

SERIES: PREVENTING HOUSING INSTABILITY
Fact Sheet

Legal Representation in Eviction Proceedings

The Problem

More than two million eviction cases are filed against tenants each year in the United States.¹ That's roughly one eviction filing every four minutes. Eviction can impact the physical, psychological, and economic health of individuals, families, and communities for years,² and yet the vast majority of tenants navigate these weighty eviction proceedings without the help of legal counsel.

The Sixth Amendment to the U.S. Constitution guarantees defendants the right to the assistance of counsel in all criminal cases.³ Defendants in civil matters, however, do not enjoy the same broad guarantee, despite the potentially devastating consequences of many civil cases. "As a result, many low-income Americans 'go it alone' without legal representation in disputes where they risk losing their job, their livelihood, their home, or their children, or seek a restraining order against an abuser."⁴ Organizers, non-profit organizations, bar associations, and others have long sought to provide those who are unable to afford lawyers in matters concerning basic human needs with access to a lawyer at no charge.⁵ In recent years, that effort has shifted to include demands not just for the increased funding needed to expand free legal services, but also for recognition of a legal right to counsel in various civil matters. As a result, a patchwork of state and local laws today establishes this legal right in particular types of civil cases—such as involuntary mental health commitment, child custody, domestic violence, guardianship, and eviction proceedings.⁶

Civil legal aid organizations and pro bono attorneys around the country provide legal assistance in these and other civil matters whenever possible, but they are often constrained by lack of funding and other resources. In a 2017 report, for example, the [Legal Services Corporation \(LSC\)](#)—the largest federal source of funding for free legal representation in civil cases—found that due to a lack of resources, LSC-funded programs were able to provide limited or no legal help to more than half of the low-income Americans who asked, and that 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help.⁷

This access to justice gap is particularly notable in eviction proceedings, where on average, 90% of landlords are represented by an experienced agent or attorney and only 10% of tenants are.⁸ In some jurisdictions, like Baltimore City, as few as 1% of tenants are typically represented and as many as 96% of landlords are.⁹ This means that tenants, already facing the double stigma of poverty and nonpayment,¹⁰ enter the courtroom at a distinct disadvantage. The unsurprising result is that outcomes disproportionately favor landlords.¹¹



The Potential Policy Solution

Research shows that legal representation can radically change the outcome of eviction cases,¹² by decreasing rates of default judgments, preventing displacement through eviction, and limiting the collateral damage caused by eviction.¹³ In cases brought for failure to pay rent, many tenants have legal defenses to eviction, and a lawyer is able to help tenants exercise these defenses to prevent displacement. Even when eviction is warranted and tenants are not able to stay in their homes, lawyers can help to mitigate the worst impacts of eviction, by negotiating to have the tenant's move-out date adjusted, have back rent reduced or waived, retain the tenant's housing subsidy, have the case sealed from public view, or have the tenant's credit otherwise protected. Legal representation can also benefit tenants as a whole by reducing the overall number of eviction filings and reducing the burden on the court system, as landlords who know that tenants will be represented may be less inclined to file.

In New York, the first city to enact a right to counsel in eviction proceedings, 84% of represented tenants have remained in their homes since the right was enacted, and the eviction rate in relevant zip codes has declined more than 30%. Similarly, in San Francisco, eviction filings declined by 10%, and 67% of represented tenants have been able to stay in their homes since the right was enacted. In a pilot project in Los Angeles, 89% of tenants represented by lawyers achieved a favorable outcome.¹⁴ These results demonstrate that when tenants have access to an attorney in eviction proceedings, they are able to assert successful defenses and avoid the long-term negative consequences of eviction.


Local-Level Initiatives

To date, eight major cities have enacted a right to counsel in eviction proceedings. New York led the way by establishing the right in July of 2017.¹⁵ Under [New York's law](#), all tenants are eligible for brief legal advice, and income-eligible tenants—defined as those whose household income is at or below 200% of the federal poverty guideline—receive access to full legal representation in eviction proceedings. Notably, the right attaches early in the eviction process: no later than a tenant's first scheduled appearance in housing court; and the right extends to administrative proceedings of the city housing authority for termination of tenancy or housing subsidies. The City has been working to phase the program in over five years, by zip code, with a goal of full implementation by 2022.

