

## NOTICE TO VACATE

ALL TENANTS

1/20/2021

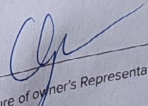
RE: Notice to vacate

Dear Tenant,

\_\_\_\_\_ has been sold and the new owners have plans to begin renovations on February 10th in order to update to the latest housing codes. As a result all residents must move out by that date because the property will no longer have gas, electric or water as those will be turned off to complete renovations.

You are hereby given notice to vacate the dwelling on or before midnight on the **10th day of February 2021**, which is at least one day from delivery of this notice.

1/25/2021  
Date notice was given:

  
Signature of owner's Representative

The notice was: (check at least one)

- Hand delivered to any of the residents named above
- Posted on the inside of the dwellings main entry door (not the screen door)
- Securely affixed to the outside of the dwelling's main entry door in a sealed envelope, per Texas Property Code Section 24.005

# Keeping Harris County Housed

An Overview of the Eviction Crisis in Harris County

*new*  
**HOUSTON**



*Keep Harris Housed coalition members pose following a strategy meeting for Right to Counsel for Tenants campaign, April 2023*

**New Economy for Working Houston (NEW Houston)** brings together the power of grassroots organizing and public policy innovation to win a just economy for Gulf Coast working families. We seek to build an inclusive regional economy where workers and neighborhoods thrive, and where people of color, immigrants, women, and low-income residents have an equal voice and share equally in regional prosperity.

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**Keep Harris Housed Coalition Members:**

We would like to thank all of the individuals and organizations who have contributed to the efforts of the coalition over the last 4 years. It is through the partnership and effective collaboration of community organizations, legal aid providers, government offices, and tenants that thousands of families have remained stably housed.

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# A Tenant's Perspective

A tenant of the Redford Apartments went to a Houston Tenants' Union meeting and shared with the group that she received an eviction notice for unusually high back rent. She had appealed her initial eviction decision in July, but concerns were spreading rapidly across her complex as more and more of her neighbors received eviction notices. She was clearly not alone in her situation.

Representatives from Texas Housers and the Keep Harris Housed Coalition were in attendance and connected the tenant with legal representation. After speaking to Lone Star Legal Aid and looking at the upcoming court dockets, everyone had grasped the severity of the situation: two neighboring apartment complexes owned by the same entity were attempting a mass eviction of over 120 households in one day, and many others over the span of the previous month. All of the parties involved agreed to work together to inform the tenant's neighbors of their rights and offer an opportunity to seek legal counsel before the hearing.

On the day of the hearing, some tenants showed up; many others did not. Some were represented; many others were not. The first three cases were heard with none of the tenants being represented by an attorney. Anticipation filled the courtroom, only to fade into disappointment as all three rulings were ruled in favor of the property. The tenant whose case was fourth on the docket was represented by a Lone Star Legal Aid attorney who argued two defenses not only on behalf of their client, but all clients on the docket that morning from the same apartment complex. After several hours of deliberation between the attorney, the property managers and the judge, the judge ruled in favor of the defendant, dismissing the cases of every individual who was physically present for the morning docket. A wave of relief washed over the faces of tenants throughout the courtroom. There was a palpable feeling of hope as neighbors glanced at one another and realized that they would gain the most valuable resource of all-time: time to save up, connect with resources and locate new housing before another inevitable eviction filing.

Though their paths forward from that day would vary, every tenant that showed up to their hearing reaped the benefits of quality legal representation at a critical juncture at which they would have otherwise been forgotten. The tenants would have likely been reduced to additional numbers, datapoints tracked through the backends of social service providers' information management systems and court records. Evictions are not statistics—they are individuals and families whose lives are upended in an extremely dehumanizing fashion—most of the time due to circumstances far beyond their control. Many tenants around the county only fall behind on their rent due to an emergency or change in life circumstances. When falling into financial hardship, time, financial assistance, and patience can be the key to keeping renter families and individuals across Harris County housed.



# Executive Summary



Since the beginning of the COVID-19 pandemic in March 2020, 211,568 evictions have been filed in Harris County.<sup>1</sup> Despite popular perception that the eviction crisis has receded along with the public health crisis, the scale of the problem has only increased in the last year. In 2023, 81,510 evictions were filed in Harris County, more than at the height of the pandemic.

Harris County is in the midst of an ongoing eviction crisis that impacts tens of thousands of residents every year.<sup>2</sup> When a tenant is evicted, every basic human need is impacted. Evictions result in homelessness, lasting negative physical and mental health impacts.<sup>3</sup> They disrupt healthcare access, educational attainment, and employment, increase interactions with the child welfare system and police, and cause declines in financial health such as decreased credit score.<sup>4</sup> An eviction on a tenant's record makes it more challenging to secure stable housing in the future. BIPOC tenants are disproportionately harmed by the eviction crisis. Roughly one in five Black Americans living in a renter household is threatened with eviction annually,<sup>5</sup> especially mothers with young children. With limited rights and protections for tenants in Texas, many households find it difficult to overcome predatory landlord tactics and a looming eviction hearing.

There is a great representational disparity between landlords and tenants in eviction hearings. Despite the disruptive, traumatic impacts of evictions, most tenants do not have legal representation when facing eviction, which would greatly improve their chances at a fair trial. The National Coalition for a Civil Right to Counsel found that across the country, 83% of landlords have attorneys, but only 4% of tenants do.<sup>6</sup>

While court-appointed legal representation is constitutionally guaranteed for criminal cases that may result in incarceration, no such right exists in civil cases like eviction hearings. As a result, tenants in jurisdictions without eviction Right to Counsel must advocate for themselves. Ensuring

1 "Eviction Tracking: Houston, Texas," *Eviction Lab*, Accessed 24 February 2024, <https://evictionlab.org/eviction-tracking/houston-tx/>.

2 "Eviction Tracking: Houston, Texas," *Eviction Lab*, Accessed 24 February 2024, <https://evictionlab.org/eviction-tracking/houston-tx/>.

3 "Eviction And Health: A Vicious Cycle Exacerbated By A Pandemic," *Health Affairs*, April 1, 2021. <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/>.

4 Henri Cornec, "New Research Sheds Light on the Economic Consequences of Evictions," *Yale Department of Economics*, September 26, 2023. <https://economics.yale.edu/news/230926/new-research-sheds-light-economic-consequences-evictions>.

5 Nick Graetz et al. "A comprehensive demographic profile of the US evicted population," *PNAS* 120.41, October 2 2023, <https://www.pnas.org/doi/10.1073/pnas.2305860120>.

6 "Eviction representation statistics for landlords and tenants absent special intervention," *National Coalition for a Right to Counsel*, September 2023, [http://civilrighttocounsel.org/uploaded\\_files/280/Landlord\\_and\\_tenant\\_eviction\\_rep\\_stats\\_NCCRC.pdf](http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats_NCCRC.pdf).

access to legal representation grants tenants the ability to explore all available legal options before and during eviction proceedings. These programs aim to reduce the harm caused by evictions—especially for vulnerable tenants—by addressing the power imbalance in the courtroom. Establishing a Right to Counsel and providing legal assistance to low-income tenants has shown various benefits, including increased court efficiency and fairness<sup>7</sup>, keeping tenants in their homes<sup>8 9</sup>, securing better move-out terms for tenants<sup>10</sup>, reducing emergency shelter use<sup>11</sup>, and overall lowering disruptive displacement. Right to Counsel is a cost-effective policy intervention that mitigates the negative impacts of evictions on individuals, families, and entire communities.

An increasing number of jurisdictions across the country are implementing Right to Counsel programs to advise and provide representation to tenants facing eviction. Strategies and opportunities utilized by other jurisdictions serve as a model for Harris County. Over the past three years, local, state, and federal governments responded with funding and protections that assisted tenants and landlords in maintaining financial stability during the economic downturn of the pandemic. The CDC Eviction Moratorium, local and state rent relief programs, and additional tenant protections such as the Supreme Court of Texas Emergency Orders offered tenants avenues to catch up with housing costs. Local organizations, legal aid providers, and government offices worked together to get information and resources directly into the hands of at-risk households.

Starting in 2021, partners from the Keep Harris Housed coalition—a broad community-labor coalition convened by the Texas Gulf Coast Area Labor Federation, AFL-CIO to advocate for solutions to the eviction crisis—approached Harris County officials to discuss potential ways to establish an eviction Right to Counsel. Counties in Texas do not have ordinance-making power, and have no ability to regulate contracts. As an alternative, Keep Harris Housed organizers recommended funding legal aid providers at a level that would ensure every Justice of the Peace court had at least one attorney on site to represent tenants during hearings, which was estimated to cost \$4 million per year. Although this would not establish a legal eviction Right to Counsel in Harris County, it would minimally ensure that qualifying tenants would have access to legal counsel.

Although Texas law limits the number of effective defenses in eviction cases, expanding access to legal assistance would provide tenants with substantial benefits, and represents a cost-effective policy intervention for Harris County.

During this timeframe, Harris County Commissioners Court allocated a total of \$9 million from federal funding sources<sup>12</sup> to support the Housing and Legal Services Initiative to establish access to legal representation in eviction courts. On average, approximately 300 tenant records denoted a lawyer on their case annually prior to 2020, or about 0.5% of tenants who faced an eviction. The number of tenants with legal representation has grown exponentially, reaching around 1,500 tenants annually during the last two years. Unfortunately, while the number of tenants represented during an eviction hearing is growing, the number of cases filed continues to grow as well. This is reflected in the fluctuating rate of legal representation in court records. Using the Stout Analytics model, it is estimated that an investment of \$4 million over two years will fund some level of representation for approximately 5,000 eligible cases.

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7 Public Justice Center, *How Renters Are Processed in the Baltimore City Rent Court*. Public Justice Center, Baltimore, 2015, <https://abell.org/wp-content/uploads/2022/02/cd-justicediverted216.pdf>.

8 Eviction Defense Collaborative, “Tenant Right to Counsel Data – Outcomes March 2021 through December 2021,” *Online Slides*, 2021, [http://civilrightstocounsel.org/uploaded\\_files/290/RTC\\_outcomes\\_March\\_2020\\_-\\_Dec\\_2021.pdf](http://civilrightstocounsel.org/uploaded_files/290/RTC_outcomes_March_2020_-_Dec_2021.pdf)

9 Michael T. Cassidy and Janet Currie, “The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence From New York City’s Universal Access Program,” *National Bureau of Economic Research*, Cambridge, MA., July 2022, [https://www.nber.org/system/files/working\\_papers/w29836/w29836.pdf](https://www.nber.org/system/files/working_papers/w29836/w29836.pdf).

10 The Legal Aid Society of Cleveland and United Way Greater Cleveland, “About the Report,” January 2024, [freeevictionhelpresults.org/](https://freeevictionhelpresults.org/).

11 Luke Grundman and Muria Kruger, “Legal Representation in Evictions – Comparative Study,” *Mid-Minnesota Legal Aid and Volunteer Lawyers Network*, 2018, [www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf](http://www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf).

12 Rachel Carlton, “Harris County Commissioners approve \$4M to provide legal services for renters facing eviction,” *Community Impact*, September 30, 2022, <https://communityimpact.com/houston/bay-area/city-county/2022/09/30/harris-county-commissioners-approve-4m-to-provide-legal-services-for-renters-facing-eviction/>.

**These efforts, while impactful, are not without limitations. Barriers to accessing legal representatives and the effective implementation of the current program include:**

**Expiration of current federal funding:** ARPA funds must be fully spent by the end of 2026. This necessitates a long-term solution within the county budget, through partnerships with other county jurisdictions to share costs, or through new funding sources.

**Tenant need exceeding legal aid provider capacity:** Attorneys have expressed concerns of simply not having enough staff to cover all of the clients that qualify for representation within all 16 courts, as well as challenges to attract and retain staff due to more competitive salaries and benefits within the legal field.

**Lack of standardization of Justice of the Peace procedures:** The lack of mechanisms within the law to enforce uniform administrative proceedings in Justice of the Peace courts presents a key challenge to the implementation of a Right to Counsel program for tenants and dictates the level of justice a tenant can receive based on the judge's practices.

**Texas State law restricting local powers:** Prior to the passage of HB 2127, a local government might assume that it could regulate any area where state statute is silent. The bill preempts local ordinances that attempt to regulate local conduct in an area that is already regulated by one of eight codes in the Texas government, including the Texas Property Code, which regulates landlord-tenant contracts.



*Houston City Councilmember Tiffany Thomas works with volunteer Katy Jewett to help a resident in Alief apply for rental assistance on March 30, 2021*



## **The recommendations provided in the report address multifaceted approaches to reducing the need for eviction hearings.**

These recommendations are made in an effort to improve current programs and policies already implemented in Harris County and support the Right to Counsel as a unifying solution to the housing instability problem faced by tenants and landlords.

### **Forge strong partnerships between all stakeholders:**

The population and geographic size of Harris County necessitates convening partnerships in order to provide the scope of funding necessary to launch a Right to Counsel program and the breadth of services needed to adequately address housing instability issues. Collaborative efforts across government bodies, private stakeholders, and social service providers is equally necessary to address housing stability challenges for families and individuals who arrive at eviction court.

### **Create dedicated and diversified sources of funding:**

Through permanent funding utilizing public and private investments, a Right to Counsel program would have the necessary resources to ensure that legal aid providers contracted for this work are able to acquire and maintain the staff necessary to provide representation and legal advice efficiently and effectively.

### **Develop centralized access points:**

Centralized access points would streamline outreach to at-risk tenants, reduce confusion of services and application fatigue, and strengthen partnerships among social services providers. With reduced barriers to entry for tenants in need, legal aid providers could focus on litigation rather than navigation.

### **Incorporate eviction diversion into Justice of the Peace practice and procedures:**

Local Justices of the Peace should take proactive steps to administer eviction hearings in a manner that is both consistent with the law and fair to tenants, who are inherently disadvantaged by the law. Justices of the Peace in Harris County should work to set baseline standards of administration in the courts that are mindful of equity.

### **Strengthen Landlord-Tenant relationships through eviction diversion:**

Landlords and tenants may reach the point of an eviction lawsuit when communication breaks down and the relationship sours. Strengthening this relationship and opening lines of communication for negotiation between parties through eviction diversion tactics can result in positive outcomes for both landlord and tenant.

### **Reduce tenant need through affordable housing and job investments:**

The core drivers of housing instability are low wages and rising housing costs. In order to address these, we must implement policies that drive wage growth, while also increasing income-targeted construction of affordable housing that intentionally addresses the housing needs of residents at all income levels.

