

SENATE BILL REPORT

SB 5907

As of February 19, 2019

Title: An act relating to a comparative study of the impact of attorney representation for tenants in unlawful detainer proceedings.

Brief Description: Requiring the office of civil legal aid to conduct a comparative study of the impact of attorney representation for tenants in unlawful detainer proceedings.

Sponsors: Senators Kuderer, Das and Nguyen.

Brief History:

Committee Activity: Housing Stability & Affordability: 2/18/19.

Brief Summary of Bill

- Requires the Office of Civil Legal Aid to conduct a comparative study of the impact of attorney representation for tenants in residential unlawful detainer proceedings.

SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

Staff: Brandon Popovac (786-7465)

Background: Office of Civil Legal Aid. The Legislature established the Office of Civil Legal Aid (OCLA) in 2005 as an independent agency in the judicial branch. OCLA is responsible for the administration and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. OCLA does not provide legal aid services directly, but contracts with attorneys to provide civil legal aid services to eligible low-income clients throughout the state. The Northwest Justice Project is the primary statewide provider of civil legal aid services. OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

Unlawful Detainer. Washington's Residential Landlord-Tenant Act (RLTA) governs the relationship between landlords and tenants of residential dwelling units. The RLTA provides a process called an unlawful detainer action that may be used by a landlord to evict a tenant under certain circumstances. A tenant may be guilty of unlawful detainer if the tenant fails to pay rent and has not vacated the premises after a request to do so, or if the tenant continues to

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occupy the property after the expiration of the lease term. The landlord must serve the tenant with a summons and complaint of the unlawful detainer action and the tenant must respond by a certain date. If the court issues a writ of restitution, an order directing the sheriff to physically evict the tenant, the sheriff must deliver a copy of the writ to the tenant, informing the tenant that they can be physically removed from the premises after a certain date. The sheriff must also give the tenant a written notice informing the tenant what can happen to the tenant's personal property if it is not removed by the date of the eviction.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Between July 1, 2019, and December 31, 2020, OCLA must conduct a comparative study of the impact of attorney representation for tenants in residential unlawful detainer proceedings. OCLA must contract with a Washington state-based research institution to study differences in outcomes in such proceedings.

OCLA must work with the superior courts in counties with a total population between 500,000 and 850,000 to appoint and provide payment to attorneys to represent tenants, and track relevant data and outcomes, in 750 residential unlawful detainer cases. OCLA must contract with nonprofit legal aid providers to provide such legal representation. OCLA must also work with the superior courts in counties with a total population between 400,000 and 500,000 and 850,000 and 900,000 to track relevant data and outcomes in 750 residential unlawful detainer cases in which no attorney appeared on behalf of the tenant.

OCLA may reimburse participating counties for the actual costs of establishing data collection and tracking systems, and for attorney appointments, for no more than \$15,000 per county.

Study data must be disaggregated by gender, race, age, and other relevant demographic characteristics, while study research must track the grounds claimed for eviction, the amount of rent claimed unpaid in cases where nonpayment of rent is the basis for the action, whether the tenant received a governmental rent subsidy, the amount of costs and fees claimed due, if a writ of restitution was issued, and the amount of any money judgment and costs and fees awarded.

A preliminary study report must be submitted to the Legislature by January 31, 2021, with a final report due by March 31, 2021.

Appropriation: The bill contains appropriations totaling \$900,000 from the general fund.

Fiscal Note: Requested on February 15, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2019.

Staff Summary of Public Testimony: PRO: Evictions are a leading cause of homelessness that must be addressed. When a lawyer is present, the system seems to be more fair and there is a decrease in the number of times that the eviction is successful. Attorney representation

matters because data suggests that is the case. There is a need for additional concrete data on this specific dynamic in order to avoid unnecessary evictions. If we are serious about preventing homelessness and know that evictions can lead to homelessness, this bill will provide us with essential information to help us reform the system appropriately.

Tenants are faced with a daunting and often terrifying court process that is premised on the availability of legal representation for both parties. There is no right to legal representation for a tenant faced with an eviction. Tenants are underrepresented in the vast majority of unlawful detainer cases, while landlords are represented over 95 percent of the time. Over the last 10 to 15 years, only 8 percent of unlawful detainer cases had some sort of legal representation for the defendant at some point during the eviction process. The playing field is not even and the outcomes experienced by tenants reflect this. A study in Seattle in 2017 found that defendants that had legal representation were twice as likely to stay in their homes compared to tenants with pro se representation. The office of civil legal aid is prepared to work with researchers at the University of Washington's Evans School of Public Policy to undertake a study comparing the experience and outcomes of eviction cases. Researchers have a sufficient sample size to do the type of analysis and employ various matching strategies necessary to produce reliable results.

105,000 renter households in Washington state are earning \$10,000 or less and cannot afford legal assistance. The threat of losing your home is absolutely terrifying and tenants need somebody to walk them through the process to make sure that they have access to justice. Tenant attorneys can help assist tenants deal with landlords who might charge for unauthorized utilities or fail to keep a building habitable. Some tenants are afraid of attorneys, often not knowing the difference between law enforcement and an attorney.

The goal is to get to eviction cases before they ever get to court at the time of the first notice. What the Housing Justice Project and other legal advocates provide to tenants is absolutely critical. The volume of cases for certain non-profit providers is too high to provide representation to all in need and this bill will help fill that gap.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Karin Martin, Assistant Professor, Evans School of Public Policy and Governance, University of Washington; Tim Thomas, PhD Postdoctoral Fellow, University of Washington; Jim Bamberger, Director, Washington State Office of Civil Legal Aid; Michele Thomas, Washington Low Income Housing Alliance; Violeta Sialer, citizen; Mark Chattin, Tenant Law Center, Catholic Community Services of Western Washington; Sharee Corcoran, citizen; Lynn Kohner, citizen.

Persons Signed In To Testify But Not Testifying: No one.