SHAKING THE FOUNDATIONS

Gideon Informational Packet

Table of Contents

I. *Gideon*'s Unfulfilled Promise:

The Criminal Legal System

An official website of the United States government Here's how you know

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THE LEGACY OF GIDEON V. WAINWRIGHT

"If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pencil and paper to write a letter to the Supreme Court, and if the Court had not taken the trouble to look for merit in that one crude petition ... the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter, the Court did look into his case ... and the whole course of American legal history has been changed."

Attorney General Robert F. Kennedy
Speech Before the New England Conference on the
Defense of Indigent Persons Accused of Crime
November 1, 1963

On March 18, 1963, the U.S. Supreme Court issued its decision in *Gideon v. Wainwright*, unanimously holding that defendants facing serious criminal charges have a right to counsel at state expense if they cannot afford one. The time that has passed since *Gideon* have demonstrated that effective legal assistance for all persons charged with crimes is critical to safeguarding justice and fairness in the criminal process. On the 50th anniversary of *Gideon*, the Justice Department reaffirmed its commitment to supporting the highest standards in criminal defense.

HISTORY

Clarence Gideon was accused of a felony in Panama City, Florida and convicted after the trial judge denied Gideon's request to have counsel appointed to represent him. The Supreme Court agreed to hear Gideon's case and granted him a new trial, ruling that legal assistance is "fundamental and essential to a fair trial" and that due process requires states to provide a lawyer for any indigent person being prosecuted for a serious crime. After being retried with the help of a local attorney, who had the time and skill to investigate his case and conduct a competent defense, Gideon was acquitted of all charges.

The right to appointed counsel has been extended to misdemeanor and juvenile proceedings. Today, states and localities make use of a variety of systems to provide indigent defense, from state- and county-based public defenders, to appointment systems that reimburse private attorneys who represent indigent defendants.

Despite the significant progress that has been made over 50 years after the decision, the promise of *Gideon* remains unfulfilled. The quality of criminal defense services varies widely across states and localities. Many defenders struggle under excessive caseloads and lack adequate funding and independence, making it impossible for them to meet their legal and ethical obligations to represent their clients effectively. The problems of mental illness and juveniles in our criminal justice system pose special difficulties for achieving fairness and justice.

As Attorney General Eric Holder has stated, "our criminal justice system, and our faith in it, depends on effective representation on both sides." The Justice Department is providing a number of tools and resources to help establish effective indigent defense systems across the nation. In 2010 the Department also launched the Office for Access to Justice — establishing a new, permanent office focused on enhancing access to criminal and civil legal services for those who cannot afford them.

The Supreme's Court recognition in *Gideon* that "lawyers in criminal courts are necessities, not luxuries," and its guarantee of the right to counsel in the state criminal process, has had a profound impact on the operation and aspirations of the American criminal justice system. The Justice Department is committed to working to ensure that the goals and vision of *Gideon* are fully, and finally, realized.

Updated October 24, 2018

https://www.nacdl.org/Content/Caseloads

Caseloads

The guarantees of the 6th Amendment are not met by simply providing the defendant a warm body with a bar card. An accused is in need of and entitled to a zealous, capable advocate who can provide effective assistance consistent with prevailing professional norms. When public defense attorneys are burdened with excessive caseloads they are unable to fulfill their ethical and constitutional responsibilities to their clients and the community.

November 03, 2022

Overloaded lawyers lack the time to conduct investigations, review discovery materials, perform legal research and file motions, communicate with clients, and prepare for court. Outdated caseload standards which failed to consider the unique needs of varying case types or the complexities of modern criminal practice must be replaced. Public defense providers must be given the means to properly track case data and case time. Public defense systems must be provided adequate resources and personnel, including attorneys and support staff, to provide proper representation. And court systems must allow public defenders to refuse cases when workloads get too great.

Public defense attorneys and public defense providers have the ethical responsibility to challenge caseloads when they become excessive and prevent the attorney from fulfilling their ethical obligations to their clients.{1}

1

Eight Guidelines of Public Defense Related to Excessive Workloads. (https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf)(ABA 2009).

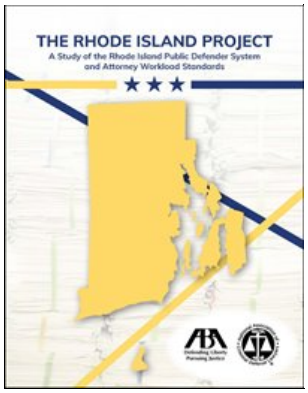
NACDL stands ready to help ensure both public defenders and assigned counsel have proper workload controls and the resources needed to perform their constitutional duties on behalf of their clients and their community.

Last Week Tonight on Public Defense

Last Week Tonight with John Oliver on Public Defense, September 2015

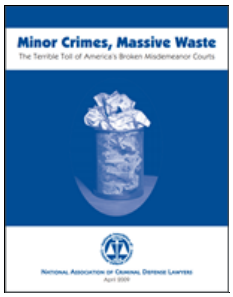
LEARN MORE (/MEDIA/LAST-WEEK-TONIGHT-ON-PUBLIC-DEFENSE)

NACDL REPORTS ON EXCESSIVE CASELOADS

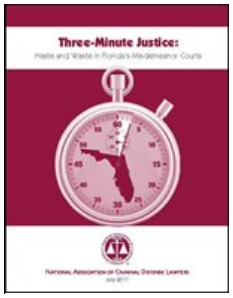


(/Document/TheRhodeIslandProjectStudyofRIPDSystemandWorkloads)Meaningful workload studies are one way a system can examine current practices and develop data-driven standards. In 2017, NACDL and the ABA (https://www.americanbar.org/groups/legal_aid_indigent_defendants/indigent_defense_systems_improvement/) examined the Rhode Island's public defender system. Utilizing the Delphi Method, the study concluded the RIPD's current caseload **required 136 attorneys; at the time they had 49**.

Read more in: The Rhode Island Project (/Document/TheRhodeIslandProjectStudyofRIPDSystemandWorkloads)



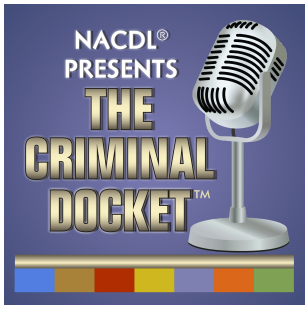
(/Document/MinorCrimesMassiveWasteTollofMisdemeanorCourts)NACDL reports on how the explosive growth of misdemeanor cases has placed a staggering burden on America's courts. Defenders across the country are forced to carry caseloads that leave too little time for clients to be properly represented. As a result, constitutional obligations are unmet and taxpayer money is wasted. **Read more in** Minor Crimes, Massive Waste (/Document/MinorCrimesMassiveWasteTollofMisdemeanorCourts) **(2009).**



(/Document/ThreeMinuteJusticeFloridasBrokenMisdemeanorCourts)

More on misdemeanors can be found in: NACDL's Report
Three Minute Justice: Haste and Waste in Florida's Misdemeanor Courts (/Document/ThreeMinuteJusticeFloridasBrokenMisdemeanorCourts)

Ep.20 - Missouri Public Defender Caseload Litigation



Ep.20 - Missouri Public Defender Caseload Litigation -- This week, NACDL Public Affairs & Communications Intern Denise Tugade sits down with Holland & Knight Pro Bono Partner Stephen Hanlon (http://www.hklaw.com/Stephen-Hanlon/) and NACDL's Indigent Defense Counsel John Gross to discuss the recent, landmark decision (/Content

/MissouriPDCvWaters) by the Missouri Supreme Court in the Missouri Public Defender Commission caseload litigation.Learn more about NACDL (http://www.nacdl.org/?utm_source=thecriminaldocket&utm_medium=feed&utm_campaign=pa). Denise Tugade, host. Ivan Dominguez (/People/IvanJDominguez), production assistant. Steven Logan (/People/StevenJLogan), production supervisor. Music West Bank (Lezet (http://freemusicarchive.org/music/Lezet/)) / CC BY-NC-SA 3.0 (http://creativecommons.org/licenses/by-nc-sa/3.0/us/) and Walkabout (Digital Primitives (http://freemusicarchive.org/music/Digital_Primitives/)) / CC BY-NC-ND 3.0 (http://creativecommons.org/licenses/by-nc-nd/3.0/).

