RESEARCH IN BRIEF

THE EFFECT OF STATE & LOCAL LAWS ON EVICTIONS

DECEMBER 2023

Leveling the Playing Field

The Importance of the Right to Counsel in Eviction Proceedings

Early data from Right to Counsel (RTC) initiatives provided promising results for tenants, the justice system, and communities… Since 2017, five states and 18 local jurisdictions have enacted legislation providing RTC in evictions.

At the direction of Congress, the Legal Services Corporation (LSC) launched the Effect of State & Local Laws on Evictions Study to investigate the unmet legal needs surrounding the eviction crisis in the United States. More than one in three renter households will experience a housing-related civil legal problem, such as eviction, in a year.[1]

The COVID-19 pandemic exacerbated the eviction crisis, leading to state and local eviction moratoria, an influx of rental assistance funding, and innovative partnerships by legal services organizations to prevent evictions.[2] The crisis also brought new attention to right-to-counsel (RTC) initiatives as cities and states searched for tools to stem evictions.[3] Early data from RTC initiatives provided promising results for tenants, the justice system, and communities. During the pandemic, the White House in 2021 urged jurisdictions to use American Rescue Plan State and Local Recovery Funds to support RTC initiatives.[4] This brief describes RTC initiatives in eviction, highlights recent research findings, and examines the role of legal services organizations in implementing these efforts.

Eviction in America

Over the past two decades, eviction rates in the U.S. have steadily risen, with approximately 3.6 million evictions filed in 2018 alone.[5] The COVID-19 pandemic exacerbated the problem by causing widespread job loss and economic hardship, making it difficult for many tenants to pay rent and increasing the risk of eviction.[6] In March 2020, protections were implemented to ensure tenants were not displaced. As protections expired, eviction filings returned to pre-pandemic levels and historic highs in other jurisdictions.[7] At the end of 2022, as many as 20% of renter households were at risk of eviction.[8]

As detailed in prior briefs, the eviction process is complex, hyperlocal, and moves quickly.[9] Nonpayment of rent is the most common cause of eviction, representing more than 80% of evictions filed each year.[10] In many jurisdictions, tenants can be removed from a missed rent payment in a matter of weeks.[11] The consequences of eviction are far-reaching. If evicted, low-income families already struggling with the daily burdens of poverty face losing their homes, belongings, and housing subsidies.[12] The connection between eviction and employment challenges, decreased school performance for children, and adverse health and mental health outcomes are also well-documented.[13]

LSC America's Partner for Equal Justice
LEGAL SERVICES CORPORATION

Few tenants have access to legal representation in eviction proceedings. Research consistently demonstrates that while landlords have representation in more than 80% of cases, tenants have representation in less than 5% of cases.[14] This impacts tenants and burdens local court systems—which are not set up to operate without legal representation on both sides.[15] The barriers tenants face to participate in eviction proceedings are multifaceted—from poorly designed notices, forms, and processes to a lack of legal information and assistance.[16] In some jurisdictions, defaults or failure to appear at an eviction hearing are standard—ranging from 35% to more than 70%.[17]

An Evidence-based Solution: Right to Counsel

The right to legal representation is a cornerstone of due process in criminal proceedings, as enshrined in the Sixth Amendment of the U.S. Constitution. This constitutional provision forms the basis for the funding and operation of state and federal public defenders in criminal cases. However, despite the profound repercussions of civil legal issues on essential aspects of life, such as housing and parental rights, there is no corresponding federal right to counsel in civil matters. Notably, this absence extends to eviction cases, where individuals facing the potential loss of housing do not have a federally mandated right to legal representation in civil proceedings.[18]

Several state and local lawmakers have enacted civil RTC initiatives for eviction to address the legal representation disparity between landlords and tenants.[19] Typically, these efforts cover a distinct group of tenants eligible for services, often based on income or threshold of the federal poverty level. Since 2017, five states and 18 local jurisdictions have enacted legislation providing RTC in evictions (see Figure 1).[20] Other jurisdictions have funded

