Tenant Protections: An Impact Analysis
Team Introduction

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Agenda

- **General Overview**
- **SB230: Tenant’s Right to Repair and Deduct**
  - Monetary & Judicial Efficiency
  - Health Impacts of Habitability Issues
  - State-to-State Comparisons
- **HB1214: Eviction Sealing**
  - Positives of State Law 164
  - Potential Future Improvements
  - State-to-State Comparisons
- **Legal Representation**
  - Benefits of Right to Counsel
  - Policy Recommendations
Affordable Housing = Policy Priority
- Homelessness is positively associated with premature mortality, substance abuse disorders, violence victimhood
- Social services associated with homelessness in Indianapolis cost state $73 million annually

Tenant Protection = Policy Priority
- Minimum wage: 91 hours a week to afford two-bedroom rental, 74 hours to afford one-bedroom
- Landlords who serve low-income neighborhoods more likely to have tenants facing eviction

Landlord-Friendly Legislation
- SB148
- Senate Enrolled Act 558

SB230: Right to Repair and Deduct

HB1214: Eviction Sealing, Expungement

Guaranteed Legal Representation for Tenants
SB230 – Right to Repair and Deduct

**Issue: Landlord Negligence**

- Lakeside Pointe - **600+ housing code violations** since 2017
- Nuisance lawsuits can no longer be used – Enrolled Act 558
- Risk of retaliation – municipal anti-retaliatory acts scaled back by SB230

**Solution: SB230 – Right to Repair and Deduct**

- Promotes judicial and monetary efficiency
- Diminishes health impacts of substandard housing
- Maintains a net-zero economic gain for landlords
- Provides tenants with much-needed legal protections in the face of negligence
SB 230 History & Summary

2 of every 3 Hoosier renters are “cost-burdened,” spending upwards of 30% of their income on housing.

Trend lines also suggest that the price of housing is increasing far more than average income.

Jan 06, 2022 - Met with a preliminary 10-0 vote
Sen Fady Quaddora (D) and Sen Greg Walker (R) author and introduce SB 230

Feb 07, 2022 - Bipartisan support to send SB 230 to a summer study.

SB 230 has been effectively killed, with no guarantee that the summer study will lead to further legislation.
SB 230 History & Summary

SB 230 would provide necessary protections for tenants against “negligent, corporate out-of-state landlords.”

45 states already gave statues establishing mechanisms for tenants to withhold rent from negligent landlords.

Section 2, SB 230
A landlord must make a “good faith effort” to repair or replace all “essential systems”, within 24 hours of tenant’s notification

- An essential system = that which is used for/necessary for electricity, gas, heat, water, or any other for the safety and habitability of the tenant.

Section 3, SB 230: A tenant may repair the system themselves and deduct the associated costs from their next rent

- If the landlord fails to comply after 30 days notice and the repairs are left unmanaged
- Stipulation gives good-faith, responsible landlords the opportunity of ample time, to make the repairs or replacements
Support For SB-230

Monetary/Judicial Efficiency

1. Creates a model of efficiency, with tenants taking care of habitability of their rented property, when a good-faith landlord is unable (due to lack of time, knowledge etc)

2. Saves courts and involved parties time and resources, by eliminating the need for many lengthy, costly legal battles between landlords and tenants

“"I think the bill is a little vague, goes too far, and I think it’s going to have the unintended consequence of forcing more folks to get out of the rental industry.”

