Furthering the Promise of Civil *Gideon* in Connecticut

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In 2016, the Connecticut Task Force to Improve Access to Legal Counsel in Civil Matters published a report. In this report, the Task Force outlined three recommended civil litigation practices in which Connecticut should establish a right to counsel, or a civil Gideon *right. These three areas were restraining order applications under Connecticut General Statutes § 46b-15, proceedings concerning "family integrity," and residential evictions. Connecticut has made significant progress on these goals through implementing a restraining order pilot program that ran from 2018-2019, a restraining order program currently in place, and a current pilot program instituting a right to counsel in eviction cases; however, further policy changes are needed in order to establish permanent civil* Gideon *rights in the Task Force's areas of concern. This paper argues that Connecticut should explore civil rights to counsel in the three recommended areas the Task Force identified, either by extending pilot programs or instituting new programs, under the administration of either the state or local governments. This paper also discusses the various benefits and costs to these proposals, the effect of the COVID-19 pandemic on these areas of concern, and how the passage of six years since the Task Force recommendations has changed the landscape of each area.*

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"Legal services come at a cost. But the lack of meaningful access costs more."

The Connecticut Task Force to Improve Access to Legal Counsel in Civil Matters in its Report to the Connecticut General Assembly, 2016[1]

I. INTRODUCTION

There is no single image of a courtroom or a court case in our collective imagination. Courtroom dramas often inaccurately portray the speed of the judicial process, the rules of procedure, and acceptable attorney behavior.[2]

If there was a single image of "the court," it would likely include a lawyer. Attorneys are, for better or worse, at the center of the American legal system. We assume that they are ever-present in our actual courtrooms as they are in our idealized ones; the idea that one has a "right to an attorney" is entrenched in how we think about law and justice, and will likely remain that way.[3] Given this fact, it may surprise many Americans, and many residents of Connecticut, that their right to an attorney is far from guaranteed in cases that often stem from normal life and quotidian unfairness: civil cases.

"A civil case is a private, non-criminal lawsuit, usually involving private property rights, including respecting rights stated under the Constitution or under federal or state law."[4] Civil cases make up a significant amount of the Connecticut court system's business every year. Between July 1, 2020 and June 30, 2021, 42,713 civil cases were added to Connecticut's judicial docket;[5] during that same period, 55,704 criminal cases were added to the state's criminal docket.[6] Even during the COVID-19 pandemic, where civil

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[1] JUD. COMM. CONN. GEN. ASSEMBLY, REPORT OF THE TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS 4 (Dec. 15, 2016), [hereinafter "Task Force Report"].

[2] *See, e.g.*, MIRACLE ON 34TH STREET (20th Century Fox 1947) (where a New York Superior Court judge rules expeditiously on evidence of questionable legal significance, likely for the sake of the narrative at issue in this piece of pop culture).

[3] *Cf.* Dickerson v. United States, 530 U.S. 428, 464–65 (2000) (Scalia, J. dissenting) ("I am not convinced by petitioner's argument that *Miranda* should be preserved because the decision occupies a special place in the 'public's consciousness.'" *Id.* at 464 (quoting Brief of Petitioner at 40, Dickerson v. United States, 530 U.S. 428 (2000)).

[4] *Civil Case*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/civil_case (last visited May 8, 2022). *Cf.* The definition of a criminal case; "[a] lawsuit brought by a prosecutor employed by the federal, state, or local government that charges a person with the commission of a crime. *Criminal Case Definition*, NOLO'S LEGAL DICTIONARY, https://www.nolo.com/dictionary/criminal-case-term.html (last visited May 8, 2022).

[5] *Civil Case Movement: July 1, 2020 to June 30, 2021*, STATE CONN. JUD. BRANCH, https://jud.ct.gov/statistics/civil/CaseDoc_2021.pdf (last visited May 8, 2022).

[6] *Geographic Area Criminal: July 1, 2020 to June 30, 2021*, STATE CONN. JUD. BRANCH (last visited May 8, 2022), https://www.jud.ct.gov/statistics/criminal/GA_crim_2021.pdf. Note that this is the number of cases filed in Geographic Area (GA) courts; this does not cover lower-level motor vehicle cases which are counted separately. There were over 103,000 motor vehicle cases that occurred during

cases were often deemed "non-essential" court business,[7] roughly forty-three percent of new, non-motor vehicle cases filed were civil disputes.[8]

Civil cases are often just as confusing as criminal cases and can have dire life consequences for the uninformed, the unrepresented, and those who are uninformed and unrepresented by virtue of their financial inability to hire counsel. There are myriad issues in framing this access to legal assistance issue solely in a legal lens, but from a legal representation point of view one possible solution is a "right to an attorney"—a *Gideon* right to counsel—in civil cases. Connecticut is among the many states (and, perhaps, at the forefront of these states) that have explored expanding a civil *Gideon* regime by proposing programs and solutions that would provide legal assistance to those unable to hire their own counsel, most notably in child custody cases.[9] Most recently in 2016, the Constitution State convened a Task Force charged with coming up with solutions in and around civil representation. The Task Force issued a report, and over a dozen recommendations were proposed.[10]

In the intervening six years, few permanent solutions have come to pass in light of these recommendations. Connecticut has pioneered some civil *Gideon* approaches. The state is one of the few that offers a right to counsel in all parental rights termination proceedings for both children and parents, and has done so since the 1990's.[11] In the last six years, however, Connecticut has piloted programs in areas of need and passed a limited, grant-based civil *Gideon* law.[12] That said, the state has a lot of work remaining if it is serious about providing fair and equitable representation to all of its citizens in the direst civil cases.

This article argues that this insufficient access to legal assistance must be addressed. Using the Task Force's report as a backdrop, this article argues that permanent civil *Gideon* must be installed in areas of identified greatest need (areas that remain just as dire as they were six years ago).[13] This article then goes on to weigh the pros and cons of these solutions. In doing so, this article concludes that the Connecticut General Assembly must continue the noble work of the Task Force it convened—it must come closer to furthering the promise of sustainable, impactful civil *Gideon* in Connecticut.

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the relevant time period, and are not included in this calculation. *Geographic Area Motor Vehicle: July 1, 2020 to June 30, 2021*, STATE CONN. JUD. BRANCH (last visited May 8, 2022), https://www.jud.ct.gov/statistics/criminal/GA_mv_2021.pdf.

[7] *See, e.g.*, *Statement from Judge Patrick L. Carroll III*, STATE CONN. JUD. BRANCH (Mar. 18, 2020), https://jud.ct.gov/HomePDFs/StatementChiefCourtAdministratorCarroll0320.pdf.

[8] *See Geographic Area Motor Vehicle*, *supra* note 6.

[9] CONN. GEN. STAT. ANN. §§ 45a-717(a)–(b) (2022), 46b-121(a)(1) (2022), 46b-136 (2019).

[10] TASK FORCE REPORT, *supra* note 1, at 4.

[11] CONN. GEN. STAT. ANN. §§ 45a-717(a)–(b) (2022), 46b-121(a)(1) (2022), 46b-136 (2019).

[12] *See* discussion *infra* section III.B.

[13] *See* discussion *infra* section IV.

II. CIVIL *GIDEON*, CONNECTICUT'S PROPOSED REFORMS, AND THE CURRENT STATUS OF RECOMMENDED AREAS OF REFORM

Any conversation concerning civil *Gideon* and addressing the issues that underlie inadequate civil representation must start with the ideas and constitutional underpinnings of current policies. Much of this discussion will seem repetitive to informed readers; this issue has been exhaustively analyzed. While this article is centered around furthering and echoing calls for civil representation reform, any paper with specific solutions must start with this historical analysis.

A. Civil Gideon *Overview*

Civil *Gideon* theory can be traced back to the Sixth Amendment of the Constitution, which guarantees in part the right, "to have the Assistance of Counsel for [one's] defence" in "all criminal prosecutions."[14] This right to counsel in criminal prosecutions, regardless of one's ability to pay for this assistance, was confirmed in *Gideon v. Wainwright*.[15] Writing for the majority, Justice Black noted that in, "our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[16] While the reality of criminal *Gideon* is far from ironclad—the line wherein parties are "too poor to hire a lawyer" is routinely debated and found wanting—this right has been more or less memorialized into the American legal canon through cases like *Miranda v. Arizona* over the past six decades.[17]

Universal civil *Gideon* would apply the right to the assistance of counsel in criminal prosecution to all civil cases; non-universal civil *Gideon* could apply these rights to individual kinds of civil cases.[18] While no person may

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[14] U.S. CONST. amend. VI.

[15] Gideon v. Wainwright, 372 U.S. 335 (1963).

[16] *Id.* at 344.

[17] *Id.*; *see generally* Miranda v. Arizona, 384 U.S. 436 (1966) (where the Supreme Court memorializes several general admonitions police must make to detained individuals regarding, in part, their right to the assistance of counsel). *But see* Oregon v. Elstad, 470 U.S. 298 (1985); New York v. Quarles, 467 U.S. 649 (1984) (examples of cases that calls into question the "stickiness" of *Miranda* and provides two examples—the admissibility of a second statement when the first was elicited in violation of *Miranda* and the "public safety" *Miranda* exception, respectively—of exceptions to *Miranda's* (and therefore *Gideon's*) universal grant of a right to the assistance of counsel in all criminal prosecutions). *See also* Vega v. Tekoh, 142 S.Ct. 2095, 2106 (2022) (quoting 42 U.S.C. § 1983) (holding that a *Miranda* violation is not 'the deprivation of [a] right . . . secured by the Constitution'"). It is unclear whether warnings regarding an arrested party's right to a defendant will remain in the American legal canon after future Supreme Court terms; while *Vega* only refers specifically to the level of personal liability borne by police officers, the case represents methodology similar to that seen in Justice Scalia's *Dickerson* dissent. *See* Dickerson v. United States, 530 U.S. 428, 445–65 (2000).

[18] More plainly, "'Civil right to counsel', sometimes called 'Civil Gideon', refers to the idea that people who are unable to afford lawyers in legal matters involving basic human needs – such as shelter, sustenance, safety, health, and child custody – should have access to a lawyer at no charge." *Civil Right to Counsel*, AM. BAR ASS'N STANDING COMM. ON LEGAL AID AND INDIGENT DEF., https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel1/.

be denied "life, liberty, or property, without due process of law," in both civil and criminal proceedings, the provision of assistance of counsel during a civil proceeding is not defined as "due process."[19]

This idea has been tested several times in *Gideon v. Wainwright*, and most famously in *Lassiter v. Department of Social Services*.[20] In addition to being critical to the civil *Gideon* canon, *Lassiter* is instructive precisely because it outlines strong, typical objections to civil *Gideon* in general.

Lassiter concerned a child custody civil process wherein the Petitioner mother objected to the termination of her rights as a parent as they related to her son by the state of North Carolina following her conviction of second-degree murder.[21] Having been denied the assistance of counsel through the latter part of the child custody proceedings, Petitioner argued that the Due Process clause "entitled her to the assistance of counsel, and that the trial court had therefore erred in not requiring the State to provide counsel for her."[22] The Court reasoned that due process "expresses the requirement of 'fundamental fairness,'" and analyzed whether Ms. Lassiter—an indigent *civil* litigant—had been denied this fairness.[23] The Court then applied its three-factor balancing test—balancing private (here, Lassiter's) interests, the risk of erroneous deprivation of these interests, and the Government's interests (including efficiency and financial burdens)—from *Mathews v. Eldridge* to determine whether this fairness-defined due process right had been denied.[24]

While the Court did find that "the companionship, care, custody and management of [one's] children . . . undeniably warrants deference and, absent a powerful countervailing interest, protection," therefore creating a powerful weighing in favor of the Petitioner, it went on to find that the "'almost infinite variation'" of facts within civil cases would make a constitutional right to counsel in such cases impossible.[25] The Petitioner's lack of counsel was ruled Constitutional as a result, though the Court did note that, "wise public policy . . . may require that higher standards be

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[19] U.S. CONST. amend. XIV, § 1.

[20] *See* Lassiter v. Dep't Soc. Servs. Durham Cnty., 452 U.S. 18 (1981).

[21] *Id.* at 21–22. While not relevant to the constitutional matters of this case, it should be noted that Lucille Lassiter, Ms. Lassiter's mother, had gained custody of Ms. Lassiter's other four children. The issue in this case was the custody of William, Ms. Lassiter's second-youngest child. *Lassiter v. Department of Social Services*, 5-4 POD, at 08:09–11:50 (Apr. 26, 2022), https://www.fivefourpod.com/episodes/lassiter-v-department-of-social-services/.

[22] *Lassiter*, 452 U.S. at 24.

[23] *Id.* at 24.

[24] Mathews v. Eldridge, 424 U.S. 319, 335 (1976); *see also* Goldberg v. Kelly, 397 U.S. 254, 263 (1970) (outlining financial costs of alternative procedures as one possible weighing factor that would later be adopted implicitly in the *Mathews* test). It should be noted that Justice John Paul Stevens' dissent excoriated the "balancing" framework in its entirety; he argued that the issue in *Lassiter* was not one of balancing but "one of fundamental fairness, not of weighing the pecuniary costs against the societal benefits." *Lassiter*, 452 US. at 60 (Stevens, J., dissenting).

[25] *Lassiter*, 452 U.S. at 27 (quoting Stanley v. Illinois, 405 U.S. 645, 651 (1972)); *Id.* at 32 (quoting Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973)).

adopted than those minimally tolerable under the Constitution," and that "informed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel not only in parental termination proceedings, but also in dependency and neglect proceedings . . ."[26]

Despite the Court's acknowledgement that indigent parents may be entitled the assistance of counsel, it has continually denied that civil *Gideon* rights are guaranteed by the constitution in this—or any—area of civil litigation over the last forty years, despite the intrusive nature of depriving indigent parents custodianship without representation.[27] Despite many state court[28] and federal court[29] decisions particularly concerning civil litigants' child support contempt cases, the Supreme Court has declined to extend these rights any further.[30]

The absence of a larger, federally-recognized civil *Gideon* right leaves a patchwork collection of state laws that occasionally fill the role of

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[26] *Lassiter*, 452 U.S. 28, 33–34 (1981). Justice Blackmun, writing in dissent, went one step farther and laid out why a constitutional right to counsel in cases such as this one went beyond "wise public policy," but mandated under *Mathews* balancing as well.

> If the Court . . . was able to perceive as constitutionally necessary the access to judicial resources required to dissolve a marriage at the behest of private parties, surely it should perceive as similarly necessary the requested access to legal resources when the State itself seeks to dissolve the intimate and personal family bonds between parent and child. It will not open the 'floodgates' that, I suspect, the Court fears.

Id. at 58–59 (Blackmun, J., dissenting).

[27] This is not a novel observation; decades of scholarship on this subject have noted the irony that, "the Court considers a one-day jail sentence to be more intrusive on liberty than a lifelong revocation of the parental right to the care, custody, and companionship of a child." Ericka Petersen, *Building a House for* Gideon*: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C. L. 63, 85 (2020) (quoting Anthony H. Trembley, *Alone Against the State:* Lassiter v. Department of Social Services, 15 U.C. DAVIS L. REV. 1123, 1136–37 (1982)).

[28] *See e.g.*, Pasqua v. Council, 892 A.2d 663 (2006) (where an indigent father in a criminal proceeding was found to be owed council for his civil child support claims under due process); Black v. Div. Child Support Enf't, 686 A.2d 164 (Del. 1996) (where an indigent criminal defendant father was found to be owed counsel in a civil, family court contempt case where the defendant requested a hearing); Mead v. Batchlor, 460 N.W.2d. 493 (Mich. 1990) (where an indigent criminal defendant father was found to be owed counsel on due process grounds in a civil contempt case for lapsed child support payments).

[29] *See, e.g.*, Ridgway v. Baker, 720 F.2d 1409 (5th Cir. 1983) (where the government was found to have denied an indigent criminal defendant father his due process rights in denying him the assistance of counsel in a civil contempt to pay child support case); *In re* Grand Jury Proceedings, 468 F.2d 1368 (9th Cir. 1972) (where the state was to have violated a civil contempt proceeding litigant's due process rights by denying him the assistance of counsel).

