The Right to Counsel for Evictions: Justifications and Growth of the Movement

By John Pollock
Coordinator, Nat’l Coalition for a Civil Right to Counsel
11/21/19

About the NCCRC

• http://www.civilrighttocounsel.org
• ~300 participants in 40 states
• State/locally driven (not “top-down, one-size-fits-all” approach)

Right to counsel in eviction cases: reasons behind the movement

• Difference that counsel makes in outcomes
• Addressing widespread imbalance of power
• Tenant empowerment
• Increasing judicial system buy-in
• Avoiding collateral consequences: fiscal and moral implications
Timing and Duration of Pre- and Postnatal Homelessness and the Health of Young Children

Megan Sodat, MD, MPH; Richard Shepherd, MPH; Stephanie Eltinger-de Sola, MPH; Sharon Gollner, MS, MPH; Timothy Herren, PhD; Maureen M. Black, PhD; Patrick H. Casey, MD; Mariana Chilton, PhD, MPH

Results: After controlling for birth outcomes and other potential confounders, compared with never-homeless children, children who were homeless both pre- and postnatally were at the highest risk of the following: perinatal hospitalizations (adjusted odds ratio [aOR] 1.43; confidence interval [CI] 1.18–1.70), fair or poor child health (aOR 1.97; CI 1.58–2.47), and developmental delays (aOR 1.40; CI 1.16–1.79). There was no significant association with risk of overweight (aOR 0.95; CI 0.76–1.18) or overweight status (aOR 1.07; CI 0.84–1.37). Children <1 year old with >6 months of homelessness versus those who were never homeless had high risks of fair or poor health (aOR 3.13; CI 2.05–4.79); children 1 to 4 years old who were homeless for >6 months were at risk for fair or poor health (aOR 1.89; CI 1.39–2.58).

The Hidden Health Crisis of Eviction

By: Alana Bovell-Attanasio and Megan Sodat

Posted: October 3, 2018

But there is another public health crisis affecting our communities: eviction. An estimated 3.6 million households are at risk of eviction. Eviction rates are highest in communities with high levels of economic inequality, which also have the highest levels of housing insecurity. Eviction is linked to a range of negative health outcomes, including poor mental health, increased substance use, and reduced educational attainment.
Housing as a Platform for Improving Education Outcomes among Low-Income Children

Mary Cunningham
Graham MacDonald
Urban Institute
May 2012

Prevalence of Child Welfare Services Involvement among Homeless and Low-Income Mothers: A Five-year Birth Cohort Study

Jennifer F. Cullinan
Thomas Jefferson University

RESEARCH ARTICLE
Evicted children and subsequent placement in out-of-home care: A cohort study

Lisa Berg1,2*, Lars Brännström3
1 Centre for Health Equity Studies, Department of Public Health Sciences, Stockholm University, Stockholm, Sweden; 2 Swedish Institute for Social Research, Stockholm University, Stockholm, Sweden; 3 Department of Social Work, Stockholm University, Stockholm, Sweden

* lisa.berg@sci.su.se

Housing and Employment Insecurity among the Working Poor
Matthew Desmond and Carl Gershenson
Harvard University
Status of the movement
Eviction on Trial

Cities from New York to Minneapolis are providing free attorneys to tenants facing eviction.

By Rosecrans Foundation

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NYC’s success

With More Lawyers for Tenants, City Says Evictions Are Dropping

New York Law Journal

Increasing Tenants’ Access to Counsel Has Raised Court Efficiency, Fairness, Judges Say

The movement is growing!


