

**Pennsylvania Senate
Senate Democratic Policy Committee
Hearing on Pennsylvania’s Housing Crisis**

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**Testimony of Kevin Quisenberry, Esq.
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Members of the Senate Democratic Policy Committee, my name is Kevin Quisenberry. I am the Litigation Director of the Community Justice Project, a statewide law firm within Pennsylvania Legal Aid Network. The Community Justice Project engages in class action litigation and other forms of impact advocacy to help create positive change for low-income residents in Pennsylvania. We have extensive experience litigating and advocating for the rights and interests of lower-income renters in the Commonwealth. Thank you for the opportunity to testify today. I will focus my written testimony on the public and private costs of eviction and the corresponding need for access to legal representation by lower-income renters facing eviction and “good cause” protection from eviction for *all* Pennsylvania renters.

1. Synopsis of the Recommendation:

The General Assembly should enact legislation to: 1) robustly fund legal assistance for eviction defense for lower-income Pennsylvania renters, and 2) require “good cause” for *all* residential lease terminations in the Commonwealth, in order to promote housing stability, reduce homelessness and protect against arbitrary, discriminatory, retaliatory, erroneous or otherwise faultless evictions.

2. Summary of Need:

Eviction from one’s home, like involuntary displacement, can be devastating to a family, and particularly to lower-income families. Major disruption of a child’s education or a parent’s employment, loss of access to one’s family, neighbors, doctors or church, homelessness, along with the very real risk of psychological injury are some of the common consequences of eviction. Evictions also have destabilizing effects on communities, resulting in increased emergency shelter costs, emergency room costs, law enforcement costs, lost property tax revenue, lost municipal utility revenue, among other things. Of course, evictions are sometimes unavoidable, such as when a tenant violates material contractual obligations or when the property will be converted to a different use. However, arbitrary, discriminatory, retaliatory and otherwise faultless evictions should be prevented whenever possible, in order to minimize the public and private costs of eviction.

The injustice of erroneous and faultless evictions is compounded by the eviction process itself, where renters are *far* less likely than their landlords to be represented by legal counsel. Except for Legal Aid attorneys (and a smattering *pro bono* attorneys), there are, essentially, no legal resources available to low-income renters in the Commonwealth who face eviction. Correcting

this fundamental imbalance in power and access to the courts would significantly reduce the risk of erroneous eviction, and it would greatly reduce the occurrence of and fallout from the staggering number of evictions that occur in the Commonwealth each year.

It is incumbent upon the General Assembly—particularly now, when many thousands of households either are or soon will be threatened with eviction due to the economic crisis caused by the coronavirus pandemic—to take feasible steps to minimize the negative impacts of no-fault lease terminations and erroneous evictions. The Commonwealth should follow the lead of other states and localities that have acted to reduce the societal and personal costs of eviction, by providing funding for eviction defense legal assistance and by providing “good cause” protection against residential lease terminations. Both of these measures have proven to be very effective.

3. Reasons Supporting the Recommendation:

a. Eviction defense legal assistance would greatly help to prevent to erroneous evictions of vulnerable residents.

b. A good cause requirement for residential lease terminations would safeguard against arbitrary, discriminatory, retaliatory, erroneous or otherwise faultless evictions.

c. Eviction defense legal assistance and a good cause requirement for residential lease terminations would help to create housing stability for renters, including seniors, persons with disabilities and persons of color, who disproportionately suffer the harms of no-fault or erroneous eviction.

c. Eviction defense legal assistance and a good cause requirement for residential lease terminations would encourage stable tenancies and responsible ownership practices.

d. Eviction defense legal assistance and a good cause requirement for residential lease terminations would reduce eviction rates, thereby reducing associated costs to the local governments, such as lost property tax revenue, unpaid municipal utility bills and increased costs to address homelessness and hospitalization.

e. Eviction defense legal assistance and a good cause requirement for residential lease terminations would provide protection to landlords against unfounded accusations or litigation by tenants who may seek to challenge the justified termination of a lease and would help to reduce costs that result from eviction.

f. Eviction defense legal assistance and a good cause requirement for residential lease terminations are especially important in the present context of rapidly rising rental costs in communities throughout the Commonwealth.

g. The need for eviction defense legal assistance and a good cause requirement for residential lease terminations has been brought into sharp focus by the economic and health crises caused by the current coronavirus pandemic..

