

# Right to counsel for tenants facing eviction



## Summary

Eviction is common in Milwaukee and harms individual and community health. People who are evicted can face major disruptions in their lives, including job loss for adults and negative impacts on education for children. They are more likely to move to lower quality housing and to have trouble finding safe and stable housing in the future, because many landlords are reluctant to rent to people with eviction records. In Milwaukee eviction judgments are made in small claims court. Low-income tenants have limited access to pro bono legal support through a variety of community organizations but have no guarantee of legal representation. Tenants who are represented by lawyers are more likely to avoid eviction, and cities that have adopted right to counsel policies have seen decreased rates of eviction filings and evictions.

## Recommendation

➤ **Milwaukee County:** Adopt a right to counsel for low-income tenants in eviction proceedings

## Eviction is excessive in Milwaukee and contributes to inequities

Eviction is the legal process of expelling a tenant from a housing unit, and Milwaukee's eviction crisis has been well documented.<sup>1</sup> In the City of Milwaukee in 2018, over 12,000 evictions were filed and about 5,500 households were evicted.<sup>2</sup> In 2018, there were over 4 legal evictions for every 100 renter households.<sup>1,2</sup> Milwaukee's eviction rate is nearly twice as high as the rate across the United States.<sup>3</sup>

There are stark inequities in eviction by geography and race. In the 10 neighborhoods with the highest eviction rates, the rates range from 11% to 20%. Milwaukee's high levels of segregation, created through decades of government-sanctioned policies like redlining and racially restrictive covenants, mean that African Americans are much more likely to live in high-poverty neighborhoods with high eviction rates.<sup>4,5</sup> While the population of the City of Milwaukee is 38% African American, with a 25% poverty rate, the combined population of the 10 neighborhoods with the highest eviction rates is 73% African American and has a 40% poverty rate.<sup>6-8</sup> Previous research has found that African American women in particular are harmed by eviction.<sup>9</sup>

## Eviction is associated with a wide range of harms to health

Stable housing is key for supporting mental health, especially for mothers and their children. Mothers who were evicted in the previous year experienced more material hardship and parenting stress, higher rates of depression, and worse self-reported health for themselves and for their children.<sup>10</sup> Higher rates of material hardship and depression persisted for at least 2 years after eviction. Involuntary moves are also associated with homelessness, likely the most extreme form of housing instability, which comes with a host of physical and mental health risks.<sup>11</sup>

Housing instability makes it difficult for kids in particular to succeed. The stress that parents experience can decrease their ability to support their children, and frequent moves are associated with behavioral problems for school-age children.<sup>12</sup> Frequent moves also interfere with kids' education. Housing instability means it's more likely that kids will miss school or change schools frequently, which can affect long-term educational attainment, a strong driver of adult health outcomes.<sup>13,14</sup> In addition to effects on individual children, high rates of turnover among students can affect the educational attainment of everyone in a school or classroom.<sup>15</sup>

i The eviction rate can include duplicate households if they experience eviction more than once per year.

If someone has been evicted, or even just had an eviction filed against them, these records are publicly available online on Wisconsin's Consolidated Court Automation Programs (CCAP). The lasting consequences of eviction also include harm to future employment and earnings, making it harder for people to earn steady incomes that support housing and community stability.<sup>10</sup>

## The eviction process

Legal eviction proceedings in Wisconsin follow this basic process<sup>16</sup>:

- A landlord must give their tenant an eviction notice in writing before filing an eviction in court. Depending on the reason for eviction, notice can range from 5 to 30 days, and the tenant may be given an opportunity to address the problem (e.g., to pay a late rent payment).
- After the notice period, the landlord must file paperwork in court to pursue a legal eviction filing and court hearing. The tenant must be given at least 5 days' notice of a court hearing.
- Eviction cases are handled in small claims court. A judge can rule in favor of the landlord or tenant, or the parties can agree to a "stipulated dismissal" in which the case is dismissed if the tenant agrees to certain conditions such as a rent payment plan.
- If the judge rules in favor of the landlord, the landlord must file additional paperwork with the court and the County Sheriff's office, and the Sheriff's Office then must ensure that the tenant leaves the unit within 10 days.