• **Pending or expected:**
  - **States:** Connecticut, Massachusetts, Minnesota
  - **Cities:** Boulder, Detroit, Kansas City, Los Angeles, Seattle
  - **Federal:** AOC bill; others imminent

Already-enacted legislation
Comparison of enacted RTC laws

<table>
<thead>
<tr>
<th>City</th>
<th>Eligibility requirements</th>
<th>Scope</th>
<th>Implementation Plan</th>
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<tbody>
<tr>
<td>NYC (2017)</td>
<td>200% of FPL (RTC 2.0: 400% of FPL)</td>
<td>Evictions in court/administrative cases (RTC 2.0: subsidy terminations)</td>
<td>5 years (starting 2017) via Office of Civil Justice. Nonprofits only.</td>
</tr>
<tr>
<td>San Francisco (2018)</td>
<td>No income limit or other requirements</td>
<td>Evictions in court and administrative cases, subsidy terminations</td>
<td>Mayor’s Office of Housing &amp; Community Development. Fully implemented by 10 nonprofit providers as of July 2019.</td>
</tr>
<tr>
<td>Newark (2018)</td>
<td>200% of FPL</td>
<td>Evictions in court</td>
<td>Office of Tenant Legal Services with Dept of Economic &amp; Housing Development.</td>
</tr>
<tr>
<td>Philadelphia (2018)</td>
<td>300% of FPL</td>
<td>Evictions in court and administrative cases, subsidy terminations, appeals; some affirmative cases</td>
<td>Multi-year. Nonprofits only. Office under Mayor that oversees health/human services.</td>
</tr>
</tbody>
</table>

Philadelphia leadup:
legislative study

Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia
(Resolution No. 16066D)
RESOLUTION
Authorizing the Committee on Licenses and Inspections and the Committee on Public Health and Human Services to conduct hearings concerning the impact of eviction and substitution of rental housing on the health and wellbeing of low-income renters, and examining solutions that would improve the safety and security of rental housing, including the right to counsel.

Philadelphia leadup:
policy brief

Policy Brief: Evictions in Philadelphia
Prepared by REINVESTMENT FUND
Published JANUARY 2017
Philadelphia leadup:
media coverage/pressure

Op-ed: Philly should relieve eviction crisis by funding legal representation for low-income tenants

Philadelphia leadup:
$500k investment

PHILADELPHIA MAKES HISTORIC INVESTMENT TO AID LOW-INCOME RENTERS FACING EVICTION

Unrepresented tenants experience disruptive displacement 78 percent of the time, compared to 5 percent for represented tenants.

Philadelphia leadup:
economic study

Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants

October 30, 2019

- $3.5 million investment → $45 million return
- Unrepresented tenants experience disruptive displacement 78 percent of the time, compared to 5 percent for represented tenants.
Pending legislation

Massachusetts: cost savings study

- 45,000 evictions in 2012. Fewer than 6% of tenants represented

- Costs of homelessness: shelters, public health care system, foster care, policing, lowered earning potential for homeless youth

- For every $1 spent, $2.69 saved on “costs associated with the provision of other state services, such as emergency shelter, health care, foster care, and law enforcement.”

Source: Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts, Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts (October 2014)

Massachusetts: Effectiveness of counsel

<table>
<thead>
<tr>
<th>Comparison of Limited-Assistance Studies</th>
<th>MA District Court</th>
<th>MA Housing Court</th>
<th>CA Courts Court</th>
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<tbody>
<tr>
<td>Relieving Pressure of Lit.</td>
<td>60% of full group, compared to 35% of limited assistance group</td>
<td>55% of full group, compared to 50% of limited assistance group</td>
<td>35% of full group, compared to 10% of limited assistance group and 14% of no aid group</td>
</tr>
<tr>
<td>Amount of Rent Bennett for Legal fees</td>
<td>Full reg group saved average of $6,492 in 6 months to full assistance group</td>
<td>Full reg group saved average of $8,000 in 8 months to limited assistance group</td>
<td>In full reg group, 1) paid 75% of time, compared to 3% for limited assistance group and 2% for no aid group</td>
</tr>
<tr>
<td>Amount of Debt Bennett for Legal fees</td>
<td>Full reg group paid $210, average, compared in 2015 for limited assistance group</td>
<td>Full reg group paid $200, average, compared in 2015 for limited assistance group</td>
<td>Full reg group paid $100, average, compared in 2015 for limited assistance group</td>
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<tr>
<td>Where Processed</td>
<td>Studied, but study authors could not come to a conclusion.</td>
<td>Full reg group given 33 days on average, compared to 82 days for limited assistance group</td>
<td>Full reg group given 97 days on average, compared to 14 days for limited assistance group and 47 days for no aid group</td>
</tr>
<tr>
<td>Days to Motion Filed</td>
<td>Full reg group given 113 days on average, compared to 82 days for limited assistance group</td>
<td>Full reg group given 33 days on average, compared to 82 days for limited assistance group</td>
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Massachusetts (HB 1537 / HB 3456 / SB 913) (2019)

