

# REPORT OF THE ACCESS TO COUNSEL IN EVICTIONS TASK FORCE



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## Letter from Attorney General Brian E. Frosh

When our office partnered with the Maryland Access to Justice Commission to establish the COVID-19 Access to Justice Task Force in the summer of 2020, we knew that a key area of focus had to be figuring out how to deploy the civil legal system to keep vulnerable Maryland families in their homes. The COVID-19 Task Force put forth several crucial recommendations to reduce the number of evictions in Maryland, and we were pleased when the General Assembly responded by passing HB 18, which put two of those recommendations into law effective October 1, 2021.

The first reform included in HB 18 is a requirement that residential landlords provide tenants with a 10-day notice before filing a complaint for failure to pay rent (FTPR) in District Court. This is an important change that should help reduce the disturbingly high number of eviction filings in the State. However, there is still more to be done to deter landlords from using our overburdened court system as a collection agency. The fee to file a FTPR complaint in District Court is just \$15 (\$25 in Baltimore City), an amount that is a mere fraction of the fee in most of our sister states. As a result, even after the introduction of the pre-filing notice and the distribution of hundreds of millions of dollars in emergency rental assistance, tens of thousands of FTPR cases are being filed in our courts each month. That is more eviction filings than many states see over the course of an entire year, and it is an abusive, unnecessary practice that I will continue working to curb.

The other major housing reform enacted by the General Assembly in HB 18 was the creation of a right to counsel program that will provide low-income tenants across the state with access to legal representation in eviction proceedings. Although the language of the bill was changed during the legislative process, the Act is clear in mandating that eligible tenants ***shall have access to counsel*** when faced with losing their homes. Once funded and fully implemented, this program will prevent some unnecessary evictions and increase housing stability for Marylanders who are struggling to make ends meet. Importantly, the program will also help level the playing field in rent court, where landlords have held huge advantages for decades. Our adversarial system of justice only works fairly when both parties have access to professional representation. This program will partially address the clear imbalance in rent court, where over 90% of housing providers are represented and over 90% of tenants are not.

The Access to Counsel in Evictions Task Force, also established by HB 18, is designed to ensure that relevant stakeholders have a voice in the implementation of the access to counsel in evictions program. The legislation laid down a punishing schedule for the Task Force, providing just three months between the establishment of the Task Force and the deadline for its first report to the Governor and the General Assembly. As you will see from the report that follows, that short window did not deter the Task Force from setting and delivering on ambitious goals. The Task Force's success was made possible by the dedication of all its members, for which I am appreciative. I am especially grateful

to Vicki Schultz, the Chair of the Task Force, whose vision, leadership, and hard work is a testament to her unflagging commitment to increasing access to justice for Marylanders. The committee chairs and the employees from my office, most especially Leah Tulin and David Eppler, who have supported the Task Force's work also deserve special recognition for their tremendous work and dedication to this important initiative.

The Task Force's report includes a thoughtful, comprehensive set of recommendations that deserve careful attention. As the report acknowledges, standing up a statewide program will require work from and coordination between a variety of actors, including government agencies, legal services providers, housing providers, and community-based organizations. It will also require a significant investment of resources. Thus, the most pressing need identified by the Task Force is funding to implement the access to counsel in evictions program.

Drawing on guidance from the federal government and the example of other states, the Task Force sensibly encourages the Governor to allocate a portion of federal stimulus money to kick-start the program. But a stable source of funding is critical to ensure long-term success of the program, which is why the Task Force recommends an annual, ongoing appropriation from the State's operating budget. Our political leaders need to find the will to make this important investment in improving the lives of low-income Marylanders at risk of losing their homes.

The Task Force also recommends changes to court rules and procedures to ensure that tenants' right to access counsel in eviction proceedings is meaningful. I trust that the Judiciary will carefully consider these recommendations and do its part to guarantee that all Marylanders have access to the civil justice system.

A handwritten signature in blue ink, appearing to read "Brian E. Lee".

## Members of the Maryland Access to Counsel in Evictions Task Force

### TASK FORCE CHAIR

**Vicki Schultz**  
Associate Dean for Administration  
University of Baltimore School of Law

### REPRESENTATIVES OF THE MARYLAND STATE BAR ASSOCIATION

**Natalie McSherry**  
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Maryland Access to Justice Commission

### REPRESENTATIVES OF TENANT ADVOCACY GROUPS AND/OR DESIGNATED ORGANIZATIONS

**Jessica Kaufman**  
Director of the Housing Unit  
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**Stuart O. Simms**  
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Maryland Legal Aid

### REPRESENTATIVES OF THE JUDICIARY

**Kelley E. O'Connor**  
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**Pamela Ortiz**  
Director, Access to Justice  
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### REPRESENTATIVES OF COMMUNITY GROUPS

**Charisse Lue**  
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Public Justice Center

**Cathryn Paul**  
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### LANDLORD REPRESENTATIVES

**Luke Lanciano**  
Manager of Sustainability  
& Energy Management  
Bernstein Management Corporation

**Pamela F. Newland**  
Senior Vice President,  
Chief Operating Officer  
Hendersen-Webb, Inc.

### REPRESENTATIVE OF THE MARYLAND LEGAL SERVICES CORPORATION

**Deb Seltzer**  
Executive Director  
Maryland Legal Services Corporation

### TENANT REPRESENTATIVES

**LaTonya Abrom**  
Montgomery County  
resident

**Jason Butler**  
Baltimore County  
resident

**Karla Rodriguez**  
Prince George's County  
resident

## INTRODUCTION

During the 2021 legislative session, the General Assembly passed HB 18 (the Act), making it the second state legislature in the nation to create a statewide access to counsel in evictions program.<sup>1</sup> At its root, the law acknowledges the high level of evictions in Maryland and cites the following:

- Evictions exacerbate the public health crisis posed by COVID-19.
- Evictions create significant costs for state and local governments including costs associated with shelters, education, transportation for homeless youth, foster care, and health care provided in hospitals rather than community-based care.
- Evictions have a disparate impact on Black and Brown households and the General Assembly seeks to end the disparate impact of evictions based on race and gender.<sup>2</sup>

The General Assembly sought to address those societal costs of eviction by creating the Access to Counsel in Evictions Program (the Program) and recognized that providing tenants counsel in eviction cases is a “proven means of preventing the disruptive displacement of families and the resulting social, economic, and public health costs of such displacement.”<sup>3</sup>

As of October 1, 2021, Maryland law provides that low-income Marylanders<sup>4</sup> “shall have access to legal representation” in “a judicial or administrative proceeding to evict or terminate a tenancy or housing subsidy.”<sup>5</sup> Maryland Legal Services

Corporation (MLSC) is charged with implementing and administering the Program so that “all [eligible] individuals in the State [have] access to legal representation.”<sup>6</sup> MLSC is to direct funds to organizations for legal representation and to community-based organizations to facilitate education and outreach about tenants’ rights and the Program.<sup>7</sup>

The General Assembly anticipated that the Program would require phased implementation “in a manner that MLSC determines appropriate with the goal of full implementation before October 1, 2025.” Implementation is subject to the availability of funding and priority is to be given to local jurisdictions investing their own funds to provide legal services in eviction proceedings.<sup>8</sup>

The law also created the Access to Counsel in Evictions Task Force (the Task Force), which must:

- Evaluate the services provided through the Program,
- Study potential funding sources, and
- Make recommendations to improve the implementation of the Program, including necessary policy and statutory changes.

The Task Force is composed of 15 members appointed by the Office of the Attorney General (OAG), including a Chair designated by the Attorney General, and is staffed by OAG employees.<sup>9</sup> The Task Force is required to “report its findings and recommendations to the Governor and . . . the General Assembly” on or before

January 1, 2022 and “each January 1 thereafter.”<sup>10</sup>

The Task Force launched officially on October 1, 2021 with three months to conduct research, engage in fact finding, propose and finalize recommendations about funding and implementation of the Program, and report to the Governor and legislature. During that time, the Task Force held 9 plenary meetings, including a number of listening sessions, to inform its work. The Task Force met with leaders from other states’ and cities’ right to counsel programs who shared their experience and expertise in implementing such programs. The Task Force heard from federal officials about the federal government’s “whole of government” approach to eviction prevention and from the author of a study conducted by Stout Risius Ross, LLC (the Stout Study), cited by the General Assembly in the Act, to delve into the report’s findings and methodology.<sup>11</sup> The Task

Force held sessions with Maryland leaders as well, including landlord representatives and attorneys, tenant advocates and legal services providers, the Judiciary, the Department of Housing and Community Development (DHCD), community-based organizations, and Frederick County officials.<sup>12</sup> To focus on specific aspects of its work, the Chair of the Task Force also created three committees. Those committees, comprised of both Task Force members and other key stakeholders from across the State, met regularly to consider the primary areas within the Task Force’s purview: outreach and assessment, implementation, and funding.<sup>13</sup> All 20 Task Force and committee meetings were open to the public, and all recommendations developed within committees were passed on to the full Task Force to consider, discuss, and finalize.<sup>14</sup> This report outlines and explains the Task Force’s findings and recommendations.<sup>15</sup>

## GUIDING PRINCIPLES

In addition to the recommendations reflected in this report, the Task Force also adopted a set of guiding principles to inform its work. Those principles are as follows:

- Income-eligible tenants shall have access to counsel in eviction proceedings.
- Keep equity at the forefront of outreach, implementation and evaluation of the Program to address the disproportionate impact that evictions have on people of color, on women specifically, and on households with children.
- Build a system that is fair, accessible, understood and easily navigable by Marylanders facing eviction.
- Incorporate the voice and feedback of residents impacted by eviction in system design, development, and assessment.
- Reach tenants at the earliest possible stage to prevent court hearings where resolutions can be found ahead of time, and to ensure that tenants have time to prepare their defense and seek other resources.
- Prioritize phased implementation in jurisdictions that have invested in legal services to prevent evictions.
- Ensure consistency and uniformity in the Program while recognizing and accounting for local differences as needed.
- Be willing to learn, grow, improve, and adjust the Program as it is fully implemented.
- Build on the reduction of eviction filings during the pandemic by facilitating the implementation of access to counsel, lasting access to rental assistance, eviction diversion, and other eviction prevention mechanisms.

## FINDINGS

The Task Force engaged in research and fact-finding to deepen its shared understanding of the impact of evictions, the current process, and how the implementation of the Program would address and reduce those impacts. The Task Force had the benefit of multiple previous studies done in our State and Baltimore City as well as other national studies and resources to draw upon. The Task Force also heard from a wide range of presenters around the country and in our State representing diverse points of view. The Task Force's research affirms the importance of the General Assembly's actions in establishing a program that provides legal representation to all low-income Marylanders facing eviction who seek such help. Below is a brief discussion of some key findings.

### Legal Representation for Tenants is an Effective Eviction Prevention Strategy

The devastating effects of evictions on individuals, families, and communities have been well-documented.<sup>16</sup> As one report noted, eviction “results in great economic burdens on both landlords and tenants. It breaks up communities, hurts prospects for future employment and housing, and increases the need for homeless services. In short, eviction negatively affects everyone involved in the process.”<sup>17</sup> There is research linking eviction to physical and mental health problems, including depression and suicide, and to increased emergency room utilization.<sup>18</sup> A study of low-income mothers found that “eviction results in multiple and multidimensional negative consequences for mothers,” leading to both “economic hardship and health problems.”<sup>19</sup> For children, the consequences of an eviction (e.g., homelessness, residential instability and/or mobility) can negatively affect their performance in school, cause or contribute to behavioral issues, and increase health risks.<sup>20</sup> These effects are not always short-lived.<sup>21</sup>

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**“On some measures, eviction may not simply drop poor mothers and their children into a dark valley, a trying yet relatively short section along life’s journey; it may fundamentally redirect their way, casting them onto a different, and much more difficult, path.”**

- Matthew Desmond & Rachel Tolbert Kimbro,  
*Eviction’s Fallout: Housing, Hardship, and Health*

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It is also well-established that centuries of systemic racism in government housing policy such as redlining, restrictive covenants, capital disinvestment, and predatory lending have created a market in which evictions and their consequences fall disproportionately on communities of color, especially on Black women. For example, a review of millions of court records across the country “produced evidence that Black and Latinx renters in general, and women in particular, are disproportionately threatened with eviction and disproportionately evicted from their homes.”<sup>22</sup>

Data from Maryland likewise reflects these racial and gender disparities, with one study reporting that between January 2018 and June 2019, the number of Black female-headed households evicted in Baltimore City was 3.9 times higher than evictions of households headed by white men and 2.3 times higher for Black male-headed households.<sup>23</sup> Moreover, these disparities are neither a new phenomenon nor a new discovery. Describing the results of a study of rent court in Baltimore City conducted 30 years ago, University of Maryland School of Law Professor Barbara Bezdek observed that the defendants

were “mostly women, mostly Black, almost all poor, and tenants.”<sup>24</sup> In other words, the demographics of tenants in eviction proceedings “reveal a vulnerable group of litigants, typically poor, often women, and disproportionately racial and ethnic minorities.”<sup>25</sup>

