



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

1

About the NCCRC

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

2

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

3

Timing and Duration of Pre- and Postnatal Homelessness and the Health of Young Children

Megan Sandel, MD, MPH,^a Richard Sheward, MPP,^a Stephanie Ettinger de Cuba, MPH,^b Sharon Coleman, MS, MPH,^c Timothy Heeren, PhD,^d Maureen M. Black, PhD,^e Patrick H. Casey, MD,^f Mariana Chilton, PhD, MPH,^g John Cook, PhD, MAEd,^h Diana Becker Cutts, MD,^h Ruth Rose-Jacobs, ScD,^h Deborah A. Frank, MD^h

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: postneonatal hospitalizations (adjusted odds ratio [aOR] 1.41; confidence interval [CI] 1.18–1.69), fair or poor child health (aOR 1.97; CI 1.58–2.47), and developmental delays (aOR 1.48; CI 1.16–1.89). There was no significant association with risk of underweight (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 1.38–2.58).

4

Pacific Standard

HOME > SOCIAL JUSTICE

THE BURDEN OF A LATE RENT CHECK CAN HARM THE HEALTH OF BOTH PARENTS AND KIDS

New research finds that housing instability can affect the mental and physical health of family members of all ages.

The Hidden Health Crisis of Eviction

BY: Allison Bovell-Ammo and Megan Sandel

POSTED ON: October 5, 2018

But there is another public health crisis affecting our communities: eviction. An estimated 2.8 million households are at risk of eviction. Emerging research on the health impacts of evictions shines a light on this hidden problem lurking in the shadows of our communities. People who are threatened with eviction, even before they lose their home, are more likely to report poor health, high blood pressure, depression, anxiety, and psychological distress. Eviction often leads to residential instability, moving into poor quality housing, overcrowding, and homelessness, all of which is associated with negative health among

5



MISSING SCHOOL, MISSING A HOME: THE LINK BETWEEN CHRONIC ABSENTEEISM, ECONOMIC INSTABILITY AND HOMELESSNESS IN MICHIGAN

NOVEMBER 2018

By Jennifer Erb-Downward and Payton Watt

STUDENT MOBILITY

Exploring the Impacts of Frequent Moves on Achievement

6



Housing as a Platform for Improving Education Outcomes among Low-Income Children

Mary Cunningham
Graham MacDonald

Urban Institute

May 2012

7

September 2003

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

Jennifer F. Culhane
Thomas Jefferson University

RESEARCH ARTICLE

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

Lisa Berg^{1,2*}, 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

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8

Social Problems, 2016, 63, 46–67
doi: 10.1093/socpro/spr025
Advance Access Publication Date: 11 January 2016
Article



Housing and Employment Insecurity among the Working Poor

Matthew Desmond and Carl Gershenson

Harvard University

9

Status of the movement

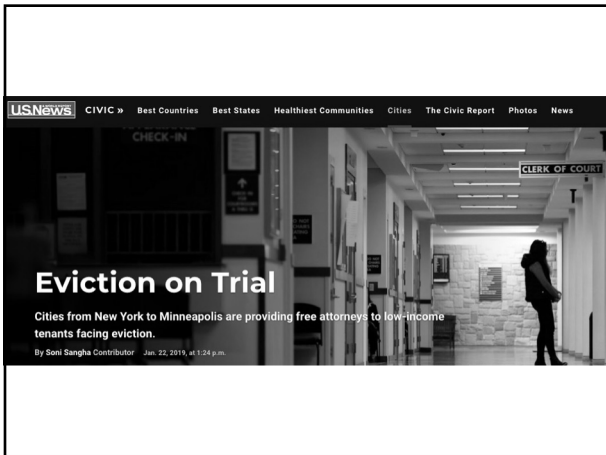
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11



12



13



14



15



Published by
WNYC News

NYC's success

With More Lawyers for Tenants, City Says Evictions Are Dropping

New York Law Journal

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Page printed from: <https://www.law.com/newyorklawjournal/2018/09/24/increasing-tenants-access-to-counsel-has-raised-court-efficiency-fairness-judges-say/>

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

16

The movement is growing!