# Introduction

Harris County is in the midst of a growing eviction crisis impacting the 46% of residents who rent.<sup>13</sup> The crisis is multifaceted – a combination of low wages and the rising cost of rent exacerbated by the effects of the COVID-19 pandemic and recession. Working families are finding it increasingly difficult to make ends meet, and eviction filing rates have risen dramatically as a result.

The December 2021 Household Pulse Survey of the Houston metro service area reported 40.8% of renter respondents having slight or no confidence to make the next month’s rent payment.<sup>14</sup> When Kinder Institute surveyed the Harris County population in 2022, only 7% of respondents indicated concern about housing costs, but in the 2023 survey, the percentage of respondents who believed the biggest problem facing Houston residents is the cost of housing rose to 20%. In their 2023 Area Survey, Kinder Institute found 51% of renter households were housing cost-burdened, which is defined by the U.S. Department of Housing and Urban Development (HUD) as households spending more than 30% of their income on housing expenses.<sup>15</sup>

That same year, Kinder’s survey reported that the annual change in rents increased by 4.5% while wages only increased by 2%. Incomes have broadly failed to keep up with housing expenses in Harris County. A worker in Houston must earn \$25.06 per hour, or work 116 hours per week at the minimum wage, to afford a two-bedroom fair market rental home.<sup>16</sup>

And in a county where only 5% of workers are members of a union<sup>17</sup> and government agencies have less capacity than ever to intervene in job exploitation, there are few solutions available to individual workers. Wage theft alone is estimated by the Department

of Labor to cost Harris County workers hundreds of millions each year,<sup>18</sup> further reducing the ability of many low-income residents to afford rising rental costs.

No state has an adequate supply of affordable rental housing, but Texas has one of the largest gaps between the need and available units: there are only 19 affordable and available homes for every 100 extremely low-income renter households in the Houston metro area.<sup>19</sup> Naturally Occurring Affordable Housing (NOAH) units are unregulated, privately-owned apartments with lower rents and often receive B and C ratings due to aging, unfavorable locations, lack of amenities, and/or at-risk of rising rents or redevelopment and displacement. NOAH units make up about 40% of rental units and are almost exclusively located within multifamily properties.<sup>20</sup> The *My Home Is Here* report, published in 2021 by Harris County, found that over 20,000 new units needed to be built in the county each year for the next decade in order to meet the needs of cost-burdened residents.<sup>21</sup>

	Renter	Owner	Annual Goal through 2030
<b>0-30% MHI (\$20,000/year)</b>	24,465	1,288	2,575 Units
<b>30-60% MHI (\$35,000/year)</b>	23,564	1,240	2,480 Units
<b>60-80% MHI (\$50,000/year)</b>	11,622	7,116	1,874 Units
<b>80-120% MHI (\$75,000/year)</b>	5,550	6,892	1,244 Units
<b>Total</b>	<b>67,729</b>	<b>14,008</b>	<b>8,174 Units Per Year</b>

## New Housing to Meet the Needs of 20% of Today’s Cost-Burdened Residents

13 2022 ACS Census Data, accessed February 25, 2024, <https://data.census.gov/table/ACSDP1Y2022.DP04?g=050XX-00US48201&d=ACS%201-Year%20Estimates%20Data%20Profiles&tid=ACSDP1Y2021.DP04>.

14 U.S. Census Bureau, “Household Pulse Survey: Measuring Emergent Social and Economic Matters Facing U.S. Households,” January 9, 2024, <https://www.census.gov/data/experimental-data-products/household-pulse-survey.html>.

15 S. Sherman et al., “The 2023 State of Housing in Harris County and Houston,” *Kinder Institute for Urban Research, Rice University*, Houston, TX, July 2023, <https://kinder.rice.edu/research/2023-state-housing-harris-county-and-houston>

16 National Low Income Housing Coalition, accessed February 25, 2024, <https://nlihc.org/or/state/tx>.

17 Erica Grieder, “Houston union membership lags, even as workers show more interest in organizing,” *Houston Chronicle*, September 2, 2023, [www.houstonchronicle.com/business/article/houston-union-membership-low-18343213.php](http://www.houstonchronicle.com/business/article/houston-union-membership-low-18343213.php).

18 “WHD by the number 2023,” *U.S. Department of Labor*, accessed February 25, 2024, [www.dol.gov/agencies/whd/data#:~:text=WHD%20investigations%20in%20fiscal%20year,for%20three%20weeks%20of%20work](http://www.dol.gov/agencies/whd/data#:~:text=WHD%20investigations%20in%20fiscal%20year,for%20three%20weeks%20of%20work).

19 National Low Income Housing Coalition, *Gap Report: Texas*, accessed February 25, 2024. <https://nlihc.org/gap/state/tx>.

20 *My Home is Here: Harris County’s Housing Needs Assessment and 10-Year Strategy*, Harris County. 2021, 12. [myhomeishere.org/Portals/myhomeishere/Documents/Resources/-48034192993MHIH\\_Final\\_Report\\_10292021\\_compressed.pdf](http://myhomeishere.org/Portals/myhomeishere/Documents/Resources/-48034192993MHIH_Final_Report_10292021_compressed.pdf).

21 *My Home is Here: Harris County’s Housing Needs Assessment and 10-Year Strategy*, Harris County. 2021, 12. [myhomeishere.org/Portals/myhomeishere/Documents/Resources/-48034192993MHIH\\_Final\\_Report\\_10292021\\_compressed.pdf](http://myhomeishere.org/Portals/myhomeishere/Documents/Resources/-48034192993MHIH_Final_Report_10292021_compressed.pdf).

	Renter	Owner	Annual Goal through 2030
<b>0-30% MHI (\$20,000/year)</b>	45,175	2,378	4,755 Units
<b>30-60% MHI (\$35,000/year)</b>	45,384	2,389	4,777 Units
<b>60-80% MHI (\$50,000/year)</b>	Supply Meets Demand	Supply Meets Demand	Supply Meets Demand
<b>80-120% MHI (\$75,000/year)</b>	1,680	27,156	2,884 Units
<b>Total</b>	98,160	27,156	<b>12,416</b> Units Per Year

*New Housing for Households Formed in Harris County over the Next 10 Years*

The COVID-19 pandemic’s economic downturn focused the public’s attention to the cruel and violent nature of evictions as thousands of households were facing eviction for the first time. Governments at all levels passed unprecedented protections for tenants, the federal government passed legislation that delivered direct cash welfare to citizens for the first time in generations, and state and local municipalities administered rent relief programs allowing for renter households to “cure” / pay their back rent and remain stably housed. But as government rental assistance was not a guarantee and eviction proceedings began to ramp back up, tenants needed another layer of assistance to guarantee their rights were being honored in court.

Legal representation has been funded nationally to ensure tenants facing eviction during the public health crisis had an attorney to represent them in eviction court. Houstonians continue to support access to legal representation in the years following the pandemic as well. A 2023 Kinder survey of Resident Policy Preference reported that 82% of respondents support policies that ensure “that anyone facing eviction has legal representation.”<sup>22</sup> The number of people in Harris County experiencing the devastating effects of evictions are higher now than ever as eviction rates have grown beyond pre-pandemic figures. In 2023, 81,510 evictions were filed in Harris County, more than any previous year.

22 Daniel Potter and Anna Glazer, “Election 2023: Overview of Residents’ Policy Preferences.” *Houston Population Research Center, Kinder Institute for Urban Research*, Rice University, 2023, <https://doi.org/10.25611/9Z1Y-MA16>.

**This report examines:**

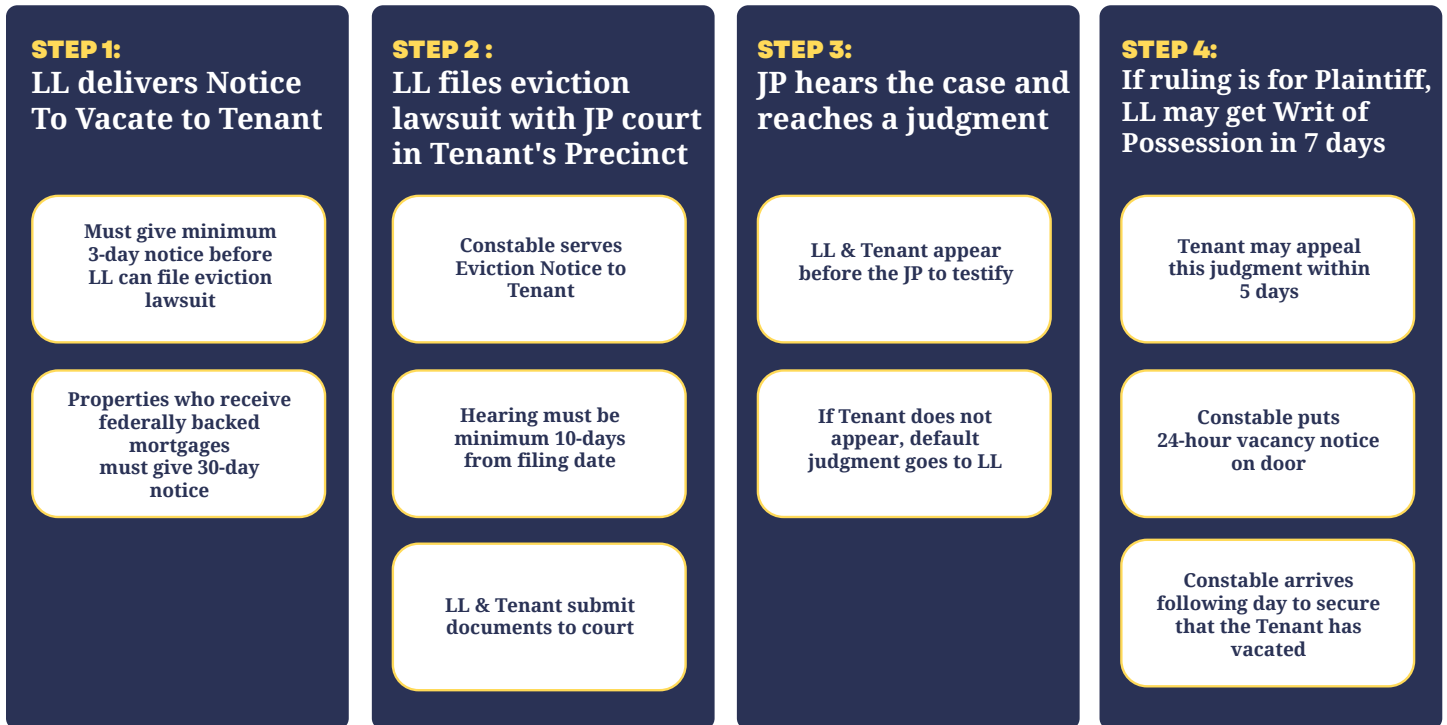
- the rights of Texas renters in eviction court
- the recent history of policy interventions to address the eviction crisis in Harris County
- the current state of the eviction filings and legal representation rates in Harris County
- case studies and lessons learned from select Right to Counsel programs established across the nation
- challenges to the implementation of effective Right to Counsel program
- recommendations for future program implementation and tenant stabilization efforts

**There are limitations to the evaluation of eviction diversion efforts and effective Right to Counsel program implementation in Harris County:**

- We cannot measure the true number of evicted tenants in Harris County because the rate of tenants removed from their home by their landlord against their will through self-eviction is not represented in court data. Dismissals may have also resulted from a self-eviction taking place after the eviction lawsuit is filed.
- There is limited data on the long-term success of Right to Counsel since the first jurisdiction to enact a right to counsel for tenants started operating in 2017 and there are limited program evaluations publicly available.
- Locally, this report analyzes the effectiveness of legal aid providers based on funding from Harris County. Legal aid providers receive funding from multiple sources, and the funding offered by local governments only covers a portion of the services provided in the courtrooms. While it is not implied that the total increase in legal representation was a direct result of the county’s funding, Harris County’s intervention played a critical role in allowing the legal aid providers to continue operating uninterrupted and increase their staff.
- Case information and legal representation data is limited to the accuracy of court records. Legal aid and social service providers may track additional demographic data that is inaccessible due to attorney-client confidentiality.
- The number of tenants with legal representation reported fails to capture the compounded benefit of legal representation as legal arguments may prevail across multiple cases.

# Tenant Legal Rights in Texas

## The Eviction Process in Texas



In Texas, the legal rights and protections conferred to tenants in eviction proceedings are limited compared to other states. According to Texas law, a landlord has the right to immediately issue a Notice to Vacate (the time a tenant has to move out or fix a certain problem before an eviction suit is filed) after a tenant is in default or falls behind on their rent, according to their written lease. Some rental contracts have a three to five-day late payment grace period, but a landlord does not need to give tenants a payback period. A Notice to Vacate must be given three days before a landlord can file an eviction lawsuit with the Justice of the Peace court. There is no right to cure late rent in Texas, and a landlord has the ability to refuse late rent during this three day period unless the Notice to Vacate indicates the tenant has the option to pay or vacate as specified in the lease agreement.<sup>23 24</sup> Justice of the Peace courts must schedule an eviction hearing at least 10 days from the eviction filing.

23 Texas Property Code, Chapter 24. Forcible Entry and Detainer, Sec. 24.005 (1983 & rev 2015). <https://statutes.capitol.texas.gov/Docs/PR/htm/PR.24.htm>.

24 "Can I get evicted for one late rent payment in Texas? *Landlord Tenant Law Firms*, accessed February 27, 2024, <https://www.texastenant.org/while-you-are-renting/late-fees>.

Once a judgment is passed against a tenant, the tenant has the right to appeal the case within the first five days of the judgment. In order to appeal, the tenant must pay an appeal bond to the court, usually set at no less than \$500 and no more than double the rent. If the tenant does not appeal, the landlord can ask the court to issue a Writ of Possession seven days after the judgment. Upon issuance of a Writ of Possession, a constable will deliver a 24-hour notice to the unit, usually placing it on the tenant's front door, and return the next day to "remove all remaining humans and personal property from the premises." At this point, most households lose the majority of their belongings.

In Texas, the eviction process – from the moment the landlord issues the notice to vacate to the moment the constable knocks on the door to remove the tenant from the property – can take as little as 21 days. Families regularly lose their homes within weeks after missing a single month's rent payment.