Another defining characteristic of tenants facing eviction is that they often face both a knowledge gap and an uneven playing field. The recent experience of one of the tenant representatives on the Task Force, Karla Rodriguez, is demonstrative. As Ms. Rodriguez explained:

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**[A]t the time of the worst moment of the pandemic, my husband lost one of his jobs. My family has five people, two adults and three kids. . . . [T]he owners of the apartments started to send red eviction letters and my husband and I didn't know what to do.**

**We didn't know we had rights, we didn't have any information and we were really scared. My older son, he's 11 years old, asked me if we were going to be kicked out and I was terrified because I thought that we were actually going to be homeless with just our things.**

**- Karla Rodriguez, Prince George's County resident**

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Research confirms that Ms. Rodriguez's experience of not knowing whether she had legal rights or what they were is not uncommon.<sup>26</sup>

Unlike Ms. Rodriguez, who was able to get connected to counsel before her landlord had filed a legal action against her, many tenants facing eviction, including those who are summoned to court, do not have the benefit of legal

representation. “Housing cases often involve unrepresented tenants defending against actions brought by corporate plaintiffs represented by counsel.”<sup>27</sup> Indeed, while the vast majority of landlords have representation of some sort in rent court, the vast majority of tenants do not.<sup>28</sup>

Landlords in Maryland also often benefit from a repeat-player advantage in rent

court. Whether represented by an attorney or by a specialized agent, the landlord representatives' "specialization, experience, and familiarity with procedure and personnel . . . render them effective representatives for property owners."<sup>29</sup> By contrast, a vanishingly small percentage of tenants make it to rent court to mount a defense to an eviction action. The Maryland Judiciary's statistical reports from the last several years reflect that only approximately 3% of defendants (i.e., tenants) appeared in landlord-tenant cases.<sup>30</sup>

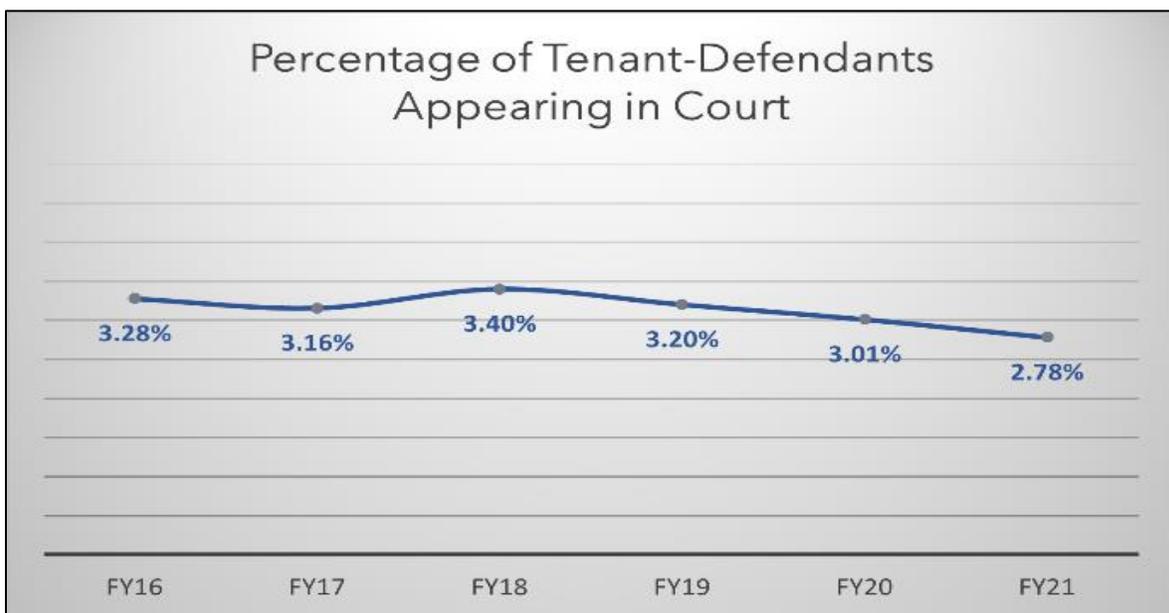
There are many reasons for this, some of which include that "tenants may have difficulty missing work or finding childcare in order to attend a hearing, or may not have received notice of their hearing."<sup>31</sup>

Even when they do come to court, unrepresented tenants who are facing the loss of their housing are often overwhelmed and confused. As Task

Force member Pamela Ortiz explained in a previous article:

*"When [tenants] do appear on their own, they often participate in "unmonitored, hallway negotiations" with the landlord or landlord's lawyer. This puts them at a distinct disadvantage. Unrepresented persons may be dependent on the lawyer for the opposing side to guide them through the process, explain their options and help present any settlement to the court. Litigants sometimes do not know when their case is called. In a housing matter, for example, if a corporation owns the building, the litigant may be listening for the name of the person to whom they pay their rent rather than the name of the corporate entity. By the end of the court session, the case may have been called and dismissed or a judgment entered."<sup>32</sup>*

Table 1



Legal services providers who regularly represent tenants in Maryland echoed these sentiments in Task Force plenary sessions and committee meetings. For example, an attorney with Community Legal Services who appears in rent court almost every day described what she has observed:

*“When you go into the courthouse at Glen Burnie District Court, there is a long line. The agents and the attorneys—maybe 3 or 4 of them, some of them are doing multiple properties, some just a few—but they stand by the door of the courtroom where those cases are heard and they kind of raise their hand and say, I’m with such and such a property and the tenants line up. And it is a long line. They line up, they’re interviewed by the agent and then the agent advises them that they can leave. And I think that generally people believe that—it looks like an official person, maybe it looks like somebody to them from the actual, from the courthouse. But they think it’s all taken care of and they turn around and go and never getting the opportunity to even walk through the courtroom door.”<sup>33</sup>*

Simply put, tenants “are less able to present their case effectively in court and are less likely to use the tools established under the law to ensure they get a fair hearing.”<sup>34</sup>

The General Assembly acknowledged this imbalance of power in passing the Act, noting that “[a] study of eviction actions in one local jurisdiction found that while only 1% of tenants are represented in eviction proceedings, approximately 96% of landlords are represented by an attorney or

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**When [tenants] do appear on their own, they often participate in “unmonitored, hallway negotiations” with the landlord or landlord’s lawyer. This puts them at a distinct disadvantage.**

- Pamela Ortiz, *How a Civil Right to Counsel Can Help Dismantle Concentrated Property in America’s Inner Cities*

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specialized agent in eviction proceedings.”<sup>35</sup> As noted, the General Assembly also recognized the disproportionate impact of evictions based on race and gender, and is seeking to eliminate them through the reforms included in HB 18, including the Program.<sup>36</sup>

The Act was also premised on the legislature’s finding that providing access to counsel to tenants facing eviction “is a proven means of preventing the disruptive displacement of families and the resulting social, economic, and public health costs of such displacement.”<sup>37</sup> Lawyers not only help prevent evictions, but can also help in “delaying evictions, providing their clients more time to move, securing access to housing, . . . overcoming a denial of a tenant’s rights under a lease, enforcing rights to decent, habitable housing, . . . [and] obtaining repairs.”<sup>38</sup> A recent report summarized the benefits of providing legal representation in eviction proceedings as follows:

*“Legal counsel can play a critical role in the eviction process especially when cases involve a lease violation or a dispute over the rent owed. Even in more straightforward nonpayment of*

*rent cases counsel can ensure that a tenant's rights are protected, guarantee that tenants have adequate time to try to come up with the money, and ensure that any counterclaims are properly heard. Often lawyers have experience that can be useful in settling or mediating disputes in a manner that is agreeable to both parties and helps protect tenants' rights.*<sup>39</sup>

In the wake of the pandemic and Congress's significant commitment of emergency rental assistance funds, the federal government has also recognized that tenants are more likely to avoid eviction when they have access to legal representation and that counsel can help tenants navigate the process of seeking and obtaining rental assistance.<sup>40</sup> In fact, the federal government has sanctioned and encouraged states to use a portion of the federal emergency rental assistance funds to provide legal services for tenants at risk of eviction.

Given the various ways in which lawyers can help tenants avoid eviction, it is

## **The Need for Increased Eviction Prevention Efforts in Maryland**

Maryland stands out for its excessively high eviction filings each year. According to the General Assembly, "[o]ver 655,000 eviction cases are filed each year in the State with only 805,000 renter households."<sup>45</sup> The Eviction Lab at Princeton University, a research organization that studies evictions, has compiled information about eviction cases from across the country and calculated states' eviction filing rates by taking the number of eviction filings and

dividing it by the number of renter-occupied households in the state. According to the Eviction Lab's latest analysis, Maryland's eviction filing rate was 103.65% in 2016. In other words, there were more eviction cases filed in Maryland district courts that year than there were rental households across the state. Maryland's eviction filing rate is not just high compared to our sister states—it is off the charts. As Table 2 demonstrates, Maryland's eviction filing

unsurprising that numerous studies show that tenants who have counsel fare better than those who do not. For example, in New York City, the first jurisdiction in the country to implement a right to counsel in evictions program, the rate of tenants represented by counsel went from 1% before the program began to more than 71% in the fourth quarter of 2021. The program has delivered enormously successful results: during the last fiscal year, "84% of households represented in court by lawyers [provided through the program] were able to remain in their homes, preserving these tenancies and promoting the preservation of affordable housing and neighborhood stability."<sup>41</sup> Eviction filings in New York City have also dropped precipitously since the implementation of the program.<sup>42</sup> In the first year of Cleveland's right to counsel program, 93% of represented tenants have avoided an eviction or involuntary move.<sup>43</sup> Other jurisdictions have seen similarly positive outcomes for tenants who are represented by counsel.<sup>44</sup>

rate in 2016 was nearly **six** times higher than South Carolina’s, the state with the next highest filing rate.<sup>46</sup>

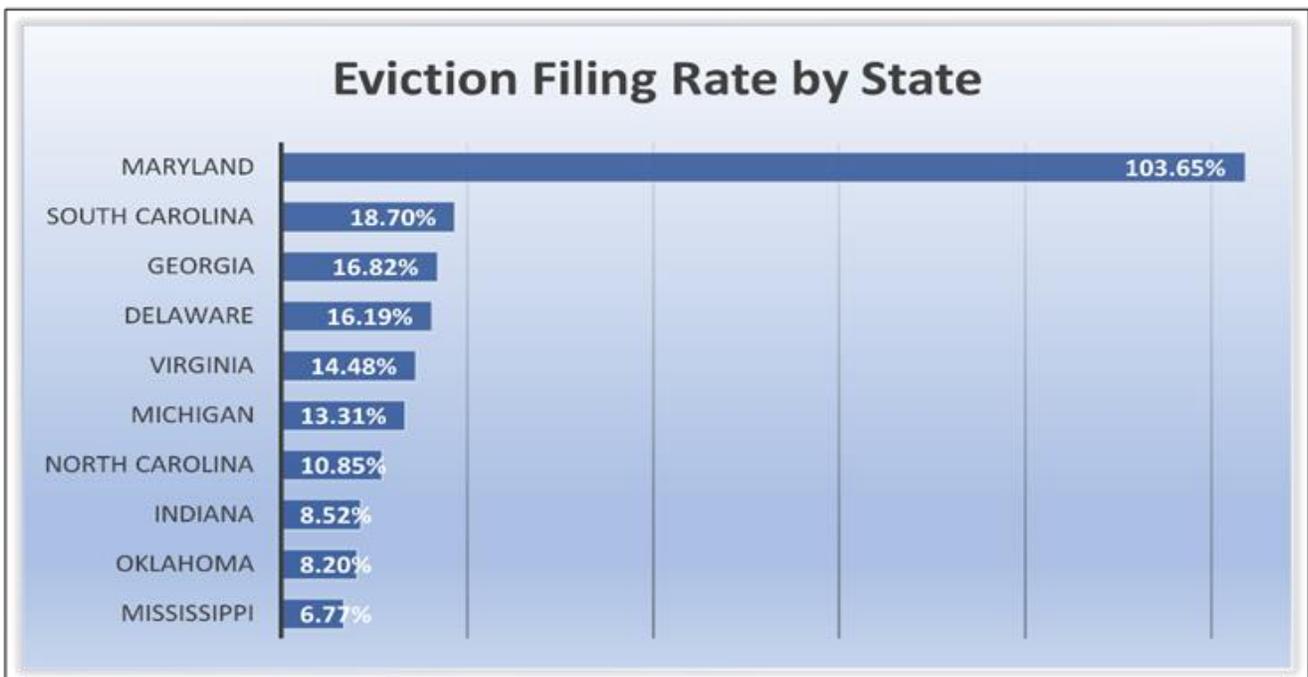
One reason for Maryland’s high filing rate relative to other jurisdictions is that Maryland law gives tenants the right to redeem the leased premises three times after a judgment for possession has been entered so long as they pay all amounts ordered by the court “before actual execution of the eviction order.”<sup>47</sup> Thus, many of the failure-to-pay-rent filings do not result in an eviction because Maryland tenants “pay and stay.”