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LEARN MORE (/MEDIA/EPISODE-TWENTY-MISSOURI-PUBLIC-DEFENDER-CASELOAD)

ADDITIONAL RESOURCES ON PUBLIC DEFENSE CASELOADS

- PBS News Hour Broken Justice, Episode 1: Triage (https://www.pbs.org/newshour/podcasts/broken-justice/episode-1-triage), Nov. 5, 2019
- Presentation on Defender Workloads (/Document/PowerPointBurkhart) by Geoff Burkhart
- ABA Delphi Method Workoad Studies (https://www.americanbar.org/groups/legal_aid_indigent_defendants/indigent_defense_systems_improvement/publications/) in Colorado, Louisiana, and Missouri.
- ABA Ethics Opinion 06-411: When Excessive Caseloads Interfere with Competent and Diligent Representation (https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf) (May 2006)
- Keeping Defender Workloads Manageable, (https://www.ncjrs.gov/pdffiles1/bja/185632.pdf) Bureau of Justice Assistance (2001)
- *Securing Reasonable Caseloads: Ethics and Law in Public Defenses (https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf)*, Norman Leftstein (ABA 2011)

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EXPLORE KEYWORDS TO FIND INFORMATION

- Caseloads (/search?term=*&activefilter=Caseloads)
- Public Defense (/search?term=*&activefilter=Public Defense)

‘Our Office Is In Crisis’: LA Public Defenders Pen Plea To Reduce Workload

Criminal Justice
By Emily Elena Dugdale

Published Mar 8, 2022 3:00 PM

Clara Shortridge Foltz Criminal Justice Center in downtown L.A.

(Frazer Harrison

Getty Images)

More than half of Los Angeles County’s active public defenders have signed a letter requesting that the head of their office stop accepting certain cases because of “excessive workloads.”

“Our office is in crisis,” begins the Feb. 22 letter the public defender’s union sent to head Public Defender Ricardo García. It demanded he “declare our office unavailable … to address the increasing burnout of our attorneys.”

Signed by more than 300 public defenders, the letter said the office’s lawyers “have reached the point where they can no longer continue to accept new cases while continuing to provide effective representation to our clients.”

The letter said “[t]he problem is only becoming more acute due to the increase in attorneys leaving the office, as well as attorneys taking leave due to burnout caused by unmanageable workloads.”

García pushed back on his attorneys' demand. “I will not abandon the indigent accused by going unavailable unless I have done everything possible internally to manage operations,” he said in a statement. García said he’ll work with the County Board of Supervisors and the County CEO “to meet operational needs across the Department."

In response, the union tweeted that "[i]t is deeply disappointing" that García "is suggesting our request ... is to abandon the 'indigent accused.' Declaring unavailability is the only way to ensure our clients are not abandoned due to ineffective representation."

Declaring unavailability would send some cases to private bar panel attorneys who can charge the county hundreds of dollars for their services representing indigent clients, depending on the type of case.

‘A Testament To The Gravity Of The Situation’

The union also sent the letter to the five county supervisors. In a cover letter, union leaders outlined some statistics from a recent survey of their members: “over 50% said they have considered quitting due to workload issues, nearly 80% said they do not have adequate time to prepare for cases, and 70% said their current workload is unmanageable.”

It continued, “It is a testament to the gravity of the situation that a majority of our attorneys — from nearly every branch and rank — signed onto this letter within a matter of days.”

We spoke to seven current and former public defenders who signed the letter. All of them said an increased workload in the past few years combined with scores of attorneys resigning or going on leave has stretched them too thin.

“In the 20 years I've been with the office, I've never had such an unworkable caseload as this,” said Karl Fenske, a felony public defender in downtown L.A and union leader.

“I could not even attempt to manage my own caseload anymore,” said a former public defender who recently resigned over the huge increase in work. The attorney requested anonymity because of concerns about future job prospects.

Before resigning, the former public defender said they had around 50 felony cases — twice as many as they thought was reasonable.

Fenske said the union has recorded over 100 attorney resignations in the last three years.

His own caseload currently hovers around 40 felony cases, which years ago would have been considered far too many, he said. Fenske said he absorbed the caseload of two attorneys in 2020 when he transferred into felony trials for mental health court.

“I still have some of those cases on my calendar today,” he said,

A County Supervisor Calls For An Investigation

Supervisor Kathryn Barger said in a statement that "I entrust that Mr. García will ... address the challenges that line staff are experiencing, finding a workable solution that addresses their concerns and keeps this essential service available for those who need it.”

Supervisor Hilda Solis issued a statement in which she said she's directing the county CEO to investigate, “given the serious nature of these concerns raised by the Public Defenders union, who defend our most vulnerable residents.”

In a statement, Supervisor Holly Mitchell said "I take the challenges expressed seriously" and pledged to continue working with management and staff in the public defender's office and the county CEO "to address this critical need.”

Public defenders we spoke with cited a number of factors that have caused their workloads to balloon. Attorney attrition was the biggest one — not enough bodies to handle all the incoming cases.

Currently, the department hovers below 600 active attorneys, according to union representatives. The union said the office has added at least 30 new lawyers over the last six months, but says that won’t make a dent in the problem.

Another issue our sources cited: Improved options for clients such as mental health diversion programs have led to more work per case for attorneys, but the office has not taken steps — such as hiring more paralegals — to help ease the burden.

“We have to go through the process of appointing experts and ordering medical records and doing a lot of those other things,” said Brooke Longuevan, a public defender in downtown L.A and the vice president of the union.

“There's a lot more steps to the process that involves a lot more resources that we just don't have,” she said.

Several attorneys also cited the increase in law enforcement body camera footage as extra material that can take multiple hours to review.

“It’s impossible for us to do all the work within working hours,” Fenske said.

‘Resources Have Not Kept Up’

Some attorneys who handle misdemeanor cases said District Attorney George Gascón’s policy of not charging many low-level misdemeanors also meant that their heavy caseloads are now mostly serious — and more time-consuming — cases.

“Our cases aren’t like run-of-the-mill driving without a license,” said one misdemeanor attorney who spoke anonymously because they were not authorized to speak to the media. “I have to actively work on all of my cases.”

Added Longuevan, “The practice has changed. The resources have not kept up with those changes.”

Declining to assign public defenders to cases is not common, but not unprecedented. In 2005, then-head Public Defender Michael Judge declared unavailability and allowed certain cases to go to bar panel attorneys to deal with heavy case workloads.

“He would institute unavailability tactically in the locations where we had too many cases coming in,” said Fenske, who was in the office at the time. He said Judge responded to hiring freezes and attorney attrition in this way.

“That era was the last time we had declared unavailability as an office,” said Fenske, who said the policy only lasted a few years. Judge retired in 2010, and died in 2018.

In 2007, Judge said his unavailable policy meant his office turned away between 2,000 and 19,000 cases a year.

‘It’s Just Heartbreaking To See’

Other states are also dealing with public defender workload and attrition. The American Bar Association recently conducted studies in Oregon and New Mexico and recommended the public defender’s offices in those states impose caseload limits and potentially suspend new case assignments.

“I don’t think going unavailable is a long-term solution by any means,” said Samantha Mergentime, a public defender working on misdemeanors in Long Beach. “But I do think it would help alleviate the immediate concerns that I and a lot of my co-workers have.”

Mergentime said she would have signed the union letter a year ago. In 2020, the Los Angeles Times reported that the COVID-19 pandemic had at times tripled public defender caseloads and led to some attorneys feeling physically ill with stress.

“People are running around saying that we’re essentially triaging cases,” Mergentime said. “There are human beings on the other end of this that are entitled to and deserve zealous, competent representation on every single one of their cases.”

“It’s just heartbreaking to see, truly,” she said.

'Punishment Without Crime' Highlights The Injustice Of America's Misdemeanor System

January 2, 2019

Heard on Fresh Air

Terry Gross

'Punishment Without Crime' Highlights The Injustice Of America's Misdemeanor System

35-Minute Listen

Former federal public defender Alexandra Natapoff says 13 million misdemeanors are filed each year in the U.S., trapping the innocent, punishing the poor and making society more unequal.

Buy Featured Book

Title
Punishment Without Crime
Subtitle
How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal
Author
Alexandra Natapoff

TERRY GROSS, HOST:

This is FRESH AIR. I'm Terry Gross. We're going to talk about a part of the criminal justice system that my guest describes as trapping the innocent and making America more unequal - the massive misdemeanor system. Depending on where you are, some misdemeanors are as minor as jaywalking. But the consequences of being charged with a misdemeanor, whether you are guilty or not, can be life-changing, especially if you are poor. My guest, Alexandra Natapoff, is the author of the new book, "Punishment Without Crime." Critics of how the criminal justice system deals with misdemeanors have described it as assembly line justice or McJustice.

Natapoff is a professor of law at the University of California, Irvine. From 2000 to 2003, she was an assistant federal public defender in Baltimore. She drew on those experiences for the book, but it's also based on extensive data she collected from every state around the country and on interviews with people who've gone through the misdemeanor process, as well as police, prosecutors, public defenders and judges.

Alexandra Natapoff, welcome to FRESH AIR. Let's start with a precedent-setting case from 1997 in which a mother was driving with her 3 and 5-year-old children in the car, and she was arrested for a seatbelt violation. Describe what she was arrested for.

ALEXANDRA NATAPOFF: Gail Atwater and her kids were driving around their local park very slowly - about 15 miles an hour. Her child, Mac, had lost his toy and the kids were looking out the window of their truck to try to find the toy. And they didn't have their seatbelt on. Their mom had told them they could take their seatbelts off in order to see out the windows to look for the toy.