In the years since, [San Francisco](#),¹⁶ [Newark](#),¹⁷ [Cleveland](#),¹⁸ [Philadelphia](#),¹⁹ [Baltimore](#),²⁰ [Boulder](#),²¹ and most recently, [Seattle](#),²² have followed suit. Many of these local laws are modeled, at least in part, after New York's law, but there are some notable differences in how the law was enacted, and to whom the right would apply. For example, most of these cities enacted the right through local legislation; but two cities, San Francisco and Boulder, did so through ballot measures. In New York and Philadelphia, families whose household income is at or below 200% of the federal poverty guideline—\$26,500 for a family of four—qualify for full legal representation; but in Cleveland, the income threshold is lower, so that only families whose household income is at or below 100% of the federal poverty guideline qualify; and in Baltimore and Boulder, there is no stated income limit. In Baltimore, the administering agency is directed to prioritize families with the lowest incomes, while the Boulder initiative specifies that the right attaches to *all* tenants, regardless of income.

State-Level Initiatives

On April 22, 2021, [Washington](#) became the first state to enact legislation providing for statewide access to legal representation in eviction proceedings.²³ At least six other states are currently considering similar legislation. These states include [Massachusetts](#),²⁴ [Minnesota](#),²⁵ [Connecticut](#),²⁶ [Nebraska](#),²⁷ [South Carolina](#),²⁸ and [Maryland](#),²⁹ where the General Assembly recently passed a bill that is still awaiting the Governor's approval or veto. As on the local level, there is some variation from state to state regarding which tenants




would qualify for free legal representation, and also in how the right would be accessed and implemented. In Minnesota, for example, the proposed right would only apply to tenants in public housing, while in Massachusetts, Nebraska, and South Carolina the right would apply more broadly to any tenants found unable to afford counsel. Several states, including Maryland and Massachusetts, would implement the right much like New York has: by connecting tenants with existing providers of free legal services, while others, like Nebraska and South Carolina, would require the court to appoint an attorney if a tenant is found unable to afford one of their own. There is also variation in the degree to which legal representation is guaranteed. In Maryland, for example, what was initially proposed as a “right to counsel” was amended through the legislative process to instead provide “access to counsel,” subject to available funding and stopping short of establishing a legal right. In Washington, the measure is framed as a “a right,” but appointment of counsel is also subject to available funding, and language conveyed to tenants is that “[t]he court *may* be able to appoint a lawyer,” suggesting representation may not be guaranteed. By contrast, proposed legislation in Nebraska and Massachusetts contains definitive language establishing a “right to counsel” in covered proceedings without any qualifications regarding funding. This language could provide a greater guarantee for eligible tenants or could similarly be modified as these measures make their way through the legislative process.

National-Level Initiatives

Several bills have also been proposed at the national level to increase legal representation in eviction proceedings. [The Place to Prosper Act](#), introduced in November of 2019 by Representative Alexandria Ocasio-Cortez, specifically called for the creation of a right to counsel for tenants in eviction proceedings.³⁰ Several others—the [Eviction Prevention Act of 2019](#),³¹ introduced by Representative Rosa DeLauro; the [Legal Assistance to Prevent Evictions Act of 2020](#),³² introduced by Representative James Clyburn and Senator Michael Bennett; and the [Affordable Housing Opportunities More Equitable \(HOME\) Act](#),³³ introduced by Senator Jeff Merkley—proposed dedicating additional federal funds to support state and local level efforts to provide low-income tenants with legal representation. While these latter efforts stop short of establishing a national right to counsel, they aim to incentivize state and local jurisdictions to do so by giving these jurisdictions funding priority. Unfortunately, none of these federal efforts have made much progress since being introduced, and it is doubtful that Congress will pass such reform soon.

The Greatest Potential Barrier: Funding

Much of the opposition to the civil right to counsel movement, even from landlords, focuses not on the principle of providing representation, but on the cost of implementation. In cities that have studied the potential cost of providing counsel at eviction proceedings, estimates range from \$3.5 million in Philadelphia to \$200 million in New York City, depending on the number of tenants the city expects to serve and what eviction defense services are already in place.³⁴ Opponents argue that money would be better spent otherwise, but “cost is not a reason to deny litigants due process. Equality before the law is basic to the very idea of democracy and we must find a way to fund it.”³⁵ While a number of local jurisdictions have relied on general appropriations to fund the right, several have attempted to create new revenue streams to provide funding. In Boulder, for example, the right to counsel will be funded through the adoption of a new rental licensing excise tax of \$75 per year per licensed unit. In Maryland, legislators attempted to pair right to counsel legislation with an increase to the state’s eviction filing fees, providing that the increased revenue from these court fees would fund legal representation in eviction cases.³⁶ Unfortunately, while the “access to counsel” bill passed the General Assembly, the [fee bill](#) did not, leaving legal representation subject to the availability of general fund appropriations.³⁷ In Connecticut, the Governor proposed allocating \$40 million of federal funds received under the [American Rescue Plan Act of 2021](#) to support legal representation in housing court.³⁸ Though federal funds are only expected to be available short term, they may provide enough of a kickstart to the effort for the state to begin to appreciate the long-term value of funding right to counsel.



