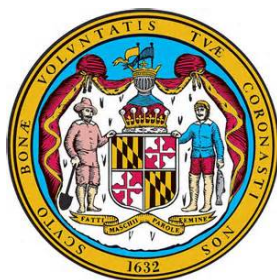


Report of the Task Force to Study Implementing a Civil Right to Counsel in Maryland



October 1, 2014



Robert R. Neall, Chair
Annapolis, Maryland

October 1, 2014

Hon. Martin O'Malley
Governor
State House
100 State Circle
Annapolis, MD 21401

Dear Governor O'Malley:


In April, 2013, you signed into law Senate Bill 262 creating the Task Force to Study Implementing a Civil Right to Counsel in Maryland. The Task Force met regularly over the last year, meeting with a wide range of informed and expert stakeholders. The Task Force reviewed the spectrum of civil legal services available to low-income Marylanders, the policy and funding innovations adopted here and elsewhere, reviewed available research on the impact of having a lawyer, and what happens when low-income persons are unrepresented. The Task Force reviewed research on the economic benefits that accrue to the State when low-income persons are represented, and the impact on the administration of justice from providing access to representation.

Maryland has long been a leader in providing access to justice. Our state has an innovative and diverse spectrum of civil legal services providers. Despite these committed organizations and professionals, a significant "justice gap" remains.

Each year the State passes laws to benefit Marylanders and ensure their basic human needs. The Task Force has found that in order to reap those benefits, however, Marylanders need meaningful access to civil legal representation.

The Task Force offers several recommendations to guide your next steps in exploring how Maryland can truly fulfill the promise of "equal justice under law."

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Neall". The signature is fluid and cursive, with a large initial "R" and "N".

Robert R. Neall, Chair
Task Force to Study Implementing a
Civil Right to Counsel in Maryland

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Charge to the Task Force

The Task Force to Study Implementing a Civil Right to Counsel in Maryland was established by Senate Bill 262/2013 which was signed into law in April, 2013. The Task Force was established to:

- (1) study the current resources available to assist in providing counsel to low-income Marylanders compared to the depth of the unmet need, including the resulting burden on the court system and the stress on other public resources;
- (2) study whether low-income Marylanders should have the right to counsel at public expense in basic human needs cases, such as those involving shelter, sustenance, safety, health, or child custody, including review and analysis of the Maryland Access to Justice Commission's "Implementing a Civil Right to Counsel in Maryland" report and each other previous report by a task force, commission, or workgroup on this issue;
- (3) study alternatives regarding the currently underserved citizenry of the State and the operation of the court system;
- (4) study how the right to counsel might be implemented in Maryland;
- (5) study the costs to provide meaningful access to counsel and the savings to the court system and other public resources;
- (6) study the possible revenue sources; and
- (7) make recommendations regarding the matters described in this subsection..

Report of the Task Force to Study Implementing a Civil Right to Counsel in Maryland

EXECUTIVE SUMMARY

If an independent judiciary is the hallmark of a healthy democratic system of laws, it is critical that we provide a right of representation to society's poorest members, in order that the justice system be fair and accessible for all. Since marking in 2013 the 50th Anniversary of *Gideon v. Wainwright*, the U.S. Supreme Court decision that established the right to counsel in criminal matters, legislatures, bar associations and citizens across the nation have been examining the broader question of the role a right to counsel plays in a just and civil society.

Providing low-income Marylanders a lawyer when critical needs are at stake is good public policy. When we provide low-income Marylanders a right to counsel in key civil case types, we give poor people and their families a tool they can use to leverage their rights under existing law. Public interest lawyers are often able to help their clients avoid problems that, if unchecked, can cascade into a negative spiral of other difficulties that affect not only these individuals and their families, but impact the State as a whole.

A network of online resources, law libraries, self-help centers, pro bono and staff attorney programs comprise the current civil legal services delivery system in Maryland. It is a triage-based system designed to deliver the most efficient and least costly service necessary for each client. The bulk of services provided are brief advice services.

Maryland has been a leader in trying to address the "justice gap," and has engaged in all the significant funding and service delivery innovations, to meet as much of the need as possible with current resources. Despite these innovations, however, only about 20% of the poor are able to address their legal issues with the help of a lawyer.

The Task Force found that having a lawyer makes a difference in a variety of ways. When parties go unrepresented their cases are more likely to be dismissed and less likely to settle. Unrepresented persons are less able to present their case effectively in court. They are less likely to make use of discovery and less likely to assert certain defenses. Those without lawyers are less likely to prevail in many types of cases. In a comprehensive analysis of studies conducted to determine the impact of having a lawyer in critical civil matters, people were 6.5 times as likely to succeed if they had representation.

Public interest lawyers secure millions of dollars in direct and indirect financial benefits each year for their low-income clients, benefits that accrue to the State as a whole. In Fiscal Year 2012, Maryland's civil legal services providers generated \$190 million in economic activity in the State.

The Maryland civil legal services delivery system is funded from three primary sources. In Fiscal Year 2013, \$2.1 million was derived from the Interest on Lawyers Trust Accounts (IOLTA) program, a source that has declined precipitously over the last several years with the decline in interest rates; \$13.1 million came from court filing fee surcharges, established by statute; and \$500,000 was provided as a statutory appropriation from the Abandoned Property Fund. The last source was increased to \$1.5 million beginning in Fiscal Year 2014. In addition, one organization in the State, Maryland Legal Aid, receives funding from the federal Legal Services Corporation (LSC). In Fiscal Year 2013, Maryland Legal Aid received \$3.7 million from LSC.

Maryland has made a significant commitment to involving the private bar in the delivery of legal services by promoting pro bono representation. Maryland is one of only 8 states that have mandatory pro bono reporting. Maryland lawyers have stepped up to the plate. Last year pro bono programs operated by Maryland Legal Services Corporation grantees closed approximately 8,000 cases. The value of those services was estimated at close to \$19 million. Despite these contributions, the pool of lawyers available to serve pro bono is smaller than suggested by the total population of lawyers. Maryland has a large percentage of attorneys (nearly 20%) who report they work for a government entity. Government attorneys may be less likely to serve because they frequently do not have the expertise needed, may have conflicts of interest, or may be precluded from the practice of law. Finally, the private bar has skills that do not always match the needs of poor clients. The biggest demand for pro bono help is in family law cases; only 5.6% of Maryland attorneys report family law as their primary practice area.

While civil legal services programs are fairly distributed around the state, there remains a justice gap; many thousands of Marylanders who have a legal problem and qualify for help continue to find it difficult or impossible to secure legal help. Thousands of self-represented litigants appear in Maryland courts each year in civil matters.

Maryland would benefit significantly by making a commitment to ensure that low-income Marylanders have a right to counsel at public expense in those categories of cases where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody. Towards that end the Task Force makes the following recommendations.

Recommendation 1. Create a right to counsel in civil domestic violence cases through a four-year, phased-in expansion of existing programs that provide representation to income-eligible petitioners and respondents.

Recommendation 2. Establish a right to counsel pilot program in child custody matters by increasing funding for the Judicare program administered by the Maryland Legal Services Corporation.

Recommendation 3. Appoint a work group to oversee implementation of these recommendations, to assess the programs and pilots, and to report back to the Governor and the General Assembly.

INTRODUCTION

The Role of a Right to Counsel in a Just and Civil Society

If an independent judiciary is the hallmark of a healthy democratic system of laws, it is critical that we provide a right of representation to society's poorest members, in order that the justice system be fair and accessible for all. Since marking in 2013 the 50th Anniversary of *Gideon v. Wainwright*¹, the U.S. Supreme Court decision that established the right to counsel in criminal matters, legislatures, bar associations and citizens across the nation have been examining the broader question of the role a right to counsel plays in a just and civil society. Some states have begun to explore whether the right to a lawyer should be extended to indigent persons in civil case types affecting their basic human needs. Many Marylanders would be surprised to learn that if they were at risk of losing the ability to parent a child, were at risk of harm from an intimate partner, or were about to lose their housing as the result of a civil court action, they would not have a right to a publicly-funded lawyer. If they could not afford to hire an attorney, one would not be appointed for them. They would have to manage the litigation on their own.

