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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 489 – Criminal Law – Fraud – Possession of Residential Real Property

FROM: Maryland Office of the Public Defender

POSITION: UNFAVORABLE

DATE: February 6, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 489.

Overview of Senate Bill 489

Senate Bill 489 aims to criminalize the unauthorized occupation of residential properties in Maryland. The bill allows property owners to submit an affidavit asserting their legal claim to the property. In response, law enforcement can remove the occupant without a court hearing.

Senate Bill 489 addresses individuals who unlawfully occupy properties, including rental and housing fraud victims. However, it does not provide legal protections for those who may unknowingly fall victim to such schemes. Furthermore, the bill fails to tackle the ongoing housing crisis in Maryland, which Governor Wes Moore. This crisis has heightened the risk of exploitation for those in need of immediate and affordable housing.¹ While the bill is intended to speed up the process of reclaiming properties, it raises significant concerns about due process and the potential for unjust outcomes, especially for vulnerable populations.

Overview of Maryland's Housing Crisis

Maryland is grappling with a significant housing shortfall, with over 120,000 units needed, including a deficit of nearly 96,000 affordable units, as highlighted in Governor Moore's 2024 housing assessment.² This crisis is particularly pressing in urban centers like Baltimore and Montgomery County, where demand and rents are soaring. The situation has left more than 50% of renters in the state cost-burdened, meaning they spend over 30% of their income on housing. As a result, many low-income renters find themselves in precarious housing situations, struggling to make ends meet.

¹ Maryland Office of the Governor. "Housing Priorities." Maryland Governor's Office. Accessed January 17, 2025. <https://priorities.maryland.gov/pages/housing>.

² Governor Wes Moore, 2024 Housing Assessment, Annapolis: Maryland Governor's Office, 2024.

Governor Moore has identified the housing shortage as a top priority, emphasizing the need for systemic solutions to increase affordable housing and stabilize the rental market. His administration has proposed investments in housing development and assistance programs, yet legislation like Senate Bill 489 undermines these goals by disproportionately targeting vulnerable renters instead of addressing root causes.

The Growing Prevalence of Housing Scams and Their Victims.

Recent data indicates a significant rise in housing scams, particularly in the rental market. TransUnion reported a nearly 30% increase in fraud triggers among rental applicants from March to August 2020.³ The Federal Bureau of Investigation (FBI) also warned of a spike in rental and real estate scams, attributing surging rents, home prices, and inflation in a competitive real estate market.⁴ The FBI reported that in 2021, 11,578 people reported losing \$350,328,166 due to these types of scams, a 64% increase from 2020, and more than \$396 million was lost in 2022.⁵ These findings underscore the growing prevalence of housing scams, highlighting the need for increased vigilance among renters and property owners.

The Federal Trade Commission (FTC) and local authorities have reported a significant increase in housing scams, especially in Maryland's competitive rental market. Scammers create fake listings and pose as landlords to collect deposits for properties they do not own. In 2023, the FTC reported over 10,000 new rental scam cases, while the Better Business Bureau noted a 45% rise in rental scam complaints over the last two years.⁶ A survey conducted by Dwellsy in 2022 revealed that 60 percent of renters have faced fraudulent or questionable activities online, while 44 percent have personally experienced or are aware of someone who has lost money due to rental scams. The financial losses are considerable, with 85 percent of victims losing more than \$400 and 19 percent suffering losses exceeding \$5,000. The total possible annual losses are estimated at a staggering \$16.1 billion.⁷

Among the most vulnerable are low-income individuals seeking affordable housing, often enticed by below-market rents.⁸ Recently, the Maryland Department of Housing and Community Development warned about online scams by individuals falsely claiming to administer Section 8 Housing Choice vouchers. The warning indicated that low-income renters are a primary target for these scams.⁹

³ TransUnion. "A Rise in Fraud Indicators Hits the Rental Industry During the Pandemic." TransUnion Newsroom, 2020. <https://newsroom.transunion.com/a-rise-in-fraud-indicators-hits-the-rental-industry-during-the-pandemic/>

⁴ Federal Bureau of Investigation. "FBI Warns of Spike in Rental and Real Estate Scams." FBI Boston Press Releases, July 12, 2022, <https://www.fbi.gov/contact-us/field-offices/boston/news/press-releases/fbi-warns-of-spike-in-rental-and-real-estate-scams>.

