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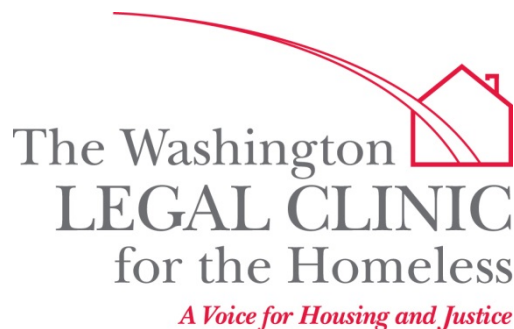
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**Committee on Government Operations  
Michael A. Stoops Anti-Discrimination Act, Fair Tenant Screening Act,  
and Eviction Record Sealing Authority Act  
Amber W. Harding  
October 28, 2020**

The Legal Clinic envisions – and since 1987 has worked towards – a just and inclusive community for all residents of the District of Columbia, where housing is a human right and where every individual and family has equal access to the resources they need to thrive. This testimony is submitted in support of the Michael A. Stoops Anti-Discrimination Act, the Fair Tenant Screening Act, and the Eviction Record Sealing Authority Act.

**Michael A. Stoops Anti-Discrimination Act**

The People for Fairness Coalition and the National Coalition for the Homeless have been leading the charge on this bill for years. We regularly get calls from people who are homeless who have been discriminated against but whom we cannot help because homelessness is not a protected class. These are not cases that are covered under any other part of the Human Rights Act: people living in shelters who can't get interviews for jobs if they use the shelter address on their applications, people not allowed to enter businesses to purchase goods because the store employees know or assume they are homeless, people who report police telling them to "move on" when they are violating no law because neighbors don't want homeless people around, and people who are assaulted or threatened with violence merely because they appear to be homeless.. Then there are the ways in which laws are enforced differently against people who are homeless than they are towards non-homeless residents. Many homeless persons have been cited for public urination when they have no access to a bathroom, but few bar-hoppers or college students are ever cited for the same behavior. Likewise, many homeless people are threatened with arrest or loss of property for "public camping," but few housed protesters or Kingman Island campers get the same treatment.

While nearly 9/10 people experiencing homelessness are Black and many others belong to protected classes, discrimination against people for their homelessness is separate and distinct from other forms of discrimination. Although we believe DC should aspire to be "human rights city" by providing enough affordable housing to end homelessness, until that goal is realized, the least it can do is protect people from discrimination while they are homeless.

### Fair Tenant Screening Act and Evictions Record Sealing Authority Act

Since 2015 I have chaired or co-chaired a workgroup on eliminating barriers to rental housing for DC residents experiencing homelessness. This workgroup was created to implement a section of the Homeward DC plan to end homelessness when the Interagency Council on Homelessness recognized that restrictive or unfair housing eligibility policies and practices were interfering with efforts to efficiently and effectively end homelessness. Eventually the workgroup became an independent workgroup of advocates, organizers, government agencies and service providers.

At our first meeting in September of 2015, we identified major barriers to housing beyond the obvious lack of affordability. We identified credit, rental history, criminal history and voucher discrimination as the most prevalent and significant barriers to rental housing for people experiencing homelessness. The workgroup determined early on that, no matter how many tweaks we made to agency practice or services, housing applicants would still face insurmountable barriers unless landlords were required to implement fair, rational and nondiscriminatory screening standards. We reviewed tenant screening legislation from many other jurisdictions and developed legislative proposals that eventually became the Fair Criminal Records Screening Act (which went into effect in 2014), the Fair Tenant Screening Act, the Eviction Record Sealing Authority Act, and parts of the Fairness in Renting Act.

Our workgroup learned quickly that landlords are relying on background screening companies to tell them whether they should rent to an applicant, often with near total deference to the company. There is very little transparency to the business practices of screening companies, including what data they are accessing and how they rate applicants. We tried to get the companies to speak to us for years, only to be ignored or told that the algorithm was proprietary.

