



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

House Bill 0034

Failure to Pay Rent Proceedings - Prohibition on Rent Increases and Sealing of Court Records

Hearing in the Senate Judicial Proceedings Committee on March 28, 2023

Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written testimony on HB0034 at the request of bill sponsor Delegate Terri Hill.

MLA is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. Our 12 offices serve residents in each of Maryland's 24 jurisdictions and handle a range of civil legal matters, including housing, family law, public benefits, bankruptcy and other debt collection matters, and criminal record expungements. Maryland Legal Aid asks that the Committee report **favorably** on HB0034 **without new amendments**.

HB0034 establishes a records-sealing procedure for eviction cases based on non-payment of rent. The bill was amended in the House after substantial negotiation among representatives of landlords and tenants. The current version of the bill reflects a careful balance of interests.

Currently, there is no mechanism in Maryland law specific to this ubiquitous type of litigation. In FY22, nearly 310,000 "Failure to Pay Rent" (FTPR) cases were filed throughout Maryland.¹ While these lawsuits resulted in nearly 9,000 evictions, they often resulted in dismissed litigation.² Courts dismissed 54 percent of all FTPR filings—over 70 percent in two of the top three highest-volume jurisdictions.³ At the same time, tens of thousands of cases resulted in default judgments for which many tenants presumably redeemed possession by payment. Consequently, beyond actual evictions, Maryland's FTPR dockets generate a long-lasting problem for Maryland residents on a massive scale: the harm of eviction records.

The filing of an FTPR itself, whether it leads to dismissal, redemption, or actual eviction, begins an electronic data trail that will follow renters throughout their searches for new rental housing or

¹ District Court of Maryland, Statistics, Table: "Landlord/Tenant Case Activity Report FY22 (July 2021-June 2022),"

https://mdcourts.gov/sites/default/files/import/district/statistics/Fiscal_2022.pdf.

² *Id.*

³ *Id.*

employment. Unlike debts that appear on consumer reports at most for seven years, eviction records live indefinitely on Maryland’s Judiciary Case Search site. HB0034 squarely addresses this problem.

Automatic sealing

HB0034 would reduce the harm of FTPR eviction records primarily by requiring the District Court to seal these court records automatically within 60 days after the final disposition of any FTPR that resulted in dismissal. For FY22 alone, HB0034 would have led to the sealing of 167,849 FTPR actions, without any action taken by the tenants in those actions.

Sealing by petition

Notably, HB0034 does not provide automatic sealing for cases that resulted in a judgment for possession. Instead, the bill would allow the tenant to petition the court and to make either of two showings:

- Either (1) that the tenant redeemed possession by payment to the landlord and that at least 12 months have passed since the case’s final resolution; or
- (2) that the court should seal the court records in the interest of justice.

Effect of electronic data

HB0034 expands the opportunities for low-income Marylanders to become employed and to secure housing. Without the passage of this legislation, employers and landlords may continue to utilize Case Search data to screen out renters, without regard for the context or even the propriety of the FTPR actions themselves. Electronic records of FTPR actions are more available today on Case Search than ever before due to the advancement of Maryland Electronic Courts, including the [new “e-rent” electronic filing system](#) for FTPRs in Baltimore County.⁴ Baltimore County is the highest-volume jurisdiction for eviction litigation in the state.⁵

MLA’s clients know too well that employers and landlords evaluate Case Search data without attention to case disposition – meaning, the fact that a case appears in Case Search at all weighs equally to the actual outcome, whether a dismissal or judgment for possession. Clients consistently convey a sense of

⁴ CBS Baltimore, “Baltimore County launches e-rent pilot program for property owners, landlords,” July 18, 2022, <https://www.cbsnews.com/baltimore/news/baltimore-county-launches-e-rent-pilot-program-for-property-owners-landlords>.

⁵ *Supra* n.1.

hopelessness and discouragement in their ability to obtain gainful employment or stable housing due to the public availability of electronic eviction records.

The data trail, coupled with Maryland's [125,483-unit shortage of available and affordable housing units](#) for extremely low-income families, heavies the burden on poor families throughout the state.⁶ Their low incomes increase the likelihood that they cannot pay rent in a given month and will be subjected to a FTPR filings. Eviction filings also disproportionately burden families by race. In a [national sample](#) in which one in every five adult renters was Black, "one in every three eviction filings were served to a Black renter."⁷ Without passage of HB0034, FTPR filings, including those that are dismissed, perpetuate economic and racial barriers to finding available, affordable housing.

No FCRA preemption

HB0034 does not raise preemption questions under the federal Fair Credit Reporting Act (FCRA). Arguably, the FCRA already bars screening companies from reporting sealed cases by virtue of the requirement that reports be "complete and up to date." *See* 15 U.S. Code § 1681k(a). HB0034 does not limit property owners' right to report rent delinquency to consumer reporting agencies nor does the bill alter their access to tenant screening and consumer reporting products, which are widely and cheaply available in today's rental market.

Definitions of "shield" and "court records"

Of note, HB0034, by amendment, adopts definitions of "shield" and "court records" that were enacted in 2022 in HB 521 (Real Property art. § 8-502(a)). These definitions clarify that this legislation intends to remove electronic records of FTPR actions from public view.

This bill will directly impact many MLA clients and will help to remove barriers for Marylanders seeking to better themselves and their families. HB0034 can help to ensure that the past does not obscure the chance for a better future.

Maryland Legal Aid urges the Committee to issue a FAVORABLE report on House Bill 0034. If you have any questions, please contact Zafar Shah, Assistant Advocacy Director – Access to Counsel in Evictions, (410) 951-7672, zshah@mdlaborg.

⁶ National Low Income Housing Coalition, Housing Needs by State: Maryland, <https://nlihc.org/housing-needs-by-state/maryland>.

⁷ The Eviction Lab, Racial and Gender Disparities among Evicted Americans, Dec. 16, 2020, <https://evictionlab.org/demographics-of-eviction>.