

HB 724: Access to Counsel in Evictions Special Fund - Funding
Remarks of Neil Steinkamp, Managing Director, Stout
Hearing of House Judiciary Committee, February 16, 2022

I submit these remarks for the Committee’s consideration on HB 724.

When experiencing the eviction process, low-income tenants face crises of homelessness, increased need for mental / physical health care, job loss, interactions with the foster care system, disruption to child education and other harmful and traumatic crisis. Disproportionately, these crises are experienced by women and people of color. These crises often require responses by costly city, county and state funded systems. Access and right to counsel (legal representation) legislation for low-income tenants in eviction proceedings has been extraordinarily successful in ensuring people remain in their homes, address defective conditions, navigate rental assistance processes or smoothly transition to a safe and stable home, saving cities and states millions of dollars in social safety net responses.

Throughout this testimony, I will use the phrase “disruptive displacement” instead of “eviction.” Disruptive displacement describes the varied outcomes of the eviction process that can cause trauma, harm, and crises often requiring assistances from assorted social systems or other impacts to those systems. “Eviction”, in a legal sense, is only one particular outcome of the eviction process. In many cases, low-income households facing eviction are forced to leave their homes before the formal eviction occurs (for example, resulting in a “Dismissal”) or attempt to negotiate a resolution with the landlord without any assistance, frequently resulting in the tenant leaving, not having their rights exercised, unable to afford amounts claimed by the landlord and unable to force the landlord to repair unsafe conditions in the home. The eviction process does not simply cause “evictions” – it causes widespread disruptive displacement to low-income families putting them in a crisis the state will be required to support financially.

Research from around the country has also demonstrated that Black and Brown renter households disproportionately experience housing instability and housing inequities. Home ownership rates among Black and Brown households are consistently lower than white homeownership rates, and eviction filings among Black and Brown renter households are consistently higher than those of white renter households. In many jurisdictions, Black female-headed renter households disproportionately experience eviction filings and eviction compared not only to Brown and white households but also Black male-headed renter households. In Baltimore, Black-headed households are evicted nearly three times as often as white-headed households.¹

¹ Thomas, Tim. Baltimore Eviction Map. May 8, 2020.

The Fiscal Impacts of Disruptive Displacement in Maryland

I have conducted cost-benefit analyses of rights to counsel in eviction proceedings in six jurisdictions – Baltimore, Los Angeles, Philadelphia, Delaware, Detroit, and New York City – and am currently engaged in similar work in five other jurisdictions, including serving as the independent evaluator of eviction right to counsel programs in Cleveland, Milwaukee, and Connecticut. My analyses have consistently indicated that jurisdictions enacting a right to counsel in eviction proceedings will recognize a monetary benefit that is greater than the cost of providing the right to counsel (i.e., the cost of providing attorneys to low-income tenants facing eviction).

In Baltimore, the annual investment to provide a right to counsel to low income tenants facing eviction was estimated to be \$5.7 million, and the estimated cost savings to Baltimore resulting from that investment was at least \$17.5 million, a return on investment of more than \$3 per dollar invested (300% return on investment).² Considering that many social safety net responses to disruptive displacement are partially funded by the state of Maryland, Maryland is also likely to experience cost savings if Baltimore were to enact a right to counsel for low income tenants facing eviction. Together, Baltimore and Maryland could save an estimated \$35.6 million annually from the same investment in a right to counsel for low-income tenants facing eviction in Baltimore, an estimated return on investment of more than \$6 per dollar invested (600% return on investment). Baltimore would likely realize annual costs savings related to emergency shelter and other temporary housing programs, in-patient and emergency room health care, school transportation for students experiencing homelessness, and foster care boarding and administration. Additionally, Baltimore City Public Schools are likely losing funding due to students who are chronically absent as a result of disruptive displacement from the eviction process. Maryland would likely realize cost savings related to health care for people experiencing homelessness as a result of disruptive displacement and foster care for children placed in care as a result of housing instability and well as those children who cannot return home because of housing instability.

In New York City, the annual investment in right to counsel was an estimated \$199 million, and the estimated cost savings to New York City was at least \$320 million.³ In Los Angeles we found that the annual investment to provide a right to counsel to low income tenants facing eviction was expected to have a return on investment of 348% - 480%.⁴ In Philadelphia we found that the annual investment to provide a right to counsel for low income tenants facing eviction was expected to have a return on investment of

² The Economic Impact of an Eviction Right to Counsel in Baltimore City. Stout Risius Ross. May 8, 2020.

³ The Financial Costs and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A. Stout Risius Ross. March 16, 2016.

