



**Testimony before the House Financial Institutions, Housing & Urban
Development Committee**

Bill Faith, Executive Director, COHHIO

November 28, 2017

Chairman Dever, members of the Financial Institutions, Housing & Urban Development Committee, thank you for the opportunity to testify on House Bill 282.

I'm the executive director of the Coalition on Homelessness and Housing in Ohio, an organization that works with hundreds of local organizations and partners to fight homelessness and promote safe, decent, fair, affordable housing. We feel strongly about our work, because without a safe place to call home, Ohioans cannot fully participate in the opportunities afforded by this great state.

House Bill 282 would make damage to residential rental property a violation of the state's criminal mischief statute. It would also require metropolitan housing authorities to ban anyone found guilty of this violation from accessing public housing or Section 8 voucher rental assistance for three years.

Judging from proponents' testimony, this bill appears to be based on a handful of anecdotes and negative stereotypes about tenants, who comprise one-third of Ohio's total 4.5 million households. While middle-class Ohioans have increasingly gravitated to

the rental market in recent years, lower-income Ohioans still represent the vast majority of these 1.5 million households.

It's important to note that many tenants struggle to meet their rent obligations. The average household income for Ohio renters is only \$12.87/hour. But tenants need to earn at least \$19.86/hour to be able to afford the cost of rent for a modest three-bedroom apartment in Ohio. Statewide, 48 percent of Ohio's renter households spend at least 30 percent (the affordability standard) of their income on rent and utilities, and more than a quarter of the state's tenants – 400,000 households – spend over half their income on housing costs.

We oppose this legislation along with 42 other organizations (see attached) for several reasons, but primarily because it could ultimately cause greater housing insecurity for Ohio families.

While there are certainly some bad apples among Ohio's 1.5 million tenant households, there are also plenty of negligent and/or absentee landlords, whose failure to properly maintain their properties. In fact, negligent repairs and maintenance to rental units is one of the most common subjects we hear about in calls placed to COHHIO's Housing Information Line, which offers free legal information to both tenants and landlords.

House Bill 282 is a one-sided approach that attempts to punish tenants for damage they cause to landlords' property without addressing the damage to tenants and their communities caused by landlords who fail to perform the basic maintenance and repairs currently required by law. I'm sure some tenants occasionally cause more damage to their landlords' property than their security deposits will cover. However, I would argue that the dangers to families and their communities caused by negligent and/or absentee landlords happens with greater frequency.

By passing House Bill 282 bill, the state would be putting the butcher's thumb on the scales of justice in favor of landlords. As discussed in written testimony submitted by the Legal Aid Society of Southwest Ohio, this legislation will give landlords a powerful new tool to coerce tenants to pay for property damage without even going to court. All a landlord has to do is threaten to have a tenant criminally prosecuted unless they pay for property damage that could have occurred before or after their tenancy or was caused by someone else. Many tenants are unaware of their rights and unable to afford legal representation and will do whatever it takes to avoid going to jail.

Criminalizing rental property damage creates a scenario where tenants could be criminally prosecuted for accidents or for damage that could have disastrous results for vulnerable populations. Let's consider a couple of examples:

- An elderly tenant is caring for grandchildren. Her daughter, who is struggling with addiction, relapses, gets in an argument and causes significant damage to the apartment while visiting her children. Under this bill, the grandmother could go to jail and her grandchildren could wind up in foster care.
- A tenant suffering from mental illness becomes agitated and beats his head repeatedly against the wall until making a hole in the drywall. Under this bill, a tenant suffering from an acute mental health crisis could wind up in jail.

House Bill 282 will further burden county and municipal courts with increased criminal charges and collections. This runs contrary to ongoing sentencing reform efforts by the legislature and administration; instead, this proposal would add a new criminal offense and turns what has always been a purely civil matter into a crime. While I understand property damage does happen and is incredibly frustrating for landlords, locking up tenants would not help landlords recover any money owed.

House Bill 282 also conflicts with the legislature's often-stated goal of getting more Ohioans gainfully employed because it will make it more difficult for people who have

been charged with criminal mischief to secure future housing and employment. Any potential landlord or employer that sees a criminal mischief charge for property damage is less likely to rent to or hire the applicant.