Beyond the formal legal process, tenant households experience evictions regularly through a myriad of landlord intimidation tactics. It is illegal to cut off utilities, restrict entry with a padlock, or change door locks and deny a tenant re-entry into their unit, but

landlords frequently use these tactics to encourage the tenant to leave the property without a court order or force tenants to go into debt to gain entry into their home.<sup>25</sup> Because intimidation tactics and self-evictions occur outside the legal process, the rate of tenants removed from their home by their landlord against their will is much higher than what is represented in court data and the information in this report.

The lease signed by both landlord and tenant is a document that delineates the rules and responsibilities obligated to each party in the contract. It defines the tenant's responsibilities, how they should communicate their needs to the landlord, their financial responsibilities along with their timeline, as well as the landlord's responsibility for maintaining the property to ensure a safe and habitable standard for the tenants. When a tenant violates the terms of the lease, a landlord can begin an eviction process to remove the tenant from the property. However, when a landlord violates the lease and neglects to make meaningful repairs or fails to address inadequate living conditions, the tenant has little recourse to remedy the situation; if a tenant does take action, they risk retaliation.

According to the law and most leases, tenants cannot withhold rent in order to pressure their landlord to make necessary repairs, nor can they do the repairs themselves and invoice the landlord or deduct it from their rent without the landlord's expressed agreement. Navigating the arcane legal process of having to affirmatively sue the landlord for incomplete repairs after multiple written notices is especially burdensome for low-income tenants.

A landlord may still evict a tenant for nonpayment of rent, even if they are not in compliance with their own lease agreement. Unlike many other jurisdictions across the country, Texas eviction courts do not allow tenants to raise counterclaims in eviction proceedings, such as holding a landlord accountable for breaching the warranty of habitability and failing to complete repairs in a timely manner. This means that a tenant cannot bring up habitability concerns and the landlord's lease violation in an eviction proceeding. The only legal question that is considered in an eviction case in Texas is the issue of possession of the property.<sup>26</sup> This significantly limits tenants' legal defenses if they are factually delinquent on rent. The majority of legal defenses against an eviction in Texas are found in procedural violations, such as an issue with the delivery method or content of the Notice to Vacate.

25 Texas Property Code 8.92A, accessed February 27 2024, <https://statutes.capitol.texas.gov/Docs/PR/htm/PR.92.htm>

26 Philip Silberman, "Eviction Appeals and Counterclaims in Texas." *Silberman Law Firm, LLC*. September 22, 2023. <https://silblawfirm.com/real-estate-law/eviction-appeals-and-counterclaims/#:~:text=Counterclaims%20and%20the%20joinder%20of,not%20permitted%20in%20eviction%20cases.>



*Once the landlord pays the court for the Writ of Possession, the Constable will hand deliver or post a 24 Hour Final Notice to Vacate to the property before arriving the following day to remove any remaining persons or belongings.*



*Volunteers help residents apply for rental assistance at an application event at the International Brotherhood of Electrical Workers Local 716 on August 3, 2021*

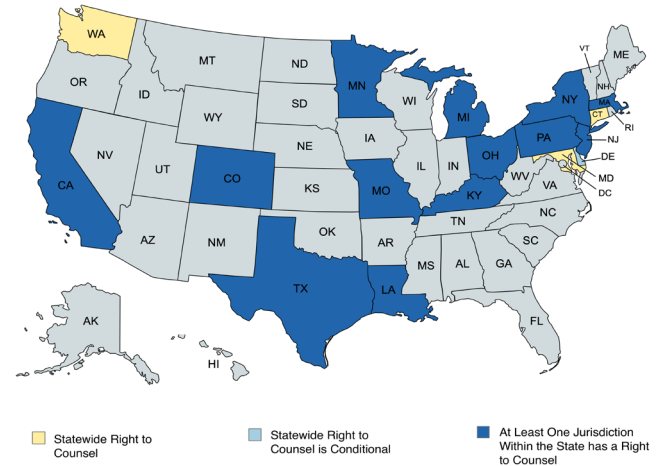
# Eviction Right to Counsel

Over the past decade, a growing number of policymakers have recognized the value of legal representation and taken action to balance the scales in eviction proceedings by expanding access to legal counsel for tenants. Propelled by tenant-led advocacy movements, Right to Counsel programs have been passed across the nation as state legislative actions or local ordinances. In total, seventeen cities and four states have established a Right to Counsel for tenants.<sup>27</sup>

Right to Counsel programs have been shown to increase court efficiency and fairness,<sup>28</sup> keep tenants in their homes,<sup>29</sup> secure more favorable move-out terms for tenants who cannot or do not want to stay in their homes,<sup>31</sup> reduce emergency shelter use and costs,<sup>32</sup> and overall lower disruptive displacement. Legal representation reduces the power imbalance between landlord and tenant in the courtroom and can help to limit the harm caused by eviction by providing tenants with additional time to plan.

The right to court-appointed legal representation for criminal proceedings is guaranteed by law in both the United States and Texas Constitutions. Public Defender programs across the state report to and receive funding through the Texas Indigent Defense Commission (TIDC), which is “tasked with funding, overseeing, and improving public defense in each of Texas’s 254 counties and led by 13 Commission Members and 12 staff.” This funding is made possible through a series of legislative appropriations requests (LAR) and the general revenue-dedicated (GR-D).<sup>33</sup> However, no such right is

Figure 1: Right to Counsel Protections Across the Nation



guaranteed in Texas in civil proceedings like eviction hearings. There is no precedent, law, or funding that provides the same access to legal representation in civil cases as exists in criminal cases.

As a result, parties to eviction lawsuits are not legally required to be afforded a legal representative that knows the law and can assist with a legal defense. Tenants struggling to afford rent are rarely in a financial position to pay the legal fees of a private attorney. As a result, there are significantly disparate levels of legal representation between landlords and tenants in the eviction cases in Texas and across the country. The National Coalition for a Civil Right to Counsel found that across the country in eviction proceedings, 83% of landlords have attorneys, but only 4% of tenants do.<sup>34</sup>

## Local, State, and Federal Response to the Pandemic

Although the current eviction crisis predates the COVID-19 pandemic, analyzing the emergency policy interventions enacted between 2020 and 2022 can provide us with long-term tools to address our current crisis.

Between March 2020 and December 2021, residents of Harris County saw a historic number of local, state, and federal measures taken to address housing insta-

27 National Coalition for a Civil Right to Counsel, “Eviction representation statistics for landlords and tenants absent special intervention,” November 2023, [http://civilrighttocounsel.org/uploaded\\_files/283/RTC\\_Enacted\\_Legislation\\_in\\_Eviction\\_Proceedings\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf).

28 How Renters Are Processed in the Baltimore City Rent Court, *Public Justice Center*, Baltimore, 2015, <https://abell.org/wp-content/uploads/2022/02/cd-justicediverted216.pdf>.

29 “Tenant Right to Counsel Data – Outcomes March 2021 through December 2021.”

30 Michael T. Cassidy and Janet Currie, “The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence From New York City’s Universal Access Program,” *National Bureau of Economic Research*, July 2022, [https://www.nber.org/system/files/working\\_papers/w29836/w29836.pdf](https://www.nber.org/system/files/working_papers/w29836/w29836.pdf).

31 The Legal Aid Society of Cleveland and United Way Greater Cleveland, “About the Report,” January 2024, <https://freeeviction-helpresults.org/>.

32 Luke Grundman and Muria Kruger, “Legal Representation in Evictions – Comparative Study,” *Mid-Minnesota Legal Aid and Volunteer Lawyers Network*, 2018, <https://www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf>.

33 Texas Indigent Defense Commission, “My Rights.” *Texas Indigent Defense Commission*, accessed February 25, 2024, [www.tidc.texas.gov/my-rights/#:~:text=The%20United%20States%20Constitution%20and,defendants%20or%20provide%20legal%20advice](http://www.tidc.texas.gov/my-rights/#:~:text=The%20United%20States%20Constitution%20and,defendants%20or%20provide%20legal%20advice).

34 “Eviction representation statistics for landlords and tenants absent special intervention,” National Coalition for a Right to Counsel, September 2023, [http://civilrighttocounsel.org/uploaded\\_files/280/Landlord\\_and\\_tenant\\_eviction\\_rep\\_stats\\_NCCRC\\_.pdf](http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats_NCCRC_.pdf)

bility caused by the COVID-19 pandemic and resulting recession. On March 11, 2020, Harris County Judge Lina Hidalgo announced a declaration of local disaster for public health emergency due to the COVID-19 virus.<sup>35</sup> Two days later, Governor Greg Abbott announced an emergency declaration for the State of Texas.<sup>36</sup> Two weeks later on March 25, Congress passed the Coronavirus Aid, Relief and Economic Security (CARES) Act, which released billions in emergency aid to the State of Texas and local jurisdictions within Harris County.<sup>37</sup>

In response to Governor Abbott's disaster declaration, the Supreme Court of Texas issued the Fourth Emergency Order Regarding The COVID-19 State of Disaster<sup>38</sup> which instructed courts to pause eviction proceedings until April 19, 2020<sup>39</sup> and later extended until May 18, 2020.

During this period, organizers with the Keep Harris Housed coalition began approaching policymakers and elected officials to advocate for the creation of emergency rental assistance funds, opportunity to cure ordinances, and a temporary pause on eviction proceedings. The Texas Gulf Coast Area Labor Federation sent letters to all 16 Harris County Justices of the Peace calling on them to use their discretion to temporarily pause eviction proceedings once the Supreme Court of Texas allowed cases to resume.<sup>40</sup>

The Fifteenth Emergency Order resumed eviction proceedings on May 19. Two weeks later, Harris County Judge Lina Hidalgo and Houston Mayor Sylvester Turner reiterated calls on Justices of the Peace to suspend evictions.<sup>41</sup> They were joined by a diverse group of attorneys in an open letter reinforcing the legal basis for an eviction pause.<sup>42</sup> None of the 16 Harris County Justices of the Peace paused evictions in their courts at any point during 2020.

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35 County Judge Lina Hidalgo, "Declaration of Local Disaster for Public Health Emergency," March 11, 2020, <https://agenda.harriscountytexas.gov/2020/DisasterDeclaration.pdf>.

36 "Governor Abbott Declares State of Disaster In Texas Due To COVID-19" March 13, 2020, <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>.

37 "About the CARES Act and the Consolidated Appropriations Act," U.S. Department of the Treasury, accessed February 25, 2024, <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act>.

38 State Supreme Court of Texas, Misc. Docket No. 20-9045, March 19, 2020, [www.txcourts.gov/media/1449340/209045.pdf](http://www.txcourts.gov/media/1449340/209045.pdf).

39 The Fourth Emergency Order was the first to suspend eviction proceedings. Other orders related to the pause of eviction proceedings include the Ninth and Twelfth Orders.

40 Lacy Wolf and Hany Khalil, "Letter to Judge Eric Willias Carter," May 19, 2020, Labor Letter to JP Courts re Eviction Relief 1-1.

41 State Supreme Court of Texas, Misc. Docket No. 20-9066, July 21, 2020. <https://www.txcourts.gov/media/1446543/209066.pdf>.

42 Christian D Menefee et. al. "Letter to Harris County Justices of the Peace," June 25, 2020, Letter to Harris County Justices of the Peace.

In May, City of Houston allocated \$15 million from the \$404 million received in CARES Act funding, to the first emergency rent relief program, which was oversubscribed within 90 minutes of launching the application portal and received more than 17,000 applications.<sup>43</sup> Later in the year, Harris County joined the City of Houston to create a joint rental assistance program.

Recognizing the scale of housing instability caused by the pandemic, the Houston/Harris County Housing Stability Task Force was convened in June with a goal of "align[ing] resources to address evictions while developing strategies and recommendations to strengthen the region's housing delivery system."<sup>44</sup> The task force was made up of a diverse group of stakeholders representing tenants, landlords, government, finance, homebuilders, and labor.

This group met weekly through August, when they presented their recommendations, including a grace period ordinance designed to provide tenants with time to pay back rent while waiting for government assistance to arrive. In September, Mayor Sylvester Turner disbanded the joint task force and rejected the unanimous recommendation to enact an eviction grace period ordinance.<sup>45</sup>

As a form of contagion control, the Center for Disease Control and Prevention (CDC) issued an Eviction Moratorium effective September 4, 2020. Under the CDC eviction moratorium, tenants were able to present a declaration to their landlord, which in turn prevented the eviction filing, hearing, or writ execution due to claims of COVID-related hardship. The protection ended July 31, 2021 with an extension from August 3 to October 3 for communities experiencing a COVID-19 surge,<sup>46</sup> which was later overturned by the US Supreme Court.

The CDC declaration had a limited impact on the eviction crisis in Harris County because it required tenants to proactively sign and deliver a specific declaration form to their landlords to prevent eviction proceedings from moving forward.