Another reason for Maryland’s astronomical filing rate is that Maryland’s high number of filings has historically been matched with a significant number of those cases—more than a quarter of them—being dismissed *before* judgment.<sup>48</sup>

But even those dismissed cases impose burdens on everyone involved: on the Judiciary, which expends significant time and resources processing complaints and court fees, scheduling hearings and managing dockets, and processing dismissals; on sheriffs’ offices, which are tasked with effectuating service on tenants; on the landlords, who bear the administrative expenses associated with these filings; and on the tenants who may ultimately experience higher housing costs as a result of this system.<sup>49</sup>

As of October 1, 2021, landlords in Maryland must provide a 10-day Notice of Intent to File a Complaint for Summary Ejectment (Notice of Intent to Evict) in a Failure to Pay Rent (FTPR) case.<sup>50</sup> Although it is not yet possible to know how much of an impact the notice will have on the number of filings, it has the potential to lead to a sustained decrease in eviction filings and

Table 2

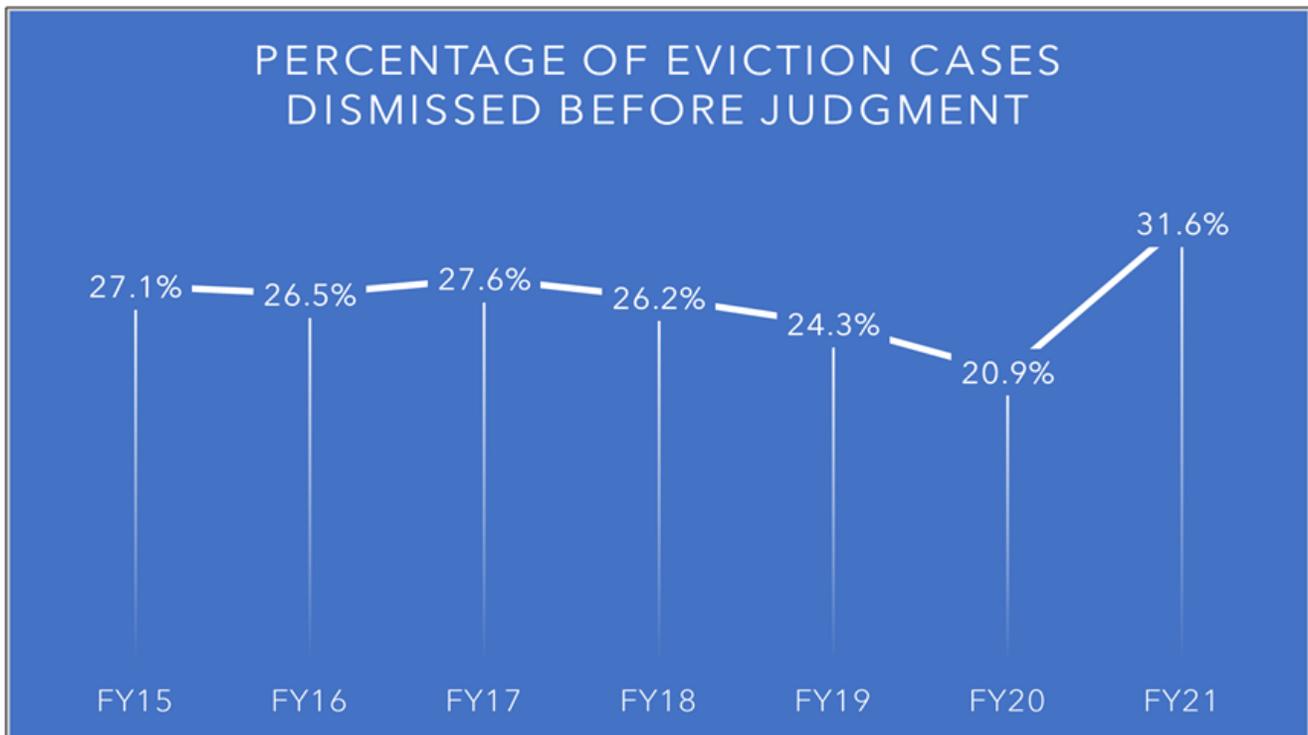


significantly decrease Maryland’s filing rate. It is a data point the Task Force will monitor as it assesses the program’s efficacy and impact over the implementation period.

Certainly, the number of eviction filings decreased when the COVID-19 pandemic began and it has not rebounded to pre-pandemic levels. During the spring of 2020, when court operations were significantly curtailed, filings dropped below 10,000 per month. But from September 2020 to September 2021, the number of eviction filings stabilized around 31,500 per month. Thus, notwithstanding the existence of federal and state eviction moratoria and the influx of hundreds of millions of dollars in emergency rental assistance, landlords in Maryland have continued to file tens of thousands of eviction actions every month. By way of comparison, in Washington State—which has both a

larger population and a higher number of renter-occupied units than Maryland—there were fewer eviction actions filed pre-pandemic on an annual basis (17,000 to 20,000 filings annually) than there have been in Maryland on a *monthly* basis in the wake of the pandemic.<sup>51</sup>

Table 3



## RECOMMENDATIONS

Based on its findings and consistent with its statutory mandate, the Task Force has developed recommendations that lay out the critical elements necessary for building an effective Access to Counsel in Evictions Program. These recommendations are presented topically as follows: outreach and education, program design and implementation, program assessment and evaluation, and program funding.

As a preliminary matter, the Task Force notes that the Act contemplates a phased approach to implementation and requires prioritization of services during that period to tenants in jurisdictions that are using local funds to provide access to counsel in eviction proceedings. The Task Force's understanding is that, to date, those jurisdictions include Anne Arundel County, Baltimore City, Baltimore County, Caroline County, Dorchester County, Frederick County, Howard County, Montgomery County, Prince George's County, Queen Anne's County, and Talbot County.<sup>52</sup> As the administrator of the Program, MLSC will be responsible for determining how best to phase implementation of the Program, taking into account such factors as local funding, volume of evictions in a jurisdiction overall and/or per capita, and readiness of local providers and courts.

### Outreach and Education

**Recommendation:** Develop a comprehensive, broad-reaching and multi-modal outreach strategy that centralizes access, disperses resources and services, and takes into account technological and other barriers to getting information.

For the Program to create the benefits described above, services must be available and accessible to eligible tenants. Because tenants at risk of eviction are already in crisis and eviction proceedings move quickly by design, early and ongoing outreach and education about the Program is critically important.

MLSC and the organizations that it engages to conduct outreach and education should work together to develop uniform messaging about the Program. Outreach messages will need to be carefully tailored to understand and counter the reasons that people do not reach out for legal help. For

example, some people do not seek legal help because they do not realize that the problem they have may involve a legal issue.<sup>53</sup> Accordingly, it is not enough to simply publicize that people now have access to counsel in evictions for free if they are income eligible and where they can get help. Messaging should also focus on identifying a problem as a legal problem, explaining why legal help may be necessary, and how a lawyer can help.

For the sake of both efficiency and effectiveness, outreach should be targeted to Marylanders who are most likely to be eligible for legal services provided through the Program. Those

who have applied for or received rental assistance and those who are living in areas with high numbers of eviction filings should be identifiable using existing data. Data identifying areas with high numbers of evictions should also be collected to aid in determining how best to target outreach.<sup>54</sup> Outreach should also focus on other populations and communities at risk of housing instability, such as people who are facing utility shut-offs and applicants for public benefits (e.g., CHIP, unemployment assistance) and those with mental illness. Coordination with social service providers, schools, head start programs, and community-based organizations will be important to reach those most likely to need legal help.

Eligible tenants should receive information about their right to access counsel in evictions at every stage of their tenancy and through various messengers. Landlords should provide information about the Program in their leases and other written communications with tenants. Simple, easy to understand information about the Program should also be included in pre-filing notices and any communications about judicial and administrative hearings. However, it is also important to be aware that information is likely to be most effective if it is delivered by trusted messengers. Those responsible for outreach and education should develop partnerships

with trusted members of the community and other organizations and agencies that are already serving at-risk populations. Key messengers and partners include state and local housing departments, social services organizations, continuum of care coalitions, public schools, faith-based leaders and organizations, grassroots tenant and community groups, food pantries, and public libraries.

Outreach and education efforts must account for the different ways in which eligible tenants get information and for the reality of the digital divide. Messages raising awareness about the Program should be disseminated through a diverse mix of print and digital tactics, and direct in-person outreach should also be employed. For example, the Frederick County Department of Housing and Community Development is using an outreach model that borrows from political campaigns, doing everything from knocking on doors to sending postcards to households that they have proactively identified as needing rental assistance. The Department is also working closely with nonprofit organizations, including United Way's 211 system, to connect tenants with legal assistance. Although posting information on social media and websites is important, other print and on-the-ground outreach will be necessary to reach people who do not have digital access.

**Recommendation:** Establish a centralized repository for pre-filing notices related to eviction cases and administrative proceedings (e.g., FTPR, Tenant Holding Over (THO), Breach of Lease (BROL), and housing subsidy terminations) that protects individual privacy and confidentiality but also allows such notices to be used as a mechanism to gather data, analyze trends, and facilitate targeted early outreach.

Under Maryland law, the window between an eviction filing and a scheduled hearing is designed to be short.<sup>55</sup> Connecting eligible tenants facing eviction with legal assistance as early as possible can minimize delays and may, at times, avoid the need for a filing at all. The Act itself recognizes the value of early intervention, stating that tenants who qualify for counsel through the Program should have access to legal representation “as soon as possible after . . . a landlord provides notice to terminate a tenancy.”<sup>56</sup>

As currently written, the law requires that a landlord planning to file a FTPR action send a copy of the 10-day Notice of Intent to Evict to the tenant and to affirm in the complaint that the notice has been sent. This new 10-day notice period presents an opportunity to connect tenants with assistance, including legal assistance. Indeed, connecting tenants to legal assistance at this stage could prevent a court filing,

which can be beneficial for the tenant and provide for greater judicial efficiency.<sup>57</sup> The General Assembly should amend the Act so that landlords are also required to provide an electronic notification of the 10-day Notice of Intent to Evict to a centralized agency that can record the notice and track data to identify trends and to facilitate targeted early outreach to tenants eligible for services under the Program.<sup>58</sup> As a state agency charged with combating homelessness and with existing programs to help renters, including the emergency rental assistance program, the Maryland Department of Housing and Community Development (DHCD) is a logical entity to receive this information, track the data, and share it appropriately. DHCD should be given the resources needed to perform this new function, and guidelines for sharing data and information should be developed along with appropriate safeguards to protect individual privacy.<sup>59</sup>

## Program Design and Implementation

**Recommendation:** Create a coordinated intake system that simplifies the process for eligible tenants to seek and obtain legal assistance in eviction cases.

Marylanders facing eviction should have streamlined and easy access to legal help when they need it. By law, the

eviction process is intended to move swiftly, so time is of the essence. The sooner tenants facing eviction can

connect with counsel, the better for potential resolution or for the preparation of a defense. Currently, those seeking legal assistance are provided with a list of legal services providers to contact. For Maryland's Program to be successful, it should streamline that process for those facing eviction. As the Task Force learned from other jurisdictions, it is critical to establish a centralized number and website that is easy to promote and easy for tenants to access and navigate.<sup>60</sup>

The Program should include one centralized number for tenants facing eviction to connect with counsel. Having one central number that is available to people when they need it increases the probability that they will seek and find help. Legal services providers have explained that it is critical to get as much information related to the case as possible in that first call for help. They also emphasized the lack of uniformity across jurisdictions in the scheduling of court hearings, making it crucial to avoid delays in transferring to a local organization and the importance of not losing people during the transfer process. The centralized system must provide for immediate transfers and warm handoffs to local legal services providers, and it must be equipped to serve clients in different languages. Further, to handle potential conflicts of interest, there should be at least two legal services providers available to accept cases in each jurisdiction.

Additionally, the coordinated intake system should fully integrate local legal services providers. Local providers often have a better understanding of the needs of their clients and the communities they serve, and those

providers frequently enjoy trust and credibility in the community that they have established over time. Those legal services providers know that they must get as much information as possible in that initial interaction so they can assess the situation and determine what help is needed. A person calling for help today may not call again if they get cut off, have a bad experience, or do not talk with someone they feel they can trust.

Similarly, the program should establish a centralized website that gives general information about the program and has a client portal to guide people to the appropriate help. A website can be available 24/7 and offer real-time access to information for those who may have shift work and other demands.

Good coordination and collaboration within the legal services delivery system is an essential element of a successful intake system and access to counsel program. It is also critical to coordinate with other social service and homeless service agencies, nonprofits, providers, and other hotlines such as 211 to encourage connectivity and early referrals to the centralized intake system. Another component of a coordinated intake system should include an electronic referral system among all organizations involved that creates a closed loop for data and reporting with the ability to track an individual from the time the individual enters the system through the termination of services.

