

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 46

(Senator Watson)

Judicial Proceedings

Criminal Law - Fraud - Possession of Residential Real Property

This bill prohibits a person from possessing (or claiming a right to possess) residential real property that the person does not lawfully possess or own with the intent to defraud another. It also establishes procedures under which a sheriff's office must remove a person who is allegedly in violation of the bill's provisions and return possession of the property to the owner. The bill preserves the owner's right to file a wrongful detainer action under § 14-132 of the Real Property Article.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions, as discussed below. Potential minimal increase in general fund expenditures for the Office of the Public Defender (OPD).

Local Effect: *Potential* significant increase in expenditures for local sheriffs' offices, as discussed below; local incarceration costs also increase minimally. No material impact on revenues. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A person in violation of the bill's prohibition is guilty of a misdemeanor and subject to imprisonment for up to 90 days and/or a maximum fine of \$500 for a first offense; imprisonment for up to six months and/or a maximum fine of \$1,000 for a second offense within two years after the first violation; and imprisonment for up to

one year and/or a maximum fine of \$2,500 for each subsequent violation occurring within two years after the preceding violation.

The bill authorizes the owner of residential real property to submit a sworn affidavit to the sheriff for the county in which the property is located, stating that a person is fraudulently in possession of the property. Upon receiving this affidavit, the sheriff must remove the person and return possession to the owner. However, a deputy sheriff may not remove a person who produces evidence of lawful possession to the law enforcement officer. The provisions do not apply if (1) the person in actual possession of the property has been granted possession under a court order or (2) a remedy is available under Title 8 of the Real Property Article (generally governing landlord-tenant actions).

Current Law:

Wrongful Detainer Actions

Wrongful detainer means to hold possession of real property without the right to do so. A wrongful detainer action is not available if (1) the person in actual possession of the property has been granted possession under a court order; (2) a remedy is available under general landlord/tenant law; or (3) any other exclusive means to recover possession is provided by statute or rule. Generally, if a person holds possession of a property to which the person is not entitled, a person claiming possession (complainant) may file a complaint, in writing, with the District Court. Once the court receives a complaint, the court must immediately summon the person in possession of the property to appear before the court on the day specified in the summons to show why the court should not restore possession of the property to the complainant. If the court determines the complainant is legally entitled to possession, the court must give judgment for restitution of the property to the complainant and direct the sheriff to deliver possession of the property to the complainant.

Landlord-tenant Actions

In general, a landlord seeking to evict a *tenant* must file the appropriate action (*e.g.*, failure to pay rent, tenant holding over, 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.

Criminal Trespass on Real Property

Statute also includes multiple prohibitions against *trespassing* on property. For example, under § 6-402 of the Criminal Law Article, a person may not enter or trespass on property that is posted conspicuously against trespass by (1) signs placed where they reasonably may be seen or (2) paint marks that meet specified requirements. Under § 6-403 of the Criminal Law Article, a person may not wantonly enter or cross over private property after having been notified by the owner or the owner's agent not to do so, unless entering under a good faith claim of right or ownership. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a \$500 maximum fine. For a second violation occurring within two years of the first violation, violators are subject to imprisonment for up to six months and/or a fine up to \$1,000. For each subsequent violation occurring within two years after the preceding violation, violators are subject to imprisonment for up to one year and/or a fine up to \$2,500.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures:

Incarceration Costs

General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities for convictions in Baltimore City.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Office of the Public Defender

OPD advises that the bill *may* result in approximately 450 new misdemeanor cases statewide for OPD each year, requiring the equivalent of three attorneys and one administrative assistant at an estimated cost of \$325,948 in fiscal 2026, increasing to \$443,012 by fiscal 2030. Although the Department of Legislative Services is unable to validate OPD's precise caseload/staffing estimate without experience under the bill, it acknowledges that general fund expenditures may increase minimally to accommodate an increased workload. To the extent OPD's case volume increases meaningfully as a direct result of the bill, OPD can request additional resources through the annual budget process.

Judiciary

Any impact on the Judiciary is not anticipated to be material.

Local Expenditures: Local sheriffs' offices may incur increased administrative and staffing costs, depending on the number of affidavits they receive and the time required to restore possession of property to owners who submit such affidavits. For example, Prince George's County estimates that the county needs to hire 15 additional sheriffs, with associated costs of approximately \$4.5 million annually. Conversely, Calvert and Howard counties do not anticipate a fiscal impact, and the Maryland Association of Counties generally advises that the bill is not anticipated to materially affect local government operations or finances.

Expenditures also increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$140 to \$350 per incarcerated individual in recent years.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Calvert, Howard, and Prince George's counties; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland State's Attorneys' Association; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 17, 2025
rh/jkb

Analysis by: Donovan A. Ham

Direct Inquiries to:

(410) 946-5510

(301) 970-5510