[30] *See* Turner v. Rogers, 564 U.S. 431 (2011) (where the Court held that "the Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order."). *Id.* at 448. It must be noted that the *Lassiter* decision has since faced considerable criticism not only for its positions on civil right to counsel matters, but its galling implicit racism against Ms. Lassiter and Ms. Lassiter's family, who were black. *See* 5-4 PODCAST, *supra* note 21. No conversation on civil *Gideon* is complete without acknowledging the issue's intersections with race, gender, and class; Ms. Lassiter is but one example of how a system without civil *Gideon* harms people who are marginalized on these three fronts.

guaranteeing the assistance of counsel in civil proceedings.[31] There are some areas in the modern age—such as cases, like *Lassiter*, where a state is terminating parental rights[32]—where there is widespread civil *Gideon*.[33] Connecticut is one state that has gone beyond the "minimally tolerable" bounds of the *Lassiter* line of cases and the explicit language of the Due Process clause by exploring and instituting some civil *Gideon* programs, such as the state's guarantee of counsel for indigent parents and children in both public and private termination proceedings.[34]

B. Connecticut and Civil Gideon

Connecticut is among the states at the forefront of civil *Gideon* work and legislation, and policies that increase access to legal assistance in civil matters have garnered interest, discussion, and real change from state legislators and the Connecticut Bar Association (CBA).[35] Connecticut's recent history with civil *Gideon* has been especially promising, as is its history with child custody cases.[36] Below, this section discusses Connecticut Special Act No. 16-19 and its creation of the Connecticut Task Force to Improve Access to Legal Counsel in Civil Matters, the Task Force's Report,

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[31] *See, e.g.*, *In re* Adoption by J.E.V., 141 A.3d 254 (N.J. 2016); Ashley Dejean, *New York Becomes First City to Guarantee Lawyers to Tenants Facing Evictions*, MOTHER JONES (Aug. 11, 2017), https://www.motherjones.com/politics/2017/08/new-york-becomes-first-city-to-guarantee-lawyers-to-tenants-facing-eviction/; Clare Pastore, *Gideon is my Co-Pilot: the Promise of Civil Right to Counsel Pilot Programs*, 17 U. D.C. L. REV. 75 (2014).

[32] The only five states with discretionary—not categorical—rights to counsel for birth parents in parental rights termination cases filed by the state (like *Lassiter*) are Nevada, Minnesota, Mississippi, Vermont, and Delaware. *See* Termination of Parental Rights (State) Right to Counsel Map, NAT'L COALITION FOR C.R. TO COUNS., http://civilrighttocounsel.org/map (follow "Right to Counsel Status" starting point field; and select "Termination of Parental Rights (State) – Birth Parents.").

[33] Other areas of widespread civil *Gideon* involve rights to counsel for accused parents in abuse cases (forty-six states have at least qualified right to counsel) and civil commitment (only one state—Indiana—only has a qualified right to counsel, and all other states have a categorical right). *Id.* (follow "Right to Counsel Status" starting point field; and select "Abuse/Neglect/Dependency – Accused Parents."); *Id.* (follow "Right to Counsel Status" starting point field; and select "Civil Commitment – Subject of Petition."); *see also* IND. CODE § 12-26-2-2-(b)(4) (2021) (which states that litigants have a right to counsel only in certain civil commitment cases rather than *all* civil commitment cases).

[34] Lassiter, 452 U.S. 28, 33–34 (1981); CONN. GEN. STAT. ANN. § 45a-717(a)–(b) (effective Jan. 1, 2022).

> If the respondent parent is unable to pay for such respondent's own counsel or if the child or the parent or guardian of the child is unable to pay for the child's counsel, in the case of a Superior Court matter, the reasonable compensation of counsel appointed for the respondent parent or the child shall be established by, and paid from funds appropriated to, the Judicial Department . . . .

CONN. GEN. STAT. ANN. 45a-717(b) (effective Jan. 1, 2022). *See also* NAT'L COALITION FOR C.R. TO COUNS., *supra* note 32 (follow "Right to Counsel Status" starting point field; and select "Termination of Parental Rights (State) – Birth Parents" and/or "Termination of Parental Rights (Private) – Birth Parents" and/or "Termination of Parental Rights (State) – Children" and/or "Termination of Parental Rights (Private) – Children.").

[35] *See, e.g.*, Cecil J. Thomas, *Investing in Justice: The Impact of Establishing Right to Counsel for Tenants Facing Eviction*, 31 CONN. LAW. 32, 33 (2021).

[36] *See generally* CONN. GEN. STAT. ANN. § 45a-717(a)–(b) (effective Jan. 1, 2022), § 46b-121(a)(1) (effective Jan. 1, 2022), § 46bb-136 (effective July 1, 2019).

and how this report has led to civil *Gideon* programs within the state. While many of the conclusions reached specifically relate to the pilot civil *Gideon* programs the final Task Force Report recommends, many of the symptoms, issues, and barriers to access identified provide valuable context for how permanent civil *Gideon* programs may help in these same areas.

1. Connecticut Special Act No. 16-19 and the Establishment of the Task Force

On June 10, 2016, the Connecticut Legislature passed Substitute Senate Bill No. 426, which enacted Special Act No. 16-19, *An Act Creating a Task Force to Improve Access to Legal Counsel in Civil Matters*.[37] The Act designated twenty-seven members of the task force, "to study the nature, extent and consequences of unmet legal needs of state residents in civil matters . . . [and to] examine, on a state-wide basis, the impact that the lack of access to legal counsel in civil matters is having on the ability of state residents to secure essential human needs."[38] The task force was later named the Connecticut Task Force to Improve Access to Legal Counsel in Civil Matters ("Task Force").

The Task Force was directed to "submit a report on its findings and recommendations to the joint standing committee of the General Assembly," in which recommendations would center on measures that would "[s]ecure access to justice and legal representation in civil matters by increasing the availability of legal assistance with civil matters throughout the state; and . . . encourage increased pro bono service by the state's legal community."[39] The Task Force met over the course of the summer and fall of 2016, split into various working groups, and published meeting agendas and resources used before the publication of their final report in December 2016.[40]

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[37] 2016 Conn. Spec. Acts. No. 16-19 (Spec. Sess.). Special Acts in Connecticut are "law[s] that [have] a limited application or [are] of limited duration, not incorporated into the Connecticut General Statutes." *Glossary – Legislative Terms and Definitions*, CONN. GEN. ASSEMB. (last visited May 8, 2022), https://www.cga.ct.gov/asp/content/Terms.asp. This is in contrast to public acts, which are bills "passed by both chambers of the legislature that amend[ ] the general Statutes. *Id.*

[38] 2016 Conn. Spec. Acts. No. 16-19 (Spec. Sess.), § 1(a)–(b). Interestingly, the sixteen through twenty-seven members of this committee—including the Dean of the University of Connecticut, Yale, and Quinnipiac Schools of Law, the chairs of several affinity bar associations, and representatives from several legal aid societies—were not initially a part of the proposed committee. An amendment later added these members before the bill's passage. S. Amend. 426, Gen. Assemb., Feb. Sess. (Conn. 2016).

[39] 2016 Conn. Spec. Acts. No. 16-19 (Spec. Sess.), § 1(f). This report is similar to one prepared by a Civil *Gideon* Task Force from Maryland in 2014. TASK FORCE TO STUDY IMPLEMENTING C.R. TO COUNS. MD., REPORT OF THE TASK FORCE TO STUDY IMPLEMENTING A CIVIL RIGHT TO COUNSEL IN MARYLAND 20 (2014).

[40] *See generally* TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS, CONN. GEN. ASSEMB., https://www.cga.ct.gov/jud/taskforce.asp?TF=20160729_Task%20Force%20to%20Improve%20Access%20to%20Legal%20Counsel%20in%20Civil%20Matters (last visited May 8, 2022). The committee

The Task Force specifically narrowed in on three separate "key issues": (1) "the human consequences of unmet legal needs in civil matters"; (2) "the social impact of unmet legal needs in civil matters"; and (3) "the fiscal consequences of unmet legal needs in civil matters."[41]

2. The Report of the Connecticut Task Force to Improve Access to Legal Counsel in Civil Matters

On December 15, 2016, the Task Force issued its final report pursuant to Special Act No. 16-19, specifically recommending fifteen measures to improve Connecticut's provision of civil legal services.[42] The first measure called for the Connecticut General Assembly to "[e]stablish a statutory right to civil counsel in three crucial areas where the fiscal and social cost of likely injustice significantly outweighs the fiscal cost of civil counsel," and then specifically named restraining orders, child custody proceedings, deportation proceedings, and eviction defense.[43]

These three recommendations resulted from the committee identifying four areas of "most pressing need."[44] The first, "Physical Safety and Freedom from Domestic Violence," specifically centers around civil restraining orders in instances of domestic violence.[45] The Report referred back statistics indicating that the cost of domestic violence "exceed[ed] $5.8 billion" during the period analyzed by the committee.[46] The committee also

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was co-chaired by William H. Clendenen, Jr. of Clendenen & Shea, LLC and Dean Timothy Fisher of the University of Connecticut School of Law. TASK FORCE REPORT, *supra* note 1, at 1. *See also William H. Clendenen, Jr. Biography*, THE L. OFF. CLENDENEN & SHEA, LLC, https://www.clenlaw.com/william-h-clendenen (last visited May 8, 2022); *Biography of Dean Emeritus Timothy Fisher*, UNIV. CONN. SCH. L., https://law.uconn.edu/person/timothy-fisher/ (last accessed May 8, 2022).

[41] TASK FORCE REPORT, *supra* note 1, at 7–8.

[42] TASK FORCE REPORT, *supra* note 1, at 4. Nine of these recommendations called for the creation of specific statutes to combat the civil legal assistance gap. *Id*.

[43] TASK FORCE REPORT, *supra* note 1, at 4.

[44] *Id.* at 9.

[45] *Id.* at 9. Note that "restraining order(s)" for the purposes of Connecticut's Civil *Gideon* reforms and Civil *Gideon* in general refer to *civil* restraining orders *requested by a family or party directly*. *See* CONN. GEN. STAT. § 46b-15. These differ from civil orders of protection that may be issued by a court *sua sponte*, or criminal orders of protection. *See* CONN. GEN. STAT. § 46b-16a. These latter forms of civil/criminal orders of protection are more controversial because there is not necessarily a direct connection between the person theoretically at the center of a specific abuse requesting these orders and the orders themselves; courts (in both the latter civil and all criminal orders) and prosecutors (in criminal orders) can initiate these orders. Analyzing these latter forms of order as means of limiting domestic violence vs. potential harms to households merits further discussion. *See, e.g.*, Elizabeth Topliffe, *Why Civil Protection Orders Are Effective Remedies for Domestic Violence but Mutual Protective Orders Are Not*, 67 IND. L.J. 1039 (1991) (but is outside the scope of this paper). For the duration, "restraining order" for the purposes of this paper refers to restraining orders as defined under Connecticut General Statute § 46b-15. *See* CONN. GEN. STAT. § 46b-15.

[46] TASK FORCE REPORT, *supra* note 1, at 9–10. The "exceeds" language came from estimated losses of productivity; in 2013, some commentators speculated that lost productivity costs resulting from domestic violence may have ranged close to $2.5 billion nationally. Robert Pearl, *Domestic*

noted that "9,000 restraining orders applications" had been filed "annually from 2010 through 2013," and highlighted this metric as a distinct reason as to why freedom from domestic violence ought to be categorized as an area of greatest need.[47] This found area of most pressing need resulted in the civil *Gideon* recommendation concerning civil restraining orders.

The second, "Family Integrity and Relationships," reflects a wider and more general goal that could be considered as reflected in all of the Report's recommended civil *Gideon* measures, but most specifically in deportation and its relation to child custody. The report cites back to "the devastating impact of physical separation and loss of parental care, detained immigrants and their families," on children and implies that lack of counsel at these proceedings has a dramatic impact on the well-being of children in particular.[48] The Task Force referred back to parental rights cases in New York state case law, focusing particularly on *Matter of Ella B.*, and inferred that Connecticut ought to adopt a policy where parental rights could not be eliminated without counsel in cases beyond those covered by existing legislation.[49] In both deportation and child custody cases, a parent has a higher likelihood of being separated from a child than in most other civil suits; the Task Force highlighted these two proceedings accordingly despite Connecticut's comparatively strong civil *Gideon* record in parental rights termination proceedings.

The third and final area of need reflected in the three recommended civil *Gideon* pilot areas was "Housing Stability," which is reflected in the eviction proceeding program. The report notes that, "the impact of even short-term homelessness and housing insecurity can be devastating," and focuses specifically on the needs of children and their well-being in these areas.[50]

Violence: The Secret Killer That Costs $8.3 Billion Annually, FORBES (Dec. 5, 2013), https://www.forbes.com/sites/robertpearl/2013/12/05/domestic-violence-the-secret-killer-that-costs-8-3-billion-annually/?sh=262890fe4681.

[47] TASK FORCE REPORT, *supra* note 1, at 9–10. The Report also notes that many of these statistics in Connecticut are rather outdated since they are based on "Connecticut's last Legal Needs Study." *See* CTR. FOR SURVEY RES. & ANALYSIS, CIVIL LEGAL NEEDS AMONG LOW-INCOME HOUSEHOLDS IN CONNECTICUT, (2008). This report, deemed out of date in 2016, has not been updated; 2022 will mark *fourteen years* since the state has commissioned a legal needs report.

[48] TASK FORCE REPORT, *supra* note 1, at 9–11. Here, the Task Force report is perhaps indicating that Connecticut has a codified right to counsel for all custody cases not involving immigration. *See generally* CONN. GEN. STAT. ANN. §45a-717(a)–(b) (effective Jan. 1, 2022), § 46b-121(a)(1) (effective Jan. 1, 2022), § 46bb-136 (effective July 1, 2019).

[49] TASK FORCE REPORT, *supra* note 1, at 9–11; *see generally* In the Matter of Ella R. B., 30 N.Y.2d 352 (1972) (confirming that parental rights could not be terminated in New York state without a lawyer present); *see also* In the Matter of Jonathan N., 194 A.D.3d 815, 816 (2d Dept, 2021) (showing that, as of 2021, New York common law generally holds that "parental rights may not be curtailed without a meaningful opportunity to be heard, which includes the assistance of counsel," per *Ella B.*); *see also* CONN. GEN. STAT. ANN. § 45a-717(a)-(b) (effective Jan. 1, 2022).

[50] TASK FORCE REPORT, *supra* note 1, at 12. It should be noted that the disastrous effects of being unhoused have been widely analyzed and documented outside the scope of the Task Force. *See, e.g.*, RACHEL G. BRATT ET AL., WHY A RIGHT TO HOUSING IS NEEDED AND MAKES SENSE: EDITOR'S INTRODUCTION TO A RIGHT TO HOUSING 1, 3–4 (Rachel G. Bratt et al. eds., 2006); MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 5 (1st ed., 2016).

Again linking the report back to New York data, the Task Force took great pains to highlight possible economic savings from addressing the consequences of evictions (e.g., unhoused shelters) to eviction protections.[51]

It is worth exploring the fact that the Task Force identified "Consumer Protection and Fair Proceedings in Small Claims and Superior Court," namely, the large number of suits filed to collect small amounts of debt, as an additional area of need.[52] This area of need is not reflected in the three areas of recommended civil *Gideon* programs in Connecticut; further discussion on providing legal services to people affected by small-claims court is absolutely needed but outside the scope of this paper.

The Report went on to identify barriers to justice and the Task Force's other recommendations; all of these recommendations deserve further analysis and conversation, though are beyond the scope of this paper.

C. The Current State of Intimate Partner Violence, Family Integrity, and Housing Stability in Connecticut

The three areas of need directly reflected in the Task Force's recommendations regarding civil *Gideon* pilot programs—freedom from intimate partner/domestic violence, family integrity, and housing stability—remain critical points of emphasis. While each metric can and should be measured independent of each other, this section will demonstrate that each factor remains an issue or has worsened over the past six years most likely due in some part to the large-scale instability caused by the ongoing COVID-19 pandemic.

1. Intimate Partner Violence (IPV) and Restraining Orders

As covered above, civil restraining orders in Connecticut are governed by Connecticut General Statute § 46b-15 and are specifically referenced in the Task Force report as an area where counsel ought to be provided.[53] This statute provides general guidance on the administration of civil restraining orders, and specifically calls for the publication of an annual report documenting the past year in Connecticut restraining orders.[54]

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[51] TASK FORCE REPORT, *supra* note 1, at 13.

[52] *Id.* at 13.

[53] *See generally* CONN. GEN. STAT § 46b-15. It is critical to note that this paper does not cover a right to counsel in proceedings specifically regarding IPV cases; Connecticut does not offer any right to counsel—categorical or discretionary—to either accused perpetrators or alleged victims of IPV. New York is the only state with a categorical right to counsel in all IPV cases for all litigants. N.Y. Fam. Ct. Act §§ 262(a)(ii), 1120(a).