And they were stopped by a police officer, Turek, who pulled them over and hollered at Gail Atwater that she would be arrested for the seatbelt violation for not having her children in the seatbelt restraints. Her children started to cry. Ms. Atwater asked if she could take her kids to the neighbor's house. Officer Turek said, no, they're going to come to jail with you. A neighbor happened to walk by and take care of the kids, but Gail Atwater went to jail.

She was booked, fingerprinted, spent a couple hours in the lockup and eventually pled guilty to and paid the fine for the seatbelt violation. The most she could have been punished for that violation was $50. It's a traffic misdemeanor. She could not have gone to jail for the seatbelt violation, but nevertheless spent time in jail as a result of the arrest.

And she brought a lawsuit. She asked the Supreme Court to hold that it's unreasonable for police officers to effectuate what we call full-fledged custodial arrest - that is, lock someone up, book them, take them to jail for a crime like hers, for which she could not have gone to jail. It was a fine-only traffic offense. And the Supreme Court ruled against her.

The Supreme Court said no matter what the crime, no matter how minor the misdemeanor, no matter what the ultimate punishment is, even if you can't be incarcerated for it, the police have the power to effectuate a full-fledged custodial arrest - that is, take you to jail, book you, lock you up.

And it really - it was such an important case because it opens a gateway into the kinds of arrests and intrusions and jail stays that characterize this low-level world of misdemeanors and minor offenses. And so in many ways, the size and the harshness of the misdemeanor system trace back to Gail Atwater.

GROSS: So how long was she in jail?

NATAPOFF: Gail Atwater spent a few hours that day in jail. She was booked. They took her personal possessions. She was fingerprinted. She spent the time in the lockup as anybody would if they were arrested for any offense in that jurisdiction.

So although I don't know who Gail Atwater spent her afternoon with in the lockup, it's possible that anyone in her situation could have spent the afternoon with people accused of very serious crimes, violent offenders, people with mental health or substance abuse issues. And she had an arrest record, so her information now is in the booking system. And it's an arrest record that will follow her for the rest of her life.

GROSS: When you say she had a record, this is her record. She didn't have one before this.

NATAPOFF: Correct.

GROSS: Yeah. So let's talk more about what a misdemeanor is. Not having your children wear seatbelts - that's a misdemeanor. But there's a wide range of crimes that qualify as misdemeanors. Can you give us a sense of that range?

NATAPOFF: So misdemeanors are minor offenses. Every jurisdiction defines them differently. Typically, they're defined as any criminal offense for which you can do no more than one year incarceration as punishment. But misdemeanors come in all kinds of shapes and sizes. Sometimes we call them petty offenses. Sometimes we call them violations or ordinance violations. In Texas, Gail Atwater's offense - her seatbelt offense - even though she couldn't go to jail for it, was a criminal offense. It was a criminal misdemeanor.

Many jurisdictions criminalize their traffic offenses. Even though we don't typically think of speeding as a crime, 25 states define speeding as a misdemeanor. Sometimes people go to jail for these offenses, more often they don't, at least not right away. And so it's a whole world of low-level petty offenses, criminalizing low-level conduct, imposing punishments that are relatively light compared to the kinds of felony sentences that we've become accustomed to.

GROSS: So your book is, in part, about the inequality of the misdemeanor system and how it's racially unequal and there's a class system within the misdemeanor system. So I don't know what kind of income the woman who was arrested for the seatbelt violation had, but what are the differences in how that might've been handled between a person who had money and a person who didn't?

NATAPOFF: One of the startling things about our enormous misdemeanor system is just how unequal it is. It often goes after low income and impoverished individuals. It sweeps in people of color, often disproportionately, for order maintenance and other low-level offenses. One of the particularly burdensome and inegalitarian aspects of low-level offenses is the effect of imposing fines and fees on misdemeanor defendants.

So Gail Atwater, for example, it appears that she didn't have any trouble paying the $50 fine for her seatbelt violation, but many people do. And for many people, they are set bail for low-level offenses - hundreds of dollars which they cannot pay - and therefore languish in jail while their cases are being resolved.

Jurisdictions also impose fees in addition to fines - user fees that fund the criminal system itself. And so there are all kinds of ways that an encounter with the misdemeanor system generates criminal debt. Individuals who come into the system incur all kinds of debt - fines and fees and bail and other kinds of

monetary penalties. And for the low-income individuals who typically, you know, represent the average person who encounters the misdemeanor system, that debt can be crushing.

It can be unpayable, so much so that they end up spending time in jail that they otherwise wouldn't have spent. If they do pay those fines, it can cast them into deep debt, ruin their credit. They may end up on probation solely in order to pay off those fines because the fines are so crushing. So now they're under court supervision, not because they committed a particularly terrible offense or because they need supervision, but merely because they cannot pay.

So there is a profoundly regressive quality to the way that the misdemeanor system deploys fines and fees and bail and monetary sanctions. And because the system is heavily funded by those fines and fees and monetary sanctions, the misdemeanor system turns out to be a kind of regressive tax policy. It's stripping the poor and the - and working people in the system of their wealth and their resources in order to fund itself.

GROSS: Let's talk about bail. I mean, what is the purpose of bail, and how do you think it's being misused now?

NATAPOFF: The purpose of bail is supposed to be to ensure that people appear for court when they're charged with an offense. When people are charged with an offense, they're, of course, presumptively innocent. They haven't been convicted of anything. So bail has nothing to do with whether anyone is guilty or innocent. It's essentially a deposit that the court can require of an individual to make sure that they come back to court.

But what has happened in the misdemeanor system is that bail has morphed into a tool for raising money, for extracting fines and fees from individuals and has contributed to a sort of misdemeanor version of mass incarceration. Many jurisdictions have bail schedules, a set list of fees for various low-level offenses.

So if you're charged with trespassing, your bail is automatically $500. If you're charged with marijuana possession, your bail is automatically $1,000. These amounts have nothing to do with whether this particular individual is a flight risk, whether they're dangerous. Rather, they're just set schedules.

And for many people, those bail fees are out of reach. And so they remain incarcerated because they can't pay. And so we've seen around the country - many jails are filled with individuals who are there not because they've done anything particularly wrong or pose any particular threat or even a risk of flight but simply because they can't afford to pay bail.

GROSS: Let's take a short break here, and then we'll talk some more. If you're just joining us, my guest is Alexandra Natapoff, author of the new book "Punishment Without Crime: How Our Massive Misdemeanor System Traps The Innocent And Makes America More Unequal." We'll be right back. This is FRESH AIR.

(SOUNDBITE OF PAUL SIMON SONG, "HOW CAN YOU LIVE IN THE NORTHEAST?")

GROSS: This is FRESH AIR. And if you're just joining us, my guest is Alexandra Natapoff. She is the author of the new book "Punishment Without Crime: How Our Massive Misdemeanor System Traps The Innocent

And Makes America More Unequal." She's also a professor at the University of California, Irvine and a former assistant federal public defender in Baltimore.

You mentioned that fees and fines are used to fund things. And by things, do you mean, like, to fund cities and counties and municipalities - that those funds go into funding the system? So in that sense, kind of like traffic tickets, they're an important part of fundraising for the budget.

NATAPOFF: And misdemeanors are moneymakers for local jurisdictions. They fund courts. They fund probation offices. They fund public defender offices. They fund prosecutor offices. Some counties and municipalities use them to fund the general budget. It's one of the covert aspects of the misdemeanor system that, in many instances, it's running, not aimed at rounding up dangerous people or solving crimes or protecting public safety but cities and institutions and courts are reliant on the revenue stream that the misdemeanor system produces. It's a real distortion, you know, of what our criminal system is for.

Our criminal system is an extraordinarily important public, democratic institution. We need it to go after dangerous people. We need it for deterrence and for public safety. And yet, the misdemeanor system has quietly converted much of the misdemeanor apparatus into a revenue source. Whatever we think of punishment - whatever we think the purposes of criminal punishment are, raising money is not supposed to be one of them.

GROSS: I think, for some areas, the police are expected to - or may be required to - pull over a certain number of people per month. Like, there's a quota. And I'm wondering if you think that contributes to problems within the misdemeanor system.

NATAPOFF: We've recently learned through lawsuits and through police officers speaking out that many police departments rely on quotas - sometimes formal, more often informal - pressures on police officers to produce a certain number of arrests or citations or summons in order to measure their productivity or in order to support their promotion or their advancement in the department. And we've heard from police officers just how distorting these formal or informal quotas can be. They put pressure on officers to make arrests that they might not otherwise make, to issue summons and citations that otherwise might not be justified.

There have been lawsuits in New York from police officers that, when they are assigned to low-income communities of color, under pressure from these quotas, they feel forced to contribute to the racial disproportion of the criminal system - that in essence, because they've been assigned to communities of color, that they have to issue citations, that they have to engage in arrests, even when some other police action or some other intervention might be more appropriate.

