



GEORGETOWN LAW

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Senate Chair, Senator Lydia Edwards
Joint Committee on Housing

House Chair, Representative James Arciero
Joint Committee on Housing

In Support of S. 864, An Act promoting access to counsel and housing stability in Massachusetts

I submit this testimony in support of S. 864, An Act promoting access to counsel and housing stability in Massachusetts. I am currently an associate professor of law at Georgetown University Law Center, where I research and write on issues related to eviction, housing affordability, and fair housing. Prior to joining the Georgetown Law faculty, I represented tenants facing eviction in Massachusetts for many years, including as a staff attorney at Northeast Justice Center and as a Clinical Instructor at the Harvard Legal Aid Bureau and the Legal Services Center of Harvard Law School.

I submit this testimony primarily in my capacity as a researcher. My goal is to communicate the findings of my own empirical research on eviction cases in Massachusetts showing that when tenants face eviction without counsel, their rights are undermined, and rules and procedures enacted by the Legislature go unfollowed.

My recently published Stanford Law Review article, [*Civil Probation*](#), is based on an empirical study I conducted of eviction cases in the Eastern Housing Court of Massachusetts. For this study I retrieved and coded nearly 1,000 randomly selected eviction cases filed in the Eastern Housing Court between 2013 and 2017. Nearly all the tenants in these cases – 97% – were unrepresented by counsel. My particular focus was on the terms of settlements, because while most of us know that eviction cases settle, we often do not know what landlords and tenants are settling *for*.

What I found is that about two-thirds of settlements in the Eastern Housing Court take the form of what I call “civil probation.” Under the terms of these settlements, the tenant’s right to remain in their home, and ultimately to have their tenancy reinstated, is made conditional on their compliance with certain conditions for a certain period of time. Conditions often include paying rental arrears, paying ongoing rent on time, or adhering to behavior rules. While this arrangement may sound advantageous – after all, the tenant is given another opportunity to retain their home – it in fact creates a smoother, surer path to eviction for any tenant transgression. This is because once a tenant is on civil probation, violation of any enumerated condition is adjudicated within an alternative legal regime established by the agreement. This legal regime affords far fewer procedural and substantive protections to tenants than what is afforded under Massachusetts statutory law and the Uniform Summary Process Rules. For example, a tenant who allegedly fails to meet a payment condition has no right to claim a defense under the warranty of habitability, to request discovery on the landlord’s allegation, or to a statutorily-prescribed notice period before facing eviction. As a

result, evictions are swifter and easier for landlords to obtain than they ever would be under the rules and statutes the Legislature enacted.

The alternative legal regime established by civil probation is not a hypothetical regime. 1 in 3 tenants on civil probation will eventually face eviction based on an alleged violation of the probationary conditions, via a motion to issue execution. My data show that judges grant **96%** of such motions that come before them. The data also show that judges issue 4 times as many eviction orders based on violations of civil probation as they issue based on the underlying merits of eviction complaints: during my study period, 81% of eviction orders handed down by judges were for violations of civil probation, and only 19% were for proven allegations listed in the summons and complaint. In other words, the alternative set of rules established by civil probation agreements, rather than the rules established by the Legislature, have now become the *typical* rules that judges apply when they decide eviction cases.

As I well know from my years in practice, and as you have likely heard from countless legal aid attorneys and advocates, many of the tenants who sign civil probation agreements have viable defenses that should, in theory, allow them to permanently retain their homes. They have no reason to be put under an alternative regime that makes them significantly more vulnerable to eviction. Indeed, the Legislature has enacted numerous statutes that protect tenants from eviction when their landlords fail to follow the appropriate procedures, neglect repairs, or violate the consumer protection laws, among other defenses. However, my research shows that these laws are virtually meaningless when tenants do not have access to counsel. Unrepresented tenants do not leverage the law in their favor, invoke defenses, or negotiate favorable agreements. Instead, likely aware that they have no realistic alternative to fight for a better outcome on their own, they enter into landlord-crafted settlements that wipe away their rights and render the formal legal regime all but meaningless.

I hope that the Housing Committee will take action early in the 2023-24 session to report **S. 864** out favorably.

Thank you for your consideration.

Sincerely,

Nicole Summers
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