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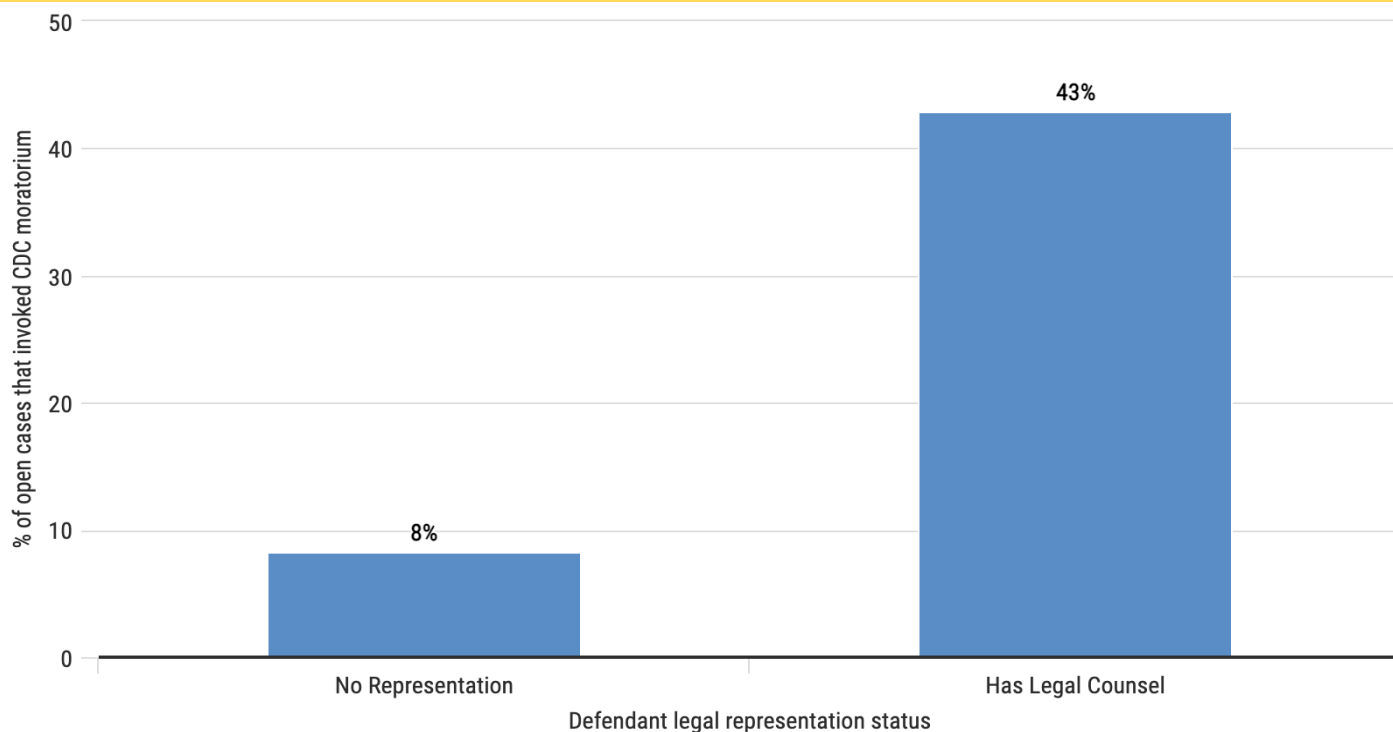
43 Jasper Scherer and Sarah Smith, "Houston's \$15 million rental assistance program fills up in 90 minutes," *The Houston Chronicle*, May 13, 2020, <https://www.houstonchronicle.com/politics/houston/article/15-million-rental-assistance-program-fills-90-min-15267544.php>.

44 City of Houston, "City, County Announce Task Force to Tackle Looming Threat of Evictions, Improve Housing Stability," June 12, 2020, <https://www.houstontx.gov/mayor/press/2020/evictions-task-force.html>.

45 Dylan McGuinness, "Turner pulls out of housing task force that recommended eviction grace period ordinance," *The Houston Chronicle*, September 11, 2020, <https://www.houstonchronicle.com/politics/houston/article/mayor-turner-housing-task-force-eviction-period-15559884.php>.

46 "Federal Moratorium on Evictions for Nonpayment of Rent," National Low Income Housing Coalition, August, 2021, [nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf](https://nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf).

Figure 2: Share of eviction cases where tenant invoked CDC moratorium in Harris County



Source: Harris County Justice of the Peace Courts. Only cases that were open during CDC moratorium period (9/1/2020 - 8/26/2021) are included.

According to Texas Housers' Houston Eviction Solidarity Network (HESN), a court observation initiative, "only 30 tenants from the 244 hearings we observed in December [2020] presented a CDC declaration, or 12% of our sample size."<sup>47</sup> Tenants with access to lawyers were able to invoke this protection more frequently. While it was active, 43% of tenants with a lawyer invoked the moratorium, compared to only 8% of tenants who lacked representation.

In order to better inform tenants about their rights under the eviction moratorium, the Keep Harris Housed Coalition worked with the offices of Harris County Commissioners Adrian Garcia of Precinct 2 and Rodney Ellis of Precinct 1 to get information directly into the hands of households most at risk. Coalition partners mapped out apartment complexes with high rates of eviction filings and recruited volunteers to distribute flyers. In total, union members and Precinct 1 and 2 staff canvassed over 40,000 Harris County households between November 2020 and September 2021 with flyers that included the legal CDC eviction moratorium declaration form in English, Spanish, and other languages.<sup>48</sup>

47 Julia Orduña and Ally Harris, "The CDC Eviction Moratorium Needs Amendments, Not Just Extensions." *Texas Housers*, January 26, 2021, <https://texashousers.org/2021/01/26/cdc-eviction-moratorium-needs-amendments-not-extensions/>

48 R.A. Schuetz, "Thousands in Houston behind on rent could qualify for aid. But many don't know the program exists," *Houston Chronicle*, August 18, 2021, [www.houstonchronicle.com/business/article/With-thousands-in-need-of-rental-assistance-16347351.php](http://www.houstonchronicle.com/business/article/With-thousands-in-need-of-rental-assistance-16347351.php).

This public information campaign was successful in pausing eviction proceedings, granting tenants time to apply and be processed by rental assistance programs or to reach an agreement with their landlord. While the CDC eviction moratorium was in effect, 80% of the cases where tenants presented the CDC declaration were still open one month later.

Although a small amount of rental assistance was made available earlier in the year through the CARES Act, the federal government dramatically expanded the program scope starting in late 2020 with the Consolidated Appropriations Act (CAA) in December 2020 and the American Rescue Plan Act (ARPA) in March 2021.

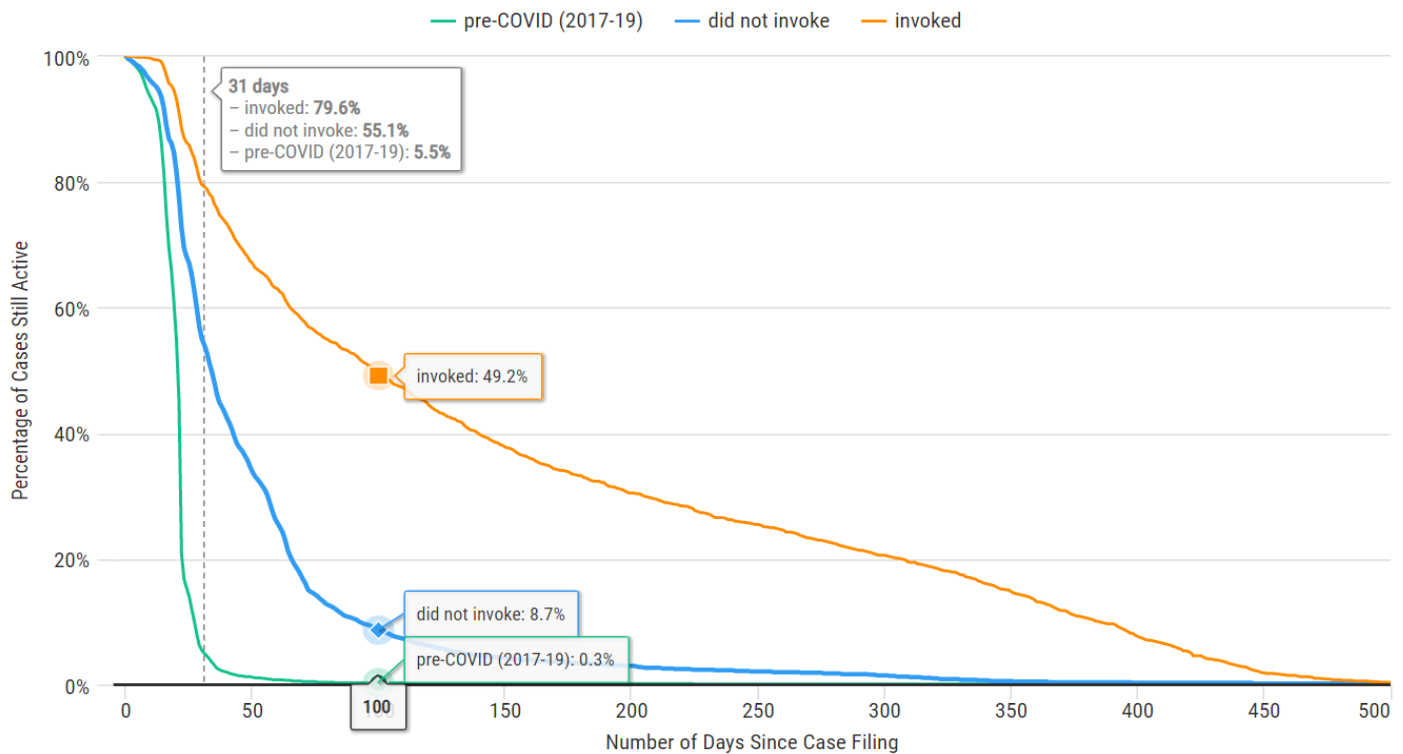
The State of Texas received \$2.4 billion to administer the Texas Rent Relief program, of which \$557 million went to assist 82,629 households in Harris County with utility and rental assistance.<sup>49</sup> The City of Houston and Harris County merged their Emergency Rental Assistance (ERA) funding to create the Houston-Harris County Emergency Rental Assistance Program (ERAP), totalling \$331 million in ERA 1, ERA 2, and reallocated funding.<sup>50</sup>

49 "Texas Rent Relief Program Dashboard," Texas Department of Housing and Community Affairs, July 6, 2023. <https://app.powerbi.com/view?r=eyJrIjoiOTQzMjI5ZDctY2MxMy00ZGJiLWI-2YjAtOTg3ODZiZGZhYWQzIiwidCI6ImEwZTYxZGZGNkLUxYTIiLWDM3NC05ZmEyLWJiMmFiNjBjNW12MyIsImMiOiN9>

50 Erin Hahn, Emergency Rental Assistance in Texas: How it went and what happened. *Texas Housers*, December 6, 2022, <https://texashousers.org/2022/12/06/emergency-rental-assistance-in-texas-report/>.



Figure 3: Cases limited to those eligible during initial filing period (not including post-disposition or appeal)



Source: Harris County Justice of the Peace Courts.

Harris County and the City of Houston also included funding for facilitators to help residents apply for rental assistance, recognizing that the online-only application platform limited access to the program. Residents were provided with a large number of physical locations to apply at, but policymakers and community members realized that there were still gaps in access.

In order to address these gaps, ERAP facilitators BakerRipley and Catholic Charities partnered with the Keep Harris Housed coalition to organize twenty-one mass rent relief events, which helped over 7,000 area residents apply for rental assistance at drive-through events located in zip codes with high rates of evictions.

Each event included multi-lingual facilitators to help expand access to the program to communities with language barriers. The events also helped to reduce the technology barriers associated with poor or no internet connection, online portal access issues, and online documentation submission.<sup>51</sup>

Language assistance proved essential, as many of the neighborhoods hardest hit by the eviction crisis in Harris County are home to immigrant populations. For example, at the March 30th, 2021 event hosted in Alief, a neighborhood in southwest Houston, organizers provided promotional materials in English, Spanish, Arabic, Urdu, Vietnamese, and Swahili. Translators were also on hand during the events to translate for

speakers of each language.

Legal aid providers also participated in the Keep Harris Housed events, helping tenants at risk of eviction to take advantage of the protections of the CDC eviction moratorium. Lone Star Legal Aid developed an online intake platform that enabled tenants to work with lawyers on site to fill out the form, which the platform then automatically sent to their landlord.

While the CDC Eviction Moratorium was in effect, the Supreme Court of Texas continued to issue orders that instructed courtrooms to create accessible and COVID-safe hearings, how to implement the CDC moratorium, and administrative processes for tenants with rent relief such as case abatement and record sealing.<sup>52</sup> The Forty-Second Emergency Order, issued on June 20, 2022, instructed Justices of the Peace to allow legal representatives “to be present...to provide information, advice, intake, referral, or other assistance for eligible litigants.”<sup>53</sup> The protections afforded to ten-

<sup>52</sup> Other SCOTX Orders regarding eviction proceedings include the Twentieth, Twenty-Fourth, Twenty-Fifth, Twenty-Seventh, Twenty-Eighth, Thirtieth, Thirty-First, Thirty-Second, Thirty-Fourth, Thirty-Fifth, Thirty-Seventh, Thirty-Ninth, Forty-Second, Forty-Fourth, Forty-Sixth, Forty-Eighth, Fiftieth, Fifty-Third, Fifty-Fourth, Fifty-Sixth, Fifty-Eighth Emergency Orders issues from 2020-2022. In 2023, SCOTX issued a Final General Emergency Order in January and two Emergency Orders Regarding the Texas Eviction Diversion Program in February and April. All of the Emergency Orders can be found here: Supreme Court of Texas, “Administrative Orders,” Texas Judicial Branch, accessed February 25, 2024, <https://www.txcourts.gov/supreme/administrative-orders/>.

<sup>53</sup> Other SCOTX Orders regarding eviction proceedings include the Twentieth, Twenty-Fourth, Twenty-Fifth, Twenty-Seventh,

<sup>51</sup> <https://www.gcaflcio.org/keep-harris-county-housed>



*Luis Cadavid, left, and Bianca Castor talk to a resident of an apartment complex in the Greenspoint area telling him about the Houston-Harris County Emergency Rental Assistance Program.*



*Harris County Commissioner Adrian Garcia and Texas State Representative Armando Walle with union volunteers Jay Malone and Mark Grady at a rental assistance event in Aldine on April 17, 2021*



*Tenants work with volunteers to apply for help through the Houston-Harris County Emergency Rental Assistance Program at Harvest Time Church Wednesday, June 30, 2021 in Houston.*



*Residents wait for assistance at a mass application event at the International Brotherhood of Electrical Workers Local 716 on August 3, 2021. Over 1,000 residents attended this event.*

ants through the actions of the Supreme Court ended on July 1, 2023 when the Emergency Order expired.

Judge Nathan Hecht stated in a subsequently published *New York Times* Opinion piece:

While federal funding may have spurred the initial reaction to the growing eviction crisis, state governments, and state courts especially, must continue the work of eviction prevention and diversion... By holding virtual hearings, proactively sending tenants information about legal aid and rental assistance and slowing down the eviction process to give both tenants and landlords time to access those resources, courts ensure that their process is as fair as possible to all involved.<sup>54</sup>

Judge Hecht clearly illustrates the importance of these emergency measures. By explicitly requiring courtroom access, legal aid providers and volunteer attorneys in Harris County were able to more effectively represent their clients and assist in the navigation and negotiation of eviction cases.

## Harris County's Housing Legal Services Initiative

Legal aid providers in Texas receive funding from a variety of sources, including the Legal Services Corporation and Texas Access to Justice Foundation. But they do not receive sufficient funding to represent all eligible tenants. When eviction proceedings resumed in Texas, they lacked capacity to address the needs of the community, despite the historic efforts of overburdened legal aid attorneys during this period.