⁵ ABC Action News. "Rental Rip-Offs Spike in 2022: FBI Reports Over \$396 Million Lost." ABC Action News, February 2, 2023. Accessed January 31, 2025. https://www.abcactionnews.com/money/consumer/taking-action-for-you/rental-rip-offs-spike-in-2022-fbi-reports-over-396-million-lost?utm_source=chatgpt.com.

⁶ Rently. "Rental Fraudsters Prey on Desperation in Tight Housing Market." December 9, 2024. <https://use.rently.com/blog/rental-fraudsters-prey-on-desperation-in-tight-housing-market/>.

⁷ Ziprent. "Rental Scams: A Crisis Demanding Tech-Driven Solutions." *Ziprent Blog*, n.d. Accessed January 31, 2025. <https://www.ziprent.com/blog/articles/rental-scams-a-crisis-demanding-tech-driven-solutions>.

⁸ National Low Income Housing Coalition. "State Housing Agencies Warn of Social Media Scam Involving HCV Waitlist Openings." National Low Income Housing Coalition, 2024. Accessed January 31, 2025. <https://nlihc.org/resource/state-housing-agencies-warn-social-media-scam-involving-hcv-waitlist-openings>.

⁹ Maryland Department of Housing and Community Development. "Maryland Department of Housing and Community Development Warns of Housing Scam." Maryland.gov, June 21, 2024. Accessed January 31, 2025.

Black and Latinx renters are overrepresented among victims due to systemic barriers and historical inequities that hinder homeownership.¹⁰ Elderly renters are also frequent targets, as they may be less familiar with the complexities of online rental processes. Furthermore, immigrants face increased vulnerability due to language barriers and a lack of knowledge about local laws, making them prime targets for scammers.

The Lack of Judicial Oversight Before Occupant Removal

Senate Bill 489 mandates that the sheriff's office or law enforcement makes a legal determination regarding the legality of occupancy without judicial oversight, which raises significant concerns about due process and fair enforcement.¹¹ Law enforcement officers lack the training to evaluate the validity of complex legal claims, such as the authenticity of leases or the intricacies of property law, which are usually resolved in court.^{12 13} This practice poses a serious risk of wrongful removals, disproportionately impacting vulnerable populations - many of whom may face significant challenges in proving lawful possession. By circumventing judicial oversight, these actions erode the fairness of the legal process and bypass the essential checks and balances that courts provide to safeguard the rights of all parties. Additionally, residents subjected to unjust or unlawful removals are left without access to legal remedies, leaving them defenseless against wrongful eviction.

Collateral Consequences of Immediate Removal of Occupants

Removing tenants without providing adequate time to secure alternative housing or manage their belongings can lead to several significant consequences:

- *Increased Risk of Homelessness:* Immediate eviction leaves tenants with limited options, often resulting in temporary shelter use or homelessness. This abrupt displacement disrupts lives and can exacerbate existing vulnerabilities
- *Loss of Personal Belongings:* Without sufficient time, tenants may be unable to retrieve or arrange storage for their possessions. This can lead to the loss of essential items, further compounding the trauma of eviction.
- *Emotional and Psychological Distress:* The sudden upheaval associated with immediate eviction can cause significant stress, anxiety, and other mental health challenges, impacting overall well-being.
- *Negative Impact on Employment and Education:* Displacement can disrupt employment due to relocation challenges and affect children's education, leading to broader socioeconomic instability.

<https://news.maryland.gov/dhcd/2024/06/21/maryland-department-of-housing-and-community-development-warns-of-housing-scam/>.

¹⁰ Solomon, Danyelle, Connor Maxwell, and Abril Castro. "Systematic Inequality and Economic Opportunity." Center for American Progress, August 7, 2019. Accessed January 31, 2025.

<https://www.americanprogress.org/article/systematic-inequality/>.

¹¹ Urban Institute. The Risks of Eviction Without Judicial Oversight. Washington, D.C.: Urban Institute, 2023.

¹² People's Law Library of Maryland. "Evictions and the Role of Law Enforcement." Accessed January 17, 2025. <https://peoples-law.org>

¹³ American Bar Association. Judicial Oversight and Due Process in Eviction Cases. Washington, D.C.: ABA Publishing, 2023

- *Legal and Financial Repercussions:* Criminal charges can appear on a tenant's record, making it difficult to secure future housing and potentially affecting credit scores, which can have long-term financial implications. The ACLU of Maryland has reported that criminal penalties linked to housing laws disproportionately affect Black renters, worsening their economic and housing stability.¹⁴

Providing tenants with adequate notice and time to secure alternative housing and manage their belongings is crucial to mitigate these adverse outcomes and promote fair housing practices.