FIGURE 1 ENACTED EVICTION RIGHT TO COUNSEL INITIATIVES

pilot RTC efforts or programs without codifying the initiative into law.[21] The specific details of each program vary. Some programs provide legal representation to all tenants facing eviction, while others may be limited to tenants in a specific geographic area or tenants meeting other criteria. For example, in 15 jurisdictions, services are provided only to tenants with income below specific income guidelines.[22] In Cleveland, the program represents tenants below 100% of the federal poverty guidelines and where at least one child resides in the home.[23] The funding sources and the type of legal services provided vary by program. The National Coalition for the Civil Right to Counsel (NCCRC) maintains a comprehensive map of proposed and enacted legislation across the country and a comprehensive analysis describing the components of each enacted measure.

In some jurisdictions, the legislation provides for other tenant protections or funding for related services. In recent RTC legislation, several jurisdictions require landlords to provide information on the right to legal assistance and how to access it with the eviction notice.[24] Other legislation dedicates funding for advocates and community organizations to provide education and outreach.[25] For example, the Baltimore City Council passed its RTC legislation in 2020, allowing community organizations to provide outreach and education to community members.[26]

The Impact of Legal Representation

Research consistently demonstrates that providing tenants with legal representation in eviction cases is beneficial across several metrics, including increased access to justice, improved court processing, and a positive return on investment.[27]

Access to Justice. Legal representation in eviction cases can greatly increase tenants' access to justice and procedural fairness outcomes. First, tenants with legal representation are more likely to appear in court, reducing the number of default or failure-to-appear judgments.[28] Tenants with representation are also more likely to raise defenses to the eviction, such as challenging the validity of the eviction notice, asserting their right to repairs, or disputing the amount of rent owed.[29] Finally, legal representation can also improve the tenant's ability to negotiate payment plans with landlords, which can help tenants stay in their homes.[30]

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Tenant Outcomes. Tenants with legal representation are more likely to avoid eviction or secure more favorable outcomes in their case.[31] Most notably, with representation, tenants are more likely to stay housed and avoid eviction judgments. Findings from recent RTC evaluations show:

- In New York City, *84% of legal-represented renters remained in their homes*.[32]
- In Cleveland, *93% of tenants with legal representation avoided an eviction judgment or involuntary move*.[33]
- In Connecticut, *76% of tenants with representation avoided an eviction judgment*.[34]
- In California, *tenants with representation are three times more likely to remain housed* when compared to tenants receiving limited or no assistance.[35]

Legal representation can be crucial in determining the outcome of eviction cases and the well-being of tenants.

Court Processing. Research also indicates that providing tenants with legal representation in eviction proceedings can benefit the legal system. A study by the Eviction Lab at Princeton University found that providing legal representation to tenants in eviction cases could help to reduce the number of court hearings and appeals, leading to a more efficient and cost-effective system.[36] Studies have also shown that eviction cases with legal representation tend to move more quickly and efficiently through the court system, reducing the burden on judges and court staff.[37] Additionally, tenants with legal representation are more likely to understand their legal rights and responsibilities, which can help to prevent future legal disputes.[38] Moreover, providing legal representation to tenants can have positive ripple effects beyond the individual case, such as discouraging landlords from filing frivolous eviction cases and improving overall housing stability in communities.[39]

Economic Benefits. Providing legal representation in eviction cases has significant economic benefits for communities. By helping tenants avoid eviction and remain in their homes, legal representation can help prevent the negative economic consequences of eviction, such as increased homelessness, decreased employment opportunities, and decreased economic activity.[40] For example, studies have found that eviction can negatively impact household income and employment. One study

conducted in Milwaukee found that households that experienced eviction had an average income loss of $5,000 and were more likely to experience job loss.[41] Similarly, another study conducted in New York City found that evicted households were more likely to experience long-term job loss and earn lower incomes over time.[42]