On November 20, 2021, Harris County Commissioners Court approved the allocation of \$1 million from CARES Act funds to create the COVID-19 Housing Legal Services Initiative, and awarded a one-year contract to the Eviction Defense Coalition (EDC), funded through Lone Star Legal Aid.<sup>55</sup> The EDC, made up of Lone Star Legal Aid, Houston Volunteer Lawyers, South Texas College of Law, the University of Houston Law Center,

Twenty-Eighth, Thirtieth, Thirty-First, Thirty-Second, Thirty-Fourth, Thirty-Fifth, Thirty-Seventh, Thirty-Ninth, Forty-Second, Forty-Fourth, Forty-Sixth, Forty-Eighth, Fiftieth, Fifty-Third, Fifty-Fourth, Fifty-Sixth, Fifty-Eighth Emergency Orders issues from 2020-2022. In 2023, SCOTX issued a Final General Emergency Order in January and two Emergency Orders Regarding the Texas Eviction Diversion Program in February and April. All of the Emergency Orders can be found here: "Administrative Orders," <https://www.txcourts.gov/supreme/administrative-orders/>

54 Anna Blackburne-Rigsby and Nathan Hecht. "It Should Take More Than 10 Minutes to Evict Someone." *The New York Times*, January 13, 2022, <https://www.nytimes.com/2022/01/13/opinion/housing-eviction.html>.

55 Agreement, Harris County Commissioners Court, August 24th, 2021, <https://harriscountytexas.legistar.com/LegislationDetail.aspx?ID=5091692&GUID=AC7BEDED-489E-4224-9752-99340A9F671A>.

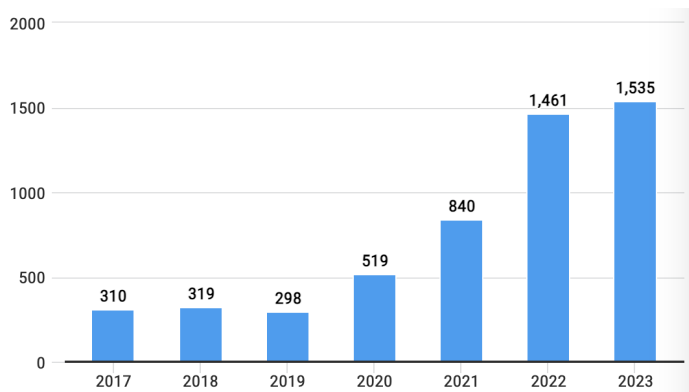
and the Earl Carl Institute at the Thurgood Marshall School of Law was convened in June of 2020 to coordinate efforts by all legal aid providers in Harris County.<sup>56</sup>

Although the new funding from Harris County helped to bridge the funding gap, the legal aid providers confronted many barriers related to this new funding source. While the funding was approved in November 2020, the contract was not approved until one year later. The one-year contract created staffing challenges for the organizations, and there was minimal job security for new attorneys due to a short contract timeframe.

During the summer of 2022, members of the Keep Harris Housed coalition began meeting to advocate to increase legal aid funding, with a goal of establishing an eviction Right to Counsel.<sup>57</sup> Although Harris County lacks the legal mechanism to pass an ordinance mandating legal representation, it does have the ability to increase funding to legal aid providers to a level that enables all eligible residents facing eviction to access legal assistance.

On September 27, 2022, the Commissioners Court allocated \$4 million from ARPA funding for legal representation services, later approving two 2-year contracts with the EDC and new vendor Neighborhood Defender Services (NDS).<sup>58</sup>

Figure 4: Annual number of eviction cases with defendant attorneys in Harris County, 2017-2023



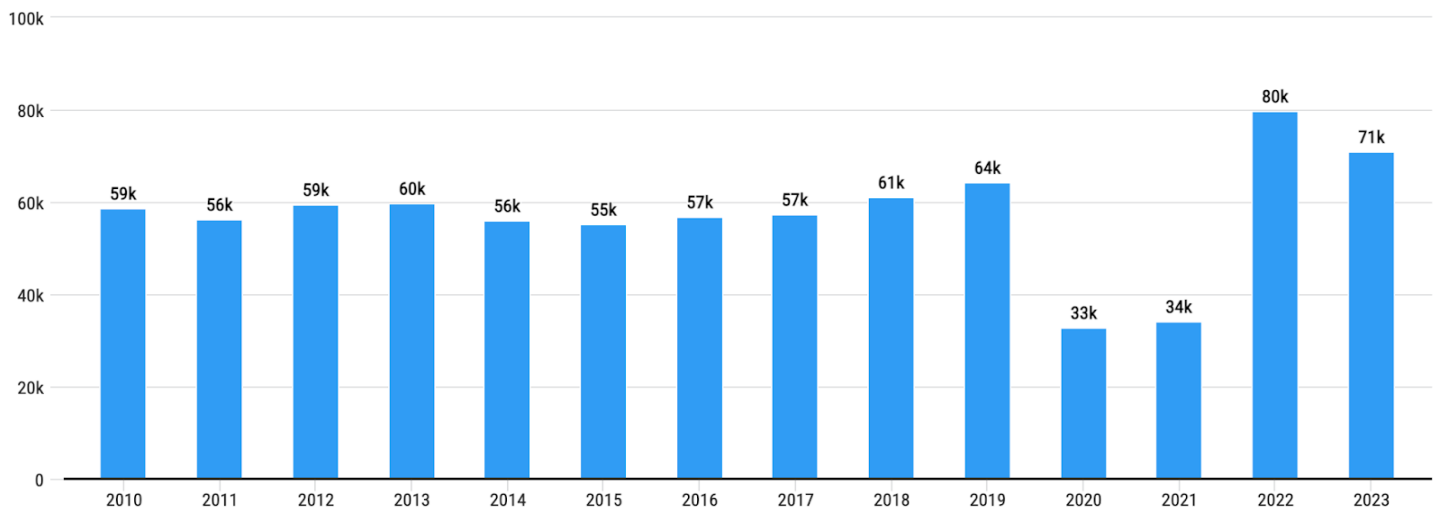
Source: Harris County Justice of the Peace Courts.

56 Center for Civic & Public Policy Improvement et. al, "Harris County Right to Counsel Funding Implementation Memo," August 22, 2022, <http://tinyurl.com/HarrisCountyMemoRTC>.

57 Rachel Carlton, "Harris County Commissioners approve \$4M to provide legal services for renters facing eviction." *Community Impact*, September 30, 2022, <https://communityimpact.com/houston/bay-area/city-county/2022/09/30/harris-county-commissioners-approve-4m-to-provide-legal-services-for-renters-facing-eviction/>.

58 Lesley Briones, "Harris County Commissioners expand eviction defense program to all 16 Justice of the Peace Courts with new funding for legal aid services," December 20, 2023, <https://cp4.harriscountytexas.gov/Connect/Newsroom/eviction-legal-aid>.

Figure 5: Annual number of eviction filings in Harris County, 2010-2023



Source: Harris County Justice of the Peace Courts.

Although this was a welcome increase in funding, organizers with the Keep Harris Housed coalition and Harris County policymakers shared a concern about the scope of the need. In a letter signed by over 60 partners delivered to Harris County Commissioners Court on December 7, 2022, the coalition estimated that the total need required an investment of \$20 million over three years. Over the next year, coalition partners continued to work with Harris County Commissioners, particularly the offices of newly elected Commissioner Lesley Briones and Commissioner Rodney Ellis. Coalition members were in constant communication with Harris County staff and legal aid providers to evaluate the program and determine how it could be improved and stabilized as a permanent solution.

On December 19, 2023, the Commissioners amended the EDC and NDS contracts to allocate an additional \$4 million in ARPA funds to the Housing Legal Services Initiative, bringing the total allocated to legal representation services to \$9 million.<sup>59</sup>

Although this fell short of the \$20 million the Keep Harris Housed coalition partners initially advocated for, it matched estimates for the \$4 million in additional annual funding the coalition estimated was

<sup>59</sup> According to FEMA Individual Assistance data as reported by the Texas General Land Office, 150,221 and 258,437 renter-occupied households applied for assistance in Harris County and the City of Houston, respectively. Of those renter households, 16,175 and 14,878 were denied due to \$0 FEMA Verified Loss. FEMA calculated there were 8,740 and 14,878 affected rental units with unmet need in Harris County and the City of Houston, respectively. The Houston Housing Authority reported 18% of their housing stock as damaged. Including Housing Choice Vouchers, a total of 1,513 subsidized rental units sustained storm damage. The Texas General Land Office Community Development & Revitalization Program, *State of Texas Plan for Disaster Recovery: Amendment 13*, September 26, 2023, <https://recovery.texas.gov/documents/action-plans/2017-hurricane-harvey/5b-sap-amend-13.pdf>.

required to provide access to legal aid in all 16 Justice of the Peace Courts.

## Eviction & Representation Trends in Harris County

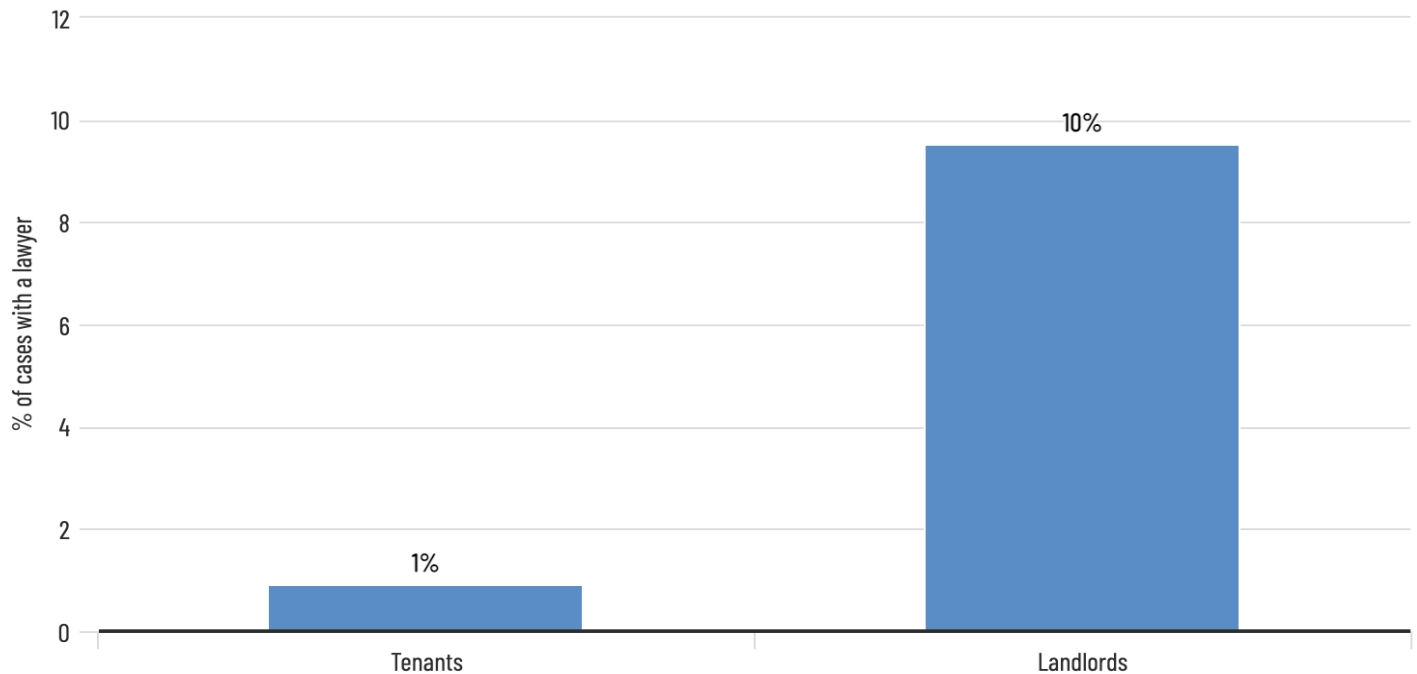
Eviction filings in Harris County ranged between 55,000 and 60,000 annually from 2010-2017. In the wake of Hurricane Harvey in 2017, evictions rose in 2018 and 2019.<sup>60</sup>

Eviction filings fell by almost 50 percent during 2020 and 2021, compared to the average filings over the last decade, due to pandemic-era protections such as the CDC Eviction Moratorium and ERA funding. As these protections expired and funds depleted, evictions began to rise past historical averages. There were a total of 79,626 eviction filings in 2022, and a staggering 81,510 filings in 2023.

In Harris County, fewer than 1% of defendants had formal legal representation between 2017-2021, while landlords were represented 10% of the time. Tenants' lack of access to legal representation contributes to a power imbalance in the courtroom. Research has shown that settlements that are negotiated between two attorneys are fairer to both parties than those where only one party has legal representation. HESN court observers have witnessed a judge ask tenants for their testimony as a legal defense, and when the tenant could not articulate legal jargon, the case would

<sup>60</sup> D. James Greiner, Cassandra Wolos Pattanayak, and Jonathan Hennessy, "The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future." *Harvard Law Review*, 126:4, 2013, <https://harvard-lawreview.org/print/vol-126/the-limits-of-unbundled-legal-assistance-a-randomized-study-in-a-massachusetts-district-court-and-prospects-for-the-future/>.

Figure 6: % of tenants and landlords who have legal representation in eviction cases in Harris County, 2017-2021



Source: Harris County Justice of the Peace Courts.

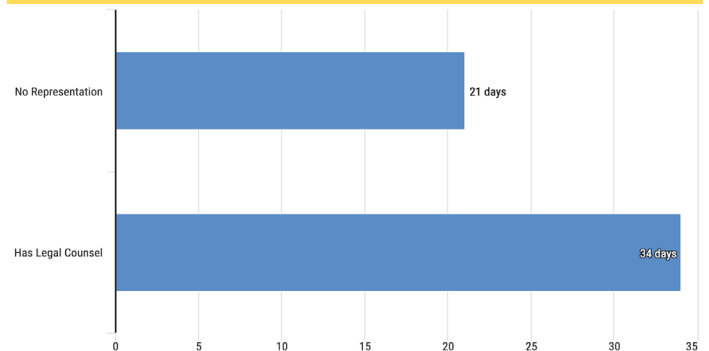
be ruled in favor of the landlord, forcing an unjust eviction. Court observers also witnessed tenants fail to articulate a defense, yet when their lawyer explained the situation, the judge granted a favorable outcome for the tenant.

