

No Eviction Without Representation

Evictions' Disproportionate Harms and the Promise of Right to Counsel

American families face a long-brewing eviction crisis that has reached historic proportions. For 40 years, median rents have grown more than six times faster than median wages, and more than 23 times faster than the wages of low-wage workers.¹ Combined with large-scale divestment from public and subsidized housing programs, these macroeconomic factors have resulted in approximately half of all renters being rent-burdened (spending at least 30% of their income on rent) and a quarter being severely rent-burdened (spending at least 50% of their income on rent).² When this burden becomes too much, tenants often fall behind, and landlords force them from their homes using a mixture of informal, illegal, and court-involved evictions. Nonpayment of rent is the cause of 80% of the 3.6 million eviction filings processed by U.S. courts in a typical year.³ Data from the U.S. Census Bureau's 2022 Pulse survey indicates that 20% of renting households are currently behind in their payments.⁴

The first national study of evictions, released in late 2020, provided the clearest profile of American evictions.⁵ Drawing on data from 39 states that covered 38% of all renter households and included more than 4 million eviction records, the study tracked both eviction filings (a filing is a landlord's court petition seeking removal of tenants) and

eviction warrants (a warrant is issued following a court ruling in favor of the landlord and authorizes the removal of the household). Both filings and evictions were astoundingly common; nationwide, "one in 25 renters was threatened with eviction every year, and one in 40 was evicted."⁶

Absent intervention, evictions function as an extreme kind of "disruptive displacement," forcing people out of their homes and, in doing so, completely upending their lives in the short- and long-term. Eviction can disrupt children's education, result in job loss, damage physical and mental health, and, make it difficult to find a new home to rent.⁷ Short-term and long-term homelessness are all-too-frequent outcomes of eviction.

The harms of eviction fall disproportionately on Black and Latinx people, especially women and children. According to a 2020 study, Black individuals account for 32.7% of all eviction filing defendants, despite only making up 19.9% of all adult renters in the counties addressed by the study.⁸ Landlords target renters with children to such an extent that simply having children in the household is equivalent, as a trigger for eviction, to falling four months behind in rent.⁹

The Eviction Process¹⁰

When a residential lease agreement, either oral or written, is created, there is an immediate power imbalance, as landlords set the lease terms.¹¹ Tenants, particularly low-income people in need of the unit, are rarely able to negotiate. Leases often include unenforceable terms.¹² If an issue arises, such as an alleged failure to pay rent, a lease term violation, or the tenant remaining after the lease has ended,¹³ the landlord is legally prohibited from using self-help tactics, such as removing a tenant's personal property without a court order or changing the locks,¹⁴ although landlords frequently engage in this behavior nonetheless.¹⁵ For an eviction to be lawful, landlords must use the eviction process set out in the law.¹⁶ In theory, this is a safeguard for tenants, since evictions are subject to due process requirements. But eviction cases are designed to be disposed of quickly, often relying on unfair practices.

In most states, before filing for eviction, landlords must notify the tenant of the planned eviction, the issue, and the amount of time (sometimes as short as three days) to remedy or vacate.¹⁷ Violations of notice requirements are common.¹⁸ Once the notice period is up, if the tenant and the issue remain, the landlord can file in court. Many tenants, misunderstanding their rights or likelihood of prevailing in court, vacate after receiving the initial notice or the filing but before the court date.¹⁹

In at least half of all cases, tenants do not respond or appear at the court date.²⁰ This is often due to distrust of the judicial system, an inability to attend because of work or childcare obligations, or a lack of understanding about available defenses.²¹ The rise in the use of remote proceedings during COVID-19 has introduced new practical challenges for tenants.²² For those who appear, the power imbalance is only exacerbated: on average, 82% of landlords are represented in eviction cases, compared to only 3% of tenants.²³ Across the country, free legal

assistance for tenants is extremely limited, as legal aid providers are underfunded. And limits on opportunities and time to cure the issue can make effective intervention difficult.²⁴

Evictions are governed by complex substantive and procedural rules and laws, yet hearings often occur on the first court date. Courts encourage (or sometimes insist upon) pre-hearing hallway negotiations between tenants and landlord attorneys.²⁵ Unrepresented tenants often agree to unfavorable settlement terms, which are then entered on the record without review. A settlement may allow a tenant to stay if certain conditions are met or define a period in which the tenant must leave. A judgment for arrears or costs is often included. Actual eviction hearings can last as little as two minutes.²⁶ Unrepresented tenants rarely raise objections, counterclaims, or defenses.²⁷ Some jurisdictions even require tenants to pay the alleged amount of unpaid rent into court before raising a defense or proceeding to hearing.²⁸ Even if a tenant "wins," the fact of the filing can attach to their name, and future landlords can access it through a public record search.²⁹ Many landlords refuse to rent to tenants named in an eviction, regardless of the outcome.

Where a tenant must vacate, the court will issue a warrant of eviction that the landlord enlists law enforcement to serve and execute. The tenant has a prescribed period to leave or, where permitted by law, to remedy the issue. Otherwise, law enforcement will remove the tenant from the unit. Tenants often lose personal property in this process, as items are left on the curb or put in storage and can only be recovered by paying a fee. Depending on the state, the eviction process can be accomplished in weeks.³⁰ Appeals are often limited, discretionary, or impeded by the requirement of paying an "appeal bond."³¹

Americans facing eviction encounter a legal system that is often inaccessible, confusing, and overburdened. While, on average, over 80% of landlords are represented in eviction proceedings in court, just 3% of tenants are.³² Unrepresented tenants generally cannot make legal arguments, raise applicable defenses, respond to or raise objections, introduce evidence, preserve issues for appeal, or navigate the procedural obstacles of litigation. It also takes a significant amount of time to appear in court—often close to an entire day—when many tenants must be at work or school, taking care of children, or managing other responsibilities. As a result of either intimidation by the legal process or responsibilities precluding court attendance (or both), tenants default at high rates in eviction cases. These factors may account for a decrease in public faith in our nation’s civil courts.³³

Access to legal representation can protect families facing eviction from its many harms. Lawyers often help families remain in their home. Even when eviction proceedings end in tenants moving out (which tenants may desire, owing to either uninhabitable conditions or an irreconcilable breakdown in the relationship with the landlord), lawyers regularly help tenants avoid an eviction judgment, secure more time to move, avoid paying excessive back rent and fees, and seal eviction records that unfairly lock them out of new housing opportunities. Without guaranteed access to an attorney, as exists in criminal court, the vast majority of tenants do not have access to these protections.