Building out the type of system the Task Force is recommending may not require starting from scratch. The Maryland Court Help Centers (MCHC) currently provide legal advice, information,

assistance to Marylanders across the state via phone, live chat, email, and video conferencing.<sup>61</sup> It also has a portal where documents can be uploaded and maintained. MCHC's statewide call center includes a legal referral unit, which uses the Maryland Justice Passport to make warm referrals to legal services providers. The call center also serves the eight District Court Help Centers and all civil walk-in help centers in state courts. The Judiciary's existing outreach and advertising efforts include promoting a single phone number and website for MCHC. Partnering with the Judiciary to build out MCHC's capacity could provide an opportunity to leverage existing infrastructure to meet the needs of the new program.<sup>62</sup>

Whether a new system is created or an existing one expanded, the centralized

intake number and website should be promoted heavily throughout the state by using the array of methods noted in the Task Force's outreach recommendations. Saturation is the goal to ensure that the information reaches tenants who may need to access those resources. Additionally, the centralized intake system, both the hotline number and website, should be included on any pre-filing notices, the 10-day Notice of Intent to Evict, and any summons issued for rent court or administrative hearings. Finally, the Task Force learned that some sheriff's' offices have started placing stickers with information about rental assistance on the summons that is posted on the property when an eviction case has been filed. That practice should be replicated across the state and should also include the centralized intake number and website.

**Recommendation: Adopt uniform court rules and procedures for rent court dockets to ensure that eligible tenants have the opportunity to meaningfully and consistently access counsel as required under the Act.**

As discussed, implementation of the Program will require changes in the current systems that low-income, *pro se* Marylanders must navigate when facing eviction. Those systems must adapt and change to provide tenants the legal assistance that the law requires. Change in the courthouse and to courtroom operations will be critical to effectively implement the Program and to fulfill the purpose of the legislation.

The first change needed to implement the Program is to move from the current paper filing and case management system to an electronic case management system for eviction cases.

Landlord-tenant cases were exempted from implementation of Maryland Electronic Courts (MDEC), the Judiciary's electronic case management system. One of the main challenges to implementing MDEC in rent court cases is the very high volume of eviction filings in Maryland. As noted above, Maryland remains an outlier among all 50 states in the number of eviction filings. This has caused a challenge for the Judiciary because its MDEC vendor, Tyler Technologies, was not able to use its off-the shelf product to handle the volume of eviction filings in Maryland and has instead had to customize the product. The Judiciary has announced that it will

launch an MDEC Landlord Tenant Pilot in Baltimore County in 2022, at which point landlords will be required to file cases electronically. Although this is an important start, e-filing alone will not address many of the challenges created by maintaining a case management system that is not electronic.

Accordingly, the Judiciary should plan to fast-track implementation of an electronic case management system for all eviction-related cases aligned with the phased implementation of the Program. Having such a system in rent court is essential to provide accessible, real-time information and data about filings, case posture, and outcomes that the Program will require. Additionally, an electronic system could deter incomplete filings by requiring that all statutorily required fields be filled in before submission of a complaint, which would ultimately encourage better compliance.

In the courthouse itself, legal services providers will need to have appropriate and adequate space for day-of-court programs. Courthouses around the state are currently providing such space for the day-of-court programs that currently exist. However, as the Program is implemented, those programs will need to expand in order to run in each jurisdiction every day that rent court is in session. Legal services providers operating day-of-court programs will need access to technology, Wi-Fi, and space for equipment in the courthouse. Moreover, those spaces allocated for legal services providers must be accessible and allow for confidential client meetings.<sup>63</sup> Although interpreters currently assigned to the courthouse may sometimes be able to facilitate attorney-client discussions, additional

resources likely will be needed to ensure that language access needs are met both in the courtroom and in day-of-court programs.

Procedurally, a statutory mandate requiring eligible tenants to be given access to counsel in eviction cases will require that rent court operates differently than it currently operates in many jurisdictions. There are differences in how court dockets are handled in different jurisdictions, some of which are driven by volume of the docket as well as local court practices and procedures. However, more consistency and greater uniformity in the operation of rent court will be needed to satisfy the due process requirements of the Program as it is implemented. Consequently, the Task Force recommends that the Judiciary promulgate rules to ensure that tenants can meaningfully and consistently access counsel in all cases covered under the Act—i.e., FTPR cases, THO cases, BROL cases, and court proceedings involving housing subsidy terminations.

Initially, the District Court should help to make the day-of-court services accessible and easy to find both in the courthouse and in the courtroom. Coming to court can be overwhelming and confusing for tenants. At times, it can be unclear to tenants who are the landlord representatives and who are court personnel when they come into the courtroom. That confusion is problematic and can lead to serious negative outcomes in a case. With the implementation of the Program, there will be a consistent presence of attorneys in rent court, and it will be necessary to more clearly delineate between landlord representatives, legal

services providers, and court personnel. It is especially important that the legal services providers are easily identifiable so that tenants can access those resources. This identification can be done by improving signage, situating different players in the courtroom, and implementing other strategies. That way tenants and others in the court can identify and locate legal services providers more readily.

Most importantly, the court must inform tenants that they may be entitled to free legal representation if eligible under the Act. This will require that cases in rent court be called individually and that District Court judges announce the availability of counsel under the Program and the availability and presence of legal services providers in the courthouse.<sup>64</sup> When a tenant

requests the opportunity to access legal assistance on the day of court, the District Court rules should be revised to facilitate liberal adjustment of the docket so that the tenant can consult with counsel. The District Court in Baltimore City has, at times, implemented such a practice, but the practice is inconsistent from one judge to another. Further, if the tenant is eligible and needs time to prepare their case, the Court should offer and liberally grant a continuance so the tenant can meaningfully access the assistance of legal counsel to prepare a defense.<sup>65</sup> As New York Judge Jean Schneider noted in her testimony regarding the impact of New York City's right to counsel law on the courts, these changes will not only make rent court more fair and balanced, but also may well help make the court operate more efficiently and effectively.<sup>66</sup>

### **Recommendation: Provide adequate staff, including attorneys and paralegals who are ready and competent to provide services.**

Legal services providers have operated in a system which requires that they triage cases with legal merit and make decisions about representation based on scarce staffing resources. The Program mandates that they assess eviction cases and provide representation to eligible tenants whenever the tenant has a meritorious defense. To meet that need and ensure that eligible clients can access counsel for eviction matters, legal services providers will need to build a pipeline of attorneys and paralegals ready to provide the required legal assistance. In other similar programs, it has taken several years to hire and train staff sufficient to meet the demand for eviction prevention and defense.

Other jurisdictions have built a staffing pipeline by establishing fellowship programs in partnership with organizations such as Equal Justice Works. Partnerships with local law schools are another essential part of the pipeline. Maryland should employ both of these strategies to ensure adequate staffing levels for the program. Educating and informing law students and attorneys at the beginning of their careers about how lawyers can make a difference for clients at risk of eviction is an important part of recruiting lawyers to do this work.

Legal services providers will also need to ensure that they can serve clients

who do not speak English. Although interpreters will be necessary in some circumstances, hiring bilingual staff who can communicate in clients' native languages (e.g., Spanish) should also be a priority.

Additionally, especially in a tight labor market, legal services providers will need to offer competitive compensation and benefits. For those in rural areas, special incentives, such as childcare and/or housing stipends, may be needed to attract and retain the staff needed for the Program. Providers may want to consider recruiting retired attorneys as well, especially in the initial implementation period when hiring and training enough staff may be challenging.

With an influx of new staff and lateral hires, it is critical to ensure that staff have training and support to do this work. As in any practice area, some

cases will be simpler and others more complex, but all clients are entitled to well-trained, competent lawyers to assess their cases and represent them at a time of crisis and vulnerability. MLSC should establish training protocols, including the minimum number of hours of training, essential curriculum for training, and a process for legal services providers to certify that all staff assisting tenants in the Program have completed the training before representing clients. Importantly, cultural competency should be included as part of the essential training. Some level of training should also be required for any pro bono attorneys who volunteer their services within the Program. Finally, attorneys and other staff providing services through the Program should be encouraged to build and foster a supportive community where practitioners can share ideas, strategize, and problem solve.<sup>67</sup>

## Program Assessment and Evaluation

**Recommendation:** Conduct a comprehensive evaluation of the Program that assesses the effectiveness of outreach, the connection of tenants to services, appropriate levels of funding/staffing, the provision of legal services, and the reduction in disruptive displacement in eviction cases.

Both MLSC and the Task Force will have responsibility for assessing the Program to determine whether it is operating effectively and efficiently, whether it is meeting the needs identified by the General Assembly in creating it, and what can be done to improve it. Evaluations should include all aspects of the Program, including the effectiveness of both outreach and the provision of legal services. The General Assembly

noted the importance of evaluation by specifically including it as an allowable use for Program funding.<sup>68</sup> The goal of evaluating outreach should be to determine which outreach messages and strategies are effective in educating eligible tenants about the availability of the Program and in connecting them to help. Assessment of outreach should also seek to determine whether certain types of messages,

methods of delivery (e.g., print, online), and messengers yield better results than others. For example, Frederick County has put individualized QR codes on different types of rental assistance materials in order to determine where a given applicant learned about the program. Once a centralized phone number and website are created, utilization of each resource (i.e., call volume and visits to the website) should be tracked and regularly evaluated.

The Task Force also recommends evaluating how successful the Program is at connecting eligible tenants with legal representation once they reach out for assistance. One benefit of creating a closed loop referral system is that it can track how many people enter the system, how many are referred, and how many receive legal assistance. Analyzing that data will allow the identification of points where tenants may fall through the cracks (e.g., during a hand-off between legal services providers) and an assessment of whether individuals who contacted the Program in fact received the legal help they needed. Specific metrics that should be tracked include the amount of time for the tenant to be connected to counsel, the number of transfers that result in the tenant being connected with counsel, and whether tenants are returning for help multiple times, for either the same or different cases, against the same or different opposing parties.

Program evaluation should also include an assessment of the demand for services and whether the Program has sufficient staffing and resources to meet the need, including supervision and support staff. This should include

tracking the hours and caseloads of attorneys, paraprofessionals, and support staff as well as tracking how many tenants were unable to obtain legal representation due to capacity constraints during the implementation phase. Monitoring staffing needs will be especially important as phased implementation proceeds so that budget projections can be modified and refined as needed.

As noted in the Task Force's findings, legal counsel can help tenants in various ways, from avoiding eviction to facilitating a soft landing in a new home. This is often referred to as preventing the "disruptive displacement" of tenants who are subject to an eviction action. Assessment of the effectiveness of services provided through the Program should likewise include an evaluation of all outcomes that prevent disruptive displacement, including preventing the eviction, negotiating more time for the tenant to move, the mitigation of public access to court records, obtaining repairs to the dwelling, eliminating illegal fees or wrongful charges, and preventing negative reporting to credit agencies. Detailed case information—such as the number of days between filing and trial and/or filing and eviction (if applicable), whether there was a trial or settlement, the number of hearings, and incidents of failure to appear and the subsequent court response—should also be tracked.

Finally, because the General Assembly passed the law with the aim of eliminating race and gender disparities in evictions, the equitable impact of the Program should be tracked and assessed. Accordingly, demographic information about the people who seek

and obtain services through the Program should be gathered and tracked to the extent possible. In addition to race and gender, the Task Force also recommends collecting data about income level, disability, the number of people (and specifically children) in the household, and the primary language spoken in the household.<sup>69</sup>

Understanding that a comprehensive evaluation of the Program will require both the collection of baseline data and infrastructure for evaluating the Program going forward, the Task Force made an interim recommendation encouraging MLSC to put out a Request for Proposals (RFP) at the earliest opportunity so that existing funds can be used to develop the data and evaluation infrastructure necessary to implement the Program.

**Recommendation:** Create a centralized eviction data hub that would collect, visually display, and analyze eviction-related data from key stakeholders, while protecting individual privacy.

Maryland currently lacks reliable, localized, real-time data about the evictions taking place in our State. This information gap poses a significant obstacle to implementing the Program effectively. Not having current information about which households are most at risk of eviction makes outreach and education more difficult and makes decisions about how to target resources less reliable.

Creating a centralized repository for eviction-related data will shed light on where resources are most needed and allow improvements to the Program. An eviction data hub—which could be housed at a university—should include, for example, anonymized, jurisdiction-specific information about the number and sources of requests for assistance with housing matters, including applications for rental assistance; the number of eviction filings and warrants of restitution; and information about eviction proceedings, such as the number of days from filing to hearing

date, the number of postponements, and the case disposition (e.g., trial, settlement, eviction).

There should also be a real-time eviction database that tracks and maps certain data to aid in early outreach while protecting personal information. That database should include information about the number of evictions; the location of evictions by county, and ultimately by census tract or zip code; demographic information about those being evicted, such as age, race/ethnicity, gender, size of household, the presence of minors in the household, disability status, primary language status, income level, and subsidized housing status; and the cause of eviction by type of case (i.e., FTPR, THO, BROL, subsidy termination) or whether eviction was illegal, meaning it occurred outside the judicial system.

