

Senate Bill 154

Landlord and Tenant – Eviction Action – Right to Counsel Senate Judicial Proceedings Committee SUPPORT

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The Maryland Access to Justice Commission (A2JC) is an independent entity supported by the Maryland State Bar Association (MSBA) that unites leaders to drive reforms and innovations to make the civil justice system accessible, fair and equitable for all Marylanders. Prominent leaders from different segments of the legal community in Maryland – including the deans of the two law schools, the attorney general, law firm partners, heads of the legal services providers and funders, corporate counsel, academics, legislators, the state bar and judiciary comprise the A2JC. During the course of the COVID-19 pandemic, A2JC served as the lead partner in the Maryland Attorney General's COVID-19 Access to Justice Task Force, with its executive director serving as the A2J Task Force's vice chair.

A2JC was originally created in 2008 by order of the Chief Judge of the Court of Appeals of Maryland, and operated within the judiciary until the end of 2014. An independent Maryland Access to Justice Commission was formed in 2015.

A2JC, in all its forms, has promoted and advocated for implementing the right to counsel in civil legal cases that implicate basic human needs cases. In 2011, A2JC authored a report entitled, "[Implementing a Civil Right to Counsel in Maryland.](#)" Thereafter, in 2013, it staffed the [Task Force to Study the Implementation of a Civil Right to Counsel in Maryland.](#)

The Civil Right to Counsel Task Force concluded that "Maryland would benefit significantly by making a commitment to ensure that low-income Marylanders have a right to counsel at public expense in those categories of cases where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody." The ABA Basic Principles of a Right to Counsel in Civil Legal Matters,¹ defines "safety" as including a person's ability to obtain legal remedies affording protection from the threat of serious bodily injury or harm. The global pandemic draws a clear line between health and eviction.

[The Maryland Attorney General's COVID-19 Access to Justice Task Force](#), which released its final report entitled [Confronting the COVID-19 Access to Justice Crisis](#) in January, 2021, also recommended a civil right to counsel in eviction proceedings as an important

¹ABA Basic Principles for a Right to Counsel in Civil Proceedings at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_toolkit_for_crtc.authcheckdam.pdf.

part of broader housing justice reforms as a viable and cost-effective means to prevent the projected tsunami of COVID-19-related evictions.

A2JC adopts the findings of the Civil Right to Counsel and COVID-19 Access to Justice Task Force reports and provides the following testimony in support of SB154:

1. Effective pandemic recovery must include a plan to prevent evictions

In the wake of COVID-19, housing advocates have forecasted a tsunami of evictions, with estimates of up to 320,000 households in Maryland being impacted.

Evictions endanger public health

During the course of the COVID-19 pandemic, the Centers for Disease Control (CDC) has made clear that evictions threaten public health. The CDC has imposed a “federal moratorium on evictions,” which was extended again in January, 2021, but which has not been interpreted as a moratorium by the Maryland judiciary, which continues to evict Marylanders. [Researchers](#) from the University of California, Los Angeles & San Francisco, Johns Hopkins, Boston University and Wake Forest University School of Law found that lifting state moratoriums and allowing eviction proceedings to continue caused as many as 433,700 excess cases of COVID-19 and 10,700 additional deaths in the U.S. between March and September, 2020.

Evictions stall economic recovery

Evictions will impact and disrupt every other part of pandemic recovery, especially economic recovery. Evictions are not only a condition of poverty, but a cause of it. Evictions cause people to lose their life center. People lose their homes and may lose all personal possessions. Losing a home causes disruption and displacement and has tremendous ripple effects on every part of a person and family’s life. Eviction can cause homelessness; job loss or prevent re-employment; worsen educational disparities, lead to poor credit scores and a decline in credit; and contribute to deteriorating health.

Evictions worsen race inequity

Evictions also have a disproportionate impact on black and brown communities. In Matthew Desmond’s Pulitzer Prize winning book, *Evicted*, the author spells it out clearly: mass eviction is to black women as mass incarceration is to black men. In one local Maryland jurisdiction, Black household eviction count is three times higher than white household count. Additionally, the number of Black women evicted in that jurisdiction is 296% more than white men.