With the support of a concerted national campaign, more than a dozen jurisdictions have enacted a right to counsel for tenants in eviction cases.³⁴ The details vary by jurisdiction, but these programs all guarantee legal representation for tenants facing eviction.

This research brief analyzes existing evidence on the harms caused by evictions, particularly for Black and Latinx women and children, and examines how a right to counsel may mitigate those harms. The first section summarizes the research on the harms of eviction and who is most impacted by them. The second section synthesizes the empirical research on

the effectiveness of legal representation in eviction proceedings. The brief concludes with actionable recommendations.

All people, regardless of their circumstances or background, should have access to safe and stable housing. Right to counsel measures are critical to fighting evictions and ensuring tenants have a fair chance to access legal protections and stay in their homes.

The Impacts of Eviction

While the immediate impact of eviction is the loss of one’s housing, the effects of eviction reverberate across many different areas of life. Evictions can influence access to education for children, physical and mental health, and financial stability. The harms caused by eviction make a right to counsel essential.

Eviction, Employment, and Poverty

When tenants experience eviction, they are thrust into a cycle of displacement that lasts far beyond the initial housing loss. Experiencing an eviction and its aftermath can lead to job loss. When tenants do not have a stable housing situation and are constantly relocating, they are unlikely to maintain steady employment because of challenges to work performance and absenteeism.³⁵ According to a study in Wisconsin, workers who experienced eviction or faced an involuntary move were 20% more likely to lose their jobs than consistently housed workers.³⁶ As part of the same study, 42% of respondents who were laid off in the two years prior to the study had also experienced an involuntary move.³⁷

An eviction record can disqualify tenants from federal housing assistance, including public housing and subsidized housing vouchers.³⁸ Many landlords

will not accept tenants with a previous record of eviction. Because of these limitations in attaining new housing, tenants who have faced eviction in the past will often continue to face residential instability. This cycle frequently results in homelessness.^{39, 40} Those tenants who are able to secure new housing are often forced to relocate to distressed neighborhoods, which further hampers their life opportunities.⁴¹

When a person is unable to maintain a job because of lack of housing and is simultaneously unable to find housing because of financial instability and discriminatory practices against tenants who have faced eviction, poor tenants become trapped in poverty, increasingly limiting their way out.

Eviction and Homelessness⁴²

Evictions are one of the direct causes of homelessness.^{43, 44} Those who are evicted from their homes may find themselves unable to afford or secure housing. An estimation of the causal effect of evictions on homelessness in New York City stated that evicted persons are 16% more likely to apply to a shelter in the first two years after their eviction case is filed (the baseline shelter application rate of non-evicted households is 3.4%).⁴⁵

The consequences of homelessness have been widely documented, and can range from poorer health to lower education attainment, limited employment opportunities, and increased victimization, among many others.⁴⁶ Clearly, the impact of losing one's home and ending up without housing can be dire. For example, according to an analysis of the U.S. Health Resources and Services Administration's 2009 Health Center Patient Survey, "homeless patients had worse health status than their housed counterparts."⁴⁷ Researchers conducted analyses that found that homeless patients had "twice the odds as housed patients of having unmet medical care needs" in the year the study was conducted and "twice the odds of having an [emergency department] visit."⁴⁸ A study conducted in Los Angeles drawing data from face-to-face interviews with homeless individuals found that two-thirds of the homeless adults they interviewed "met criteria for chronic

substance dependence."⁴⁹ In addition, "22% [of the interviewees] met criteria for chronic mental illness," and "77% of those with chronic mental illness were also chronic substance abusers."⁵⁰ Though some individuals experience mental illness before becoming homeless, homelessness can lead to or exacerbate existing poor mental health.

Homelessness impacts all areas of life for individuals and families alike. Children experiencing homelessness often have their education disrupted. A robust body of research has identified decreased academic achievement as a consequence of homelessness. For example, according to a 2019 report about homeless students in New York City, only 23% of homeless students met their grade-level standards for English language art, compared to 43% of their peers who have always been housed.⁵¹ On the New York statewide math assessment, homeless students scored proficient at half the rate of their classmates who have always had housing.⁵² Another study conducted in the Los Angeles Unified School District found that more than 80% of students living in shelters for three or more years were chronically absent for one or more school years.⁵³

All too often evictions leave individuals and families homeless. As discussed later in this brief, legal representation in eviction proceedings is a demonstrably effective intervention, and is therefore critical to preventing the harsh consequences of homelessness.

Impact on Children

Experiencing childhood eviction can significantly alter the course of a child's life.

Housing stability has a profound effect on children's educational outcomes. According to research conducted by the MacArthur Foundation, residential changes during childhood are associated "with nearly half a year loss in school."⁵⁴ This research shows that childhood moves, especially moving three or more times, "[are] associated with lower earnings, fewer work hours, and less educational attainment later in life."⁵⁵ When evictions force families out of their homes, they often simultaneously force children to change schools and disrupt their education.⁵⁶ The impact on homeless children's education can be especially harsh. More information on this can be found in the previous section on Eviction and Homelessness.

Families that had been evicted reported poorer physical and mental health and were less likely to have access to medical care and medications.

