

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee

**FROM:** Legislative Committee  
Sara Elalamy  
410-260-1561

**RE:** Senate Bill 454  
Real Property – Alterations in Actions for Repossession and  
Establishment of Eviction Diversion Program

**DATE:** January 15, 2021  
(2/9)

**POSITION:** Oppose as drafted

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The Maryland Judiciary opposes Senate Bill 454 as drafted. This bill creates an Eviction Diversion Program in the District Court of Maryland.

While the Maryland Judiciary supports the use of alternative dispute resolution (ADR) to address eviction and landlord tenant disputes, the procedures outlined in the bill are more appropriate for the Executive Branch.

This bill would fundamentally alter the District Court process for the handling of failure to pay rent cases. The District Court hears over 650,000 failure to pay rent cases in a normal year. The bill would require the court to screen all cases, create and operate an eviction diversion program, and expand existing alternative dispute resolution (ADR) programs to ensure all tenants and landlords had the opportunity to mediate or work out a settlement of the matter. The fiscal impact will be significant. The Judiciary has not planned for the capital needs of expanding staff of the magnitude required to implement this bill. Under section § 4-503 of the Courts and Judicial Proceedings Article of this bill, the Chief Judge of the District Court is required to create an Eviction Diversion Program to include alternative dispute resolution in jurisdictions with greater than 10,000 filings in Fiscal Year 2019. The facilitation of remote screening of tenants and the prevention service providers is not feasible, because Failure to Pay Rent (FTPR) cases are not added to the MDEC case management system until post-adjudication, and with some of the largest jurisdictions in the state (Baltimore City, Montgomery County, and Prince George’s County) still operating with paper filings, case data could not be worked on or screened from a digital MDEC queue. The ADR program will result in a substantial fiscal impact to the existing District Court that can only be resolved with hiring additional staff at a cost of over \$1.7 million.

Limiting the ADR intake process to 10 days will be problematic. The language contained in § 8-401(d)(3)(ii) of the bill provides that a landlord prior to filing a failure to pay rent complaint, has 10 days to make “affirmative, good-faith efforts” to resolve the claim with the tenant. The ADR intake process to reach both parties and schedule the case for a mediation session generally takes more than 10 days and access to reliable contact information for all necessary parties may not be available, extending the timeline.

Further, the language contained in § 8-401(d)(5) of the bill requires the landlord to certify that they made an affirmative good faith effort to resolve the case through mediation and require the tenant to defend against that affirmation. This language is problematic as it warrants for a potential breach of the Maryland Mediation Confidentiality Act and Maryland Rule 17-105, Mediation Confidentiality, which protects mediation communications from disclosure in a judicial, administrative, or other proceeding.

Additionally, the terms “good faith” and “fair and equitable” contained in § 8-401(d)(3)(ii), § 8-401(d)(5)(i), and § 8-401(f)(2) of this bill are ambiguously defined, and therefore, can be interpreted differently by each judge, creating inconsistent application and unmet expectations.

Moreover, the language contained in section § 8-401(d)(1)(v) of this bill, contains unclear language about whether the Court or the parties bear the responsibility of notifying the District Court ADR Office for ADR services.

Lastly, the status conference provision in this bill is not workable, based on current caseload volumes, without very strong assumptions about the decline in filings that would accompany an increase in the costs associated with filings stemming from a separate bill whose enactment is not certain. Time standards on other cases would suffer as well. Courthouses also may not have the physical space to house the Eviction Diversion Program.

cc. Hon. Melissa Wells  
Judicial Council  
Legislative Committee  
Kelley O’Connor