2. Right to counsel is a potent and cost-effective access to justice solution

Legal Representation is the key to case outcomes in civil cases

In Maryland, the only legal mechanism to achieve an eviction is through court order. In eviction-related court matters, only 1% of tenants have legal representation, compared to 96% of landlords. However, when those 1% of tenants are able to get representation, the result is impactful. Ninety-two percent of tenants are able to avoid disruptive displacement when a right to counsel is implemented. More than any other factor, the inequities in legal representation have proven to lead to evictions.

These findings in eviction cases are supported by findings in other types of civil legal cases. Research shows that representation by counsel results in markedly better outcomes for litigants. One Maryland study found that in appeals where public benefits were denied, the rate of reversal for the unrepresented was 40 – 45%, whereas the rate of reversal for the represented doubled to 70 – 80%.² In another Maryland study looking at the impact of counsel on consumers sued by debt buyers, the rate of dismissals or judgments for the consumer dropped from 71% for the represented to 23% for the unrepresented.³ In yet another Maryland study, the rate of acquiring a protective order with counsel was 83%, but without counsel was 32%.⁴

ROI of right to counsel in evictions is 624%

The right to counsel in evictions is both impactful and cost-effective. A report from [Stout Risius and Ross \(The Stout Report\)](#) shows a return on investment of 624% from implementing a right to counsel in eviction proceedings. Not only would a right to counsel in evictions avert the tragic human toll that hundreds of thousands of evictions in Maryland, but the state will spend less money doing so.

Right to Counsel has been proven to work in other jurisdictions

Many other jurisdictions that have implemented a right to counsel have seen impressive results. New York City began a phased implementation of a right to counsel in evictions in 2018. Evictions have since dropped 29% in zip codes where the right to counsel was implemented. In zip codes with right to counsel, tenants remained in their homes in 84% of the cases.

Right to Counsel is being implemented in other jurisdictions including Philadelphia, San Francisco, Cleveland, and Newark. It is also being considered in numerous others, including state-wide efforts in California, Connecticut, Massachusetts, Minnesota, New Jersey, Ohio, Washington state; and city-wide efforts in Los Angeles, Santa Monica, Boulder, D.C., Kansas City, Detroit, Jersey City, New York City, Toledo, Oklahoma City and San Antonio.

² ADVISORY COUNCIL OF THE MARYLAND LEGAL SERVICES CORPORATION, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR (1988), 12.

³ PETER HOLLAND, EVALUATION OF THE PRO BONO RESOURCE CENTER CONSUMER PROTECTION PROJECT (2013), at 6-7, on file with the Maryland Access to Justice Commission.

⁴ Jane C. Murphy, Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 511 (2003).

3. More innovations are needed to address the stark “justice gap”

The role of civil legal aid is to help clients avoid problems that, if unchecked, can cascade into a negative spiral of other difficulties that affect not only these individuals and their families, but impact the state of Maryland as a whole. A network of online resources, law libraries, self-help centers, pro bono and staff attorney programs comprise the current civil legal services delivery system in Maryland. It is a system designed to deliver the most efficient and least costly service necessary for each client. Despite being a leader in trying to address the “justice gap,” and engaging in many of the significant funding and service delivery innovations, Maryland meets only about 20% of the current demand for civil legal service in the state.

More needs to be done to supplement, not supplant the current delivery system. A right to counsel in eviction proceedings moves us in the right direction by providing all Marylanders and their families a powerful mechanism they can use to leverage their rights under existing law. The existence of counsel in these high stakes cases levels the playing field, increases fairness and provides greater access to justice to Marylanders.

For the reasons stated, the Maryland Access to Justice Commission recommends including the right to counsel in evictions cases as a proven and cost-effective policy solution to post-pandemic economic stabilization and recovery and requests the Senate Judicial Proceedings Committee to issue a FAVORABLE report on SB154. For more information, please contact Reena K. Shah, Executive Director of the Maryland Access to Justice Commission, at reena@msba.org.