

# Principles to Guide the Reconciliation of the Right to Counsel Bills

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Three Right to Counsel bills have been filed for the 2019-20 Massachusetts legislative session. These bills were drafted several years ago. Since that time, New York City and others have passed similar legislation. Members of the Massachusetts Right to Counsel Coalition have reviewed these bills, considered lessons learned in Massachusetts and NYC, and developed the following principles to advance a legislative campaign for justice in evictions.

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## **Housing Stabilization and Homelessness Prevention**

Whereas housing is a basic fundamental human need, access to legal and housing stability services are necessary to prevent homelessness, stem the tide of displacement, and stop unjust evictions.

## **Fairness in the Legal System**

The vast majority of tenants who face eviction are unrepresented. In contrast, most landlords are represented by counsel. The result is a process that can be unbalanced and unfair.

## **Assistance Can Make a Difference**

Access to the right assistance can prevent families from the trauma of eviction and displacement, and create a path to housing stability.

## **Upstream Solutions**

Pre-court eviction help, proactive education and outreach, and housing stabilization are needed to prevent tenants from losing subsidized housing. “Upstreaming” will save landlords, tenants, and courts time and money and better facilitate the resolution of cases.

## **Community Engagement**

Development of an implementation plan must provide a process to allow for input from all stakeholders on the multitude of issues to consider.

## **Build Upon and Strengthen the Existing Institutions**

Implementation must build upon the work of existing organizations with a proven track record of effectiveness in the areas of landlord/tenant legal assistance, homelessness prevention and housing stabilization.

## **Collaboration**

Collaboration is needed among legal services, social services, community organizers, municipalities, courts, educational institutions, and other organizations to create a continuum of impactful assistance.

## **Funded with New Money**

The right must be funded with new money and cannot be effective by reallocating existing legal assistance and housing stabilization resources.

## **Outcomes**

Oversight and assessment of the program should be designed in a way to insure measurable outcomes, data collection, and public reporting.

## **Tied to Other Systemic Housing Solutions**

The right to counsel is one component of a necessary housing stability strategy that must include other initiatives to preserve and expand the supply of affordable housing for low and moderate income people.

# Right to Counsel Coalition's Proposal

May 10, 2019

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Whereas housing is a basic fundamental human need and access to legal and housing stability services are necessary to prevent homelessness, displacement, and unjust eviction, the Right to Counsel (RTC) Coalition recommends drawing together provisions from all of the RTC bills (S. 913, H. 3456 and H. 1537<sup>\*</sup>) and from the work and lessons of Massachusetts advocates and advocates in other places starting to implement RTC. What follows is a summary of the RTC Coalition's proposal.

## 1. Who is eligible for assistance

- a. Both bills cover tenants and occupants.
- b. We seek to clarify that tenants and occupants include former homeowners facing eviction after foreclosure.
- c. We recommend the broader definition in Rep Rogers/Day bill to include indigent income eligible owner-occupants of 2-family homes seeking possession where their own and only home may be at stake. In Right to Counsel pilots in Quincy and Framingham income eligible landlords were provided with pro bono legal assistance and currently Volunteer Lawyers Project provides full pro bono legal representation to income eligible owner occupants in the Greater Boston area.
- d. We recommend the indigency standard in DiDomenico/Tyler bill which is 200% of Poverty. In 2019 in Mass for Family of 1 the Annual Income is \$24,980 and for a family of 4 it is \$51,500. At 200% of poverty families earning minimum wage would be covered.

## 2. When does the right attach?

- a. Both bills provide for RTC before an eviction court complaint is filed.
- b. We recommend the provision in the DiDomenico/Tyler bill which provides legal assistance when one receives a notice to quit, not after it expires, and if no notice to quit is provided, upon service of an eviction complaint. Providing people with pre-court eviction legal help, proactive public education, and housing stabilization assistance helps prevent lawsuits, saves landlords, tenants and the court time and money, and better facilitates the fair & efficient resolution of cases. Pre-court eviction also prevents tenants from having a court record which can be a serious barrier to finding a next place to live.
- c. We seek to clarify that assistance should begin upon a request for a public housing grievance hearing related to an eviction and upon notice of a termination of rental assistance voucher.

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\* S. 913 was filed by Senator DiDomenico and H. 3456 was filed Rep Tyler; these bills are same. H. 1537 was filed Rep Rogers and Rep Day. All bills were refiled and in this session had a combined [63 co-sponsors](#).

### **3. What kinds of proceedings are covered?**

- a. Both bills cover summary process and similar proceedings.
- b. We recommend the provision in Rogers/Day bill which includes foreclosures, but need to clarify that this is at the point when a homeowners is facing an eviction after a foreclosure.
- c. We recommend clarifying that similar proceedings include formal public housing grievance hearings requested by public housing tenants facing an eviction (not the first informal conference) and voucher terminations hearings, in order to stabilize tenancies in subsidized housing and prevent eviction or loss of subsidy before court. Because administrative grievance hearings are on a very short time frame, clarification is also needed that tenants have a right to a continuance so that with their legal advocate they can properly prepare their case.

### **4. What is the right for?**

- a. Both bills need more clarification
- b. We recommend clarifying that a continuum of legal assistance and housing stability support to be provided by a designated agency with collaborating community partners (See # 6 below), which includes:
  - Community outreach to educate people about legal rights and assistance,
  - At the notice to quit stage, assessment to screen for housing stability resource, mediation, and legal support, as needed.
  - At the administrative hearing stage, assessment to screen for housing stability resources and a trained legal advocate.
  - At the eviction complaint stage, full representation by a legal advocate.