1,200% - \$12 for every \$1 invested.⁵ In Delaware, the return on investment was 276%.⁶ In every jurisdiction for which we have analyzed the economic impact, costs, and benefits of providing a right to counsel, the benefits have far outweighed the costs – the efficacy of this form of assistance and intervention, in a highly complex, high-stakes form of dispute, with a vast power differential between the parties (where the landlord is almost always represented and the tenants is almost never represented) helps to avoid costly crises that the state, county and city are paying to respond to. Consistently, we have found cost savings associated with school district funding and expenses associated with students experiencing homelessness, the foster care system, the homeless shelter system, the rehousing and relocation system, the healthcare system, and many more.

My estimates of potential cost savings in each of these jurisdictions are likely significantly understated. Included in my calculations are benefits of a right to counsel that are quantifiable and reasonably reliable with available data. However, if low-income tenants experienced more stable housing, jurisdictions (including Baltimore and Maryland) would enjoy many benefits that are not at this time reliably quantifiable. These benefits and costs avoided include but are not limited to:

- Reduced costs and negative impacts of disrupted education, the juvenile justice system, and the child welfare system;
- The negative impact of eviction on tenants' credit score, ability to re-rent, and the potential loss of a subsidized housing voucher;
- The cost of providing public benefits when jobs are lost due to eviction or the eviction process;
- Certain additional costs associated with homelessness, such as additional law enforcement and incarceration costs;
- The cost of family, community, and neighborhood instability;
- The preservation of financial assets and personal belongings;⁷
- The costs to jurisdictions of enforcing rent laws and regulations that could be avoided; and
- A reduction, over time, of the number of eviction cases filed resulted in improved use of city and state court resources.

⁵ Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants. Stout Risius Ross. November 13, 2018.

⁶ The Economic Impact of an Eviction Right to Counsel in Delaware. Stout Risius Ross. May 3, 2021.

⁷ When low-income tenants experience disruptive displacement, it can have a significant detrimental financial impact in the form of moving expenses, loss of personal belongings, loss of security deposit, court fees, and fines from landlords. Low-income tenants already possess few financial assets, but when they are disruptively displaced these will likely be fully depleted, making their situation even more challenging. For example, if after experiencing disruptive displacement, a low-income tenant needs a repair to his or her vehicle that is used for transportation to work and child care, the financial assets that may have been available to pay for the repair may have been used for the expenses described above.

The Success of a Right to Counsel in Reducing the Likelihood of Experiencing Disruptive Displacement

During my work in Baltimore, I analyzed a sample of eviction case filings from the District Court of Maryland in Baltimore City. My analysis indicated that approximately 99% of tenants were unrepresented, and 4% of landlords were unrepresented. My analysis also indicated that when tenants are unrepresented, they likely experience disruptive displacement 93% of the time. However, when tenants are represented, they are likely avoiding disruptive displacement 92% of the time.⁸

Similar metrics from around the country indicate that representation keeps tenants in their home and reduces the likelihood of disruptive displacement. For example, New York City, San Francisco, and Cleveland – three of the first four jurisdictions implementing a right to counsel – have realized the following benefits:

- In New York City, 84% of tenants represented through right to counsel have been able to remain in their homes, and 100% of tenants represented in administrative termination of tenancy proceedings were able to remain in their homes.⁹ Eviction filings decreased 20% from 2019 to 2020 and 30% since 2013 when funding for tenant representation first began.¹⁰ Marshal evictions declined 6% from 2018 to 2019, 15% from 2019 to 2020, and 41% since 2013.¹¹ Default judgments have also decreased 34% since 2013.¹²
- In San Francisco, two-thirds of tenants received full representation from 2018 to 2019 through right to counsel, and of them, 67% were able to stay in their homes – including 80% of African American tenants.¹³ Eviction filings in San Francisco decreased 10% from 2018 to 2019.¹⁴
- In my first annual independent evaluation of Cleveland’s eviction right to counsel, I found that: 93% of represented tenants seeking to avoid an eviction judgment or an involuntary move were able to do so, 92% of represented tenants seeking more time to move were able to do so, 94% of represented tenants seeking to mitigate their damages were able to do so, 97% of represented tenants seeking to secure monetary relief were able to do so, and 83% of represented tenants seeking to secure rental assistance were able to do so.¹⁵

⁸ The Economic Impact of an Eviction Right to Counsel in Baltimore City. Stout Risius Ross. May 8, 2020.

⁹ Universal Access to Legal Services A Report on Year Three of Implementation in New York City. NYC Office of Civil Justice. 2021.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Supervisor Dean Preston Press Release. February 24, 2020.

¹⁴ Ibid.

¹⁵ Cleveland Eviction Right to Counsel Annual Independent Evaluation. Stout Risius Ross. January 31, 2022.