And it is a distortion of the police function. Police discretion is an extraordinarily important resource in the criminal system. We rely on police discretion to advance public safety, to make sure people are treated fairly. And when we put pressure on police officers to produce citations and low-level arrests when they might not otherwise exercise their discretion that way, we're really interfering with a key aspect of the system's integrity.

GROSS: In your book, you write that you were a federal public defender in Baltimore from 2000 to 2003. And one of the things you learned from the people you represented there was that there was a very messy calculation of punishment - trying to decide, like, whether to plead guilty or pay a fine or you know. Give us a sense of what that calculation of punishment is when you're facing a misdemeanor charge and you don't have much money.

NATAPOFF: I learned an enormous amount from the people that I represented in Baltimore - listening to their stories, meeting them and their families and hearing how they grappled with the challenges of facing a low-level misdemeanor charge. And I learned that often the calculus of punishment doesn't necessarily shake out the way you would think.

There might be an assumption, for example, that people would avoid jail at any cost. And yet, for many of my clients, being on probation for a year or two or three years with the burdens and intrusions of probation - having to make appointments and meet with their probation officers monthly, having to be drug tested routinely, giving up their privacy, having the restrictions on their freedom - for many of them, they decided that, for them, going to jail made more sense. Even though they knew that jail was risky, that it was dangerous, that it was painful, the intrusion into their lives and the burdens on their lives of supervision and probation often seemed, in the long run, to be even more disruptive.

Many of my clients lived in dangerous neighborhoods. They were surrounded by dangerous situations. They often felt caught between a rock and a hard place. So I represented individuals, for example, who were charged with misdemeanor gun possession who knew that if they were caught they would be punished. And yet, they felt the pressure from their neighbors - from the people in their neighborhoods that if they did not carry a gun or at the very least were not perceived to be carrying a weapon, that they would be in danger, that they would be seen as a target. It was a heartbreaking calculus that they had to go through.

GROSS: So in terms of lack of resources, among the things you're mentioning is the resource of time, that public defenders don't have enough time to represent all the clients that they're supposed to be representing, and judges don't have time to hear all the cases they're supposed to be hearing. So what are the consequences of that?

NATAPOFF: The lack of resources in the misdemeanor system is one of the great challenges to the integrity of that process. And the reason that there's a lack of time is because the case loads are so enormous. There are so many people coming in to the misdemeanor system. Thirteen million misdemeanor cases are filed every year in this country. That's 80 percent of American criminal dockets.

And so for public defenders - and it's worth noting that every official - every legal official in the misdemeanor system is faced with this crushing case load. Public defenders, prosecutors and judges are all under pressure to move cases along. For public defenders in particular, having hundreds, sometimes thousands of cases that they have to resolve means that they don't have time to talk to their clients.

They may meet them literally in the lockup in the courtroom 10 minutes before a hearing with no time to discuss the case, the facts, the file. This is sometimes referred to derogatorily as meet-them-and-plead-them

lawyering, that essentially your public defender meets you. They tell you what the government's deal is, and they engage in the process of you pleading guilty immediately.

The lack of resources also means that public defenders lack the ability to investigate cases. So there are very few, if any, investigators and public defender offices available for misdemeanors, so if an individual is innocent or if there are witnesses or if there are facts about the encounter with the police or the crime that could be uncovered, that public defender office may simply be unable to unearth that information.

The lack of resources means also that in many ways, the law itself is put aside. Misdemeanor cases can be legally very complicated. They may involve unconstitutional searches and seizures. They may involve unconstitutional statutes. They may involve complicated factual issues. But without the time and resources to engage those questions, there's very little litigation. Motions are not filed. Issues are not aired both because public defenders lack the resources but also because there's enormous pressure on them from prosecutors and judges not to litigate.

We've seen around the country examples of judges who actually punish public defenders when they try to litigate issues on behalf of their clients when they want to go to trial, when they want to file a motion. Judges have been known to hold public defenders in contempt or threaten to hold them in contempt because they're holding up the docket.

And so it's not the way that we think a judicial system is supposed to work. There's little room for law. There's little room for investigation. There's little room to have the adversarial conversation that we rely on to produce valid cases and valid convictions.

GROSS: My guest is Alexandra Natapoff, author of the new book "Punishment Without Crime: How Our Massive Misdemeanor System Traps The Innocent And Makes America More Unequal." We'll talk more after a break, and Lloyd Schwartz will review a new recording of Stravinsky's "The Soldier's Tale" made by Roger Waters, co-founder of the rock band Pink Floyd. I'm Terry Gross, and this is FRESH AIR.

(SOUNDBITE OF ANTONIO SANCHEZ AND BRAD MEHLDAU AND MATT BREWER'S "NAR-THIS")

GROSS: This is FRESH AIR. I'm Terry Gross. Let's get back to my interview with Alexandra Natapoff, author of the new book "Punishment Without Crime: How Our Massive Misdemeanor System Traps The Innocent And Makes America More Unequal." She's a professor of law at the University of California Irvine and, before that, was an assistant federal public defender in Baltimore. When we left off, she was describing how people accused of misdemeanors who don't have extra cash on hand face a backlogged justice system with public defenders who don't have adequate time or resources to properly defend their clients, so the clients are often encouraged to take a plea whether or not they're guilty.

You mentioned that part of the misdemeanor system is often referred to as meet them and plead them, so, you know, lawyers encourage - often encourage their clients to just like plead guilty and get it done with. So if you decide to take the conviction and you take the plea, what are the consequences of that? Now you have a record.

NATAPOFF: So one of the great fallacies of the misdemeanor universe is that getting a misdemeanor is no big deal, that it's just a misdemeanor, that it won't dog you for your life. And that has come to be, you know, profoundly untrue. A misdemeanor conviction, although of course not as serious as a felony conviction, still imposes enormous burdens on the people who carry them.

First and foremost, a conviction is accompanied by punishment. It can be crushing fines and fees. They may be on supervision, on probation for long periods of time. They may be incarcerated. If they're not incarcerated upfront, they may be incarcerated if they violate their probation or fail to pay their fines and fees. And then that conviction will - is a permanent conviction that follows them for the rest of their lives.

We know that it interferes with employment. It can mean that they lose welfare benefits, become ineligible for financial aid for education. They can lose their housing. It can threaten their immigration status. It can disqualify them for all kinds of jobs and licenses.

So the consequences of a misdemeanor conviction are far from petty, even though the conversation around misdemeanors, you know, really doesn't appreciate the impact that they impose.

GROSS: So we've talked a little bit about how the misdemeanor system penalizes the poor more than people who have money because the poor can't afford to pay bail or fines or fees. What are the fees that you're referring to?

NATAPOFF: So fees are different than fines. A fine is a punishment. It's punishment for whatever offense you are guilty of. It's typically set by statute. The judge decides how severe your fine will be as punishment for your crime. But fees are not punishment. They are user charges, in effect, that the criminal system imposes on people who go through it for all kinds of functions. They're essentially money-raising mechanisms that, for decades now, have been growing and growing as municipalities, counties and states rely more and more heavily on the revenue stream from the misdemeanor system.

So their fees can include jail fees, supervision fees, fees for applying for the public defender, fees for using the public defender, fees for drug testing, fees when they swab your cheek to put your DNA in the database. They'll charge you a fee if you don't show up to court, and they issue a warrant, they'll issue a fee. If you're late paying your fees, they'll charge you a fee.

In many jurisdictions, the list of fees, ranging from a few dollars here to $10, $20, $30 or a hundred dollars there, can add up to hundreds, even thousands of dollars on top of whatever punitive fine the court decides to impose.

GROSS: So wait a minute. You're charged a fee for paying - paying for your own incarceration in jail. And you're charged a fee to have a public defender and - when the whole idea of having a public defender is that it's a free lawyer to represent you.

NATAPOFF: I think it's hard for people to really fathom just how unfairly the misdemeanor system strips poor people of their wealth, or more accurately, wealth that they don't have. One of the most infamous is fees charged for the application for the public defender. Of course, by definition, you're only eligible for a public

defender if you can't afford a lawyer. And yet, nevertheless, many jurisdictions charge a fee - say, a $50 fee - to apply just to get a public defender assigned. And many people forgo a public defender because the fee is prohibitive.

The Supreme Court has upheld the use of what they sometimes called recoupment fees. So if you use a public defender, the state can come after you and ask for money to pay for that even though, again, by definition, you would only be eligible for a public defender because you can't afford a lawyer in the first place.

Jail fees are particularly egregious and ironic for individuals who are being incarcerated precisely because they couldn't pay their fines and fees. Once they go to jail, in many jurisdictions, the jail will then charge them a fee for having been in the jail. There are fees for the use of health care in jails, so many people forgo health care. They forgo their medication because they can't afford the fee in the jail to get access to their medication. It's really this enormous underground wealth-stripping, regressive mechanism that is only just starting to come to light.