Harris County’s Housing Legal Services Initiative began to operate in mid-2021. That year, there was a 38% increase in tenants’ legal representation. The following year, the number of cases where tenants had legal representation had once again increased, now by 43%. In 2023, tenants were represented 4 times more often than before the pandemic.

Legal representation helps the tenant navigate longer legal processes when a judgment is not reached during the original hearing. Oftentimes, a judge will reset a case to allow both parties to discuss repayment opportunities, enter negotiations and settlement plans, provide further evidence to the court, and allow social services a tenant applied to, such as SNAP, TANF, or WIC, time to activate. These efforts can prolong the amount of time a case is active in the court database and grant tenants time to catch up on rent payments or begin to seek other housing options.

It is clear that tenant legal counsel buys valuable time for tenants, increases positive outcomes, and helps tenants take advantage of their full protection under the law. Without legal representation, tenants are more likely to be fast-tracked to a default judgment, forced to move out against their will, or undergo an improper eviction with no way to articulate or defend their rights.

Figure 7: Median days from filing to disposition by tenants with and without legal counsel, 2017-2021



Source: Harris County Justice of the Peace Courts.



Attorney Geoff Riddle helps a Harris County resident to complete the CDC Eviction Moratorium Declaration form on March 31, 2021 at the BakerRipley Harbach facility.

# Current State of Eviction Diversion Initiatives in Harris County

## Harris County Access to Legal Aid Providers

Currently, Harris County has contracts with two legal aid providers: Lone Star Legal Aid (LSLA) and Neighborhood Defender Service (NDS). LSLA partners with four other legal aid providers as the EDC; NDS runs an eviction diversion initiative, which includes access to legal representation for qualifying renters. Representatives from any of the six legal aid providers are present in nine out of the sixteen Justice of the Peace courts across Harris County in varying capacities. Clients receive legal advice and possibly representation at their hearing. Prospective clients can access contact information for any of the six legal aid providers prior to their hearing date from a page on the Harris County Eviction Diversion website. Each organization has a different intake process and eligibility criteria, such as income or citizenship requirements. Representation varies depending on each client's situation, but may include legal advice, full representation at trial, assistance with a settlement agreement, or a referral to enroll in the Houston-Harris Helps Rent Relief program while funding was available. Each legal aid provider reports Key Performance Indicators (KPI) to the county regarding the number of clients that complete intake and number of clients represented.



*People meet with attorneys from Lone Star Legal Aid to receive free legal council outside of the courtroom at the Justice of the Peace Court 5-1 on Chimney Rock Rd. on Tuesday, Feb. 14, 2023. Lone Star Legal Aid was present to offer help to hundreds of people whose eviction cases were on the docket Tuesday. Photo by Annie Mulligan, Houston Chronicle.*



*Mamie Kelley, left, and Kira Promise wait to talk to people outside of Judge Steve Duble's courtroom Wednesday, Sept. 13, 2023, at Harris County courthouse in Houston. Photo by Jon Shapley, Houston Chronicle*

## Two Justice of the Peace Courts Launch Eviction Diversion Pilot Program

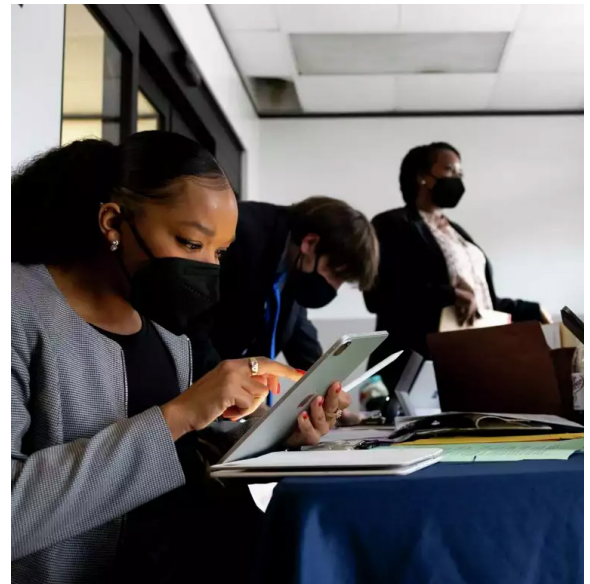
Two Harris County Justice of the Peace courts were chosen to represent the county as grant recipients from the National Center for State Courts (NCSC) in 2023 (along with nine other jurisdictions nationally) to establish a full time Eviction Diversion Facilitator staff position in each court: Precinct 1, Place 2 with Judge Steve Duble and Precinct 2, Place 2 with Judge Dolores Lozano.<sup>61</sup> The Eviction Diversion Facilitator tracks additional demographic data about tenants who are facing eviction that is not tracked by the county, provides proactive outreach to tenants facing eviction before their hearing date to connect them with necessary resources, and connects tenants with a broad range of community resources to reduce the harm of an eviction. The Eviction Diversion Facilitators were hired and onboarded in October 2023, and advocates are enthusiastic to see early results of the initiative in 2024. Judge Steve Duble will also house the Harris County Law Library within his courthouse which “will have three monitors that can be used to access up-to-date legal guides...[and] a separate room where they can video conference with a law librarian.”<sup>62</sup>

<sup>61</sup> Lucio Vasquez. “2 Harris County courts receive grant funding to establish full-time eviction diversion efforts.” *Houston Public Media*, September 6, 2023 <https://www.houstonpublicmedia.org/articles/housing/2023/09/06/461516/2-harris-county-courts-receive-grant-funding-to-establish-full-time-eviction-diversion-efforts/>

<sup>62</sup> R.A. Schuetz, “Facing eviction or ticket? This courthouse is opening a library for those representing themselves,” *Houston Chronicle*,

### Connective Court Navigator Program

For four months in 2023, Connective – a Houston-based non-profit with the mission of transforming social services into a more connected, empathetic and accessible system – partnered with the Alliance and Justices of the Peace to launch a Court Navigator pilot program in six Justice of the Peace courts across Harris County. The Court Navigator was a staff position to support eviction diversion efforts by helping tenants navigate confusion about the eviction hearing process and coordinating services such as rent relief, legal assistance, and housing assistance. Connective found that during court hearings, navigators had “greater success triaging tenants in courts that provided them visibility and a permanent physical space.”<sup>63</sup> Navigators focused their initial contact with tenants on understanding tenant goals and tailoring their services to meet the needs each individual tenant articulated. Overwhelmingly, tenants desired to be connected to ERAP, and 21% of rental assistance cases Houston-Harris Helps received during the months of the Connective Navigator pilot were referrals from Connective Navigators.<sup>64</sup> Navigators also helped persuade landlords to accept rental assistance, serving as valuable liaisons between landlords and tenants. The benefits of Connective Navigators extended beyond their eviction court hearing, as Navigators followed up with clients to discuss options for assistance, and became a valuable point of contact for tenants as they endured the stress of housing instability.



*Attorney Jasmine Simmons of Lone Star Legal Aid looks through dozens of eviction cases outside of the courtroom at the Justice of the Peace Court 5-1 on Chimney Rock Rd. on Tuesday, Feb. 14, 2023. Photo by Annie Mulligan, Houston Chronicle*

### Estimated Impact of a fully funded Right to Counsel Program

Using a model created by Stout Analytics, a consulting firm that provides Right to Counsel evaluation services, **\$4 million over two years will fund some level of representation for approximately 5,000 eviction cases.**<sup>65</sup>

In the future, increasing legal aid funding would result in a significant multiplier effect for Harris County through savings on social service spending. The Stout Analytics model estimates that funding a Right to Counsel program also yields millions in savings for the County and taxpayers by reducing spending on other social services. According to the University of Arizona Law School’s Cost of Eviction Calculator, \$4 million in funding for a Right to Counsel program would have an annual benefit of up to \$46,000,000 from reduced costs associated with homeless shelters, hospital emergency rooms, foster care, inpatient medical fees, and juvenile delinquency.<sup>66</sup> Further investment into a Right to Counsel program would result in more savings on social costs for Harris County and residents participating in federal safety-net programs.

Annual RTC Funding	Eviction Cases Represented (Stout Model)	Benefit (AZ Model)	Annual Net Benefit
\$1,000,000	1,100 - 1,300	\$12,000,000	\$11,000,000
\$4,500,000	5,000 - 5,700	\$52,725,000	\$48,225,000
\$6,600,000	9,300 - 10,300	\$90,651,000	\$84,051,000
\$10,000,000	12,000 - 13,500	\$124,876,000	\$114,876,000

December 12 2023,

63 Connective, How Eviction Diversion in JP Courts Supports Harris County Residents, 2023, Innovation in Action How Eviction Diversion in JP Court Supports Harris County Residents v4.pdf.

64 How Eviction Diversion in JP Courts Supports Harris County Residents.

65 “Eviction Right to Counsel: Resource Center.” Stout, n.d. <https://www.stout.com/en/services/transformational-change-consulting/eviction-right-to-counsel-resources>

66 <https://evictioninnovation.org/2020/04/27/calculator/>

## Case Studies of Comparable Programs

Currently, there are at least 22 jurisdictions across the nation implementing a Right to Counsel program at some capacity. A number of Right to Counsel programs have worked diligently to implement innovative ideas around program funding and structure to ensure legal representation is accessible and amply available for individuals with eviction lawsuits.

Below are a selection of jurisdictions that each highlight certain opportunities for policymakers to consider when developing a Right to Counsel program in Harris County.



*Harris County Precinct 2 staffers Selina Valdez and Tanya Makany-Rivera help a resident apply for rental assistance in Baytown on July 29, 2021.*





# Los Angeles

The Los Angeles' Right to Counsel Coalition was established in 2018, after a motion from Los Angeles City Council calling for a report on Right to Counsel programs. Currently, Los Angeles has an expanded eviction prevention and defense program, not a Right to Counsel ordinance. The city and county of Los Angeles work together to fund the Los Angeles Right to Counsel program with an annual budget of \$30 million per year, which provides funding for legal services to 88 jurisdictions and the eleven courthouses that hear eviction cases. With the joint investments from both county and city, LA county could avoid \$200 million and the City of LA could avoid \$100 million in social services costs.<sup>67</sup> The majority of funding originally allocated was from ARPA along with supplemental aid from the Liberty Hill Foundation and Wells Fargo bank.

On November 8, 2022, LA residents overwhelmingly voted to pass Proposition United to House LA (ULA) or the Homelessness and Housing Solutions Tax, which will permanently fund Right to Counsel. Proposition ULA will:

- Enact a 4% tax on properties sold or transferred for more than \$5 million and a 5.5% tax on properties sold or transferred for more than \$10 million
- Allocate 10% of revenue generated from the tax will go to the Right to Counsel program
- Establish the House LA fund within the city treasury to collect additional tax revenue

## TAKEAWAYS

The Los Angeles Right to Counsel program serves as an example of an effective program that was created without a local ordinance. Given the uncertain landscape in Texas around the implementation of HB 2127, a robust right to counsel in Harris County would need to be established *without* a local ordinance. Instead the program was established by funding promises by the county and local governments and supported by diverse stakeholders. Stay Housed LA is a partnership between Los Angeles County, the city of Los Angeles, and local community and legal service providers. The website is a model for sharing information and resources that can help keep tenants in their homes. Los Angeles County itself has similarities with Harris County. Both are large counties with large cities. Los Angeles County is also at the precipice of an eviction crisis, with evictions in June 2023 at the highest levels in a decade and recent data indicating that 278,020 households in the county are behind on rent (COVID-19 rent protections only expired in Los Angeles in March 2023).<sup>68</sup> The Los Angeles Right to Counsel program has utilized cooperation between the city and county government, resulting in an estimated savings in 2019 of \$49,802,570 in annual emergency shelter costs. Los Angeles Right to Counsel is a model program serving a large, diverse population without a Right to Counsel ordinance. Stay Housed LA demonstrates what is possible through collaborative funding from both county and local government and the significant cost-savings to county/city emergency services.

<sup>67</sup> Cost-Benefit Analysis of Providing a Right to Counsel to Tenants in Eviction Proceedings, *Stout*, December 10, 2019, [https://info.stout.com/hubfs/PDF/Eviction-Reports-Articles-Cities-States/Los%20Angeles%20Eviction%20RTC%20Report\\_12-10-19.pdf](https://info.stout.com/hubfs/PDF/Eviction-Reports-Articles-Cities-States/Los%20Angeles%20Eviction%20RTC%20Report_12-10-19.pdf)

<sup>68</sup> Kyle Nelson, A Judicious Investment: Right to Counsel Is a Cost-Effective Way to Solve Los Angeles' Affordability Crisis and Keep Angelenos Housed. *Strategic Actions for a Just Economy*, 2023, <https://www.saje.net/wp-content/uploads/2023/08/SAJE-RTC-Report.pdf>.



## San Antonio

The City of San Antonio started the first Right to Counsel program in Texas. The program began in 2019 as a pilot program with \$100,000 earmarked from the city's \$1 million Displacement Mitigation Fund. The Right to Counsel pilot served as a component of a broader citywide eviction prevention program, which coordinated other supportive services such as the city-run Emergency Housing Assistance program (EHAP) and Court Navigator programs. The city partnered with Texas Rio Grande Legal Aid (TRLA), which provides outreach and legal representation to tenants who came to eviction court. TRLA also provides “Know Your Rights” workshops throughout the city to inform tenants about their rights.

Any tenant who would like counsel receives legal representation or at least a meeting with an attorney; there are no eligibility guidelines based on income or location. The San Antonio Right to Counsel pilot program was a resounding success. Between 92-94% of families who received legal representation during the pilot program remained housed.

The success of the pilot program led the San Antonio city council to maintain Right to Counsel as a permanent service. Along with ARPA funding, San Antonio has incorporated funding into its annual budget by appropriating \$1.1 million in city general funds for Right to Counsel.

### TAKEAWAYS

The effectiveness of San Antonio's pilot Right to Counsel program in ensuring tenant housing stability speaks to the ability of Right to Counsel programs to achieve positive tenant outcomes, even within the narrow confines of the limited tenant protections that exist in Texas state law. The program's success can be attributed to the cooperation between the Justice of the Peace courts and Housing Navigators. Located within the Justice of the Peace courts, Housing Navigators helped tenants complete rent relief forms, referred them to TRLA, and connected them with other helpful resources.<sup>69</sup> Housing Navigators relieved a burden from legal aid providers that has been observed in some Harris County eviction courts, where legal aid providers and their support staff are tasked with assisting tenants with rent relief applications, on top of providing quality legal representation. Another notable takeaway of San Antonio's Right to Counsel program was the variety of legal services that were funded through the program, including a free legal advice hotline, legal counseling, weekly legal clinics in the community, and full representation at trial.<sup>70</sup> Each of these services was coordinated by a different legal aid provider, ensuring that no one legal aid provider was overburdened. Tenants are not seeking a one size fits all solution to their legal issues, and tenant issues may not necessitate full legal representation. By offering a wide range of legal services, San Antonio's Right to Counsel program ensures that legal aid providers are working in coordination to appropriately leverage their resources to meet the variety of legal challenges that tenants are facing.