4. Research Supporting the Recommendation:

- **Legal Background**

“Good cause” protection against no-fault residential lease terminations generally means that, as long as the property continues to be used as a residential rental dwelling, a renter’s lease should not be terminated unless the tenant has committed a serious violation of the lease or repeated, lesser material violations of the lease. “Good Cause” protection generally requires adequate notice and opportunity to dispute an allegation of lease breach. A showing of “good cause” to justify the termination of a lease also has been determined by some courts to be an element of the Constitution’s due process protections.¹

Virtually all federal housing programs provide for a “good cause” lease termination requirement.² For example, the Low Income Housing Tax Credit program operated by the Pennsylvania Housing Finance Agency requires a “good cause” provision to be included in the lease, and PHFA has published a model lease addendum for this purpose.³

The General Assembly, itself, has legislated “good cause” protection from eviction for *certain* private market renters in Pennsylvania. Under the Manufactured Home Community Rights Act:

A manufactured home community owner may terminate or refuse to renew the lease of a lessee or may evict a lessee and manufactured home occupants only for one of the following reasons:

- (1) Nonpayment of rent.
- (2) A second or subsequent violation of the rules of the manufactured home community occurring within a six-month period.
- (3) If there is a change in use of the community land or parts thereof.
- (4) Termination of the manufactured home community.

¹ See, e.g., Mitchell v. U.S. Dept. of Housing and Urban Development, 569 F.Supp. 701, 709 - 710 (D.C.Cal., 1983) (“A showing of “good cause” is not only a statutory prerequisite for termination, but also a requirement of due process.”) (internal citations omitted).

² See, for example, the Low Income Housing Tax Credit (LIHTC) program. Pub. L. 101-508, § 11701(a)(7) and IRS Rev. Rul. 2004-82, Q&A 5 (2004). See also, for example, 24 CFR 966.4(1) (Low Income Public Housing Program) and 24 CFR 247.3 and 247.4 (applicable to various project-based Section 8 and similar HUD programs).

³ PHFA’s “good cause” lease addendum is available online at https://www.phfa.org/forms/housing_management/tax_credits/manuals_and_documents/exhibits/lihtc_lease_addendum.pdf (last visited 10/08/2020).

68 P.S. §398.3(a). This “good cause” protection easily could be modified and extended to all renters in the Commonwealth.

However, the vast majority of private market renters in Pennsylvania lack this basic, extremely important protection.

There is no civil legal right to counsel in eviction proceedings under Pennsylvania law.

- **Policy Background**

Many states and localities across America have recognized the need for good cause protection against lease termination and have enacted this basic protection for renters.⁴ And a growing number have begun to add legal assistance for eviction prevention as a funding priority.

In large part, this has been in recognition of the often extreme hardship borne by families who experience no-fault eviction, and the disproportionate impact of this on lower-income renters. For an excellent analysis of the hardships of eviction, please read Matthew Desmond’s Pulitzer Prize winning book, *Evicted: Poverty and Profit in the American City*. For a similarly eye-opening evaluation of the consequences to families and communities of involuntary displacement, please see Mindy Fullilove’s book, *Root Shock: How Tearing Up City Neighborhoods Hurts America, And What We Can Do About It*. Not only have elected officials begun to understand the destabilizing effects of eviction on families and communities. Many have begun to recognize what scholars and housing advocates have long known: evictions are costly for governments and landlords, and the legal eviction process is (very misguidedly) tilted in favor of eviction as the outcome.

The consequences of eviction are many and multidimensional. The body of research indicates that evictions result in both hard and soft costs to the public, including increased emergency shelter costs, emergency room costs, law enforcement costs, lost property tax revenue, lost municipal utility revenue, etc.⁵ Concentrated patterns of eviction in neighborhoods also have