These are some of the reasons we believe House Bill 282 will exacerbate housing insecurity in Ohio. To sum it all up, we believe the state should not pick winners and losers in what is really a simple business relationship between two private parties.

With your permission, I'd like to call up Joe Maskovyak, COHHIO's Fair and Affordable Housing Coordinator. As an attorney specializing in housing law, Joe can elaborate on some of the practical and legal problems surrounding this legislation.

Joe Maskovyak: Thank you Chairman Dever and members of the Financial Institutions, Housing & Urban Development Committee.

I have been an attorney for more than 30 years. I spent most of them working for Legal Aid, including managing the Housing team at Columbus Legal Aid. I have represented over 1,000 tenants and have supervised attorneys who represented thousands more. My experience informs me on how this legislation will play out in the real world.

House Bill 282 inappropriately seeks to insert the criminal justice system into what is rightly a civil matter – a basic commercial transaction between two private parties. The legislation would enable landlords to use prosecutors like their own private attorneys to file property damage cases, prosecute them and secure a judgement in their favor. Then the courts would collect restitution, with the ability to garnish wages, and hand the money over to the landlord. In effect, we will be instituting a system using taxpayer resources to collect private debts of landlords, and for those unable to pay, we will essentially have created debtors' prisons.

This legislation is unnecessary because landlords already have the ability to obtain compensation for property damage that exceeds the amount withheld as a security deposit. In addition to keeping a tenant's security deposit, landlords can file civil complaints seeking damages. Few tenants have the resources to hire an attorney to defend against such claims, and Legal Aid chapters typically accept very few landlord-tenant cases.

Furthermore, the kinds of major property damage that proponents say this bill targets – like removal of copper plumbing and appliances – are already criminal violations of theft and vandalism that should be very easy to prosecute given the fact that landlords have the suspects' names, addresses, telephone numbers, etc.

Proponents have also said this legislation is designed to act as a deterrent against intentional property damage by tenants. The fallacy here is that this bill would revise the state's criminal code, but not the landlord-tenant law that clearly spells out each party's rights and responsibilities. So tenants won't even know this law exists, which mitigates any deterrent effect it might have.

The final piece of the bill adds a "collateral consequence" for tenants convicted of criminal mischief. In addition to jail time, increased fines, and restitution, the bill seeks to pile on by requiring Public Housing Authorities (PHA) to deny anyone so convicted from accessing public housing or a Section 8 housing choice voucher for a period of 3 years.

The Department of Housing and Urban Development has very few mandatory reasons for denying assistance (lifetime sex offenders, meth labs, prior eviction from federally subsidized property, illegal drug use). HUD has also expressed concern that PHA's exclude many more applicants than necessary and has criticized PHA's use of discretion to exclude applicants with a felony conviction (and HB 282 is only a misdemeanor). This bill essentially equates a conviction for criminal mischief with criminal drug activity because they both carry a three-year ban. This conflicts with

reforms currently being sought in the housing community and especially does harm to those involved in reentry housing, as exhibited by the reentry coalition testimony. Restricting those formerly incarcerated from obtaining affordable housing leads to instability, which in turn leads to recidivism. We are also unaware of any state that has invoked mandatory denials for PHA's, encroaching on their discretion.

The proposed ban also raises federal preemption concerns regarding the state's ability to control who qualifies for federal housing assistance. Beyond the handful of mandatory exclusions mentioned above, HUD has left the question of who can access assistance provided by PHAs up to the housing authorities themselves because they are in the best position to review the circumstances in each case. And HUD has given discretion to PHAs to deny applicants who commit criminal mischief if they so choose. This bill reflects a lack of trust that PHA's can make the right decision by removing that choice and suggests the state knows better than the folks who manage public housing.

Furthermore, House Bill 282 raises serious fair housing and civil rights issues for the state if it is found to have a disparate impact on tenants based upon one of the protected classes in federal and state fair housing laws. I believe Jim McCarthy, of the Miami Valley Fair Housing Center, addresses this subject in more detail during his testimony.

Thank you for the opportunity to testify. We would be happy to answer any questions you may have.