



### Senate Bill 937

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

Hearing in the Senate Judicial Proceedings Committee  
On March 11, 2025

### Position: FAVORABLE

*Maryland Legal Aid submits its written and oral testimony on SB 937 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. Because we know that our clients face a tight rental market in which housing opportunities are continually out of reach, Maryland Legal Aid urges a **favorable** report on SB 937, the Fair Chance in Housing Act.

SB 937 will curtail the denial of rental housing opportunities based on applicants’ criminal history 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 certain conviction history only after an applicant has been deemed qualified and given 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 and Prince George’s County have enacted “Ban the Box” style policies similar but weaker than SB 937. A statewide Fair Chance in Housing law will dramatically improve access to rentals for many formerly incarcerated renters.

### **One 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 than one million Marylanders, or approximately 22 percent of the state population, had some type of

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<sup>1</sup> Bureau of Justice Statics, 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> US. 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 History Information Systems*, 2012, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

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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> Housing serves as a foundation for gaining employment and family reunification.<sup>6</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>7</sup> Yet “[r]esearchers have found that formerly incarcerated individuals are far more likely to be homeless than the general public”<sup>8</sup> and that “formerly incarcerated people are most likely to be homeless in the period shortly after their release.”<sup>9</sup>

One study has found that in the first two years after release from incarceration, a person is more than twice as likely to be homeless compared to year four and beyond.”<sup>10</sup> In other words, the time just after release is pivotal. By making housing opportunities more available, the Fair Chance in Housing Act supports the social and economic rehabilitation of reentering individuals. Longer look-back periods, such as 5-year or 7-year windows, defeat the most high-impact potential of this bill.

SB 937 eliminates the use of charges, arrests, and low-level offenses to deny rental applications. **The bill would have aided Marylanders like our client Ms. Brown** in Frederick. She had a criminal record consisting of a single instance, a 2019 conviction for misdemeanor theft, with a sentence of six months

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<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,” *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> Demelza Baer, Avinash Bhati, Lisa Brooks, et al., *Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute’s Prisoner Reentry Portfolio* (Washington, DC: Urban Institute, 2006), 8–9, <https://www.urban.org/sites/default/files/publication/42981/411289-Understanding-the-Challenges-of-Prisoner-Reentry.PDF>

<sup>7</sup> *Supra* n.1.

<sup>8</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>9</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>10</sup> *Supra* n.2.

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in jail, all of which was suspended. She served 18 months of supervised probation. Yet, when she applied for an apartment in the summer of 2024, more than five years after that conviction, Ms. Brown's application was denied because she had 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 prospective landlord reasoned simply that those factors did not matter. "Our policy," they told us, "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 937 will ensure that cannot happen again.

### ***Tenant screening under SB 937***

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. Initial screening**

The landlord may conduct an initial screening based on non-criminal factors, such as consumer history and references, as well as:

- Convictions for sex offenses, including sexual assault, rape, attempted rape, solicitation of a minor convictions related to sexual assault (Crim. Law Art., Title 3, Subtitle 3);
- Convictions for child pornography (Crim. Law Art. § 11-207);
- Convictions for human trafficking (Crim. Law Art. § 3-1102);
- Convictions for first- and second-degree murder within the past 10 years;
- Convictions for methamphetamine manufacturing on the premises of federally assisted housing (if application is for tenancy in such housing);
- Lifetime registration requirement under a state sex offender registration program.

The landlord must consider the following information, if provided by the applicant, evidence of inaccuracies in the applicant's criminal history, evidence of rehabilitation, and other mitigation factors.

#### **2. Conditional offer and second screening**

If the landlord makes a conditional offer of a lease to the applicant, the landlord may then assess the following additional information about the applicant's conviction history:

- Murder in the first degree (Crim. Law Art. § 2-201)
- Human trafficking (Crim. Law Art. § 3-1102);
- Sexual offenses, including sexual assault, rape, attempted rape, and solicitation of a minor (Crim. Law Art., Title 3, Subtitle 3);
- Child pornography (Crim. Law Art. § 11-207);

- Any crime resulting in lifetime registration in a state sex offender registry;
- Within the 3 years preceding the offer:
  - Kidnapping (Crim. Law Art. § 3-502)
  - Arson (Crim. Law Art. §§ 6-102 and 6-103)
  - Assault in the first degree (Crim. Law Art. § 3-202)
  - Burglary in the first degree (Crim. Law Art. §6-202)
  - Manufacturing a controlled dangerous substance (Crim. Law Art. § 5-612); and
  - Felony fraud

### 3. **Withdrawal of conditional offer and notice**

Based on this conviction history information, the landlord may withdraw the conditional offer if it is “necessary to fulfill a substantial, legitimate, and non-discriminatory interest.” SB 937 will require the landlord to notify the applicant of the specific reason for withdrawal and notify the applicant that they may request a reassessment based on evidence of mitigating factors.

### 4. **Reassessment**

The reassessment stage is especially important to the second-chance objective of this legislation. Within 30 days after notice of withdrawal of the offer, the applicant may request the landlord to provide, within 10 days, a copy of all information that factored into the landlord’s withdrawal of the offer and may appeal the withdrawal by providing the landlord evidence of mitigating factors, rehabilitation, or inaccuracies in the conviction history.

The landlord’s reassessment of the withdrawal must take into account six factors:

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

Notably, SB 937 does not prescribe a time for completion of the reassessment phase, nor does the bill require the landlord to keep a unit available to the applicant during the reassessment.

### ***SB 937 operationalizes 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

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not provide an enforceable procedure. Worse, on November 25, 2025, HUD rescinded its memoranda, reverting to guidance from the early 1990s.<sup>11</sup>

Nonetheless, SB 937 adopts the framework of HUD’s contemporary Fair Chance guidance and, importantly, adds specific procedures to that framework.

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 937.

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 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>12</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>13</sup> However, antidiscrimination laws offer relief *after* the discrimination has occurred, and their remedies are encumbered by the substantial

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<sup>11</sup> U.S. Dep’t of Housing and Community Development, “SOHUD Letter to PHAs and Owners re. Public Safety,” (Nov. 25, 2025) [https://www.novoco.com/public-media/documents/hud-criminal-screening-](https://www.novoco.com/public-media/documents/hud-criminal-screening-11262025.pdf?utm_source=NLHC+All+Subscribers&utm_campaign=a783ddb168-Memo_120825&utm_medium=email&utm_term=0_-41cf60b129-&ct=t(Memo_120825))

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<sup>12</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>13</sup> *See id.*

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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>14</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>15</sup>

By contrast, SB 937 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 937 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 for landlords against liability**

SB 937 will also protect prospective landlords who give an applicant a second chance from liability for having done so. The bill precludes 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 937 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.

The Fair Chance in Housing Act provides a fair, transparent process for rental screening and decision-making based on conviction information. This bill is streamlined, structured around only two look-back periods: a “forever” look-back for major convictions and a 3-year look-back for other serious convictions. Maryland Legal Aid believes SB 937 will help to reduce homelessness and recidivism among the reentering population. We urge the Committee to report **FAVORABLE** on Senate Bill 937.

If you have any questions, please contact:

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<sup>14</sup> *Connoly 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>15</sup> See *supra* note 11.