GROSS: So I just want to make sure - I know a lot of our listeners are probably thinking, is this person arguing that misdemeanors should not be punished or that there shouldn't be misdemeanors or that everybody should just be left alone - no jail, no fees or fines or bail? So what are you arguing for? I mean, you want reform, but you're not arguing to do away with the misdemeanor system.

NATAPOFF: No, I'm not arguing to do away with the misdemeanor system. We need to be able to respond to low-level crimes, to low-level harms. It's not OK to take other people's stuff. It's not OK to engage in low-level violence. It's not OK to drive drunk. And so in many ways mirroring the mass incarceration debate, we need to dial it back.

We need to dial back this enormous, bloated misdemeanor system. We need to dial back arrests. We need to dial back incarceration. We need to dial back the penalties and the use of debtors' prison so that the misdemeanor system can do its job, so that it can go after crime and low-level offenses in a meaningful way and impose punishments that are not so wildly disproportionate to the crime.

GROSS: Let me reintroduce you here. If you're just joining us, my guest is Alexandra Natapoff. She's the author of the new book, "Punishment Without Crime: How Our Massive Misdemeanor System Traps The Innocent And Makes America More Unequal." We're going to take a short break and then we'll be right back. This is FRESH AIR.

(SOUNDBITE OF MUSIC)

GROSS: This is FRESH AIR. And if you're just joining us, my guest is Alexandra Natapoff. She's the author of the new book, "Punishment Without Crime: How Our Massive Misdemeanor System Traps The Innocent And Makes America More Unequal." She's also a professor at the University of California, Irvine and a former assistant federal public defender in Baltimore.

What are a couple of the reforms you would like to see in the misdemeanor system?

NATAPOFF: So many of the problems of the misdemeanor system flow from its sheer enormity. And there are things that we can do about that. Police could arrest fewer people. We could put less pressure on police officers to arrest and to issue summons when it's unnecessary. Prosecutors can decline more cases. When police officers arrest, prosecutors then have to decide whether that arrest is going to convert into a criminal case or whether it's going to be declined and remain merely an arrest.

And prosecutors could shrink the pipeline by declining more low-level cases in which an arrest is enough. It was enough of an intervention and enough of a punishment - decriminalization, reduced use of jail, the reduced use of bail, as we're starting to see in jurisdictions across the country. There are any number of points along the misdemeanor pipeline which we could meaningfully and sensibly shrink it so that it can - so that the cases that are left can get our full attention.

GROSS: Are you convinced that that would not encourage people to break laws because there wouldn't be consequences or at least there wouldn't be consequences as great as there are today.

NATAPOFF: So many of the reasons that people are incarcerated in the misdemeanor system have nothing to do with their wrongdoing. When individuals are locked up because they can't pay a fine or a fee, it's not because they're scofflaws. It's because they're poor. When individuals are arrested for loitering or trespassing because the police are under pressure to clear a corner or make a quota, it's not because they're scofflaws. It's not because they're dangerous.

They're caught up in a system that's using misdemeanor arrest and using misdemeanor processing in unfair and dysfunctional ways. And I think there is a lot of room in our misdemeanor system to scale back those practices so that we can concentrate on misdemeanors that cause real harm - the drunk driving and the assaults and the domestic violence that require our attention and make our misdemeanor system more truly effective and a better deterrent.

GROSS: I want to switch topics to an earlier book that you wrote, a 2009 book called "Snitching: Criminal Informants And The Erosion Of American Justice." And this book was about the government's use of criminal suspects and criminal defendants to get information in exchange for deals to get, you know, somebody to talk or to, you know, name another person who is guilty of something in return for leniency for the informant's crimes. What do you think is the problem with that kind of approach?

NATAPOFF: The problem with snitching, with the use of criminal informants, is that it is the most extreme version of a basic truth about the American criminal system, which is that ours is a system of negotiation. It's essentially a market. Ninety-five percent of all the convictions in this country, felony and misdemeanor, are the result of a plea. They're not a result of a trial. We almost never litigate guilt anymore.

And so within this market, we've created a kind of a black market, if you will, of cooperation, of deals between the government and individuals who are suspect or who have committed a crime in which guilt and information and cooperation are traded, often off the record, informally, without constraint.

And so this kind of black market of trading guilt and information has really undermined a lot of the integrity of the criminal system. Criminals are getting away with very serious offenses. Often, individual - vulnerable

individuals are pressured into becoming informants at great risk to their lives. The government can launder a lot of its mistakes through cooperation and through the plea-bargaining process. So it's an opaque, under-regulated aspect of a market that is all - that hasn't gotten enough attention.

GROSS: I know you're also concerned that somebody who is bargaining for leniency in return for information isn't necessarily telling the truth.

NATAPOFF: So there's some big, famous problems with the use of criminal informants. One is wrongful conviction. Informants often lie in order to get a deal. Informants also often continue to commit their own crimes. They get a kind of impunity from cooperating with the government. A lot of it is very secretive, so it's a kind of off-the-record aspect - big off-the-record aspect of the criminal justice system.

And all these things work in tandem to create troubling cases and troubling outcomes. It's not that the government should never be able to cut a deal. It's that for such an important public policy, we should know more about it. The government should be more accountable. These cases should be better scrutinized.

GROSS: So in light of what you just told us about what you describe as snitching, what do you think of the use of giving information in return for a more lenient sentence as is being done by the Mueller investigation and the Southern District of New York in investigating the Trump administration?

NATAPOFF: So in some ways, those deals and deals like them - by which I mean deals cut by wealthy, powerful, well-represented individuals in a highly scrutinized, transparent environment - are the best version of snitching. White-collar crimes, political crimes like these, where the government has very few options to get information about conspiracies or wrongdoing by powerful, insulated individuals, it's - in my view, it's probably the best version of the informant deal.

The kinds of informant deals I think we should be worried about are the ones that are not scrutinized, where people - where defendants, for example, are not represented by counsel, where it takes place off the record where no one ever learns about it, where the informant gets to go on and commit additional crimes because the government finds them so useful. But at the top of the pyramid, if you will, in the highly scrutinized, highly resourced environment of these political crimes and the Mueller investigation, that's about as good as we get in terms of the integrity of these kinds of deals.

GROSS: As good as we get, but do you think it's justified?

NATAPOFF: I think time always will tell whether a particular criminal deal is justified or not. And that's a matter for democratic debate. We will know, eventually, what the government learned as a result of these deals. And then the American public can decide whether it made sense to let people who committed serious crimes against our democracy off or gave them more lenient sentences.

I'm not against the use of criminal informant deals in a system where we have already made the decision to negotiate. We live in a world of plea bargaining. And sometimes, it's worth cutting a deal with a terrible person in order to advance public safety and advance justice.

GROSS: Alexandra Natapoff, thank you so much for talking with us.

NATAPOFF: Thanks so much for having me.

GROSS: Alexandra Natapoff is the author of the new book "Punishment Without Crime." She's a professor of law at the University of California, Irvine.

Here's something surprising in the music world. Roger Waters, co-founder of the rock band Pink Floyd, has made a new recording of Stravinsky's "The Soldier's Tale." Lloyd Schwartz will review it after a break. This is FRESH AIR.

(SOUNDBITE OF GILAD HEKSELMAN'S "DO RE MI FA SOL")

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II. Civil *Gideon*:

The Stark Justice Gap

Civil Right to Counsel

At a Glance

"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. The "Gideon" reference is linked to the famous Supreme Court ruling that individuals charged with serious crimes have a right to counsel. While this right exists in criminal matters, it exists at present only in very limited circumstances in civil matters.

Civil Appointment Authority

Click a state from the list below to obtain that state's research report detailing existing authority for appointment of counsel in various types of civil proceedings. The preface to the report will indicate when it was last updated.

Making Justice Equal

A protestor holds his fist in the air during a demonstration outside Hamilton County Courthouse in Cincinnati, Nove

Access to justice is now more critical than ever. In the United States, Americans need a lawyer's help for everything from avoiding an unjust eviction to preventing a wrongful conviction. Yet, effective legal assistance remains out of reach for the majority of Americans. The gap between legal needs and the services available exacerbates systemic inequities and disadvantages that will only grow over the next four years. This series examines the state of access to justice in the United States and how public and private actors can join forces to make justice equal for all Americans.

For two years, Mary Hicks paid $975 per month for a run-down Washington, D.C., apartment. When she contacted the landlord about mold and mildew in the bathroom and holes in the walls, he did nothing. After Mary began to withhold rent, her landlord sued her.