Courts measure their effectiveness using a set of benchmarks developed by the National Center for State Courts called the *Trial Court Performance Standards*.² Among the five key measures outlined in the *Standards* are "Public Trust and Confidence" and "Access to Justice." The one depends upon the other. A healthy justice system depends upon the public's trust and confidence in the courts. The public's trust and confidence grows from the experience individuals have in dealing with the courts and the justice system – the extent to which they understand how to proceed, the extent to which they feel they were heard, the extent to which they feel they had a fair chance to present their case, the extent to which others did not have an unfair advantage over them in the proceedings. In short, the public's trust and confidence in the courts depends on whether individuals perceive they had meaningful access to justice. The public's trust and confidence is, indeed, a fragile commodity. No court has a private army to enforce the many thousands of orders it issues each day. Access to justice is the key to public trust and confidence in the courts. As the Maryland State Bar Association has stated, "When the legal system fails to protect the fundamental rights of a citizen as a direct consequence of that person's inability to pay for or be appointed counsel, a long shadow is cast over the ability of 'the courts [to] maintain the confidence of the society and to perform the task for insuring that we are a just society operating under a rule of law'."³ When we provide meaningful legal help to individuals – be it the criminal *or* the civil justice system – we enhance access to justice and support the role of the courts and the rule of law in a just and civil society.

A Broader Civil Right to Counsel in Other Nations

The principle that indigents should have a right to representation in civil proceedings has its roots in common law. An English statute enacted in 1494 guaranteed poor plaintiffs in civil

cases a court-appointed attorney.⁴ Later English courts extended the right to counsel in civil matters for indigent defendants as a matter of common law.⁵ In 1979 the European Court of Human Rights found, in *Airey v. Ireland*,⁶ that the right to a fair hearing established by the European Convention required effective access to the court. While each nation is free to choose the means of achieving that right, under certain circumstances the government is under an obligation to guarantee the right to counsel. The result of *Airey* has been the establishment of a much broader civil right to counsel in most of the 47 member nations of the Council of Europe.⁷ A number of other nations, including most of the Canadian provinces, Australia, India, Japan, New Zealand, and Brazil also have statutes or constitutional provisions establishing a broader civil right to counsel for low-income persons.⁸

Finland, for example, boasts one of the most comprehensive rights to counsel in civil matters, a right established by statute. Free legal advice is available through a series of publicly funded legal services offices. If the case goes to court, clients can choose to be represented by staff attorneys or private lawyers. Perhaps not surprisingly, high-income and low-income Finns use the courts and other formal dispute resolution processes to resolve disputes in equal numbers. In the U.S., by contrast, where the civil legal aid system meets the needs of so few, high-income individuals are much more likely to use the courts than their low-income neighbors.⁹

The Principle of a Civil Right to Counsel Dovetails with State Constitutional Values if Not Yet Federal Ones

It seems inconsistent with American Constitutional values that we should permit wealth to differentiate access to justice in our nation. Yet, the U.S. Supreme Court has yet to extend the right to counsel at public expense much beyond criminal matters. In 1981 the Court declined to find inherent in the Due Process Clause of the Fourteenth Amendment a right to counsel for indigent parents in termination of parental rights cases. In *Lassiter v. Dep't of Social Services*,¹⁰ the Court established that, unless the person faced a potential loss of liberty, there was a presumption against a right to counsel in civil matters. For counsel to be required, the matter would need to satisfy the test set out in *Mathews v. Eldridge*, which requires the court to balance the private interests at stake, the risk of erroneously depriving the person of those interests because of the procedures used, and the state's interest.¹¹

Although *Lassiter* appeared to suggest that civil cases involving a potential loss of liberty might trigger a right to counsel, that myth was dispelled by the Court's 2011 decision in *Turner v. Rogers*.¹² There the Court found there was no categorical right to counsel at public expense in a civil contempt matter where the respondent in a child support case faced substantial jail time.¹³

Despite the reluctance of the U.S. Supreme Court to find a right to counsel in any category of civil matters, many States have not hesitated to extend the right to cases involving basic human needs. Although no state has yet established, either by judicial decision or by statute, a comprehensive right to counsel in all civil case types affecting basic human needs, states have

relied on their own constitutions, and in some instances passed new laws, creating statutory rights in key case types. Forty-five states, Maryland among them, have moved beyond *Lassiter* and provide a categorical right to counsel for parents in termination of parental rights cases as a matter of law; twenty-two states provide a categorical right to counsel for children in those same matters.¹⁴ Forty-two states provide a right of representation to parents, and twenty-five to children, in child abuse and neglect proceedings.¹⁵ The State of New York provides a categorical right to counsel for parents in child custody disputes¹⁶; Oregon provides a similar right for children in custody disputes.¹⁷ Forty-one states, including Maryland, provide a right to counsel for the alleged disabled in guardianship matters.¹⁸ New York provides a right to counsel at public expense for both victims and alleged abusers in civil domestic violence cases.¹⁹

Providing Low-Income Marylanders a Lawyer When Critical Needs are at Stake is Good Public Policy

When we provide low-income Marylanders a right to counsel in key civil case types, we give poor people and their families a tool they can use to leverage their rights under the law. We give them the means to address the legal issues inherent in some of their everyday problems, tools they can use, for example, to improve their neighborhood or move to a healthier one.²⁰ These opportunities may include the ability to effectively enforce housing habitability laws, the ability to protect themselves from intimate partner violence, or an opportunity to secure federal benefits they can use to pay rent, or avoid foreclosure or eviction.

By helping clients in one area, public interest lawyers, for example, are often able to help their clients avoid other problems that, if unchecked, can cascade into a negative spiral of poverty and despair.²¹ Maryland legal services providers support indigent families by helping them fairly adjudicate eviction or foreclosure, federal bankruptcy protection, and debt collection cases, and by helping them secure or preserve public assistance payments and unemployment benefits, helping clients secure or maintain child custody, or obtain protection from domestic violence.²² In Fiscal Year 2012, Maryland legal services providers helped 405 individuals avoid or delay foreclosure, benefiting 1,196 household members:

“Those household members included children whose schooling was not disrupted by an unexpected move, parents who were able to continue caring for their children, adults who were able to focus on their work and retain employment. These were the homes that did not get boarded up on streets that remained viable for just a little longer.”²³

STATEMENT OF NEED

Each year the Maryland General Assembly passes laws to benefit Marylanders and ensure their basic human needs. Many of those laws are designed to ensure Marylanders have access to adequate housing, food, and healthcare, can obtain protection from abuse, and are able to care for and support their children. In order to reap those benefits, however, Marylanders need meaningful access to civil legal representation.

How do low-income Marylanders get legal help?

A network of online resources, law libraries, self-help centers, pro bono and staff attorney programs comprise the current civil legal services delivery system in Maryland. It is a triage-based system designed to deliver the most efficient and least costly service necessary for each client. The bulk of services provided are brief advice services.²⁴ Because most programs are continually operating at capacity, they attempt to provide as much service as possible for as many clients as possible. This has largely meant supporting individuals who are otherwise self-represented by helping them complete forms, providing brief advice and coaching them on how to proceed in mediation, negotiations or at trial.

While Maryland's legal aid providers served over 170,000 clients during the past year in areas where there is no statutory right to counsel for indigent persons, fewer than 5% involved an attorney representing an individual in court.²⁵ In the majority of cases where only brief advice is provided, service is limited because program resources are in short supply. As noted by Debra Gardner, Legal Director of the Public Justice Center, in her testimony before the Task Force, most programs do not have sufficient staff to take every case for full representation. The persons who seek their help may face the loss of the ability to care for a child, the loss of their home, or other critical needs, and yet the programs are able to provide perhaps 30 minutes of support.

Maryland has been a leader in trying to address the "justice gap," and has engaged in all the significant funding and service delivery innovations, to meet as much of the need as possible with current resources. Despite these innovations, however, only about 20% of the poor are able to address their legal issues with the help of a lawyer.²⁶

Does having a lawyer make a difference?

Several studies have shown that individuals who are represented fare better than those who must proceed without counsel.

