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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 202 – Criminal Law – Fraud – Conveyance, Lease, or Possession of Residential Real Property

FROM: Maryland Office of the Public Defender

POSITION: UNFAVORABLE

DATE: January 21, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 202.

Overview of House Bill 202

House Bill 202 addresses fraudulent activity related to the sale, lease, or possession of the residential property. The bill criminalizes various activities, including the intentional fraudulent sale or lease of property, possession of counterfeit deeds or leases, and the fraudulent possession of residential real property. Penalties for violations include fines and imprisonment, with enhanced penalties for repeat offenders.

While House Bill 202 aims to combat property-related fraud, it risks disproportionately impacting marginalized renters—many of whom are victims of rental scams—without providing sufficient safeguards or addressing the perpetrators of these scams. Additionally, by introducing criminal penalties, the bill compounds existing systemic inequities, particularly for racial minorities and low-income communities that are already disproportionately affected by criminal records and housing instability. While, in part, 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.

Penalizing Residents Without Legal Safeguards

House Bill 202 proposes removing occupants who lack lawful possession; however, many of these individuals are victims of housing scams, unknowingly occupying properties under false leases. Additionally, the bill does not address these victims' significant financial devastation, such as losing deposits or prepaid rent to scammers. Furthermore, it leaves vulnerable renters, particularly those from low-income and communities of color, without access to legal assistance or representation, which exacerbates their already challenging situations.

Potential Impact of Criminalizing Housing Violations

Introducing criminal penalties for housing violations, as proposed in House Bill 202, can have adverse effects on low-income renters and families, both in the short and long term:

Immediate Consequences: The expedited eviction process poses a significant risk of wrongful eviction, as it may lead to the removal of tenants who hold legitimate leases or have been misled without giving them sufficient opportunity to present their case. Additionally, sudden evictions can result in residents losing access to their personal belongings, which not only compounds their financial troubles but also leads to emotional distress.

Long-Term Consequences: Individuals affected by criminal records often encounter difficulties in accessing housing and employment, which can result in ongoing cycles of poverty and instability. This is particularly true for Black communities. The ACLU of Maryland has reported that criminal penalties linked to housing laws disproportionately affect Black renters, worsening their financial and housing stability.¹ The increasing occurrence of housing scams poses a threat of criminal charges, further deterring people from pursuing rental options. This discouragement not only exacerbates housing insecurity but also contributes to a rise in homelessness.

The Lack of Judicial Oversight Before Occupant Removal

House Bill 202 requires the sheriff's office or law enforcement to make a legal determination about the lawfulness of occupancy without judicial oversight, raising significant concerns about due process and equitable enforcement.² The requirement to prove "intent to defraud another" introduces considerable complexity and ambiguity into the legal standard, relying heavily on subjective judgment. Often lacking the necessary judicial training, law enforcement officers are expected to navigate these intricate legal concepts, such as fraudulent intent, frequently without sufficient evidence. Law enforcement officers are not trained to assess the validity of complex legal claims,³ such as the authenticity of leases or the nuances of property law, typically adjudicated in court.⁴ This practice risks wrongful removals, disproportionately affecting vulnerable populations like low-income renters, racial minorities, and victims of scams who may struggle to prove lawful possession. Without judicial oversight, such actions undermine the fairness of the legal process, bypassing the checks and balances that courts provide to protect the rights of all parties involved. Individuals who have been scammed and occupy properties without valid leases face a considerable risk of being wrongfully removed, even though they act in good faith. The lack of judicial review increases this risk, especially for marginalized groups that have limited access to legal resources.

¹ ACLU Maryland. Criminalizing Poverty: How Evictions and Fines Trap Black Communities. Baltimore, MD: ACLU Maryland, 2023

² Urban Institute. The Risks of Eviction Without Judicial Oversight. Washington, D.C.: Urban Institute, 2023.

³ People's Law Library of Maryland. "Evictions and the Role of Law Enforcement." Accessed January 17, 2025. <https://peoples-law.org>

⁴ American Bar Association. Judicial Oversight and Due Process in Eviction Cases. Washington, D.C.: ABA Publishing, 2023

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.
- **Legal and Financial Repercussions:** Evictions 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.

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 House Bill 202

The impact of housing challenges on racial minorities 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.⁵ 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.^{6 7} Moreover, the threat of increased housing instability looms large, as marginalized communities—already at a heightened risk of eviction—may face devastating displacement under proposed legislation like House Bill 202, lacking the time resources to find alternative housing after removal by the Sheriff's Office. Furthermore, data reveals that policies incorporating criminal elements related to housing violations often lead to higher eviction rates among minority and low-income populations. This is exacerbated by the economic disparities faced by Black families, who are more vulnerable to the

⁵ Maryland Center on Economic Policy. Racial Disparities in Housing and Wealth in Maryland. Annapolis, MD: Maryland Center on Economic Policy, 2024.

⁶ Urban Institute. The Legacy of Redlining: Housing Discrimination and Systemic Inequities. Washington, D.C.: Urban Institute, 2023.

⁷ National Low Income Housing Coalition. Out of Reach: The High Cost of Housing in America. Washington, D.C.: NLIHC, 2024. <https://nlihc.org>.

negative consequences of expedited eviction processes and criminal penalties, making them particularly susceptible to these new challenges.^{8 9}

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.¹⁰ Property owners can file a complaint in the District Court of the county where the property is located. The court then issues a summons requiring the occupant to appear and show cause why possession should not be 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.¹¹ 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.¹² The existing framework effectively addresses such disputes without imposing criminal penalties or exacerbating housing inequities.¹³

House Bill 202 aims to help property owners reclaim their properties more efficiently, but it raises serious concerns about due process:

- **Overcriminalization:** The bill introduces criminal penalties for issues that could be handled through civil solutions. This can place an unnecessary load on the criminal legal system and turn administrative matters into criminal offenses.
- **Disproportionate Consequences:** Criminal penalties can have lasting impacts, such as creating a criminal record. This affects an individual's chances of getting jobs, housing, or education, even for minor offenses.
- **Risk of Misapplication:** New laws with criminal penalties can be vague or broad, leading to unfair enforcement and wrongful convictions.

House Bill 202 imposes criminal penalties without addressing the real issue: the growing need for housing. Its focus on criminal penalties worsens existing inequalities, especially for communities of

⁸ Legal Aid Bureau of Maryland. *The Racial Impact of Evictions in Maryland*. Baltimore, MD: Maryland Legal Aid, 2024.

⁹ Maryland Center on Economic Policy. *Racial Disparities in Housing and Wealth in Maryland*. Annapolis, MD: Maryland Center on Economic Policy, 2024

¹⁰ Maryland Real Property Code §14-132. "Wrongful Detainer Actions." Accessed January 17, 2025. <https://mgaleg.maryland.gov>.

¹¹ Maryland District Court. *Landlord and Tenant Cases: A Procedural Guide for Property Owners*. Annapolis, MD: Maryland Judiciary, 2024

¹² Maryland Legal Aid. *Tenant Rights and Responsibilities in Maryland*. Baltimore, MD: Legal Aid Bureau of Maryland, 2024

¹³ Maryland Center on Economic Policy. *Balancing Property Rights and Housing Equity in Maryland*. Annapolis, MD: Maryland Center on Economic Policy, 2024

color and low-income renters. We must protect the rights of property owners while also safeguarding tenants' protections, ensuring that legal actions do not worsen inequalities or increase housing instability.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 202

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