Mary sought help from a law clinic. Her student attorneys not only kept her from being evicted and ensured that her landlord made the repairs but also reduced her rent to $480 after discovering that her unit was rent-controlled.[1]

Mary was fortunate. While 90 to 95 percent of landlords are represented by lawyers before the Landlord and Tenant Branch of the D.C. Superior Court, only 5 to 10 percent of tenants have legal assistance.[2] Unlike criminal defendants, parties in civil cases do not have a generalized right to counsel. While all states provide a right to counsel for at least a few types of civil cases, most parties in civil cases that involve high stakes and basic human needs, such as housing, do not have a right to representation.[3]

In more than three-fourths of all civil trial cases in the United States, at least one litigant does not have a lawyer.[4] Figures are even starker when it comes to family law, domestic violence, housing, and small-claims matters—those involving disputes over amounts up to $25,000, depending on the state. At least one party lacks representation in 70 to 98 percent of these cases.[5]

And these are just the Americans who make it to court. Without access to legal advice, many are unaware of their legal rights and potential claims. Past estimates and more recent state-by-state studies suggest that about 80 percent of the civil legal needs of those living in poverty go unmet[6] as well as 40 to 60 percent of the needs of middle-income Americans.[7] But because these figures depend upon self-selection and self-reporting, however, and because many Americans do not identify their unmet legal needs as such, it is impossible to estimate Americans' total unmet legal needs.[8]

To deny Americans access to legal assistance is to deny them their rights and protections. This is because, to a greater degree than other countries, the United States places the burden on an individual to seek justice by going to court.[9] Other developed democracies have enshrined the right to counsel in civil cases and devote 3 to 10 times more funding to civil legal aid than the United States.[10] In areas from environmental regulation and workplace discrimination to civil rights and housing, Americans must hire or find their own attorneys to enforce the law. The result is a divide between those who can afford legal assistance and those who cannot.

This issue brief is the first in a series that examines access to justice as a long-neglected policy concern integral to American democracy—one that is under threat from the coming administration.[11] It provides important information on the U.S. justice gap and makes the case for prioritizing improvements in civil aid and indigent defense through legislative and infrastructure initiatives. It also outlines steps that state legislators, courts, and outside actors, such as advocacy organizations, can take to make justice equal.

Understanding the justice gap

The justice gap—that is, the gap between legal needs and services available—has the greatest implications for the United States' most vulnerable populations: those at greatest risk under the policies announced by the incoming administration.[12] On the civil side, people of color,[13] women,[14] immigrants,[15] the elderly,[16] people with disabilities,[17] and lesbian, gay, bisexual, and transgender, or LGBT, people[18] are more likely to live in poverty and more likely to need legal assistance. Claiming protections under the Americans with Disabilities Act, for example, often requires, at a minimum, legal advice, and at most, litigation.

The justice gap not only most affects those living in poverty but also perpetuates poverty. It also comes at great cost to government: Preventing eviction, for instance, is less expensive for governments than providing emergency housing or covering the higher costs associated with homelessness. In particular, providing attorneys for litigants in cases involving housing, health care, and domestic violence saves governments money and creates both social and economic benefits.[19]

In New York state, every dollar spent on civil legal aid creates $10 in benefits for the recipients of the assistance, their communities, and the state combined.[20] Likewise, North Carolina aid providers found that each dollar the state spends on legal aid yields $10 in economic benefits.[21] Montana[22] and Pennsylvania[23] have each seen a return on investment of $11 per dollar spent on legal aid.

In the criminal system, too, those who cannot afford an attorney are at a disadvantage—even with the constitutional right to representation. Terrence Miller met his court-appointed defense attorney for the first time on the morning of his first hearing on drug charges.[24] The attorney, who had not handled a criminal case in seven years, had been assigned to Miller's case only four days prior.[25] He was only able to speak to Miller for a few minutes.[26] Yet the judge denied the lawyer's requests for more time to prepare, and Miller was convicted in just a few days.[27] A New Jersey appellate court affirmed the conviction on the grounds that Miller failed to prove that the trial would have gone differently had he met his attorney earlier.[28]

In the last year for which the Bureau of Justice Statistics published detailed figures, more than 80 percent of felony defendants charged with violent crimes in the largest U.S. counties could not afford to hire attorneys; the same was true for 66 percent of such defendants in U.S. district

courts.[29] Other estimates for the percentage of criminal cases involving indigent defendants nationwide put that figure as high as 90 percent.[30] Current funding and staffing levels for publicly funded lawyers cannot keep up with this demand. One estimate suggests that 6,900 more public defenders would be needed to manage the current caseload in the United States.[31]

Defendants with publicly appointed attorneys are more likely to be detained before trial as well as more likely to be jailed.[32] Facing time and resource limitations, publicly funded attorneys often resort to plea bargains: 90 to 95 percent of defendants represented by a public defender plead guilty.[33] People of color are disproportionately represented among those in poverty and in the criminal justice system due in part to racial profiling and bias at stages from investigation to prosecution. As a result, they are disproportionately disadvantaged by the failings of indigent defense systems.[34]

Over the past century, and even recently, Congress and the courts have achieved remarkable progress on civil rights, social welfare, and criminal justice through landmark legislation and rulings. But if the people for whom these rulings are meant to protect do not have access to civil legal aid or receive adequate defense representation, these protections become irrelevant to their daily lives.

Shortfalls in civil legal aid

When Congress created the Legal Services Corporation in 1974,[35] it was responding to "a need to provide equal access to the system of justice in our Nation."[36] The Legal Services Corporation Act's sponsors noted that "providing legal assistance to those who face an economic barrier to adequate counsel will serve best the ends of justice and assist in improving opportunities for low-income persons."[37]

Today, the Legal Services Corporation is the biggest source of funding for civil legal aid for low-income Americans.[38] It funds programs that provide direct legal services in every state.[39] Legal aid lawyers help Americans meet everyday needs, including housing and health care. They also provide assistance in extreme circumstances, such as making sure that victims of 9/11 and the Deepwater Horizon oil spill in the Gulf Coast received benefits from government compensation funds.[40]

Unfortunately, in practice, too few Americans qualify for legal aid due to the extremely low income cutoff. In 2015, an individual had to make less than $14,713 per year—a family of four, less than $30,313 per year—to be eligible for Legal Services Corporation aid.[41] Americans making several times as much can ill afford to hire a lawyer, a luxury that runs $200 to $300 per hour on average.[42] The high cost of justice has a deterrent effect on even high-income individuals, who pursue legal action to resolve unpaid debts just 46 percent of the time.[43]

Worse, funding shortages mean that only half of those who are eligible for and seek legal aid get help.[44] While Legal Services Corporation programs aided 1.8 million Americans in 2013, another 1.8 million or more people were turned away.[45] And, of course, these figures underrepresent the scale of the problem because they only include cases in which help was sought and denied—not all those where help was needed.[46]

Congress has not only placed restrictions on who can receive aid but has also politicized how aid can be used. For example, just as the Hyde Amendment bars the use of federal funds to pay for abortion,[47] the Legal Services Corporation Act bars grantees from most abortion-related legal

proceedings.[48] Legal Services Corporation-funded programs also cannot lobby government offices, agencies, or legislators—or take class-action cases.

As a result of congressional restrictions, legal aid attorneys are limited in what they can do to affect the overarching policies and institutions that foment and entrench injustice. And once a program accepts just $1 of Legal Services Corporation funding, it must adhere to these restrictions in all activities, even if it receives money from other, nonrestricted sources.[49]

Today, unmet legal needs are at an unacceptable level and growing as civil legal aid funding is shrinking.[50] Congressional appropriations for the Legal Services Corporation were just $385 million in 2016.[51] In the early 1980s, by contrast, the corporation received more than $770 million annually.[52] Adjusted for inflation, the corporation's budget has decreased by 300 percent since 1981, even as the number of Americans eligible for aid has grown by 50 percent.[53]

Beginning in 2009, the second-largest source of legal aid funding in the United States also began to decrease. Since 1980, all 50 states have created Interest on Lawyers Trust Account programs, or IOLTAs. These accounts fund legal aid with interest earned on client funds that lawyers temporarily deposit in a trust account.[54] In 2007, IOLTA income was more than $370 million. By 2008, however, it fell to $284 million, and, in 2009, it was just $92 million due to dropping interest rates.[55]

Some state IOLTAs have been more gravely affected than others. In North Carolina, the state IOLTA disbursed more than $4 million in grants in 2008 and 2009. In 2016, IOLTA grants came to just $2 million.[56] Texas, meanwhile, saw a staggering 80 percent decline in IOLTA revenue, from $20 million in 2007 to $4.4 million in 2012.[57]

Many IOLTA programs have attempted to mitigate losses by developing relationships with banks, asking for higher returns on their accounts in return for publicly acknowledging banks' assistance, and making lawyers' participation—and their use of the highest-yield account possible—mandatory.[58]

Some states are also exploring creative solutions for bolstering IOLTA revenues. In Indiana, legislators approved a $1 civil filing fee that will generate $450,000 for legal aid. The Indiana and Pennsylvania supreme courts have mandated that some portion of all unclaimed funds from class action lawsuits be directed to IOLTAs.[59] But these policies only help mitigate the effect of low interest rates on IOLTA programs.[60] It is also important for state legislatures to take steps to fund legal aid directly.

