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SB662

**Access to Counsel in Evictions - Special Fund - Funding
Senate Judicial Proceedings Committee
SUPPORT**

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.

The Commission strongly supports full first year funding via SB662 to jump start the Access to Counsel in Evictions Program.

Confronting the Access to Justice Crisis

COVID-19 created a health, economic and civil justice crisis. Even before the pandemic, only a small percentage of Marylanders (about 20%) received the help they needed to navigate the civil justice system, resulting in threats to their housing, safety and economic security — not because they did anything wrong, but because they did have the legal help they needed. The pandemic made more people than ever engage in some aspect of the civil justice system, whether through their unemployment insurance application or appeal or because they fell behind on their rent and faced an eviction proceeding in court. Indeed, the need for civil legal aid skyrocketed, in every area in the civil justice system, including housing, consumer debt, public benefits, domestic violence, life & health planning, immigration and more. Funding for civil legal aid, which is primarily dependent on interest rates and court filings, saw precipitous declines, and needed to be shored up.

To confront the COVID-19 Access to Justice Crisis, the MSBA-backed Access to Justice Commission provided distinctive leadership to unite the access to justice community to face the unprecedented crisis. We partnered with the Attorney General's Office to help helm the [COVID-19 Access to Justice Task Force](#), and delivered [final report](#) that had 59 substantive recommendations, 41 of which were transformed into bills during the 2021 legislative session and 19 of which are now law, including an additional \$9M in civil legal aid funding and state-wide access to counsel in eviction cases.

The New Access to Counsel in Evictions Law

During the 2021 legislative session, the General Assembly passed HB 18, making it one of the first state legislatures in the nation to create a statewide access to counsel in evictions program. At its root, the law acknowledges the detrimental impact of evictions to Marylanders, including how evictions

- exacerbate the public health crisis posed by COVID-19;
- create significant collateral costs for state and local governments;
- cause trauma and increase instability and insecurity for families, esp. children; and
- have a disparate impact on Black and Brown households.

The General Assembly sought to address the deleterious effects of eviction and its many collateral consequences by creating the Access to Counsel in Evictions Program (the Program) and recognized that providing tenants counsel in eviction cases is a “*proven means of preventing the disruptive displacement of families and the resulting social, economic, and public health costs of such displacement.*”

The General Assembly Must Fund Access to Counsel in Evictions Law

The Program, to the detriment of Marylanders, remains unfunded. ***During this legislative session via SB662, the General Assembly must allocate \$11.8M in funding for FY23 for this law to have its intended effect.*** With COVID-19 surging again and with [approximately 111,000 Maryland households behind on their rent](#) and facing eviction, implementing HB 18 should be an urgent priority for Maryland legislators. The households under threat are overwhelmingly people of color (80%) and have suffered both job and income loss during the pandemic. A2JC has been active, in concert with key legislators, the Attorney General, the [Access to Counsel in Evictions Task Force](#), and the civil legal aid community, in requesting that Governor Hogan fund the Program with a small portion of the billions in federal dollars coming into the State for COVID relief. Now, we ask the General Assembly to act.

The General Assembly must take action during the legislative session to fund the Access to Counsel in Evictions Program. [The Access to Counsel in Evictions Task Force](#), which was mandated by HB 18, studied the funding issue, recommending that the legislature look to all appropriate sources of funding, but particularly emphasized jump-starting the Program through one-time federal funding and then seeking a general allocation in the state budget for the Program.

SB662 helps find that bridge funding to start the program. It is our understanding that since the bill was introduced, Governor Hogan will be allocating \$5.4M to funding the first year of the Program. Should this come to pass, we are supportive of seeking the difference in the amount from SB662, namely making it \$6.8M in one-time funding from the Abandoned Property Fund.

Eviction is a Legal Process Where Counsel Makes a Difference in Case Outcomes

While substantial progress has been made to get the more than \$800 million in rental assistance to Marylanders who need it, rental assistance alone is not currently and will not in the future prevent all preventable evictions. The additional measure of providing access to counsel in eviction proceedings is necessary. When talking about housing generally, it can be overlooked that *eviction is a legal process* that is made more efficient and fair when tenants have the same access to counsel that landlords have. According to a Maryland study on evictions, [96% of landlords are represented by an attorney or eviction court agent, while only 1% of tenants are represented.](#) When tenants go to court without legal

representation, even if the law affords legal defenses, they are likely not to be successful. In one Baltimore study, over [60% of tenant-respondents had a defense based on the condition of the unit](#), but only 8% of those tenants were successful in raising the defense without counsel.

Failure to pay rent cases, which amounted to more than 650,000 case filings per year pre-pandemic, are not always straightforward and can at times be complex, implicating federal, state, and local contract laws and regulations. In these cases, legal counsel assists with solving disputes in relation to the amount of rent owed. Further, if conditions in a property threaten life, health and safety, legal counsel aids in ensuring that the property is made habitable. Or, if a property owner wrongfully attempts to evict a tenant despite obtaining rental assistance—in violation of a rental assistance contract—counsel assists in enforcing legal rights the tenant may have.

Indeed, jurisdictions that have enacted right-to-counsel laws before the pandemic, like New York City, saw drastic reductions in evictions – without any of the other factors that have aided in eviction prevention since the pandemic – including moratoriums and rental assistance. [In New York City, 86% of represented tenants remained in their homes and eviction filings decreased by 30% just through the provision of counsel.](#)

Recognizing the importance of legal representation in preventing evictions, the federal government has made clear that their funding sources can and should be used to provide legal representation for households facing eviction proceedings. Earlier this year, [Treasury Secretary Janet Yellen, U.S. Attorney General Merrick Garland, and Secretary of Housing and Urban Development Marcia Fudge echoed this point in a letter to state and local officials](#) across the country, explaining that “tenants are more likely to avoid eviction and remain stably housed when they have access to legal representation. Legal counsel can also aid in the successful completion of [rental assistance] applications.” [Numerous states and localities have responded and allocated millions toward counsel in eviction cases including in Tennessee, Wyoming, Virginia, Maine, and Michigan.](#)

Based on the information provided above, the Maryland Access to Justice Commission strongly urges the Senate Judicial Proceedings Committee to deliver a FAVORABLE REPORT on SB662. Please contact Reena Shah - reena@msba.org - with any questions.