DEFAULTS, DISMISSALS AND SETTLEMENT RATES. A study of housing courts in New York showed that the number of tenants who defaulted declined from 28% to 16% when individuals had representation,²⁷ while a California study found that defaults in housing cases dropped from 51% to 0% once representation was added.²⁸ In Delaware, family law cases were dismissed in 30% of the cases when at least one party was unrepresented, but, when both parties were represented, the dismissal rate dropped in half.²⁹ When parties go unrepresented, their cases are more likely to be dismissed and less likely to settle.³⁰

DISCOVERY AND ASSERTING DEFENSES. Unrepresented persons are less able to present their case effectively in court and are less likely to use the tools established under the law to ensure they get a fair hearing. Studies have shown self-represented litigants almost never engage in discovery (0% of the time), while those with counsel make use of discovery in 62% of the cases.³¹ Those with counsel raise defenses 80% of the time, while the self-represented do so only 2% of the time.³²

OUTCOME. Whether or not a person is represented also affects the outcome of the case. In a Maryland study, 76% of those represented in Medicaid denial appeals were successful in getting the denial reversed.³³ In other state benefits cases in Maryland, unrepresented persons were able to reverse a denial of benefits 40-45% of the time upon appeal; that reversal rate nearly doubled to 70-80% for individuals who had a lawyer.³⁴

In a recent study of consumers sued by debt buyers, it was determined that cases were dismissed or judgments were entered in favor of defendants who were not represented by attorneys only 23% of the time. By contrast, consumer debtors assisted by volunteer attorneys in the Pro Bono Resource Center of Maryland's (PBRC) Consumer Protection Project achieved a positive outcome (judgment in favor of the defendant or dismissed) approximately 71% of the time.³⁵

In a 2003 study of domestic violence cases in Maryland, University of Baltimore School of Law professor, Jane Murphy, found that few women seeking civil protective orders had counsel, but when they did they were more likely to obtain protection. Of the 142 women in the study, only about 25% had a lawyer. Those with counsel in Professor Murphy's study obtained the protective order 83% of the time, while unrepresented petitioners prevailed in only 32% of the cases.³⁶

In cases involving child custody, it may be difficult to determine whether a party succeeds, because often neither truly “wins” or “loses.” A comprehensive case file review of Maryland child custody cases, however, found that when only one party was represented in the case, regardless of whether that party was the mother or the father, the person with counsel was more likely to obtain sole custody.³⁷ Because cases involving unrepresented persons are less likely to settle, more of these cases result in judge-made decisions. The same Maryland study showed that judge-made family law decisions were more likely to result in post-judgment litigation, which means ongoing family conflict and court involvement.³⁸

In a New York study, tenants who had attorneys obtained orders for repairs in 65% of cases, compared with 25% for unrepresented tenants.³⁹ In a recent study in Massachusetts, represented tenants in one housing court “fared, on average, twice as well in terms of retaining possession, and almost five times as well in terms of rent waived and monetary awards.”⁴⁰ In a California study, tenants with representation retained possession 55% of the time as compared to 14% for unrepresented tenants, while represented tenants who had to move were given twice as many days to move out as those without counsel. That same study found that represented tenants received money from the landlord 55% of the time and were forced to pay money to the landlord 0% of the time, compared to 2% and 61% for tenants without a lawyer.⁴¹

In a comprehensive analysis of studies conducted to determine the impact of having a lawyer in critical civil matters, people were 6.5 times as likely to succeed if they had representation.⁴²

What benefits are secured by public interest lawyers for their low-income clients, and what impact does that representation have on the State as a whole?

In Fiscal Year 2012, Maryland’s civil legal services providers generated \$190 million in economic activity in the State by securing benefits for their low-income clients. The Maryland Access to Justice Commission worked with the state’s civil legal aid providers to compile and analyze data based on direct financial benefits, benefits that resulted from systemic advocacy, cost savings to the state and increased productivity.⁴³

Maryland legal aid lawyers secured at least \$9.9 million in direct federal financial benefits for their clients, generating \$12.6 million in economic stimulus for Maryland. Those lawyers secured another \$10.7 million in direct financial benefits through their representation in bankruptcy, consumer matters, employment matters, child and spousal support matters, and through the non-federal share of healthcare and unemployment benefits secured for their clients.

Non-profit legal services providers also generated approximately \$160 million as the result of their systemic advocacy in cases and through legislative work that benefited large groups of low-income residents. For example, the Public Justice Center successfully urged court action to limit the amount of attorney's fees and expenses that Baltimore homeowners must pay to redeem their homes after a tax sale foreclosure. The move has affected 80,000 tax sales each year since the decision, a savings of \$126 million per year.

Civil legal aid organizations have also benefited the state through their work preventing domestic violence and homelessness. The Maryland Access to Justice Commission estimates the State's legal aid organizations saved the state \$3.6 million in averted shelter costs by helping their clients avoid homelessness. They saved the state at least \$1.3 million by preventing domestic violence, thereby averting medical costs and increasing productivity.

The work of civil legal aid providers keeps Marylanders employed who might otherwise be jobless, generating income tax revenue for the State. In Fiscal Year 2012, civil legal aid lawyers addressed workplace issues and helped with expungements, keeping 376 Marylanders employed and generating approximately \$882,096 in state and local tax revenue.⁴⁴

How is the Maryland civil legal services delivery system funded?

At its first meeting the Task Force heard from member and Executive Director of the Maryland Legal Services Corporation (MLSC), Susan Erlichman. MLSC is a statutorily-created non-profit which manages funding from several sources, including the State, making grants to the State's non-profit civil legal aid providers. Its board is appointed by the Governor and confirmed by the Senate. In Fiscal Year 2013, MLSC made grants totaling \$16.6 million to 34 legal services providers.

MLSC awards grants from the MLSC Fund, which includes funds from three primary sources. In Fiscal Year 2013:

- ⚖️ **\$2.1 million** was derived from the Interest on Lawyers Trust Accounts (IOLTA) program. Monies earned from interest on attorney escrow accounts is forwarded by the banks to MLSC, pursuant to state law.
- ⚖️ **\$13.1 million** came from a surcharge on court filing fees, established by statute.⁴⁵
- ⚖️ MLSC also received **\$500,000** from a statutory appropriation from the Abandoned Property Fund. For Fiscal Year 2014, that amount was increased to \$1.5 million.

In addition to these funds, MLSC drew some funds from reserves to make its grants in Fiscal Year 2013.⁴⁶

In Maryland, one organization, Maryland Legal Aid, receives funding from the federal Legal Services Corporation (LSC). In Fiscal Year 2013, Maryland Legal Aid received \$3.7 million from LSC.

Maryland's non-profit legal service providers receive some additional funds from foundations, private fundraising, and occasional *cy pres* awards. Those sources are unpredictable and, for that reason, cannot usually be counted on for ongoing operations.

What population is served by the civil legal services delivery system in Maryland today?

Approximately 1 million individuals qualify for legal assistance from the state's civil legal services programs.⁴⁷

In Maryland, approximately 9% of the population, over half-a-million individuals, live below the federal poverty level.⁴⁸ Over 83,000 Maryland families (6.1%) live in poverty.⁴⁹

To qualify for help from Maryland Legal Aid, the state's only recipient of federal Legal Services Corporation (LSC) funds, an individual must have a household income that is within 125% of the federal poverty guidelines. A person with a family of 4 must make less than \$29,813. A single individual must make less than \$14,588.⁵⁰

To qualify for help from most other civil legal aid organizations in the state, which receive funds from the Maryland Legal Services Corporation, a person must have a household income that is below 50% of the Maryland median income. A person with a family of 4 must earn less than \$52,674. A single individual must earn less than \$27,390.⁵¹

What does Maryland's civil legal services delivery system look like?

A network of court-based, government sponsored, and private non-profit organizations provide a range of services to meet the civil legal needs of low-income Marylanders.

WRITTEN, ONLINE AND MULTIMEDIA RESOURCES. Individuals with a legal question, or who are unsure where to begin can turn to a range of online and written resources to determine if they need more in-depth legal help.

† The Maryland State Law Library operates the state's legal information website, the **People's Law Library of Maryland**, www.peoples-law.org.

✚ The Maryland Judiciary provides **Legal Help** through its website, www.mdcourts.gov. These pages provide information on court procedures, court services, as well as links to **forms, instructions, brochures** and **videos** designed to guide persons who must proceed without counsel.