Gathering and maintaining the data for an eviction data hub will require coordination and cooperation from a

variety of stakeholders, including the Judiciary; local and state agencies; rental assistance program administrators; departments of housing and community development (or equivalent); local housing authorities; sheriffs' offices; landlords; and legal services providers. It will be necessary

to formalize data sharing agreements that adequately balance the need for transparency and the importance of protecting the confidentiality and privacy of individuals. These agreements should also be accompanied by more informal efforts at relationship building, information sharing, and coordination.

## Program Funding

The Act established the Access to Counsel in Evictions Special Fund (the Fund), a special, non-lapsing fund to be administered by MLSC, the purpose of which is “to provide funding to fully implement access to legal representation in evictions and other related proceedings in the State.”<sup>70</sup> Money from the Fund may be used for the services required under the statute including legal services, outreach and tenant education, MLSC’s administrative expenses, and evaluation of the Program. No money has yet been directed to the Fund.

**Recommendation:** Provide sufficient funding for the Access to Counsel in Evictions Special Fund to fully implement the Program throughout the State as required by the statute.

Although the Program is new, the Task Force in partnership with MLSC, the administrator of the Program, has made projections about the level of funding required to implement the Program. Using existing research, past MLSC grant reporting data, and lessons learned from other jurisdictions with similar programs, MLSC has preliminarily projected a full implementation cost of approximately \$30 million per year, which would include the necessary funding for legal services, required outreach and education, administration, and evaluation. However, the Task Force has projected that the phased implementation funding needed for the upcoming fiscal year is approximately \$12 million.

The cost projections for staffing the Program are based on estimates about the number of cases that will require legal representation and the staffing level needed to handle those cases. MLSC drew upon the methodology used in the Stout Study, which projected that only a small percentage of eviction filings would require representation—*i.e.*, those cases in which income-qualified tenants in eviction proceedings with meritorious defenses would seek and/or accept legal representation. The Stout Study estimated that the total number of cases requiring representation in Baltimore City would be approximately 7,000 cases per year, or roughly 5% of total eviction filings.<sup>71</sup> Neil Steinkamp, the author of the Stout Study, explained to the Task Force that,

based on his experience working with other jurisdictions that have implemented similar programs, the cases where tenants elect to seek representation will likely be those with more significant issues to be resolved—e.g., defective housing conditions, multiple months of back rent allegedly due, issues regarding wrongful charges or fees, mental health issues, retaliation, rental assistance issues, and/or housing subsidy terminations.<sup>72</sup> Based on a survey of nearly 900 Maryland eviction cases, the estimated average time per case is 8 hours, lower than the average time per case in other jurisdictions, where the average time per case is between 10-15 hours.<sup>73</sup> Based on these assumptions, it is estimated that attorneys in the Program would handle 244 cases per year, with most being full representation cases. This projection equates to a high caseload as compared with other jurisdictions, which have emphasized the importance of full representation to ensure good outcomes for tenants.<sup>74</sup>

Many factors will inform the level of funding that is ultimately needed, including the rate of eviction filings, which, as noted, has been uniquely high in Maryland, though the rate has not yet returned to pre-pandemic levels. Neither the full, long-term impact of the recently implemented 10-day Notice of Intent to Evict and of emergency rental assistance funds, nor whether the projected staffing levels are set appropriately, is yet known. MLSC will need to continually monitor filing rates, staffing levels, hours per case, the types of cases where representation is required, and other factors to project ongoing costs. Similarly, the Task Force will need to evaluate the adequacy of

funding levels based on such factors in its annual report.

Currently, however, there is no money that has been directed to the Fund nor any source of funding identified to implement the Program. **Funding is the most urgent and critical need.** Without it, this Program cannot be implemented and nothing will change for the many low-income Marylanders who face eviction. The Task Force strongly recommends that the necessary funding be identified and deposited into the Fund so that phased implementation for the Program can begin. The recommendations for sufficient Program funding begin with the gold standard and most stable source of funding—an annual state appropriation for the Program—and progress to recommend other sources as well.

The Task Force recommends that the State include an annual, ongoing appropriation for the Fund in the operating budget. Beyond the use of one-time federal funding to jumpstart the Program, discussed below, the State should include the Program as an ongoing line-item in the budget. Stable funding will be crucial to ensure the success of the Program. Fluctuations that come from relying on intermittent funding sources could have deleterious impacts on staffing levels, outreach efforts, and more.<sup>75</sup>

Again, other jurisdictions have recognized the importance of eviction prevention legal services by including right to counsel programs in their executive budgets. Washington State will fund their right-to-counsel program through the state's operating budget.<sup>76</sup>

Separate from a regular appropriation in the annual budget, two sources of funding provided to the State as a result of the American Rescue Plan Act are available and appropriate for jumpstarting the Program.<sup>77</sup> In anticipation of the urgent need for funding to begin implementation of the Program as well as the timeline for the formation of the FY23 State budget in December, the Task Force made an interim recommendation prior to the publication of this report regarding the use of these federal funds for the Program. Specifically, the Task Force sent a letter to Governor Hogan urging the allocation of federal stimulus money to the Fund and providing a breakdown of the approximately \$12 million in costs associated with implementation for the upcoming fiscal year. The Task Force renews that recommendation here.<sup>78</sup>

Several other jurisdictions with eviction right-to-counsel programs, as well as others who ramped up eviction prevention legal services in response to the COVID-19 pandemic, have made use of federal funds. Connecticut, one of two other states with similar programs, has allocated \$20 million of Coronavirus State Fiscal Recovery Funds (CSFRF) for eviction prevention legal services.<sup>79</sup> Local jurisdictions—including Maricopa County, Arizona; Louisville, Kentucky; Cuyahoga County, Ohio; and Milwaukee County, Wisconsin—have also used COVID-related federal funding to launch or shore up services.

The Task Force further recommends that the State and/or MLSC pursue federal funding and private funding sources for the Fund when appropriate. The federal government and private funders may offer occasional funding

opportunities that align with the Program. When eligible, the State or MLSC should pursue such opportunities to offset the budgetary impact of the Program. For example, the U.S. Department of Housing and Urban Development recently instituted an Eviction Prevention Grant Program and announced \$20 million in legal assistance grants in November 2021. While neither MLSC nor any state agencies were eligible to apply for this grant opportunity, they should continue to monitor for similar opportunities with different eligibility requirements.

One such opportunity has recently emerged that could support the Judiciary's needs as it absorbs the impacts of the Program. The National Center for State Courts (NCSC) recently announced an Eviction Diversion Initiative. NCSC has received \$11.4 million in funding and will distribute grants to courts to hire court-based staff to assist with operating eviction diversion programs. Grant recipients will receive wraparound technical assistance and support from NCSC. The applications are due January 21, 2022, and the Task Force encourages the Judiciary to apply.

Although these grant opportunities are helpful and should be taken advantage of, it bears emphasizing that neither the volume nor the frequency of these opportunities will likely be sufficient to fully fund the Program. They may from time to time provide important resources, but they cannot replace the importance of a stable, ongoing appropriation.<sup>80</sup>

The Task Force supports, in concept, legislation that would direct money to

the Fund through Consumer Protection Act penalties, federal rental assistance programs, or other sources. The Task Force was apprised of several bills set to be introduced during the 2022 session of the Maryland General Assembly. One bill would direct to the Fund any financial penalties collected through rental housing-related violations of the Consumer Protection Act. Another bill would require allocation of a portion of current and future federal rental assistance money to the Fund. Although the Task Force has not yet seen the text of these bills, it generally supports such efforts to direct external and federal money to the Fund in order to supplement a State appropriation.

Both the funding committee and the Task Force also discussed the potential reintroduction of a bill from the 2021 session that would have increased the current, comparatively low summary ejectment filing fee to include an additional surcharge, directing resulting revenue to the Fund while prohibiting the landlord or court from passing that

increased surcharge onto tenants. Several Task Force members expressed support for such a proposal, both as a mechanism for providing needed funding for the Program and also as a means to disincentivize serial eviction filings and reduce the corresponding burden on the Judiciary. In contrast, landlord representatives expressed strong opposition to an increase in eviction filing fees.<sup>81</sup> As noted above, the Task Force has identified Maryland's extraordinarily high eviction filing rate as problematic and anticipates that the overall number of eviction filings will decrease over time for reasons other than the amount of the filing fee. Therefore, the Task Force chose to focus its main funding recommendation at this time on an appropriation in the State budget. As part of its work going forward, however, the Task Force will monitor bills introduced during the upcoming session to identify relevant legislative proposals and support those that align with its guiding principles and recommendations.

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<sup>1</sup> Since the passage of Maryland's law, Connecticut passed a statewide Right to Counsel in Evictions law.

<sup>2</sup> An Act Concerning Landlord-Tenant - Residential Tenants - Access to Counsel, 2021 Md. Laws, ch. 746, preamble (HB 18 or the Act).

<sup>3</sup> *Id.*

<sup>4</sup> A "[c]overed individual" is defined as an individual who has a claim of a legal right to occupy a residential property other than an owner and whose household income is not greater than 50% of the state median income, adjusted for household size. Md. Code Ann., Real Prop. § 8-901(c).

<sup>5</sup> *Id.* §§ 8-902, 904(a). The right to access legal representation also extends to "the first appeal of a decision in the proceeding" as long as the provider of legal services "determines that there

are sufficient legal grounds for the appeal." *Id.* § 904(a).

<sup>6</sup> *Id.* § 8-903.

<sup>7</sup> *Id.* § 8-906.

<sup>8</sup> *Id.* § 8-910.

<sup>9</sup> See *id.* § 8-908(b)-(d), (f).

<sup>10</sup> See Md. Code Ann., Real Prop. § 8-908(g). Because January 1, 2022 fell on a weekend, this report is being submitted on the next business day.

<sup>11</sup> See HB 18, preamble; Stout Risius Ross, LLC, The Economic Impact of an Eviction Right to Counsel in Baltimore City (May 8, 2020) (*Stout Study*),

<https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/baltimore-rtc-report-final-5-8-2020.pdf>.

<sup>12</sup> A list of all Task Force plenary and committee meetings, along with recordings and/or meeting minutes, is available on the Task Force’s website. See

<https://www.marylandattorneygeneral.gov/Pages/A2C/index.aspx>.

<sup>13</sup> The Chair of the Task Force announced her intent to create committees at the Task Force’s first meeting. She asked Task Force members both to indicate their preferences for committee placement and suggest individuals who might be interested in serving on a Task Force committee. A list of committee members is available on the Task Force website and is also attached as Appendix A to this report.

<sup>14</sup> The Task Force operated by consensus and members were encouraged to raise any concerns as the recommendations were considered and finalized. The Judiciary representatives on the Task Force noted at the outset that they would need to abstain from any formal votes. The landlord representatives raised both general and specific objections, which this report has attempted to capture.

<sup>15</sup> The Task Force’s recommendations are also summarized in Appendix B to this report.

<sup>16</sup> See, e.g., *Stout Study* at 34-50 (summarizing research).

<sup>17</sup> Philadelphia Mayor’s Task Force on Eviction Prevention and Response: Report and Recommendations, at 3 (June 2018) (*Philadelphia Report and Recommendations*), <https://www.phila.gov/media/20210805121804/Mayors-Taskforce-on-Eviction-Prevention-and-Response-final-report.pdf>.

<sup>18</sup> See, e.g., Robert Collinson & Davin Reed, *The Effects of Eviction on Low-Income Households* (Dec. 2018), <https://bit.ly/3lrYftK>; Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 Soc. Forces 295, 295-301 (2015), [https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015\\_2.pdf](https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf).

<sup>19</sup> Desmond & Kimbro, *supra*, at 316-18.

<sup>20</sup> See Matthew Desmond et al., *Evicting Children*, 92 Soc. Forces 303, 320 (2013), [https://scholar.harvard.edu/files/mdesmond/files/social\\_forces-2013-desmond-303-27.pdf](https://scholar.harvard.edu/files/mdesmond/files/social_forces-2013-desmond-303-27.pdf); see also *id.* at 304 (reporting findings from a study in Milwaukee demonstrating that “the presence of children in a household significantly increases the odds of receiving an eviction judgment”).

<sup>21</sup> Desmond & Kimbro, *supra*, at 317.

<sup>22</sup> Peter Hepburn et al., *Racial and Gender Disparities among Evicted Americans*, 7 Sociological Sci. 649, 659 (2020), [https://sociologicalscience.com/download/vol-7/december/SocSci\\_v7\\_649to662.pdf](https://sociologicalscience.com/download/vol-7/december/SocSci_v7_649to662.pdf).

<sup>23</sup> Tim Thomas et al., *The Evictions Study: Baltimore Eviction Map* (May 8, 2020), <https://evictions.study/maryland/report/baltimore.html>.

