 would codify the principles from HUD's prior guidance<sup>36</sup> into Maryland law. As previous HUD guidance recommended, SB 937 ensures Maryland landlords will conduct an individualized assessment when screening potential applicants with prior criminal legal contact. Similarly, the HUD guidance recommended landlords consider the age and severity of any prior convictions. SB 937 sets lookback periods for specific crimes so that landlords cannot consider certain crimes that happened decades ago and have no bearing on if a potential tent would be able to pay their rent today. Without a proper lookback period, this policy would allow owners and management companies the ability to deny someone housing for a nonviolent misdemeanor

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<sup>35</sup> U.S. Dep't of Hous. & Urban Dev., Proposed Rule: Reducing Barriers to HUD-Assisted Housing, (Apr. 10, 2024), <https://www.federalregister.gov/documents/2024/04/10/2024-06218/reducing-barriers-to-hud-assisted-housing>

<sup>36</sup> U.S. Dep't of Hous. & Urban Dev., 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, Apr. 4, 2016, [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

which occurred 20 years ago. Finally, the previous guidance stated landlord exclusions based on prior arrests alone are impermissible in all circumstances under the Fair Housing Act. Under SB 937 landlords would not be able to exclude an applicant based on prior arrest alone, which follows former HUD guidance. Passing SB 937 would be a significant step to push back against Trump administration actions which have made it more likely that people with prior criminal history will be unnecessarily excluded from housing.

## **VI. Conclusion**

Every person in Maryland should have access to safe and affordable housing, including people who have prior involvement with the criminal legal system. Currently, landlords discriminate against hundreds of thousands of Marylanders based on histories which do not bear on their ability to be good tenants. This practice denies far too many of desperately needed safe and stable housing. Such discrimination disproportionately affects Black Marylanders, who face severely unequal treatment at every stage of the criminal justice process. SB 937 has the potential to help hundreds of thousands of Marylanders access housing opportunities. LDF urges its swift passage and asks the Judicial Proceedings Committee to give a favorable report on SB 937 out of committee.

Thank you for the opportunity to testify. If you have any questions, please contact David Wheaton, Assistant Policy Counsel, at [dwheaton@naacpldf.org](mailto:dwheaton@naacpldf.org).