— Hatch & Yun, 2021

In some states, children are even being named in evictions. In New York, this became a more common practice as an unintended consequence of the state's Housing Security and Tenant Protection Act of 2019.⁵⁷ According to Roland Nimis, an attorney with Legal Services NY, "[The intention] was to protect third parties if they are family members who may have succession rights.... The idea there was to sort

of codify that idea that [landlords] have to make sure [they're] giving everyone in the apartment notice who may have some rights." In Massachusetts, "a growing number of parents are finding their children are being listed on eviction notices."⁵⁸ Once a child is listed on an eviction notice, their name is entered into a court database. The effects of this can last a lifetime and can cause children to become subject to tenant blacklisting.⁵⁹

Health Impacts

The potential health effects of eviction are among the most explored areas in the research literature on eviction impacts. This research has demonstrated that housing instability can decrease adult and child mental and physical health. Forty-seven studies using various methods and samples were assessed in a 2017 systematic review; this research found that people facing eviction or foreclosure had poorer health outcomes, including depression, anxiety, cardiovascular issues, and food insecurity.⁶⁰ Two more recent studies, both using data from the National Longitudinal Study of Adolescent to Adult Health, found similar results: families that had been evicted reported poorer physical and mental health and were less likely to have access to medical care and medications.⁶¹ A longitudinal study of housing court tenants in New Haven, Connecticut, also identified associations between evictions and mental health outcomes, including depression, anxiety, stress, and suicide.⁶²

One specific risk that has been identified in the research literature on health impacts is lead poisoning. Tenants who have received an eviction notice and are still living in their homes are less likely to receive services from their landlords, including testing for lead.⁶³ This lack of testing puts children of families facing eviction at higher risk of lead poisoning. Similarly, another study found that eviction early in life for children living in urban settings was a powerful predictor of lead poisoning.⁶⁴

Sexually transmitted infections (STIs) may represent another health risk factor caused by eviction. One

study, looking at data from the Eviction Lab's National Database and AtlasPlus, found significant associations between county-level eviction rates and rates of chlamydia and gonorrhea.⁶⁵ The findings indicate that eviction may result in increased sexual and/or social vulnerabilities in ways that elevate community levels of STIs.⁶⁶ Eviction and the resultant displacement may also disrupt healthcare access and decrease opportunities for STI testing and treatment.⁶⁷

Eviction can also have an effect on the health of mothers and babies. According to one study, when comparing evicted and non-evicted mothers, evicted mothers “experienced more material hardship, were more likely to suffer from depression, reported worse health for themselves and their children, and reported more parenting stress.”⁶⁸ Another study conducted in Georgia found that eviction during

pregnancy (compared with maternal eviction at any other time) can cause adverse birth outcomes, including reductions in infant weight and gestational age at birth.⁶⁹

Several studies assessed in the aforementioned 2017 systematic review also reported increased negative behavioral outcomes among those facing eviction, including family violence.⁷⁰ This review found mixed results for impact of eviction and substance abuse, with some studies finding an association and others not.⁷¹

Furthermore, eviction has been associated with lack of access to medical coverage. According to one study, “eviction was associated with 63% higher odds of losing Medicaid coverage...fewer pharmaceutical prescription fills...and lower odds of generating any healthcare spending.”⁷²

Impact of the COVID-19 Pandemic on Eviction

America's eviction crisis has been decades in the making, but the economic dislocations caused by the global coronavirus pandemic are exposing dramatically more American families to a dysfunctional and harmful system. For many renters, the pandemic has resulted in job and wage loss.

Though the unemployment rate has gone back down since July 2020, many Americans are still unable to pay their rent. The U.S. Census COVID-19 Household Pulse Survey from December 2021 showed that over 5 million women, constituting nearly 17% of women who rent, were behind on their rent.⁷³ Nearly 31% of Black, non-Hispanic women and nearly 20% of Latinx women renters were behind on their rent.

Throughout the pandemic, some states, localities, and eventually the federal government put in place eviction moratoria to help some tenants stay in their homes.⁷⁴ However, these moratoria expired before most tenants recovered from the economic losses of the pandemic. Congress, through two versions of the Emergency Rental Assistance Program, also

allocated \$46 billion in funding to be distributed by individual states.⁷⁵ Some jurisdictions used funding from these programs to help start right-to-counsel programs and increase representation for tenants facing eviction.⁷⁶ However, due to extensive need, funds quickly began to run out. As of January 2022, New York, Texas, and Oregon had almost entirely used up their funds while still having significant demand.⁷⁷ In response, the Biden administration has begun “pulling back cash from states with relatively few tenants” and redistributing the money to states that have used all or most of their funds, including California, New York, New Jersey, and Illinois. New York, which will receive \$119 million in additional funding, had requested \$1.6 billion in aid.⁷⁸

With renters still unable to pay their rent and lacking government protection, many tenants have faced eviction and housing displacement, both of which are particularly threatening to individual and public health during a global pandemic. Eviction is likely to increase COVID-19 infection rates through overcrowded living environments, transiency, limited access to healthcare, and a decreased ability to comply with pandemic mitigation regulations.⁷⁹

Impact on Civic Engagement

Past research has demonstrated that those who lose their homes are less likely to participate in the political process and are less likely to vote.^{80,81} However, this work has focused on people losing their homes due to foreclosure. While some existing research has examined the impact of eviction on civic and community engagement,⁸² researchers have just recently begun to study the impact that eviction can have on renters' democratic participation and found that negative life events, including evictions, were related to lower voter turnout.⁸³ A study published in 2021 drew on eviction and voter record data from 19 states and concluded that "residential eviction contributed to voter demobilization in the 2016 presidential election."⁸⁴ Replications of this analysis with 2012 data, as well as additional analyses with somewhat different methods, yielded similar findings.⁸⁵

Disproportionate Impacts of Eviction on Black and Latinx Women and Children

Data from a 2020 national study of evictions found that women—especially Black and Latinx women—are disproportionately targeted for eviction.⁸⁶ The number of women evicted is 16% higher than the number of men evicted (across the 1,195 counties studied, 341,756 women were evicted, compared with 294,908 men).⁸⁷ Black women face eviction filings at nearly twice the rate of white women.⁸⁸ Black women are also more likely to have a case filed against them that is later dismissed.⁸⁹ These trends hold true across the U.S.: four out of five Black renters live in a county where landlords disproportionately file eviction cases against Black people.⁹⁰ Accordingly, Black women are the group most likely to be harmed by evictions and policies that screen out housing applicants with prior evictions.⁹¹

The Fair Housing Act prohibits discrimination based on familial status,⁹² but, in practice, landlords commonly target families with children for eviction and illegally discriminate against prospective tenants with children. An analysis of data from

Milwaukee found that families with children are 17% more likely to be evicted than those without children, even after accounting for factors such as amount of rent owed, race, and family structure.⁹³ Another study, also from Milwaukee, found even greater disparities for families with children: a renter with two children has an 11.7% chance of being evicted in a year, compared to a 9.5% chance for a renter with one child and a 7.3% chance for a childless renter.⁹⁴ As with evictions, unrepresented tenants are highly unlikely to know how to address discrimination effectively using the legal process.

Nearly one in five Black and Latinx children experience eviction by age 15.