Concerns about the cost of implementation may also be misplaced, as right to counsel is projected to save governments money in the long run by reducing the costs of disruptive displacement like emergency shelter, temporary housing, physical and mental health care, school transportation, and foster care. According to one study, an investment of \$5.7 million in right to counsel in Baltimore City is expected to result in approximately \$17.5 million in cost savings to the City and an additional \$18.1 million in cost savings to the State, for a total return on investment of more than six to one.³⁹ In Philadelphia, it's estimated that for each \$1 the City spends on representation, it will receive a benefit of more than \$12.⁴⁰ As these studies note, these cost-savings are likely significantly understated because they are limited to benefits that are easily quantifiable.⁴¹

Conclusion

Legal representation can play an important role in leveling the playing field in eviction cases. As recent experience has shown, tenants represented by a lawyer have a much better chance of achieving a positive outcome than those who are not—whether that means staying in their homes or being able to mitigate some of the worst impacts of eviction. By implementing a right to counsel in eviction cases, state and local governments not only help to prevent harm to individuals threatened with eviction, they also help to reduce eviction filing rates overall, stabilize communities, and ultimately save far more than they spend.

SUPPORTERS



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¹ EVICTION LAB, *National Estimates: Eviction in America* (May 11, 2018), <https://evictionlab.org/national-estimates/>.

² Mathew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOCIAL FORCES 295 (Feb. 24, 2015), https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf.

³ U.S. CONST. amend. VI (as interpreted in *Gideon v. Wainwright*, 372 US 335 (1963)).

⁴ LEGAL SERVICES CORPORATION, *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 9 (2017), <https://www.lsc.gov/justicegap2017>.

⁵ See e.g. Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 84–88 (2020) (describing the history of the civil right to counsel movement); THE AMERICAN BAR ASSOCIATION, *Civil Right to Counsel*, https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel1/.

⁶ NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, *Status Map*, <http://civilrighttocounsel.org/map> (providing a 50-state view of civil right to counsel legislation).