- **Scope:** eviction defendants in court
- **Eligibility:** 200% of poverty, eligible for public benefits, or unable to pay for atty without losing “necessities of life

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Connecticut: bill leadup

Substitute Bill No. 426

*SB00426/JUD_032216_*

**AN ACT CREATING A TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened.

Section 1. Effective from passage (a) There is established a task force to study the nature, extent and consequences of unmet legal needs of state residents in civil matters. The task force shall examine, on a state-wide basis, the impact that the lack of access to legal counsel in civil matters is having on the ability of state residents to secure essential human needs.
'Civil Gideon' Task Force Would Be an Important First Step
The Connecticut Law Tribune
April 27, 2016

Report of the Task Force to Improve Access to Legal Counsel in Civil Matters
Judiciary Committee
Connecticut General Assembly

LEGISLATIVE RECOMMENDATIONS
We have identified a series of recommendations to the General Assembly that will enable our time and to continue to work on that grand vision. The final report will be completed within six months, with recommendations made by February 28, 2016. They are:
1. Preventing evictions through legal representation
2. Expanding access to civil legal aid
3. Enhancing the legal aid system's capacity
4. Improving access to pro bono services
5. Supporting the development of a statewide legal aid network
6. Creating a task force to study the issue
7. Developing a comprehensive plan
8. Ensuring that all Connecticut residents have access to justice
9. Funding the legal aid system
10. Establishing a legal aid board

Time to confront Connecticut’s eviction crisis - with lawyers

Connecticut Law Tribune
April 27, 2016
Connecticut (SB 652) (2019)

• Scope: Public housing tenants where breach of lease alleged

• Eligibility: “financially unable to obtain counsel”

Minnesota (HB 2593 / SB 1785) (2019)

• Scope: Public housing tenants where breach of lease alleged

• Eligibility: “financially unable to obtain counsel”

Los Angeles (motion) (2019)

• City Housing Committee recommended studying RTC feasibility

• Phase 1: $3 million in FY19-20 for 5 sites; identify $12.5 million in budget
Detroit (ordinance) (2019)

- **Scope**: evictions in court
- **Eligibility**: 200% or below of FPL

Pilots

Need A Lawyer To Fight An Eviction? A New D.C. Program Provides One For Free

The committee has set aside $4.5 million for a pilot program that offers low-income residents a lawyer at no cost for eviction proceedings in the city’s landlord-tenant court. Last year, the court handled 11,000 eviction cases.

The bill creating the pilot program was first introduced last year by Council member Kenyan McDuffie (D-Ward 5), but despite a public hearing and support from the majority of the Council, it did not receive a vote before the end of last year’s session. It was reintroduced in January, but also failed with Council member Charles Allen (D-Ward 6), who chairs the Judiciary Committee, to find money in the city’s 2019 budget to implement the program starting in October.

- **Scope**: Limited to evictions (was broader in early drafts)
- **Eligibility**: 200% of poverty
- **Services provided**: mixture of full scope, brief services, limited scope funded by Bar Foundation
- **Other**: not “right to counsel”; services provided until funding (~$4 million annually) runs out

Tenants w/o counsel:

- 2x likely to be found in breach of lease;
- 3x more likely to be subjected to writ of possession;
- 7x more likely to wind up with consent judgment (less favorable than a settlement agreement)
**Hennepin County, MN**

- $100,000/year in public county funds (Hennepin County), $275,000/year in private foundation (Pohlad Family Foundation)
- Pilot found represented tenants were:
  - Twice as likely to stay in their homes;
  - Received twice as long to move if necessary;
  - Were 4x less likely to use homeless shelter.

