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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 164 – Criminal Law – Fraud – 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 164.

Overview of House Bill 164

House Bill 164 criminalizes the unauthorized occupation of residential properties in Maryland. It allows property owners to file an affidavit asserting legal claims to their property, prompting law enforcement to remove occupants without judicial oversight. The bill requires that law enforcement determine whether the occupant had the intent to defraud another. This critical but problematic component raises concerns about fairness, due process, and enforcement feasibility.

While the bill aims to address fraudulent possession, it lacks protections for scam victims and disproportionately targets vulnerable populations, including low-income renters, racial minorities, and elderly individuals. The bill does not address the housing crisis in Maryland. Governor Wes Moore has called this a critical issue that needs immediate action. He has noted that over 50% of renters in urban areas, like Baltimore City and Montgomery County, are cost-burdened. This means they spend more than 30% of their income on housing.¹ This crisis has increased the risk of exploitation for those seeking immediate and affordable housing.

Recent data indicates a significant rise in housing scams, particularly in the rental market. The National Multifamily Housing Council (NMHC) survey revealed that 70.7% of rental housing providers experienced increased fraudulent applications and payments over the past year.² Similarly, TransUnion reported a nearly 30% increase in fraud triggers among rental applicants from March to

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

² National Multifamily Housing Council. "Rampant Increasing Fraud Impacting Rental Housing Costs." NMHC Press Release, 2024. <https://www.nmhc.org/news/press-release/2024/rampant-increasing-fraud-impacting-rental-housing-costs/>.

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 These findings underscore the growing prevalence of housing scams, highlighting the need for increased vigilance among renters and property owners.

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.⁵ This crisis is particularly pressing in urban centers like Baltimore and Montgomery County, where demand is exceptionally high 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.

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 House Bill 164 undermines these goals by disproportionately targeting vulnerable renters instead of addressing root causes.

The Growing Prevalence of Housing Scams and Their Victims

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. Alarming, 6.4% of renters nationwide have fallen victim to these scams, affecting millions of Americans, particularly low-income renters who are disproportionately impacted.

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

Additionally, racial minorities, particularly Black and Latinx renters, are overrepresented among victims due to systemic barriers and historical inequities that hinder homeownership. Elderly renters are also frequent targets, as they may be less familiar with the complexities of online rental

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, accessed January 17, 2025. <https://www.fbi.gov/contact-us/field-offices/boston/news/press-releases/fbi-warns-of-spike-in-rental-and-real-estate-scams>.

⁵ Governor Wes Moore, 2024 Housing Assessment, Annapolis: Maryland Governor's Office, 2024.

processes. Furthermore, immigrants face increased vulnerability due to language barriers and a lack of knowledge about local laws, making them prime targets for scammers.

Penalizing Victims Without Legal Safeguards

House Bill 164 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 164, 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.⁶ 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 164 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.⁷ 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,⁸ such as the authenticity of leases or the nuances of property law, typically adjudicated in

⁶ ACLU Maryland. *Criminalizing Poverty: How Evictions and Fines Trap Black Communities*. Baltimore, MD: ACLU Maryland, 2023

⁷ Urban Institute. *The Risks of Eviction Without Judicial Oversight*. Washington, D.C.: Urban Institute, 2023.

⁸ People's Law Library of Maryland. "Evictions and the Role of Law Enforcement." Accessed January 17, 2025. <https://peoples-law.org>

court.⁹ 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.

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 164

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.¹⁰ This economic vulnerability is exacerbated by systemic barriers rooted in historical redlining and housing discrimination, which have disproportionately affected these communities, making them

⁹ American Bar Association. *Judicial Oversight and Due Process in Eviction Cases*. Washington, D.C.: ABA Publishing, 2023

¹⁰ Maryland Center on Economic Policy. *Racial Disparities in Housing and Wealth in Maryland*. Annapolis, MD: Maryland Center on Economic Policy, 2024.

heavily reliant on rental housing and more susceptible to fraud and displacement.^{11 12} 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 164, lacking the resources to find alternative housing. 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.¹³

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 negative consequences of expedited eviction processes and criminal penalties, making them particularly susceptible to these new challenges.^{14 15}

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.¹⁶ 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.¹⁷ 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.¹⁸ The existing framework effectively addresses such disputes without imposing criminal penalties or exacerbating housing inequities.¹⁹

¹¹ Urban Institute. *The Legacy of Redlining: Housing Discrimination and Systemic Inequities*. Washington, D.C.: Urban Institute, 2023.

¹² National Low Income Housing Coalition. *Out of Reach: The High Cost of Housing in America*. Washington, D.C.: NLIHC, 2024. <https://nlihc.org>.

¹³ ACLU Maryland. *Immigrant Rights and Housing Stability*. Baltimore, MD: ACLU Maryland, 2024.

¹⁴ Legal Aid Bureau of Maryland. *The Racial Impact of Evictions in Maryland*. Baltimore, MD: Maryland Legal Aid, 2024.

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

¹⁶ Maryland Real Property Code §14-132. "Wrongful Detainer Actions." Accessed January 17, 2025. <https://mgaleg.maryland.gov>.

¹⁷ Maryland District Court. *Landlord and Tenant Cases: A Procedural Guide for Property Owners*. Annapolis, MD: Maryland Judiciary, 2024

¹⁸ Maryland Legal Aid. *Tenant Rights and Responsibilities in Maryland*. Baltimore, MD: Legal Aid Bureau of Maryland, 2024

¹⁹ Maryland Center on Economic Policy. *Balancing Property Rights and Housing Equity in Maryland*. Annapolis, MD: Maryland Center on Economic Policy, 2024

While House Bill 164 seeks to provide property owners with a more efficient means of reclaiming possession of their property, it raises significant concerns regarding due process and the potential for disproportionate adverse effects on low-income renters and Black families in Maryland. It is imperative to balance the rights of property owners with the protections afforded to tenants, ensuring that any legal measures do not inadvertently 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 House Bill 164

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