- ⁷ LEGAL SERVICES CORPORATION, *supra* note 4 at 6, 14 (note that these numbers only account for the legal needs of families with incomes at or below 125% of the Federal Poverty Level; they do not account for the many families whose income is higher but may still be unable to afford a lawyer).
- ⁸ Neil Steinkamp, *Right to Counsel: The Nationwide Movement to Fight the Eviction Crisis*, STOUT RISIUS ROSS, LLC (Oct. 14, 2019), <https://www.stout.com/en/insights/article/right-to-counsel-nationwide-movement-fight-eviction-crisis>.
- ⁹ STOUT RISIUS ROSS, LLC, *THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY 23* (May 8, 2020), <https://bmorerentersunited.org/rtc/stoutreport/>. Notably, however, Baltimore City has recently enacted a right to counsel in eviction proceedings.
- ¹⁰ Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, 80,5 AM. SOCIO. REV. 909, 924 (Oct. 2015).
- ¹¹ See e.g. STOUT BALTIMORE, *supra* note 9 at 25 (finding that more than two-thirds of eviction cases in Baltimore City were resolved in favor of landlords); *id.* at 51 (finding that percent of unrepresented tenants in eviction cases in Philadelphia experience case outcomes that have a high likelihood of disruptive displacement).
- ¹² Sandefur, *supra* note 10.
- ¹³ STOUT BALTIMORE, *supra* note 9 at 50–58 (explaining benefits of legal representation).
- ¹⁴ *Id.* at 30–32.
- ¹⁵ N.Y.C., N.Y. Ord. No. 2017/136 (Aug. 11, 2017) (codified at N.Y.C., N.Y. ADMIN. CODE §§ 26-1301–05).
- ¹⁶ No Eviction Without Representation Act of 2018 (Proposition F) (codified at S.F., CAL. ADMIN. CODE § 58.4).
- ¹⁷ Newark, N.J. Ord. No. 6PSF-L (Dec. 19, 2018) (codified at NEWARK, N.J. CODE §§ 19.3-0–4).
- ¹⁸ Cleveland, Ohio Ord. No. 1001-2019 (Sept. 30, 2019) (codified at CLEVELAND, OHIO CODE § 375.12).
- ¹⁹ Bill No. 190386, 2019 Phila. City Council (Dec. 4, 2019) (codified at PHILA., PA. CODE. § 9-808).
- ²⁰ Bill No. 20-0625, 2020 Balt. City Council (Dec. 2, 2020) (codified at BALT., MD. CODE §§13-6A-1–6, 13-7-3).
- ²¹ Boulder, Colo. Ord. No. 8412 (Sept. 1, 2020) (codified at BOULDER, COLO. MUN. CODE §§12-2, 3-20).
- ²² C.B. 120007, 2021 Seattle City Council (Apr. 2, 2021) (codified at SEATTLE, WASH. MUN. CODE § 22.206.195).
- ²³ S.B. 5160, 67th Leg., 2021 Reg. Sess. (Wash. 2021).
- ²⁴ H.B. 1436, 192d Gen. Ct., First Ann. Sess. (Mass. 2021).
- ²⁵ H.F. 450/S.F. 1290, 92d Leg., 2021–2022 Sess. (Minn. 2021).
- ²⁶ H.B. 6531, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021). See also [H.B. 5053](#) (proposing to provide access to legal counsel in a summary process proceeding to any tenant negatively affected by the COVID-19 pandemic); [S.B. 531](#) (proposing to provide tenants with income of <75k or less facing summary process matter with right to counsel).
- ²⁷ L.B. 419, 107th Leg., 2021–2022 Sess. (Neb. 2021).
- ²⁸ H.B. 3072, 124th Gen. Assemb., First Reg. Sess., (S.C. 2021).
- ²⁹ H.B. 18/S.B. 154, 2021 Leg., 442d Sess. (Md. 2021).
- ³⁰ H.R.5072, 116th Cong. (2019).
- ³¹ H.R. 2598, 116th Cong. (2019).
- ³² S. 3305/H.R. 5884, 116th Cong. (2020).
- ³³ S. 2452, 116th Cong. (2020).
- ³⁴ STOUT BALTIMORE, *supra* note 9 at 63 (estimating that representation would cost the City \$5.7 million annually); STOUT RISIUS ROSS, LLC, *ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS* *8, 44 (Nov. 13, 2018)), <https://www.stout.com/en/services/transformative-change-consulting/eviction-right-to-counsel-resources> (estimating that it would cost Philadelphia \$3.5 million annually to implement a right to counsel); STOUT RISIUS ROSS, LLC, *THE FINANCIAL COST AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL IN EVICTION PROCEEDINGS UNDER INTRO 214-A *3*, 16 (Mar. 16, 2016), <https://www.stout.com/en/services/transformative-change-consulting/eviction-right-to-counsel-resources> (estimating that the cost of implementing New York's proposed legislation would be \$199 million).
- ³⁵ Peterson, *supra* note 5 at 88.
- ³⁶ H.B.31, 2021 Leg., 442d Sess. (Md. 2021).
- ³⁷ Bennett Leckrone, *In Wake Of Failed Bills, Housing Advocates Say Relief Funding Alone Won't Stop Evictions*, MARYLAND MATTERS (Apr. 14, 2021), <https://www.marylandmatters.org/2021/04/14/in-wake-of-failed-bills-housing-advocates-say-relief-funding-alone-wont-stop-evictions/>.
- ³⁸ GOVERNOR NED LAMONT, *CONNECTICUT'S PLAN FOR THE AMERICAN RESCUE PLAN ACT OF 2021: A ROADMAP FOR A TRANSFORMATIVE, EQUITABLE AND HEALTHY RECOVERY FOR OUR STATE* 18 (Apr. 26, 2021), <https://portal.ct.gov/-/media/Office-of-the-Governor/News/2021/20210426-Governor-Lamont-ARPA-allocation-plan.pdf>.
- ³⁹ STOUT BALTIMORE, *supra* note 9 at 80–81 (calculating cost savings to the City and State).
- ⁴⁰ STOUT RISIUS ROSS, LLC, *Cost-Benefit Analysis for Philadelphia Right to Counsel for Low Income Tenants Facing Eviction*, <https://www.stout.com/en/experience/cost-benefit-analysis-for-philadelphia-right-to-counsel>.
- ⁴¹ STOUT BALTIMORE, *supra* note 9 at 82.