-Sen Mike Bohacek (R)
A landlord, himself
Health Impacts

**Lead Exposure**
- Has been linked to reduced intelligence, reduced stature, and impaired hearing in *children*.
  - 2005 study found increase in childhood blood lead content with a 3.9 point IQ-score decline
- Children exposed to lead more likely to develop behavioral problems (impulsivity, ADHD)
  - Exhibit higher rates of aggression and delinquency as they mature into adulthood

**Infectious Disease**
- Absence of hot water for washing, ineffective waste disposal, lack of safe drinking water, presence of rats, insects, and other disease vectors
  - Causes of disease spread, threaten habitability of rented property

**Respiratory Effects**
- Poor ventilation, presence of mold, pest infestation, and dirty, dust-collecting furnishing link to respiratory challenges and illnesses (asthma, lung cancer, & mesothelioma.)
<table>
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<th><strong>State to State Comparison</strong></th>
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<tr>
<td><strong>Ohio</strong></td>
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<td>● Most demographically similar to Indiana</td>
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<td>● If landlord does not make necessary action “within a reasonable time considering the severity of the condition and the time necessary to remedy it,” tenants can:</td>
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<td>○ Repair and deduct</td>
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<td>○ Terminate rental agreement, no penalty</td>
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<td>○ Deposit rent to court</td>
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<td>● Court authority to what constitutes “reasonable time”</td>
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<td><strong>Kentucky</strong></td>
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<td>● Tenants can procure reasonable amount of an <strong>essential service</strong> and deduct from rent payment</td>
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<td>○ Oklahoma, South Carolina, Tennessee, Arizona provide similar right</td>
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<td>● May repair and deduct for repairs <strong>only if</strong> costs do not exceed greater amount between $100 or half of tenant’s rent</td>
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<td><strong>North Dakota</strong></td>
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<td>● 1.1% eviction rate (Indiana’s is 8.5%)</td>
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<td>● Tenants have greater freedom to repair and deduct for several systems</td>
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<td>○ electrical, plumbing, sanitary, heating, ventilating, air-conditioning, garbage removal, running water, and heat systems</td>
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<td>● Can repair and deduct or vacate without penalty after “reasonable time of notice” of negligence</td>
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HB-1214 History & Summary

What does HB1214 mean for tenants in Indiana?

**Positives:**
- Opportunity for eviction expungement

**Potential Future Improvements:**
- Automatic expungement
- Expansion of eviction expungement requests
- Mandate of the Eviction Diversion Program

How does it compare to other states?
- Minnesota
- Nevada
- Oregon
- California

**Legislative History:**
- January, 2022: HB1214 introduced by Rep. Ethan Manning (R)
- Received bipartisan support in House and Senate
- Signed into law March 18th, 2022
  - Now, State Law 164
Eviction Diversion Program:
- Requires consent to participate from both parties: tenants and landlords
- During participation:
  - Case becomes confidential for 90 days
  - Apply for rental assistance
  - Ask for help communicating with landlord
  - Participate in status hearing with the court

Positive Impacts
- Opportunities for eviction expungement
  - Conditions of expungement:
    ■ No action taken on the filing for 180 days
    ■ Filing resolved outside of court
    ■ Judge rules in favor of tenant
- Avoiding worst consequences of the “scarlet E”
  - Removes barriers for tenants seeking safe, affordable housing
  - Helps break the cycle of eviction

Section 3, HB-1214: the court in which the eviction action was filed, upon motion by the tenant, shall order the clerk of the court...not to disclose or permit disclosure of any records in the case, including the petition by the landlord for possession of the rental unit....The court shall direct the clerk of the court to redact or permanently seal the court's own records related to the eviction action.
Potential Improvements

Eviction Diversion Program under State Law 164

Section 5, HB-1214: A residential eviction diversion program **may not be offered** or operated unless participation in the program is **voluntary** for all parties.

Indiana’s Eviction Diversion Program Timeline:
- November 1, 2021 - An eviction diversion program is first established in Indiana.
- As of January 13, 2022, the eviction diversion program only had a 6% participation rate.

Prohibiting Mandatory Eviction Diversion Program
- Will continue to go underused.
- Outreach campaigns could help this issue.
- Results from other states show effectiveness of program.
Expansion of Eviction Expungement

Limits of Eviction Expungement
- Tenants with current eviction judgments against them have no ability to have their records expunged
- This is problematic in cases where tenants had inadequate representation or were victims of unfair treatment

“Reports of inadequate court representation for tenants and evictions stemming from landlords acting in bad faith demonstrate the need for recourse in specific situations.”