In addition to negative economic impacts for tenants and their families, eviction significantly impacts communities, including increased costs for social services. For example, a study conducted in Philadelphia found that each eviction in the city cost an average of $8,000 in social service costs and lost tax revenue. Relatedly, a study conducted in Cleveland found that each eviction cost an average of $4,000 in social service costs alone.[43] Stout, an economic firm, conducted several analyses to estimate the impact of RTC programs. They estimate:

- A $5.7 million investment in Baltimore would result in a $35.6 million return in Maryland.[44]
- In Massachusetts, a cost savings of $2.40 for every dollar spent on providing full legal representation to tenants in eviction.[45]
- In Cleveland, Stout estimates a return on investment of between $2.62 and $3.11 per dollar invested in its RTC program.[46]

Overall, studies provide strong evidence for the benefits of the RTC in eviction cases, including increased access to justice, improved outcomes, reduced homelessness, increased efficiency, and economic savings.

Legal Aid Organizations are Core Partners in RTC Initiatives

RTC legislation often describes the types of organizations that can provide legal assistance under the program. Most legislation allows assistance to be provided by non-profit organizations. For example, in San Francisco, the legislation established the Eviction Defense Collaborative, a group of more than ten non-profit legal services providers who provide legal services to low-income defendants facing eviction.[47] In Boulder, Colorado, where "No Evictions without Representation" (NEWR) was passed in 2020, the city manager implements the program with non-profit legal services organizations, private law firms, and private individual attorneys.[48] Similarly, Denver, which passed legislation in 2021, will allow private, for-profit organizations or individuals to participate in the program.[49] Louisville (2021) names the Legal Aid Society and Coalition for the Homeless to provide services.[50]

Legal services organizations play a critical role in the implementation and success of RTC initiatives. Organizations are often involved in the following ways:

- **Providing legal representation:** Legal aid organizations provide free or low-cost legal representation to eligible tenants facing eviction.
- **Capacity building:** Legal aid organizations help build the capacity of RTC programs by providing training and technical assistance to participating attorneys and other program staff.
- **Outreach and education:** Legal aid organizations conduct outreach and education activities to raise awareness about the RTC and help tenants understand their rights. These activities help ensure that tenants know the legal services available to them and how to access them.
- **Advocacy:** Legal aid organizations advocate for expanding and improving RTC programs. Organizations often work with policymakers and other stakeholders to build support for the programs and ensure they are adequately funded.
- **Program evaluation:** Legal aid organizations help evaluate the effectiveness of RTC programs by gathering tenant feedback, analyzing case data, and participating in independent evaluations. Data is central to building the evidence base for RTC programs. These efforts help identify areas for improvement and ensure that the programs meet tenants' needs.

Legal aid organizations are essential in successfully implementing RTC initiatives. Their expertise and experience in providing legal services to low-income individuals can help ensure tenants can access the legal services they need to stay in their homes and avoid eviction.

TABLE 1 Impact of Providing Access to Legal Assistance in Evictions

Access to Justice	– More likely to appear in court – More likely to raise defenses to eviction – Increased ability to negotiate payment plans – Improved court processing
Tenant Outcomes	– Tenants are more likely to remain housed – Tenants are more likely to have more time to move – Less court-ordered repayment of back rent – Tenants are more likely to avoid a record of eviction
Increased System Efficiencies	– Allows dockets to proceed more expeditiously – Decreases the number of motions and appeals – Decreased burden on the judge to explain legal rights or proceeding rules
Economic Impact	– Decreased social service demand – Increase in tax revenue – Estimated positive impact on net earnings

SPOTLIGHT

Role of Communities

Community organizations and tenant organizers play a critical role in the success of RTC initiatives.[51] Organizers and community groups help raise awareness about RTC and its benefits. In many jurisdictions, communities have led efforts to bring RTC to fruition. In jurisdictions where ballot initiatives are available, tenant organizers have successfully raised awareness and introduced RTC initiatives.[52] Communities help educate tenants about their rights in eviction proceedings and provide information about accessing legal services.