Collateral Racial Disparities Created by Senate Bill 489

The impact of housing challenges on Black and Latinx communities is both profound and alarming. In Maryland, Black and Latino renters, already grappling with significant income disparities, find themselves more vulnerable to scams as they often rely on informal networks or unverified platforms for housing.¹⁵ This economic vulnerability is exacerbated by systemic barriers rooted in historical redlining and housing discrimination, which have disproportionately affected these communities, making them heavily reliant on rental housing and more susceptible to fraud and displacement.^{16 17} Compounding this crisis, immigrant communities often steer clear of law enforcement and legal processes out of mistrust, leaving them defenseless against wrongful evictions and further trapping them in a cycle of instability.¹⁸

Furthermore, data reveals that policies incorporating criminal elements related to housing violations often lead to higher eviction rates among Black people and low-income populations. This is exacerbated by the economic disparities faced by Black families, who are more vulnerable to the negative consequences of expedited eviction processes and criminal penalties, making them particularly susceptible to these new challenges.^{19 20}

Existing Legal Protections for Property Owners

Maryland's current legal framework provides property owners with civil remedies to address unauthorized occupancy through wrongful detainer actions. Under Maryland Real Property Code §14-132, a wrongful detainer is defined as holding possession of real property without the right of possession.²¹ Property owners can file a complaint in the District Court of the county where the property is located. The court then issued a summons requiring the occupant to appear and show

¹⁴ ACLU Maryland. *Criminalizing Poverty: How Evictions and Fines Trap Black Communities*. Baltimore, MD: ACLU Maryland, 2023

¹⁵ Maryland Center on Economic Policy. *Racial Disparities in Housing and Wealth in Maryland*. Annapolis, MD: Maryland Center on Economic Policy, 2024.

¹⁶ Urban Institute. *The Legacy of Redlining: Housing Discrimination and Systemic Inequities*. Washington, D.C.: Urban Institute, 2023.

¹⁷ National Low Income Housing Coalition. *Out of Reach: The High Cost of Housing in America*. Washington, D.C.: NLIHC, 2024. <https://nlihc.org>.

¹⁸ ACLU Maryland. *Immigrant Rights and Housing Stability*. Baltimore, MD: ACLU Maryland, 2024.

¹⁹ Legal Aid Bureau of Maryland. *The Racial Impact of Evictions in Maryland*. Baltimore, MD: Maryland Legal Aid, 2024.

²⁰ Maryland Center on Economic Policy. *Racial Disparities in Housing and Wealth in Maryland*. Annapolis, MD: Maryland Center on Economic Policy, 2024

²¹ Maryland Real Property Code §14-132. "Wrongful Detainer Actions." Accessed January 17, 2025. <https://mgaleg.maryland.gov>.

the cause of the possession not being restored to the owner. If the court finds in favor of the property owner, it orders the sheriff to return possession to the complainant. Maryland's current wrongful detainer laws are sufficient to protect property owners who encounter illegal residents on their property because they provide a clear, civil legal process for owners to regain possession.²² This ensures due process for both the owner and the occupant, balancing the need for property owners to reclaim their property with protections against wrongful eviction.²³ The existing framework addresses such disputes without imposing criminal penalties or violating the tenants of due process.²⁴

While Senate Bill 489 aims to provide property owners a faster way to reclaim their property, it raises significant concerns regarding due process and the potential for disproportionately adverse effects on low-income renters and Black families in Maryland. It is crucial to balance the rights of property owners with the protections granted to tenants, ensuring that any legal measures do not unintentionally perpetuate systemic inequities or contribute to housing instability.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 489.

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²² Maryland District Court. Landlord and Tenant Cases: A Procedural Guide for Property Owners. Annapolis, MD: Maryland Judiciary, 2024

²³ Maryland Legal Aid. Tenant Rights and Responsibilities in Maryland. Baltimore, MD: Legal Aid Bureau of Maryland, 2024

²⁴ Maryland Center on Economic Policy. Balancing Property Rights and Housing Equity in Maryland. Annapolis, MD: Maryland Center on Economic Policy, 2024