- Senator Vernon Smith

Section 4, HB-1214: The tenant in the action may petition the court in which the eviction action was filed to issue an order prohibiting the disclosure of any records in the action

Automatic Expungement
- Eviction expungement is not automatic. Tenants have to file a petition to request expungement
- This process will likely prevent some tenants from receiving eviction expungement

Possible Proposal: Evictions are automatically sealed when a court proceeding begins. They are then expunged if the tenant is successful in their case
## State-to-State Comparisons

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<th>State</th>
<th>Description</th>
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| Minnesota    | • Between March 2020 and March 2022 had 10,000 eviction filings (pop. 5.64 million)  
○ Indiana had 95,000 (pop. 6.73 million)  
• Statute 484.014  
○ Mandatory, automatic expungement under certain circumstances  
○ Discretionary expungement available upon appeal to the court |
| Nevada       | • 2017 Assembly Bill 107  
○ Automatic eviction expungement when defendant wins case or landlord fails to appear in court  
○ Can appeal for eviction expungement |
| Oregon       | • Laws passed in response to state lifting of the moratorium  
○ Tenants must appeal for expungement themselves under certain circumstances |
| California   | • 2016 Assembly Bill 2819  
○ Permanent, automatic expungement of eviction records when landlord fails to seek further action before the 60-day grace period ends |
Legal Representation

**Issue:** Inequalities in Legal Rights

- Corporate landlords, of whom are responsible for 88% of evictions, have greater access to representation, leading to favorable litigation
- Lack of ability under current system to enforce habitability
- Must petition to remove unwarranted eviction records

**Solution:** Guaranteed Legal Representation

- Closes power gap between landlord and tenant
- Benefits tenants, landlords, the judiciary, and the state
- **Policy Recommendation:** Use models from other states in implementation
Legal Representation For Tenants

The Issue:
- There are currently severe disparities in who is represented during eviction proceedings
  - 90 percent of landlords are represented
  - In contrast, only about 10 percent of tenants have representation
- As a result, outcomes are drastically skewed in favor of landlords (who, on average, are about 32 times wealthier than the average tenant) that have a greater ability to afford representation than tenants

The Result:
- Without a knowledgeable attorney, tenants face a confusing legal system that is stacked against them
  - Example from Marion County, Indiana
    - Tenants must contact the court to remove an eviction ruling from their record but most do not even know this is a path they can take
- Numerous costs arise for both tenants and social services as a result of evictions that could easily be prevented if tenants are provided with counsel
  - Emergency shelter costs: **$68.50 per person per day**, with most people staying **50+ days**
  - Foster system costs: **$2,150 per child month**, for an **average of 19.8 months**
Benefits of the Right to Counsel in Eviction Cases

For Tenants
- A right to counsel in eviction cases provides "tenants a fair chance to access legal protections and stay in their homes"
- Tenants who receive counsel in eviction cases are more likely to receive a favorable ruling in an eviction case

For Landlords
- With fair representation, tenants are more likely to accept court rulings handed to them
  - This means that landlords are more likely to receive payments owed to them by their tenants
- Representation also saves landlords time by streamlining the legal process

For Courts
- Legal representation for tenants improves the efficiency of legal proceedings and saves the time of both court employees and judges themselves

For Governments
- Saves money on education costs, juvenile costs, costs of hospitalization and emergency services usage, among others
  - Financial benefit to the right to counsel
We recommend that the state of Indiana use the Washington and Connecticut models to implement a program of guaranteed legal representation for low-income tenants in the state.

Washington Plan:
- Provides free legal consultation to tenants at or below 200% the poverty line
- Prioritizes tenants in counties with high eviction rates and minority tenants

Connecticut Plan:
- First implemented its plan in the highest-eviction areas in the state before expanding out across the state

Recommended Indiana Plan:
- Legal consultation for tenants at or below 200% of the poverty line
- First implement this plan in the high-eviction cities of Bloomington, Indianapolis, and South Bend before expanding
Questions?