⁴ See, e.g., ARIZ. REV. STAT. § 33-1476 (LexisNexis 1975); Arizona Recreational Vehicle Long-Term Rental Space Act, ARIZ. REV. STAT. § 33-2143 (LexisNexis 2000); Connecticut Mobile Manufactured Homes, CONN. GEN. STAT. § 21-80 (1974); District of Columbia Rental Housing Evictions, D.C. CODE § 42-3505.01 (2001); Florida Mobile Home Park Lot Tenancies, FLA. STAT. ANN. § 723.061 (West 1984); Massachusetts Local Control of Rents and Evictions, MASS. GEN. LAWS ANN. ch. 40 § 1-9 (West 1970); New Hampshire Termination of Tenancy, N.H. REV. STAT. ANN. § 540:2 (1985); New Jersey Removal of Residential Tenants, N.J. STAT. ANN. § 2A:18-61.1 (West 2000); New York Rent Control Act, N.Y. UNCONSOL. LAW § 26-408 (McKinney 1985). For an example of a local ordinance adopting good cause provisions, see Just Cause for Eviction Ordinance, OAKLAND, CAL., O.M.C. § 8.22.3 (2002).

⁵ *Id.* See also, e.g., the March 20, 2017 testimony of the Philadelphia Bar Association Civil Gideon and Access to Justice Taskforce before the Philadelphia City Council, available online at <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/NeedsandEvictionCrisisTestimony2017.pdf>; M. Desmond, “Unaffordable

been shown to correlate with increases in neighborhood poverty and crime.⁶ Evictions cost landlords as well, through lost revenues and increased transactional costs.⁷ But by far the harshest costs of no-fault lease termination and eviction are those suffered by the renters who lose their homes, and particularly low-income families.

Eviction is a leading cause of homelessness, especially for families with children.⁸ It is directly linked to high rates of housing instability, which often brings about further instability—in family relationships, at school, or at work—compromising the life chances of adults and children.⁹ Families displaced from their homes often end up in worse housing in worse neighborhoods,¹⁰ which has been shown to correlate with increased incidence of lead poisoning, asthma and other adverse health effects attributable to environmental factors.¹¹ Evictions are negatively associated with mental health, leading to increased rates of depression and suicide. And eviction negatively impacts childhood development.¹² It is no surprise that poverty is a leading risk factor for eviction, but studies also suggest that eviction is a driver of poverty.¹³ Among many other things, the mere fact of being sued for eviction, a matter of public record in Pennsylvania, permanently mars a person’s reputation as a renter and consumer.

America: Poverty, housing, and eviction,” *Fast Focus No. 22-15*, University of Wisconsin’s Institute for Research on Poverty (2015), available at <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>.

⁶ *Id.*

⁷ *Id.*; see also Pew Charitable Trust, *How Free Legal Help Can Prevent Evictions*, *supra* note 4.

⁸ M. Desmond, “Unaffordable America: Poverty, Housing, and Eviction,” *citing* United States Conference of Mayors, *Hunger and Homelessness Survey* (Washington, DC: United States Conference of Mayors, 2013).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See National Coalition for the Homeless, *Healthcare and Homelessness* (July 2009); Matthew Desmond, Harvard University Rachel Tolbert Kimbro, Rice University, *Eviction’s Fallout: Housing, Hardship, and Health*, available at http://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf.

¹² See, e.g., Pew Charitable Trusts, *How Free Legal Help Can Prevent Evictions*; March 20, 2017 Testimony of the Philadelphia Bar Association Civil Gedeon and Access to Justice Taskforce; M. Desmond, “Unaffordable America: Poverty, Housing, and Eviction” and the references cited therein.

¹³ *Id.*

The issue of no-fault lease termination and eviction, however, is not just a poverty issue. It also is an equity issue. In America, working families headed by racial/ethnic minorities are twice as likely to live under the federal poverty guideline as are white working families, a gap which has markedly increased since the onset of the Great Recession in 2007.¹⁴ This pattern plays out in communities across Pennsylvania. In the City of Pittsburgh, for instance, persons of color are far more likely to rent, rather than own, their homes. Approximately two-thirds of African-American households in Pittsburgh rent their homes, whereas 40.6% of white households rent.¹⁵ Persons of color in Pittsburgh are far less likely to have sufficient income or assets to be able to successfully relocate after a lease termination or eviction.¹⁶ African-Americans in Pittsburgh are far more likely than white households to be housing cost burdened: 46% of African-American households pay more than they can afford for housing, compared to 33% of white households.¹⁷ The disparity in *severe* housing cost burden is even greater: 25% of all African-American households in Pittsburgh pay over half of their income on housing cost, compared to 16% of white households.¹⁸ African-American households are more than twice as likely to live in poverty as white households (33% vs. 14.9%).¹⁹ The same patterns are reflected in the homeless population, where African-Americans constitute the majority of sheltered homeless in Allegheny County, 56.6%.²⁰ Similar disparities are experienced by female-headed households with children, disabled renters and seniors.²¹

The injustice of these disparities is often made worse by the formal eviction process, where landlords often have legal counsel while low-income tenants lack even access to legal counsel.

