

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 454 (Senator Sydnor)
 Judicial Proceedings

Real Property – Alterations in Actions for Repossession and Establishment of Eviction Diversion Program

This bill creates an Eviction Diversion Program in the District Court to reduce the incidence of judgments for repossession of residential property and to promote continuity of housing. The Chief Judge of the District Court (1) must establish the program in each county that processed 10,000 or more claims for the repossession of residential property in fiscal 2019 and (2) may establish the program in each county that processed 10,000 or fewer claims in fiscal 2019. The bill also makes various procedural changes in failure to pay rent cases, including requiring a status conference between the parties and expanding permitted lengths of stay after a judgment for possession has been awarded.

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$1.2 million beginning in FY 2022. Minimal decrease in general fund/special fund revenues associated with filing fees, as discussed below.

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF/SF Rev.	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$1.2	\$1.3	\$1.4	\$1.4	\$1.5
Net Effect	(\$1.2)	(\$1.3)	(\$1.4)	(\$1.4)	(\$1.5)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Each Eviction Diversion Program must (1) facilitate at-court or remote screening of tenants and the provision of eviction prevention service provider services as appropriate and (2) operate in support of the District Court’s docket management for actions under Title 8, Subtitle 4 of the Real Property Article (landlord-tenant matters).

An “Eviction Prevention Service Provider” is a governmental, nonprofit, or charitable organization that provides the following services for the purpose of preventing housing insecurity, eviction, or homelessness:

- social work services;
- counseling;
- financial assistance for rent or relocation;
- alternative dispute resolution; or
- civil legal aid.

Landlord Responsibilities

The bill requires that, within five days after receiving a request from a tenant, a landlord must provide the tenant with a written statement that (1) lists all debts and credits made during the tenancy and (2) identifies any past due rent that the tenant must pay in order to maintain the tenancy.

In addition to existing statutory requirements, prior to filing a failure to pay rent claim in the District Court, the bill requires a landlord to deliver written notice to the tenant that meets specified requirements, including:

- the date of the notice and a description of the manner of delivery of the notice;
- a description of the past due rent in dispute, including the amounts of rent and late fees due to the landlord, excluding charges related to utilities, services, other fees, fines, or court costs, and the specific periods of time to which the past due rent and fees correspond;
- a statement informing the tenant that, on request of the tenant, the landlord will promptly provide an itemized accounting of debts and credits;
- a request that the tenant apply for financial assistance from a service provider or that the tenant negotiate a payment plan through the District Court Alternative Dispute Resolution (ADR) Office, or the Eviction Diversion Program;

- a statement that the landlord may initiate an action for repossession in the District Court if the tenant does not respond within 10 days after delivery of the written notice and that the tenant has the legal right to dispute the charges; and
- contact information for the landlord and specified resources, including, if applicable, the Eviction Diversion Program.

The written notice must be delivered by first-class mail and affixed to the door of the premises, or if elected by the tenant, delivered by email. On delivery of the notice and for 10 days after the date of delivery, the landlord must make affirmative, good-faith efforts to resolve the claim. Such efforts may include (1) when applicable, cooperating with or facilitating the tenant's application for financial assistance for rent from a governmental, nonprofit, or charitable entity and (2) negotiating a payment plan or other agreement through the local court's Eviction Diversion Program or ADR Office. A landlord is prohibited from filing a complaint prior to satisfying these requirements.

The requirements are also deemed satisfied if the tenant (1) does not respond within 10 days after delivery of the notice; (2) fails or refuses to participate in the completion of an application for financial assistance for rent, the negotiation of a payment plan, or other agreement; or (3) materially breaches the terms of a payment plan or other agreement made in an effort to resolve the claim.

Complaint for Repossession of Residential Property

Under the bill, a complaint for repossession must include a statement on a form provided by the court that:

- affirms and states the date that the landlord delivered the required notice;
- certifies that the landlord made an affirmative, good-faith effort to resolve the landlord's claim through the application of financial assistance or negotiation of a payment plan or other agreement, and that these efforts are complete;
- describes when efforts were initiated and completed; and
- states that all efforts made failed to satisfy the landlord's claim.