— Lundberg & Donnelly, 2018

The faces of America's eviction crisis are those of children. Recent estimates of the scale of the problem found that 15% of children born in large American cities experienced eviction by age 15.⁹⁵ Children of color experience eviction at especially high rates, as do children born to families in poverty. Nearly one in five Black and Latinx children experience eviction by age 15 (approximately 19% and 17%, respectively), as do just over one in 10 (11%) white children born in large U.S. cities.⁹⁶ Over a quarter (29%) of children living in "deep poverty," defined as below 50% of the poverty line, are evicted before age 15.⁹⁷

Furthermore, there is a small body of research indicating that the health impacts of evictions do not impact everyone equally, and that some populations may experience greater harm to their health from evictions than others, including women and Black populations,⁹⁸ along with people living with HIV/AIDS⁹⁹ and those with existing mental health and substance abuse issues.¹⁰⁰

Right to Counsel for Tenants Facing Eviction

Given the multiple negative effects evictions have on families and communities, especially Black and Latinx women and children, avoiding eviction is critical. Legal representation for tenants facing eviction is a demonstrably effective intervention, yet just 3% of tenants are represented in eviction cases, compared to over 80% of landlords.¹⁰¹ And though the movement to establish the right to counsel for tenants facing eviction is growing, as of March 2022, only 13 cities and three states guarantee such a right.

Defined broadly, the right to counsel is a guarantee from the government, established in law, that all tenants, or a defined class of tenants, must be provided legal representation in eviction proceedings. “Universal representation” programs are governmental or nongovernmental programs that provide sufficient funding for all tenants, or a defined class of tenants, to be represented, but there is no codified law guaranteeing representation to such tenants.¹⁰²

City, state, and national movements for the right to counsel are quickly growing. Fifteen cities around the country have enacted some type of right-to-counsel program in eviction cases: New York City, San Francisco, Boulder, Newark, Cleveland, Philadelphia, Baltimore, Minneapolis, Toledo, Louisville, Kansas City, Denver, Seattle, New Orleans, and Detroit. Three states have also adopted a right to counsel for tenants facing eviction: Washington, Maryland, and Connecticut.¹⁰³ Some jurisdictions have provided sufficient funding for universal representation but have not passed an ordinance, including Milwaukee County, Wisconsin (which also enacted a resolution supporting right to counsel), and Rochester, New York.

The Impact of Legal Representation for Tenants Facing Eviction: What the Research Says

With right to counsel passing or being proposed in cities and states around the country, researchers are working to understand its potential impact. Though studies of implemented right-to-counsel (RTC) programs as defined above are limited, due to how recently nearly all of these enactments have occurred, existing RTC program data as well as studies on non-RTC legal representation for tenants facing eviction indicate the impact that the right to counsel can have for tenants facing eviction.

This section details the existing published empirical research on the effects of legal representation for tenants facing eviction and includes assessments of existing and evaluated programs, as well as research that does not address a specific program or policy but assesses the potential impact of tenant counsel in housing court, such as cost savings. The results of the research are clear: Rates of eviction were significantly lower for tenants who were represented in housing court compared to those who were not, and providing representation is a cost-effective measure.

California: Sargent Shriver Civil Counsel Act (AB 590) and Appointed Legal Counsel in Civil Cases Act (AB 330)

Enacted into California law in 2009, the Sargent Shriver Civil Counsel Act (AB 590) established a number of pilot programs to provide counsel to low-income clients for civil matters.¹⁰⁴ Of these 10 programs, six were designed to represent clients in housing cases. The Appointed Legal Counsel in Civil Cases Act (AB 330) was enacted in 2019 to expand and improve the projects.¹⁰⁵ NPC Research conducted two evaluation studies of these pilot projects—the first in 2017 and the second in 2020—for the Judicial Counsel of California.¹⁰⁶

About the Shriver Housing Pilot Projects:

Located in seven counties—Fresno, Kern, Los Angeles, Sacramento, San Diego, Santa Barbara, and

Yolo—these pilot programs provided several types of legal services to low-income individuals, including full legal representation in housing court and limited-scope legal assistance (e.g., representation in mediation or negotiations, assistance with form preparation, other guidance).¹⁰⁷ Some of these pilot projects also implemented court-based services, such as designated personnel and expanded resources.

Outcomes: According to findings from the 2020 evaluation,¹⁰⁸ two-thirds (67%) of the cases in pilot program settled, 3% were resolved via trial, and 8% ended by default. Alternatively, only one-third (34%) of cases not in the program settled, whereas 14% were resolved via trial and 26% ended by default. In addition, only 3% of cases in the program ended with a formal eviction. 91% of Shriver cases ended with the eviction record sealed, 81% with the eviction not reported to a credit agency, and 71% with a neutral reference provided by the landlord. In a randomized study discussed in the report, Shriver tenants were three times less likely to default, nearly half as likely to have to pay damages or attorney fees than *pro se* tenants, and nearly 24% more likely to raise a defense to the eviction action. One year later, 71% of Shriver clients had obtained a new rental unit, compared to 43% of non-Shriver tenants.

Massachusetts: Boston Bar Association Reports

In an update of an earlier (2014) report, the Boston Bar Association released a 2020 report detailing a study conducted by the Analysis Group examining the financial benefits to the state of providing full legal representation through a right to counsel in Massachusetts eviction proceedings.¹⁰⁹ In 2019, Massachusetts had 39,594 eviction cases filed, many which resulted in judgements or agreements that led to the displacement of individuals and families. That same year, 91% of tenants in eviction proceedings did not have legal representation.

Findings: The Analysis Group study estimated that full legal representation will help over 15,000 people each year.¹¹⁰ The annual cost to provide this representation to all eligible tenants in

Massachusetts was assessed at an estimated \$26.29 million.¹¹¹

The study also analyzed the costs of eviction incurred by the state due to the resulting burdens on the healthcare, foster care, emergency shelter, education, and correctional systems, resulting in an annual estimate of \$63.02 million.¹¹² Thus, according to the study, implementing the right to counsel would result in an overall conservative estimated cost savings of \$36.73 million annually, providing a return of approximately \$2.40 for every dollar spent on full legal representation in eviction cases.¹¹³ Furthermore, the researchers note that “there are many other societal costs associated...that are not included in our calculation.”¹¹⁴ As such, the cost savings of providing counsel in eviction cases are likely substantially higher than estimated.