- Enacted: NYC (2017), San Francisco (2018), Newark NJ (2018), Cleveland (2019), Philadelphia (2019)
- Pending or expected:
 - States: Connecticut, Massachusetts, Minnesota
 - Cities: Boulder, Detroit, Kansas City, Los Angeles, Seattle
 - Federal: AOC bill; others imminent

17

Already-enacted legislation

18

Comparison of enacted RTC laws

City	Eligibility requirements	Scope	Implementation Plan
NYC (2017)	200% of FPL (RTC 2.0: 400% of FPL)	Evictions in court/admin cases (RTC 2.0: subsidy terms, court appeals)	5 years (starting 2017) via Office of Civil Justice. Nonprofits only.
San Francisco (2018) (ballot)	no income limit or other requirements	Evictions in court and admin cases; subsidy terminations	Mayor's Office of Housing & Community Developments. Fully implemented by 10 nonprofit providers as of July 2019
Newark (2018)	200% of FPL	Evictions in court	Office of Tenant Legal Services w/in Dept of Economic & Housing Development
Cleveland (2019)	100% of FPL and have children	Evictions in court	United Way leads implementation. Nonprofits only. Starts in July 2020.
Philadelphia (2019)	200% of FPL	Evictions in court and admin cases; subsidy terminations; appeals; some affirmative cases	Multi-year. Nonprofits only. Office under Mayor that oversees health/human svcs.

19

Philadelphia leadup: legislative study



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 160988)

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 substandard housing on the health and wellbeing of low-income renters, and examining solutions that would improve the safety and stability of rental housing, including the right to counsel.

20

Philadelphia leadup: policy brief



REINVESTMENT
FUND



Policy Brief:
Evictions in Philadelphia

Prepared by REINVESTMENT FUND
Published JANUARY 2017

21

**Philadelphia leadup:
media coverage/pressure**

newsworks

MARCH 24, 2017 | BREAK EASY

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



49°

HOME NEWS WEATHER SPORTS TRAFFIC LISTEN WATCH E.S.P. CONTESTS MORE

Lawyers Could Ease Philadelphia 'Eviction Crisis,' Council Members Hear

March 20, 2017 5:43 PM By Pat Leahy

22

**Philadelphia leadup:
\$500k investment**

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

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\$500,000 in new funding puts Philadelphia at the forefront of national movement for right to counsel

PHILADELPHIA—Today, city leaders announced an historic investment in legal assistance for low-income renters who face eviction. The \$500,000 in new funding, which Council passed unanimously this spring, will nearly double legal and supportive services for such renters, many of whom are threatened with losing their homes simply for standing up for their right to safe, quality, and habitable housing.

23

**Philadelphia leadup:
economic study**

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

October 30, 2018

Prepared for the Philadelphia Bar Association's
Civil Gideon and Access to Justice Task Force

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

24

Pending legislation

25

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)

26

**Massachusetts:
Effectiveness of counsel**

Comparison of Limited-Assistance Studies			
	MA District Court	MA Housing Court	CA County Court
Retaining Possession of Unit	66% of full rep group, compared to 33% of limited assistance group	33% of the full rep group, compared to 36% of the limited assistance group	55% of full rep group, compared to 18% of limited assistance group and 14% of no aid group
Amount of Rent Tenants Saved	Full rep group saved average of 9.4 months of rent, compared to 1.9 months for limited assistance group	Full rep group saved average of 1.8 months of rent, compared to 1.6 months for limited assistance group	In full rep group, LL paid 55% of time, compared to 0% for limited assistance group and 2% for no aid group
Amount Tenants Ordered to Paid to LLs	Full rep group paid \$0 to LLs on average, compared to \$617 for limited assistance group	Full rep group paid \$903 to LLs on average, compared to \$486 for limited assistance group	Full rep group paid LLs 0% of time, compared to 71% for limited assistance group (where 51% paid more than max liability) and 61% of time for no aid group (where 55% paid more than max liability)
Where Possession Lost, Days to Move	Studied, but study authors could not come to a conclusion*	Full rep group given 113 days on average, compared to 82 days for limited assistance group	Full rep group given 97 days on average, compared to 54 days for limited assistance group and 47 days for no aid group

27

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"

28

Massachusetts
Right to Counsel
Coalition

HOME WHY SUPPORTERS YOUR STORY EVENTS STATE BILLS NATIONAL ARTICLES

Massachusetts
Right to Counsel Coalition

A Campaign for Justice in Evictions

29

Connecticut: bill leadup

General Assembly

Substitute Bill No. 426

February Session, 2016

* SB00426JUD 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.

