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SB 176

Wicomico County – Landlord and Tenant – Repossession for Failure to Pay Rent Procedures

Hearing before the Judicial Proceedings Committee, Jan. 28, 2020

Position: OPPOSE

Public Justice Center (PJC) is a non-profit, civil legal services provider that provides advice and representation to over 700 tenants throughout Maryland each year. Eviction without notice is a top concern of the renters who seek PJC's assistance. Under current law (Real Prop. art. ("RP") § 8-401), after a judicial order of repossession, neither landlords nor the courts are required to provide the tenant notice of their eviction date. Renters need and deserve timely, reliable notice of the eviction date so that they can effectively exercise their statutory right of redemption (to "pay to stay" before eviction) or to leave the property without irreparable loss of personal property.

SB 176 would not meaningfully fix this gap in due process. For Wicomico County, where **over 10,000** eviction actions have been filed in each year since 2012, the uncertainty surrounding eviction would continue to hamper the lives of thousands of women, men, and children. This bill would not curtail surprise evictions. It would worsen the surprise by creating *per se* legal "abandonment" of the tenant's personal property at the time of eviction. Without notice of a scheduled eviction date, a renting household in Wicomico County might not only lose the roof over their head, they would then also endure an irreparable termination of their right to keep their worldly possessions – including vital records, medication and medical equipment, clothes, and food. For these reasons, PJC seeks the Committee's unfavorable vote.

SB 176 fails to provide renters a reliable notice of eviction date.

At a glance, SB 176 appears to require a landlord to notify the tenant of impending eviction by mailed and posted notices. In the details, however, we find that the notice scheme is deficient and unlikely to curtail surprise evictions for two reasons:

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1. *The bill does not require notice of a scheduled eviction date.*

In subsection (d-1)(2)(ii), the required notice would specify “4. [t]he date on which the warrant of restitution was ordered by the District Court” and “5. [a] statement that repossession may occur” unless the tenant voluntarily leaves or exercises their right of redemption. These provisions fall well short of mandating notification of the specific date scheduled for the Sheriff’s execution of the warrant, i.e. the eviction date. The date of order on a warrant of restitution has only one significance in the chronology of eviction under RP § 8-401: it starts a 60-day clock for the warrant’s ultimate execution. Thus, SB 176 promises renters merely a notification that the 60-day period began. For renters facing potential eviction, the more crucial notification would be the actual date of scheduled eviction. Advance knowledge of that date provides tenants a measure of certainty by which to plan their next steps, i.e. to leave or to redeem possession.

2. *Certified mailing lowers the likelihood of delivered notice.*

Under subsection (d-1)(2)(i), the bill requires a landlord to send the notice to the tenant by certified mail with return-receipt requested. While this mailing method provides proof of mailing and a manner by which to track the delivery of the notice, it also lowers the likelihood that the tenant will ultimately receive the notice. Too often in PJC’s legal practice, certified mail notices are not delivered to the tenant’s residential address because of the tenant’s unavailability. Instead, the notice is returned to the post office. The post office location and hours of operation then become impediments to the tenant’s retrieving the notice. Consequently, the 14-day notice period provided in the bill would be invariably shortened or entirely thwarted in practice.

"Abandonment" provision in SB 176 exacerbates the impact of eviction.

SB 176 creates, as a byproduct of the notice requirement, that all “personal property in or about the leased premises at the time the warrant of restitution is executed... shall be deemed abandoned” (subsection (d-1)(5)). This means that a renter has no right to their belongings as they are being removed from the property. The policy is regressive, multiplying the harm of eviction for no other reason than to absolve the landlord’s liability for damage to the tenant’s personal property during the eviction. The harm to the evicted household far outweighs the policy’s intended benefit.

We find frequent examples of harsh, unintended consequences in Baltimore City, which has an identical abandonment policy. At the time of a surprise eviction, our clients lose critical medications and medical equipment. They lose vital records and documents crucial to their access to public benefits. We see, too, that our clients are essentially extorted by the landlord: for instance, they must pay the landlord excessively to salvage a prescription medication or family heirloom, else the item gets trashed.

There are better policies for handling a tenant’s property at the time of eviction.

Some jurisdictions afford tenants a time-limited opportunity to transport their personal property after execution of the warrant. Prince George’s County, for example, provides:

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If the tenant or the tenants' agent is present at the time the warrant of restitution is executed, the tenant shall be permitted to salvage and transport the tenant's property removed from the leased premises, after the warrant of restitution is executed, *for a reasonable period of time, not to exceed four hours*. Prince George's County Code Sec. 13-164.02. (Emphasis added.)

Outside Maryland, many jurisdictions require the landlord to hold or to store the tenant's personal property for a specified time ranging from 24 hours to 60 days. Such jurisdictions include Delaware, Florida, Maine, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Dakota, Virginia, Washington, and West Virginia.

Renters in Wicomico County, and throughout Maryland deserve timely, clear, reliable notice of a scheduled eviction. Further, they deserve policies that do not compound the harm that eviction poses financially, emotionally, and otherwise. PJC urges the Committee to consider policies that assist renters to recover from the financial perils that lead to evictions.

Please issue a report of UNFAVORABLE on SB 176. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409, ext. 237.