Minnesota: Hennepin County Housing Court Project

For the past two decades, Mid-Minnesota Legal Aid and the Volunteer Lawyers Network have staffed the Housing Court Project, a legal clinic in Minnesota’s Fourth Judicial District Housing Court. In 2018, the Hennepin County Center for Innovation and Excellence reviewed a random selection of eviction cases receiving representation under the Housing Court Project’s expanded services. They also examined the outcomes from a random selection of eviction cases. In order to assess the effects of legal representation, they compared the outcomes of cases without representation to those with full and limited representation.¹¹⁵

About the Housing Court Project: The Project provides low-income tenants with free brief advice and short services. When tenants facing eviction seek help from the clinic with enough lead time, their cases may be referred for full representation.

Outcomes: The findings of the study indicated significantly better outcomes for tenants who had access to full and limited-scope legal representation than those without.¹¹⁶ Fully represented tenants won or settled their cases 96% of the time, and nearly 80% were able to leave court without an eviction record.

Comparatively, 62% of unrepresented tenants settled or won their cases and only 6% left court without an eviction record stemming from their case.

In addition, compared to unrepresented tenants, those with access to full legal representation were nearly twice as likely to retain possession of their homes and nearly four times less likely to use homeless shelters. Unrepresented tenants were “four to five times more likely than fully represented tenants” to face eviction enforced by sheriff deputies.¹¹⁷

In addition, the study shows that even tenants with limited-scope representation experience better outcomes than those without any legal representation. Those with limited-scope representation win or settle their cases 83% of the time, often preventing them from experiencing eviction, compared to 62% of unrepresented tenants.¹¹⁸

New York: New York City Expanded Legal Services and Universal Access to Counsel Initiative

In 2021, the New York City Office of Civil Justice (OCJ) released a report on the fourth year of the implementation of the city’s Universal Access to Counsel Initiative (UAC), assessing its impact.

About UAC: In 2013, only 1% of tenants in New York City housing court had legal representation, compared to 95% of landlords. Because of this disparity, the Right to Counsel New York City Coalition formed in 2014.¹¹⁹ The Coalition successfully advocated for City Council to pass a bill requiring the establishment of right to counsel for income-eligible tenants within five years.¹²⁰ Prior to the passage of this bill, the city launched the Expanded Legal Services pilot program in 2016, which provided representation to income-eligible tenants (tenants whose income falls below 200% of the federal poverty line). The pilot program initially served a limited number of ZIP codes. In 2017, NYC enacted UAC, which guaranteed the right to counsel for all ZIP codes but had a five-year phase-in plan. This was amended in 2021 to be

implemented citywide immediately—a year earlier than anticipated.¹²¹

Outcomes: Early results of both the pilot program and expanded UAC validate the investment.¹²² By the end of 2017, legal representation for tenants had increased from 1% to 10% citywide. ZIP codes included in the earlier pilot program had an even larger increase. In addition, more tenants began to respond to their eviction filings and appear in court, going from a 20% response rate in 2014 to a 45% response rate in 2019. Increases in legal representation among tenants facing eviction and declines in eviction rates continued until March 2020 (the start of the COVID-19 pandemic).

Ohio: Cleveland Right to Counsel

In October 2019, Cleveland City Council passed a bill enacting the right to counsel (RTC) in eviction proceedings for families with children facing eviction who are at or below 100% of the federal poverty line. The bill stated, “lack of legal counsel for tenants during eviction cases is a violation of a basic human right.”¹²³

About the RTC: Eligible families receive access to legal services from “designated organizations under contract with lead partner organizations,” including the Legal Aid Society of Cleveland. These organizations are obligated to provide legal services “in a covered proceeding, as soon as possible after the initiation of the proceeding, and no later than at the time of the individual’s first scheduled appearance in a covered proceeding.”¹²⁴

Outcomes: According to an independent evaluation of 2021 data conducted by Stout Risius Ross, the Cleveland RTC initiative is providing assistance to in-need tenants and saving the city money. The report details that the program has helped 93% of clients avoid an eviction judgement or an involuntary move. Further, 83% of clients participating in the program were able to secure rental assistance.¹²⁵ Of the 21% of clients who were unaware of the possibility of rental assistance at the time they contacted Legal Aid, approximately 98% wanted rental assistance, and Legal Aid helped 81% of those clients obtain it.

In other words, Legal Aid played a key role in both awareness of and securing rental assistance.

The evaluation estimates that the city was able to save approximately \$1.1–\$1.2 million from costs “related to housing social safety net responses,” \$1.1–\$1.2 million in “sustained education funding for children,” \$1.4–\$1.6 million in “economic value preserved by retaining residency in Cleveland,” \$108,000–\$116,000 in “cost savings related to Medicaid spending on health care,” and \$580,000–\$620,000 on “out-of-home foster care placements.” The evaluation estimates that Cleveland/Cuyahoga County were able to avoid social safety net costs of

Cleveland’s Right to Counsel initiative was estimated to save the city approximately \$1.1–\$1.2 million in costs.

—Stout, 2022

at least \$1.8 million and retained approximately \$2.5–\$2.8 million in federal funding and economic value through RTC. Ultimately, the report found that the preliminary fiscal impact of RTC in Cleveland/Cuyahoga County for 2021 was a savings of approximately \$4.3–\$4.7 million.¹²⁶

Ohio: Columbus Tenant Advocacy Project (TAP)

An evaluation of the first six months of the Tenant Advocacy Project (TAP) in Columbus, Ohio, assessed the outcomes of cases with full-scope representation, limited-scope representation, and other types of legal assistance.¹²⁷

About TAP: Legal Aid Society of Columbus piloted the TAP program in Franklin County, Ohio, through a daily clinic, where staff and volunteers met with

tenants regarding their eviction cases. Tenants were screened to determine their eligibility for TAP and the type of assistance needed for their case. From 2016–2017, TAP provided a mix of full and limited-scope representation in 563 cases: 52% of cases received full representation, 41% of cases received on-site counsel/brief advice, and 8% of cases received a continuance.

