

Principles to Guide the Reconciliation of the Right to Counsel Bills

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.

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

The Right to Counsel (RTC) Coalition recommends drawing together provisions from all the RTC bills (S. 913, H. 3456, and H. 1537) currently before the State Legislature to create a “hybrid” RTC bill that also builds upon lessons learned by advocates in Massachusetts and from other places that are starting to implement RTC. What follows is the Coalition’s proposal:

- 1. Who is eligible for assistance?** Tenants and occupants facing an eviction who are at or below the 200% of poverty level and owner-occupants of 2-family homes seeking possession who are at or below the 200% of poverty level.
- 2. When does the right attach?** When one receives a notice to quit.
- 3. What kinds of proceedings are covered?** Summary process and similar proceedings. This includes formal public housing grievance hearings requested by public housing tenants facing an eviction (not the first informal conference) and voucher termination hearings. Evictions after foreclosures are also covered.
- 4. What is the right for?** A continuum of legal assistance and housing stability support provided by a designated agency in collaboration with community partners. Different stages call for different levels of legal involvement.
- 5. How do people find out about the right?** A form approved by the Supreme Judicial Court would inform the occupant of the right to counsel. This form should be attached to the first document an occupant receives pertaining to the termination of the tenancy.
- 6. Who can be appointed as counsel?** A “designated agency” that is a non-profit that has the capacity to provide the services. These agencies will be regional entities that will collaborate with existing organizations with proven track records in landlord/tenant legal assistance, homelessness prevention, and housing stabilization to provide the services for a designated region. The Civil Justice Committee will designate the organizations.
- 7. Who creates, implements, and monitors the program?** A Civil Justice Committee with independent authority that will be housed in the Executive Office of Housing and Economic Development, which oversees funding and resources to help people in Massachusetts live affordably and safely.
- 8. Who is on the Civil Justice Committee?** The following: 2 Governor Appointments, Chief Justice of the Housing Court, Chairs of Joint Housing Committee, 2 Access to Justice Commission members, 2 Committee for Public Counsel Services, 3 legal aid organizations selected by Mass. Legal Assistance Corp, Mass. Coalition for the Homeless, Mass Union of Public Housing Tenants, Mass. Chapter National Association of Housing and Redevelopment Officials, Mass. Law Reform, Mass Association of Community Action Programs, and Volunteer Lawyers Project.
- 9. Rules and Regulations.** The Civil Justice Committee will be provided with the authority to promulgate rules and regulations.
- 10. When would RTC take effect?** The Civil Justice Committee must be appointed within 180 days of the bill passing. It will spend the first year developing an implementation plan that considers how to phase-in and prioritize resources, cost of implementation, the role of non-lawyer advocates, community groups, courts, law schools, and others.
- 11. Funding.** The financial support for RTC must come from new and separate funding that does not interfere with existing funding for legal services or collaborations with non-profit organizations.