<sup>24</sup> Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*, 20 Hofstra L. Rev. 533, 540 (1992), <https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1742&context=hlr>.

<sup>25</sup> Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 Fordham Urban L.J. 37, 47 (2010), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2321&context=ulj>.

<sup>26</sup> Statement by Karla Rodriguez, Meeting of the Maryland Access to Counsel in Evictions Task Force, at 1:10:00-1:15:46 (Dec. 9, 2021), [https://www.youtube.com/watch?v=KTvY\\_q-UXU](https://www.youtube.com/watch?v=KTvY_q-UXU). Ms. Rodriguez, a monolingual Spanish speaker, addressed the Task Force in her native language with real-time translation provided in the video’s “chat.” A transcript of her full statement is available in English on the Task Force’s website. See [https://www.marylandattorneygeneral.gov/A2C/docs/Karla\\_Rodriguez.pdf](https://www.marylandattorneygeneral.gov/A2C/docs/Karla_Rodriguez.pdf); see also, e.g., Public Justice Center, *Justice Diverted: How Renters Are Processed in the Baltimore City Rent Court* (Dec. 2015), <https://abell.org/sites/default/files/files/cd-justicediverted216.pdf> (noting, based on a survey of tenants who appeared in rent court, that the majority of respondents were not aware of legal defenses based on serious housing defects).

<sup>27</sup> Pamela Cardullo Ortiz, *How a Civil Right to Counsel Can Help Dismantle Concentrated Property in America’s Inner Cities*, 25 Stan. L. & Pol’y Rev. 163, 185 (2014), [https://law.stanford.edu/wp-content/uploads/2018/03/ortiz\\_25\\_stan.l.poly\\_r.ev.163\\_final.pdf](https://law.stanford.edu/wp-content/uploads/2018/03/ortiz_25_stan.l.poly_r.ev.163_final.pdf).

<sup>28</sup> Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, Fast Focus No. 22-2015 (Mar. 2015),

<https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf> (“[I]n many housing courts around the country 90 percent of landlords have attorneys, and 90 percent of tenants do not.”); Engler, *supra*, at 47 & n.44 (reporting on statistics from various jurisdictions and noting that “the typical case pits a represented landlord against an unrepresented tenant”).

<sup>29</sup> Bezdek, *supra*, at 555.

<sup>30</sup> The 3% figure and the supporting data included in Table 1 were derived from the District Court’s Fiscal Year statistical reports, which are available at <https://mdcourts.gov/district/about#stats>. Statistics for failure to pay rent (FTPR) cases were disaggregated from other landlord-tenant cases beginning in Fiscal Year 2020. See District Court of Maryland, Landlord/Tenant Case Activity Report FY21 (Jul 2020-Jun 2021) (FY21 District Court Statistics), (defendant appeared in 8,878 of 318,827 FTPR cases filed); District Court of Maryland, Landlord/Tenant Case Activity Report FY20 (Jul 2019-Jun 2020) (FY20 District Court Statistics), (defendant appeared in 15,340 of 509,598 FTPR cases filed); District Court of Maryland, Civil Case Activity Report FY19 (Jul 2018-Jun 2019) (FY19 District Court Statistics) (defendant appeared in 21,720 of 676,193 landlord-tenant cases filed); District Court of Maryland, Civil Case Activity Report FY18 (Jul 2017-Jun 2018) (FY18 District Court Statistics) (defendant appeared in 22,037 of 653,505 landlord-tenant cases filed).

<sup>31</sup> *Philadelphia Report and Recommendations* at 11.

<sup>32</sup> Ortiz, *supra*, at 186 (quoting Engler, *supra*, at 46-47); see also Testimony of Judge Jean Schneider, *Transcript, The Chief Judge’s 2018 Hearing on Civil Legal Services in New York State*, at 35 (Sept. 24, 2018), <http://ww2.nycourts.gov/sites/default/files/document/files/2019-09/2018transcript.pdf> (describing decades of “toxic hallway culture” where “lawyers representing landlords have attempted to reach settlements with unrepresented tenants far from the Court’s eyes and ears”).

<sup>33</sup> Statement by Kathleen M. Hughes, Community Legal Services, Meeting of the Maryland Access to Counsel in Evictions Task Force, at 24:49-25:39 (Oct. 22, 2021), [https://www.youtube.com/watch?v=HPSOm\\_uub7Q](https://www.youtube.com/watch?v=HPSOm_uub7Q).

<sup>34</sup> *Report of the Task Force to Study Implementing a Civil Right to Counsel in Maryland*, at 8 (Oct. 1, 2014) (CRTC Task Force Report), <https://www.mdcourts.gov/sites/default/files/import/mdatjc/taskforcecivilcounsel/pdfs/finalreport201410.pdf>; see also Office of Cmty. Empowerment and Opportunity, City of Philadelphia, *At Home: Eviction Prevention & Response Progress Report*, at 14 (Sept. 2019), <https://www.phila.gov/media/20191016181826/Eviction-Prevention-2019.pdf> (being unrepresented “hinders tenants’ abilities to fully participate in legal hearings by presenting their stories and claiming the rights and protections that are due to them”).

<sup>35</sup> HB 18, preamble.

<sup>36</sup> *Id.* (noting that “[e]victions have a disparate impact on black and brown households in the State” and that “[t]he General Assembly seeks to end the disparate impact of evictions based on race and gender”).

<sup>37</sup> *Id.*

<sup>38</sup> Ortiz, *supra*, at 180.

<sup>39</sup> Brian J. McCabe & Eva Rosen, *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability*, at 31 (Fall 2020), <https://georgetown.app.box.com/s/8cq4p8ap4ng5xm75b5mct0nz5002z3a>; see also CRTC Task Force Report at 8 (“When we provide low-income Marylanders a right to counsel in key civil case types, we give poor people and their families a tool they can use to leverage their rights under the law.”).

<sup>40</sup> Letter from J. Yellen, M. Garland, & M. Fudge to Governors, Mayors, County Executives, & Chief Justices/State Court Administrators (Aug. 27, 2021), <https://home.treasury.gov/system/files/136/Eviction-Moratorium-Joint-Letter.pdf>; see also Letter from Vanita Gupta, Associate Attorney General, to Chief Justices & State Court Administrators (June 24, 2021), <https://www.justice.gov/asg/page/file/1405886/download> (encouraging the creation of comprehensive eviction diversion programs, including a “combination of rental assistance, mediation, social services, and legal assistance”); Statement by Jason Dressler, New York City Civil Justice Coordinator, Meeting of the Maryland Access to Counsel in Evictions

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Task Force, at 1:30:59-1:31:53 (Oct. 7, 2021), <https://www.youtube.com/watch?v=l7ZGWfqi8YU> (noting that the rental assistance application process is much more efficient when a tenant has legal representation).

<sup>41</sup> Office of Civil Justice, New York City Human Resources Administration, *Universal Access to Legal Services: A Report on Year Four of Implementation in New York City*, at 5 (Fall 2021), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2021.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf).

<sup>42</sup> *Id.*

<sup>43</sup> United Way Greater Cleveland et al., *Right to Counsel: Annual Report to Cleveland City Council and Courtesy Report to Cleveland Mayor's Office*, at 2 (Jan. 31, 2021), <https://unitedwaycleveland.org/wp-content/uploads/documents/2020-Right-to-counsel-annual-report.pdf>.

<sup>44</sup> See *Stout Study* at 50-58; see also generally *CRTC Task Force Report* at 9 (noting that a comprehensive analysis of studies conducted to determine the impact of having a lawyer in critical civil matters found that people were 6.5 times as likely to succeed if they had representation).

<sup>45</sup> HB 18, preamble. It bears noting that these numbers are not entirely consistent with other data sources. For example, the Judiciary's annual statistical abstract reported 669,778 landlord-tenant cases filed in FY19, see *Maryland Judiciary Statistical Abstract, 2019*, Table DC-2, at 32, while Census data estimated that there were 730,055 renter-occupied units in 2019, see *American Community Survey, 2019: ACS 5-Year Estimates Data Profiles, DP04*, selected housing characteristics, Maryland (renter occupied units).

<sup>46</sup> See Eviction Lab, National Eviction Map, <https://evictionlab.org/map/#/2016?geography=sates&type=efr>. Detailed information about the Eviction Lab's methods for collecting and analyzing data is available at <https://evictionlab.org/methods/>. The landlord representatives questioned the use of 2016 data in this report, but—as noted above—that is the most recent data analyzed by the Eviction Lab. Moreover, although the landlord representatives suggested that the Task Force's report should focus on the number of evictions rather than the number of evictions filings, this report makes

clear that the filings themselves place burdens on both tenants and the court system. Further, reliable, real-time data about the number of actual evictions in Maryland is currently lacking, which is why the Task Force calls for better data collection and the establishment of an eviction data hub later in this report.

<sup>47</sup> Md. Code Ann., Real Prop. § 8-401(g).

<sup>48</sup> The annual dismissal rates reflected in Table 2 were calculated based on data included in the District Court's Fiscal Year statistical reports, which are available at

<https://mdcourts.gov/district/about#stats>. See, e.g., FY21 District Court Statistics (100,722 of 318,827 filed FTFR cases were dismissed); FY20 District Court Statistics (106,330 of 509,598 filed FTFR cases were dismissed); FY19 District Court Statistics (164,629 of 676,193 filed landlord-tenant cases were dismissed); FY18 District Court Statistics (171,420 of 653,505 filed landlord-tenant cases were dismissed).

<sup>49</sup> Maryland's low filing fee, among the lowest in the nation and far below the national average of \$120 per filing, may also be responsible for encouraging the court's use for collection and increased filings. However, the landlord representatives argue that raising the filing fee would ultimately result in more evictions. They posit that a higher filing fee would cause landlords to wait to file for eviction until several months' rent was due, making it harder for tenants to pay the back rent due and remain in the property.

<sup>50</sup> See Md. Code Ann., Real Prop. § 8-401(c); District Court Form DC-CV-115, <https://mdcourts.gov/sites/default/files/court-forms/dccv115.pdf>.

<sup>51</sup> See *American Community Survey, 2019: ACS 5-Year Estimates Data Profiles*, Maryland, DP04, selected housing characteristics (reflecting total population of 6,018,848 and 730,055 renter-occupied units), with *American Community Survey, 2019: ACS 5-Year Estimates Data Profiles*, Washington, DP04, selected housing characteristics (reflecting total population of 7,404,107 and 1,055,157 renter-occupied units); see also Wash. State Office of Civil Legal Aid, *Right to Counsel for Indigent Tenants: Implementation Plan*, at 8 (July 15, 2021) (Washington Implementation Plan), <https://ocla.wa.gov/wp-content/uploads/2021/07/Implementation-Plan->

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[Right-to-Counsel-for-Indigent-Tenants-7-15-21-Final.pdf](#) (“Prior to the pandemic, average yearly filings of unlawful detainer actions ranged between 17,000 and 20,000 per year.”).

<sup>52</sup> This information was provided to the Task Force by MLSC and the Maryland Department of Housing and Community Development.

<sup>53</sup> See Rebecca L. Sandefur, Am. Bar Ass’n, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, at 13 (2014), [https://www.abajournal.com/files/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug2014.pdf](https://www.abajournal.com/files/sandefur_accessing_justice_in_the_contemporary_usa_aug2014.pdf) (explaining that Americans often do not seek help from lawyers or courts for civil justice situations “because they do not understand these situations to be legal”).

<sup>54</sup> Further discussion of data collection and sharing appears below in the section regarding Program Evaluation and Assessment.

<sup>55</sup> See District Court of Maryland for Baltimore City, *Rent Court Summer Work Group Report*, at 3 (Dec. 8, 2016), <https://www.ubalt.edu/academics/prelaw/Rent%20Court%20Summer%20Work%20Group%20Report%20FINAL.pdf> (noting that although Real Property § 8-401 states that a trial is to be scheduled on the fifth day after the filing of a failure to pay rent case, “[g]iven the large volume of Rent Court cases in some jurisdictions, trial dates are usually scheduled seven to fourteen calendar days after the complaint was filed”). In some jurisdictions, there is currently a longer gap between the filing of a complaint and a scheduled hearing due to a backlog of landlord-tenant cases filed during the pandemic when federal and state eviction moratoria were in place. Other jurisdictions, such as Anne Arundel County, continue to schedule hearings in keeping with the timeline set forth by statute.

<sup>56</sup> Md. Code Ann., Real Prop. § 8-904(b)(1)(i).

<sup>57</sup> For tenants, there may be collateral consequences to the filing itself, regardless of the ultimate disposition of the eviction action. For example, tenants are often required to pay the court costs associated with a filing, and the fact of an eviction filing can negatively impact the tenant’s credit and their ability to secure other housing.