Outcomes: Of the cases in which the tenant had access to full representation, courts ruled in favor of the landlord in only 1% of cases, compared with rulings in favor of the landlord 54% of the time in other cases.¹²⁸

When provided with full or limited-scope representation, tenants were far more likely to have their cases resolved through a process called “agreed entry,” a negotiation that benefits both the landlord and tenant. In these cases, tenants often are required to move out as part of the agreement, but they avoid an eviction judgement as well as negative impacts to their credit scores. Evaluation data reported that 40% of tenants in the TAP program were able to use the agreed entry process, compared with 15% of unrepresented tenants.¹²⁹

Virginia: Richmond Area RVA Eviction Lab Data

Through a combination of philanthropy, state, and federal support, legal representation in eviction proceedings in the Richmond region of Virginia has increased in recent years. According to research conducted by the RVA Eviction Lab, between 2019 and 2020, representation in eviction proceedings in the three geographic areas examined (Chesterfield County, Henrico County, and the city of Richmond) rose from 116 represented tenants (less than 1% of tenants facing eviction) to 1,233 tenants (approximately 11% of those facing eviction), a 963% increase.¹³⁰ Though the number of represented tenants has increased, 90% of all tenants facing eviction still do not have representation, while nearly all landlords do.

Outcomes: The RVA Eviction Lab found that across all years studied (2015–2020) tenants with

Research indicates that providing representation balances out the disparity in access to legal resources between landlords and tenants and is cost-effective for the government.

legal representation were less likely to face eviction. Overall, tenants with legal counsel had better court outcomes than those without (18% vs 2% favorable outcomes). And in 2020, as legal representation of tenants increased, tenants with representation were far less likely to have decisions filed against them (30% of cases were decided against tenants with representation, while 43% of cases were decided against tenants without representation).

Summary of Findings on Impact of Legal Representation in Eviction Proceedings

Right-to-counsel initiatives and other access-to-counsel programs in eviction proceedings are becoming increasingly popular in cities across the country. As these initiatives have only begun to take effect in recent years, research assessing the impact of providing representation to tenants is developing, but the preliminary data from RTC programs, including out of New York City and Cleveland, as well as existing research from studies of representation in eviction proceedings, points to overwhelmingly positive results. In each available study, represented tenants faced starkly different outcomes than unrepresented tenants—they were far less likely to receive an eviction judgement and less likely to suffer the collateral consequences of eviction records. This research indicates that providing representation balances out the disparity in access to legal resources between landlords and tenants and is cost-effective for the government. As research on legal representation in eviction proceedings continues, it is critical to look at its impact in geographically and socioeconomically diverse areas to understand its potential as a critical component of the national

strategy to combat housing inequality and income disparity.

Methodology

This brief reviews empirical research on two main topics: 1) the impacts of eviction, with particular attention to race/ethnicity and gender disparities, if any; 2) the effects of access to counsel on eviction outcomes. Although other references are included in this brief for context and informational purposes, the methods referenced here apply to these key areas of focus for the research review.

1. **Impacts of eviction:** Based on preliminary research and in consultation with subject matter experts, four key areas of impact were identified for review: economic, childhood, health, and civic. Potential sources were identified via search of academic databases for key search terms (e.g., eviction and education, eviction and mental health). A more focused search on potential gender and race disparities in eviction impacts was conducted via general search engines (e.g., Google) to identify relevant news articles or other non-academic sources (e.g., NGO reports, government data). These were reviewed for relevant research sources.
2. **Effects of access-to-counsel programs, including but not limited to, right to counsel efforts (RTC):** Potential sources were identified by: 1) searching for key terms

(e.g., eviction and counsel, eviction and legal aid, right to counsel and evaluation); 2) more focused searching (i.e., including geographic search terms and/or names of specific programs or providing institutions) on both academic databases and general search engines to obtain research on existing RTC and access-to-counsel programs and policies already known to the authors and subject matter experts. Relevant news articles and other non-academic sources (e.g., NGO reports, legislation) were reviewed for mention of relevant data or research studies which were then obtained and reviewed.

In addition to the search methods discussed above, citation tracing was conducted for all relevant sources.

Specific criteria for inclusion in the review for both areas of focus were:

- Empirical research studies: quantitative, qualitative, and/or mixed-methods; original studies and systematic reviews and meta-analyses; primary research, evaluation studies, and/or new reporting of government or program data
- Research on U.S. populations and systems (allowing local, state, and national samples)

Overall, 49 sources met these criteria for inclusion (28 on impacts of eviction; 7 on eviction disparities; 14 on impacts of right to counsel or legal representation). and were reviewed for this brief. This brief represents the data and extant research literature at a given point in time (October 2021 – March 2022.) Thus, one limitation of this review is that it cannot capture all of the efforts regarding right to counsel in evictions; this is a growing policy field, and many of the existing policies and programs are newly or yet to be implemented and their effects are not yet known. Future attention should be given to evaluation studies of these real-world programs as they continue to be implemented.

Recommendations & Conclusions

When considering the detrimental impact of evictions, particularly on women of color and their children, communities should find solutions that avoid disruptive displacement of tenants. This means supporting tenants who want to stay in their homes whenever possible. Based on the current available evidence, it is clear that providing a right to counsel allows for a more just system, resulting in fewer evictions and a reduction in other damaging collateral costs that come with forced relocation. Given that the vast majority of those facing eviction are not represented by counsel, often because they cannot afford an attorney, it is critical that governments at all levels take action to ensure those facing eviction are provided with legal representation.

The federal government should:

- Fully fund efforts to establish and implement the right to counsel for tenants at the state and local level;
- Begin tracking evictions of tenants, disaggregating the data by race, gender, familial status, income level, etc., and ensuring that the data is available for analysis with appropriate privacy protections;
- Fund state and local efforts to track eviction filing rates and case disposition;
- Increase awareness among localities and states about the portions of Emergency Rental Assistance Program and Fiscal Recovery Fund dollars available for legal services, and work to make these funding sources permanent.