¹⁴ The Working Poor Families Project, *Low-Income Working Families: The Racial/Ethnic Divide* (Winter 2014-2015), available online at: http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPFP-2015-Report_Racial-Ethnic-Divide.pdf.

¹⁵ *Pittsburgh's Racial Demographics 2015: Differences and Disparities*, pp. 3, 33-34, University of Pittsburgh Center on Race and Social Problems (2016), available online at www.crsp.pitt.edu/sites/default/files/REPORT.pdf.

¹⁶ *Ibid.*

¹⁷ 2015-2019 Analysis of Impediments to Fair Housing Choice, p. 78, Table II-22, available online at http://apps.pittsburghpa.gov/dcp/Final_2015-2019_Analysis_of_Impediments_to_Fair_Housing_Choice_for_the_City_of_Pittsburgh_PA.pdf

¹⁸ *Ibid.*

¹⁹ *Id.* at 32.

²⁰ *Pittsburgh's Racial Demographics 2015: Differences and Disparities*, *supra* note 15, p. 33.

²¹ *E.g.* March 20, 2017 Testimony of the Philadelphia Bar Association Civil Gedeon and Access to Justice Taskforce *supra*; M. Desmond, "Unaffordable America: Poverty, Housing, and Eviction," *supra*.

Any honest lawyer will tell you that meaningful access to the courts and one’s chances of winning in Court—for instance by introducing evidence that establishes a legal defense or counter-claim—are largely dependent upon one’s access competent legal counsel.²² Studies around the Country have evidenced this pattern and its consequences.

Owing in significant part to Federal cutbacks to civil legal aid to the poor, in housing courts around the country as high as 90 percent of landlords have attorneys, and greater than 90 percent of tenants do not.²³ The result is that legal eviction proceedings generally result in tenants being evicted, often simply because tenants are simply unfamiliar with the legal process, including how to introduce evidence, assert legal defenses or counterclaims, or file or properly draft an appeal.²⁴ Beyond unfamiliarity with the legal process, many tenants also face additional courtroom barriers on account of their language or disabilities.²⁵ And many simply succumb to the pressure of the situation and agree to an unfair or unrealistic settlement in exchange for a little more time to relocate.²⁶

Tenants who are represented by legal counsel in eviction proceedings, however, are *far* less likely to be evicted than their unrepresented counterparts.²⁷ As described in Richard Engler’s meta-study, “Connecting Self-Representation to Civil Gideon,” *supra* note 23, pp. 46-49:

Courts that handle housing cases have been the focus of countless reports across the country over the past three decades. The titles capture the perilous fate awaiting unrepresented tenants: *Injustice In No Time, No Time for Justice, Judgment Landlord, Justice Evicted....* In addition, *Si-lence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*

²² See generally, for example, the Pew Charitable Trusts’ report, *How Free Legal Help Can Prevent Evictions*, available online at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/10/27/how-free-legal-help-can-prevent-evictions>.

²³ M. Desmond, “Unaffordable America: Poverty, Housing, and Eviction,” *supra*, citing R. Engler, “Connecting Self-Representation to Civil Gideon,” *Fordham Urban Law Review* (2010): 38–92 (providing a meta-analysis of existing studies).

²⁴ March 20, 2017 Testimony of the Philadelphia Bar Association Civil Gedeon and Access to Justice Taskforce *supra*.

²⁵ *Id.*; see also C. Seron, G. Van Ryzin, M. Frankel, and J. Kovath, “The Impact of Legal Counsel Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment,” *Law and Society Review* 35 (2001): 419–434; D. J. Greiner, C. W. Pattanayak, and J. Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future,” *Harvard Law Review* 126 (2013): 901–989.

²⁶ *Id.*

²⁷ *Id.*

captures the powerlessness of tenants, while *Alone in the Hallway* speaks to the perils of hallway negotiations [without legal representation].