<sup>58</sup> In Washington State, for example, landlords are required to provide a 14-day notice to pay rent or vacate to the tenant. See Wash Code

Rev. § 59.18.507. In April 2021, the state legislature created an eviction resolution pilot program and amended the notice requirement to require that, upon the expiration of the pilot program, landlords will be required to provide the 14-day notice both to the tenant and to “the dispute resolution center located within or serving the county in which the dwelling unit is located.” 2021 Wash. Sess. Laws 617-19, 621. A landlord’s failure to provide the additional notice to the dispute resolution center will provide the tenant with a defense to eviction. *Id.*

<sup>59</sup> Representatives of the Task Force met with DHCD officials to discuss the recommendation that DHCD be the repository of the Notice of Intent to Evict. DHCD did not take a position regarding that recommendation at that meeting.

<sup>60</sup> Jim Bamberger, who heads Washington State’s Right to Counsel program, emphasized the importance of having one centralized number and website for ease of access in his presentation to the Task Force.

<sup>61</sup> See Maryland Judiciary, *Resources for Self-Represented Litigants in the Maryland Courts: Annual Report*, at 7-8 (Fiscal Year 2020), <https://www.courts.state.md.us/sites/default/files/import/accesstojustice/pdfs/srreportfy20.pdf>.

<sup>62</sup> The State also has a robust 211 call center that Marylanders call for general help and information. It has been used as a first point of contact for eviction relief funds. Building out a coordinated intake system through 211 is another avenue that could be explored instead of or in partnership with the system established through the Judiciary’s Court Help Centers.

<sup>63</sup> Jordan Dressler, New York City’s Civil Justice Coordinator, explained to the Task Force that implementing the city’s right to counsel program required working closely with the judiciary to “identify courtrooms and interview space. These are courthouses not designed for this kind of operation. . . . Retrofitting operations in order to allow for meaningful, dignified communications between attorneys and either their potential clients or their actual clients took a lot of work . . . and a lot of coordination among all parties.” Statement Jordan Dressler, Meeting of the Maryland Access to Counsel in Evictions Task Force, at 44:50-45:26 (Oct. 7, 2021), <https://www.youtube.com/watch?v=I7ZGWfj8YU>.

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<sup>64</sup> Mr. Dressler emphasized the importance of the judicial imprimatur in communicating the importance of counsel. See *id.* at 1:44:44-1:45:12 (“Just by simply saying from the bench ‘you have access to free legal services in this case’ . . . hearing from a court goes a long way.”).

<sup>65</sup> Washington State and New York City courts grant automatic continuances to ensure that counsel can provide effective representation. See *id.* at 1:38:21-1:39:12. Similarly, the Implementation Committee proposed that the Task Force recommend a continuance as of right. However, both landlord and judiciary representatives on the Task Force objected to an automatic continuance.

<sup>66</sup> See, e.g., Testimony of Judge Jean Schneider, Transcript of Chief Judge’s Hearing on Civil Legal Services, at 30 (Sept. 13, 2021), <https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/091321-CLS-Hearing-Transcript.pdf> (“New York City’s right to counsel has made the Housing Court a fairer and more balanced court. We understood that; we expected it. But I think less expected was the extent to which the availability of counsel for tenants in eviction cases has made the court more efficient and more effective.”).

<sup>67</sup> See, e.g., Washington Implementation Plan at 16 (discussing the establishment of “a confidential statewide platform to allow for direct communication among” attorneys providing services through the statewide program).

<sup>68</sup> Md. Code Ann., Real Prop. § 8-909(f)(4).

<sup>69</sup> Other jurisdictions, including Washington State, Connecticut, and Cleveland, are or plan to track similar information.

<sup>70</sup> Md. Code Ann., Real Prop. § 8-909(b).

<sup>71</sup> *Stout Study* at 11.

<sup>72</sup> See Statement by Neil Steinkamp, Meeting of the Maryland Access to Counsel in Evictions Task Force, at 11:08-12:02 (Dec. 9, 2021) (Steinkamp Statement), [https://www.youtube.com/watch?v=KTvY\\_q-UXU](https://www.youtube.com/watch?v=KTvY_q-UXU).

<sup>73</sup> See *Stout Study* at 10-11; Steinkamp Statement at 19:11-26:16 (describing the methodologies used in sampling Baltimore City cases and projecting attorney hours per case).

<sup>74</sup> See Washington Implementation Plan at 11 (attorneys expected to handle between 150 and 200 unlawful detainer cases per year, with “caseload expectations to be regularly reviewed based on experience”); see also, e.g., *Report to*

*the California State Legislature for the Sargent Shriver Civil Counsel Act Evaluation*, at 14-28 (June 2020), [https://www.courts.ca.gov/documents/Shriver-Legislative-Report\\_June-30-2020.pdf](https://www.courts.ca.gov/documents/Shriver-Legislative-Report_June-30-2020.pdf) (reporting on various types of benefits attorneys secured in full representation cases, including sealing of records, payment plans, and settlement agreements providing additional time to relocate).

<sup>75</sup> Md. Access to Justice Comm’n, *Implementing a Civil Right to Counsel in Maryland*, at 5 (2011) <https://mdcourts.gov/sites/default/files/import/mdatjc/pdfs/implementingacivilrighttocounselinmd2011.pdf> (noting that using State general funds “follows the model of the Office of the Public Defender and funding for the Maryland Legal Services Program (MLSP), both of which were created to provide counsel where clients have a right to be represented, and where, in both instances, funding is provided from State general funds. The State has established a precedent by grounding right-based representation programs on the most stable funding source available.”).

<sup>76</sup> Washington Implementation Plan at 7.

<sup>77</sup> The first is the second round of funding for the Emergency Rental Assistance Program (ERAP 2). Up to 10% of ERAP 2 funds may be used for housing stability services, including legal services. The federal government has expressly and repeatedly encouraged states to use ERAP 2 funds to support legal services programs. Second, the State has wide latitude to address the negative impacts of the COVID-19 pandemic with the Coronavirus State Fiscal Recovery Funds (CSFRF). In fact, the State has already deemed eviction prevention legal services as an appropriate use of CSFRF, as the funds provided to MLSC under the RELIEF Act in early 2021 were retroactively designated as CSFRF.

<sup>78</sup> Despite agreeing in principle that the federal funds identified by the Task Force should be used to fund the Program, the Task Force’s two landlord representatives took issue with the amount of funding requested by the Task Force and set forth their concerns with the funding request in their own letter to Governor Hogan dated December 6, 2021. A copy of the Task Force’s November 17, 2021 letter and the landlord representatives’ letter dated December

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6, 2021 are attached to the report as Appendix C.

<sup>79</sup> Gov. Ned Lamont, Connecticut’s Plan for the American Rescue Plan Act of 2021, at 18 (Apr. 26, 2021), <https://portal.ct.gov/-/media/Office-of-the-Governor/News/2021/20210426-Governor-Lamont-ARPA-allocation-plan.pdf>.

<sup>80</sup> See Md. Access to Justice Comm’n, *supra*, at 5 (“The administering entity should be fully funded with stable, general fund appropriations, but it should not be precluded from seeking other sources of funding as well. Diversity of funding can provide the program with flexibility during difficult times.”).

<sup>81</sup> The landlord representatives mistakenly claimed that the Task Force never discussed legislation seeking to increase filing fees. In fact, the filing fee increase was discussed at both committee and Task Force plenary meetings. Both landlord representatives shared their views—that an increased filing fee would have collateral consequences resulting in increased costs for tenants and a reduction in affordable

housing—during a Task Force meeting. See Meeting of the Maryland Access to Counsel in Evictions Task Force, at 2:35:00-2:38:17 (Dec. 9, 2021),

<https://www.youtube.com/watch?v=KTvYq-UXU>.

Further, the landlord representatives also suggested that other industry representatives did not have sufficient opportunity to participate in Task Force proceedings, especially committee meetings. However, landlord representatives—both those appointed to the Task Force and other members of the industry—regularly attended and actively participated in Task Force meetings, including serving on each of the three committees. Lastly, the Task Force devoted one session to hear exclusively from housing providers. See Meeting of the Maryland Access to Counsel in Evictions Task Force (Oct. 11, 2021),

<https://www.youtube.com/watch?v=TWLoQJ4YILY>.

## Appendix A

### List of Task Force Committee Members

#### Funding

Deb Seltzer, Chair\*  
Maryland Legal Services Corp.

David Eppler  
Office of the Attorney General

Beth Harber  
The Abell Foundation

Senator Shelly Hettleman  
Maryland Senate

Matt Hill  
Public Justice Center

Nick Katz  
CASA of Maryland

Pamela F. Newland\*  
Hendersen-Webb, Inc.

Kelley O'Connor\*  
Admin. Office of the Courts

Pamela Ortiz\*  
Admin. Office of the Courts

Delegate Sandy Rosenberg  
Maryland House of Delegates

Reena Shah\*  
Md. Access to Justice Comm'n

Vicki Schultz\*  
Task Force Chair, *ex officio*

#### Implementation

Charisse Lue\* (co-chair)  
Public Justice Center

Stu Simms\* (co-chair)  
Maryland Legal Aid

Sumbul Alam  
Ballard Spahr LLP

Jason Butler\*  
Baltimore County resident

Greg Countess  
Maryland Legal Aid

David Eppler  
Office of the Attorney General

Meredith Girard  
Mid-Shore Pro Bono

Luke Lanciano\*  
Bernstein Management Corp.

Douglas Nivens  
Maryland Legal Aid

Pamela Ortiz\*  
Admin. Office of the Courts

Jessica Quincosa  
Community Legal Services

Jonathan Riedel  
CASA of Maryland

Reena Shah\*  
Md. Access to Justice Comm'n

Vicki Schultz\*  
Task Force Chair, *ex officio*

#### Outreach and Assessment

Reena Shah (chair)\*  
Maryland Access to Justice  
Commission

LaTonya Abrom\*  
Montgomery County resident

Seema Iyer  
Merrick School of Business,  
University of Baltimore

James Johnson  
Hendersen-Webb, Inc.

Jessica Kaufman\*  
Office of the Attorney General

M. Natalie McSherry\*  
Md. State Bar Association

Danielle Meister  
Md. Department of Housing &  
Community Development

Sandy Monck  
United Way of Central  
Maryland

Alicia Myers  
Mid-Shore Pro Bono

Kelley O'Connor\*  
Admin. Office of the Courts

Cathryn Paul\*  
CASA of Maryland

Lisa Sarro  
Arundel Community  
Development Services Inc.

Karla Rodriguez\*  
Prince George's County  
resident

Ryan Trout  
Frederick County Dep't of  
Housing & Community  
Development

Vicki Schultz\*  
Task Force Chair, *ex officio*

\* Members of the Task Force are indicated with an asterisk next to their names.

## **Appendix B**

### **Summary of Task Force Recommendations**

#### **Outreach and Education**

- Develop a comprehensive, broad-reaching and multi-modal outreach strategy that centralizes access, disperses resources and services, and takes into account technological and other barriers to getting information.
- Establish a centralized repository for pre-filing notices related to eviction cases and administrative proceedings (e.g., FTPR, Tenant Holding Over (THO), Breach of Lease (BROL), and housing subsidy terminations) that protects individual privacy and confidentiality but also allows such notices to be used as a mechanism to gather data, analyze trends, and facilitate targeted early outreach.

#### **Program Design and Implementation**

- Create a coordinated intake system that simplifies the process for eligible tenants to seek and obtain legal assistance in eviction cases.
- Adopt uniform court rules and procedures for rent court dockets to ensure that eligible tenants have the opportunity to meaningfully and consistently access counsel as required under the Act.
- Provide adequate staff, including attorneys and paralegals who are ready and competent to provide services.

#### **Program Assessment and Evaluation**

- Conduct a comprehensive evaluation of the Program that assesses the effectiveness of outreach, the connection of tenants to services, appropriate levels of funding/staffing, the provision of legal services, and the reduction in disruptive displacement in eviction cases.
- Create a centralized eviction data hub that would collect, visually display, and analyze eviction-related data from key stakeholders, while protecting individual privacy.

#### **Program Funding**

- Provide sufficient funding for the Access to Counsel in Evictions Special Fund to fully implement the Program throughout the State as required by the statute.

## Appendix C-1

### Task Force Letter to Governor Hogan Regarding Program Funding



ACCESS TO COUNSEL IN EVICTIONS TASK FORCE



November 17, 2021

The Honorable Lawrence J. Hogan, Jr.  
Governor  
State House  
100 State Circle  
Annapolis MD 21401-1925

Dear Governor Hogan:

As you know, legislation went into effect last month creating an Access to Counsel in Evictions Program (the “Program”) and, alongside it, the Access to Counsel in Evictions Task Force. Consistent with the timeframe set forth in the statute, the Task Force will be providing you and the General Assembly an initial report with recommendations regarding the Program by January 1, 2022. However, we have an initial recommendation now regarding funding for the Program that is time sensitive given the State’s budget process. On behalf of the Task Force, we recommend that you allocate recent federal stimulus money to fund the launch of the Program in your proposed budget. Without this critical funding, Maryland will be unable to implement its Access to Counsel for Evictions program in a timely way and thousands of Marylanders will be without the legal assistance the law contemplates.