Local and state governments should:

- Enact and implement a right to counsel in their jurisdictions that:
 - Involves a variety of stakeholders in designing the right to counsel for their jurisdiction, including tenants, organizers, and legal aid providers;
 - Applies to all types of evictions and all tenants, regardless of income;
 - Applies to administrative proceedings to terminate housing subsidies, which are the functional equivalent of an eviction;
 - Applies to affirmative tenant claims, such as those involving harassment, retaliation, illegal self-help evictions, and failure to make repairs;
 - Ensures that tenants are entitled to full representation, meaning all legal advice, advocacy, and assistance required to provide the best possible outcome for a particular case;
 - Ensures that tenants are provided counsel as soon in the process as practicable;
 - Ensures that tenants are notified of the right to counsel at lease-up, upon service of a notice to quit, and at service of a summons and complaint, using a separate form that explains the right in plain English (and other languages);
 - Ensures that there is data gathering throughout implementation, that the data is disaggregated by race, gender, income level, familial status, etc., and that the data is available for analysis subject to appropriate privacy protections;
 - Ensures that any phase-in process is transparent, specific, and responsive to principles of racial and gender equity;
- Provides sufficient funding for legal services programs to provide high-quality legal representation;
- Funds community organizers to engage in awareness building and implementation oversight, so that the right to counsel is well-advertised and effective;
- Is legally enforceable; and
- Is regularly evaluated for implementation and impacts.

Eviction is a gender justice issue. It is a racial justice issue. It is an economic justice issue. It is a children's rights issue. And it is a civil liberties issue.

- Support and fund research and evaluation that assesses longer-term outcomes and identifies best practices of right to counsel efforts, including:
 - Research into eviction filings, as well as informal and illegal eviction practices, making sure that the research is publicly available;
 - Research into court monitoring to understand how the courts' treatment of tenants differs when they do or do not have legal representation;
 - Research to evaluate and assess ongoing and new right-to-counsel programs to understand longer-term outcomes and differences in impact across demographics.

Eviction is a gender justice issue. It is a racial justice issue. It is an economic justice issue. It is a children's rights issue. And it is a civil liberties issue. Ensuring a right to counsel for tenants in eviction proceedings can play a role in helping to address systemic inequity and our nation's failure to invest in affordable housing for all. The research demonstrates that right to counsel is an effective means of ameliorating and preventing the serious harms of eviction and giving families a fighting chance to have a home.

Acknowledgements

Research and writing of this brief were conducted by Liel Sterling, Legal Administrative Assistant, ACLU Women's Rights Project; Cyrus O'Brien, former ACLU Research Associate; and Maria Roumiantseva, Associate Coordinator, National Coalition for a Civil Right to Counsel (NCCRC). This project was conceived of and coordinated by Sandra Park, Senior Staff Attorney, ACLU Women's Rights Project, and John Pollock, Coordinator, NCCRC. Research and publication were managed by Emily Greytak, ACLU Director of Research. Particular thanks to Ian Thompson, ACLU Senior Legislative Advocate; Eva Lopez, ACLU Communications Strategist; Marcos Vivieros, former ACLU Research Intern; and Roshni Saleem Chagan, former ACLU Research Intern, who provided guidance and feedback on this brief.

"No Eviction Without Representation," the phrase used for the title of this brief, references the name of tenant led campaigns to enact a right to counsel for tenants facing eviction in San Francisco, CA, Boulder, CO, and Denver, CO. Those campaigns were powered by tenants and community organizers, including chapters of the Democratic Socialists of America. We're grateful to them for their advocacy.