30

Connecticut: bill leadup

ConnecticutLawTribune

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'Civil Gideon' Task Force Would Be an Important First Step

The Connecticut Law Tribune

April 27, 2016

31

Connecticut: bill leadup



Judiciary Committee
Connecticut General Assembly

Report of the Task Force to Improve Access to Legal Counsel in Civil Matters

LEGISLATIVE RECOMMENDATIONS

We have identified a series of recommendations to the General Assembly that will enable our State and its residents to improve our fiscal and social well-being consistent with the financial burden these recommendations would entail. They are:

1. Establish a statutory right to civil counsel in three crucial areas where the fiscal and social cost of likely litigation significantly outweighs the financial cost of civil counsel:
 - a. Renting and eviction under General Statutes § 40b-15;
 - b. Child custody and detained removal (deportation) proceedings;
 - c. Defense of residential evictions;

32

Connecticut: bill leadup

Time to confront Connecticut's eviction crisis - with lawyers

By SARAH FREE
SHANTREE COURANT | FEB 18, 2019



A Baltimore man holds a sign at the city's city shelter facility shelter material with an emergency management. (AP Photo, Baltimore Sun)

33

Connecticut (SB 652) (2019)

General Assembly
January Session, 2019
Proposed Bill No. 652
LCO No. 2187
Referred to Committee on JUDICIARY
Introduced by:
SEN. FLEXER, 29th Dist.

AN ACT PROVIDING LEGAL COUNSEL TO ELIGIBLE TENANTS IN A SUMMARY PROCESS MATTER.

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

1. That chapter 832 of the general statutes be amended to provide that
2. a tenant who is a defendant in a summary process matter and whose
3. total yearly earnings are less than fifty thousand dollars shall have
4. legal counsel appointed to represent such tenant during the pendency
5. of the summary process matter.

Statement of Purpose:

To provide legal counsel to certain eligible tenants in a summary process matter.

34

Minnesota (HB 2593 / SB 1785) (2019)

- Scope: Public housing tenants where breach of lease alleged
- Eligibility: "financially unable to obtain counsel"

35

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

36

Detroit
(ordinance) (2019)

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

37

Pilots

38

WEAPILL, MAY 18
**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 free of charge for eviction proceedings in the city's landlord-tenant court. Last year, the court handled 33,000 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. He re-introduced the bill in January, but also worked with Council member Charles Allen (D-Ward 6), who chairs the Judiciary Committee, to find money in the city's 2018 budget to implement the program starting in October.

39

D.C. “Expanding Access to Justice Act” (2017)

- 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

40

D.C. “Expanding Access to Justice Act” (2017)

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)

41

Hennepin County, MN



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Mid-Minnesota Legal Aid
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Maria Kruger
Volunteer Lawyers Network
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mkruga@vlmn.org

Legal Representation in Evictions - Comparative Study Limited Services Data Included

This project seeks to determine whether legal representation for tenants in the Fourth Judicial District Housing Court provides meaningful benefits in housing stability. With help from two Hennepin County departments—the Center for Innovation and Excellence and the Office of Housing Stability—and many volunteers, Mid-Minnesota Legal Aid and Volunteer Lawyers Network examined eviction cases filed in Hennepin County between January 1 and June 30, 2018 to determine the effect of legal representation for tenants on housing stability. This study examines the extent to which representation helps tenants keep their homes or obtain sufficient transition periods to move, maintain clear eviction records, avoid forced moves by sheriff deputies, and avoid the use of emergency shelters.

42

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.