69 Homebase and LISC San Antonio. *San Antonio Eviction Prevention Program Evaluation*. Homesense and LISC San Antonio, April 2022. [https://www.lisc.org/media/filer\\_public/01/91/0191808f-36bd-4ac3-9245-c6ef66d856e9/san\\_antonio\\_eviction\\_prevention\\_program\\_evaluation\\_52622.pdf](https://www.lisc.org/media/filer_public/01/91/0191808f-36bd-4ac3-9245-c6ef66d856e9/san_antonio_eviction_prevention_program_evaluation_52622.pdf)

70 “San Antonio Eviction Prevention Program Evaluation” LISC. April 2022. [https://www.lisc.org/media/filer\\_public/01/91/0191808f-36bd-4ac3-9245-c6ef66d856e9/san\\_antonio\\_eviction\\_prevention\\_program\\_evaluation\\_52622.pdf](https://www.lisc.org/media/filer_public/01/91/0191808f-36bd-4ac3-9245-c6ef66d856e9/san_antonio_eviction_prevention_program_evaluation_52622.pdf)



# Milwaukee

In 2021, Milwaukee County’s Board of Supervisors passed a resolution in favor of a Right to Counsel for residents facing eviction. The pilot program, which is still running, titled “Eviction Free Milwaukee” contracts with two local legal aid providers to provide full representation in court for tenants facing eviction or foreclosure across the county. The program utilizes public funding from the American Rescue Plan and private funding from the United Way of Greater Milwaukee. Full representation is guaranteed to all renter households in the county, and full representation is determined by legal aid providers through an “understanding of the needs and goals of their clients,” and may or may not include representation at trial.<sup>71</sup> The program also utilizes a website with a chatbot that asks tenants a series of questions to best tailor the help they are eligible for through the program.<sup>72</sup>

Since September 2021, the legal aid providers in Milwaukee have helped the majority of their clients achieve their case goals. The three most common goals: to prevent an eviction judgment, seal an eviction record, and prevent an involuntary move were achieved by 76%, 72% and 70% of clients who had those goals, respectively. The representation rate rose significantly from 2 - 3% of defendants facing eviction to a monthly rate fluctuating between 13.7% and 16.2%. When looking towards likely legal aid eligible households, the representation rate was 25%. In the first year and four months of the program, legal representation in Milwaukee had an estimated economic benefit of \$9-9.3 million, including foster care, homelessness, healthcare, and school spending – for only a \$3 million private investment.

## TAKEAWAYS

One significant takeaway from Milwaukee’s design of their pilot Right to Counsel program is the utilization of both private and public funding streams to ensure the program can operate on a countywide scale. Despite the population difference between the two jurisdictions, the strategy to use both private and public funds to appropriately scale a right to counsel program in Harris County can be replicated to meet the demand of tenants facing eviction. The private funding was also pledged for five years, indicating a long-standing private commitment to supporting the program even after public funds may expire. Another critical takeaway from Milwaukee is the program’s robust data collection, which was conducted through the legal aid service providers. Legal aid expanded the types of data they collected to include client goals, client household demographics, and case complexities, data points which may not typically be collected and shared for evaluation purposes. By focusing outcomes on client goals, the effectiveness of the pilot program can be understood through the nuances of each tenant’s unique eviction situation. By modeling this data collection approach, Harris County can better understand which populations are being served to better target resources and potential shortcomings in the program’s implementation through stronger evaluations.

71 Stout, “Eviction Free Milwaukee Annual Independent Evaluation September 1, 2021 to December 31, 2022,” 2023, [https://urban-milwaukee.com/wp-content/uploads/2023/03/Stouts2022IndependentEvaluationofEFM\\_FINAL\\_2023.03.061.pdf](https://urban-milwaukee.com/wp-content/uploads/2023/03/Stouts2022IndependentEvaluationofEFM_FINAL_2023.03.061.pdf)

72 *EvictionFreeMKE Connector*, n.d. <https://communityinput.typeform.com/to/WYBP4v7w?typeform-source=www.eviction-freeemke.org>

# Barriers to Effective Implementation of a Comprehensive Legal Aid Program in Harris County

With limited legal arguments and strained capacity, local legal aid providers and volunteers have worked tirelessly to defend tenants at risk of eviction in Harris County since the beginning of the COVID pandemic.

In this section, we discuss some of the challenges that efforts to implement a comprehensive Right to Counsel program in Harris County must overcome.

## Expiration of Current Federal Funding

The COVID-19 pandemic brought an unprecedented amount of federal funding to cities, counties, and states. Harris County received \$915 million in funding through the American Rescue Plan Act, while the City of Houston received \$630 million.<sup>73</sup> This is in addition to federal stimulus received through the CARES Act and other COVID-era programs.

Both jurisdictions effectively collaborated to launch a joint rental assistance program, and Harris County has begun breaking ground on new affordable housing projects, one of the key elements in a long term strategy to address the eviction crisis. While Harris County has committed \$9 million in federal funding to expand access to eviction legal aid, Houston has not provided any dedicated legal aid funding.

With US Treasury rules requiring that all American Rescue Plan Act dollars must be obligated by the end of 2024, Harris County now has a limited time to decide on final allocations of funding.

Regardless of whether additional ARPA funding is dedicated to legal aid in the coming year, ARPA funds must be fully spent by the end of 2026. This necessitates a long term solution within the county budget, through partnerships with other county jurisdictions to share costs, or through new funding sources.

<sup>73</sup> “American Rescue Plan,” *Harris County Office of County Administration*, accessed February 27, 2024, <https://harriscountyarpa.org/>.

## Tenant Need Exceeds Legal Aid Provider Capacity

As eviction filings have risen, the need for legal representation has also risen. One challenge noted by the legal aid providers pertained to the hiring and retaining of necessary staff to provide adequate representation in eviction court for the amount of tenants in need with their current funding sources. Attorneys have expressed concerns of simply not having enough staff members to cover all of the clients that qualify for representation within all 16 courts, especially during high volume dockets. The volume of prospective clients that desire assistance must go through an intake process, which reduces the lawyers capacity to adequately attend to litigation. Lack of legal support staff capacity for intake is indicative of another staffing challenge that these organizations are experiencing as they attempt to meet the demand on the day of the trial. Acquiring talent for eviction defense work has presented a challenge for legal aid providers as these positions are time-restricted to grant funding availability. Moreover, retaining talent has been a challenge for legal aid providers due to more competitive salaries and benefits offered within the legal field.

## Lack of Standardization of Justice of the Peace Procedures

Justices of the Peace are uniquely positioned to implement voluntary eviction diversion efforts in their individual courts. While the baseline conduct and responsibilities expected of Justices of the Peace across the state are governed by the several Texas government codes and the Texas Rules of Civil Procedure, each Justice of the Peace holds a great deal of control in the staffing and administration of proceedings in their court as long as there is no contradiction with the rules laid out in the law. On a local level, Justices

## Texas State Law Restricts Local Ordinance Making Power

of the Peace in the county set and agree to Local Rules of Administration, which ensure “the efficient processing of cases that come before the Harris County Justice Courts” so that both parties have a “meaningful opportunity to be heard.”<sup>74</sup>

Justices of the Peace can leverage their discretion in the administration of their court to implement new staff positions in their courts that assist with eviction diversion, allow legal representatives to confer with both parties before the hearing, refer parties to mediation instead of immediately rendering a judgment, offer service providers space in their court to provide resources to tenants, and actively encourage parties to enter into written settlement agreements to avoid appearing before the judge.

Still, interventions that yield positive outcomes for tenants appearing in eviction courts are currently being implemented on a court-by-court basis, with no uniformity across courts and no protections to ensure these interventions are codified in state law or local code. One Justice of the Peace court in a precinct may support these proactive diversion initiatives, while another conducts business strictly according to the baseline standard dictated by the law.

Notwithstanding a Justice of the Peace’s ability to implement voluntary interventions in their court, there exists a lack of oversight in the administration of Justice of the Peace courts. As the Justice of the Peace court is not a court of record, it is impossible to track a Justice of the Peace’s standard practices of conduct. This lack of oversight that exists can sway landlords to file their lawsuit in courtrooms where they know the Justice of the Peace is more amenable to the plaintiff or whose dockets are excessive, rendering thorough fact-finding and testimony almost impossible. This imbalance of courtroom standards may compromise the justice that tenants may receive on the day of their eviction hearing.

The lack of mechanisms within the law to enforce uniform administrative proceedings in Justice of the Peace courts presents a key challenge to the implementation of a Right to Counsel program for tenants. Without clear administrative guidelines set forth by the state, enforcement power from the county, and complete buy-in from all local Justices of the Peace, a Justice of the Peace would have the discretion to restrict certain spaces in their courtroom for legal aid providers to offer intake or legal advice, can choose to not inform tenants of when legal aid providers are present in the court before the docket starts, or could dissuade tenants from utilizing legal services that are made available to them.

<sup>74</sup> Harris County Justice Courts, “Harris County Justice Courts Local Rules,” *Harris County Justice Courts*, updated December 19, 2022, <http://www.jp.hctx.net/info/RULES%2012-19-2022.pdf>.

House Bill 2127, colloquially known as the “Death Star Bill,” was signed into law by Governor Greg Abbott in June of 2023. The bill preempts local ordinances that attempt to regulate local conduct in an area that is already regulated by one of eight codes in the Texas government, including the Texas Property Code, which regulates landlord-tenant contracts.

Prior to the passage of HB 2127, a local government could assume that it could regulate any area where state statute is silent. However, HB 2127 turns this assumption on its head, establishing that local governments may not regulate where statute is silent. HB 2127 even goes as far to add a subsection that explicitly prohibits any “ordinance, order, or rule regulating evictions or otherwise prohibiting, restricting, or delaying delivery of a notice to vacate or filing a suit to recover possession of the premises under Chapter 24 [of the Texas Property Code]”.<sup>75</sup> The bill also allows citizens and private entities to sue local governments for ordinances that they deem they have been harmed by, and that infringe on their rights as delineated by the various State Codes covered under the law. The citizen or entity that sues a municipality against an ordinance may have the ordinance overturned by a judge and damages awarded if they prevail in court.<sup>76</sup>

HB 2127 compromises ordinances such as those passed in Dallas and Austin that implemented a Right to Cure back rent before a landlord can file an eviction case. Furthermore, given the vague language of the bill, HB 2127 could open the door for lawsuits against new eviction prevention and diversion ordinances that could potentially be passed by municipalities, depending on how narrowly “regulating evictions” is interpreted by a local judge.



<sup>75</sup> Texas House of Representatives. *H.B. 2127*, 2023, <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB02127F.pdf#navpanes=0>.

<sup>76</sup> Michael Handy, “Republican and Democratic Cities Band Together to Blow Up the Death Star Bill,” *Texas Monthly*, November 2023, <https://www.texasmonthly.com/news-politics/republican-and-democratic-cities-band-together-to-blow-up-the-death-star-bill/>

# Recommendations

There are clearly many hurdles to effective implementation of a comprehensive Right to Counsel program in Harris County that fully addresses the needs of tenants at risk of eviction. In this section, we offer recommendations for policymakers to help guide their efforts, as well as additional steps that must be taken beyond the courts to address the larger socio-economic drivers of evictions.

## Forge Strong Partnerships between all Stakeholders

Texas governments have a unique system of overlapping jurisdictions, which often results in overlapping responsibilities and services provided to the residents. Many jurisdictions rely on private partnerships with non-governmental organizations (NGOs) to scale large projects, which was the case with the Houston-Harris County ERAP.

The population and geographic size of Harris County necessitates convening similar partnerships in order to provide the scope of funding necessary to launch a Right to Counsel program and the breadth of services needed to adequately address housing instability issues facing tenants. The City of Houston and Harris County can jointly contribute funding for legal aid providers, rent relief, and social services in order to enhance the legal aid providers' capacity to respond to the need. Shared oversight by both government bodies is also critical to hold stakeholders accountable for their role in the greater eviction diversion effort.

Private stakeholders should also be included as partners in program design and implementation. Harris County's civil society effectively mobilized at the beginning of the pandemic through the Keep Harris Housed coalition and other formations to provide capacity for eviction diversion and prevention efforts. Unifying efforts extends the local government's capacity to scale programs and services effectively.

Two types of housing – unstable households have been identified in this work: households with emergency issues who require one-time financial assistance and households facing chronic instability who would benefit from navigation to long-term social service and welfare programs. Coordinating with social service providers and helping at-risk households navigate these services, which include but are not limited to



*Volunteers from a Keep Harris Housed event in Greenspoint on June 30, 2021.*

emergency rent relief programs, one-time financial assistance programs, federal welfare programs, and homeless intake services, is equally necessary to address housing stability challenges for families and individuals who arrive at eviction court. Coupling a Right to Counsel program with a coordinated and accessible pipeline to social services would help stabilize tenants quicker and potentially stop an eviction before it starts. Early research from the disbursement of ERA during the COVID-19 pandemic found that the payments increased housing stability and improved the mental and physical health of the recipients.<sup>77</sup> A permanent source of rent relief or other financial assistance could help keep tenants who fall behind on their rent due to an unforeseen expense like a medical bill or car repair.<sup>78</sup>

Streamlining information sharing can also present opportunities to connect at-risk households with other benefit programs and social services. These collaborative efforts bring more stakeholders to the table and increase a household's chances of self-sustainability with less financial resources.

## Create Dedicated & Diversified Sources of Funding

Many jurisdictions across the country utilized pandemic-era ARPA or ERA funds to establish a Right to

<sup>77</sup> Whitney Airgood-Obrycki, "The Short-Term Benefits of Emergency Rental Assistance," *Joint Center for Housing Studies at Harvard University*, June 14, 2022, <https://www.jchs.harvard.edu/research-areas/working-papers/short-term-benefits-emergency-rental-assistance>.

