



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

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**Committee on the Judiciary and Public Safety
Council of the District of Columbia**

**Hearing on Bill 20-642, The “Fair Criminal Record Screening Act of 2014”
Monday, February 10, 2014, 11:00 a.m.**

On behalf of the Legal Aid Society of the District of Columbia, I would like to thank the Council and the Committee for this opportunity to comment on Bill 20-642, the “Fair Criminal Record Screening Act of 2014.” As you know, Legal Aid provides civil legal services to persons living in poverty in the District of Columbia free of charge.¹ Each year, our attorneys represent hundreds of individuals and families in a wide range of matters. While we assist people with their civil legal needs, many of our clients have also had interactions with the criminal justice system and must deal with the continuing collateral consequences of those experiences. These clients know well the ongoing challenges to reintegrating into society after having had brushes with law enforcement.

Legal Aid agrees with and strongly supports this Bill’s purpose: to remove barriers to gainful employment of formerly incarcerated individuals. We also agree, however, with many of our sister organizations and advocates who have testified today and who have offered ways that the Bill could and should be substantially strengthened. Legal Aid respectfully requests the opportunity to work with the Committee and other advocates on these proposed additions and modifications to the Bill.

That said, these written comments focus on one issue in particular: the need to amend the current Bill to include provisions that would extend similar protections to individuals with criminal records in the housing context—*i.e.*, limiting the ability of housing providers to inquire about and consider a prospective tenant’s criminal background, except where doing so is expressly required or permitted by existing law. Removing barriers to employment is critical to the reintegration of individuals with criminal records. But removing similar barriers to securing stable housing is equally if not more important.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” For more than 80 years, Legal Aid attorneys and volunteers have served tens of thousands of the District’s neediest residents. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

Ensuring Access to Stable Housing Facilitates Reintegration of Individuals with Criminal Records and Benefits the Broader Community as Well.

The Council for Court Excellence estimates that 60,000 D.C. residents have a criminal record, roughly 10% of the District's population.² Each year, about 8,000 women and men return to the District having served a sentence in prison or jail,³ and numerous others are arrested or charged with a crime that never results in a conviction. These individuals face a lifetime of adverse consequences and unfair treatment based on their arrest and criminal records, not only in the form of employment discrimination, but in housing discrimination, the loss of public benefits, the lack of medical and mental health care, and many other ways, large and small.

For the vast majority of crimes, our society adopts the view that individuals released from prison have served their time and paid their debt, and that those individuals should not face unnecessary barriers to reintegration into society. And for those individuals who may have been arrested but never convicted, our society takes the view that they are not guilty of any crime at all. Yet, while the Committee is rightfully considering a bill today that would prevent employers from engaging in discrimination against those with arrest or conviction records unless there is a "legitimate business justification" to do so, the current version of the Bill would not prevent housing providers from discriminating on this very same basis.

Denying housing to otherwise qualified individuals based on their criminal background subjects individuals with criminal records to continuing discrimination that unnecessary and unfair. Many of Legal Aid's clients survive on incomes at or below the poverty line. Our clients are among the poorest and most vulnerable of D.C.'s residents, who all too often struggle to find and maintain a roof over their heads. As a result of the District's continuing loss and lack of affordable housing,⁴ persons living in poverty are often left with very few housing opportunities. All of this is made even more difficult if the individual has a criminal record. Limited public housing opportunities available to others who may income-qualify often exclude those with a history of criminal activity, based on federal and some local restrictions. So staying with family or friends—relationships that are often strained and impermanent—or seeking something on the ever-shrinking affordable private housing market are usually their only options.⁵

Private housing providers who discriminate against prospective tenants based solely on criminal records do harm not only to those individuals, but also to our communities as well. As numerous studies have shown, unstable housing is the greatest predictor of whether an individual with a criminal record will reoffend, engage or re-engage in substance abuse, or end up being a

² Council for Court Excellence, *Unlocking Employment Opportunity for Previously Incarcerated Persons in the District of Columbia* 7, available at http://www.courtexcellence.org/uploads/publications/CCE_Reentry.pdf.

³ *Id.*

⁴ Reed, J., *Disappearing Act: Affordable Housing In DC Is Vanishing Amid Sharply Rising Housing Costs* 1, available at <http://www.dcfpi.org/wp-content/uploads/2012/05/5-7-12-Housing-and-Income-Trends-FINAL.pdf> (observing that over the past decade, "DC has lost more than half of its low-cost rental units and 72 percent of its low-value homes").

⁵ Baer, D., et al., *Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio* 8-9, available at http://www.urban.org/UploadedPDF/411289_reentry_portfolio.pdf.

drain on society's resources in other ways.⁶ A large percentage of those with criminal records who are unable to find housing end up homeless, and a large percentage of those who are homeless report having spent some time in prison or jail.⁷ To be sure, employment is important, but residential stability is perhaps even more critical to reconnect to one's community upon release. And as we know, employment and housing are inextricably linked; the failure to be able to secure housing impacts one's ability to obtain employment, and vice versa.