### **5. How do people find out about the right**

- a. We recommend language in DiDomenico/Tyler bill that a landlord must inform the occupant of the right to counsel by a form approved by the Supreme Judicial Court (SJC) and that the form be attached to Notice to Quit or eviction Summons and Complaint.
- b. We seek clarification that the form be attached to a notice of termination of rental assistance and for public housing tenants facing an eviction, notice of termination of lease per recommendation (3)(c).
- c. We recommend that this notice be attached to which ever document the tenant receives first and clarify that if a tenant/occupant does not receive the form that:
  - there be a reasonable continuance of the covered proceeding so that they can obtain legal assistance to prepare their case,
  - the right to cure non-payment be extended so that they do not lose the opportunity to preserve their tenancy, and
  - that the Civil Justice Committee (see below) may recommend additional protections so that people who do not timely receive notice are not prejudiced.
- d. We recommend the court develop procedures to inform litigants about the right to counsel and provide a written waiver for eligible parties that they are knowingly and voluntarily waiving this right.

## 6. Who can be appointed as counsel

- a. We recommend adopting provisions from each of the bills that would provide that “designated agency” that is a non-profit organization that has the capacity to provide legal services be designated by the Civil Justice Committee as the organization that provides RTC.
- b. The RTC Coalition’s vision is to designate existing regional entities with legal expertise in landlord/tenant law that will establish collaborations with existing non-profits organizations to achieve effective tenant education, housing stability, and homelessness prevention.
- c. Drawing from both bills, we seek to clarify that “designate agencies” must:
  - have as their “principal purpose” the provision of free or low-cost legal services to indigent people as defined by this act;
  - have substantial expertise in landlord/ tenant law, housing stability, and homelessness prevention and relevant experience in representing low-income tenants in court
  - develop a regional plan, in collaboration with local partners, to provide legal representation, housing stability, and homelessness prevention assistance;
  - have the capacity to supervise and/or develop a partnership to train new legal housing advocates; and
  - satisfy other criteria established by the Civil Justice Committee (see #7).
- d. Each designated organization would be required to identify the geographic areas they shall represent.

## 7. Who creates, implements, and monitors the program

- a. Both bills provide for a governing structure with certain responsibilities for development and oversight of the program.
- b. We recommend pursuant to Rogers/Day bill establishing a Civil Justice Committee with independent authority that would be based in the Executive Office of Housing and Economic Development, an agency that has as its focus housing stability and homelessness prevention.
- c. The Civil Justice Committee’s role would be to develop, implement, monitor, and evaluate a program to provide legal and housing stability services necessary to prevent homelessness, displacement, and unjust evictions.
- d. We recommend elements of both bills along with clarification that the Civil Justice Committee would be responsible for:
  - Developing an implementation plan - after a process that allows for input from members of the public - to Joint Housing Committee within 1 year of passage of the bill that must include at a minimum, recommendations on:
    - how to phase-in and prioritize resources for the initiative;
    - procedures related to notification, request and assignment of counsel, and determination of indigency,
    - changes to existing state laws, regulations, and court rules to fully implement the program and ensure the rights provided by the program;
    - cost of implementation and compensation for designated entities;
    - role of non-lawyer advocates and community organizations in pre-court proceedings;

- role of law schools and other institutions to build a pipeline of qualified legal advocates;
  - role of community groups to conduct outreach and education and provide pre-court support and resolution of matters related to eviction;
  - role of courts, housing authorities, and the Department of Housing and Community Development to insure effective implementation,
  - training and supervision standards for designated agencies;
  - collection and reporting of eviction data among designated agencies, courts and other agencies, including municipalities to inform housing policies.
- Establishing procedures for the monitoring services to ensure that designated organizations are providing competent legal services and collaborating with local partners to provide tenant education, homelessness prevention, and housing stability services.
  - Reviewing the performance and systemic outcomes of designated organizations annually and being able to decline to renew the designation of any such organization.

## 8. Who is on the Civil Justice Committee

- a. We recommend drawing from both bills and expanding who is on the governing body so that the Civil Justice Committee includes those committed to the success of a right to counsel and would include the following:

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| ▪ 2 Governor Appointments  | ▪ Mass Coalition for the Homeless   |
| ▪ Chief Justice of the Housing Court/designee                        | ▪ Mass Union of Public Housing Tenants  |
| ▪ Chairs of Joint Housing Committee/designees                        | ▪ Massachusetts Chapter National Association of Housing and Redevelopment Officials |
| ▪ 2 Access to Justice Commission members                             | ▪ Mass Law Reform Institute   |
| ▪ 2 Committee for Public Counsel Services                            | ▪ Mass Association of Community Action Programs                                     |
| ▪ 3 Legal Aid Organizations selected by Mass. Legal Assistance Corp. | ▪ Volunteer Lawyers Project   |

## 9. Rules and regulations

- a. Both bills propose that rules and regulations be promulgated to implement the program.
- b. We recommend the provision in Rep Rogers/Rep Days bill providing the Civil Justice Committee with the authority to promulgate program rules and regulations.

## 10. When would RTC take effect

- a. We recommend the provisions in Rep Rogers/Day bill that the members of the Civil Justice Committee must be appointed within 180 days of bill passing.
- b. We propose adding a provision clarifying that the Executive Office of Housing and Economic Development shall hire a director for the project within 90 days of bill passing in order to facilitate the appointment and work of the CJC.

## 11. Funding

- a. Support for this initiative must be new and separate funding that does not interfere with existing funding for legal services designated organizations or collaborations with local non-profit agencies.
- b. Neither bill currently provides for a specific appropriation.
- c. Out next step will be to work with stakeholder to develop a preliminary cost estimate.