[54] CONN. GEN. STAT. § 46b-15e(b). The reports also contain details regarding civil protection orders, which are governed by Conn. Gen. Stat § 46b-16a; this paper does not discuss these orders, nor includes this data, since they are outside the scope of the Task Force's recommendations. *See, e.g.*, STATE CONN. JUD. BRANCH, RESTRAINING ORDERS (§ 46B-15) AND CIVIL PROTECTION ORDERS (§ 46B-16A): CALENDAR YEAR 2017, https://jud.ct.gov/statistics/prot_restrain/RestrainingOrderCPO2017.pdf (last visited May 8, 2022).

These reports show that the number of requested § 46b-15 restraining orders in Connecticut increased eighteen percent (from 6,280 orders to 7,407 orders) from calendar year 2020 to calendar year 2021.[55] While the number of reports has overall decreased slightly since calendar year 2017 (the first full year after the Task Force's report) from the 2017 amount of 7,252 orders in total, this at the very least shows that the literal level of need—restraining order cases appearing before the Connecticut court system—is at least the same as it was at the time of the report.[56]

The problem of IPV, however, extends far beyond the literal, defined bounds of restraining orders in Connecticut; restraining orders are only one method through which victims may seek refuge. The Centers for Disease Control (CDC) defines intimate partner violence as including, "physical violence, sexual violence, stalking and psychological aggression (including coercive tactics) by a current or former intimate partner (i.e., spouse, boyfriend/girlfriend, dating partner, or ongoing sexual partner)."[57]

Intimate partner violence undoubtedly increased during the COVID-19 pandemic. Domestic violence arrests increased as much as ten percent in New York City during the first wave of stay-at-home orders,[58] and general domestic violence incidences increased more than eight percent nationally "following the imposition of stay-at-home orders."[59] The Pan American Health Organization found calls to domestic violence hotlines increased by as much as forty percent during the pandemic in the Americas, and calls to

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[55] STATE CONN. JUD. BRANCH, RESTRAINING ORDERS (§ 46B-15) AND CIVIL PROTECTION ORDERS (§46B-16A): CALENDAR YEAR 2020, https://jud.ct.gov/statistics/prot_restrain/RestrainingOrderCPO2020.pdf (last visited May 8, 2022); STATE CONN. JUD. BRANCH, RESTRAINING ORDERS (§ 46B-15) AND CIVIL PROTECTION ORDERS (§ 46B-16A): CALENDAR YEAR 2021, https://jud.ct.gov/statistics/prot_restrain/RestrainingOrderCPO2021.pdf (last visited May 8, 2022). For the purposes of this piece, it is assumed that the number of restraining orders requested is a fair analogue for the amount of domestic/intimate partner violence over a given time period; while this is not a perfect metric, a recent study found that in California "between 84 and 92 percent" of protective orders filed are in connection to criminal domestic violence. Christopher T. Benitez et al., *Do Protection Orders Protect?*, 38 J. AM. ACAD. PSYCHIATRY L. 376, 377 (2010).

[56] RESTRAINING ORDERS (§ 46B-15) AND CIVIL PROTECTION ORDERS (§ 46B-16A): CALENDAR YEAR 2017, *supra* note 54.

[57] NAT'L CTR. FOR INJURY PREVENTION & CONTROL, INTIMATE PARTNER VIOLENCE SURVEILLANCE 11 (2015), https://www.cdc.gov/violenceprevention/pdf/ipv/intimatepartnerviolence.pdf. "Domestic violence" and "intimate partner violence" are not interchangeable; domestic violence is defined more narrowly by the Department of Justice as the *criminal* act of violence whereas intimate partner violence is the incident—criminal or not—is the act of violence itself. *See* U.S. DEP'T JUST., DOMESTIC VIOLENCE (last visited May 8, 2022), https://www.justice.gov/ovw/domestic-violence. This article uses the term "intimate partner violence" (unless the term "domestic" is used in a quoted source) to capture the full scope of harm in this instance and as an acknowledgment that restraining orders (and legal services for those restraining orders) ought to extend beyond criminal cases.

[58] Brad Boserup, et al., *Alarming Trends in US Domestic Violence During the COVID-19 Pandemic*, 38 AM. J. EMERGENCY MED. 2753, 2753 (2020).

[59] ALEX R. PIQUERO ET AL., COUNCIL ON CRIM. JUST., *Domestic Violence During COVID-19*, 1, 3 (March 2021), https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/Domestic-Violence-During-COVID-19-February-2021.pdf.

EU member-state hotlines increased by sixty percent.[60] Especially early on in the pandemic, experts theorized that the imposition of necessary lockdown orders were worst-case scenarios for victims of IPV—situations where victims were at times *de facto* contained with their abusers—and "demonstrates a need for further research."[61] IPV victimizations increased by forty-two percent between 2016 and 2018, and COVID-19 lockdowns only encouraged this growth.[62] Even though COVID-19 lockdowns (or indeed, most to all substantive COVID-19 mandates) are no longer in place in Connecticut, that damage still exists and will always exist.[63]

It ought to be painfully obvious, however, that framing the conversation around COVID-19, increases in restraining orders, or on statutory analysis does not come close to capturing the full scope of IPV; it is important to recite the fact that intimate partner violence continues to exist in many forms to a degree that merits concrete, immediate action. In the United States alone, roughly one in four women and one in ten men have experienced "contact sexual violence."[64] Ten percent of women "report having been stalked by an intimate partner" in the United States.[65] Connecticut is not immune from this tragic prevalence of violence; the state self-reports that there are "approximately 20,000 family violence incidents annually resulting in at least one arrest," and that seventy-three of these incidents involve IPV.[66] Around 37,000 people "sought help" in Connecticut in domestic violence cases in 2020 alone.[67] It is clear that the issue of IPV has not lessened in the years since the Task Force's report.

2. Family Integrity

The Task Force's second recommended area of focus, "Family Integrity," is an amalgamation of two distinct kinds of civil action—child custody proceedings and deportation/removal proceedings. Both kinds of

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[60] *COVID-19 Pandemic Disproportionately Affected Women in the Americas*, PAN-AM. HEALTH ORG. (March 8, 2022), https://www.paho.org/en/news/8-3-2022-covid-19-pandemic-disproportionately-affected-women-americas; *Op-Ed: Violence against women: tackling the other pandemic*, THE LANCET (Jan. 2022, Vol. 7), https://www.thelancet.com/action/showPdf?pii=S2468-2667%2821%2900282-6.

[61] Boserup et al., *supra* note 58, at 2753.

[62] NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE 1 (last visited May 8, 2022), https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457.

[63] For a full list of Connecticut's COVID-19 Emergency Orders, *see Connecticut COVID-19 Response*, CONN.GOV, https://portal.ct.gov/Coronavirus/Pages/Emergency-Orders-issued-by-the-Governor-and-State-Agencies (last visited May 8, 2022).

[64] VIOLENCE PREVENTION, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html (last visited May 8, 2022).

[65] *Id.*

[66] *Connecticut State Department of Children and Families*, CT.GOV, https://portal.ct.gov/DCF/Intimate-Partner-Violence/Home#CCADV (last visited May 8, 2022).

[67] Clare Dignan, *After almost 300 intimate partner violence deaths in Connecticut in 20 years, has enough changed?*, CT INSIDER (Dec. 8, 2021 at 6:00 AM), https://www.ctinsider.com/projects/2021/intimate-partner-violence/protective-restraining-orders/.

proceedings can implicate the foster care system; one 2019 study found that "on any given day, there are approximately 437,000 children in foster care" in the United States.[68] While there is "additional overlay" between these two issues (family integrity issues can often co-mingle immigration proceedings and child custody proceedings) this section examines both in turn below.[69]

a. Child Custody Proceedings Without Immigration Implications

Connecticut defines a child custody proceeding in Connecticut General Statute § 46b-115a(4) as a "proceeding in which legal custody, physical custody or visitation with respect to a child is an issue."[70] In Connecticut, "[t]he term includes a proceeding for dissolution of marriage, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear."[71] Connecticut's Family Courts fielded over 20,000 cases in 2020 through 2021, and over thirteen percent—2,709—were child custody cases.[72] While not all of these cases concern children entering foster care, there were 4,333 children in foster care in Connecticut alone in 2019.[73]

Even if one considers child custody proceedings in a vacuum—that is, simply as an isolated civil proceeding without the intersecting considerations of deportation or criminal legal proceedings—these proceedings fundamentally affect the structure and home life of children.[74] Custody battles can be emotionally charged, and the economics of having legal representation at these proceedings often serves as an additional exacerbating tension even if neither potentially-custodial party is at risk of imprisonment or deportation.[75] Providing legal counsel in these instances to both parents and children—especially in cases where a parent's rights are at risk of being terminated—can help alleviate possible due process concerns.

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[68] THE JUST. GOV. PROJ., KEY STUDIES AND DATA ABOUT HOW LEGAL AID HELPS KEEP FAMILIES TOGETHER AND OUT OF THE CHILD WELFARE SYSTEM, https://legalaidresourcesdotorg.files.wordpress.com/2021/04/foster-care.pdf (last updated March 23, 2021) (quoting, U.S. DEP'T HEALTH & HUM. SERVS., ADMINISTRATION FOR CHILDREN AND FAMILIES REPORT, THE AFCARS (2019), available at https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf).

[69] TASK FORCE REPORT, *supra* note 1, at 11.

[70] CONN. GEN. STAT. § 46b-115a(4).

[71] *Id.*

[72] STATE CONN. JUD. BRANCH, MOVEMENT OF ADDED FAMILY CASES BY CASE TYPES: FISCAL YEAR 1999-00 THROUGH 2020-21, https://jud.ct.gov/statistics/family/Fam_cases_added_2021.pdf (last visited May 8, 2022). This does not even include visitation decisions or Uniform Child Custody Jurisdiction actions; if those were included under a broader definition of "child custody" cases, that amount and percentage would be higher. *Id.*

[73] DEP'T HEALTH & HUM. SERVS., *Connecticut Child Welfare Outcomes*, https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/connecticut.html (last visited May 8, 2022).

[74] *See* ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY 108–09, 300 (1992).

[75] Kathie Mathis, CAL. COGNITIVE BEHAV. INST., *Psychological and Emotional Aspects of Child Custody Battles and Divorce* (Aug. 30, 2016), https://theccbi.com/psychological-and-emotional-aspects-of-child-custody-battles-and-divorce-by-kathie-mathis-psy-d/.

Fortunately, Connecticut is a national leader in providing a right to counsel in cases where immigration is not implicated, and has been since the early 1990's. This movement started before the Connecticut General Assembly codified this right into law; as the Connecticut Supreme Court wrote in *In re Baby Girl B.*, "[i]n future cases, the trial court should seriously consider the appointment of legal counsel to represent an absent parent in proceedings for the termination of parental rights in those cases in which the parent has received only constructive notice of the pendency of the proceedings."[76] Shortly thereafter, Connecticut passed General Statute 45a-717(b), which codified civil *Gideon* for indigent birth parents in such proceedings.[77] These rights were gradually extended to indigent children in both public and private proceedings in 2005.[78]

b. Removal Proceedings

The Task Force identifies removal proceedings as a category within "family integrity" because of its relative complexity and relative uncommon occurrence in Connecticut. Removal proceedings[79] are more complex than standard parental rights cases—state immigration policy often interacts in an unorthodox manner with federal institutions—and implicate policy that is outside the scope of state-level civil *Gideon*.[80] The Task Force does not address the issue of removal proceedings in general; while removal proceedings are technically civil actions,[81] the dictation of these proceedings may be outside the scope of what Connecticut could effectively legislate from a civil *Gideon* perspective since immigration courts are administered

[76] *In re* Baby Girl B., 618 A.2d 1, 11 n.22 (1992).

[77] CONN. GEN. STAT. § 46b-115a.

[78] *See In re* Christina M., 877 A.2d 941, 949–50 (Conn. App. 2005).

[79] "Removal proceedings" is the official name of what is often colloquially referred to as "deportation proceedings"; the former term replaced the latter in cases initiated after April 1997. 8 U.S.C. § 1229; *see generally 7.2 – Deportation Proceedings and Exclusion Proceedings*, U.S. DEP'T JUST., https://www.justice.gov/eoir/eoir-policy-manual/7/2 (last visited May 8, 2022). Deportation is "the removal from a country of an alien whose presence is unlawful or prejudicial," and is one possible consequence of a removal proceeding, but calling them "deportation proceedings" is technically incorrect. *Deportation*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/deportation (last visited May 8, 2022).

[80] Only one state—New York—offers conditional rights to an attorney in any removal proceedings. *See* Jillian Jorgensen and Erin Durkin, *De Blasio, City Council reach deal limiting legal fund for immigrants facing deportation*, N. Y. DAILY NEWS (Aug. 1, 2017), https://www.nydailynews.com/new-york/de-blasio-city-council-reach-deal-immigrant-legal-aid-limits-article-1.3373228; *New York State Becomes First in the Nation to Provide Lawyers for All Immigrants Detained and Facing Deportation*, THE VERA INST. JUST., https://www.vera.org/newsroom/new-york-state-becomes-first-in-the-nation-to-provide-lawyers-for-all-immigrants-detained-and-facing-deportation (last visited May 4, 2022). Florida offers a conditional right to an attorney to eligible "special immigrant juvenile status"—undocumented children—for some filing and immigration proceedings rather than custody cases. *See* FLA. STAT. ANN. § 39.5075.

[81] *Immigration Removal Proceedings and Criminal Law*, JUSTIA, https://www.justia.com/criminal/procedure/deportation/ (last reviewed Oct. 2021).

by the Federal government through the Department of Justice.[82] Instead, the Task Force focuses on the intersection of removal proceedings and child custody cases (i.e., cases where a parent's possible removal from the United States would have custody implications for any U.S.-born or non-removed dependent). For the purposes of the "family integrity" pillar of the report, removal proceedings take the place of an indigent criminal legal proceeding in a custody case like those seen in *Lassiter* or *Turner*.[83]

It makes more sense for Connecticut to approach removal proceedings as just another way custodial issues arise rather than a separate category because such proceedings are astronomically less common in Connecticut compared to states in the South and West of the United States. [84] 2,157 people have been removed from the United States following removal proceedings that specifically originated in Connecticut between 2003 and 2021; for context, 2,434,899 people were removed from the United States due to Texas-originating proceedings over that same period.[85] Since the Task Force issued its report in December 2016, twenty-six people have been removed from the United States due to proceedings arising in Connecticut.[86]

Immigration is a serious issue, and the issue of *Gideon* rights before immigration courts deserves far more attention. It is certainly a serious issue in Connecticut specifically; though there have been comparatively fewer deportations originating in Connecticut than many other states, Connecticut was "home to about 120,000 immigrants without documentation in 2016, accounting for about four percent of the state's total population."[87] The Task Force, however, avoided direct confrontation with this issue in its recommendation. Avoiding the topic of *Gideon* rights in immigration would allow a possible statute to incorporate custody issues resulting from removal

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[82] *1.4 – Jurisdiction and Authority*, U.S. DEP'T JUST., https://www.justice.gov/eoir/eoir-policy-manual/ii/1/4 (last visited May 8, 2022). That is not to say that there should not be a *Gideon*-like right to counsel at non-custodial removal proceedings in Connecticut. This merits further discussion but is outside the Task Force's recommendations and outside the scope of this paper. For further reading, *see generally Right to Counsel*, ACLU, https://www.aclu.org/sites/default/files/field_document/right_to_counsel_final.pdf (last visited May 8, 2022); INGRID EAGLY & STEVEN SHAFER, AM. IMM. COUNCIL, ACCESS TO COUNSEL IN IMMIGRATION COURT, (Sept. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf. That said, some local, Hartford initiatives merit consideration in this case. Alex Putterman, *'I don't have to worry': Initiative offers money for legal aid for those facing deportation*, THE HARTFORD COURANT, Apr. 10, 2022, at A1.

[83] *See generally* Lassiter v. Dep't Soc. Servs., 452 U.S. 18 (1981); Turner v. Rogers, 564 U.S. 431 (2011).

[84] *Latest Data: Immigration and Customs Enforcement Removals*, TRAC IMMIGRATION PROJECT, https://trac.syr.edu/phptools/immigration/remove/.

[85] *Id.* (follow "State Departed From at Deportation" menu in the bottom left-hand corner; select "Texas.").

[86] *Id.* (follow "State Departed From at Deportation" menu in the bottom left-hand corner; select "Connecticut.").