Importance of Communities and Tenant Organizers in RTC Initiatives

Advocacy

Communities work with elected officials and other stakeholders to build support for the programs and advocate for funding.

Outreach

Community organizations and tenant organizers help connect tenants with legal services by conducting outreach in communities most affected by eviction. They provide information about legal services and help tenants access them.

Community Support

Community organizations and tenant organizers support tenants facing eviction by organizing rallies and protests, providing emotional support, and connecting tenants with other resources such as emergency financial assistance.

Evidence & Accountability

Community organizations and tenant organizers can help evaluate the effectiveness of RTC programs by encouraging tenants to participate in evaluation efforts, gathering feedback, and identifying areas for improvement. Communities can help hold elected officials accountable for meeting tenants' needs and using data to improve the program over time.

Funding & Staffing Challenges for Legal Aid Organizations

RTC initiatives present opportunities for legal aid organizations to access stable funding for eviction. Legal aid organizations are historically underfunded and reliant on grant-making, private foundations, and individual donors to serve their communities. This often means, on an annual basis, organizations are trying to make the case that their work is innovative or fits into a funders' priorities. Stable funding for eviction representation allows organizations to consistently prioritize cases, learn from their work, improve workflows, and build staff expertise. Like most non-profit organizations, legal aid organizations' largest expense is staff salaries and benefits.[53] Annually, LSC grantees spend more than 80% of their total revenue on staff salaries and benefits.[54] However, legal aid staff have historically been the lowest-paid lawyers in the nation.[55] Increasing stable funding enables organizations to increase staff salaries and invest in recruitment and retention activities.

RTC funding structures and contracts may present challenges for legal services organizations. Contracts can cover multiple years without accounting for economic uncertainty, including a lack of adjustments for inflation, and structured as a fixed price per case that may not be based on how much time a case requires or requires a level of staffing that can be challenging to maintain.[56] Challenges meeting contractual demands in a highly unpredictable environment can strain relationships with the court, local stakeholders, and lawmakers.[57] Recently, it has become increasingly difficult for legal services organizations to recruit and retain staff. Without staff, organizations are unable to meet contractual demands.

Looking Forward

RTC programs are critical to ensuring fairness and justice in the eviction process, but they must be coupled with viable funding streams. With the increasing number of eviction cases and the complex legal procedures involved, individuals facing eviction are disadvantaged without proper legal representation. RTC programs, which provide legal aid to those facing eviction, established in several cities and states, have shown promising results in reducing eviction rates, helping individuals maintain their housing stability, and providing positive economic benefits to cities and states.

The COVID-19 pandemic has brought renewed attention to the urgent need for housing stability and highlighted the importance of the RTC in eviction cases. As a result, significant momentum has been gained in recent years toward implementing and expanding RTC programs in various cities across the United States. This momentum presents a unique opportunity to leverage the public's awareness and support for the RTC in eviction cases.

Legal aid organizations and community organizers play a central role in the success of RTC initiatives, as they provide crucial support to those facing eviction and advocate for policies that promote housing justice. As more states and cities consider implementing RTC programs, addressing challenges to ensure low-income tenants have access to legal assistance is essential.

> The $461 million funding request may come with sticker shock, but the upfront investment in eviction prevention will be offset by savings on shelter stays and homeless services. For now, tenants are forced to navigate the court system independently, with potentially disastrous consequences. "What we see coming out of cases where tenants don't have lawyers is bad deal after bad deal after bad deal, where tenants' rights are not recognized or acknowledged in the settlement," he said.
>
> **Raun Rasmussen, the executive director of Legal Services NYC**

Other Resources

National Coalition for a Civil Right to Counsel: Tenant Right to Counsel

Stout Eviction Right to Counsel Resource Center

ACLU's No Eviction without Representation

American Center for Progress' A Right to Counsel is a Right to A Fighting Chance

National Low Income Housing Coalition's E.R.A.S.E. Project—Tenant Protections Resource

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