SB 54 AN ACT CONCERNING A LANDLORD'S ABILITY TO REVIEW CRIMINAL RECORDS RELATING TO A PROSPECTIVE TENANT.

HB 5712 AN ACT CONCERNING THE CONNECTICUT CLEAN SLATE LAW.

HB 5713 AN ACT CONCERNING INQUIRIES ABOUT THE CRIMINAL CONVICTIONS OF A PROSPECTIVE TENANT.

Housing Committee Public Hearing
02.07.19

Dear Senator Bradley, Representative McGee, and Ranking Members Senator Hwang and Representative Dauphinais and Members of the Housing Committee:

My name is Carrie Rowley and I am submitting testimony representing the Connecticut Apartment Association (CTAA). CTAA represents over 50,000 units, the largest number of apartments represented by any single association in the state. CTAA members consist of the state's leading firms in the multifamily rental housing industry, many of whom manage national portfolios. The association's mission is to actively lead the apartment industry in providing quality housing by educating, advocating and connecting property owners, managers and vendor partners. Our parent organization, the National Apartment Association (NAA), represents more than 9.2 million apartment homes throughout the United States, Canada and Europe.

I would like to address the following bills in my testimony:

SB 54 – *An Act Concerning a Landlord's Ability to Review Criminal Records Relating to a Prospective Tenant.*
HB 5712 – *An Act Concerning the Connecticut Clean Slate Law*
HB 5713 – *An Act Concerning Inquiries About the Criminal Convictions of a Prospective Tenant*

The CTAA supports the committee's efforts to address the matter of inmate reentry and we look forward to working with the committee on devising policies that do not unfairly sanction property managers and landlords who undertake sensible measures to provide safe stable housing to present and future tenants.
CTAA believes there are policies and procedures that can be adopted that when implemented can assist in achieving the goals the committee is looking to address.

Personal Experience:

Currently, landlords, management companies and property managers work with screening companies to set up guidelines for an applicant to an apartment community. These are not set in stone and are made to be flexible for the situation.

I was a property manager for the better part of nine years and have worked in the multi-family housing industry for ten years. In my experience as a property manager, I have had many occasions where prior convictions came up in the application process. This was not an automatic denial, but typically something I reviewed and

researched. As an example, I had an applicant for an apartment and who had a couple convictions come up. The convictions were for an open container (alcohol) when the applicant was in college. This was not something I considered to be an item of concern for my community at large and was not repeated. Therefore, I submitted my recommendations to the management company, and the applicant was approved.

On the other hand, I have seen where applicants have had convictions over an extended period of time which included either violent offenses and/or ongoing behavior that could compromise the safety and security of other residents on property. These were applicants who had been dealing drugs or had assault type of convictions on their record. If the applicant had been approved, the history of the applicant showed that it wasn't a one-time occurrence and would likely occur again. An additional occurrence, if on property, would compromise the safety and security of all of my residents as well as open up the company to significant liability. My responsibility was to the community of residents on property and to the owners. Apartment communities are businesses and must be able to operate in a way that allows them to continue to maintain the property, as well as address safety and security on the property.

I did have an unfortunate experience at a property I worked at in which three drug dealers moved into the property. The previous history did not show up in the application process for reasons I don't know. Within a month, there was a significant uptick in criminal activity on the property including harassment and intimidation of other residents as well as a reported sexual assault and gun violence. The police department began to daily monitor the property. However, the reputation of the company and the occupancy of the apartment community took a nose dive. The residents were eventually evicted, however the damage had already been done, not just in the reputation and occupancy, but also in actual physical damage to the apartments in which these individuals lived.

Solutions:

There are policy solutions which are reasonable and workable. Some of these include transitional housing, certificates of housability, security deposit guarantee programs, establishing standards of proof, implementing the HUD Guidelines from 2016 by providers of housing and real estate-related transactions, and establishing a working group of landlords and landlord advocates for establishing screening criteria. The working group would serve to investigate and establish guidelines for screening criteria which work within current Fair Housing regulations and HUD guidance.