[87] *See* Putterman, *supra* note 82, at A2.

proceedings as a part of the over 20,000 custody cases fielded in Connecticut every year.[88] This is itself a significant victory, albeit not an ultimate one.

3. Housing Stability

Housing policy has been at the heated center of debate since the publication of the Task Force's report and in the midst of the COVID-19 pandemic. Eviction policy has been a special focus; in May 2022, roughly 1,057,962 of Connecticut's estimated 3,605,597 total residents—slightly less than thirty percent of all residents—reside in a leased home.[89] While not every tenant is at serious risk of eviction, landlords continue to initiate eviction proceedings. From December 16, 2016—the day the Task Force published its report—through February 28, 2022, for example, 10,410 people were evicted from their homes in Hartford alone.[90] This problem existed before the COVID-19 pandemic even outside of Connecticut—in 2016, "2.3 million evictions were filed in the U.S.," or four evictions per minute,[91] and, to use Milwaukee, WI as an example, "landlords evict roughly 16,000 adults and children each year" despite the city only having merely 105,000 renter households.[92] Housing stability and eviction issues have only intensified as the proportion of income spent on housing has increased; "over 1 in 5 of *all* renting families . . . spends half its income on housing."[93]

COVID-19 affected evictions and housing stability greatly. On March 12, 2020, Judge Patrick L. Carroll III, Chief Court Administrator of the Connecticut Judicial Branch, announced that the court would only hear "Priority 1 Business Functions" until March 27, 2020.[94] These functions—which *did* include civil protection orders, orders of temporary custody, and termination of parental rights processes—*did not* include eviction processes,

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[88] MOVEMENT OF ADDED FAMILY CASES BY CASE TYPES: FISCAL YEAR 1999-00 THROUGH 2020-21, *supra* note 72.

[89] *Connecticut*, EVICTION LAB, https://evictionlab.org/covid-policy-scorecard/ct/ (for the renting population of CT) (last updated Jun. 30, 2021); *Connecticut Quick Facts*, UNITED STATES CENSUS BUREAU, https://www.census.gov/quickfacts/CT (last accessed May 9, 2022).

[90] *Connecticut Eviction*, CONN. FAIR HOUS. CTR., https://datastudio.google.com/u/0/reporting/ca1c60f5-0c9c-41ec-af87-4862e82e5ef4/page/KspPB?s=n8zkRH3NDV4 (last accessed May 8, 2022). This data point was gained using an interactive tool powered by the Connecticut Fair Housing Center and setting the date range to the period specified. For more information on the Connecticut Fair Housing Center, *see* CONN. FAIR HOUS. CTR., https://www.ctfairhousing.org (last accessed May 8, 2022).

[91] Terry Gross, *First-Ever Evictions Database Shows: 'We're in the Middle of A Housing Crisis,'* NPR, https://www.npr.org/2018/04/12/601783346/first-ever-evictions-database-shows-were-in-the-middle-of-a-housing-crisis (Apr. 12, 2018, 1:07 PM).

[92] DESMOND, *supra* note 50, at 4. Notably, this data dates from before this book's publication in 2016; it is now estimated that 50.6% of Milwaukee County households are rented. YAIDI CANCEL MARTINEZ ET AL., THE COST OF LIVING: MILWAUKEE COUNTY'S RENTAL HOUSING TRENDS AND CHALLENGES, WISC. POL'Y F. 3 (Aug. 2018), https://wispolicyforum.org/wp-content/uploads/2018/08/CostOfLiving_Full.pdf.

[93] DESMOND, *supra* note 50, at 303 (emphasis in original).

[94] CARROLL, *supra* note 7.

effectively establishing a procedural eviction moratorium in Connecticut.[95] A week later, the Connecticut Supreme Court announced that all civil trials and procedures—including evictions—would be cancelled until at least May 1, 2020.[96] While this court order was extended several times until the court resumed scheduling eviction hearings on September 14, 2020, Governor Ned Lamont issued Executive Order No. 7X, which in part modified Connecticut General Statute § 47a-23 to read "No landlord . . . shall, before July 1, 2020, deliver or cause to be delivered a notice to quit or serve or return a summary process action . . . except for serious nuisance . . ."[97]

While this eviction moratorium was in place, the number of eviction processes initiated plummeted; 264 evictions were filed in Connecticut between March 15 and March 22, 2020, 184 eviction processes were processed *in total, across the state* between April 15 and July 4, 2020.[98] Governor Lamont continued to extend increasingly less lenient eviction moratoriums until June 30, 2021; the total number of evictions per week in Connecticut did not exceed 200 during that entire timeframe.[99] Connecticut renters also benefitted from the CDC's eviction moratorium order that commenced on September 4, 2020 that stated that, "[u]nder 42 CFR 70.2, a landlord . . . shall not evict any covered person from any residential property."[100] Even though this order only extended until December 31, 2020, the CDC continued to extend the moratorium until the Supreme Court struck it down in *Alabama Association of Realtors v. Department of Health and Human Services* on August 26, 2021.[101]

Since the expiration of the CDC moratorium, evictions have increased markedly in Connecticut. Between September 5, 2021 and March 20, 2022, there were at least 200 evictions per week in the state, with 613 evictions in the state during the week of March 13, 2022.[102] While COVID-19 remains present in the United States, and likely will remain present for the foreseeable future, eviction moratoriums are unlikely to be re-enforced as the general public becomes more accepting of the pandemic's costs and

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[95] *Id.*

[96] EVICTION LAB, *supra* note 89.

[97] *Id.*; Office of the Governor Ned Lamont, Executive Order No. 7X (Apr. 10, 2020), https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7X.pdf; *see generally* CONN. GEN. STAT. § 47a-23.

[98] EVICTION LAB, *supra* note 89.

[99] *Id.* (these less lenient moratoriums, for example, allowed a landlord to file "notice where there was 'serious nonpayment of rent,' or 'a rent arrearage equal to or greater than six months' worth of rent due on or after March 1, 2020.'")

[100] Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292, 55,296 (Sept. 4, 2020), on file at https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf.

[101] *Id.*; Ala. Ass'n Realtors v. Dep't Health & Hum. Servs., 141 S. Ct. 2485 (2022). "[T]he CDC has imposed a nationwide moratorium on evictions in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination. It strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts . . . ." *Id.* at 2486.

[102] *Id.*

presence in our lives.[103] It is unclear how evictions will move forward in the future, but in the immediate case there is a strong possibility that the "aftershocks" of COVID-19—including aftershocks in employment and inflation—will unsettle trends in housing generally.

III. THE EFFECT OF LEGAL REPRESENTATION AND CONNECTICUT'S PILOT PROGRAMS

Assume that the previous sections of this paper prove that intimate partner violence prevention, family integrity maintenance, and housing stability maintenance (and their proxy right to counsel procedures in restraining orders, immigration-driven custody defense, and eviction defense) are both: (1) existing problems that are at least unchanged since the Task Force report; and (2) areas generally worthy of reform. Even in this case, one final step before analyzing possible solutions concerns looking at the effects of legal representation in these areas, programs that already have been piloted in Connecticut, and seriously interrogating whether legal representation is even the best method of addressing these issues in the first place.

A. The Effects of Legal Representation in Each Practice Area

The presence of legal representation does not have a uniform effect on across different kinds of civil cases; however, most studies indicate that legal representation has net positive effects on the civil case outcomes that the Task Force identified.

1. Restraining Orders

The accompaniment of representation evidently helps in cases where spouses are seeking restraining orders. Victims of intimate partner violence often go into civil court without representation, especially when criminal domestic violence charges are pending.[104] This data dates back almost five decades after many states passed protective order legislation between 1976 and 1992.[105] One 2003 study, for example, found that eighty-three percent of women accompanied by representation were successful in seeking civil

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[103] One Monmouth University poll published on January 31, 2022 found that 7 in 10 Americans believe "it's time we accept that Covid is here to stay and we just need to get on with our lives." Patrick Murray, *National: Time to Accept COVID and Move On?*, MONMOUTH UNIV. 1, 6 (Jan. 31, 2022), https://www.monmouth.edu/polling-institute/documents/monmouthpoll_us_013122.pdf/.

[104] Jane H. Aiken & Jane C. Murphy, *Evidence Issues in Domestic Violence Civil Cases*, 34 FAM. L.Q. 43, 54 (2000).

[105] Jane C. Murphy, *Engaging With The Stat: The Growing Reliance on Lawyers and Judges To Protect Battered Women*, 11 AM. UNIV. J. GENDER, SOC. POL'Y & L. 499, 502 (May 13, 2003), https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1404&context=jgspl (citing *Developments in the Law: Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1529 (1993)).

protection orders, compared to thirty-two percent of women who were unaccompanied.[106] Even at this time, authors noted the effectiveness of providing counsel to victims of IPV, citing a twenty-one percent decrease in IPV between 1993 and 1998, and the role of counsel in that decline.[107]

A 2009 study found that both petitioners and respondents in protective order procedures were only represented by counsel in twenty percent and nineteen percent of the time, respectively, and that neither party had received "any kind of legal assistance" forty-six percent of the time.[108] This study found that protective orders were issued sixty-six percent of the time when petitioners were represented by counsel, compared to fifty-eight percent of petitioners without legal representation and/or assistance.[109] Counsel in these cases almost uniformly helped focus and clarify processes; *zero* percent of all instances where petitioners had a lawyer only "included . . . general details about abuse," alleged in the case.[110]

2. Family Integrity

Representation has proven equally vital in family integrity cases. First looking at legal custody battles where immigration status is not a factor, data show that representation remains "an important variable affecting case outcomes in the area of family law."[111] Specifically, representation helps lead to better solutions in civil custody cases where two guardians are working through the court system. In divorce cases where custody is an issue, one 1992 study found that representation was critical for achieving an amicable outcome; joint custody was an outcome only in fifty-one percent of cases where neither party had a lawyer, but increased to ninety-two percent of the time where each party had a lawyer.[112]

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[106] *Id.* at 511–12. It should be noted that the sample size for this study was relatively small; only 142 total women seeking protective orders were surveyed; of these women, only thirty-six had legal representation. *Id.* at 511.

[107] AMY FARMER & JILL TIEFENTHALER, EXPLAINING THE RECENT DECLINE IN DOMESTIC VIOLENCE 158 (2003).

[108] Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 16 (2009).

[109] *Id.* It is important to note that this sample size is also small; only 101 cases in total were analyzed. *Id.*

[110] *Id.* at 17. Again, it is important to note that the sample size for this specific statistic was merely twenty petitioners.

[111] Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORD. URB. L. J. 37, 51 (2010); *see also* U.S. DEP'T HEALTH & HUM. SERVS., ADMIN. FOR CHILDREN AND FAMILIES, ACYF-CB-IM-17-02, INFO. MEMORANDUM ON LEGAL REPRESENTATION FOR CHILDREN AND PARENTS (2017), (stating "The Children's Bureau (CB) strongly encourages all child welfare agencies and jurisdictions (including, state and county courts, administrative offices of the court, and Court Improvement Programs) to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.").

[112] MACCOBY & MNOOKIN, *supra* note 74, at 300. This assumes that joint custody is a general indicator of a favorable outcome; of course, this may not be the case in every custody battle in the case of divorce. *Cf.* Rebecca Aviel, *Why Civil* Gideon *Won't Fix Family Law*, 122 YALE L.J. 2106, 2109–10

It is clear that the Task Force recommended the widespread provision of legal services, regardless of what kind of "family integrity" case was at issue. Its final report took particular care in outlining how proceedings pitting the state against immigration-effected indigent parties in custody cases required *Gideon* coverage as well.[113] This is likely due to the fact that Connecticut already has a robust civil *Gideon* legacy on providing counsel for indigent parties in custody cases without immigration implications.[114] Relying on a pilot program in New York City for detained immigrants, the Task Force highlighted statistics stating that similar programs providing counsel to indigent parties had increased successful outcomes by one thousand percent.[115] This same program also putatively saved New York State $1.9 million.[116]

Connecticut's civil *Gideon* program in custody cases is categorical, and legal aid organizations in the state do not target specific groups in most cases.[117] There is significant data that targeting populations in the greatest need could shore up Connecticut's existing custody *Gideon* laws.

For example, New York City's Center for Family Representation (CFR) "provide[s] legal and social work services to primarily Black and Brown families at risk of separation through foster care or juvenile incarceration," cases where New York City is attempting to remove guardianship from families due to incarceration or other allegations.[118] The CFR "works with the parent through the entire life of the child welfare case."[119] The organization had served over 3,000 families and 6,000 children between

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(2013) ([S]horter, simpler, cheaper, more personal, more collaborative and less adversarial" methods may be preferable in divorce proceedings when custody is at issue since a "lawyer-centric adversary system . . . does more harm than good for most domestic relations litigants.").

[113] TASK FORCE REPORT, *supra* note 1, at 20. Interestingly, the committee does not explicitly differentiate between different *kinds* of custody cases in its report; it instead more or less ignores existing laws granting counsel in custody battler during non-immigration cases.

[114] *See* CONN. GEN. STAT. §§ 45a-717(a)–(b) (2022), 46b-121(a)(1) (2022), 46bb-136 (2019).

[115] TASK FORCE REPORT, *supra* note 1, at 20 (citing NAT'L IMMIGR. L. CTR., BLAZING A TRAIL: THE FIGHT FOR RIGHT TO COUNSEL IN DETENTION AND BEYOND 15 (2016), https://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf.).

[116] TASK FORCE REPORT, *supra* note 1, at 20. That said, it is also worth mentioning that New York-initiated deportation proceedings resulted in the removal of 3,267 people in fiscal year 2014. *See* Latest Data, *supra* note 84. Connecticut-initiated proceedings resulted in the removal of 45 people during that same time frame. *See* Connecticut Data, *supra* note 86. Still, a far more robust conversation is warranted on how any program regarding removal proceedings and custodianship—while Connecticut has a comparatively small immigration component to civil *Gideon* issues, any state with larger undocumented populations (e.g., Texas, California, and New York) may need to take a different approach with widespread family integrity civil *Gideon* solutions.

[117] Elizabeth Thornton & Betsy Gwin, *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 FAM. L.Q. 139, 141 (Spring 2012), https://www-jstor-org.ezproxy.lib.uconn.edu/stable/23240377?refreqid%3Dexcelsior%253Aacaded0e492db31ca42d222c81dc3e83%26seq%3D1=&seq=3.

[118] *Mission & History*, CTR. FOR FAM. REPRESENTATION (last visited May 8, 2022), https://cfrny.org/mission-history/.

[119] Thornton & Gwin, *supra* note 117, at 143.

2002 and 2012[120]; according to data accessed on May 8, 2022, in 2020 alone, 2,654 families and over 5,000 children were served by the organization.[121] In addition to evident, direct cost savings for the cities,[122] "CFR's attorneys have anecdotally reported that they have fewer continuances as a result of attorneys being unprepared," therefore increasing judicial efficiency.[123] While there likely would not be a one-to-one comparison between a Connecticut system and this example from New York City, there are other examples of programs across the country that have shown that family integrity cases more often allow parents to retain custody of their children when all sides are represented and communities of greatest need are targeted for support.[124]

3. Eviction Defense

Eviction cases are notorious for especially disadvantaging tenants; "in many housing courts around the country, [ninety] percent of landlords are represented by attorneys, and [ninety percent of tenants] are not."[125] Much like lawyers in IPV or family integrity cases, lawyers in eviction cases have a greater familiarity with the housing system writ large, are able to raise technical legal defenses, and are less likely to be intimidated by the court system.[126] Even before considering outcomes, many homeowners would readily accept representation in eviction cases when offered.[127]

Tenants facing eviction are also more likely to face positive outcomes when represented by counsel. One 2013 study of eviction defense in Boston

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[120] *Id.*

[121] *Results & Reach*, CTR. FOR FAM. REPRESENTATION (last visited May 8, 2022), https://cfrny.org/results-reach/. Fifty-six percent of the CFR's 2020 clients "avoid[ed] foster care altogether," and the organization self-reports that the median length of stay of a client child in foster care has been 6.4 months, "compared to 11.5 months for all children citywide before CFR began working with parents in a high-volume capacity," since 2007. *Id.*

[122] Thornton & Gwin, *supra* note 117, at 144; *see also Results & Reach*, *supra* note 121 (where the CFR self-reports $50 million in government savings since 2007 and outlines the total cost of $7,100 per CFR team per client. The minimum cost of keeping one child in foster care in New York City in 2020 was $77,000). *Id.*

[123] Thornton & Gwin, *supra* note 117, at 144.