A tenant may challenge assertions made by a landlord, and the court may dismiss the landlord's complaint on a showing of sufficient cause.

Procedural Alterations

The bill repeals statutory provisions that refer to the tenant's appearance at trial on the fifth day after the filing of the complaint, including the requirement that if a trial has not occurred and the tenant has not become current (on rent) since the filing of the complaint, the court must enter a judgment in favor of the landlord if the complaint so requests. Instead, the landlord and tenant must appear before the court for a status conference between 10 and 15 days after the complaint is filed. A party may request, and the court must subsequently grant, a recess for a reasonable time to allow for the immediate on-site or remote screening by an available service provider or, if established for the District Court of the county where the property is located, the court's Eviction Diversion Program. The bill also repeals provisions that authorize the court to adjourn a trial under specified circumstances to enable either party to procure necessary witnesses. Instead, the bill establishes that, on request of a party made at any time after the filing of a complaint up to the commencement of a trial on the merits of the complaint, the court *must* grant a continuance to allow time for the requesting party to seek attorney representation. After the granting of a continuance, the court may grant further continuances, as specified.

At the status conference, the court must review the complaint for sufficiency and hear from each party on their efforts to resolve the complaint. The court may order the parties to participate in mediation or a settlement conference through the court's ADR Office or, if established, the court's Eviction Diversion Program. The court may continue the status conference in order to accomplish an alternative resolution, as specified.

If the parties agree to resolve the landlord's complaint without a trial on the merits, they must submit an agreement to the judge who, if satisfied that the terms of the agreement are fair and equitable, must dismiss the landlord's complaint. If the parties do not agree to resolve the landlord's complaint, the court must allow the tenant to present any defense or a counterclaim, related to rent or debts, to the landlord's complaint.

If the court is satisfied that the tenant has proffered a meritorious defense or counterclaim, the court must schedule a trial to be held no more than *10* days after the date on which the defense or counterclaim was heard. The court may order a party to provide to the other party a copy of any written instrument, not privileged, on which a claim or defense is based in advance of a trial.

The court *must* dismiss the complaint if the landlord or the landlord's agent or attorney fail to appear at the status conference. The court may grant judgment on the landlord's complaint in accordance with statutory provisions if the tenant or tenant's attorney fails to appear for the status conference. If both parties attend the conference, but are unable to reach a resolution, the court may schedule a trial to decide the matter.

Following a judgment in favor of the landlord, the bill increase the time for repossession of the property from within 4 days to 10 days after the trial, or later than 10 days if the tenant demonstrates that the surrender of the premises within 10 days would endanger the health or life of the tenant or any other occupant of the premises. The bill makes numerous conforming changes regarding the 10-day timeframe and repeals the requirement that the tenant present a certificate signed by a physician.

The bill also repeals the 15-day limit on the extension of time for repossession, granting the court unlimited discretion in determining how long a tenant has to vacate the property if health and safety concerns prevent the tenant from vacating the premises within the initial 10 days. The court may also order an emergency stay of execution of a warrant of restitution for a residential property on a motion presenting evidence that eviction of the tenant would endanger the health or life of the tenant or any other occupant of the premises, or impede an imminent act by a governmental or charitable organization to prevent the homelessness of the tenant or any other occupant of the premises.

Current Law: In general, a landlord seeking to evict a tenant initiates the process by filing the appropriate action (*e.g.*, failure to pay rent, breach of lease, *etc.*) in the District Court. If awarded a judgment by the court, the landlord files a warrant of restitution, which, once reviewed and signed by the court, authorizes an eviction. The warrants of restitution are forwarded to the local sheriff's office, who is then authorized to carry out the evictions. Statute sets forth numerous specific requirements for such actions, including those related to written notice prior to filing certain actions.

In failure to pay rent actions, if judgment is in favor of the landlord and the tenant does not return the premises to the landlord or otherwise satisfy the judgment by paying the applicable rent and late fees within 4 days, as specified, the court must, at any time after 4 days have elapsed, issue a warrant of restitution. The court may, upon presentation of a certificate signed by a physician certifying that surrendering the property within the 4-day period would endanger the health or life of the tenant or other occupant, extend the time for surrender of the premises as justice may require, up to 15 days. Statutory provisions also authorize stays of execution in other specified circumstances, such as in the event of extreme weather conditions.