Impact of Implementation of SB 54, HB 5712, & HB 5713:

If SB 54, HB 5712, and HB 5713 are made into law, CTAA feels a significant burden will be placed on property managers and landlords. SB 54, An Act Concerning a Landlord's Ability to Review Criminal Records Relating to a Prospective Tenant places a burden by limiting our ability to see if the behavior is of a more violent, or repetitive behavior which becomes a significant disruption on property.

HB 5713, An Act Concerning Inquiries About the Criminal Convictions of a Prospective Tenant, actually seems completely backwards and opens up significant liability for a landlord. Per the language in HB 5713 and the statement of intent, a landlord must first offer the housing (i.e., an accepted application) without running a background check. Then, the landlord can run a background check and deny the applicant. A primary rule of thumb for Fair Housing is that you do not do for one what you do not do for another, or more simply put, what you do for one, you do for all. HB 5713 creates a secondary standard of a background check for some but not all. By separating the two parts of the application process, HB 5713 violates the Fair Housing Act in two significant ways. The first is through discrimination in terms or conditions; the second is through disparate impact as defined and added to the Fair Housing Act in 2013.

Per the Connecticut Fair Housing Center website, under "What does discrimination look like?", the definition of 'discrimination in terms and conditions' is when a person is treated differently by a landlord, owner, or real estate agent and given different conditions, terms, rules or requirement than others because the person is a member of a protected class (https://www.ctfairhousing.org/fair-housing-overview/). HB 5713 by this definition violates Fair Housing as it creates discrimination in terms and conditions. The prospective resident then can sue the landlord based on fair housing when the violation of fair housing becomes written into the law through HB 5713.

Per HUD Guidelines and changes implemented to the Fair Housing Act in 2013, "Final §100.500(a) provides that '[a] practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, familial status, or national origin."
(https://www.hud.gov/sites/documents/DISCRIMINATORYEFFECTRULE.PDF, page 11467-8).

Though a person who is reentering society from incarceration is not necessarily part of a protected class, based on the information from the Commission on Equity and Opportunity (CEO) in January 2019, 'Report and Recommendations from the Reentry Working Group', disparate impact is an inevitable result of the implementation of HB 5317. On page 13, under "Racial and Ethnic Disparities and Economic Inequality", "… African-Americans, Latinos and Puerto Ricans are still disproportionately incarcerated relative to whites in Connecticut. In 2014, blacks in Connecticut were 9.4 times and Hispanics 3.9 times more likely to be incarcerated relative to whites adjusting for population size." HUD establishes in the guidelines for the use of criminal records for housing providers and real-estate transactions, discriminatory liability of the landlord even if the conduct or practice was unintentional or did not intend to discriminate (see https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF). HB 5713 sets up a standard in which a housing provider is essentially required to practice standards which violate the Fair Housing Act.

HB 5712 follows the intent of HB 5713, but becomes an enforcement piece for HB 5713 by sealing records for convictions over seven years. There absolutely are convictions which cause concern by a landlord when renting to an applicant, some of which may have been before seven years. Therefore, the sealing of all records does not take into account the severity and impact of a crime and conviction particularly with repeat offenders.

Conclusions & Summary:

The implementation of SB 54, HB5712 and HB 5713 places excessive burden on property managers in liability and in practice. HB 5713 in particular violates the Fair Housing Act through discrimination in terms and conditions and through disparate impact and should not be implemented in Connecticut. The CTAA supports efforts to address the matter of inmate reentry, and seeks to find solutions that work within Fair Housing and can achieve the goals put forth by the CEO Reentry Working Group and other concerned parties within the State of Connecticut.

Thank you for the opportunity to speak to this issue.

Sincerely,

Carrie Rowley
Co-Chair, Government Relations
Connecticut Apartment Association (CTAA)