While New York City, San Francisco, and Cleveland are the only right to counsel jurisdictions providing counsel long enough to have measurable outcomes, several other eviction representation programs throughout the country have demonstrated similar results:

- In Hennepin County, Minnesota, represented tenants win or settle their cases 96% of the time, and settlements made by represented tenants are significantly better than settlements made by unrepresented tenants.¹⁶ Represented tenants are nearly twice as likely to remain in their homes.¹⁷ If represented tenants agree to move, they are given twice as much time to do so, and nearly 80% of represented tenants do not have an eviction record as a result of the case compared to only 6% of unrepresented tenants.¹⁸
- In Boston, Massachusetts, represented tenants fared, on average, twice as well in terms of remaining in their homes and almost five times as well in terms of rent waived and monetary awards than unrepresented tenants.¹⁹ Represented tenants also created a lesser strain on the court system than those who were unrepresented.²⁰
- In Seattle, Washington, represented tenants were approximately twice as likely to remain in their homes as unrepresented tenants.²¹
- In Chicago, Illinois, represented tenants had their cases resolved in their favor approximately 58% of the time compared to 33% of the time for unrepresented tenants.²² Represented tenants were also more than twice as likely to have their cases dismissed, and when tenants were represented, the rate of landlord summary possession awards decreased from approximately 84% to approximately 39%.²³

¹⁶ Grundman, Luke and Kruger, Muria. “Legal Representation in Evictions – Comparative Study.” N.d.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ “The Importance of Representation in Eviction Cases and Homelessness Prevention.” Boston Bar Association Task Force of the Civil Right to Counsel. March 2012.

²⁰ Ibid.

²¹ Losing Home: The Human Cost of Eviction in Seattle.” The Seattle Women’s Commission and the Housing Justice Project of the King County Bar Association. September 2018.

²² Dukmasova, Maya. “New data reveals impact of being lawyerless in Chicago eviction court.” Reader. September 14, 2017.

²³ Grundman, Luke and Kruger, Muria. “Legal Representation in Evictions – Comparative Study.” N.d. Referencing Birnbaum, Julian. “Chicago’s Eviction Court: A Tenants’ Court of No Resort.” Urban Law Annual. 1979.

- In Denver, Colorado, approximately 79% of unrepresented tenants are displaced due to an eviction.²⁴ Represented tenants avoid displacement in 80% to 90% of cases, depending on whether the housing is public or private.²⁵
- In Jackson County (Kansas City), Missouri, approximately 72% of unrepresented tenants had eviction judgments or monetary damages entered against them compared to 56% of represented tenants.²⁶
- In Columbus, Ohio, the Legal Aid Society of Columbus provided representation to tenants through its Tenant Advocacy Project (TAP).²⁷ One percent of TAP-represented tenants received a judgment against them compared to approximately 54% of non-TAP cases.²⁸ Approximately 40% of TAP-represented tenants negotiated an agreed upon judgment compared to approximately 15% of non-TAP cases.²⁹ TAP-represented tenants who negotiated agreements to remain in their homes more than twice as often as non-TAP cases, and TAP-represented tenants successfully negotiated an agreement to move and avoided an eviction judgment more than seven times as often as non-TAP cases.³⁰

Insights into Challenges Faced by Low-Income Tenants and Case Complexities

Clients of Cleveland’s eviction right to counsel program go through an extensive interview process with an attorney. The interview is designed to collect information about clients’ circumstances leading up to the eviction filing, household demographics, employment status, relationship with their landlord, the presence of sub-standard housing conditions, the presence of mental or physical health challenges among household members, and their goals for the case, among other interesting data points.

Key findings from my analyses of the interview responses for eviction right to counsel clients in 2021 include³¹:

- Approximately 46% of Cleveland eviction right to counsel clients indicated that they did not want to stay in their home.

²⁴ Hasvold, Aubrey and Regenbogen, Jack. “Facing Eviction Alone: A Study of Evictions, Denver, Colorado 2014-2016.” Colorado Coalition for the Homeless and Colorado Center on Law and Policy. N.d.

²⁵ Ibid.

²⁶ “Evictions in the Courts: An Analysis of 106,000 Cases from 2006-2016 in Jackson County.” Kansas City Eviction Project. January 24, 2018.

²⁷ “The Legal Aid Society of Columbus: Tenant Advocacy Project Evaluation.” Thoughtwell. 2018.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Source for the following metrics: Cleveland Eviction Right to Counsel Annual Independent Evaluation. Stout Risius Ross. January 31, 2022.