SELF-HELP CENTERS. The Maryland Judiciary provides a network of self-help centers where unrepresented persons can obtain help in finding and completing forms and preparing for court. Visitors meet with an attorney, usually for 15-20 minutes, and receive some basic help in representing themselves.

Family Law Self-Help Centers are available in most Circuit Court locations. Larger jurisdictions may have full- or near full-time programs, providing assistance during most court hours. Smaller jurisdictions may have programs that operate one day or one-half day per week. Some courts contract with a legal service provider to operate the program; others hire attorneys directly. Still others may operate the program with volunteer lawyers or contract with local counsel.

There is currently a single **District Court Self-Help Center**, located in the Glen Burnie District Court. The program is operated contractually by Maryland Legal Aid. The program aids persons without counsel in small claims, landlord-tenant, and some domestic violence matters. In addition to providing walk-in assistance, the program serves unrepresented persons from every jurisdiction in the State via telephone and live chat. The program is in high demand. In 2013 the program served over 23,000 individuals.

HOTLINES. Several legal services programs operate telephone hotlines and helplines. Some hotlines are designed to serve the needs of specific individuals, for example, seniors and victims of domestic violence. The Family Law Hotline, a partnership of the Women’s Law Center and Maryland Legal Aid, provides telephone help to unrepresented persons in family law matters. The Women’s Law Center operates the Legal Forms Helpline to aid unrepresented litigants in domestic cases in completing court forms. Baltimore Neighborhoods, Inc., (BNI) operates fair housing and landlord-tenant hotlines. Finally, many local bar associations operate lawyer referral services which provide hotline services as well. Callers receive brief advice over the phone, and if additional assistance is needed, will be referred to a private bar member for assistance.

ON-SITE HELP FOR VICTIMS OF DOMESTIC VIOLENCE. A number of District and Circuit Court locations provide space and grant funding to local domestic violence providers who offer on-site help with safety planning, assistance in filing for protection, and representation at final protective order hearings. Those operated by the Women’s Law Center or the House of the Ruth are called “Protective Order Advocacy Representation Projects.” These programs do not operate in all court locations, and despite these resources, most persons go unrepresented in these cases.

CLINICS. The University of Maryland Francis King Carey School of Law and the University of Baltimore School of Law operate legal clinics that aid low-income individuals with a variety of legal needs. Clinics usually focus on a particular type of case and provide a learning opportunity for law students. Law students can appear in court under the supervision of an attorney pursuant to Md. Rule 16. The University of Maryland Just Advice Clinic uses a slightly different model, offering a low cost alternative for individuals in need of legal advice who do not qualify for legal aid, but may not have the resources to hire a private attorney. Just Advice hosts two three-hour sessions each week at various locations. For \$10, customers receive up to 30 minutes with an experienced attorney to discuss their legal issue.

PRO BONO PROGRAMS. A number of organizations in the state provide pro bono representation to low-income clients. Some programs, like Community Legal Services of Prince George's County or the Montgomery County Bar Foundation Pro Bono Program, provide volunteer lawyers to income-eligible clients in a single jurisdiction. Others, like the Mid-Shore Pro Bono Program, serve persons within a particular region of the state. The Maryland Volunteer Lawyers Service recruits and places volunteer attorneys primarily in those jurisdictions that do not have a local pro bono program. Finally, some programs focus on a specific case type or population, such as seniors, the homeless or children with special educational needs. The Foreclosure Prevention Project spearheaded by the Pro Bono Resource Center of Maryland (PBRC), in conjunction with the state and multiple partners, provides volunteer lawyers to help unrepresented homeowners avoid foreclosure. A few of these pro bono programs also operate courthouse and community clinics, public workshops and classes for self-represented litigants on a range of legal issues. For example, PBRC and the University of Baltimore School of Law run a Pro Bono Family Mediation Project for the Circuit Court for Baltimore City. Through the program, volunteer lawyers and mediators conduct day-of-court mediations in contested custody cases, with 79% of cases resulting in an agreement.

PRIVATE BAR – REDUCED FEE PROGRAMS. The Judicare Family Law Project and Civil Justice are examples of programs that provide assistance to low- or moderate-income individuals by engaging the private bar at a reduced rate. The Judicare Family Law Project, administered by MLSC, is operated by a series of grantees. Grantee programs recruit private attorneys willing to accept cases at a capped, low hourly rate. Clients pay a one-time fee of \$25; the attorney's fee is otherwise paid for by the program. Civil Justice, Inc., coordinates a network of Maryland attorneys who provide help to clients who pay a reduced fee for their services. Civil Justice Inc. provides assistance primarily in consumer and foreclosure matters.

STAFF ATTORNEY PROGRAMS. Finally, a number of legal aid organizations provide experienced public interest staff attorneys to aid low-income clients, including full representation where program resources permit. These programs often specialize in case types relevant to the poor, areas outside the expertise of private practitioners or where there is very

high demand. These may include landlord-tenant matters, consumer law, public benefits, elder law issues, farmworker rights, family law and domestic violence.

What role does pro bono representation play in the delivery system?

Maryland has made a significant commitment to involving the private bar in the delivery of legal services by promoting pro bono representation. Maryland is one of only 8 states that have mandatory pro bono reporting. The Maryland Judiciary has required all lawyers to report on their pro bono activities since 2002. Each jurisdiction is required to have a local pro bono committee that works to identify opportunities for local lawyers to serve pro bono. The data collected from mandatory reporting has yielded critical information about the impact pro bono can have on the delivery system, and the limits of that contribution.

The Maryland Access to Justice Commission and the Standing Committee on Pro Bono Legal Services recently released a joint report examining the data collected from the mandatory reporting process over the past 11 years.

⚖️ ***Maryland lawyers make a significant contribution by serving pro bono. Fifty-seven percent of all full-time active lawyers report they do some pro bono.*** The number of those who provide over 50 hours of service has increased over the years, as has the number of total hours of service provided by Maryland lawyers. The percent of all lawyers and full-time lawyers reporting doing any pro bono has decreased slightly during the last eleven years. Last year pro bono programs, operated by MLSC grantees in the State, closed approximately 8,000 cases, representing about 5% of the cases handled by MLSC grantees.⁵² The value of those services was estimated at close to \$19 million. This does not include the hundreds of cases handled by attorneys “directly” or outside a legal services program. Pro bono programs are more likely to assign private attorneys to cases where litigation is necessary, and where the attorney is likely to handle just one case at a time.

⚖️ ***The pool of lawyers available to serve pro bono is smaller than suggested by the total population of lawyers.*** Among all Maryland lawyers on active status, 14% report they are not actively practicing law. Forty-two percent report that their primary office is outside Maryland. Nearly 20% report they work for a government entity. Government attorneys are less likely be able to serve because they frequently do not have the expertise to provide the type of legal help needed by low-income clients, have conflicts of interest, or are prohibited from the outside practice of law.

⚖️ *The private bar has skills that do not match the areas of help needed by most low-income Marylanders.* While family law is the area most lawyers provide pro bono, it is consistently ranked as only the 7th or 8th primary practice area for Maryland lawyers. The skills Maryland lawyers have may not match the needs of low-income residents.

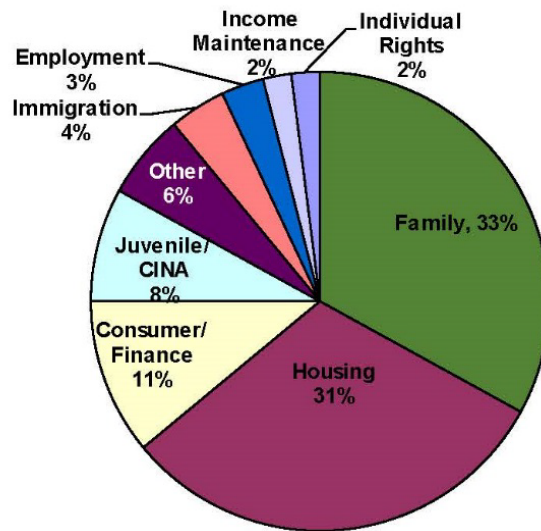
Finally, it was noted in testimony before the Task Force that pro bono representation is not free. To match potential clients with attorneys requires administrative staff and funding to run the referral program. Pro bono has an important role to play in any civil legal services delivery system. Maryland has done as much as any state to capitalize on the potential of that resource, but it has not proven sufficient to fill the justice gap for low-income Marylanders.