[124] *Id.* at 144–48 (covering the Detroit Center for Family Advocacy and the Washington State Office of Public Defense, Parents Representation Program). Specifically, the Washington program resulted in "10.4% more reunifications in filed cases (equaling a 39% rate increase) . . . [and] 10.6% more case resolutions within about 2.5 years." KEY STUDIES AND DATA, *supra* note 68 (quoting Washington State Office of Public Defense, 2010).

[125] DESMOND, *supra* note 50, at 303.

[126] *Id.* at 304. It is also worth noting that people facing evictions—often this country's least well-to-do and most harried—would be the parties that would most benefit from having another party take charge of their case; "[i]f tenants had lawyers, they wouldn't need to go to court. They could go to work or stay home with their children while their attorney made their case." *Id.*

[127] *See, e.g.*, ninety-seven percent (seventy-four out of seventy-six) of people offered eviction legal defense in one Boston study (discussed later in this section) accepted an offer of eviction defense from Greater Boston Legal Aid. D. James Grenier et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 908, 925 (2013).

shows just how effective legal assistance—in this case, provided by Greater Boston Legal Services (GBLS)—is in eliciting better outcomes for tenants.[128] Representation made tenants twenty-eight percent more likely to retain actual possession of their home.[129] Represented parties faced an adverse judgment of possession in merely seventeen percent of all cases.[130] Even if the observed population was small, "[l]arge differences in outcomes were indeed present," in the study, due to legal counsel displaying a confrontational legal style that better advocated for client outcomes, expert knowledge of applicable housing law, or legal counsel's use of evidentiary hearings to develop a more usable record.[131]

These kind of results are not limited to Boston; "a program that ran from 2005 to 2008 in the South Bronx provided more than 1,300 families with legal assistance and prevented eviction in 86 percent of cases."[132] This Housing Help Program, a collaboration between the United Way of New York City, the Civil Court of the City of New York, and the New York City Department of Homeless Services, allowed lawyers to pursue other positive housing outcomes for their clients; over four percent of participants were re-housed elsewhere and over one percent were granted sole possession of their domicile.[133] This left an over ninety-one percent positive outcome rate for all participants in the study.[134] Building on the success of this program, in 2017, New York City passed Local Law 136, phasing in a right to counsel in all eviction cases by July 31, 2022.[135] The program continues to be a success during the COVID-19 pandemic, as eighty-four percent of all represented tenants are able to remain in their homes.[136]

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[128] *Id.* at 908.

[129] *Id.* at 927 (specifically, represented parties retained occupancy of their home sixty-six percent of the time, compared to thirty-eight percent of the time for unrepresented parties). "Actual possession refers to whether the evictor ended up in possession, not whether any loss of possession by the occupant was voluntary or otherwise." *Id.* at 926.

[130] *Id.* at 927.

[131] *Id.* at 920 (there were only 129 participants studied in this case). *See also id.* at 941–42, 947 (elaborating how attorneys used different methods to reach a positive outcome for tenant).

[132] DESMOND, *supra* note 50, at 304; STRUCTURED EMP. ECON. DEV. CORP., HOMELESSNESS PREVENTION PILOT FINAL REPORT 2 (2010), https://cdn2.hubspot.net/hubfs/4408380/PDF/General-Housing-Homelessness/Housing-Help-Program.pdf [hereinafter SEEDCO].

[133] SEEDCO, *supra* note 132, at 1, 31.

[134] *Id.* at 31.

[135] N.Y.C., NY, N.Y.C. ADMIN. CODE § 26-1302 (2017). For more information on Local Law 136, *see* LEGAL REG. N. Y. CITY COUNCIL, PROVIDING LEGAL SERVICES FOR TENANTS WHO ARE SUBJECT TO EVICTION PROCEEDINGS HOMEPAGE, https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80&Options=ID%7cText%7c&Search=214 (last accessed May 9, 2022); OFF. CIV. JUST. N.Y.C. HUM. RES. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR FOUR OF IMPLEMENTATION IN NEW YORK CITY 2 (2021), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf.

[136] *All About the Right to Counsel for Evictions in NYC*, NAT'L COAL. FOR C.R. COUNS. (Apr. 17, 2022), http://civilrighttocounsel.org/major_developments/894.

These results are also not reserved for the largest cities in the United States. Sacramento, California, conducted an eviction representation pilot program in 2012 despite having only 466,000 residents at the time.[137] The program estimated that ninety to ninety-five percent of cases settled, and that half of all cases that went to trial were won by represented tenants.[138] This program had "a supervising attorney, four staff attorneys and an administrative support clerk," and served over 700 litigants in its first year of operation.[139] The success of this Sacramento program—and a similar program in neighboring Yolo County, CA[140]—may indicate the viability of such programs in areas less dense than other example cities, therefore indicating a chance that this program could succeed in a place like Connecticut.

B. Connecticut's Gideon *Pilot Programs*

Since the Task Force Report's publication in 2016, Connecticut has instituted two temporary programs designed to test civil *Gideon* viability in two of the three areas identified in this paper: 46b-15 restraining orders and eviction defense. It is unclear whether these programs were successful during their implementation or whether they will be successful; the "outcome" of the eviction defense program is not analyzed in this piece because its first report is set to be issued in January 2023, and the § 46b-15 Restraining Order programs have organizational weaknesses that render analysis inconclusive. This section briefly summarizes these programs and examines the stated results of the restraining order pilot program.[141]

1. Public Act 17-12 Waterbury Restraining Order Pilot Program (2018–2019)

In direct response to the Task Force Report, the Connecticut General Assembly "passed sections 150 and 151 of Public Act 17-2 . . . which established a yearlong pilot program to provide legal representation and respondents at any hearing on an application for a restraining order seeking relief from abuse brought under § 46b-15."[142] The original text of the law set the duration of this program as running from July 1, 2018 to June 30, 2019.[143] This program defined indigency in terms of annual gross income,

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[137] SACRAMENTO QUICK FACTS, UNITED STATES CENSUS BUREAU, https://www.census.gov/quickfacts/sacramentocitycalifornia (last visited May 9, 2022).

[138] *See* Pastore, *supra* note 31, at 108.

[139] *Id.*

[140] *Id.* at 110. "Yolo is a mixed urban and rural county of 200,000," perhaps representing that these programs may help in even less dense communities. *Id.*

[141] 2021 CONN. ACTS 21-34 § 1(i) (Reg. Sess.).

[142] STATE CONN. JUD. BRANCH, CIVIL GIDEON PILOT PROGRAM: REPORT TO THE CONNECTICUT GENERAL ASSEMBLY 2 (2019), https://www.jud.ct.gov/HomePDFs/CivilGideon.pdf.

[143] 2021 CONN. ACTS 17-2 § 150(a) (Spec. Sess.).

and with "indigency"—and therefore eligibility for this program—defined as $23,760 for a litigant with no dependents, to $48,600 for litigants with three dependents.[144] Section 151 of the same law remitted $200,000 to the Connecticut Judicial Branch, and the Division of Public Defender Services from the State Attorney General's budget, officially funding the program for the duration of its life.[145]

The program commenced on time, and ran under the direction of Connecticut Legal Services, Inc. (CLS).[146] CLS provided "two full-time attorneys to represent qualified applicants who sought legal representation through the pilot program in the Waterbury Judicial District," which was the sole area where this pilot program was run.[147] CLS specifically provided services for *petitioners*; "[t]he act charged the Division of Public Defender Services with providing legal counsel to indigent respondents."[148] During the length of the program, 432 applications were filed by restraining order litigants, with roughly fifty percent of all restraining order applicants and one-third of all respondents filing for representation.[149] Roughly eighty percent of applicants were deemed eligible, and 347 litigants were represented in total.[150] The Judicial Branch collected statistics through its case management system, which mostly relied on litigant surveys after the cessation of the judicial process.[151]

This program was dogged by a structure that did not measure the program's effectiveness, relatively ineffective goal-setting, and a lack of target metrics for success. First, the program was not run with clinical trial structures that would allow policymakers to accurately compare outcomes of litigants with and without representation; the program just measured the outcomes of represented parties. Unlike randomized control trial (RCT) experiment structures, which allow for the comparison of individual variables, the pilot representation program only measured the satisfaction of represented parties rather than all § 46b-15 litigants in Waterbury over the program's execution.[152] While this reticence to use this methodology, or to

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[144] *Id.* at § 150(e). If a litigant had more than three dependents, the indigency threshold was increased by $8,320 for each additional dependent; this amount was equivalent to the threshold increases outlined earlier in § 150(e). *Id.*

[145] *Id.* at § 151.

[146] STATE CONN. JUD. BRANCH, *supra* note 142, at 4.

[147] *Id.* "CLS estimated it would serve approximately 500 clients in Waterbury at a price of $350 per client, resulting in a total program cost of approximately $175,000," or $25,000 under the total program allocation amount set out in Pub. Act 17-2, § 151. *Id.*; *see also* 2021 CONN. ACTS 17-2 § 151 (Spec. Sess.).

[148] STATE CONN. JUD. BRANCH, *supra* note 142, at 2.

[149] *Id.* at 5.

[150] *Id.* ("CLS filed appearances on behalf of 217 applicants and the Division of Public Defenders represented 130 respondents," for a total of 347 litigants.).

[151] *Id.* at 6–7. The sample size for this program was 339 litigant surveys—eight participants apparently did not complete surveys—114 family relations counselor surveys and 191 judge surveys. *Id.* at 7.

[152] *Id.*

collect more wide-ranging data to fully understand the effects of representation on litigants was perhaps in line with the legal profession's general lack of standardized policy implementation methods, it nevertheless lessened the ability for future policymakers to glean useful data from the exercise.[153]

Second, the program was not created with specific, actionable goals when enacted. Sections 150 and 151 of Public Act 17-2 did not outline goals beyond representation for all § 46b-15 litigants in Waterbury for one calendar year; while the program was impliedly founded under the auspices of the Task Force's recommendations of general access to civil representation, the program itself did not set any metrics that it would strive for over the course of its existence.[154] As the official Report on this program—mandated by Pub. Act 17-2, § 150(g)[155]—stated, "the legislation did not define what results would be considered a successful pilot program"; the lack of clarity on this point led to significant ambiguity in the program's outcomes.[156] The program could have perhaps been founded with the goal of increasing litigant satisfaction or understanding of the legal process. While both of these proposals also have shortcomings—in establishing goals, bias may be more easily introduced—but still could have provided a clearer guiding light for the program.

Third, there was relatively little data collected from participants in the program; the program relied solely on "(1) statistics that it regularly keeps, and (2) satisfaction surveys."[157] Both are needed metrics, but neither provide a full understanding of the effects this program had on its participants. Regularly-kept statistics or in-the-moment satisfaction surveys did not cover long-term satisfaction, or the rate at which participants required further representation at later times. Neither metric attempted to control for existing biases against the legal profession. Indeed, the program's final report seemed to concede that the program was designed to have *no real definitive outcome*; the program was structured, "so that individuals may draw their own conclusion as to the success of the pilot program."[158]

This program, perhaps due in part to these process inefficiencies, yielded results that are inconclusive at best and evince failure at worst. The program's metrics show that litigant satisfaction actually *slightly decreased* with representation; litigants reported that they were slightly more likely—eighty-two percent to seventy-nine percent—to be satisfied with the

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[153] For a critique of the legal profession's unwillingness to adopt RCT methodology, *see* D. James Grenier & Andrea Matthews, *Randomized Control Trials in the United States Legal Profession*, 12 ANN. REV. L. SOC. SCI. 295, 296 (Apr. 29, 2016).

[154] 2021 CONN. ACTS 17-2 §§ 150–151 (Spec. Sess.).

[155] *Id.* at § 150(g).

[156] STATE CONN. JUD. BRANCH, *supra* note 142, at 5.

[157] *Id.*

[158] *Id.*

outcome of their case when self-represented.[159] The program evidently did not have a large effect on the actual amounts of restraining orders granted or dismissed.[160] The program's primary success from a litigant's perspective appeared to be in helping litigants feel more prepared for their proceedings; ninety percent of represented litigants said they felt prepared for their hearing, compared to seventy-five percent of those unrepresented.[161] Ninety-five percent of represented litigants said they understood the court process, and ninety-five percent said they believed that having an attorney helped them understand the court process.[162]

Waterbury court officials were noticeably more bullish on the program. Judges felt that parties that had been provided a free attorney through the pilot program were "prepared for their court hearing" thirteen percent more frequently, and understood the court process seven percent more frequently.[163] Family relations counselors saw an uptick in agreements during case conferences during the pilot program; agreements regarding restraining orders increased eighteen percent.[164] However, litigant outcomes may not have been aided by this evidently more lawyerly process; family relations counselors were evenly split on whether having lawyers present during case conferences had a positive (or any) effect on conference efficiency.[165]

Based on these metrics, the final report of the 17-12 program recommended against expanding the program further since "funding for legal representation might be more impactful if directed toward other court processes where there are greater unmet needs," such as residential evictions, noting that "a significant portion of the cases involve tenants who have limited resource and are unable to hire attorneys."[166] The final report pointed to resources available to self-represented § 46b-15 litigants that provide guidelines that may be commensurate to such litigants' needs.[167]

The Connecticut General Assembly, however, did memorialize a grant process similar to the restraining order pilot program in Connecticut General Statute § 46b-15(f) in June 2021.[168] This grant program allows the state to

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[159] *Id.* at 7.

[160] Before the pilot program, between July 1, 2017, and April 22, 2018, restraining orders were granted forty percent of the time and dismissed thirty-six percent of the time; this is compared to the pilot program's order granting rate of forty-two percent and dismissal rate of thirty-nine percent. *Id.* at 6.

[161] STATE CONN. JUD. BRANCH, *supra* note 142, at 7.

[162] *Id.* at 8–9.

[163] *Id.* at 9.

[164] *Id.* at 10.

[165] *Id.* at 11. "Family relations counselors were split as to whether they thought the presence of an attorney at the case conference created a more efficient conference: 34% agreed, while 34% disagreed." *Id.*

[166] STATE CONN. JUD. BRANCH, *supra* note 142, at 14–15.

[167] *Id.* at 14.

[168] *See generally* CONN. GEN. STAT. § 46b-15f (2016).

disburse funds through the Connecticut Judicial Branch[169] not exceeding $200,000 to legal aid organizations in the Fairfield, Hartford, New Haven, Stamford/Norwalk, or Waterbury judicial districts.[170] While this law represents a furthering of § 46b-15 restraining order representation (and does build upon some of the shortcomings of the 17-12 program),[171] it does so on a non-Statewide scale and in funding that will require yearly renewal. No data is currently available for this program, as the law mandated the manufacturing of its first annual report on July 1, 2022.[172] As of November 2022, no such report has been published.

2. Eviction Pilot Program

Eviction proceedings were identified in the Task Force Report as a critical area, as "the impact of even short-term homelessness and housing insecurity can be devastating," and was identified as an area of greatest need in the final report of the Waterbury Restraining Order Pilot Program.[173] The Task Force report even included a recommendation—unrelated to the pilot program—emphasizing the need for additional training for non-licensed professionals in order to address evictions.[174]

This call for eviction-centered help only increased after the Task Force's report. COVID-19 related pressure on the housing market and renters continued to increase, and notable voices in the Connecticut House of Representatives[175] and the Connecticut Bar Association pushed for increased

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[169] Interestingly, Connecticut administers this program through "the organization that administers the program for the use of interest earned on lawyers' clients' funds accounts" rather than the Connecticut Judicial Branch directly. *See id.* § 46b-15f(a).

[170] *Id.* at § 46b-15f(c).

[171] For example, subsection (f) of the new law sets aside office space for grant recipients, and mandates both programmatic advertising and notification of program eligibility to potential applicants. *Id.* § 46b-15f(f)(1)–(3).

[172] *Id.* at § 46b-15f(h). It is unclear what data this program does and will rely on; the relevant statute does not specify whether the data offerings will be expanded beyond surveys and regularly kept statistics. *Id.*

[173] TASK FORCE REPORT, *supra* note 1, at 12; CIVIL GIDEON PILOT PROGRAM: REPORT, *supra* note 142, at 14–15.

[174] The eleventh recommendation of the report specifically says, "Enact a statute establishing an accredited representative pilot program allowing trained non-lawyers to assist in matters ancillary to eviction defense proceedings and consumer debt cases in accordance with General Statutes § 51-81c." TASK FORCE REPORT, *supra* note 1, at 4.