**Washington State**

- 2019 pilots bill enacted to study atty representation in eviction cases
- Appropriates $500,000 in FY20 and $400,000 in FY21
- Would provide attys for 750 unlawful detainer cases, then compare to 750 cases w/no representation

**Procedural Justice Data: CA study**

<table>
<thead>
<tr>
<th>TABLE 1: METHODS OF CASE CONCLUSION</th>
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<table>
<thead>
<tr>
<th>TABLE 2: ASSERTION OF COCUMBLARY VS. NON-COCUMBLARY DEFENSES</th>
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</table>
Procedural Justice Data: CA study

TABLE 9. OUTCOMES BASED ON COGNIZABLE VS. NON-COGNIZABLE DEFENSES

<table>
<thead>
<tr>
<th>Tenant prior to eviction</th>
<th>Tenants who evicted more than once in 10 years</th>
<th>Tenants who evicted more than once in 5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Cognizable</td>
<td>54%</td>
<td>49%</td>
</tr>
<tr>
<td>Cognizable</td>
<td>32%</td>
<td>25%</td>
</tr>
</tbody>
</table>

Substantive Justice Data: CA study

TABLE 1. CASES RESOLVED WITH TENANT IN POSSESSION OF UNIT

<table>
<thead>
<tr>
<th>Legal Aid</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Legal Aid</td>
<td>34%</td>
</tr>
<tr>
<td>Unbunded Legal Aid</td>
<td>30%</td>
</tr>
<tr>
<td>Paid Representation</td>
<td>36%</td>
</tr>
</tbody>
</table>

TABLE 2. AVERAGE NUMBER OF DAYS FOR TENANT TO MOVE OUT WHERE TENANT LOST POSSESSION

<table>
<thead>
<tr>
<th>Legal Aid</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Legal Aid</td>
<td>128</td>
</tr>
<tr>
<td>Unbunded Legal Aid</td>
<td>183</td>
</tr>
<tr>
<td>Paid Representation</td>
<td>183</td>
</tr>
</tbody>
</table>

Substantive Justice Data: CA study

TABLE 3. EXCHANGE OF MONEY BETWEEN THE PARTIES

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<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>No Legal Aid</td>
<td>65%</td>
</tr>
<tr>
<td>Unbunded Legal Aid</td>
<td>3%</td>
</tr>
<tr>
<td>Paid Representation</td>
<td>32%</td>
</tr>
</tbody>
</table>

TABLE 4. AMOUNT OF PAYMENT MADE BY TENANT TO LANDLORD

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<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>No Legal Aid</td>
<td>30%</td>
</tr>
<tr>
<td>Unbunded Legal Aid</td>
<td>5%</td>
</tr>
<tr>
<td>Paid Representation</td>
<td>30%</td>
</tr>
</tbody>
</table>
Baltimore

Report (based on case review, tenant surveys, interviews) examined:

- How summary process works
- Demographics of those coming to housing court
- Info given to tenants / tenant bewilderment
- Lack of sufficient judicial review of complaints
- Insufficient notice
- Reasons why tenants default
- Difficulty with escrowing
- Experience of those with counsel
Study conducted in 3 periods over course of 8 years analyzed:
- Disparity in LL/T representation (70% vs. 4%)
- Default rate (50%)
- Financial, social, and procedural costs of evictions
A final note

• Connection between RTC and substantive law
• Connection between RTC and emergency rental assistance

Seeing the latest developments:
http://www.civilrighttocounsel.org
Legislation: http://civilrighttocounsel.org

Seeing the status: http://www.civilrighttocounsel.org

Bibliography: http://www.civilrighttocounsel.org
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Questions?

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