

RTC Coalition Draft RTC Bill to Judiciary Committee

November 4, 2019

*An Act promoting housing stability and homelessness prevention in Massachusetts.*

Whereas, housing is a basic fundamental human need, access to legal assistance and housing stability assistance are necessary to prevent homelessness, displacement, and unjust eviction.

Whereas, the Massachusetts supreme judicial court recently recognized “that the complexity and speed of summary process cases can present formidable challenges to individuals facing eviction, particularly where those individuals are not represented by an attorney.” *Adjartey v. Central Division of Housing Court*, 418 Mass. 830 (Apr. 10, 2019)

Whereas, access to the right assistance at the right time can prevent the trauma of eviction, promote a path to housing stability, and assist in the fair administration of justice.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 239 of the General Laws is hereby amended by adding the following 4 sections:

Section 14. For purposes of sections 15, 16, and 17 the following terms shall have the following meanings:

“Committee”, the civil justice committee established pursuant to section 15.

“Covered proceeding”, an action brought pursuant to chapter 239, chapter 139 section 19, or similar proceedings.

“Coordinator”, the coordinator of the office of civil justice.

“Designated organization”, a not-for-profit organization or public entity that is designated by the coordinator to provide or contract to provide legal or housing stability assistance.

“Eligible individual”, a party in a covered proceeding who is indigent: (i) tenant or occupant of any premises rented or leased for dwelling purposes; or (ii) owner occupant of a 1-family or 2-family dwelling that is their sole dwelling and located in the commonwealth.

“Full legal representation”, ongoing legal representation provided by legal counsel in a designated organization to an indigent eligible individual and all legal advice, advocacy, and assistance associated with representation. Full representation includes, but is not limited to, the filing of a notice of appearance on behalf of the indigent eligible individual in a covered proceeding.

“Indigent”, a person who is: (i) receiving public assistance pursuant to: (1) aid to families with dependent children pursuant to chapter 118; (2) the emergency aid program for elderly and disabled residents pursuant to section 1 of chapter 117A; (3) a veterans’ benefits program; (4) Title XVI of the federal Social Security Act; (5) supplemental nutrition assistance program, pursuant to 7 U.S.C. chapter 51; (6) refugee resettlement benefits; or (7) medicaid, pursuant to 42 U.S.C. section 1396, et seq.; or (ii) earning an income, after taxes, that is 200 per cent or less of the current poverty guidelines established annually by the United States Department of Health and Human Services; or (iii) unable to pay the fees and costs of the covered proceeding in which the person is a party or is unable to do so without depriving said person or said person’s dependents of the necessities of life, including food, shelter and clothing.

“Legal counsel” or “counsel”, lawyer licensed to practice law in the Commonwealth.

“Office of civil justice”, an office established within the executive office of housing and economic development with the capacity to effectuate the purposes of this act which shall be advised by a committee known as the civil justice committee.

Section 15. (a) There shall be established within the executive office of housing and economic development an office of civil justice which shall implement, monitor, and evaluate a statewide program to effectuate the right to counsel and housing stabilization and homeless prevention services for eligible individuals.

(b) The office of civil justice shall be advised by a committee known as the civil justice committee which shall be chaired by the undersecretary of the department of housing and community development and include the Chief Justice of the Housing Court (or designee), one member from the Access to Justice Commission, Citizens' Housing and Planning Association, Committee for Public Counsel Services, from each of the four regional legal aid organizations selected by Massachusetts Legal Assistance Corporation, Massachusetts Coalition for the Homeless, Massachusetts Union of Public Housing Tenants, Massachusetts Chapter of the National Association of Housing and Redevelopment Officials, Massachusetts Law Reform Institute, Massachusetts Association of Community Action Programs, Regional Housing Network of Massachusetts, and Volunteer Lawyers Project.

(c) The committee, after conducting regional hearings to invite public review and comment, shall develop and implement a statewide plan to phase in full legal representation for covered proceedings, with recommendations including: (i) how to provide assistance prior to a court complaint for tenants whose tenancy has been terminated through a notice to quit or otherwise; (ii) procedures and enforcement related to notification of the availability of legal assistance pursuant to section 17 and other procedures necessary to effectuate the purposes of this act; and (iii) standards for designated organizations to provide legal assistance, training, and supervision.

(d) After conducting regional hearings to invite public review and comment, the committee shall study and make recommendations regarding how to further promote housing stabilization and homelessness prevention for eligible individuals, consistent with existing programs, which shall be include, but not limited to, the following: (i) community outreach to engage, educate, and inform tenants about their rights; (ii) eviction prevention to assess and obtain resources available to maintain housing stability and resolve eviction matters prior to court; and (iii) legal assistance or housing stability assistance when tenants are facing the termination of a tenancy or rental assistance before an administrative agency or public housing authority.