If the landlord does not order a warrant of restitution within 60 days from either the date of judgment or the expiration date of any stay of execution (whichever is later), then (1) the judgment for possession must be stricken and (2) the judgment must generally count toward the threshold for the number of judgments at which a tenant no longer has the right to redemption of the leased premises, as specified.

State Expenditures: General fund expenditures for the Judiciary increase *by a minimum* of \$1,236,648 in fiscal 2022, as discussed below. The bill requires that the District Court

establish the Eviction Diversion Program in counties that processed more than 10,000 claims for repossession of residential property in fiscal 2019. The Judiciary advises that 10 counties meet this criteria, as illustrated in **Exhibit 1**.

Exhibit 1
Repossession of Residential Property Claims
Fiscal 2019

<u>County</u>	<u>Total Claims</u>
Allegany	1,650
Anne Arundel*	63,120
Baltimore City*	199,859
Baltimore County*	270,670
Calvert	8,863
Caroline	1,053
Carroll	3,058
Cecil	6,244
Charles	8,999
Dorchester	3,519
Frederick*	10,065
Garrett	343
Harford*	19,832
Howard*	30,245
Kent	354
Montgomery*	60,226
Prince George's*	184,423
Queen Anne's	431
Somerset	3,954
St. Mary's	5,706
Talbot	763
Washington*	13,120
Wicomico*	14,630
Worcester	1,483

*Required to have an Eviction Diversion Program under the bill.

Source: Judiciary; Department of Legislative Services

The Judiciary advises that implementation of the bill necessitates significant expenditures, including those associated with computer programming costs, additional District Court
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clerks to reflect the increased workload from the protracted process for failure to pay rent cases (*e.g.*, required status conferences), and anticipated increased referrals to the District Court ADR Program. Accordingly, general fund expenditures increase by a *minimum* of \$1,236,648 in fiscal 2022 to hire eight District Court clerks for the highest-volume jurisdictions, one District Court Clerk coordinator, six ADR roster program managers, and one data analyst. This estimate includes salaries, fringe benefits, one-time start-up cost (including computer programming cost), and ongoing operating expenses.

Positions	16.0
Salaries and Fringe Benefits	\$1,041,886
Operating Expenses	89,300
One-time Programming Costs	<u>105,462</u>
Minimum FY 2022 General Fund Expenditures	\$1,236,648

Future year administrative expenditures, which increase from \$1,334,755 in fiscal 2023 to \$1,475,021 by fiscal 2026, reflect full salaries with annual increases and employee turnover and ongoing operating expenses. As noted, this estimate reflects *minimum* expenditures and likely does not fully reflect implementation costs of the Eviction Diversion Programs in the jurisdictions. To the extent that the District Court can implement programs through partnerships with nonprofit entities, volunteers, or other similar resources, significant additional expenditures may be somewhat mitigated. However, considering the volume of failure to pay rent actions handled annually and the specific provisions regarding Eviction Diversion Programs within the bill, such as their involvement in negotiating payment plans and otherwise facilitating mediations or settlement conferences, significant expenditures beyond those shown above are possible.

State Revenues: Any impact on the number of cases filed has a corresponding impact on general fund filing fee revenues collected by the Judiciary (as well as on special fund revenues from surcharges imposed on filing fees). To the extent that the bill’s provisions decrease the number of landlord-tenant cases filed, general/special fund revenues decrease. For purposes of this fiscal and policy note, it is assumed that general/special fund expenditures decrease at least minimally from fewer filings.

Small Business Effect: Landlords are subject to more stringent requirements in failure to pay rent actions, including notice requirements prior to filing, mandated status conference, and increased waiting periods before property may be repossessed. Landlords may also benefit to the extent that more tenants are referred to programs that facilitate rent payments or assistance.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 52 (Delegate Wells) - Judiciary and Environment and Transportation.

Information Source(s): Carroll, Montgomery, and Prince George's counties; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2021
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