## Court is challenging for tenants, and legal representation is limited

The majority of tenants facing eviction in Milwaukee do not have legal representation, and available representation is limited in scope, although the network of legal services is growing. Currently, someone facing eviction from private housing in Milwaukee County has access to limited, same-day representation 3 to 4 days a week through Legal Action of Wisconsin's Eviction Defense Project, based in the County Courthouse.<sup>16</sup> Tenants can also obtain "extended representation" from Legal Action of Wisconsin and the Legal Aid Society of Milwaukee, when these organizations have staff capacity.<sup>16</sup> With extended representation, lawyers are able to do additional research, prepare documents in support of a client's case, and attend multiple court dates. Other pro bono representation may be available from private attorneys and other community organizations.

Court can be confusing and difficult to navigate for tenants facing eviction. While judges and landlords are generally comfortable and familiar with the court system, tenants are often in crisis, facing the enormous stress of the loss of their home. In the words of one housing counselor:

*I always try to warn people that what's fair and what's legal are not the same thing. So tenants go to court and they think 'well I'm gonna tell this judge this and I'm gonna win.' . . . The landlords, this is their business, they know what check marks they're trying to accomplish.*

— Housing Service Provider in Milwaukee

## People with legal representation have better outcomes

Tenants with counsel have better outcomes in eviction court, whether that is avoiding eviction entirely or negotiating a more favorable plan and timeline to move out of a housing unit and avoid homelessness. Expanded funding for legal aid in New York City beginning in 2013 led to a major drop in evictions, and when the city implemented a limited right to counsel in 20 ZIP Codes in 2017, those neighborhoods saw a steep decline in eviction proceedings compared with other areas.<sup>17</sup> A pilot program similar to Milwaukee’s Eviction Defense Project in Lansing, Michigan, found a reduction in the rate of formal and informal evictions, as well as a reduction in defaults when tenants don’t show up to their court dates.<sup>18</sup>

### Recommendation

Given the harms to health caused by eviction, and the evidence that increased legal representation reduces evictions, we recommend that Milwaukee join the growing right to counsel movement.

- **Milwaukee County:** Establish a right to counsel for low-income tenants facing eviction

### Examples

Multiple cities have passed a right to counsel for low-income tenants in eviction proceedings.

| Location            | Year passed | Income limits and other details  |
|---------------------|-------------|--|
| ✓ New York City     | 2017        | <ul style="list-style-type: none"> <li>• Below 200% of the federal poverty line</li> <li>• Tenants must live in certain ZIP Codes with high eviction rates, and the program has a 5-year plan to cover the entire city<sup>17</sup></li> </ul> |
| ✓ Newark, NJ        | 2018        | <ul style="list-style-type: none"> <li>• Below 200% of the federal poverty line<sup>19</sup></li> </ul>  |
| ✓ San Francisco, CA | 2018        | <ul style="list-style-type: none"> <li>• No income limits<sup>20</sup></li> </ul>  |
| ✓ Philadelphia, PA  | 2019        | <ul style="list-style-type: none"> <li>• Below 200% of the federal poverty line<sup>21</sup></li> </ul>  |
| ✓ Cleveland, OH     | 2019        | <ul style="list-style-type: none"> <li>• Below 100% of the federal poverty line</li> <li>• Tenants must have at least one child living with them<sup>22</sup></li> </ul>   |

## Complementary policies and programs

- **Tenant-landlord mediation:** Mediation supports tenants and landlords in finding mutually beneficial resolutions to disputes outside of court.
- **Rental resource center and expanded training:** A rental resource center would provide streamlined access to information and services for tenants and landlords and expanded training opportunities on their rights and responsibilities.
- **Consolidated Court Automation Programs (CCAP) reform:** Reforms to CCAP should seal eviction filings in which a landlord did not prevail and reduce the amount of time that completed evictions are publicly available.
- **Just-cause eviction:** Just-cause eviction policies limit and clarify the specific reasons that a landlord can evict a tenant.

## Key Resources

- [The National Coalition for a Right to Counsel](#) tracks legislation and provides guides to developing and implementing expanded access to counsel in civil cases.
- NYU's Furman Center published a policy brief with lessons learned from the first year of New York City's right to counsel: [Implementing New York City's Universal Access to Counsel Program: Lessons for Other Jurisdictions](#).

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