Endnotes

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- 2 U.S. Census Bureau, American Community Survey (2019) Table DP04, <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/>; Apartment List analysis of U.S. Census data in Chris Salviati, 2019 Cost Burden Report: Half of Renter Households Struggle With Affordability (October 9, 2019), <https://www.apartmentlist.com/research/cost-burden-2019>.
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- 9 Matthew Desmond et al., "Evicting Children," *Social Forces* 92, no. 1 (September 1, 2013): 303–27, <https://doi.org/10.1093/sf/sot047>.
- 10 This section provides a brief summary of the eviction process. States, and sometimes counties and cities, may differ in applicable law, policy, and practice. The Legal Services Corporation (LSC) recently conducted a study, "The Effect of State and Local Laws on Eviction" which can be accessed at <https://lsc.gov/initiatives/effect-state-local-laws-evictions>. The LSC's database of eviction laws is available at <https://lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>.
- 11 State laws set out the responsibilities of both parties, that generally cannot be shifted. A rental agreement often emphasizes the tenant's responsibilities while minimizing those of the landlord. See generally Hoffman, David A. and Strezhev, Anton, *Leases as Forms* (December 20, 2021). *Journal of Empirical Legal Studies* (forthcoming 2022), U of Penn, Inst for Law & Econ Research Paper No. 21-11, available at SSRN: <https://ssrn.com/abstract=3786326> (descriptive study of 170,000 residential leases in Philadelphia evictions between 2005 and 2019 finding that there is a growing adoption of "shared forms" by landlords and "pro-landlord tilt" has increased over time).
- 12 For a discussion of the problem of standard leases being used across states despite variances in state laws, see Jacob Passey, America Has Seen A 'Nationalization Of Leases' – And It Could Hurt Renters Amid the COVID-19 pandemic, MarketWatch (Mar. 13, 2021), <https://www.marketwatch.com/story/america-has-seen-a-nationalization-of-leases-and-it-could-hurt-renters-amid-the-covid-19-pandemic-11615312853>.
- 13 These are common issues, but in most jurisdictions, a landlord can decline to renew a lease for any reason, which is called a "no fault" or "no cause" eviction.
- 14 Throughout the COVID-19 pandemic, accounts of illegal evictions rose. See Schweitzer, Ally, *Legal Evictions Are Banned During The Pandemic, But 'Invisible' Evictions Are On The Rise*. WAMU, American University Radio (October 15, 2020); and *Stopping COVID-19 Evictions Survey Results*, National Housing Law Project (July 2020), available at <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf> (finding that "91% of respondents reported illegal evictions in their area," "53% saw tenants being illegally locked out of their homes by landlords," and "18% saw tenants facing landlord intimidation and other eviction threats.")
- 15 A 2020 survey of tenant attorneys by the National Housing Law Project found that 91% of respondents reported illegal evictions in their area, and 53% saw tenants illegally locked out by their landlords. <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf>
- 16 Depending on the state, eviction proceedings may go by a different name, such as unlawful detainer. Eviction cases are "summary" proceedings, designed to be disposed of quickly on an accelerated schedule. See *The Effect of State and Local Laws on Eviction*. The Legal Services Corporation (2021), available at <https://lsc.gov/initiatives/effect-state-local-laws-evictions> (a study of state and, some, local laws governing eviction).
- 17 See Sarah Abdelhadi & Ranya Ahmed, *Fast and Cheap, The speed and cost of evicting tenants for nonpayment of rent*, 3 (December 14, 2021), available at <https://lsc-live.app.box.com/s/mwq50tpyipqipkm2sbawilghr99fydrb> ("In 51 of 56 locations studied, state/territory statute requires landlords to notify tenants in advance that they plan to file for eviction for nonpayment of rent; this is often called a notice to vacate."), and at 4 (where notice is required, the amount of time varies from 3 to 30 days); see also *Landlord-Tenant Laws of the US: State Specific Rules, Laws, Regulations, and Requirements*, available at <https://www.avail.co/education/laws>.
- 18 Kaplan, Josh, *Thousands Of D.C. Renters Are Evicted Every Year. Do They All Know To Show Up To Court?* Dcist, https://dcist.com/story/20/10/05/thousands-of-d-c-renters-are-evicted-every-year-do-they-all-know-to-show-up-to-court/?fbclid=IwAR2S7DW5gaMXBY9NYkLBh4-Op67u01xNLbdL_G0TUOX9HmMb2HS2PdTKU (October 2020).
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- 20 See e.g. Red Door Collective, Nashville Eviction Report (Aug. 2021) (52.6% of eviction suits in Nashville ended in default); Stout, The Economic Impact of an Eviction Right to Counsel in Delaware (May 3, 2021) (“Unrepresented tenants lost by default in approximately 58 percent of cases in Philadelphia. Similar default rates have been observed throughout the country. In Jackson County (Kansas City), Missouri approximately 70 percent of tenants lost by default. In Hawaii, half of all eviction cases result in a default judgment in favor of the landlord. In Seattle, tenants lose by default in approximately 48 percent of cases. In a study of evictions in Greensboro, North Carolina, more than 75 percent of tenants did not attend their hearing, losing by default.”); Stout, The Economic Impact of an Eviction Right to Counsel in Baltimore City (May 8, 2020) (63% of nonpayment cases where tenant is unrepresented result in default); Stout, Cost-Benefit Analysis of Providing a Right to Counsel to [Los Angeles] Tenants in Eviction Proceedings (Dec. 10, 2019) (76% of unrepresented cases end in default).
- 21 See *id.*, and Sarah Abdelhadi & Ranya Ahmed, *Fast and Cheap, The speed and cost of evicting tenants for nonpayment of rent*, 9 (December 14, 2021), available at <https://lsc-live.app.box.com/s/mwq50tpyqipqkm2sbawilghr99fydrb> (“For most tenants, particularly those who are low-income, this is not enough time to seek legal counsel or advice, take time off from work, obtain childcare, or arrange transportation to and from the courthouse. These barriers are even more difficult to overcome for tenants with disabilities or mobility issues. When tenants are unable to attend their scheduled eviction hearing, they are almost always evicted by default.” (citations omitted)).
- 22 Alicia Bannon and Janna Adelstein, *The Impact of Video Proceedings on Fairness and Access to Justice in Court*, The Brennan Center For Justice (September 10, 2020), available at https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court#footnote14_mbzgrp0 (“According to studies by the Pew Research Center, there are substantial disparities in access to internet broadband and computers according to income and race. Americans who live in rural communities are also less likely to have access to broadband internet. The same is true for people with disabilities, who may also require special technology in order to engage in online activities such as remote court proceedings.” (citations omitted)); see also Annie Nova, *30 second trials. Judges muting tenants. The problems with virtual evictions*, CNBC (updated May 1, 2021) available at <https://www.cnbc.com/2021/05/01/virtual-eviction-hearings-often-deprive-renters-of-their-rights.html>.
- 23 National Coalition for a Civil Right to Counsel, *Eviction representation statistics for landlords* and tenants absent special intervention*** (last modified February 25, 2022), available at http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats_NCCRC_.pdf. This can be for several reasons. Landlords are generally in a better financial position than tenants to retain private counsel and in many jurisdictions private attorneys advertise flat prices for landlord representation. In addition, many landlords form LLCs and other corporate structures to protect themselves from personal liability, and in many states these entities must be represented in court by an attorney. Furthermore, public housing authorities, which evict tenants with subsidies, are also represented by counsel. And out-of-state landlords generally employ counsel to represent them in eviction proceedings. Even if there is no attorney representing the landlord, there are landlord associations or agents, in jurisdictions which permit their appearance on behalf of the landlord, that assist the landlord through the entire eviction process, including court.
- 24 See <https://www.nolo.com/legal-encyclopedia/state-laws-termination-violation-lease.html> (describing how some states do not provide any time to cure nonpayment of rent, while in other states right to cure expires after certain period of time).
- 25 Public Justice Center, *Justice Diverted, How Renters are Processed in Baltimore City Rent Court*, 33 (2015) available at <https://abell.org/sites/default/files/files/cd-justicediverted216.pdf> (“Nearly half (49%) of these disputants reported that the judge then instructed them to “step out into the hallway” with the landlord or landlord agent to further discuss the case.”)
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- 28 See e.g. Fla. Stat. § 83.60(2) (“In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant’s defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon.”)
- 29 Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color, ACLU (January 2020); Evicted for Life: How Eviction Court Records Are Creating a New Barrier to

Housing; see also Duke, Annette and Andrea Park, Court Database Shouldn't Be Landlord Screening Tool: Misleading Eviction Records Hinder Those Seeking Housing, Commonwealth Magazine: Nonprofit Journal of Politics, Ideas, and Civic Life, (July 18, 2019).

- 30 Sarah Abdelhadi & Ranya Ahmed, *Fast and Cheap, The speed and cost of evicting tenants for nonpayment of rent*, 10 (December 14, 2021), available at <https://lsc-live.app.box.com/s/mwq50tpyipqipkm2sbawilghr99fydrb> (“Per the laws of 11 states, tenants can be evicted from their homes in as little as two weeks after missing a rent payment.”)
- 31 Sarah Abdelhadi & Ranya Ahmed, *Fast and Cheap, The speed and cost of evicting tenants for nonpayment of rent*, 8-9 (December 14, 2021), available at <https://lsc-live.app.box.com/s/mwq50tpyipqipkm2sbawilghr99fydrb>.
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