Are there gaps in service?

PROGRAMMATIC. Marylanders do not currently have a right to counsel at public expense in most civil matters. Those without means are often required to navigate the court system on their own without representation. MLSC reports its grantees opened nearly 168,000 new cases in Fiscal Year 2013, an increase of 5% from the year prior.⁵³ Despite these resources, thousands of Marylanders do not have access to a lawyer when they have a legal problem. In the *Action Plan for Legal Services to Maryland's Poor [Cardin Report]*, released by MLSC in 1988, a statewide advisory panel chaired by then Representative Benjamin L. Cardin, reported that “less than twenty percent of Maryland’s low-income population is able to receive legal assistance for a wide range of critical civil legal problems.”⁵⁴ More than two decades later, little has changed. In Maryland, it is estimated that only about 22% of the civil legal needs of low-income and poor residents are being met.⁵⁵ The Maryland Access to Justice Commission estimated in its 2010 report that about 340,000 Marylanders are unrepresented in state courts each year who would be eligible for assistance if sufficient resources were provided.⁵⁶ This figure does not include the many Marylanders who may need legal help short of litigation, or who are not asserting their rights or defenses under the law because of a lack of access to counsel.

The voluntary civil legal services delivery system provides assistance in a range of case types, as noted in the figure below.

**MLSC Funded Legal Services Providers
TYPES OF CASES CLOSED**



SOURCE: Maryland Legal Services Corporation,
Fiscal Year 2013 Annual Report: July 1, 2012 to June 30, 2013.

Despite these programs, many persons continue to litigate on their own, without the help of a lawyer. In its study, *Implementing a Civil Right to Counsel in Maryland*, the Maryland Access to Justice Commission estimated that most tenants in rent court and most individuals in public benefits cases proceed without counsel.⁵⁷ In domestic violence matters, the vast majority of both parties go unrepresented. In 2012 only 23.8% of petitioners and 17.7% of respondents had lawyers for the final protective order hearing.⁵⁸ In family law data from 2010, 73% of cases involved at least one self-represented litigant at the time the answer was filed. In 47% of cases, nearly half the cases, neither party had counsel at that same juncture. Seventy-eight percent (78%) of cases had at least one person without a lawyer when the case went to trial; in 42% of trials, neither party had a lawyer.⁵⁹

GEOGRAPHIC. The Maryland Legal Services Corporation funds programs that serve residents in every jurisdiction in the State. While it is often difficult for low-income persons to find free or low-cost legal help, the programs that are available are fairly evenly distributed across Maryland. The table below reflects the percent of the total population in each region in Maryland, the percent of the total poverty population in that part of the State and the percent of legal services provided to residents of those areas by MLSC grantees. Baltimore County and the Eastern Shore appear to have access to fewer resources than their poverty population warrants. Anne Arundel and Prince George’s County residents seem to be able to access legal help in slightly higher proportion than their poverty population. Overall, however, legal services programs are fairly evenly distributed across the State.

***Distribution of MLSC Grantee Clients Served
Compared to Poverty Population***

| Jurisdiction | Percent of Total State Population | Percent of State Poverty Population | Percent of Legal Services Provided by MLSC Grantees |
|--|--|--|--|
| | | | |
| Anne Arundel | 9% | 6% | 12% |
| Baltimore City | 11% | 25% | 26% |
| Baltimore Co. | 14% | 13% | 11% |
| Central MD: Carroll Harford Howard | 12% | 7% | 6% |
| Eastern Shore: Caroline Cecil Dorchester Kent Queen Anne's Somerset Talbot Wicomico Worcester | 8% | 10% | 6% |
| Montgomery | 17% | 11% | 10% |
| Prince George's | 15% | 14% | 17% |
| Southern MD: Calvert Charles St. Mary's | 6% | 4% | 4% |
| Western MD: Allegany Frederick Garrett Washington | 8% | 8% | 7% |

How many attorneys are available to low-income Marylanders through the state's civil legal services providers?

As noted in the recent report, *Longitudinal Analysis of Pro Bono Reporting: 2002-2012*, released by the Maryland Access to Justice Commission, "A very small percent (about 1.4%) of Maryland lawyers work for a legal services organization providing legal help to people of limited means. About another 1.6% report they work for a public interest organization."⁶⁰ This means that there is 1 civil legal aid lawyer for every 1,055 poor persons in Maryland. By comparison, there is 1 lawyer for every 160 people in the general population.⁶¹ The pool of public interest lawyers able to serve the State's poor is very limited, putting tremendous pressure on the private bar to provide their services pro bono, and on existing, understaffed legal services programs.

THE GOAL: EXTEND THE RIGHT TO COUNSEL IN CIVIL LEGAL MATTERS THAT AFFECT BASIC HUMAN NEEDS

Maryland would benefit significantly by making a commitment to ensure that low-income Marylanders have a right to counsel at public expense in those categories of cases where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody. Extending the right to counsel to these types of civil cases would:

- ⚖️ Increase public trust and confidence in the courts.
- ⚖️ Support the rule of law by ensuring Maryland laws have the effect intended by the General Assembly, and that all Marylanders benefit from the rights and protections available to them under those laws.
- ⚖️ Improve the efficient operations of the courts by reducing unnecessary defaults and dismissals, and by encouraging knowing and voluntary settlements.
- ⚖️ Ensure fairness in Maryland courts. Individuals with a lawyer are better able to present their case so the court can make an effective decision.
- ⚖️ Boost the economy by ensuring Marylanders receive benefits and support to which they are entitled, and which are then spent locally on the goods and services Maryland families need.
- ⚖️ Save the State monies that would otherwise be spent to address homelessness, or cover the costs of domestic violence, family conflict, and other costs to society as a whole that result from the cascading effects of poverty.

The Task Force urges the State to endorse the principle that low-income Marylanders should have a right to counsel in those categories of cases where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody.

RECOMMENDATIONS

Maryland already supplies counsel at public expense to low-income individuals in a number of critical civil case types including:

- ⚖️ Child in Need of Assistance (CINA) (for both children and parents)
- ⚖️ Termination of Parental Rights (for both children and parents)
- ⚖️ Juvenile Delinquency
- ⚖️ Child in Need of Supervision (CINS)
- ⚖️ Adult Guardianship
- ⚖️ Civil Commitment

The Task Force recommends that the State adopt a measured, phased plan to extend the right to counsel by adding to this list those additional civil case types that affect basic human needs. Towards that end the Task Force makes the following recommendations.

Recommendation 1. Create a right to counsel in civil domestic violence cases through a four-year, phased-in expansion of existing programs that provide representation to income-eligible petitioners and respondents.

It is essential that individuals have access to legal representation when at risk for domestic violence. Indigent victims who are represented are more likely to prevail in securing protection, retaining housing and protecting their children and themselves from further harm. Indigent respondents also have much at stake when facing a civil protective order. For some there are job-related and financial consequences, as well as the potential loss of a home or the ability to care for their children.

The Task Force recommends Maryland expand an existing network of programs to provide access to representation in civil protective order cases. Maryland has done much to expand access to legal help for victims of domestic violence and will be able to build on an existing network of court-based domestic violence legal services programs established over the last 15 years.

Over the last decade and half, the Administrative Office of the Courts (AOC) has funded a series of court-based projects that offer safety planning, assistance in filing for protection, and full representation at the final protective order hearing. In many instances, programs were launched with funding from the Violence Against Women Act (VAWA) federal grant program, administered in Maryland by the Governor's Office on Crime Control & Prevention. Once the new program was established, the AOC assumed the costs and used the VAWA funds to add another court-based location to the program. Programs funded serve all 24 jurisdictions. All programs provide the full range of legal services, including attorney representation at the final protective order hearing, with the exception of Garrett County where the Dove Center provides non-attorney advocacy only.