[175] House Speaker Matthew Ritter (D-Hartford), for example, spoke at length about the need for the program and the possibility of its extension, saying,

> [w]hen this [eviction] moratorium goes away, you're gonna have a mass amount of chaos, and I think having lawyers and housing specialists be involved in the process will help a lot . . . . I think the continuation of this program in the future is a big deal, and we'll kind of see where we are after this tidal wave [that] unfortunatly [sic] is going to hit in the next couple of months.

Jacqueline Rabe Thomas, *CT House Votes to Provide Attorneys for Tenants Facing Eviction*, CT MIRROR (May 11, 2021), https://ctmirror.org/2021/05/11/ct-house-votes-to-provide-attorneys-for-tenants-facing-eviction/.

provision of counsel in evictions cases.[176] The Connecticut House of Representatives specifically commissioned favorability reports in March 2021, and prepared a draft bill (House Bill 6531) to memorialize this program.[177]

On June 10, 2021, the Connecticut General Assembly passed Public Act No. 21-34, which was in part "An Act Concerning the Right to Counsel in Eviction Proceedings," creating the Connecticut Right to Counsel Program (CT-RTC).[178] This program "established a right to counsel program for the purpose of providing any covered individual with legal representation at no cost," in covered eviction proceedings within the state.[179] In addition to providing legal counsel, the Public Act set up a working group to monitor the progress of the program,[180] required potential evictors to notify their tenants of their right to an attorney by October 1, 2021,[181] and the issuance of a report on the program's process no later than January 1, 2023.[182] This

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[176] Judge Cecil J. Thomas, former President of the Connecticut Bar Association, urged attorneys to get involved in advocating in favor of the right-to-counsel bill and to perform more *pro bono* work in the area, writing, "[t]he Connecticut Bar Association is supporting eviction right to counsel proposals before the Connecticut General Assembly in the upcoming legislative session." Thomas, *supra* note 35. *Cf.* Benjamin H. Barton, *Against Civil* Gideon *(and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1231 (2010).

> In sum, it is fair to be suspicious of courts and bar associations when they come to help the poor. Experience teaches that the most the poor can hope for is more lawyers or more process, with little of substance to show for it. Moreover, it is not clear that spending on poverty programs is not a zero sum game. If that is the case, the choice of process over substance was doubly destructive: paying for the layers of due process that now 'protect' the poor from losing various benefits may actually lower the absolute amount of those benefits.

Id. at 1269.

[177] *See* H.R. 6531, 2021 Gen. Assemb., 172th Sess. (Conn. 2021).

[178] *See generally* 2021 Conn. Acts. 21-34 (Reg. Sess.). The full name of the Act is "An Act Concerning the Right to Counsel in Eviction Proceedings, the Validity of Inland Wetlands Permits in Relation to Certain Other Land Use Approvals, and Extending the Time of Expiration of Certain Land Use Permits." *Id.* While the latter two topics are likely interesting and certainly important, neither are within the scope of this piece. Section 1 of the Act refers specifically to evictions and is directly relevant to this paper. *See also* CONNECTICUT RIGHT TO COUNSEL NOTICE, STATE CONN. JUD. BRANCH (Oct. 1, 2021), on file at https://www.jud.ct.gov/HomePDFs/RighttoCounselNotice093021.pdf?v1 (noting the program's name and abbreviation).

[179] 2021 Conn. Acts. 21-34 § 1(b) (Reg. Sess.). Specifically, "covered matter[s]" (i.e., evictions) are defined as

> any notice to quit delivered to, or any summary process action instituted against, a covered individual pursuant to chapter 832 or chapter 412 of the general statutes or any administrative proceeding against a covered individual necessary to preserve a state or federal housing subsidy or to prevent a proposed termination of the lease.

Id. § 1(2).

[180] *Id.* at § 1(e)(1).

[181] *Id.* at § 1(f)(1); *see also* CONNECTICUT RIGHT TO COUNSEL NOTICE, *supra* note 178. *See generally* EVICTIONHELPCT.ORG, https://www.evictionhelpct.org (an organization collating several access to counsel resources in this program area) (last visited May 3, 2022).

[182] 2021 Conn. Acts. 21-34 § 1(i) (Reg. Sess.).

bill made Connecticut the third state in the country to provide a categorical right to counsel in eviction cases.[183]

IV. THE QUESTION OF UNIVERSAL CIVIL *GIDEON* EFFECTIVENESS AND RECOMMENDED POLICY SOLUTIONS

A. The Effectiveness of Individualized Representation Under Universal Civil Gideon

A preliminary consideration for any policy change in this area is whether needed systemic change ought to begin with individualized legal representation. "Access to justice" is a term and field that usually implies the imposition of more robust legal processes into the lives of litigants—both actual and potential.[184] Looking at issues like IPV and housing stability through a solely legal lens is both myopic and fails to grasp the non-legal underpinnings of many issues. Lawyers and judges often are the driving force behind solutions that would create more arcane and labyrinthine processes within the legal system; however, any conversation around civil *Gideon* must query whether these processes would actually solve underlying problems or merely serve as a means of overcomplicating an already intimidating court system.[185] Thus far, this article assumed that increased representation tends to help litigant outcomes; this assumption deserves to be examined fully.

In short, this query has merit. "Resolving justice problems lawfully does not always require lawyers' assistance."[186] There are non-judicial means of settling nominally legal issues, therefore saving time, money, and manpower, both from the state and from litigants.[187] Furthermore, engaging with non-judicial resolution strategies—and moving away from civil *Gideon*—could reduce interactions between the legal system and the populations that are most inequitably affected by the legal system.[188]

The Task Force to Improve Access to Legal Counsel in Civil Matters directly considered the issue of additional process-caused bureaucracy; its recommendation section specifically called for Connecticut agencies to reduce the impact of bureaucracies on the judicial system,[189] and for regulated industries affected by recommended changes to measure the

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[183] Washington state and Maryland have provided all tenants with a right to counsel at eviction hearings. *See* S.B. 5160, 67th Leg., Reg. Sess. (Wa. 2021), on file at https://legiscan.com/WA/text/SB5160/2021; H.B. 18 (Md. 2021), on file at https://mgaleg.maryland.gov/2021RS/Chapters_noln/CH_746_hb0018e.pdf.

[184] *See generally* Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS J. AM. ACAD. ARTS & SCIS. 49 (2019).

[185] *Id.*

[186] *Id.* at 51.

[187] *Id.*

[188] *Id.*

[189] TASK FORCE REPORT, *supra* note 1, at 23 ("Recommendation 8").

burden of additional legal processes.[190] The Task Force even explicitly considered the merit of community-based legal solutions, building on the idea that hybrid legal- and community-based solutions may increase trust between underserved communities and legal systems.[191] These recommendations were presumably written to work in concert with the first recommendation, which set IPV, family integrity, and eviction defense as the three primary action areas for future laws, and indicate that the scope of legal solutions were considered. The Task Force, however, did not explicitly consider the more basic question of whether these problems could be best addressed with legal solutions in the first place.

Raising this question is necessary as it is perhaps uncomfortable for legal practitioners. Critics of total civil *Gideon* could rightfully point to such a system's philosophical shortcomings; not every issue that could involve lawyers would best be served with lawyers, and increased system interactions between an overtaxed system with an often-prejudiced population could create unneeded and expensive friction. The injection of lawyers into greater numbers of situations may smack of a paternalistic, quixotic, white-knight mindset that is centers (predominantly male,[192] predominantly white[193]) lawyers at the expense of the diverse communities they are supposed to serve when done improperly. In eviction defense specifically, individual-based legal representation may be less effective than collective action in the form of class action suits, injunctions, or other methods that would provide the greatest amount of aid to affected communities; such actions would maximize client benefits and more efficiently use court resources.[194] Lawyers must not, and cannot, get involved to simply get involved, especially when more effective solutions are available.—how could any solution that indiscriminately widens *legal* help avoid *legal* overreach?

In considering civil *Gideon*, any solutions should be crafted with these questions in mind; undoubtedly, there is a point where new legal solutions have diminishing returns despite greater investment. That said, declaring the entire project of increasing civil legal representation as ineffective is equally

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[190] *Id.* at 24 ("Recommendation 10").

[191] *Id.* at 31 ("Recommendation 11") (citing Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK L. REV. 721, 731 (2015)).

[192] As of 2022, over sixty-one percent of all lawyers are male. AM. BAR. ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 2022 (2022), https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf (citing AM. BAR. ASS'N, THE ABA NATIONAL LAWYER POPULATION SURVEY (2022)).

[193] As of 2022, eighty-one percent of all lawyers are white. AM. BAR. ASS'N, THE ABA NATIONAL LAWYER POPULATION SURVEY (2022).

[194] *See generally* Jeanne Charn, *Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services*, 122 YALE L. J. 2206 (2013). Professor Charn also warns against an over-reliance on legal services across an overwide breadth of problems; "Empirical research has shown that many consumers prefer alternatives to lawyers and that lawyers sometimes add cost, complexity, and delay without improving results." *Id.* at 2226.

myopic. Focusing only on the flaws of civil *Gideon* as seen in ineffective or over-aggressive civil *Gideon* programs masks the real, immediate benefits of an effectively designed and implemented program. Civil *Gideon* could be pursued only incrementally, in a manner backed by data, and in a manner that centers communities in need rather than policymakers, but should be pursued nonetheless. There are areas where the risks of lacking legal counsel in mandated legal processes merely exacerbate inequity. Quite simply, there is low-hanging fruit in preventing systemic inequity through greater legal representation, and Connecticut must seize upon it. While "the bar's account dominates discussion" of access to justice issues, and perhaps artificially narrows larger systemic issues into legal solutions, acknowledging these facts does not delegitimize the effort to widen civil representation.[195] Lawyers are "only part of the solution," but still remain a necessary part of the solution.[196]

B. Recommended Policy Solutions

Connecticut's history with civil *Gideon*, current and former pilot programs, and available data all have important roles in any future action. These recommendations below were formed under three guiding principles: (1) expanding civil *Gideon* in a manner appropriate with an underlying goal of centering communities rather than lawyers; (2) all proposals should be founded on the track record and available data from both Connecticut programs and related initiatives from across the country; and (3) solutions should not be unmoored from political reality even when considering the benefits of targeted civil *Gideon*. The final section of this article discusses these pillars; this section details specific recommendations.

1. Restraining Orders

Restraining Order civil *Gideon* has the most developed history of the three Task Force recommended areas in Connecticut. The state has conducted a pilot program, and passed a law designed to memorialize components of the pilot program.[197] That said, it is likely that attitudes surrounding Restraining Order civil *Gideon* are calcified; as indicated by the assertion in the final Waterbury pilot program report, it may be the case that legislators would be less likely to revisit this area. There is likely insufficient data at the present time to pursue total civil *Gideon* in the field of restraining orders; that said, there are several stopgap steps that should be taken to fortify § 46b-15 restraining order processes.

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[195] Sandefur, *supra* note 184, at 50.
[196] *Id.*
[197] *See* discussion *infra* section III.B.

First, legislators should under no circumstances roll back § 46b-15(f) as it is currently constructed. As of writing, this program has not existed for a full year, and more data should be collected before the new program has the chance to ameliorate or contradict existing doubts from the Waterbury program.

Second, the State should firmly commit to collecting relevant, usable data outside of the data collected during the Waterbury trial program. As established, the surveys used from 2018 to 2019 likely did not meet the scientific rigor of randomized control trials, and therefore provided unclear results from the program. In the current restraining order program, Connecticut must collect coherent data dating from before and after clients' interaction with the system, and endeavor to differentiate participant outcomes from "control," non-participant outcomes clearly.

Third, if the feedback from the first year of the program is positive, Connecticut should expand the grant process in both monetary amounts disbursed to the judicial districts, and in the number of judicial districts served. The current law caps all programs to individual districts at $200,000, and limits service to Fairfield, Hartford, New Haven, Stamford/Norwalk, and Waterbury judicial districts.[198] The initial Connecticut Legal Services proposal in the Waterbury pilot program estimated a $350 total cost per case.[199] Increasing the grant threshold even by $20,000—a ten percent funding increase—would allow a partner organization under this model to help over fifty additional clients per year. This increase would represent an incredibly small amount of the total state budget.[200] Furthermore, while the current law does target Connecticut's five most populous judicial districts, the state should expand this program to the remaining eight.[201] Excluding the Danbury, New London, and New Britain districts seems especially confounding since these districts encompass their titular cities, which themselves make up roughly five percent of the State's total population.[202]

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[198] CONN. GEN. STAT. § 46b-15f(c) (2016).

[199] CIVIL GIDEON PILOT PROGRAM: REPORT, *supra* note 142, at 4.

[200] For reference, the 2022–23 FY Connecticut state budget is $24 billion. Keith M. Phaneuf, *Lamont Will Finally Tap CT's Swelling Coffers with a New Budget*, CT MIRROR (Feb. 9, 2022), https://ctmirror.org/2022/02/09/lamont-will-finally-tap-cts-swelling-coffers-with-new-budget/. If all five judicial districts were given a § 46b-15f grant (which is not guaranteed), the $1 million spent by the state would be less than four one-hundredths of a percent of the total state budget (~0.0000417). *See id.* spending $1 million on this program from this amount would equate to roughly one-eighth of one percent of the total funding increase because total state funding was increased by $800 million year over year from 2021–22 (.00125). *Id.*

[201] CONN. JUD. BRANCH – JUDICIAL DISTRICTS https://www.jud.ct.gov/directory/maps/JD/default.htm. The Connecticut Judicial branches are divided as follows: Litchfield, Hartford, Tolland, Windham, Danbury, Waterbury, New Britain, Middlesex, New London, Stamford/Norwalk, Fairfield, Ansonia/Milford, and New Haven. *Id.*

[202] The total estimated populations of the cities of Danbury, New Britain, and New London are 84,751, 72,207, and 26,396, respectively, for a total of 183,354. DANBURY, CONN. POPULATION 2022, WORLD POPULATION REV., https://worldpopulationreview.com/us-cities/danbury-ct-

If these measures are successful, the State ought to then look into expanding these programs beyond a grant process and look to permanently funding a program that would grant counsel to all litigants in restraining order cases. However, at the current time, the state should coalesce efforts around eviction defense due to the apparent enthusiasm for greater eviction defense reform.

2. Family Integrity

Custody is arguably the most fundamental civil *Gideon* issue (*Lassiter* is, after all, a custody case), and Connecticut has provided a categorical right to counsel for parents and children in custody battles where all persons are citizens of the United States.[203] The cases that are not covered by these statues therefore represent a significant challenge that restraining orders and evictions do not—an established, mature civil *Gideon* framework may be tougher to change than one that must be established from scratch. Namely, Connecticut's work in this area must center around cases where immigration and custody intersect.

Connecticut would be wise to look to New York and other states for any first steps. Initiating a pilot program in a manner similar to the § 46b-15 and eviction program models for cases where custody may be lost by those the country is deporting would be a good first step. It may be wise to first engage Connecticut's large undocumented communities for the pilot program while using New York City's Center for Family Representation (CFR) as a model.[204] Starting in Bridgeport, New Haven, and Hartford might provide partner organizations some ability to gather data and build a civil *Gideon* case for parties that implicate both immigration and custody matters. Any data gathering process should focus on cost-savings in various subsidiary service areas in order to build a second-order, self-sustaining economic argument for the program.

If the State wanted to act more ambitiously, it could pass a statewide immigration custody defense program akin to the one in eviction defense. This may face some greater obstacles; the eviction defense program was

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population (last accessed May 9, 2022); NEW BRITAIN, CONN. POPULATION 2022, WORLD POPULATION REV., https://worldpopulationreview.com/us-cities/new-britain-ct-population (last accessed May 9, 2022); NEW LONDON, CONN. POPULATION 2022, WORLD POPULATION REV., https://worldpopulationreview.com/us-cities/new-london-ct-population (last accessed May 9, 2022). The total population of Connecticut is roughly 3,605,597. CONN. QUICK FACTS, *supra* note 89. The reasoning behind not including the New Britain judicial district might lie in the fact that it is situated between the Waterbury and Hartford judicial districts; even assuming that restraining order actions could be sought in a judicial district of one's choice, this fact still largely isolates New Britain and its surrounding metro area (i.e., Bristol). CONN. JUD. BRANCH – JUD. DIST., *supra* note 201.

[203] CONN. GEN. STAT. ANN. §§ 45a-717(b) (West 2022) (appointment of counsel in termination of parental rights cases), 46b-121(a)(1) (West 2022) (defining juvenile matters), 46bb-136 (West 2022) (appointment of counsel for juvenile matters).