43

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

44

Procedural Justice Data: CA study

TABLE 6. METHODS OF CASE RESOLUTION

	Default judgment	Settlement	Court judgment	Voluntary dismissal	No resolution
No Legal Aid	51%	9%	7%	21%	12%
Unbundled Legal Aid	3%	53%	20%	18%	6%
Full Representation N= 421	0%	45%	25%	30%	0%

TABLE 8. ASSERTION OF COGNIZABLE VS. NON-COGNIZABLE DEFENSES

	Cognizable	Non-cognizable
No Legal Aid	59%	41%
Unbundled Legal Aid N= 149 ¹⁴⁷	97%	3% ¹⁴⁸

45

Procedural Justice Data: CA study

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

	Tenant awarded possession	Average number of move out days	Tenant pays landlord	Tenant pays landlord more than maximum liability
Cognizable	16%	51	68%	52%
Non-Cognizable N: 149 ¹⁰⁹	14%	52	57%	52%

46

Substantive Justice Data: CA study

TABLE 1. CASES RESOLVED WITH TENANT IN POSSESSION OF UNIT¹¹³

No Legal Aid	18%
Unbundled Legal Aid	18%
Full Representation N: 137	55%

TABLE 2. AVERAGE NUMBER OF DAYS FOR TENANT TO MOVE OUT (WHERE TENANT LOSES POSSESSION)

No Legal Aid	47
Unbundled Legal Aid	54
Full Representation N: 105	97

47

Substantive Justice Data: CA study

TABLE 3. EXCHANGE OF MONEY BETWEEN THE PARTIES

	Tenant pays landlord	Landlord pays tenant	Neither party makes a payment
No Legal Aid	61%	2%	37%
Unbundled Legal Aid	71%	0%	29%
Full Representation N: 137	0%	55%	45%

TABLE 4. AMOUNT OF PAYMENT MADE BY TENANT TO LANDLORD

	Tenant pays landlord more than maximum liability	Average tenant payment, as compared to maximum liability
No Legal Aid	55%	1.37
Unbundled Legal Aid	51%	1.27
Full Representation N: 137	0%	N/A

48

Reports

49

Baltimore



How Renters Are Processed in the Baltimore City Rent Court

December 2013

A report by the Public Justice Center
in collaboration with the Right to Housing Alliance,
Dora Perdomo, Ph.D., of Johns Hopkins University,
and Michele Gorman, J.D., Ph.D., of the University of Baltimore

50

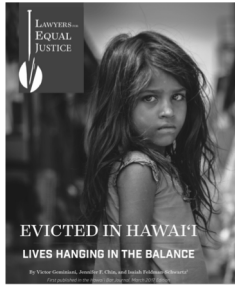
Baltimore

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

51

Hawaii



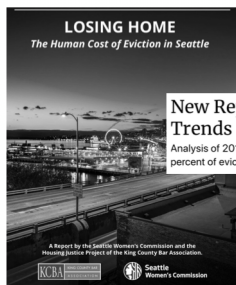
52

Hawaii

- 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

53

Seattle



New Report Details Seattle's Eviction Trends
Analysis of 2017 county records and interviews show that nearly 90 percent of evicted tenants experienced homelessness

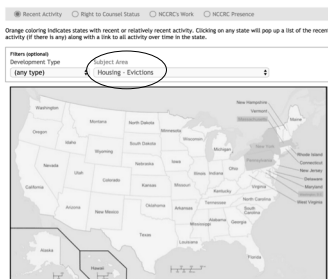
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A final note

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

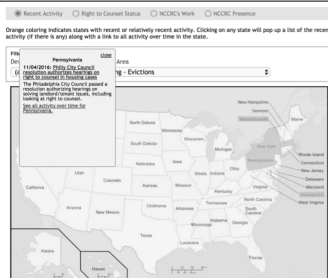
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Seeing the latest developments: <http://www.civilrighttocounsel.org>



56

Seeing the latest developments: <http://www.civilrighttocounsel.org>



57

Legislation: <http://civilrighttocounsel.org>

2018 CIVIL RIGHT TO COUNSEL BILLS

Listed below are all of the 2018 bills that address the right to counsel in civil cases. The NCRC monitors all such bills and regularly reports on their progress, and we also are involved with some of them.

Where 2017 bills are listed as "active", they are carryover bills into 2018.