These on-site programs are operated by a number of local domestic violence providers. Those operated by the House of Ruth or Women's Law Center of Maryland are called "Protective Order Advocacy & Representation Projects" (POARP). POARP staff and those at similar centers provide on-site, legal services to victims of domestic violence in protective and peace order cases, as well as at protective order appeals, modifications and contempt proceedings. Clients can walk into any of these on-site programs during court business hours and receive immediate assistance. Not all programs are located within courts, although all programs serve both Circuit and District Courts in the jurisdiction.

In Fiscal Year 2014, the AOC made grants totaling \$1,236,075 to these domestic violence legal services programs. In Fiscal Year 2013, the last year for which complete data is available, these programs provided legal representation to 3,404 individuals, although the total number served is much greater.⁶²

| Organization | Jurisdictions Served |
|---|--|
| Mid-Shore Council on Family Violence | Caroline, Talbot, Queen Anne's, Dorchester, Kent |
| Cecil County DV Rape Crisis Program | Cecil |
| Sexual Assault/Spouse Abuse Center | Harford |
| Citizens Assisting and Sheltering the Abused (CASA) | Washington |
| Life Crisis Center | Somerset, Worcester, Wicomico |
| Heartly House | Frederick |
| Family Crisis Resource Center | Allegany |
| YWCA | Anne Arundel |
| Southern MD Center Family Advocacy | St Mary's, Charles, Calvert |
| House of Ruth | Baltimore City, Prince George's, Montgomery |
| Garrett County Dove Center | Garrett |
| Multi-Ethnic DV Project (WLC) | Statewide |
| Women's Law Center | Baltimore City, Baltimore County, Carroll |
| Hope Works | Howard |

To ensure the program enhances access to justice for all and does not create inequities, the Task Force recommends the initiative provide counsel to all income-eligible respondents as well as petitioners. The program might make use of multiple providers to avoid conflicts of interest.

With a statewide network of domestic violence legal services programs in place, this model can be leveraged to extend its reach. Domestic violence cases are typically finite. Once the final protective order has been granted the case is typically closed. Yet the stakes are high and having an attorney makes a difference. It would take a modest investment to expand the existing framework of programs to ensure all income-eligible individuals representation. In its *Implementation* report, the Maryland Access to Justice Commission noted that

approximately 15,300 low-income individuals are unrepresented in final protective order cases each year.⁶³ Using the figures used by the Commission in estimating the cost of providing counsel (\$320 per case),⁶⁴ the cost of extending representation to unrepresented income-eligible individuals would be approximately \$4.8 million.

Phasing. These programs provide an opportunity for Maryland to extend a guaranteed right to counsel to income-eligible petitioners and respondents in domestic violence cases. The State could accomplish this goal by increasing funding for domestic violence legal services providers by approximately \$1.2 million per year for each of the next four years. That would bring total funding for these programs to approximately \$6 million by Fiscal Year 2018.

The benefits would be significant. Families would be protected and stabilized, able to retain jobs and housing, and move forward to a secure, violence-free future. The state would reap the benefits that stability brings by avoiding healthcare and social service costs that are incurred when families are at risk. As noted in the Maryland Access to Justice Commission's report, *Economic Impact of Civil Legal Services in Maryland*, even at the current level of investment, by providing representation to the small percentage of victims currently assisted, the State saved at least \$1.3 million in health costs and productivity by preventing domestic violence.⁶⁵

The Task Force recommends that a certain minimum percentage of the new funding provided each year be directed to programs that provide representation to income-eligible respondents. Because there are no known programs that serve this population, and the level of demand is unknown, the Task Force recommends the following allocation for income-eligible respondents, to ensure that we begin to build capacity in this area:

Year One: At least 20%.

Year Two: At least 30%.

Year Three: At least 40%.

Year Four: All income-eligible respondents and petitioners should have access to representation when needed.

Goal. The goal of this initiative would be to create a de facto right to counsel for income-eligible petitioners and respondents in civil protective order cases within four years. Once full funding is achieved, the Task Force recommends the State consider creating a statutory right to counsel in these matters.

Recommendation 2. Establish a right to counsel pilot program in child custody matters by increasing funding for the Judicare program administered by the Maryland Legal Services Corporation.

There is no value more important to parents than their ability to parent and care for their children. Children benefit when family disputes are resolved based on their true best interest – when parents and the court have the information and support they need to arrive at a decision that preserves the child’s best interest. When the right to raise and care for a child is at risk because of an allegation of abuse or neglect, the State of Maryland provides a right to counsel for parents as well as children. A low-income parent at risk of losing custody of a child in Child in Need of Assistance (CINA) cases and Termination of Parents Rights (TPR) cases is provided counsel at public expense. However, when a parent is similarly at risk of losing the ability to care for a child because of contested custody litigation, that same parent is not entitled to a publicly-funded lawyer. Low-income parents must navigate the courts on their own, and they do so in record numbers.

The State of New York currently provides a right to counsel in custody cases. The New York legislature established a statutory right to counsel for “[T]he parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding.”⁶⁶ The right also extends to the appeal.⁶⁷

The Judicare Family Law Project, an existing Maryland model, should be used to pilot a right to counsel in custody cases, and could provide an opportunity to test the effectiveness of providing for the right by engaging private attorneys to represent low-income parents in these cases. The Maryland Legal Services Corporation (MLSC) and the AOC jointly fund the Judicare Family Law Project. MLSC makes Judicare grants to a range of providers who refer contested family law cases to private lawyers who work at a reduced rate. The program operates in all Maryland jurisdictions.

Judicare grantees screen and place cases with private attorneys who are willing to accept a reduced, guaranteed payment. Clients pay a small, one-time application fee (\$25); the grant covers all remaining costs of representation. Attorneys are paid \$80 per hour with a cap of \$1,600 for up to 20 hours of work. Depending on the availability of funds, the project may pay an additional \$80 an hour for up to an additional \$800 (\$2,400 total cap), for every hour over 25 hours that the attorney spends on the case. In essence, hours 21-25 must be provided pro bono.

During Fiscal Year 2013, the Judicare project referred 974 cases to 471 private attorneys. Those attorneys provided approximately 22,000 hours of service, including 5,700 pro bono hours. The project benefited 2,700 individuals and families. MLSC awarded \$1.57 million

in Judicare grants and supplemental funding to 7 organizations around the State for the same fiscal year.

In an evaluation of the Judicare program in 2011, evaluators found that clients, participating attorneys, and program administrators expressed satisfaction with the program and perceived positive outcomes. Clients who were able to select their own attorneys expressed the most satisfaction with the program. Some attorneys thought the “cap” was inadequate, though most felt they gained personally and professionally from participating in the program. Judges and masters surveyed felt having attorney representation had a favorable impact on the outcome.⁶⁸

The same study found that contested cases handled by Judicare attorneys cost an average of \$1,046 per case.⁶⁹ It is important to remember that the program is currently limited to cases that are contested and in active litigation. The legal needs of parents in custody cases vary, and most cases settle, especially when parents are informed and understand their rights under the law. In its *Implementation* report, the Maryland Access to Justice Commission estimated that approximately 31,000 additional low-income parents would qualify for legal help if a civil right to counsel were extended to custody matters. A complex custody matter may take many tens of hours, or even 100 hours or more to resolve; a simple legal inquiry about a custody issue, however, may be resolved much more quickly. The Maryland Access to Justice Commission used a weighted average, arriving at an estimate of 4 hours per case to arrive at a total projected cost per case of \$320. At that rate it would require approximately \$10 million⁷⁰ to extend legal representation to all income-eligible parents of any child, where the parent is “seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding,” to use New York’s language. The Task Force recommends the use of the lower figure, \$320 per case, to provide a proposed funding amount. While this is probably low for custody matters, funding at even this level would enable Maryland to evaluate the cost and the need based on actual program performance.

Expanded Judicare Pilots. Maryland should explore the impact on family and child well-being, and court operations of a civil right to counsel in custody cases by expanding funding for the Judicare project in several locations. To test the feasibility of the model and the impact of providing counsel in these critical cases, the Task Force recommends the State pilot a fully-funded Judicare-type program in the following jurisdictions,:

- ✚ Baltimore City
- ✚ Prince George’s County
- ✚ Lower Eastern Shore (Dorchester, Somerset, Wicomico & Worcester)

Baltimore City. Baltimore City represented about 10.6% of all family civil filings in Fiscal Year 2013.⁷¹ Without taking into account the higher rate of poverty and self-representation

in the City, these figures suggest it would require approximately \$1.1 million to provide access to representation for all income-eligible City residents in custody matters. Full funding could be achieved by increasing funding for the program by \$275,000 per year for four years.