[204] THORNTON & GWIN, *supra* note 117, at 142–43.

borne out of extraordinary conditions created by COVID-19, a healthy state budget, and a historic need. While counsel deprivation in immigration-driven custody proceedings remains a problem, it is perhaps the area of need least affected by the pandemic and one that would therefore benefit the most from a smaller rollout.[205]

Ironically, the State may be wise to examine the outcomes of one local program that tackles this thorniest family integrity issue. Hartford launched an initiative in 2021 to "provide legal representation for all residents facing deportation."[206] Utilizing lawyers from New Haven Legal Assistance, the program currently has fifteen clients and is one of the first programs of its kind in the country.[207] The program was allotted $100,000 by the Hartford municipal government, and could serve as a trial balloon for what wider custodial *Gideon* representation would look like in Connecticut.[208] Connecticut ought to also consider granting this program additional funding so that it may expand; building on existing infrastructures may be a more effective way to collect data.

This area specifically may require the greatest amount of caution because of its inherent interaction with at-risk populations; Connecticut must enter the foray of family integrity in immigration issues specifically once a coherent plan for data collection and program management can be established.

3. Eviction Defense

As shown by Connecticut's eviction defense pilot program, the General Assembly is willing to expend political capital, funding, and energy on further programs in this area. Foremost among the priorities in this area should be finishing the pilot program in a way that will put it in the best possible position to succeed and collect data. Data collection is paramount in this case; most directly relevant past solutions have dealt with eviction defense on a municipal rather than *statewide* level. Administering the pilot program may be instructive for identifying challenges that specifically come from helping a smaller population scattered over a larger area. For example, New York City's Local Law 136 directly governs a population of 8.1 million

[205] *See* discussion *infra* section II.C.ii.b.

[206] *See* Putterman, *supra* note 82, at A1.

[207] *Id.*

[208] *Id.* That said, it would be important for Connecticut to consider the intersecting needs of immigration *Gideon* and custodial *Gideon*. While the Task Force report considered the former a component of the latter, there are complexities in immigration law which would not apply to more common, citizen-versus-state custodial cases.

people[209] spread over 305 square miles,[210] and the RTC Eviction pilot program will govern Connecticut's 3.6 million residents[211] over 5,543 square miles.[212] This represents average population densities of roughly 26,500 people per square mile in New York City and 650 people per square mile in Connecticut; there may some efficiencies lost that the pilot program's data could capture.[213] While there are two other states—(Washington and Maryland) that have passed right to counsel legislation in eviction cases, these programs are so new that there is very little data regarding the success of these programs over a more disparate, statewide population.[214]

The Connecticut General Assembly should turn towards other states to gauge how elements of the pilot program, if successful, may be memorialized into the Connecticut General Statutes. New York City's Local Law 136 is a worthy place to start; the law did not itself mandate specific programs, but instead demanded that a program be founded by July 31, 2022, that would provide legal services to all covered individuals.[215] Adopting a deadline based on the pilot program's outcome may be a good way to further engage all stakeholders and create a statewide solution. San Francisco's Ordinance No. 45-12 of 2012—the "No Eviction Without Representation Act of 2018"—may be another place to find inspiration; [216] the ordinance mandated in part that the city's Board of Supervisors "shall consider recommendations regarding the creation of a San Francisco Right to Civil Counsel Pilot Program," and some other minor staffing guidelines.[217] Both the New York City and San Francisco laws called for data collection; Connecticut would be wise to include some evaluation mechanisms in any proposed solution.[218] Examining permanent programs that resulted from

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[209] N.Y.C., N.Y., POPULATION 2022, WORLD POPULATION REV., https://worldpopulationreview.com/us-cities/new-york-city-ny-population (last accessed May 9, 2022).

[210] *New York City*, ENCYC. BRITANNICA, https://www.britannica.com/place/New-York-City (last accessed May 9, 2022).

[211] CONN. QUICK FACTS, *supra* note 89.

[212] *Connecticut*, ENCYC. BRITANNICA, https://www.britannica.com/facts/Connecticut (last accessed May 9, 2022).

[213] These calculations assume that people are evenly distributed in New York City and Connecticut; they are not. There are areas in Connecticut and New York City (e.g., coastal counties and Manhattan, in particular) that have far greater population densities than other areas in the state and city. That said, these statistics still illustrate the important point that Connecticut has far fewer people spread over a far larger landmass; the pilot program would be wise to take population densities into account when collecting data in order to identify value in concentrating efforts towards specific areas.

[214] S.B. 5160, 67th Leg., Reg. Sess. (Wa. 2021); H.B. 18 (Md. 2021).

[215] N.Y.C., N.Y., Local Law No. 136, N.Y.C. ADMIN. CODE § 26-1302 (2017) (providing legal services for tenants who are subject to eviction proceedings); UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT, *supra* note 135.

[216] S.F., CAL., Ord. No. 45-12 (2018); S.F., CAL., ADMIN. CODE §§ 58.1–58.3 (2012).

[217] S.F., CAL. ADMIN. CODE § 58.3 (2012).

[218] N.Y.C., N.Y., ADMIN. CODE § 26-1304 (2023); S.F., CAL. ADMIN. CODE § 58.3(2012); *see generally* Pastore, *supra* note 31, at 84–86.

pilot programs and have years of data, such as San Francisco's No Eviction Without Representation Act of 2018,[219] may give Connecticut lawmakers a better understanding of what administering this program may cost and look like.[220]

Finally, Connecticut should take the data that will be released in January 2023 and the information from other cities, and permanently guarantee eviction litigants counsel. While family integrity and restraining order civil *Gideon* remain critical issues, the state would likely benefit from starting with universal civil *Gideon* in an area with a proven track record of providing results, a pilot program in place, and a COVID-19 housing environment that continues to send ripples through the renting market.

V. COSTS AND BENEFITS OF THE RECOMMENDED POLICY SOLUTIONS

No civil *Gideon* legislation will come without costs; however, these costs do not come close to overwhelming the beneficial cost savings, track record of judicial success, and ethical principles of providing legal representation in the direst civil cases. This section briefly outlines some likely costs and the very real benefits of these programs; this list is not meant to be exhaustive, and simply sketches the kind of debate that would likely unfold around these issues.

A. Costs and Challenges of Civil Gideon

1. Financial Costs and Funding

Funding and monetary considerations will likely be at the forefront of any civil *Gideon* debate; the Task Force report mentioned funding for all programs explicitly in its report.[221] Increased state-provided legal representation will require additional funding by the Connecticut legislature; every civil *Gideon* program required funds to get started. The San Francisco pilot program that preceded the No Eviction Without Representation Act had a price tag of $5.8 million over its first two years.[222] The Hartford Immigration program received its funding from the Hartford municipal government only after it failed to get a grant for the same amount from the Vera Institute.[223] In the Connecticut Restraining Order program,[224] only

[219] S.F., CAL. Ord. No. 45-12 (2018).

[220] San Francisco's 2018 Proposition F, which memorialized the No Eviction Without Representation Act of 2018, "earmark[ed] $5.8 million" for the program between 2018 and 2020. Laura Ernde, *Groundbreaking San Francisco Measure Guarantees Counsel to Tenants Facing Eviction*, S.F. BAR 18 (Fall 2018), https://www.sfbar.org/wp-content/uploads/2021/06/prop-f-right-to-housing-counsel-SFAM-Q318.pdf.

[221] The Task Force's fifteenth legislative recommendation is simply, "Funding for New Initiatives." Task Force Report, *supra* note 1, at 4.

[222] *See* Ernde, *supra* note 220.

[223] *See* Putterman, *supra* note 82, at A2.

[224] *See* discussion *infra* III.B.i.

seven percent of the 6,200 applications for the program were processed; "significant resources" would be required to expand Connecticut's restraining order regime farther.[225] Indeed, one of the primary reasons the Connecticut Restraining Order program was *not* made more widespread—not counting the passage of Connecticut General Statute § 46b-15f—was idea that funding would be better spent elsewhere.[226]

The initial costs of funding programs do not account for all the costs borne by the system in a civil *Gideon* regime; with more advanced legal representation, Connecticut would likely require further judicial resources. For example, even as representation outcomes improved for tenants in the Boston eviction study,[227] average case length increased by forty-eight days with representation and the number of total motions filed by renters eclipsed one per case.[228] In San Francisco, thirty-eight percent of tenants did not even contest their eviction notice before the No Eviction Without Representation Act—every one of those cases may now take up time from other judicial functions, representing an ancillary cost of increasing the number of legal cases in the system.[229]

It is hard to put a price tag on exactly *how much* civil *Gideon* would financially "cost"; providing this level of legal representation on a statewide level is a systemic change without much precedent. The Connecticut Office of Policy and Management's Budget and Financial Management Division—Connecticut's rough equivalent to the National Office of Management and Budget—would likely have to conduct a holistic appraisal of any program in order to estimate its total cost.[230] Regardless, cost is an element parties should keep in mind while advocating for this program; simply advocating on the basis of a program's unfettered societal benefits alone is probably a losing strategy.

2. The Necessity of Effective Advertising

Advertising and driving awareness of programs offered will be a key factor in their success, but also represents an additional issue. For example, the Hartford Immigration representation program has faced real hurdles in this regard; "[c]ity officials have attempted [to] raise awareness of the program through an information session at the Park Street branch of the Hartford Public Library," among other measures.[231] Other examples of advertising troubles and needed focus abound; Connecticut General Statute

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[225] CIVIL GIDEON PILOT PROGRAM: REPORT, *supra* note 142, at 13.
[226] *Id*. at 14.
[227] *See* discussion *infra* III.A.iii.
[228] Grenier et al., *supra* note 127, at 933.
[229] *See* Ernde, *supra* note 220, at 18.
[230] *See generally* BUDGET FIN. MGMT DIV., STATE CONN. OFF. POL'Y MGMT., https://portal.ct.gov/OPM/Bud-Division/Structure/Budget_Division_Home (last accessed May 9, 2022).
[231] *See* Putterman, *supra* note 82, at A2.

§ 46b-15(f) specifically mandates notification and advertising measures,[232] the Sacramento pilot program[233] did not initially advertise its e-filing services since the program was administered through a third-party company,[234] and the current Connecticut Eviction pilot program actually mandated notice to tenants of their rights.[235] Even robust, existing civil *Gideon* programs may require additional advertising pushes; currently, notices for right to counsel in custody removal cases that *don't* involve immigration—settled law in Connecticut since the early 1990's—often come in the form of small notices in physical newspapers.[236]

The Task Force report also identified this as a barrier to justice; "[f]orty-three percent of low-income households with a legal problem in Connecticut did not seek assistance because the households did not know about legal aid options."[237] The report attributes this lack of information partly to a non-recognition of problems by some people as legal issues in the first place,[238] but also the fact that "the legal profession fails to reflect or include members of their community."[239] While effective advertising can only address portions of this problem, such measures could still help blunt the harshest information gaps.

Programs are only as effective as their ability to reach populations in need; critics of civil *Gideon* reform might point to the level of required advertising as representing a real barrier. Any proposed legislation must have measures that are tailor-made to reach their target audience.

3. Counsel Bandwidth

Providing legal counsel to more litigants in more cases will naturally require more lawyers. Connecticut and the Connecticut Bar Association has already done a sterling job of encouraging lawyers to engage in *pro bono* work and would likely continue to do so in the event that wider civil *Gideon*

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[232] *See* CONN. GEN. STAT. §§ 46b-15f(f)(1)–(3) (2022).

[233] *See* discussion *infra* section III.A.iii.

[234] *See* Pastore, *supra* note 31, at 109.

[235] 2021 Conn. Acts No. 21-34 § 1(f)(i) (Reg. Sess.). Further follow-up will be needed at the conclusion of this program.

[236] *See, e.g.*, *Order of Notice: In re:* Shaniela L., HARTFORD COURANT (May 9, 2022), at A9. The text in the right to counsel notice specifically reads:

> Right to Counsel: Upon proof of inability to pay for a lawyer, the court will make sure an attorney is provided to you by the Chief Public Defender. Requests for an attorney should be made immediately in person, by mail, or by fax at the court office where your hearing is being held.

According to this notice, Shaniela L. is less than five months old as of writing. *Id.*

[237] Task Force Report, *supra* note 1, at 17.

[238] "Only 27% of low- income households surveyed in the 2008 study felt they had a serious legal problem in the previous year, yet when asked about 41 specific civil legal problems, 77% indicated they had experienced at least one legal problem." *Id.* (quoting CENTER SURVEY RESEARCH & ANALYSIS, CIVIL NEEDS AMONG LOW-INCOME HOUSEHOLDS IN CONNECTICUT 3 (2008), http://ctlegal.org/sites/default/files/files/2008ConnecticutLegalNeedsStudy.pdf).

[239] Task Force Report, *supra* note 1, at 17.

legislation is passed.[240] This alone will not make up the difference and does not address the fact that much of the needed legal assistance will require specialized training and expertise. As one San Francisco lawyer noted at the passage of the No Eviction Without Representation Act in 2018, eviction defense is "a specialized area of law, with an interplay between states laws and local rent ordinances. There can be federal regulations as well if the case involves subsidized housing."[241] Even if "it doesn't take very long for attorneys to become experienced because the cases go so quickly through court," it is an open question if there would be enough experienced attorneys across the Task Force's three areas of focus to accomplish the goals of civil *Gideon*.[242]

Lack of available counsel is perhaps the most serious issue that the state would contend with. Critics of civil *Gideon* often laud the intent of such reforms, but say that "[c]ourts would likely not require limits on caseloads or increased expenditures on a guaranteed right to civil Counsel," thus taxing lawyers beyond the point of actual competency (if not the legal definition of incompetency).[243] In many ways, this is a reflection of issues with *Gideon* itself rather than right to counsel applications in civil settings; one main critique of the current criminal legal system's regime is on the dramatic underfunding of supposedly constitutionally vital indigent defense.[244] This critique cannot be hand-waved; any solution proposed must have proper funding and have basic protections such that all legal counsel is far above the *Strickland* competency standard.

The State would likely have to play a significant role in encouraging and funding lawyers such that counsel bandwidth issues are minimized. Placing an outsized onus on the Connecticut Bar Association is not a plausible solution to this issue; while an important advocate for access to justice issues in the state, the CBA does not have the funding or the authority to

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[240] *See* Thomas, *supra* note 35, at 33. "The CBA is providing training support and case referral connections for pro bono attorneys interested in eviction defense through CBA Pro Bono Connect." *Id.*

[241] *See* Ernde, *supra* note 220, at 20.

[242] *Id.*

[243] Barton, *supra* note 176, at 1231. *See also* Strickland v. Washington, 466 U.S. 668 (1984). *Strickland* set the bar of constitutionally deficient assistance of counsel in two terms: the assistance falling below the standard of a reasonably competent lawyer, and that deficient counsel prejudiced the defendant. *Id.* at 687. This has proven to be a difficult standard to meet; lawyers that sleep during their client's trials have been found to not meet the standard of deficient counsel. *See, e.g.*, McFarland v. State, 928 S.W.2d 482, 505 (Tex. Crim. App. 1996).

[244] "The United States spends about a hundred billion dollars annually on criminal justice, but only about 2% to 3% goes to indigent defense. Over half is allocated to the police, and defendants receive only an eighth of the resources per case available to prosecutors." Barton, *supra* note 176, at 1251 (quoting DEBORAH L. RHODE, ACCESS TO JUSTICE 123 (2004)). *See generally* Lauren S. Lucas, *Effectively Ineffective: The Failure of Courts to Address Underfunded Indigent Defense Systems*, 118 HARV. L. REV. 1731, 1735–36 (2005).

unilaterally marshal lawyers to this cause.[245] Connecticut, likely through its Judicial Branch, would have to play an outsized role in providing the supply of legal aid that could meet the likely legal need. The State should also look into the Task Force's recommended strategy of training non-lawyers to assist with various areas of need, likely starting with eviction defense.[246]

4. Effective Data Collection and Reporting

One Connecticut-specific challenge may be the lack of effective data collection and reporting infrastructure used to evaluate program outcomes. First, the data collected were insufficient. Relying on data that were already gathered, and existing survey results were unhelpful in the Waterbury § 46b-15 pilot program that ran from 2018-2019.[247] Randomized control trials or other evidence-based research methods will be needed in order to more accurately evaluate any given policy's success or failure. The state has not yet evinced an ability or a clear plan to collect data in § 46-15 trials, or any pilot program that has or will be set up. While this call for evidence-based evaluation is all too common,[248] there is little track record that shows Connecticut's ability to instill such systems. The success of any program that the state could hope to create will depend on its ability to determine whether it was successful in the first place—only coherent, comprehensive data will allow for accurate conclusions.

