



Zafar Shah
Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 237
shahz@publicjustice.org

SB0564 - Landlord and Tenant – Eviction Prevention Services

**Hearing before the House Judiciary Committee,
March 30, 2022**

Position: SUPPORT (FAV)

Public Justice Center (PJC) is a nonprofit public interest law firm that serves over 600 renters each year. We stand with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing. PJC seeks the Committee’s Favorable report on SB0564.

SB0564 would make effective use of existing eviction prevention services when they are needed most: at court, on the day of trial of an eviction case. Under SB0564, “eviction prevention service provider” is defined to include legal assistance, financial assistance, mediation, and social or counseling services. The bill targets Maryland’s rapid “summary” court procedures for evicting renters – Failure to Pay Rent, Tenant Holding Over, and Breach of Lease. In these court proceedings, SB0564 would provide consistency in allowing parties’ a reasonable time, through recess or continuance, to become better prepared for trial or to engage with services aimed at avoiding trial and eviction altogether.

The policy objectives of SB0564 are reflected in the American Bar Association’s recently adopted [Ten Guidelines for Residential Eviction Laws](#). The ABA urges states “to promulgate law and policy consistent with and otherwise adhere to, the proposed guidelines for residential eviction laws.” Among these guidelines are the assurance of an opportunity to participate in pre-litigation eviction diversion, to obtain assistance of counsel, and to prepare an eviction defense.

HB0691 addresses rampant inconsistency among Maryland judges in allowing tenants time to engage eviction prevention services on day of trial.

In January 2022, Public Justice Center surveyed 30 pro bono housing attorneys from 12 offices operating in 15 Maryland jurisdictions. Attorneys were asked about how their local court treats continuance requests in most or all cases:

- Less than 30% of attorneys reported that they could rely on their local courts in all or most cases to continue an eviction proceeding so that the tenant could seek representation from their pro bono program.

- Only 17% of attorneys said that their local courts mostly or always continue trial to allow a tenant to come back with necessary evidence or witnesses.
- In contrast, 50% of attorneys reported that the courts mostly or always grant continuances to allow landlords to obtain necessary evidence or witnesses.

Additionally, 24 attorneys who provide free legal services at court concurrently with eviction dockets were asked about the need for a recess:

- 29 percent said they have sufficient time in most or all cases to interview tenants for representation purposes before the start of the docket.
- 33 percent said they have sufficient time in most or all cases to interview tenants for representation purposes *during* the docket.
- 54 percent reported feeling rushed when providing legal assistance at the start of or during the docket.

Although limited in sample size, these survey results tell the General Assembly a simple fact: district court **judges grant continuances or recesses sometimes, but they do not grant them all the time.** This leaves litigants, especially tenants, unsure how to proceed on day of trial. The trend also limits the effectiveness of already funded, staffed, and available eviction prevention efforts.

Continuances under SB0564

Foremost, this bill operationalizes tenants' access to counsel in eviction proceedings. When a self-represented litigant comes before a judge in an eviction case and shows good cause for additional time to seek attorney representation, SB0564 would require the judge to grant a one-time continuance "for a reasonable time not more than 5 business days."

This provision recognizes that while 2021's House Bill 18 established an Access to Counsel in Evictions mandate, it did not provide a procedure by which the courts would ensure that tenants who desire counsel may reliably obtain it before trial.

Summary of Senate amendments

SB0564 was amended in the Senate Judicial Proceedings Committee. A workgroup that included Chair Will Smith, Sen. Shelly Hettleman, Sen. Ron Watson, Sen. Chris West, and representatives of both Public Justice Center and Maryland Multi-Housing Association reached consensus on these changes:

1. Strike wrongful detainer actions from the scope of the bill
2. Require a showing of good cause for continuances
3. Lower the duration of a continuance from "not *less* than 5 business days" to "not *more* than 5 business days, except for purposes of subpoena or by consent of the parties

JPR adopted those amendments and additionally changed the bill to limit a party to a one-time continuance.

While these amendments weaken SB0564, Renters United Maryland believes the bill will advance due process in Maryland's eviction procedures.

We urge the House not to weaken SB0564 any further. Suggested clarifying amendments are on page 4.

Although legal and financial assistance information is more available than ever because of HB18, the efforts of multiple governmental agencies, and the Judiciary's Help Centers, concern remains that litigants appear in eviction actions realizing too late that they would benefit from assistance and that they need certain evidence to prove assertions about payments, notices, lease provisions, or property conditions.