The Lack of Protection Allows Housing Providers To Engage in Unchecked and Arbitrary Discrimination.

At present, nothing prevents housing providers in the District of Columbia from inquiring about or considering a prospective tenant's criminal history. As a result, the ability of housing providers to discriminate on this ground is unfettered and unchecked. As an initial matter, for instance, the means that housing providers most likely use to obtain this information—through commercial databases, online searches, and reporting services—are notoriously inaccurate.⁸ Accordingly, *all residents*, not just those with prior criminal convictions, are at risk of arbitrary discrimination, and most may never know the basis on which a landlord decided not to proceed with their application.

Second, even if reasonably accurate information can be obtained through such sources, nothing prevents housing providers from using the information however they see fit. This can make the path of least resistance simply to deny housing to everyone whose background check indicates that he or she has a record of any type, or of any age, without further thought or analysis. This places anyone with any kind of criminal background whatsoever—no matter how remote or minor—at a permanent disadvantage in trying to obtain secure housing and move on with their lives. And in any event, right now, there is nothing that prevents housing providers from denying housing to individuals based only on a single arrest, if that information is sought and obtained. This result is plainly contrary to a justice system that deems someone innocent until proven guilty.

Third, as we know from criminal statistics, poor communities and communities of color are disproportionately and unfairly impacted when such factors are considered. Not only are individuals from such backgrounds much more likely to have arrest and conviction records (at rates vastly disproportionate to the rates in which they, in the aggregate, engage in the alleged

⁶ Bureau of Justice Assistance, U.S. Department of Justice, and Justice Center, the Council of State Governments, *Reentry Housing Options: The Policymakers' Guide* vi-viii, available at https://www.bja.gov/Publications/CSG_Reentry_Housing.pdf (“Without a stable residence, it is nearly impossible for newly released individuals to reconnect positively to a community. More often than not, when these individuals are not linked to the services and support that could facilitate their successful reintegration, they end up reincarcerated for either violating the conditions of release or for committing a new crime.”) (footnote omitted); Metraux S. and Culhane D., “Homeless Shelter Use and Reincarceration Following Prison Release,” *Criminology & Pub 3* (2): 139-160, 2004.

⁷ Bureau of Justice Assistance, U.S. Department of Justice, *et al.*, Homelessness and Prisoner Re-Entry 1, available at <http://www.reentry.net/library/attachment.85684>.

⁸ See, e.g., William Wayne Justice Center for Public Interest Law, *Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas* 12-15, available at http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords_report.pdf.

offending conduct), but poor communities and communities of color are also much more likely to be the communities into which the formerly incarcerated initially return.⁹ So if individuals with criminal records are unable to find stable housing in these communities, and they end up reengaging in criminal activity, the communities themselves suffer too.

Including Housing Protections Would Simply Ban Discrimination; It Would Not Affirmatively *Require* Housing Providers To Offer Housing To Anyone.

It is worth noting for the record what the housing protections we are requesting would *not* do. Extending the “fair criminal record screening” protections for employment contained in this Bill to housing would *not* require housing providers to provide housing to anyone. Nor would it forbid the consideration of criminal records where such consideration is expressly permitted or required by existing law. Though some housing providers may object to these limitations as additional regulation of their activity, in fact, it frees them from having to make inquiries or seek information about criminal convictions for the vast majority of applicants. Instead of requiring them to do something more, it actually allows them to do less.

And to the extent that housing providers may raise concerns about public safety and their ability to address criminal activity taking place on their properties, it should be noted that adding these protections for prospective tenants would not limit the ability of housing providers to take *any* action currently at their disposal to terminate tenancies or otherwise address concerns about criminal activity. Housing providers of course continue to have the full remedies to address any criminal activity that takes place on their properties, through eviction, by calling the police, or by taking any other legally permissible action.

What the protection we seek *is about* is giving people a fair shot at obtaining housing in the District of Columbia. It is about recognizing that residential stability is a critical factor in the ability of formerly incarcerated individuals to move beyond the criminal justice system with which they had interacted, to reintegrate into their communities, and to begin to build or rebuild a life, for themselves and sometimes for the families to which they are returning.

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In conclusion, Legal Aid supports the Fair Criminal Record Screening Act of 2014 and urges the Committee and the Council to consider the suggestions made today to strengthen and improve the Bill. In particular, we strongly urge the Committee and the Council to incorporate provisions that would extend the Bill’s protections to the housing context, limiting the ability of housing providers to inquire about and consider the arrest or conviction records of prospective tenants. Thank you for this opportunity to testify before the Council.

⁹ A 2006 report analyzing the census tracts in the District of Columbia with the highest rates of returning prisoners per 1,000 residents found that “[a]lmost all of the high-return tracts are in the eastern part of the District, with two tracts lying east of the Anacostia River. . . . The one tract west of East Capitol Street . . . contains the police station, the courthouse, and a number of homeless shelters.” Roman, C. G., et al., *The Housing Landscape for Returning Prisoners in the District of Columbia* 26, available at http://www.urban.org/UploadedPDF/411433_Housing_Prisoners.pdf.