Prince George's County. Prince George's County represented about 13% of all family civil filings in Fiscal Year 2013.⁷² That suggests it would require approximately \$1.3 million to provide a comprehensive right to counsel in custody cases for income-eligible parents. The cost to provide legal help for all income-eligible parents in custody litigation in Prince George's County within the next four years, could be achieved by increasing funding \$325,000 per year for the next four years.

Lower Eastern Shore. Launching a pilot project to provide broad access to representation in custody cases for income-eligible parents in Dorchester, Somerset, Wicomico and Worcester Counties, will permit the model to be tested in a more rural area of the state. These jurisdictions accounted for 6,181 or 6.3% of new family law filings in Fiscal Year 2013.⁷³ A fully funded program would include an additional \$630,000 per year. Full funding for these jurisdictions could be achieved by increasing funding for the program by \$157,500 per year for four years.

Staff Attorney Component. The current Judicare model depends primarily on the use of private attorneys paid a reduced rate. Under the current program, some Judicare grantees report that it is difficult to recruit attorneys who have the expertise in family law and are willing to take on cases at a reduced rate. This may, in part, be due to the fact that only 5.6% or slightly more than 2,000 Maryland lawyers report family law as their primary practice area.⁷⁴ The pilot should take this into consideration when seeking to establish full access to representation in custody matters for all income-eligible parents in a jurisdiction. The pilot project will need to permit the use of staff attorneys in addition to private counsel to meet the need.

Building Capacity for Family Law Representation and Eliciting Pro Bono Service.

In addition to permitting the use of staff attorneys, where necessary to meet demand, the Task Force recommends the State promote family law practice by building capacity within the bar and creating incentives for young lawyers to enter family law practice. The Task Force recommends the Pro Bono Resource Center develop or expand an existing family law course, similar to the Rita Rosenkrantz Basic Family Law Course offered by the Montgomery County Bar Foundation. That course is used to train new family law attorneys in exchange for accepting a pro bono case. A similar statewide initiative could help encourage new attorneys to enter family law practice, and increase the pool of attorneys

available to accept pro bono custody matters. Sufficient funding should be provided to permit the Pro Bono Resource Center to properly staff the initiative.

Recommendation 3. Appoint a work group to oversee implementation of these recommendations, to assess the programs and pilots, and to report back to the Governor and the General Assembly.

The Task Force recommends the State appoint a work group to monitor implementation of these recommendations. The work group membership should be appointed by the Governor, the Speaker and the Senate President. This work group could oversee a comprehensive evaluation of the initiatives recommended here. All programs should participate in a robust evaluation, designed to help the State understand the impact on the courts, the impact on the families affected, as well as the collateral effects of providing representation in these cases.

Summary of Recommended Investments

The following table summarizes the phasing of the recommended pilots and programs, and the funding that would be required to fulfill the objectives of this report:

| | Year One | Year Two | Year Three | Year Four |
|---|---------------------|---------------------|---------------------|---------------------|
| <i>Recommendation 1: Realize right to counsel in civil domestic violence cases. (Petitioners & Repondents).</i> | \$ 1,200,000 | \$ 2,400,000 | \$ 3,600,000 | \$ 4,800,000 |
| <i>Recommendation 2: Expand Judicare to broaden right to counsel for parents in child custody cases.</i> | | | | |
| <i>Baltimore City</i> | \$ 275,000 | \$ 550,000 | \$ 875,000 | \$ 1,100,000 |
| <i>Prince George's Co.</i> | \$ 325,000 | \$ 650,000 | \$ 975,000 | \$ 1,300,000 |
| <i>Lower Eastern Shore (Dorchester, Somerset, Wicomico, Worcester)</i> | \$ 157,500 | \$ 315,000 | \$ 472,500 | \$ 630,000 |
| TOTAL PER YEAR | \$ 1,957,500 | \$ 3,915,000 | \$ 5,922,500 | \$ 7,830,000 |

¹ Gideon v. Wainwright, 372 U.S. 335 (1963).

² BUREAU OF JUSTICE ASSISTANCE, TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY (1997). Available at: <https://www.ncjrs.gov/pdffiles1/161570.pdf>.

³ Brief of Amicus Curiae, Maryland State Bar Assn., in *Frase v. Barnhart*, 379 Md. 100, 840 A.2d 114 (2003) (No. 6, Sept. Term, 2003), citing Robert W. Sweet, *Civil Gideon and Confidence in a Just Society*, 17 Yale L. & Pol’y Rev. 503, 503 (1998).

⁴ An Act to Admit Such Persons as Are Poor to Sue in Forma Pauperis, 11 Hen. VII, c. 12 (1494).

⁵ See e.g., *Wait v. Farthing*, 84 Eng. Rep. 237, 237 (K.B. 1668).

⁶ *Airey v. Ireland*, 2 EUR.H.R.REP. 305 (1979-1980).

⁷ “In approximately two-thirds of the [Council of Europe] COE countries, the right to counsel covers a wide spectrum of civil matters. These include family law, housing, consumer and debt cases, personal injury claims, public benefits, employment and labor law. . . . Approximately fifteen countries use language suggesting coverage of all civil disputes. Some limit the scope by identifying specific exclusions, rather than listing extensive inclusions.” Raven Lidman, *Civil Gideon as a Human Right: Is the U.S. Going to Join Step with the Rest of the Developed World?*, 15 TEMP. POL. & CIV. RTS. L. REV. 769, 779 (2006).

⁸ See *id.*, at 790, for a chart detailing the sources and qualifications for rights to counsel in civil matters in countries around the world. See also Earl Johnson, Jr., *Equality Before the Law and the Social Contract: When Will the United States Finally Guarantee Its People the Equality Before the Law the Social Contract Demands?*, 37 FORDHAM URB. L.J. 157 (Feb. 2010).

⁹ WORLD JUSTICE PROJECT, RULE OF LAW INDEX 2012-2013, 27. Available at http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf.

¹⁰ 452 U.S. 18 (1981).

¹¹ 424 U.S. 319, 335 (1976).

¹² 131 S. Ct. 2507 (2011).

¹³ *Id.*, at 2520.

¹⁴ See the “Status Map” provided by the National Coalition for a Civil Right to Counsel (NCCRC). Available at: <http://www.civilrighttocounsel.org/map>, last visited 8 Sept. 2014.

¹⁵ *Id.*

¹⁶ NY FAM. CT. § 262 (2012).

¹⁷ OR. REV. STAT. ANN. §§ 107.425(6), 109.072(5). See also *In re Marriage of Thomason*, 174 OR.APP. 37, 44 (Ct. App. 2001) (explaining that court’s ability to appoint counsel is limited to specific

situations enumerated in statute; to hold otherwise “would be a limitless grant of authority to appoint counsel for a child at any time—even upon the court's own motion—and to impose the costs on the child's parents.”).

¹⁸ NCCRC, *supra* note 14.

¹⁹ N.Y. FAM. CT. ACT § 262(a)(ii), N.Y. FAM. CT. ACT § 1120(a).

²⁰ Pamela Cardullo Ortiz, *How a Civil Right to Counsel Can Help Dismantle Concentrated Poverty in America's Inner Cities*, 25 STANFORD L. & POL'Y REV. 163 (2014).

²¹ In her article, *50 Years After Gideon: Moving Towards a Civil Right to Counsel*, MA. B. ASS'N LAW. J. (May 2013), Barbara Mitchell recalls the story of one client who lost her job after missing work to receive treatment for breast cancer. Without a job, and with high insurance and healthcare costs, the client was facing possible eviction. With the help of a lawyer, she was able to assert her right to work under the Americans with Disabilities Act (ADA), was reinstated on the job, got time off for chemotherapy, and was able to remain in her home. After treatment, she was able to return to work full-time, cancer-free.

²² MARYLAND LEGAL SERVICES CORPORATION, ANNUAL REPORT, July 1, 2011 – June 20, 2012.

²³ Ortiz, *supra* note 20 at 181.