- Approximately 79% of Cleveland eviction right to counsel clients indicated that there were sub-standard conditions in their homes. These conditions included but were not limited to inadequate or inoperable toilets, sinks, and showers; inadequate or inoperable heat during winter months; mold and mildew; holes in walls, roofs, and floors; rodent infestations; leaks and flooding during rain; broken or missing doors and windows; exposed electrical wiring; and lead. Approximately 94% of clients indicated that they made their landlord aware of these issues. The prevalence of these sub-standard housing conditions may be an influencing factor for the 46% of clients who indicated they did not want to stay in their home. That is, clients experiencing sub-standard housing conditions may not want to continue living in their homes.
- Approximately 33% of Cleveland eviction right to counsel clients indicated that at least one adult in their household was experiencing mental health challenges, and approximately 43% of clients indicated that at least one adult in their household had a physical disability or health conditions.
- Cleveland eviction right to counsel clients were disproportionately female and Black compared to Cleveland’s overall demographics. Approximately 77% of clients were female, and approximately 72% were Black. This compares to Cleveland’s population being 52% female and 49% Black. Furthermore, Cleveland eviction filings overall in 2021 were concentrated in census tracts with non-white majority populations. Approximately 42% of all eviction filings in Cleveland in 2021 were in majority Black or African American census tracts compared to approximately 19% in majority white census tracts.

Using the data available through the extensive interview, the experience and expertise of Cleveland Legal Aid attorneys, and feedback from landlords’ counsel, I estimated that approximately 86% of clients had circumstances (either personal circumstances or case characteristics) that made their cases complex. These circumstances included: defective conditions, oral leases, living in public or subsidized housing, had previous issues with management, or had a person in the household with mental health challenges. Approximately 44% of right to counsel cases in Cleveland had more than one of these circumstances.

The evidence from Cleveland, consistent with feedback Stout has received from other jurisdictions, is that eviction right to counsel clients are tenants who are often seeking representation, in part, because there are significant and substantive issues and disputes of fact surrounding their eviction cases. It is these issues, complications, and disputes of fact that make legal representation essential in these cases. While an overwhelming majority of eviction cases filed throughout the country, including in Maryland and Baltimore – where the eviction filing rate is more than 100% - are filed for the non-payment of rent, eviction right to counsel clients are overwhelmingly experiencing

various substantive issues, complications, and disputes of fact in their eviction cases and are seeking legal representation to assist with those issues.

Because of Maryland's high filing rate for eviction cases, there are a significant number of cases resolved as "pay and stay". As I found in my analysis of eviction filings in Baltimore, a significant portion of eviction filings for the non-payment of rent resolve themselves when tenants pay the back rent owed to their landlord and the landlord subsequently withdraws or dismisses the case. The cases that remain – those that have not been resolved through the payment of valid back rent – would more likely be cases with substantive issues, complications, and disputes of fact. Based on my analysis of eviction filings in Baltimore, and in discussion with providers of eviction defense and prevention services in Maryland, I expect that less than 10% of all Maryland residents experiencing an eviction filing would seek and accept the offer of free legal representation provided by an eviction right to counsel. It is from this estimate that I developed the measures of potential costs and benefits to Baltimore and Maryland. Consistent with my findings in Cleveland, these remaining cases where tenants seek legal representation will likely take longer to resolve than cases where the only issue is the valid non-payment of rent or there are not other significant, substantive issues.

Conclusion

I have analyzed the potential costs and fiscal benefits of a right to counsel for low-income tenants facing eviction in six jurisdictions (including Baltimore) and have ongoing work in five other jurisdictions, including independent evaluations of eviction right to counsel programs now being implemented. In each jurisdiction, the benefits (i.e., cost savings) accruing to the jurisdiction are greater than the cost of providing representation. In Baltimore alone, I estimated the return on investment to be at least 300% (\$3 for every dollar invested), and for Baltimore and Maryland together, I estimated the return on investment to be at least 600% (\$6 for every \$1 dollar invested). The benefits to Baltimore and / or Maryland that I was able to reasonably quantify were related to emergency shelter and other housing programs, mental and physical health care costs, transportation to school for children experiencing homelessness due to disruptive displacement, and foster care boarding and administrative costs for children unable to return home due to housing instability. It is likely that these understate the full return on investment as many other costly responses to families experiencing crisis from housing instability are not included in these estimates.

Through my analysis of eviction proceeding data in Baltimore, I estimated that when tenants are unrepresented, they likely experience disruptive displacement 93% of the time. However, when tenants are represented, they are likely avoiding disruptive displacement 92% of the time. These findings are consistent with data from jurisdictions around the country that are representing low-income tenants in eviction proceedings. When tenants are represented, they are more likely to stay in their homes, have more

time to find alternative housing if they need to move, negotiate better settlements, navigate rental assistance, remedy defective conditions and are less likely to experience the disruptive displacement and crisis that the eviction process causes, and that Maryland is paying to respond to.

I submit these written remarks for the Committee's consideration on HB 724. Thank you for the opportunity to provide written remarks for today's hearing.



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