

The Right to Counsel and Social Work for Those Affected by Housing Instability

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Statement of the Problem

Poverty has been a problem since the beginning of history's documentation. Within poverty, there are many areas of concern with those individuals who live it daily; healthcare, education, employment stability and status, addiction, criminal records, and housing instability to name a few. Social workers strive to have their clients' basic human needs met, including shelter, food, clothing, education, medical services, and education. Recently, the global COVID-19 pandemic has hit communities with devastation, leaving thousands evicted from their homes after years of exemplary tenancy.

The United States Department of Housing and Urban Development reported the number of individuals experiencing homelessness in the United States increased by 2.2 percent in 2020 among the pandemic (2021). This means that on any given night more than 580,466 people are staying in local shelters and on the streets (HUD No. 21-041, 2021). It is hard to determine how inaccurate this number is, as people experiencing homelessness are transient and hard to count with much accuracy. There are several states that have successfully implemented legislation that gives individuals being evicted, a right to counsel and legal defense. Without a legal defense, 51 to 75 percent of tenants fighting an eviction case, lose, and are left to pick up the pieces with nowhere to turn (Greiner, D., Pattanayak, C., & Hennessy, J., 2016).

All over the nation, people are struggling to afford their rent, and being sent to court to be evicted from their homes. It is important to note here that not all evictions come from tenants not paying their rent in a timely manner. If a property is sold to another entity, the new owner has the right to evict any of the tenants it chooses. In most states, there is no program designed to defend these individuals facing eviction, for whatever reason the eviction is being pursued. Although the United States does not have a constitutional right to housing for individuals, there are many

federal statutes that protect the right to housing for individuals such as, Protecting Tenants at Foreclosure Act, The Fair Housing Act, and Section 8 of the Housing Act of 1937. Without legal representation people faced with eviction have no chance at accessing these types of protection (Kaufman E., Davis, M., & Wegleitner, H., 2014).

When clients are facing eviction, there are often other issues affecting their lives, be it childhood trauma, single parent child-rearing, medical issues, etc. This is why social work is an important aspect to include in the defense of each and every client that is facing homelessness. Lawyers have experience with the legal systems, but social workers are experienced in people, and their environment. This insight can help prevent the repetition of a client being evicted again, by addressing those person-in-environment issues, that may have caused the eviction to begin with. Not only is the right to counsel dire to the success of individuals, but social work case management is as well. The two together can prevent the United States homeless population from rising and help keep families housed in safe, adequate places.

Summary of Findings

When looking at the limited literature out there in regard to the right to counsel and social work for people facing eviction, it is clear that when clients have both forms of representation, they are more successful. Maryland started a right to counsel program in 2006, and the research from their program showed that “public defenders...were not experts in addressing social issues, so they appreciated the expertise of their social worker team,” (Hisle, B., Shdaimah, C., & Finegar, N., 2012). The lawyers could use the need of the client in their eviction defense, but that only helped fix a small, immediate problem. By not concurrently addressing those client needs, the clients would be on track for another eviction in the future. Massachusetts has had special “eviction defense clinics in place for decades,” as well (Greiner, J., et al., 2016). Without these

programs in states like Maryland and Massachusetts, the number of individuals experiencing homelessness would surely skyrocket.

It is important to remember, that when an individual, or family, is facing eviction, there are often many other factors affecting the situation including but not limited to: “parenting, [lack of] childcare, protection issues, addictions, and mental health difficulties, (Hill, M., Dillane, J., Bannister, J., & Scott, S., 2001). Not being given a right to counsel in their eviction case, can be the catalyst that implodes the lives of these individuals. Social work case management is a dire need for families and individuals facing eviction as well. Many individuals do not know what social workers can do to help the individuals rebuild their lives and begin to be successful again. The right to counsel should be offered alongside social work case management services for the best chance at preventing detrimental hardships to the individual’s lives.

Although many states have taken the right to counsel for housing seriously in the last decade, there is no federal right to counsel program to date. This is currently a state-by-state decision and most right to counsel decisions are in regard to “domestic violence, abuse and neglect proceedings, paternity proceedings, civil commitment, civil contempt, and civil forfeiture,” (Kaufman et al., 2014). This being known the American Bar Association proposed that “federal, state, and territorial governments provide legal counsel as a matter of right at public expense to low-income person in those categories of adversarial proceedings where basic human needs are at stake,” (Kaufman et al., 2014), including housing. Many jurisdictions, such as Chattanooga, Tennessee, have implemented pilot programs of a right to counsel in hope to lay the groundwork for legislation in the future protecting citizen’s right to adequate shelter.

Gaps in the Literature

There is very limited research on how the right to counsel and social work case management together can help clients moving forward. Most of the information that has been collected focuses strongly on one aspect or the other. The small amount of data that incorporates both necessary entities show the improvement of the clients' well-being and stability. As the global pandemic continues to devastate the economy and communities, it would be an opportune time to conduct this research and advocate for the rights of individuals throughout the United States facing eviction and ultimately homelessness. Doing a longitudinal study in some of the states that have incorporated right to counsel legislation would be beneficial to states like Tennessee that are lacking said legislation. This type of study could show the success over time and help advocacy groups to fight for justice on a widespread stage.

Conclusion

In conclusion, it is a devastating world today where the less educated poor are expected, in most states, to represent themselves in eviction court. This is a problem that will not end, without agencies and social workers alike advocating for the rights of the disregarded. Without social work case management and a right to counsel, evictions will continue to displace families with young children, the elderly, and the mentally ill. A right to counsel is a saving grace that can be offered to mediate the evictions that are happening, whether for good reason or not, and keep families off the street.

References

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