The crisis in indigent defense

The Sixth Amendment requires that "[i]n all criminal prosecutions, the accused shall enjoy the right … to have the assistance of counsel for his defense."[61] In *Gideon v. Wainwright*, the Supreme Court found the Sixth Amendment right to counsel to be fundamental, noting, "In our adversary system of criminal justice, any person … who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."[62]

Nine years later, in *Argersinger v. Hamlin*, the Court clarified that this Sixth Amendment right to counsel applies in all criminal proceedings where the loss of liberty may be involved:

Absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.[63]

Despite these words, many defendants who cannot afford counsel in the United States go unrepresented or do not receive adequate and meaningful representation.

In 2004, 41 years after the ruling in *Gideon*, the American Bar Association published a report titled "Gideon's Broken Promise," which concluded that "indigent defense in the United States remains in a state of crisis, resulting in a system that lacks fundamental fairness and places poor persons at constant risk of wrongful conviction."[64]

The nationwide crisis in indigent defense has its roots in inadequate funding at the state level. In 2016, the Missouri state public defender's office needed a budget increase of $23.1 million to represent indigent defendants in state court.[65] Gov. Jay Nixon (D) recommended an increase of just $1 million, leading to the director of the Missouri State Public Defender System's headline-making decision to highlight the shortfall by appointing the governor as a public defender.[66] The Missouri indigent defense system ranks 49th in the United States.[67]

Around the country, defendants find themselves represented by undertrained, unsupported, or overloaded defense counsel. Additional structural problems include courts failing to provide counsel as required by the Constitution or state law; prosecutors pushing defendants to waive the right to counsel or to plead guilty; and judges permitting or even soliciting deficient waivers of the right to counsel.[68] Some judges and elected officials even improperly exert influence over defense counsel. As a whole, the criminal justice system suffers from a lack of oversight and accountability.[69]

Although data on indigent defense systems are limited,[70] it is clear that this crisis has escalated since the *Gideon* ruling. Public defender programs are underfunded and overburdened. The gap between public defense capacities and need is only growing, yet from 2008 to 2012, total state government funding on public defense changed relatively little, ranging from $2.2 billion to $2.4 billion.[71] Nationwide, prosecutors' offices receive $3.5 billion more in funding than public defense budgets.[72]

Making justice equal

Making justice equal for all Americans must be a priority for the incoming administration, Congress, and state governments.

Congress must increase Legal Services Corporation funding, expand eligibility, and lift restrictions on aid. Legislators should begin by removing the so-called super restriction that limits Legal Services Corporation grantees' use of noncorporation funding. State legislatures must likewise increase funding for legal aid and, like Indiana, find ways to revive and support IOLTA programs. State supreme courts should follow Indiana and Pennsylvania in directing unclaimed class action awards to legal aid.

Ultimately, improving indigent defense systems requires state legislatures to increase funding for defender programs and improve infrastructure. Federal actors can help bridge the gap, however, by publicizing existing federal grants that public defenders can use to fund defense work and increasing congressional appropriations for additional grants.

Courts and outside actors also have roles to play. Judges should exercise their discretion to appoint attorneys more often and ensure that defenders have the opportunity to give the best defense possible. Courts can simplify legal processes and promote access to justice technology —such as educational applications—to make it easier for individuals to navigate the legal system

on their own. Bar associations, law firms, and law schools can increase pro bono contributions and enact policies to improve access to legal services.

Finally, issue advocacy organizations working to protect and advance the interests of the people that the justice gap most affects—those living in poverty, people of color, women, immigrants, the elderly, people with disabilities, and LGBT people—must begin to address and prioritize access to justice. Equal access to legal representation in the justice system is critical to ending poverty, combating discrimination, and creating opportunity—especially now.

Rebecca Buckwalter-Poza is a Fellow at the Center for American Progress.

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Executive Summary

Low-income Americans do not get any or enough legal help for **92% of their substantial civil legal problems.**

Low-income America

About 50 million Americans have household incomes below 125% of the poverty threshold – including more than 15 million children and nearly 8 million seniors.*

Civil legal needs

Civil legal needs typically involve securing and protecting basic needs, such as housing, education, health care, income, and safety.

The justice gap

The justice gap is the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.

*Data source: U.S. Census Bureau's Current Population Survey, 2021 Annual Social and Economic (ASEC) Supplement

The 2022 Justice Gap Study

The Legal Services Corporation (LSC) is pleased to share findings from its 2022 Justice Gap Study. This study provides a fresh assessment of low-income Americans' civil legal needs and the extent to which their legal needs are met. Additionally, its timing allows an examination of the justice gap in the context of the COVID-19 pandemic, which has had disproportionate effects on this population. The study leverages LSC's "intake census" conducted among LSC-funded legal aid organizations as well as a nationally representative survey of more than 5,000 adults conducted by NORC at the University of Chicago using its AmeriSpeak® Panel.

The Prevalence of Civil Legal Problems

Most low-income households have dealt with at least one civil legal problem in the past year – and many of these problems have had substantial impacts on people's lives.

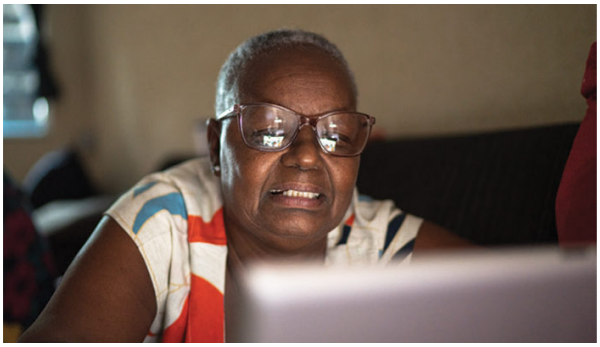
3 in 4 (74%) low-income households experienced 1+ civil legal problems in the past year.

2 in 5 (39%) experienced 5+ problems and 1 in 5 (20%) experienced 10+ problems.

Most common types of problems: consumer issues, health care, housing, income maintenance.

1 in 2 (55%) low-income Americans who personally experienced a problem say these problems substantially impacted their lives – with the consequences affecting their finances, mental health, physical health and safety, and relationships.

Data source: 2021 Justice Gap Measurement Survey



Seeking and Receiving Legal Help

Most low-income Americans do not get any or enough legal help for their civil legal problems – and the cost of legal help stands out as an important barrier.

1 in 4 problems: They seek legal help for only 1 out of every 4 (25%) civil legal problems that impact them substantially.

1 in 2 (46%) of those who did not seek legal help for one or more problems cite concerns about cost as a reason why.

1 in 2 (53%) does not know if they could find and afford a lawyer if they needed one.

92% = survey-based justice gap: They do not get any or enough legal help for 92% of the problems that have had a substantial impact on them.

Data source: 2021 Justice Gap Measurement Survey

Comparing Income Groups

People with higher incomes have fewer barriers to getting legal help.*

They seek help more often: People with higher incomes are more likely to seek legal help for problems with substantial impact (32% vs. 25% of problems).

Their justice gap is smaller: They are less likely to go without any or enough legal help for problems with substantial impact

They have better access: They are more likely to be confident that they could find and afford a lawyer if they needed one (73% vs. 45%).

They believe in the system: They are more likely to believe that they can use the civil legal system to protect and enforce their rights (59% vs. 39%).

*These statements compare people at or above 400% of FPL with people at or below 125% of FPL. Data source: 2021 Justice Gap Measurement Survey

Reports from the Field

LSC-funded organizations do not have enough resources to meet the current demand for civil legal aid in the communities they serve.*

1.9 million requests for help: Low-income individuals approach LSC-funded organizations for help with an estimated 1.9 million civil legal problems in a year.

1 in 2 requests turned away: These organizations must turn away 1 out of every 2 (49%) requests they receive due to limited resources.

1 in 2 problems fully resolved: Even when they can provide some assistance, these organizations have the resources to fully resolve only 1 out of every 2 (56%) problems.

1.4 million problems = intake-based justice gap. All in all, LSC-funded organizations are unable to provide any or enough legal help for an estimated 1.4 million civil legal problems (or 71% of problems) that are brought to their doors in a year.

*These statements are only about problems that are eligible for legal assistance from LSC-funded organizations.
Data source: LSC's 2021 Intake Census

Geographic Focus

West

11.1 million people below 125% of FPL

72% of households had 1+ civil legal problems in the past year.

Midwest

9.2 million people below 125% of FPL

75% of households had 1+ civil legal problems in the past year.

