



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

Senate Bill 19

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

Hearing in the Senate Judicial Proceedings Committee

Hearing on January 30, 2024

Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on SB0019 at the request of bill sponsor Delegate Charles Sydnor.

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. Our Tenants' Right to Counsel Project represented tenants in over 2,000 eviction cases in 2023, including nearly 1,300 "Failure to Pay Rent" (FTPR) cases. Maryland Legal Aid asks that the Committee report **favorably** on SB0019 and consider adding mobile home tenants into this important legislation.

SB0019 establishes a records-shielding procedure for eviction cases based on non-payment of rent. Currently, there is no mechanism in Maryland law specific to this ubiquitous type of litigation. From November 2022 through October of 2023, 405,690 FTPR cases were filed throughout Maryland.¹ While these lawsuits resulted in nearly 21,000 evictions,² they more often resulted in dismissed litigation.³ **Courts dismissed over 35 percent of all FTPR filings** during that period.⁴ At the same time, hundreds 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

¹ District Court of Maryland, Statistics, Table: "Landlord/Tenant Case Activity Report FY22 (November-December 2022)," https://mdcourts.gov/sites/default/files/import/district/statistics/Fiscal_2022.pdf ; *Id.*, "Landlord/Tenant Case Activity Report FY23 (January-October 2023)," https://www.courts.state.md.us/sites/default/files/import/district/Calendar_2023.pdf.

² The increased volume in evictions is a disturbing trend. In January 2022, 1,9047 Failure to Pay Rent cases were filed and 600 evictions carried out. In January 2023, those numbers rose to 32,663 Failure to Pay Rent cases filed and 2,026 evictions. This represents a 68% increase year over year in filings and a tripling in the number evictions.

³ *Id.*

⁴ *Id.*

follow renters throughout their searches for new rental housing or employment. Unlike debts that appear on consumer reports at most for seven years, eviction records live indefinitely on Maryland’s Judiciary Case Search site. SB0019 squarely addresses this problem.

Automatic Shielding

SB0019 would reduce the harm of FTPR eviction records primarily by requiring the District Court to shield these court records automatically within 60 days after the final disposition of any FTPR that resulted in dismissal. For FY23 alone, SB0019 would have led to the shielding of 156,956 FTPR actions, without any action taken by the tenants in those cases.⁵

Shielding by petition

Notably, SB0019 does not provide automatic shielding 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 shield the court records if the court determines that there is good cause to do so.

Based on the judicial data cited above, we estimate that over 240,000 FTPR judgments result in tenants’ “paying to stay,” that is, redeeming possession before the time of eviction. SB0019 would permit the tenants in those 240,000 cases to petition to shield records by waiting *12 months* from the time of redeeming possession by payment and then proving their those facts by a preponderance of evidence.

Effect of electronic data

SB0019 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 Judiciary 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

⁵ District Court of Maryland, Statistics, Table: “Landlord/Tenant Case Activity Report FY2023 (JUL 2022-JUN 2023),” https://mdcourts.gov/sites/default/files/import/district/statistics/Fiscal_2023.pdf.

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.⁶ Baltimore County is the highest-volume jurisdiction for eviction litigation in the state.⁷

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 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 146,085-unit shortage of available and affordable housing units for extremely low-income families, heavies the burden on poor families throughout the state.⁸⁹ Their low incomes increase the likelihood that they cannot pay rent in a given month and will be subjected to a FTPR filing. 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.”¹⁰ Without passage of SB0019, FTPR filings, including those that are dismissed, perpetuate economic and racial barriers to finding available, affordable housing.

No FCRA preemption

SB0019 does not raise preemption questions under the federal Fair Credit Reporting Act (FCRA). Arguably, the FCRA already bars screening companies from reporting shielded cases by virtue of the requirement that reports be “complete and up to date.” *See* 15 U.S. Code § 1681k(a). SB0019 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.

⁶ 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>.

⁷ *Supra* n.1.

⁸ National Low Income Housing Coalition, Housing Needs by State: Maryland, <https://nlihc.org/housing-needs-by-state/maryland>.

⁹ This is a notable year over year increase from 125,483 in 2022, an increase of 20,602. *Id.*

¹⁰ The Eviction Lab, Racial and Gender Disparities among Evicted Americans, Dec. 16, 2020, <https://evictionlab.org/demographics-of-eviction>.

This bill will directly impact many MLA clients and will help to remove barriers for Marylanders seeking to better themselves and their families. SB0019 can help to ensure that the past does not obscure the chance for a better future.

Prior legislation

This bill is substantially similar to 2023’s House Bill 34 (Third Reader), incorporating amendments worked out by the Sponsor, tenant advocates, and representatives of the multi-family industry. Those amendments focused the legislation on “shielding,” as opposed to sealing, and provided definitions of “court record” and “shield.” This iteration of the legislation also includes last year’s amendments to clarify that the shielding provision excludes records related to a Rent Escrow claim raised defensively in an FTPR case.

FTPR cases involving Mobile Homes

SB0019’s definition of “Failure to Pay Rent proceeding” (page 2:16-17) overlooks mobile home park tenants. Although they are taken to court in the same “rent court” proceedings as any other Maryland renter, mobile home FTPR cases are brought under **Real Property § 8A-1701**. We encourage the Committee to add reference to § 8A-1701 into this bill’s definition of “Failure to Pay Rent proceeding.”

Maryland Legal Aid urges the Committee to issue a FAVORABLE report on Senate Bill 19. If you have any questions, please contact James Bell, Staff Attorney, (443) 902-3792, jbelle@mdlal.org or Zafar Shah, Assistant Advocacy Director – Tenants’ Right to Counsel Project, (443) 202-4478, zshah@mdlal.org.



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