Over the years we have heard countless stories of landlords using arbitrary or even shifting standards to deny applicants housing, particularly extremely low-income applicants who are trying to rent with a housing subsidy. Last fall, we held at least 8 community sessions to hear from people who are homeless about what was keeping them from finding a home, besides affordability. Here are the most common things we heard:

- Minimum income requirements set at a level that would screen out any person renting with a voucher or rapid re-housing;
- Exorbitant fees that are impossible for low-income renters to pay: including up to \$120 per adult household member application fees, several hundred dollar “holding fees,” and “amenity fees” of \$1000 or more;
- Not telling applicants what the eligibility standards are and then denying them with broad reasons given such as “credit,” sometimes only after finding out they have a voucher;
- Denying applicants for having eviction cases on their record, even if they won their case, it was a mistake, or they never got evicted;
- Denying applicants because a background screening company has recommended they be denied, without any reason given;
- Widely divergent standards for screening, and little to no transparency or accountability for eligibility determinations

While landlords are not allowed to discriminate against people based on protected classes, including source of income or vouchers, many landlords use credit or rental history, minimum income requirements or exorbitant fees as pretext to deny people housing based on race, family size, disability, source of income, or other protected classes. Landlords are bound to no law when it

comes to deciding what screening standards they should use for credit or rental history or minimum income requirements. No law limits the amount or type of fees that can be charged to applicants, other than if it is a security deposit. This gives landlords near carte blanche to use opaque, arbitrary or unreasonable standards as cover when bias is the real motivation.

Even when landlords carry no conscious bias towards low-income housing applicants in DC, the majority of whom are Black, using credit or rental history as a blunt tool to deny applicants compounds the racism that is inherent in both credit and eviction systems. Credit scores and history reflect a systemically racist system that includes predatory lending, denial of opportunities to build credit and other racist practices.<sup>1</sup> Using credit to deny a housing applicant without looking more deeply into whether it fairly reflects the applicant’s likelihood of being a good tenant is deeply problematic. Similarly, a recent Georgetown study, which looked at four years of eviction data, found that evictions disproportionately took place in Wards 7 and 8 and that, the more Black renters there are per census tract, the more evictions took place.<sup>2</sup> Landlords disproportionately target Black DC residents for eviction and therefore reliance on eviction history as a predictor of good tenancy similarly compounds the effects of racism.

The Georgetown eviction study also highlights the unreasonable reliance on eviction records as determinants of good tenants:

Th[e] public availability of eviction records means that landlords can and do access them—often with the help of third-party data aggregating companies—to legally discriminate against tenants who are looking for housing after receiving an eviction filing or being evicted. Public eviction records thus create a sort of “blacklist,” leaving a lasting mark on tenants who have experiences of the eviction process... Since the overwhelming majority of tenants with an eviction filing do not ultimately get evicted and have no legal judgment against them, public records may mischaracterize the experiences of low-income tenants. Public records follow tenants through their residential records and often through their credit records, and have been shown to have a negative impact on their future housing opportunities.

We believe that the Fair Tenant Screening Act and the Eviction Record Sealing Authority Act, along with the Fairness in Renting Act, combine to establish a fairer system for renters in DC. While the Eviction Sealing bill seals eviction records, we know that landlords and background screening companies will still inquire about those records unless they are prohibited from doing so. The Fair Tenant Screening Act sets specific and enforceable standards for what landlords can inquire about or use when it comes to rental and credit history, strengthens the law that prohibits voucher discrimination, and holds background screening companies liable for violations.

We look forward to working with the Committee to reconcile Fair Tenant Screening Act, the Eviction Sealing Authority Act and the Fairness in Renting Act—to make sure all the laws are easily enforceable in the court and in the Office of Human Rights, with a full range of penalties and damages, and that background screening companies are held liable for violations in all three bills. We also hope the Committee is open to adding a cap on application fees and a prohibition on any

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<sup>1</sup> See “Credit scores are supposed to be race-neutral. That’s impossible.”

<https://www.washingtonpost.com/business/2020/10/16/how-race-affects-your-credit-score/?arc404=true>

<sup>2</sup> Brain J. McCabe, Eva Rosen “Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability,” <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqq9a8pyu8ukeuk>

mandatory fees other than application fees and security deposits and we think a first-in-time rule might improve the bills. We will be following up with specific suggested language for amendments.