(e) The committee shall establish procedures for monitoring and evaluating the assistance provided pursuant to this act.

(f) The office of civil justice may promulgate any rules or regulations necessary to implement this act.

(g) The committee shall advise the coordinator on matters of policy affecting assistance provided pursuant to this act. The committee shall further adopt recommendations, including but not limited to: (i) requirements for collection and reporting of eviction data among designated agencies, courts, municipalities and other agencies to inform housing policies and evaluate the program, including but not limited to estimated number of individuals receiving assistance, demographics, and case outcomes; and (ii) changes necessary to existing state laws, regulations, and court rules to ensure the implementation of the plan and effectuate the purposes of this act, including whether to amend the right to cure non-payment under section 11 of chapter 186 and section 12 of chapter 186, or amend other provisions to provide for continuances and extensions so that people who do not timely receive notice are not prejudiced.

Section 16. (a) The coordinator, considering recommendations from the committee pursuant to 15(c), shall designate organizations to provide legal assistance in accordance with this act. Nothing herein shall interfere with any legal counsel in carrying out their professional responsibilities to their clients as established in the canons of ethics and the code of professional responsibility adopted by the supreme judicial court. Designated organizations shall:

(i) have substantial expertise in housing law, landlord and tenant law, furnishing free or low-cost legal assistance to eligible individuals;

(ii) identify the geographic area in which they shall provide services;

(iii) provide appropriate supervision and training; and

(iv) satisfy other criteria established by the civil justice committee.

(b) The coordinator, considering recommendations from the committee pursuant to 15(d), shall designate organizations to provide legal or housing stability assistance;

organizations may provide one or the other, and may, but need not provide both in accordance with this act. Designated organizations, depending on the services provided, shall:

- (i) have the demonstrated capacity to promote housing stability assistance through eviction prevention or community education and outreach;
- (ii) identify the geographic area in which they shall provide services;
- (iii) provide appropriate supervision and training; and
- (iv) satisfy other criteria established by the civil justice committee.

(c) The coordinator shall convene a yearly statewide summit and periodic forums for purposes of training and discussing the development of major initiatives, updates from designated organizations, and policy recommendations to effectuate the purposes of this act.

(d) The coordinator shall periodically review the performance and outcomes of the designated organizations.

(e) Employees of an organization designated by the office of civil justice pursuant to this section shall not be considered to be or have any rights as a state employee.

Section 17. (a) A form recommended by the civil justice committee and approved by the chief justice of the supreme judicial court shall be used to notify individuals of their eligibility for a right to counsel in covered proceedings in court and the availability of assistance prior to court. The supreme judicial court shall adopt other forms recommended by the civil justice committee as needed.

(i) The lessor shall include or attach the approved form to the notice to quit, or, if no notice to quit is required by law, the summons and complaint for summary process or other similar proceedings to recover possession of any premises rented or leased for dwelling purposes.

(ii) The court shall include or attach the approved form to a lessor upon purchase of the summary process summons and complaint.

(b) The civil justice committee shall adopt other forms as needed.

(c) If the tenant or occupant did not receive the approved form or forms as required pursuant to this section, there shall be a reasonable continuation of the proceedings so that the tenant or occupant can obtain legal assistance to prepare their case.

(d) The supreme judicial court shall approve a written waiver form for courts to inform eligible individuals about the right to legal counsel in court proceedings in order for eligible individuals to knowingly and voluntarily waive the provisions of this act.

SECTION 2. The provisions of this act, unless otherwise expressly provided, shall take effect upon passage.

SECTION 3. The executive office of housing and economic development shall hire the coordinator within 45 days of passage of this act.

SECTION 4. Members of the civil justice committee shall be appointed and convened by the coordinator within 90 days of the passage of this act.

SECTION 5. Members of the civil justice committee shall hold regional hearings to invite public review and comment and shall develop within 280 days of this act a statewide plan to begin implementation of full representation by legal counsel pursuant to 15(c) within 360 days of the passage of this act with the coordinator able to approve designated organizations as soon as is practicable. The plan and any recommendations shall be delivered to the Chairs of the General Court's Joint Committee on Housing and Joint Committee on the Judiciary and the Secretary of Housing and Economic Development.

SECTION 6. Members of the civil justice committee shall hold regional hearings concurrent with regional hearings in SECTION 5 and develop a plan to further promote housing stabilization and homelessness prevention develop pursuant to 15(d) within 600 days of the passage of this act. The plan and any recommendations shall be delivered to the Chairs of the General Court's Joint Committee on Housing and Joint Committee on the Judiciary and the Secretary of Housing and Economic Development.