

Phasing in a Right to Counsel Program

Developed by the Massachusetts Right to Counsel Coalition

Across the country states and local jurisdictions are phasing in Right to Counsel programs based on a variety of relevant factors including prioritization by income, zip codes, eviction rates, need, availability of funding, and number of trained legal services attorneys available to provide legal representation. Essential to long-term success is a well-designed start-up that can build a strong foundation for a sustainable program for the Commonwealth.

Under the bills before the Housing Committee, S. 874 and H. 1436, the Massachusetts Legal Assistance Corporation (MLAC) would administer a Right to Counsel program. Language proposed to the Housing Committee by the Right to Counsel Coalition would ensure that necessary stakeholders are involved in the design of an implementation plan at the earliest phase of the process. As proposed, MLAC, in consultation with an advisory committee and designated organizations providing legal assistance, would determine how to phase in a program over 5 years.

Upon passage of this legislation, MLAC must appoint a 15-member advisory committee and issue requests for proposals to contract with designated organizations to provide legal assistance and organizations able to provide programmatic support and coordination for the representation of tenants and owner occupants statewide. MLAC must also, with input from the advisory committee, develop a form notifying tenants of their Right to Counsel. This form must be approved by the Supreme Judicial Court (SJC). The legislation requires that the approved form be attached to all notices to quit and summary process summons and complaints. The SJC must further approve a written "waiver of counsel" form for the trial court to ensure that tenants and owner occupants understand their right to an attorney so that any waiver of such right is knowing and voluntary.

It is anticipated that a deliberative process for the development of an implementation plan will take approximately five to six months. Similar to other jurisdictions phasing in a right to counsel, MLAC will seek the support of an educational institution or consultant to develop a plan. The implementation plan will result in a plan for how representation will be phased in statewide with clear goals and a timeline for recruiting, hiring, and training, with attention to building strong supervisory support and retaining staff.

In 2020, the Boston Bar Association issued a report with a cost estimate of \$26.3 million per year for a right to counsel for tenants. An updated cost analysis with the owner occupant component included is \$27.5 million per year (see attached).

Funding Request:

\$8 million for year 1, with a projection of \$12 million for year 2. Anticipated costs include a development plan, MLAC administration and statewide hiring, training, support, monitoring, and evaluation; funds for each contracted legal services program for staff recruitment, hiring, training, supervision, and salaries and benefits; and operational, programmatic and administrative costs.