SB0564 fills an important access-to-justice gap by providing a continuance of at least 5 workdays. This continuance provision also applies to litigants who show good cause to return to court with necessary evidence or witnesses or time to engage an eviction service provider such as the Office of Alternative Dispute Resolution or an Emergency Rental Assistance Program. The bill permits judges to grant a longer continuance, beyond 5 business days, for purposes of subpoena or by consent of the parties.

Recesses under SB0564

This bill also recognizes that litigants need consistency in their access to the legal services, rental assistance programs, and mediation programs that are increasingly available at court during eviction dockets.

- Legal services programs are now providing day-of-trial, first-come-first-serve assistance in Anne Arundel County, Baltimore County, Baltimore City, Caroline County, Dorchester County, Montgomery County, Prince George's County, Queen Anne's County, and Wicomico County.
- The District Court Help Centers are available for in-person assistance in nine court locations (Baltimore City, Catonsville, Cambridge, Frederick, Glen Burnie, Hagerstown, Rockville, Salisbury, Upper Marlboro).
- Prior to the COVID-19 pandemic, the Office of Alternative Dispute Resolution was conducting day-of-trial mediations in eviction cases in several jurisdictions, including Baltimore City, Montgomery County, and Wicomico County.

SB0564 would require simply that courts provide "a reasonable amount of time" during an eviction docket to allow a requesting litigant to engage with these eviction prevention services that are available during the docket. Reliable access to a recess would reduce the need for continuances, as pro bono attorneys, mediators, and others would have more time to assist parties during their first appearance at court.

SB0564 is about the future of Maryland's eviction process

In 2021, amid pandemic-caused scheduling delays, a federal moratorium on evictions, and the unprecedented availability of emergency rent relief, Maryland saw over 355,000 evictions actions filed – nearly a 50-percent reduction in eviction litigation compared to 2019. Actual evictions fell in 2021 by nearly 70 percent compared to 2019. So why require a fairer, more preventative eviction procedure

under SB0564? SB0564 is about the future – when there will not be pandemic protocols that delay trial or hundreds of millions in federal assistance to cover rental debt.

Currently, the Failure to Pay Rent procedure (Real Property § 8-401(e)(1)) allows judges the authority to continue a case for one day only. While cities and states across the country have met the challenges of the COVID-19 pandemic by standing up eviction diversion initiatives, often with the leadership of their courts, Maryland has not done so. Even if the Maryland Judiciary sought [full funding for an eviction diversion initiative through the National Center for State Courts](#), for example, our courts would not be able to move forward without fundamental changes to eviction procedures as set forth in SB0564.

SB0564 is the first step to any policy of using eviction trial dates to problem-solve and reach alternatives that do not place Maryland renters at risk of losing their homes.

Suggested clarifying amendments

These suggested changes to SB0564T are intended only to clarify the language of the bill after amendments made in the Senate. These changes do not alter the substance of the amended bill:

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(2) A SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IF GOOD

CAUSE IS SHOWN, A ONE-TIME CONTINUANCE FOR A REASONABLE AMOUNT OF TIME

NOT ~~LESS~~ MORE THAN 5 BUSINESS DAYS IF:

(i) ~~— EITHER EITHER~~ PARTY SEEKS:

1. ATTORNEY REPRESENTATION; ~~OR~~
2. TO PROCURE NECESSARY WITNESSES OR OBTAIN

DOCUMENTS OR OTHER PROOF OF A CLAIM OR DEFENSE; OR

(ii) ~~— A PARTY DEMONSTRATES THAT THE INTERESTS OF JUSTICE~~

~~WILL BE BETTER SERVED BY 3.~~ THE COURT’S ORDER OF REFERRAL OF THE PARTIES TO

AN EVICTION PREVENTION SERVICES PROVIDER.

(3) THE COURT MAY GRANT A CONTINUANCE UNDER PARAGRAPH (2)

OF THIS SUBSECTION FOR MORE THAN 5 BUSINESS DAYS ON ITS OWN MOTION, WITH THE BY CONSENT OF ALL THE PARTIES, OR FOR PURPOSES OF A SUBPOENA.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Judiciary Committee **issue a FAVORABLE report on SB0564**. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.

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