Two sources of funding provided to the State as a result of the American Rescue Plan Act are available and appropriate for jumpstarting this vital program. The first is the second round of funding for the Emergency Rental Assistance Program (ERAP 2). Up to 10% of ERAP 2 funds may be used for housing stability services, including legal services. The federal government has expressly and repeatedly encouraged states to use ERAP 2 funds to support legal services programs. Second, the State has wide latitude to address the negative impacts of the COVID-19 pandemic with the Coronavirus State Fiscal Recovery Funds (CSFRF). The State has already shown leadership by using CSFRF for eviction prevention through the RELIEF Act, the passage of which directed funds (re-designated as CSFRF) to Maryland Legal Services Corporation (MLSC) for eviction prevention legal services prior to the enactment of the Program.

The Task Force strongly recommends allocating ERAP 2 and CSFRF funds to support the Program. Both federal funding sources have deadlines that align with the legislatively mandated goal of fully implementing the Program before October 1, 2025.<sup>1</sup> Other than some bridge funding

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<sup>1</sup> ERAP 2 funds must be spent by September 30, 2025, while CSFRF funds must be spent by December 31, 2024.

## Appendix C-1

### Task Force Letter to Governor Hogan Regarding Program Funding

November 17, 2021

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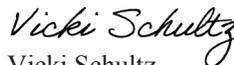
that MLSC, the administrator of the Program, anticipates being able to use primarily to fund needed program infrastructure in FY22, no funding has yet been allocated to the Program. Based on our research, we recommend that approximately \$12 million of federal money be used to provide the legal services, outreach and education, and assessment required by the statute in the first year of implementation.<sup>2</sup> Funding at this level would allow the MLSC to begin the initial phase toward full implementation of the Program. We estimate that the Program would be able to provide approximately 18,000 cases in the first year, of which 11,000 would involve extended representation.

While eviction filings have not returned to pre-pandemic levels, we are hopeful that the availability of rental assistance, other changes to state and local laws, and the availability of legal counsel will reduce eviction filings so that they do not again approach the more than 650,000 per year mark that was seen in pre-pandemic levels. Moreover, as the Program is being phased-in over several years, the Task Force and MLSC are charged to assess funding and programmatic needs on an ongoing basis and make recommendations. For those reasons and at this time, the Task Force's initial recommendation is focused on funding essential implementation costs for the first year of the Program.

The Task Force will make recommendations regarding long-term funding sources for the Program in our upcoming report. However, the existence of these one-time federal funds presents a prime opportunity to begin the first phase of critical work required now in order to lay the groundwork for successful implementation of the Program. We urge you to allocate federal funds to the Access to Counsel in Evictions Special Fund immediately.

Please do not hesitate to contact me if you would like to discuss this recommendation further. Thank you for your consideration.

Sincerely,



Vicki Schultz  
Task Force Chair

Enclosure

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<sup>2</sup> See attached breakdown.

## Appendix C-1

### Task Force Letter to Governor Hogan Regarding Program Funding

#### Attachment: Cost Breakdown

Legal Services Personnel Costs (67 staff attorneys, 9 supervising attorneys, 17 paralegals, fringe)	\$8,200,000
Legal Services Other Costs (occupancy, litigation expenses, research, equipment, IT services, training, insurance, translation, etc.)	\$1,700,000
Tenant Outreach and Education (contracts with community groups, marketing, design, printing, etc.)	\$1,300,000
Infrastructure, Maintenance and Administration (databases, intake system, administrator costs, etc.)	\$500,000
Assessment and Evaluation	\$100,000
<b>Total</b>	<b>\$11,800,000</b>

## Appendix C-2

### Landlord Representative Letter to Governor Hogan Regarding Program Funding

December 6, 2021

The Honorable Lawrence J. Hogan, Jr.  
State House  
100 State Circle  
Annapolis, Maryland 21401-1925

Dear Governor Hogan,

During the 2021 legislative session, enactment of House Bill 18 (“HB 18”) established the Access to Counsel in Evictions Task Force (“Task Force”) to provide oversight of the Access to Counsel in Evictions Program (“Program”). HB 18 delineated the Task Force’s requirements and specifically established members of the Task Force in statute.

As members of the Task Force appointed by the Attorney General, we write to provide context to the letter that you recently received from the Chair of the Task Force. For your reference, a copy of that letter is attached. The position of housing providers has remained consistent, we support use of federal and/or state general funds to implement the Access to Counsel Program based upon a transparent, objective, and fact-based funding proposal. **We are disappointed to inform you that the letter you received from the Task Force failed to meet this threshold.**

#### Development of the Task Force’s Letter

Despite the statutorily required composition of the Task Force, the Chair of the Task Force established three committees that include non-Task Force members: (1) Implementation, (2) Outreach and Assessment, and (3) Funding. The Funding Committee is comprised of a majority of non-Task Force members and includes organizations that may apply for future funding. On October 27, 2021, the Funding Committee generally discussed use of federal funds to implement the program, but there was acknowledgement that the exact scope of the staffing needs for the program remain unknown. There was absolutely no discussion regarding the scope of a potential funding request. Task Force meetings are recorded, but unfortunately committee meetings are not.

On November 15, 2021, just 3.5 hours before the meeting, Task Force members were provided with a copy of the funding request that was sent to you. No prior information was provided to the Task Force regarding how the numbers in the funding request were developed. Candidly, we were stunned when the Chair moved for approval of the funding request. We received information on how the funding request was developed the day after the funding request was approved, and we did not receive answers to our subsequent questions until November 24, 2021, nine days after the letter was approved.

#### Analysis of Funding Request

The Task Force requested \$11.8 million in federal funds for implementation of the Program, but as noted in our analysis, there was a failure to provide sufficient quantitative data on how that request was developed. We are disappointed that we were not provided with background information prior to approval of the letter, but as Task Force members, it was incumbent upon us to seek data and evaluate whether the conclusory funding request in

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### Landlord Representative Letter to Governor Hogan Regarding Program Funding

the letter was appropriate. Based on responses to our questions, the funding request in the Task Force's letter did not adequately account for essential data points regarding current funding, legal services, or infrastructure. Moreover, the letter failed to delineate costs associated with outreach and communication.

#### I. Current Funding

**The Maryland Legal Services Corporation (MLSC) currently has more than \$2 million to jumpstart the Program**, which is described in the Task Force's letter as "some bridge funding" for infrastructure. Those funds remain from the \$11.7 million that was provided by your administration and the Office of the Attorney General to MLSC in October 2020 for legal defense against eviction and other housing security issues. We are unsure of why the specific amount was excluded from the Task Force's letter, but we did request information on how those funds are expected to be expended. We were informed by MLSC that,

"These funds have not yet been deployed as we await recommendations from the Implementation Committee, but based on their preliminary discussions we envision a coordinated intake system (which would likely include a case management system, hotline/online forms and intake personnel) will be a key piece. There may also be an opportunity to set up a fellowship program to develop a pipeline of attorneys who would eventually take full caseloads. These funds are not restricted to the Access to Counsel program, but MLSC has tentatively set them aside for that purpose."

MLSC is deferring to decisions by the Implementation Committee that, as indicated, includes non-Task Force members instead of the statutorily established Task Force. We are unsure of why an additional intake system is required when presumably legal service providers already operate their respective intake systems, and the 10-day mandatory notice provides tenants with contact information for numerous legal service providers across the state. MLSC expects to expend the first \$2+ million in a manner that does not involve immediate representation of residents in judicial proceedings but rather an intake system and the establishment of a fellowship program.

Based upon District Court of Maryland data, Maryland is experiencing an extraordinarily low number of failure to pay rent actions, warrants of restitution, and evictions since the beginning of the pandemic. Despite tenant lobbyists predicting an increase in evictions after the eviction moratorium ended on August 15, 2021, evictions remained low during September and October 2021. In fact, the state experienced a 60% decline in evictions during September and October 2021 compared to the same timeframe in 2019. Additionally, statewide eviction filings **declined** by 71.7% in October 2021 compared to October 2019. Ultimately, September and October 2021 were a continuation of the consistent and extraordinary reduction in evictions that Maryland has experienced throughout the pandemic. **There has been no eviction tsunami.** As such, the District Court's data may have resulted in a determination to utilize available funds in ways that do not involve immediate representation in court.

#### II. Infrastructure and Outreach

To determine how much funding is needed for future infrastructure development, we requested information regarding the current infrastructure, including whether organizations are provided space to operate within courthouses. We were informed that,

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"Anecdotally, we know that Baltimore City and Prince George's County offer dedicated space. Newer projects in Baltimore and Anne Arundel counties might as well, but **that's not something we track.**" (Emphasis Added)

Contrary to this response and with appreciation to the District Court of Maryland, legal service providers enjoy significant space to operate within court houses and residents have open access to self-help centers and legal service providers. Unfortunately, we simply could not support a request for additional infrastructure funding that did not first account for or track current infrastructure available to legal service providers. To confirm that services and costs are not duplicated, a thorough evaluation of current infrastructure must be a prerequisite to any funding request.

The Task Force's letter requests \$1.3 million for tenant outreach, which would include contracts with community groups, marketing, printing, and design. This concept is akin to lawyers marketing their services on television, buses, and billboards. Legal service providers and community groups currently conduct outreach to residents. Further, as previously noted, every resident is required to receive a 10-day notice form prior to a court filing for nonpayment of rent that includes specific contact information for legal service providers across the state. Over the past two months, we have consistently requested data from legal service providers that would help to assess the impact of the 10-day notice, but to date that information has not been provided to the Task Force. As such, we are unsure of whether any additional benefit would be gained by spending \$1.3 million.

#### III. Legal Services

The Task Force's letter requests \$8.2 million for legal service personnel expenses. However, the Task Force's letter neglects to encompass the current provision of legal services across the state, expected caseloads, or details on how the total was developed. After the letter was considered for approval, we were provided with information that includes important context regarding the funding request.

Based on the response to our questions, the Task Force's letter assumes that each attorney would manage 263.6 cases per year, which is approximately 1 landlord/tenant case per working day over the course of a year. In stark contrast, the Public Defender's Office *standard* for attorneys in suburban District Courts is 705 cases per year. Though, the actual caseload for Public Defenders in District Court may be higher. For example, the average caseload across suburban districts in CY2018 was 830.25 cases. **Despite criminal cases being more complex and time consuming, the Task Force's funding request would result in District Court Public Defenders managing caseloads that are 62% higher than attorneys in the Program.**

**Considering that Maryland has received more than \$750 million in federal rental assistance to pay rent, it is perplexing that the Task Force's funding request focuses so heavily on cases involving nonpayment of rent.** When a Frederick County representative was asked at a Task Force meeting whether the county funds attorneys to represent residents in nonpayment of rent cases where rental assistance has been obtained, the representative noted that the provision of rental assistance includes a requirement that bars evictions for a predetermined timeframe.<sup>1</sup> As such, attorneys are not needed for those cases.

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<sup>1</sup> See [link](#) at 14:55.

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The Task Force's funding request would be significantly reduced if the request expected attorneys in the Program to manage the same caseload as their Public Defender colleagues in the same District Courts. Further, it would be beneficial to prioritize funding for breach of lease and tenant holdover cases with the recognition that more than \$750 million in federal rental assistance will address nonpayment of rent cases. The Task Force's funding request accounted for representation in 3,200 cases that do not involve failure to pay rent, which include breach of lease and tenant holdover cases. This is reflective of data from the District Court, which shows that traditionally more than 98% of eviction matters stem from nonpayment of rent. Unlike nonpayment of rent cases, which center on the simple question of whether rent has been paid, breach of lease and tenant holdover cases may involve more complex legal questions and ultimately benefit from attorney representation.

#### Conclusion

We support use of federal and/or state general funds to implement the Program. However, we are very disappointed to report that the Task Force's letter and funding request failed to meet transparent, objective, and fact-based thresholds for approval. Unfortunately, we were provided a copy of the Task Force's letter less than 3.5 hours before we were asked to approve it, and we were not provided with critical information needed to analyze the funding request until after the letter was approved.

The information we did receive ultimately raised significant questions and concerns regarding the funding request included within the letter. The Task Force's letter did not adequately account for current services and infrastructure. Further, the Task Force's funding request did not account for current caseload or funding practices, as evidenced by information from the Public Defender's Office and Frederick County.

On November 24, 2021, we were provided with responses to our questions regarding the Task Force's funding request, and we are working diligently to determine a transparent, objective, and fact-based amount of funding that would promote implementation of the Program. **We encourage your office to allocate federal and/or state general funds based on a sound review of what funding is needed to implement the Program moving forward, and we stand ready to provide any assistance or information that is required by your office.**

Best Regards,



Pam Newland  
Member  
Access to Counsel in Evictions Task Force



Luke Lanciano  
Member  
Access to Counsel in Evictions Task Force

cc: The Honorable Will Smith  
The Honorable Luke Clippinger  
Vickie Schultz, Chair of the Task Force  
Maryland Multi-Housing Association  
Apartment and Office Building Association of Metropolitan Washington