

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 112 (Delegate Henson)
 Judiciary

Residential Property – Eviction Proceedings – Sealing of Court Records

This bill requires the District Court to seal all court records related to an eviction proceeding regarding a residential property. Specifically, the records must be sealed (1) 30 days after the final resolution of the eviction proceeding, if the proceeding did not result in a judgment in favor of the landlord or (2) subject to a specified exception, three years after the final order or judgment, if the proceeding resulted in a judgment in favor of the landlord. The bill applies retroactively and must be applied to affect *all* actions of evictions relating to residential property.

Fiscal Summary

State Effect: General fund expenditures increase by \$866,600 in FY 2022; future years reflect annualization and ongoing costs. Revenues are not affected.

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0.9	1.0	1.0	1.1	1.1
Net Effect	(\$0.9)	(\$1.0)	(\$1.0)	(\$1.1)	(\$1.1)

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: Minimal.

Analysis

Bill Summary: Although the District Court is generally required to seal all court records relating to an eviction proceeding three years after a final order or judgment in favor of the

landlord, if a tenant is a defendant in a subsequent eviction proceeding during the three-year period, the court must seal all records relating to the earlier eviction proceeding three years after the most recent final order or judgment in an eviction proceeding involving the tenant.

The bill also authorizes the District Court to seal court records relating to an action of eviction at any time on the motion of the tenant, if the tenant is able to demonstrate by a preponderance of the evidence that (1) the tenant was evicted from a unit under a State or federal assistance program, as specified; (2) the landlord's initiation of the eviction proceeding was a retaliatory action in violation of existing statutory provisions; (3) the landlord initiated the eviction proceeding because of an incident that would constitute a defense to an action for possession under existing State or federal law related to domestic violence, dating violence, sexual assault, or stalking; or (4) the parties entered into a settlement agreement that did not result in the landlord recovering possession of the residential property.

The court may also seal records if it determines that there are other grounds justifying the sealing of court records related to the action of eviction. For the purposes of appeal, orders related to sealing records are considered the final order.

The court must provide a copy of the order to the tenant or the tenant's counsel. The tenant may also retrieve a copy of the order at any time from the clerk of the District Court, without a showing of need, on proper identification.

A record may only be unsealed on written request by the tenant or on order of the court on a showing of compelling need. The court is prohibited from ordering the redaction of a tenant's name from any published opinion of the court that refers to a record sealed under the bill.

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 \$866,562 in fiscal 2022 that accounts for the bill's October 1, 2021 effective date. The bill requires that the District Court process and seal specified residential landlord-tenant records and includes a retroactive provision. Accordingly, the Judiciary advises that implementation of the bill necessitates significant expenditures, including those associated with computer programming costs, ongoing administrative costs, and additional District Court clerks to reflect the increased workload from tracking and processing the sealing of residential eviction records.

The Judiciary advises that the court will be required to link and track a significant number of prior landlord-tenant cases that the court does not have the ability to efficiently complete. Furthermore, the bill's retroactive provision effectively requires the sealing of all prior court records related to evictions (subject to compliance with the applicable 30-day and three-year timeframes established within the bill). Landlord-tenant matters routinely represent a high volume of the cases filed in the District Court each year. For example, in fiscal 2019, 669,427 failure to pay rent cases (which represent the largest volume of landlord-tenant related actions) were filed in the State; that same year, 230,968 landlord-tenant cases resulted in a warrant of restitution. The Judiciary faces additional difficulty in implementing the bill due to three of the State's larger jurisdictions (Baltimore City and Montgomery and Prince George's counties) not yet completing integration of the Maryland Electronic Court (MDEC) System.

Accordingly, general fund expenditures increase by \$866,562 in fiscal 2022 to hire 15 District Court clerks. This estimate includes salaries, fringe benefits, one-time start-up costs (including computer programming cost), and ongoing operating expenses.

Positions	15.0
Salaries and Fringe Benefits	\$773,975
Operating Expenses	83,719
One-time Programming Costs	8,868
FY 2022 General Fund Expenditures	\$866,562

For purposes of this fiscal and policy note, future year administrative expenditures are estimated at \$999,100 in fiscal 2023 and increase to \$1.1 million by fiscal 2026. These expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. However, the Department of Legislative Services notes that estimated expenditures *may* be mitigated in these out-years, to the extent that (1) full implementation of MDEC statewide reduces the workload associated with these tasks in larger jurisdictions and (2) the Judiciary’s workload stabilizes once it has had an opportunity to comply with the bill’s retroactive provision and properly seal all applicable court records that were in existence prior to the bill’s effective date.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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