- Enacted Bills
- Pending Bills
- Inactive Bills
- 2017 Bills
- 2016 Bills

Enacted Bills

State	Bill #	Sponsor	Description	Status
MD	HB 131 / SB 2	Numerous	Create new termination of parental rights procedure where unreciprocal sexual conduct resulted in child, and requires appointment of counsel for those proceedings.	Signed by Governor on 2/13/18.
PA	HB 822	Numerous	Requires appointment of counsel for parties petitioning to be relieved of an offender registration requirements.	Signed by Governor on 2/21/18.

Pending Bills

State	Bill #	Sponsor	Description	Status
MD	HB 2042 / SB 2042	Numerous	Would guarantee counsel in immigration court for children and "vulnerable adults"	HB 2042 introduced and referred to Judiciary Committee on 6/6/17. Referred to Immigration and Border Security Subcommittee on 5/1/17.

58

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


☐ Recent activity ☒ Right to Counsel Status ☐ NCRC's Work ☐ NCRC's Presence

Select a subject area from the menu below to see which states provide for appointment of counsel for that subject area. You may explore the history of the bills in the states and a list of the total number of states that fit each type of bill. Clicking on any state will pop up a list of the designations in which we have our designations.

Select a subject area from which to compare all states.

☐ Pending ☐ Description ☐ Long-term Right to Counsel ☐ Temporary Appointment of Counsel ☐ Right to Appointment is Qualified ☐ Total States

Select a specific jurisdiction to be taken to a separate page with all information for that jurisdiction. (Choose jurisdiction 2)



59

Bibliography:
<http://www.civilrighttocounsel.org>

- ADA (14 entries)
- Anti-Smuggling (3 entries)
- Appellate Issues (4 entries)
- Border Patrol (1 entry)
- Court-Related Interest or Supervisory Power (19 entries)
- Benefits (2 entries)
- Civil Commitment (8 entries)
- Civil Detention (27 entries)
- Civil Justice (9 entries)
- Criminal Law Related to Civil Right to Counsel (8 entries)
- Detention Issues (including Child Support Contests) (21 entries)
- Detention, Release (27 entries)
- Education (18 entries)
- Family Law (194 entries)
- Family Law (14 entries)
- Guardianship of Adults (14 entries)
- Housing (19 entries)
- All Housing (Detention and Foreclosure) (28 entries)
- Housing General - Law Review Articles and Treatises (6 entries)
- Housing General - Legislation (1 entry)
- Housing General - Justice (1 entry)
- Housing General - Studies and Reports (6 entries)
- Housing General - Law Review Articles and Treatises (6 entries)
- Housing General - Cases (8 entries)
- Housing General - Law Review Articles and Treatises (12 entries)
- Housing General - Legislation (6 entries)
- Housing General - Justice (6 entries)
- Housing General - Studies and Reports (28 entries)
- Housing General - Detention (18 entries)
- Housing General - Law Review Articles and Treatises (2 entries)
- Housing General - Justice (9 entries)
- Housing General - Studies and Reports (4 entries)
- Immigration (17 entries)
- International Law (28 entries)

60

Resources on Right to Counsel in Housing Cases

- + Boston Bar Association Task Force on Expanding the Civil Right to Counsel, *The Importance of Representation in Eviction Cases and Homelessness Prevention* (March 2012)
- + Risa E. Kaufman, Martha F. Davis, and Heidi M. Wegleitner, *The Interdependence of Rights: Promoting the Human Right to Housing by Promoting the Right to Counsel*, 45 Colum. Hum. Rts. L. Rev. 772 (Spring 2014)
- + John Pollock, *Lassiter Notwithstanding: The Right to Counsel in Foreclosure Actions*, 43 Clearinghouse Rev. J. of Poverty L. and Pol'y 446 (Jan.-Feb. 2010)
- + Andrew Scherer, *The Price of Equal Justice: How Establishing a Right to Counsel for People Who Face Losing Their Homes Helps Tackle Economic Inequality*, Impact Center for Public Interest Law, New York Law School, Vol 1 at 29 (2015)
- + Carroll Seron, et al. *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 Law & Soc'y Rev. 419 (2001)

61

Questions?

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62