<sup>78</sup> U.S. Department of the Treasury, "New Treasury Data Shows Emergency Rental Assistance Program Made Nearly 10 Million Payments to Families at Risk of Eviction," *Press Release*, February 15, 2023, <https://home.treasury.gov/news/press-releases/jy1274>.

Counsel program. In San Antonio, Los Angeles, and in many other regions, permanent, locally sourced revenue streams were also established to ensure the long-term health of the program. Permanent funding for the program could be achieved through a mix of private investments, philanthropic grants, and public funding. Right to Counsel programs across the nation have effectively used this mixed approach to utilizing funding from the United Way, foundations, and financial institutions. Expanding the funding base of the program will increase the stability and longevity of the program.



*Cars lined up at a drive-through rental assistance event in Gulfton on May 8, 2021*

Through permanent funding, a Right to Counsel program would have the necessary resources to ensure that legal aid providers contracted for this work are able to acquire and maintain the staff necessary to provide representation and legal advice efficiently and effectively. Permanent funding would also build program credibility and increase awareness of legal representation as a reliable community resource.

## Develop Centralized Access Points

Other jurisdictions with Right to Counsel programs have encountered the challenge of eligible tenants remaining unaware of the program. There must be procedures to ensure information about the program is accessible and delivered in a timely manner to populations at risk of eviction.

Harris County should seek to implement a centralized eviction diversion website operated by the city, county, or a private stakeholder, with resources on renters rights, navigation to rental assistance, contact information for legal aid providers and mediation, and a chatbot feature, as seen in Milwaukee and New York City. Interactive chatbots allow tenants to walk through a series of step-by-step questions that navigate them to the proper resources and intake forms based on their individual eviction circumstances. Cleveland's Right to Counsel program also offers a

downloadable outreach toolkit for community partners that is accessible on their centralized eviction prevention website.<sup>79</sup> Landlords in Harris County should also be instructed to provide a Notice of Tenant's Rights alongside the Notice to Vacate, which provides tenants with information on their basic rights, resources on rent relief, and how to access Right to Counsel representation.

Centralized access points streamlines outreach to at-risk tenants, reduces confusion of services and application fatigue, and strengthens partnerships among social services providers. By reducing the barriers to entry for tenants in need, legal aid providers can focus on litigation rather than navigation.



*Volunteer Crystal Davila helps a tenant apply for rental assistance at a Keep Harris Housed event in Pasadena on May 15th, 2021*

## Incorporate Eviction Diversion into Justice of the Peace Court Practices and Procedures

To aid the effective implementation of a Right to Counsel program, local Justices of the Peace should take proactive steps to administer eviction hearings in a manner that is both consistent with the law and fair to tenants. Justices of the Peace in Harris County should work to set baseline standards of administration in their courts that are mindful of equity as well. City and county governments along with other stakeholders should work with Justice of the Peace courts to implement eviction diversion programs and offer access to legal information and other social services.

One best practice that Justices of the Peace should adopt requires the plaintiff to submit proof of a proper Notice to Vacate to the court including the method in which the Notice to Vacate was delivered, especially in instances when a tenant testifies they were improperly notified.

<sup>79</sup> ““Community Resources,” *Free Eviction Help*, accessed February 27, <https://freeevictionhelp.org/toolkit/>.



*Gregory Saez and Loreta Kovacic, Harris County's new eviction diversion facilitators, chat with Civic Heart community services program coordinator, Kira Promise, right, Wednesday, Dec. 20, 2023, at the county annex in Houston. Civic Heart, which can connect tenants with free job training, is an example of the type of service provider Saez and Kovacic are bringing to their courthouses. Photo by Kirk Sides, Houston Chronicle*

Another best practice would require both parties present to speak with legal aid providers before the case is heard by the judge. This practice ensures that tenants are able to receive legal advice or representation before the trial and that tenants, landlords, and lawyers are able to confer about the specific circumstances of a case and possibly negotiate a settlement before the case is heard by the Justice of the Peace, alleviating the need to go in front of the judge. This practice may be promulgated through Harris County Local Rules, such as Harris County Local Rule 1.3 which authorizes a judge to motion parties to alternative dispute resolution.<sup>80</sup>

Another administrative change that could be made through Local Rules is setting maximum docket sizes for a single eviction docket within the county to ensure that there is a fair amount of time for each hearing.

The Twenty-Seventh Emergency Order from the Supreme Court of Texas authorized the creation of the Texas Eviction Diversion Program (TEDP), which included a provision that allows all records related to a tenant's eviction to remain permanently sealed following the tenant and landlord's participation in the program. With the expiration of the Emergency Order in July of 2023, the ability to seal eviction case records also expired. A common tenant goal is to keep an eviction off their record. Unlike other jurisdictions, Texas currently lacks legal mechanisms for tenants to achieve this desired outcome. Given the success of the TEDP and the grave impact that an eviction filing has on a tenant's record, this is a best practice when tenants and landlords reach agreements. Reducing harm

<sup>80</sup> "Harris County Justice Courts Local Rules," *Harris County Justice Courts*, updated December 19, 2022. <http://www.jp.hctx.net/info/RULES%2012-19-2022.pdf>.

allows tenants to find stability much faster, reducing the strain on social service programs.

A formal implementation of the aforementioned best practices into all Justice of the Peace courts could come from alterations to the Texas Justice Court Training Center (TJCTC) trainings for new judges in order to emphasize the importance of thorough discovery during eviction hearings. TJCTC should also ensure that training rhetoric is socially conscious and notes the severe consequences of an eviction on a tenant's health, safety, and financial status and the magnitude of the ongoing eviction crisis across the state.

**Strengthen Landlord-Tenant Relationships through Eviction Diversion**

Landlords and tenants may reach the point of an eviction lawsuit when communication breaks down and the relationship sours. Strengthening this relationship and opening lines of communication for negotiation between parties through eviction diversion tactics can result in positive outcomes for both landlord and tenant. To supplement a robust Right to Counsel program, eviction diversion programs must be implemented simultaneously in the jurisdiction to ensure that landlords with tenants at risk of eviction do not reach the point of needing to file the lawsuit. Mediation and payment plans allow for tenants to remain stably housed while they work to pay off delinquent rent, and prevent the harm to their background check and credit report that comes from an eviction filing. Encouraging landlords to notify the tenant of their rights and make good faith attempts to mediate and discuss rent relief options with tenants before filing for eviction can save them the costs of eviction filings and legal services. The city and county should provide resources and directives to landlords and tenants that encourage payment plans and offer mediation services to proactively address a wide variety of tenant-landlord issues that may arise.





Mediation without Right to Counsel often results in an uneven distribution of power between an unrepresented tenant and their landlord, regardless of whether their landlord has representation or not. Tenants who are unrepresented may unknowingly waive away rights, such as their right to appeal, or agree to unfair terms without counsel present to advise them in the mediation process. Places like Philadelphia and Louisville have seen success with proactive mediation initiatives which could be modeled in Harris County.

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Pilot eviction diversion programs could be implemented through an ordinance requiring landlord participation in mediation or a payment plan in good faith, but such an ordinance would inevitably be threatened by HB 2127. On the other hand, Justice of the Peace courts could staff mediators and voluntarily encourage landlord and tenant participation on the date of the hearing, and the City and County could provide resources to landlords on the benefits of mediation through outreach and education.

## Reduce Tenant Need through Affordable Housing & Job Investments

An investment in Right to Counsel programs is driven by the exorbitant need for tenants to access legal resources in eviction court. The eviction crisis in Harris County is a direct reflection of the need for affordable housing and underinvestment in affordable housing construction. Tenant stabilization and eviction prevention is not possible without additional investments in the construction of affordable housing.

In order to assist the most low-income households, the majority of these units would need to target households earning less than \$35,000 or 60% median household income (MHI). This would offer tenants the opportunity to choose where they would like to live, whether it's close to schools, work or cultural centers, all while minimizing their risk of eviction due to affordable rents. Residents should not be displaced from their neighborhoods, and affordable and decent housing should be available in every neighborhood across the county.

Harris County has recognized the need to invest in affordable housing, having allocated up to \$30 million in ARPA funding to add 540 units of affordable hous-

81 "City of Philadelphia's Eviction Diversion Program," *City of Philadelphia Department of Planning and Development*, accessed February 25, 2024, <https://eviction-diversion.phila.gov/#/About>.

82 Divya Karthikeyan, "The mechanics of Louisville's eviction mediation pilot program," *Louisville Public Media*, accessed February 24, 2024, <https://www.lpm.org/news/2023-07-14/the-mechanics-of-louisvilles-eviction-mediation-pilot-program.e>



ing at five sites. While we applaud this investment, more will be needed to address the needs of the nearly 500,000 Harris County households with incomes below \$75,000 who are paying more than 30% of their income on housing.

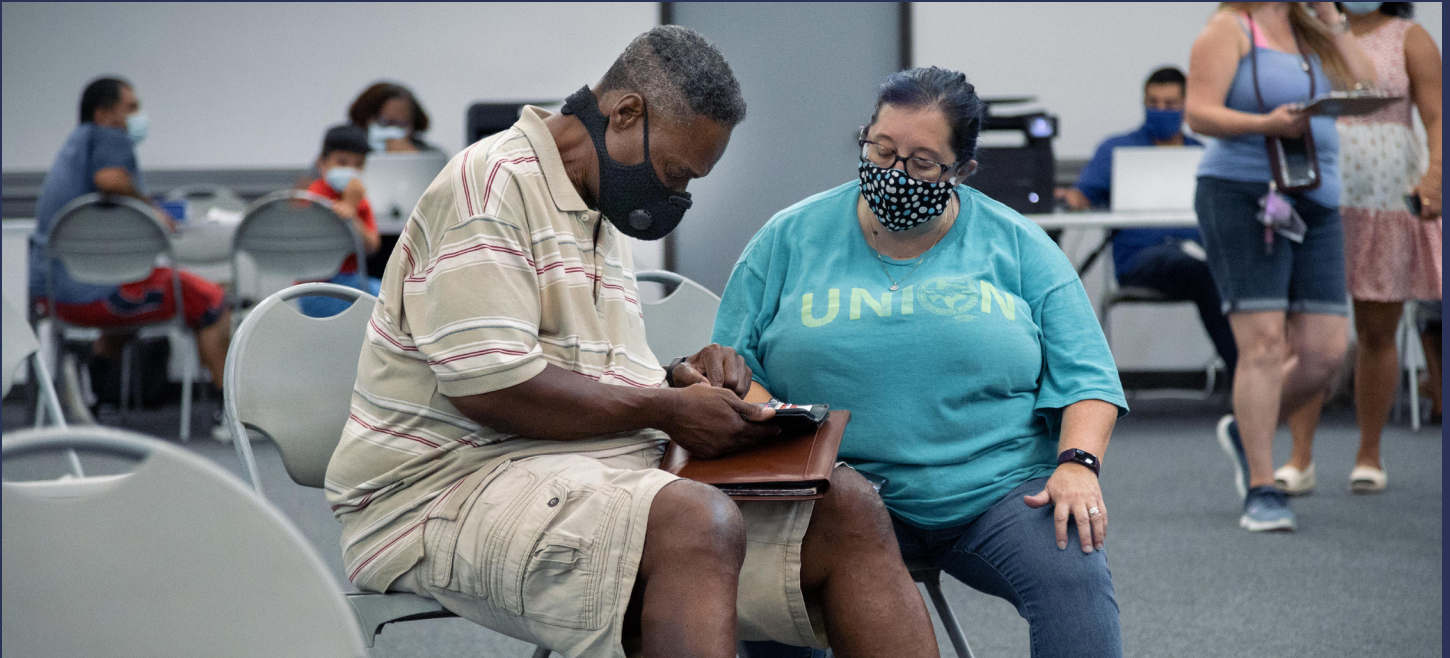
But in order to address a problem of this magnitude, we must also engage with the root causes. There is simply too little affordable housing in Harris County, wages are too low for many to afford the housing that exists, and the law limits the rights of tenants struggling to keep up with rising costs.

In 2023, the court approved a \$9.1 million contract to double enrollment in local union apprenticeships in the building and construction trades and create new ones in the entertainment and transportation industries.<sup>83</sup> The investment, which was funded through federal ARPA money, was among the largest investments in union apprenticeship training programs in the country. The implementation of the Inflation Reduction Act and Infrastructure Investment and Jobs Act will help local governments like Harris County expand employment opportunities for residents. Without good jobs, Harris County residents will continue to struggle to make ends meet.

Only by expanding access to good-paying, safe jobs with real training and advancement opportunities can we hope to offer residents in the eviction cycle real relief. Otherwise, hundreds of thousands of our neighbors will continue to struggle to keep a roof over their heads, even if more affordable units are made available.

83 Texas Gulf Coast Labor Federation AFL-CIO, "Harris County passes historic \$9.1 million investment in union apprenticeship programs, 2023," <https://gcaflcio.medium.com/harris-county-passes-historic-9-1-million-investment-in-union-apprenticeship-programs-d642ccc16b76>.

# The Path Forward for Harris County



Harris County's eviction crisis is driven by a multitude of factors, but the basic problem is a simple one: far too many renters are unable to afford their rent.

Nearly 500,000 Harris County households are housing cost burdened. Hundreds of thousands of families in our communities are one life event – one missed paycheck, medical emergency, flat tire – away from their belongings being thrown onto the street by a constable and no longer having a roof over their head. Evictions traumatize children, impoverish families, and diminish their ability to gain secure, stable housing in the future – and they happen disproportionately to Black, Latinx, and immigrant communities. Increasing rates of renters in the county endured financial instability due to job loss and COVID-19 expenses, and rising rents during the pandemic led to a rise in eviction rates that has persisted in the years since 2020.

We must collectively do everything we can to keep tenants from experiencing an

eviction. Despite the loss during the pandemic, tenant protections expanded. There is a current opportunity to continue to protect tenants by not returning to the policies of the past that created the housing crisis. Establishing a robust Right to Counsel program in Harris County eviction courts is an effective policy intervention proven to address the displacement crisis and keep working families in their homes. Harris County will join in a national movement to make eviction courts a fairer place. We must also expand eviction diversion program, improve the functions of our Justice of the Peace courts, and address root causes of housing instability such as the lack of affordable units for renters.

Legal representation for tenants facing losing their homes can go far in mitigating the negative impacts of evictions. In order to address the crisis in Harris County, we must take action to establish a Right to Counsel in our eviction courts.

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