



**House Criminal Justice Committee
Gina Wilt, Advocacy Director
June 11, 2024
House Bills 478 & 480 - Opponent**

Chair Abrams, Vice Chair Williams, Ranking Member Brown, and members of the House Criminal Justice Committee, thank you for the opportunity to express our concerns with recently introduced legislation intended to address the issue of “squatting” in Ohio. We are opposed to these bills in their current form because they will have negative unintended consequences that far outweigh any positive impact for property owners.

Proponents of these bills describe them as a proactive effort to prevent the kinds of outrageous incidents involving squatters that have recently proliferated in social media and highly sensationalized media reports. We understand the desire to protect Ohio property owners from squatters attempting to take possession of occupied homes, as seen in media reports in New York, where state law reportedly allows an individual to claim adverse possession after only 30 days. However, we believe it’s critically important that we don’t overreact simply based on a few outrageous examples in other states. Current law in Ohio requires someone to occupy an abandoned property openly, continuously, exclusively, and notoriously for 21 years before they can file suit to begin to take possession. This process is not in any way a realistic threat to responsible property owners in Ohio with regard to ownership rights. It flows then that fears of “squatting” as a conversation *in Ohio* is not typically about legally acquiring property title rights so much as it is about more easily being able to remove an individual from a property.

Real squatting cases almost always involve a neglected property where the owner has effectively abandoned the building. For instance, when a real estate LLC gets fined for building code violations and simply winds down to avoid liability. An abandoned building may seem relatively appealing to someone who would otherwise have to sleep on the streets.

If this committee is serious about preventing squatting, we should empower cities to hold negligent and absentee landlords accountable for creating conditions conducive to squatting. This could include legislation to create a statewide rental registry that includes contact info so that local authorities can find absentee owners and require them to secure their properties, adhere to building codes, and pay their property taxes.

I realize this is not normally the class of cases that comes to mind for many who have seen the recent social media outcries. So, if this committee is determined to create a new alternative non-judicial eviction process, many wrongful removals could be

prevented by limiting the bill's scope to owner-occupied properties. This would accomplish the intent of protecting homeowners from unauthorized occupants.

While it would be a step in the right direction, limiting the bill's breadth to owner-occupied properties would not alleviate all of our concerns. Here are 5 reasons why:

1. **The bill upsets what most of us would consider to be due process.** There are a multitude of complex situations where this legislation would authorize immediate eviction and arrest by the sheriff's office without any due process. These cases often involve ugly conflicts between family members, such as when an elderly homeowner dies and the daughter that had been taking care of him for years refuses to move out while she feuds with her step-siblings¹ over who has the right to the property. This can be escalated by the lack of a definition of "record owner". Does this merely count as proof of a deed? What about evidence of a conveyance of a will or a trust? The proper forum to resolve such messy disputes as to who has a right to own and enter a property is in civil court, not the front door of the house with an armed sheriff's deputy standing in judgement. This legislation should ensure that due process is granted to both parties from the beginning. At the very least, it should require that occupants be notified in writing and given at least 48 hours to vacate before an arrest can be made.
2. **The bill lacks a meaningful remedy to deter wrongful evictions.** The proposed recourse for tenants who were wrongfully removed from a property they were legally occupying would require unhoused tenants to pursue *civil litigation* to seek compensation and the right to return to the property. This "make it right later" idea is wholly inadequate since most tenants lack the resources to hire an attorney and will likely be too busy scrambling to find another place to live. While we appreciate the inclusion of attorney fees as a remedy a judge may order, it is a "may" not a "shall" and it still requires attorneys to first find defendants that have deep enough pockets to go after for such damages. Many times that is not the case. Accordingly, this is not a workable deterrent to wrongful evictions. The damage will be done and most victims cannot be "made whole" by a subsequent lawsuit.
3. **The bill is unnecessary and the penalties are cruel and unusual.** The proposed criminal charges in this legislation related to squatting are extreme. The actual conduct being prohibited is already covered under Ohio's existing laws against breaking and entering, criminal trespassing and vandalism. Criminal Trespass – even on a critical infrastructure facility – is currently at maximum a Misdemeanor of the first degree. However, Breaking and Entering is currently a felony of the fifth degree in Ohio. But, if you add in Vandalism as it appears right now in Ohio Law, someone would have to have caused damage of above \$150,000.00 for it to be a Felony of the third degree. Yet, House Bill 480 would

¹ Both bills use the current law ORC 1349.04 definition of "Immediate family" – and that definition does not include step-siblings.

grant a felony of the second degree for entering a home and causing a mere \$1,000 and one cent of damages. So, if you enter what looks like an abandoned home to seek refuge from a snowstorm and break a window doing it, you basically just committed a felony of the second degree. To put this into further context, a second-degree felony is the same severity as felonious assault and aggravated vehicular homicide, and worse than involuntary manslaughter. House Bill 478 would make it a fourth-degree felony if the damage was more than \$5,000. This penalty level is the same as negligent vehicular assault, unlawful sexual misconduct with a minor, and grand theft of an automobile. Clearly, the penalties contemplated in these bills is not in line with what most would consider to be “the time fitting the crime.”

4. **This bill does not account for false leases.**

Breaking and Entering (ORC 2911.13) contemplates trespass with a specific purpose (*i.e.*, to commit another crime). Criminal Trespass (ORC 2911.21) also thoughtfully considers culpability. However, if we look at the language of the new crime outlined in lines 191-193 of HB 478 (and similarly in HB 480), it means that “no person shall” “without privilege to do so, unlawfully detain, occupy, or trespass upon a residential dwelling and intentionally cause damage to the dwelling.” Nothing in here provides for a mental state where a tenant actually relied on a false lease to occupy the premises. Nothing negates that innocent culpability. Instead, they get a felony like everyone else if the largely minor monetary damages occur.

5. **The bill doesn't contemplate the reality that oral leases exist as both 1) a tool some willingly choose to utilize and 2) dangerous if abused.** The impact of this legislation is that many would choose to forgo using an oral lease. Why would you when you would risk criminal liability for “wrongfully occupying the premises” in a he-said-she-said front door altercation? Those who choose to utilize them will take on additional risk. Specifically, many low-income tenants have verbal month-to-month agreements and pay rent regularly, but don't have a written lease. Disputes between tenants and negligent landlords over unsafe or unsanitary conditions – roaches, rats, mold – are unfortunately quite common. Under this bill, the landlord could have the sheriff unhouse the family and get the tenants prosecuted simply for their having complained about legitimately unsafe and unsanitary conditions impacting them and their children. This imbalance of power will chill the ability for parents to stand up for the safety of their children.

I know that is a lot to consider, but I do wish to end on a positive note. As noted previously, one provision in these bills we are pleased to support the proposed criminal prohibition for title fraud. We are aware of situations where scammers dupe unsuspecting tenants into believing they own or manage a property and they collect rent. So, we are pleased to see that this legislation specifically prohibits renting residential property that the purported owner has no lawful ownership in to another person. We are hopeful rights to restitution will help make them whole in situations

where they may have been removed even while they were paying rent and believed they were paying rent to the real property owner. However, as with the civil remedy, it would be an “after the fact” remedy that would never make them truly whole.

There are lots of unanswered questions around criminal ramifications if you say you own a property in a probate dispute or if can actually rent out your property while things are being litigated. All this and more points to the need for time and the need for amendments to this bill. I am asking that you consider that path.

Thank you for considering some of the unintended consequences associated with this legislation. I would be happy to answer any questions you may have.