Furthermore, it is unclear whether third-parties will be charged with writing reports or evaluations of any individual pilot programs. The Waterbury pilot program report was authored by the Connecticut Judicial Branch. While there should not be any doubt that the Judicial Branch *could* write a sufficient report about a given program, there are serious questions about the possible stretching of limited Branch resources[249] and basic ethical

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[245] The Connecticut Bar Association, for example, was only able to "donate[ ] $8,000 to the Connecticut Bar Foundation to benefit their legal service grantees who provide pro bono civil legal services to Connecticut's low-income residents" in FY 2020–21. *Connecticut Bar Association 2020-21 Annual Report of Sections and Committees*, 11 (CONN. BAR ASS'N, 2021), https://www.ctbar.org/docs/default-source/publications/annual-reports/2020---2021-annual-report-(2).pdf?sfvrsn=15cda9f2_8. While helpful, this kind of financial support does not come close to addressing the need of the state writ large, nor is it possible for the CBA to support this initiative financially beyond this kind of grant work and perhaps some pilot program involvement.

[246] TASK FORCE REPORT, *supra* note 1, at 4.

[247] CIVIL GIDEON PILOT PROGRAM: REPORT, *supra* note 142, at 5.

[248] *See, e.g.*, Charn, *supra* note 194, at 2233; Rebecca L. Sandefur, *Paying Down the Civil Justice Data Deficit: Leveraging Existing National Data Collection*, 68 S. C. L. REV. 295, 296 (2016), ("One of the most striking facts about civil justice in the United States is how few solid representative facts we have about it."); Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. SOC. JUST. 51, 61 (2010), ("[O]nly a modest amount of research effort has gone into investigating the question of how lawyers change what happens in courtrooms . . .").

[249] Simply put, the Connecticut Judicial Branch is, at the time of writing, possibly stretched thin. Following a long period of Connecticut State Employees Retirement System (SERS)

questions of whether the Judicial Branch should, effectively, evaluate a program that the Branch itself is charged with running.

The Task Force explicitly considered this issue in its report, and said "the people of Connecticut should learn what the 'return on investment' is for every dollar spent on access to justice."[250] However, the final report only calls for methodology such as randomized control trials, and does not provide a road map for how these procedures could actually be implemented in any future program.[251] Given the paucity of published data on past programs, and an evident lack of feasible data collection systems available in Connecticut, this issue represents perhaps the most challenging logistical hurdle for any civil representation program in the state. The state has proven conclusively that it can implement civil *Gideon* programming; it has not proven that it can evaluate any programming's effectiveness.

B. Benefits and Advantages of Civil Gideon

1. Principles of Equity and Justice

The first, simplest, and most obvious benefit of civil *Gideon* measures are the moral and ethical effects it has on the legal system. "The right to speedy and meaningful access to justice is one of the cornerstones of the American justice system," and providing counsel to the most vulnerable civil litigants can help further the promise of this cornerstone.[252] These philosophical benefits of civil rights to counsel is oft-stated in Connecticut,[253] and has historically been implicated by leading legal

collective bargaining ("SEBAC 2011" and "SEBAC 2017"), several benefits that had been available to long-tenured Judicial Branch employees retiring before July 31, 2022, would no longer be available to those same employees retiring after July 31, 2022. RET. SERV. DIV. MEMORANDUM 2021-03, OFF. STATE COMPTROLLER CONN. (July 2, 2021), https://osc.ct.gov/2022-retirement/memo.php. Included in these removed benefits would be a previous guarantee of cost-of-living adjustments (COLAs) even in years "for which the rate of inflation is less than 2%," and full reimbursement for Part B and D values on Medicare Income Related Monthly Adjustment Amounts. 2022 RET. CHANGES | FREQUENTLY ASKED QUESTIONS, OFF. STATE COMPTROLLER CONN. (July 2, 2021), https://osc.ct.gov/2022-retirement/docs/2022%20Retirement%20Changes%20FAQ_v3.pdf. Effectively, the state of Connecticut incentivized its most experienced state employees—including public defenders, State's attorneys, and other Judicial Branch employees—to retire *en masse* in the summer of 2022. There is no published data to support a connection between this pension change and a possible labor shortage, but the question of a distinct experience and staffing shortfall due to the July 31, 2022 retirement incentive remains.

[250] TASK FORCE REPORT, *supra* note 1, at 25.

[251] *Id.*

[252] *Id.* at 3.

[253] "[T]he justification for providing attorneys to low-income renters can be numerically quantified, [but] the real justification is in our country's bones: the guarantee to life and liberty." Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63 (quoting Sarah Free, Opinion, *Time to Confront Connecticut's Eviction Crisis – With Lawyers*, HARTFORD COURANT (Feb. 10, 2019) (alteration in original), https://perma.cc/4J2F-F9ML.

thinkers.[254] The social ethical effect of such representation defies measurement in many ways. In the criminal system, "[i]t is not possible to know the number of people who were acquitted who would have been convicted, or the number of cases not brought, or the length of the sentences not imposed. But nor can these benefits [of Gideon] be denied by anyone with even a passing familiarity with the criminal justice system."[255] The same could very well be said about our civil system; while the deprivation of "life, liberty, or property without due process of law," has only led to a constitutional right to counsel in most criminal cases, one could point to the benefits of the number of families that would not be broken up, the frivolous eviction cases not brought, or the length of time that IPV survivors would be protected had a civil right to counsel been in place.[256] It is true that lawyers must "shift their understanding of the access problem," and must not attempt to install overly-technocratic solutions, but there are still obvious inequities that may be addressed by wider civil representation.[257]

Helping people get a fair shake when interacting with the legal system—when a legal solution is needed—is a moral and ethical good at the beating heart of Connecticut and this country.[258] This fact must be stated plainly and without reservation; it is done so here.

2. Proven Track Record of Successful Litigant Outcomes

Amorphous principles of equity are not effective at convincing every person of civil *Gideon*'s value; there are some who would only memorialize these rights if, "access to, and administration of, justice [was] more evidence-based."[259] Fortunately, right to counsel programs have a long track record of success, and provide clear, convincing data that participants encounter more favorable outcomes.

Connecticut has a proven track record of civil *Gideon* working in custody settings; laws that guarantee counsel in custody hearings have been in effect since the 1990's with little change in this state.[260] While the Waterbury program evinced inconclusive or even negative results due to

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[254] *See, e.g.*, Justice Lewis Powell Jr., Address to the ABA Legal Services Program, ABA Annual Meeting, Aug. 10, 1976.

> Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.

[255] Erwin Chemerinsky, *Lessons from Gideon*, 122 YALE L.J. 2676, 2678 (2013).

[256] U.S. CONST. amend. XIV, § 1.

[257] Sandefur, *supra* note 184, at 54.

[258] Even critics of civil *Gideon* agree that, "[t]he current treatment of persons too poor to afford counsel in America's civil courts is an embarrassment and is a serious and growing problem." Barton, *supra* note 176, at 1228.

[259] Grenier et al., *supra* note 127, at 959.

[260] The notable exception to this has been the expansion of a right to counsel in appellate custody settings. *See In re* Christina M., 877 A.2d 941, 949–50 (Conn. App. 2005).

lacking data collection methods, the survey-backed outcome of restraining order litigants understanding their process at a higher level of proficiency is a positive sign.[261] The General Assembly even codified some of the grant processes into law, signaling that the legislature felt that the program did help its participants.[262]

Outside Connecticut, right to counsel programs have proven successful in helping litigants secure positive outcomes in their cases. Eviction defense programs in Boston, Sacramento, and New York have elicited overwhelmingly positive outcomes for their clients.[263] Custody counsel programs in New York City that target marginalized groups have helped the most vulnerable communities maintain family bonds.[264] Studies and books dating back to the 1990's have shown that represented litigants in restraining order cases are more able to marshal specific facts and factors to their cause when represented.[265]

Even criticism of civil *Gideon* concedes that purportedly ineffective allocation of resources—not lawyer motivation—is the primary driver of any negative right to counsel measures.[266] If properly funded and supported, civil *Gideon* programs have proven effective. Connecticut's pilot program approach will allow it to identify which areas and strategies work best for this state and its population, therefore increasing the likelihood that any measures are so funded and supported.

3. Possible Future Cost Savings

Even if direct costs associated with longer and better-litigated civil proceedings would increase if civil *Gideon* was instituted across the Task Force's areas of focus, it is entirely possible that there would be consequential savings within the state's systems of healthcare, foster care, and unhoused shelters.

Health care costs, related both to eviction and IPV representation, are considered explicitly by the Task Force in its report. The report favorably cites studies from multiple states; in New York, "providing legal assistance to female domestic violence survivors would save the State $85 million

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[261] CIVIL GIDEON PILOT PROGRAM: REPORT, *supra* note 142, at 5.

[262] *See generally* CONN. GEN. STAT. § 46b-15f.

[263] *See* discussion *infra* section III.A.iii.

[264] *See* discussion *infra* section III.A.ii.

[265] *See generally* FARMER & TIEFENTHALER, *supra* note 107.

[266] In fact, lawyer motivation is often seen as one of the theoretical strengths of civil *Gideon* reform:

> Obviously, all else being equal, any litigant would prefer a fairer court procedure. When the cost of a civil *Gideon* is factored in, however, it becomes a harder question. For example, it would not be irrational for poor litigants to prefer that any money spent on their problems go to direct assistance, rather than a free lawyer. For example, if an indigent person facing eviction had a choice, she would often choose help with finding a new apartment or a few more weeks in her apartment over a free, but overburdened and underpaid, lawyer.

Barton, *supra* note 176, at 1268.

annually."[267] In Maryland, IPV defense funds saved the state upwards of $1.3 million in lost productivity and medical costs.[268] In Massachusetts, each dollar spent on civil legal services saved the state "at least" the same amount in Medicare reimbursement rates.[269] In housing, the Task Force considered savings in health care costs in eviction-related stress diseases and actions (e.g., depression, suicide, IPV), and the effects of diseases such as asthma and lead poisoning stemming from evicted persons moving to sub-standard housing.[270] Health care cost prevention is a major tenet of Connecticut's historic investment in right to counsel programs, and should be considered an absolute benefit to the state's right to counsel proposals.

Furthermore, Connecticut spent $62.8 million on foster care programs as recently as 2016.[271] Only eighteen percent of this funding in 2016 was actually directed towards preventative services—increasing the percentage of funding on preventative legal counsel in immigration proceedings could help this downstream costs.[272] There are only a small number of immigration removal cases in the state annually; providing targeted legal assistance would be less likely to tax Connecticut-based immigration lawyers more than a comparable policy would in states with more immigration removal cases.[273]

Directing costs towards legal representation can also effectively limit the amount of funding municipalities are later forced to spend on unhoused shelters.[274] For example, while the South Bronx program discussed earlier[275] "cost $450,000[, it] saved New York City more than $700,000 in estimated shelter costs."[276] The program likely accomplished this through the positive housing outcomes that its lawyers provided; the program "prevented shelter entry for 94.3% of clients."[277] Even short of unhoused shelters, there are several social costs that may be avoided with preventing eviction; the Task Force explicitly covered factors such as the costs of "remedial schooling,"

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[267] TASK FORCE REPORT, *supra* note 1, at 10.

[268] *Id.*

[269] *Id.* at 10–11.

[270] *Id.* at 12.

[271] CHILD TRENDS, CHILD WELFARE AGENCY SPENDING IN CONNECTICUT 2, https://www.childtrends.org/wp-content/uploads/2018/12/Connecticut_SFY2016-CWFS_12.13.2018.pdf (last accessed, May 9, 2022).

[272] *Id.* at 4.

[273] *See* discussion *infra* II.C.ii.b.

[274] DESMOND, *supra* note 50, at 304.

[275] *See* discussion *infra* III.A.iii.

[276] DESMOND, *supra* note 50, at 304 (citing HOMELESSNESS PREVENTION PILOT FINAL REPORT, *supra* note 132).

[277] HOMELESSNESS PREVENTION PILOT FINAL REPORT, *supra* note 132, at 28. "Entered Shelter" was defined in the data collection process as, "when a client goes to live in shelter before the court case is closed, or within a month after the case closing (in the instances where the HHP staff are aware). This includes decisions to enter domestic violence emergency shelters." *Id.* at 30.

"neighborhood deterioration," and "criminal justice enforcement," as costs that would be lowered if evictions were lowered through eviction defense.[278]

Limiting future costs by addressing the roots of subsidiary problems is a proactive, smart budgeting step. Even in instances where financial costs seem onerous, Connecticut simply must consider the literal costs that would be incurred down the road without these expenditures in the immediate term. Smart budgeting requires non-myopic thinking; civil *Gideon* spending now prevents higher costs later.

VI. CONCLUSION

This piece should lead a reader to understand that the eventual, laudable goal of these initiatives should not just be *furthering* the promise of civil *Gideon*, but *fulfilling* it—that is, providing competent, helpful legal assistance to litigants in a civil case when such representation is wanted and needed. These recommendations serve as a partial map rather than a finish line; it would be a grave error to assume that truly equitable access to justice could be achieved by these measures and these measures alone.

What's more, there are many societal issues that civil *Gideon* alone cannot correct; total civil rights to counsel will not stop IPV even if restraining orders are allocated more effectively, and it will not stop the forces that destroy family integrity. Eviction legal defense is a band-aid for a lack of affordable housing, stagnating wages, and rapid increase in housing costs.[279] Total civil Gideon would not fix all of the *legal* problems in the civil justice system; "[a] 'civil Gideon' program that relies on voluntary action by state legislatures for funding is likely to be inadequate for the same reasons that the implementation of Gideon has been insufficient."[280] Naysayers of civil *Gideon* reform may say that any program that Connecticut—or any state—could put in place would be mere palliative care on a diseased system. As covered, these concerns should not be tossed aside, and there are other solutions that must be examined; *pro se* litigant reform[281]

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[278] TASK FORCE REPORT, *supra* note 1, at 12 (citing DESMOND, *supra* note 50, at 304).

[279] Indeed, housing insecurity is intimately tied to all three; "[b]oosting poor people's incomes by increasing the minimum wage or public benefits . . . is absolutely critical. But not all of those extra dollars will stay in the pockets of the poor. Wage hikes are tempered if rents rise along with them . . . ." DESMOND, *supra* note 50, at 305.

[280] Chemerinsky, *supra* note 255, at 2692.

[281] For an excellent critique of civil *Gideon*, please read *Against Civil Gideon (And For Pro Se Court Reform)* by Benjamin H. Barton. The author offers many critiques of civil right to counsel programs, most of which are absolutely fair; however, the author's focus on the critiques of universal civil *Gideon* may be addressed by the implementation of targeted programs, such as Connecticut's various pilot programs. The author may be correct in stating that wholesale civil *Gideon* implementation is both legislatively unlikely and functionally inoperable at the current time; the author's opinion that furthering civil *Gideon* even incrementally is an unworthy goal is less certain. Barton, *supra* note 176.

and litigant supporting methods should be explored.[282] Indeed, the Task Force considered other methods in conjunction with increased civil representation; any future policymaker in Connecticut must do the same.[283]

That said, Connecticut is well on its way towards the most progressive civil *Gideon* regime in the United States. Connecticut's approach to right to counsel programs largely repudiates claims of ineffectiveness and funds wasted; well-funded, targeted implementation of right to counsel programs has immediate, positive impacts that increase satisfaction and the effectiveness of the legal system for civil litigants. Total civil *Gideon* is a valid goal, and Connecticut has taken many steps towards that goal.

The work, however, is not done. Connecticut must continue its critical work in its current eviction pilot program, it must strengthen the support of various grassroots legal aid movements and obtain additional funds to civil aid services. This state is in an excellent position to continue this work, and it must not take its proverbial foot off the pedal. There are further bounds to be pushed in this realm, and Connecticut must be at the forefront of that push—following up on the Task Force's recommendations in their totality is the best way to stand at this vanguard.

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[282] Another excellent examination of the limits of *Gideon* comes in *Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services* by Professor Jeanne Charn. Professor Charn adroitly explores how there are limits to civil *Gideon*'s effectiveness in different civil litigation areas; however, like Professor Rebecca Sandefur, she does conclude that lawyers must remain a part of systemic solutions even as lawyers are not the solution in every instance of system inequity. Charn, *supra* note 194; Sandefur, *supra* note 184.

[283] The Task Force, for example, recommended that State agencies provide "computers at locations accessible to the public so that they have access to on-line (sic) resources for the protection of legal rights." TASK FORCE REPORT, *supra* note 1, at 22 ("Recommendation 6").