²⁴ Maryland Legal Services Corporation (MLSC) grantees reported that 73% of the services provided were “brief advice, information or referral.” MLSC ANNUAL REPORT, June 1, 2012 – June 30, 2013.

²⁵ Testimony of Susan Erlichman, Executive Director, MLSC. Meeting of the Task Force to Study Implementing a Civil Right to Counsel, Annapolis, Maryland. December 3, 2013.

²⁶ LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA (2007), *available at* <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>. See also MD. ACCESS TO JUSTICE COMM'N, IMPLEMENTING A CIVIL RIGHT TO COUNSEL IN MARYLAND (2011), <http://mdcourts.gov/mdatjc/pdfs/implementingacivilrighttocounselinmd2011.pdf>.

²⁷ Carroll Seron, et. al. *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419, 427 (2001). (“Notably, while approximately 28% of the control cases show defaults or failure to appear in Housing Court, only about 16% of treatments do so.”)

²⁸ Jessica Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. POV. L. & POL'Y. 453, 491 (2011).

²⁹ Paula Hannaford-Agor & Nicole Mott, *Research on Self-Represented Litigation: Preliminary Results and Methodological Considerations*, 24 Just. Sys. J. 163 (2003).

³⁰ *Id.*

³¹ Debra Gardner, *Justice Delayed is Once Again, Justice Denied: The Overdue Right to Counsel in Civil Cases*, 17 BALTIMORE L. REV. 59, 71 (2007).

³² *Id.* at 72, n. 114.

³³ ADVISORY COUNCIL OF THE MARYLAND LEGAL SERVICES CORPORATION, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR (1988), 12.

³⁴ *Id.*

³⁵ PETER HOLLAND, EVALUATION OF THE PRO BONO RESOURCE CENTER CONSUMER PROTECTION PROJECT (2013), at 6-7, on file with the Maryland Access to Justice Commission.

³⁶ Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 511 (2003).

³⁷ WOMEN'S LAW CENTER OF MARYLAND, INC., FAMILIES IN TRANSITION: A FOLLOW-UP STUDY EXPLORING FAMILY LAW ISSUES IN MARYLAND 47 (2006).

³⁸ *Id.*, at 140.

³⁹ Seron, *supra* note 27.

⁴⁰ BOSTON BAR ASSOCIATION TASK FORCE ON EXPANDING THE CIVIL RIGHT TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION (March 2012).

⁴¹ Steinberg, *supra* note 28.

⁴² Rebecca Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, SEATTLE J. FOR SOC. JUST. (Fall/Winter 2010).

⁴³ MD. ACCESS TO JUSTICE COMM'N, ECONOMIC IMPACT OF CIVIL LEGAL SERVICES IN MARYLAND (2013).

⁴⁴ *Id.*

⁴⁵ Senate Bill 248 was signed into law in 2010. The bill increased existing surcharges to support civil legal services in an effort to replace critical revenue lost when interest rates plummeted, beginning in 2008, significantly reducing the funds from the Interest on Lawyers Trust Accounts (IOLTA) program. The bill increased the surcharge on civil cases in the circuit courts from \$25 to \$55, increased the surcharge on civil cases in the District Court from \$5 to \$8 in summary ejectment cases and from \$10 to \$15 in all other civil cases. The increases are set to sunset in 2018. MD. CODE, CTS. & JUD. PROC. §7-202.

⁴⁶ MLSC, *supra*, note 24.

⁴⁷ MD. ACCESS TO JUSTICE COMM'N, *supra*, note 26.

⁴⁸ U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS: MARYLAND, <http://quickfacts.census.gov>

⁴⁹ U.S. CENSUS BUREAU, S1702 POVERTY STATUS IN THE PAST 12 MONTHS OF FAMILIES, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF3_DP3.

⁵⁰ FEDERAL REGISTER, VOL. 79, NO. 31, FRIDAY, FEBRUARY 14, 2014 / RULES AND REGULATIONS, at 8864. <http://www.gpo.gov/fdsys/pkg/FR-2014-02-14/pdf/2014-03273.pdf>.

⁵¹ MD. LEGAL SERVS. CORP., CLIENT INCOME ELIGIBILITY GUIDELINES (FY2014), <http://mlsc.org/wp-content/uploads/2010/08/2014-MLSC-incgud.pdf>.

⁵² Testimony of Susan Erlichman, *supra* note 25.

⁵³ MLSC, *supra* note 24 at 4.

⁵⁴ ADVISORY COUNCIL TO THE MARYLAND LEGAL SERVICES CORP., ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR [CARDIN REPORT], 1988, ix.

⁵⁵ MD. ACCESS TO JUSTICE COMM'N, *supra* note 26, at 9. ("MLSC has reported that approximately 1 million Marylanders are eligible for MLSC services. Of those, approximately 470,000 per year have a legal problem or may need assistance. Currently approximately 105,000 receive help through MLSC-funded grantees, which means there are probably about 365,000 additional Marylanders with unmet legal needs.")

⁵⁶ *Id.*, at 8.

⁵⁷ *Id.*

⁵⁸ DOMESTIC VIOLENCE MONTHLY SUMMARY REPORTING, STATE OF MD., ADMIN. OFFICE OF THE COURTS, http://portal.mdcourts.gov/dv/DVCR_Statewide_2012_1.pdf (last visited Apr. 11, 2014).

⁵⁹ DEPT. OF FAMILY ADMINISTRATION, MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS, Master Stats FY2009 – 2010. On file with the Maryland Access to Justice Commission.

⁶⁰ MD. ACCESS TO JUSTICE COMM'N, LONGITUDINAL ANALYSIS OF PRO BONO REPORTING: 2002-2012. <HTTP://MDCOURTS.GOV/MDATJJC/PDFS/LONGITUDINALANALYSISPROBONOPRACTICEREPORT201404.PDF>, at 1 and 12.

⁶¹ In Calendar Year 2012, there were 36,892 lawyers on active status in Maryland, of which 528 worked for a legal services organization. MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS, CURRENT STATUS OF PRO BONO SERVICE AMONG MARYLAND LAWYERS, YEAR 2012, 15. Maryland's general population includes 5,928,814 residents, of whom 9.4% or 557,308 are below the federal poverty guidelines. U.S. CENSUS BUREAU, *supra* note 39.

⁶² In FY2013 funding for these programs totaled \$1,215,918. ADMINISTRATIVE OFFICE OF THE COURTS, DEPT. OF FAMILY ADMINISTRATION, VICTIMS REPRESENTED AT PROTECTIVE ORDER HEARINGS. On file with the Maryland Access to Justice Commission.

⁶³ MD. ACCESS TO JUSTICE COMM'N, *supra* note 26 at 8.

⁶⁴ The AOC reports that in FY2013 programs provided attorney representation to 3,404 individuals. Total program costs were \$1,215,918 that year. Although many more individuals received assistance filing the petition, safety planning and other services, we can extrapolate an average cost of \$357 (\$1,215,918 divided by 3,404) as the cost per represented case. At this rate the cost of providing service to an additional 15,300 litigants in court would be \$5.4 million.

⁶⁵ MD. ACCESS TO JUSTICE COMM'N, *supra* note 43 at 1.

⁶⁶ N.Y. Fam. Ct. Act § 262 (a)(v); N.Y. Surr. Ct. Proc. Act § 407(1)(a)(iv).

⁶⁷ N.Y. Fam. Ct. Act § 1120(a); *see also* N.Y. Surr. Ct. Proc. Act § 407(a)(v).

⁶⁸ MARYLAND LEGAL SERVICES CORPORATION, JUDICARE FAMILY LAW PILOT PROJECT: EVALUATION SUPPLEMENT, March 2011.

⁶⁹*Id.*, 5.

⁷⁰ \$320 x 31,000 individuals = \$9.92 million.

⁷¹ MARYLAND JUDICIARY, ANNUAL STATISTICAL ABSTRACT, FISCAL YEAR 2013, at CC-20. (10,419 (Baltimore City) of 98,233 total new filings statewide).

⁷² *Id.* (12,883 (Prince Georges') of 98,233 total new filings statewide).

⁷³ *Id.* (6,181 (First Circuit) of 98,233 total new filings statewide).

⁷⁴ MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 62 at 5.