Despite some variation in details, the core features of the courts seem remarkably consistent.... Tenants rarely are represented by counsel, while the representation rate of landlords varies...to highs of 85-90%.... [T]he typical case pits a represented landlord against an unrepresented tenant. The demographics of the tenants reveal a vulnerable group of litigants, typically poor, often women, and disproportionately racial and ethnic minorities.

...Regardless of whether tenants appear or default, settle or go to trial, raise defenses or do not, the result invariably is a judgment for the landlord.... The unrepresented tenant faces swift eviction, and with minimal judicial involvement.

One variable that often can halt the swift judgment for the landlord is representation for the tenant, with the likelihood of eviction dropping precipitously. Some reports discuss winning generally, showing tenants three, six, ten, or even nineteen times as likely to win if they are represented by counsel, in comparison to unrepresented tenants. Others talk in terms of represented tenants faring better “[a]t every stage of the proceeding” or more generally in avoiding having judgments entered against them. Studies providing specific data show that represented tenants default less often, obtain better settlements, or win more often at trial.

Based on preliminary research, in 2016, landlords who filed eviction proceedings in the City of Pittsburgh at the Magisterial District Justice (MDJ) level were more than six times (600%) as likely as tenants to be represented by legal counsel. In case where the tenant did *not* have legal counsel, an eviction judgment was entered against the tenant 97% of the time, and only 2.2% of the cases settled. Tellingly, but not surprisingly, in cases where the tenant *did* have legal counsel, the tenant prevailed on the merits of the case at a rate that was approximately sixteen times (1600%) greater than the rate of those without representation. Further, in cases where the tenant *did* have legal counsel, the cases settled at a rate that was approximately seven times (700%) higher than in cases where the tenant lacked representation (16% v. 2.2%).²⁸

Researchers who have analyzed this issue have virtually uniformly concluded that enhancing publically funded legal assistance for low-income families in eviction cases can be a very effective tool for preventing the fallout that results from evictions. Moreover, this has been shown to be a *very* cost-effective mechanism. For instance, an independent Economic Impact Study commissioned by the Pennsylvania Interest on Lawyers Trust Account (IOLTA) Board

²⁸ These trends need to be further analyzed, as do similar data at the Court of Common Pleas level. It is anticipated that landlords are represented by legal counsel far more often than tenants in eviction proceedings before the Court of Common Pleas, where landlord “entities” (corporations, LLCs, etc.) are required by law to be represented by legal counsel.

found that for each dollar (\$1) spent on civil Legal Aid, there is an \$11 return to Pennsylvania taxpayers.²⁹

5. Reasons against the recommendation:

Legislating to provide funding for legal assistance in eviction proceedings and protection against evictions absent good cause may place you “in the crosshairs” of some who may wish to prevent any legislation that is perceived to be detrimental to housing providers. Any such concerns, however, should be able to be allayed by effective outreach and education with interested parties.

6. Conclusion

The public and private costs and benefits of preventing evictions, by providing legal assistance for lower-income renters in eviction proceedings and “good cause” protection against eviction, are indisputable. Pennsylvania should join the growing chorus of states and localities that have acted to provide for these. Philadelphia, New York and San Francisco spring to mind as good examples where legislation has provided for legal counsel in eviction proceedings. Perhaps the best example of a “good cause” requirement is the one the General Assembly already enacted in the Pennsylvania Manufactured Home Community Rights, which easily could be extended to all renters in the Commonwealth. 68 P.S. §398.3(a). The present health pandemic has highlighted the urgent need for these measures. The General Assembly should enact legislation at this time to robustly fund legal assistance for lower-income renters in eviction proceedings and require “good cause” for all residential lease terminations in the Commonwealth.

Thank you, again, for the opportunity to provide this input at this hearing. I look forward to any further opportunities to work with you on legislation that promotes housing stability for all Pennsylvanian residents.

Respectfully submitted,

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²⁹ Pennsylvania Interest on Lawyers Trust Account (IOLTA) Board, *The Economic Impact of Outcomes Obtained for Legal Aid Clients Benefits Everyone in Pennsylvania* (April 11, 2012), is available at <https://www.paiolta.org/wp-content/uploads/2014/05/Economic-Impact-of-Legal-Aid.pdf>.