

# SENATE BILL REPORT

## SB 5707

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As of February 14, 2023

**Title:** An act relating to establishing a housing court pilot program.

**Brief Description:** Establishing a housing court pilot program.

**Sponsors:** Senators Kuderer, Lovelett, Nguyen, Nobles and Wilson, C..

**Brief History:**

**Committee Activity:** Law & Justice: 2/14/23.

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| <p><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Creates a housing court pilot program.</li></ul> |
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- Creates a housing court pilot program.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Joe McKittrick (786-7287)

**Background:** Residential Landlord-Tenant Act—Generally. The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, and how and when a tenancy expires or may be terminated, and remedies for violations of the RLTA. District and superior courts may exercise jurisdiction over any landlord or tenant with respect to any conduct governed by the RLTA, or with respect to any claim arising from a transaction subject to the RLTA within the respective jurisdictions of the district or superior courts as provided in the Washington State Constitution.

Forcible Entry. A person is guilty of forcible entry if the person either enters upon or into any real property by breaking open windows, doors, or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, or who enters real property peaceably and thereafter expels the party in actual possession by force, threats,

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or menacing conduct.

Forcible Detainer. A person is guilty of forcible detainer if the person either:

- by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property; or
- who in the nighttime, or during the absence of the occupants of any real property, enters the property, and who, after making a demand for the surrender of the property, refuses for a period of three days to surrender the property to the former occupant.

Unlawful Detainer. A person is liable for unlawful detainer if the person holds over or continues possession of real property after the expiration of a lease agreement; the person defaults in payment of rent; the person fails to perform any condition or covenant of the lease; the person erects, suffers, permits, or maintains any nuisance; the person, without permission enters the property of another and fails or refuses to vacate the property after three days' notice to vacate; or the person permits or commits any gang-related activity at the premises.

Eviction Resolution Pilot Program. In 2020, the Washington State Supreme Court issued an order authorizing an eviction resolution program (ERP) in the superior courts. Six counties were selected to participate in the ERP pilot. Each ERP operates in accordance with the court enabling order and a standing order of the local superior court. These orders require landlords to undertake efforts to engage tenants in pre-filing resolution efforts, including direct negotiation, facilitated conciliation services, and upon agreement of both parties, formal mediation provided by the participating dispute resolution center (DRC). Eligible cases are those where non-payment of rent or non-compliance with previously agreed upon payment plans are the primary reason for the decision to evict.

In 2021, the Legislature passed E2SSB 5160, which in part required the Administrative Office of the Courts (AOC) to contract with DRCs within or serving each county to establish a two-year, statewide court-based ERP in accordance with the state supreme court order. Before filing an unlawful detainer action for nonpayment of rent, landlords must provide a 14-day pay or vacate notice and an additional notice to the tenant informing them of the ERP. Landlords must also secure a certification of participation with the ERP by the appropriate DRC before an unlawful detainer for nonpayment of rent may be heard by the court. The ERP program created under this legislation is set to expire July 1, 2023.

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

**Summary of Bill (Proposed Substitute):** Subject to appropriations, AOC must establish a housing court pilot program which will last through July 1, 2033. The pilot program must be sited in the district courts of counties west of the crest of the Cascade mountains with populations of 2 million or more and east of the crest of the Cascade mountains with populations greater than 500,000.

AOC must develop criteria for the housing program including a requirement that all judicial officers hearing cases in housing court complete initial and continuing training in the laws and procedures governing landlords and tenants and a requirement that case management be based on the practices of one judge or judicial teams handling cases arising under RLTA, and cases of forcible entry and forcible and unlawful detainer.

The pilot program must include all residential case types arising under the RLTA, and all forcible entry and forcible and unlawful detainer cases. The pilot program must also include housing court judicial officers who meet training requirements established by local court rule, case management practices that provide a flexible response to the diverse court-related needs of landlords and tenants, and a court facilitator to aid parties. The pilot program must emphasize providing non-adversarial methods of dispute resolution such as a settlement conference or mediation by attorney mediators. The judges of district courts with housing court pilot programs must adopt court rules directing the program which must comply with the criteria established by AOC.

Beginning January 1, 2024, any court participating in the pilot program must report annually to AOC the number of actions that were subject to the program requirements, and the number of actions that were resolved where both parties had counsel. By December 1, 2024, and annually thereafter, AOC must provide a report to the Legislature summarizing the report data shared by these courts.

**Appropriation:** None.

**Fiscal Note:** Requested on February 10, 2023.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony On Proposed Substitute:** PRO: This bill seeks to create a housing court. The housing issues in Washington deserve to be resolved as soon as possible. Creating a designated court for these cases takes a huge workload off the entire court system, prioritizes housing issues, and gives landlords and tenants quicker access to the courts to have their matters heard. This bill recognizes that many issues that come before the court could be resolved by facilitation, mediation, and access to resources. This will benefit tenants, landlords, and the judicial system by allowing both parties to resolve conflicts efficiently. One important component includes asking the courts involved with the pilot to create better standards for protecting the confidentiality of these cases. This is a tool to combat the housing crisis and keep people in their homes. The report created in this bill should include requirements and reports that include key indicators on equity like the race, income, and housing alternatives if the court ordered an eviction.

CON: The outcome of the Eviction Resolution Pilot Program that expires in July will

directly affect the efficacy of this bill. Housing providers and tenants have a right to know the truth about a prospective tenant's background. The last thing landlords want to do is evict tenants. It is expensive, time consuming, and an emotional burden. Landlords evict tenants because of violence, destruction of property, drug use, moving in others without landlord approval, and smoking. The constitution puts unlawful detainer solely with the superior court. If this bill were to pass and was housed in district court, there must be a constitutional amendment.

OTHER: Section two of this bill would require new court rules for sealing eviction records. The Washington State Constitution applies a good test for balancing privacy interests with the public's right to know. The constitution's declaration of rights guarantees open administration of justice so people can have confidence in the system's fairness. Eviction records can be sealed under existing rules. This section of the bill should be removed to avoid confusion.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Edmund Witter, King County Bar Association; Scott Crain, Northwest Justice Project.

CON: GORDON HAGGERTY; Melissa Johnson, District & Municipal Court Judges Association; Patricia Hoendermis, Yakima Valley Landlords Association.

OTHER: Jason Keefe, Oak Terrace Apts; Rowland Thompson, Allied Daily Newspapers of WA, WA Newspaper Publishers Assn, WA State Assn of Broadcasters; Katherine George, WA Coalition for Open Government.

**Persons Signed In To Testify But Not Testifying:** PRO: Michele Thomas, Washington Low Income Housing Alliance.

CON: RON GREER; Russ Millard, MHCW; KAREN FOURNIER, Karen Fournier; Ray Lilienthal.