Northeast

7.4 million people below 125% of FPL

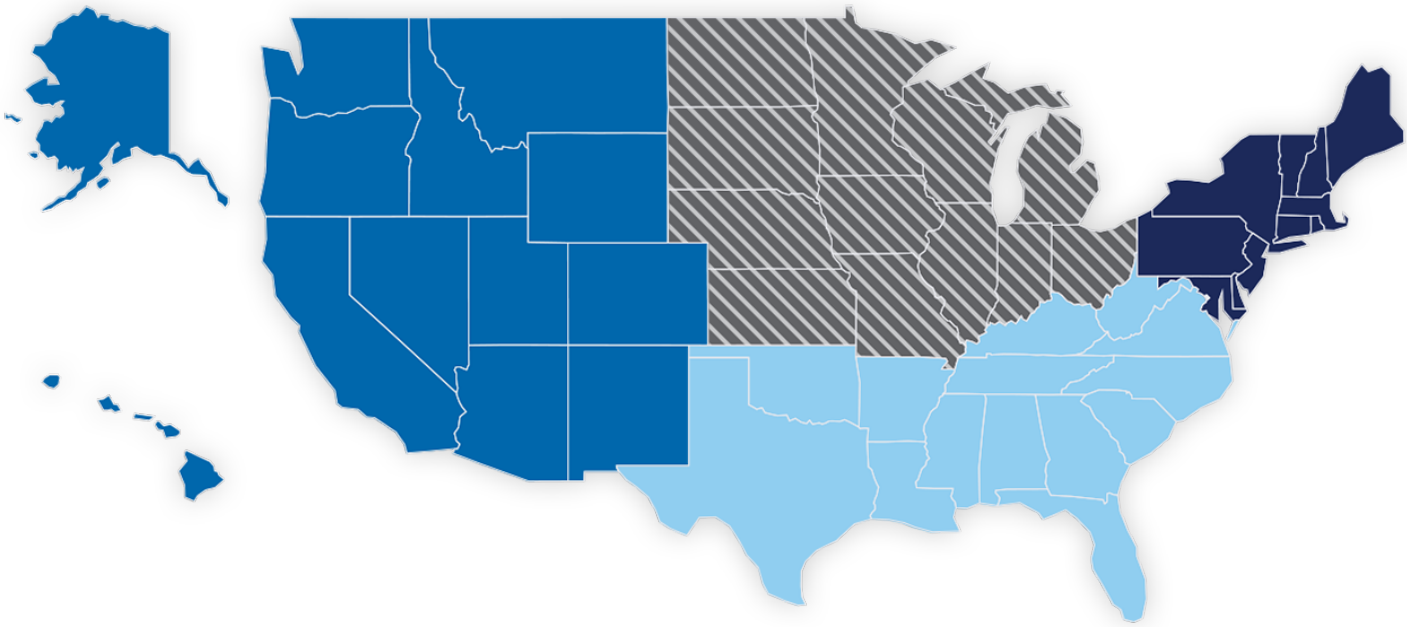
74% of households had 1+ civil legal problems in the past year.

South

22.2 million people below 125% of FPL

75% of households had 1+ civil legal problems in the past year.

Data sources: 2021 Justice Gap Measurement Survey and the U.S. Census Bureau's Current Population Survey, 2021 Annual Social and Economic (ASEC) Supplement



Special Focus

65+

Seniors

7.6 million seniors below 125% of poverty.

70% of senior households had 1+ problems in the past year.

People in Rural Areas

8 million people below 125% of poverty in rural areas.

77% of rural households had 1+ problems in the past year.

Veterans

1.6 million veterans below 125% of poverty.

76% of veteran households had 1+ problems in the past year.

People with High Housing Costs

15 million households with high housing costs have annual incomes <$25,000.

84% of households with high housing costs had 1+ problems in the past year.

Children (<18 yrs)

15.2 million children below 125% of poverty.

83% of households with children < 18 yrs had 1+ problems in the past year.

Survivors of Domestic Violence

98% of households with recent domestic violence had 1+ problems in the past year (excluding problems involving domestic violence).

Data sources: 2021 Justice Gap Measurement Survey and various other sources (see Section Two).

Impact of the COVID-19 Pandemic

33% of low-income Americans experienced at least one civil legal problem linked to the COVID-19 pandemic in the past year.

The types of civil legal problems most likely to be attributed to the COVID-19 pandemic are those involving income maintenance, education, and housing.

Income maintenance

32% of income maintenance problems are pandemic-related.
Examples: difficulty accessing unemployment insurance or receiving COVID stimulus payments.

Education

31% of education problems are pandemic-related.
Examples: difficulty attending school or accessing technology to participate in virtual learning.

Housing

27% of housing problems are pandemic-related.
Examples: problems involving foreclosure, eviction, and safe living environments.

Additionally, the data suggest that income disparities in the justice gap between low- and higher-income Americans are exacerbated for pandemic-related civil legal problems. See Section Five for a fuller discussion of this noteworthy finding.

Data sources: 2021 Justice Gap Measurement Survey.

Section 1: Introduction

III. Beyond *Gideon*'s Promise:

New Right-to-Counsel Initiatives

- About
- Our Work
- Legislation
- Status Map
- Resources
- Media Coverage
- Stay Informed
- Support Us
- Contact Us

CALIFORNIA

This page provides a breakdown of all major developments and right to counsel law that the NCCRC knows for this state, sorted by subject area. Click on either tab below to see the aspect it describes.

Major Developments and Specific Rights to Counsel | Summary of All Rights to Counsel

Color Key	Explanation
Categorical Right To Counsel	There is a right to counsel without qualification for all indigent individuals in this type of case (except that the individual may be required to request counsel).
Discretionary Appointment Of Counsel	Courts are permitted but not required to appoint counsel for any indigent individual in this type of case. A request may be required.
Right Or Appointment Is Qualified	The established right to counsel or discretionary appointment of counsel is limited in some way, including: the only authority comes from a lower/intermediate court decision or a city government, not a high court or state legislature; a case has cast doubt on prior authority; a statute is ambiguous; or the right or discretionary appointment is not for all individuals or proceedings within that type of case.
No Such Proceeding	This state has no law creating a judicial proceeding of this type.
No Authorization, But Relevant Materials	While this state does not provide for or require appointment of counsel with respect to the given subject area, it does have something (such as a report or bar policy) that supports the right to or appointment of counsel for this subject area.
Other	Because the "Other subject areas" category can include developments from different subject areas that do not work the same way as each other, a blanket categorization of this category is not possible.

About
Our Work
Legislation
Status Map
Resources
Media Coverage
Stay Informed
Support Us
Contact Us

Home > Status Map > California

CALIFORNIA

This page provides a breakdown of all major developments and right to counsel law that the NCCRC knows for this state, sorted by subject area. Click on either tab below to see the aspect it describes.

Major Developments and Specific Rights to Counsel | Summary of All Rights to Counsel

Subject Area	Status
Abuse/Neglect/Dependency - Accused Parents	qualified
Abuse/Neglect/Dependency - Children	discretionary
Adult Protective Proceedings - Proposed Protected Person (incomplete)	qualified
All Basic Human Needs	qualified
Benefits - Claimant	
Bypass of Parental Input into Abortion - Minor	no such proceeding
Child Support Establishment	qualified
Civil Contempt in Family Court	qualified
Civil Commitment - Subject of Petition	categorical
Civil Forfeiture (incomplete)	
Consumer or Other Debt	
Custody Disputes - Parents	
Custody Disputes - Children	discretionary
Divorce	qualified
Domestic Violence - Accused Person	
Domestic Violence - Alleged Victim	qualified
Education - Special Education	
Employment Discrimination	
Guardianship/Conservatorship of Adults - Protected Person	categorical
Health Care Access	
Housing - Discrimination	
Housing - Evictions	qualified
Housing - General	
Immigration	
Issues Related to Incarceration	qualified
Incarceration for Fees/Fines (incomplete)	qualified
Involuntary Medical Treatment (incomplete)	categorical
Paternity - Defendant/Respondent	categorical
Paternity - Petitioner or Child	
Quarantine/Isolation	qualified
Sexually Dangerous Persons - Commitment	categorical
Sexually Dangerous Persons - Registration/Notification	
Sterilization	categorical
Termination of Parental Rights (Private) - Children	qualified
Termination of Parental Rights (State) - Children	discretionary
Termination of Parental Rights (Private) - Birth Parents	qualified
Termination of Parental Rights (State) - Birth Parents	categorical
Truancy - Petition Against Child	categorical

Go back to Status Map

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The New York Immigrant Family Unity Project

Universal Representation for Detained Immigrants Facing Deportation in New York State

The New York Immigrant Family Unity Project

New York's investment in immigration legal services makes it the national leader in promoting safety, family unity, and freedom for immigrants targeted by federal enforcement. Among the state's pioneering achievements is the New York Immigrant Family Unity Project (NYIFUP), a statewide public defender program that ensures lawyers for immigrants in detention.

The stakes could not be higher for people in detention and facing deportation—loss of freedom, permanent separation from families and communities, and possible return to dangerous conditions in another country. Having a lawyer makes a huge difference: detained immigrants with lawyers win their cases at more than 10 times the rate of those who don't have legal help. Yet immigrants facing deportation still do not have the right to a public defender if they cannot afford a lawyer.

The New York Immigrant Family Unity Project (NYIFUP) is the first and largest public defender program in the country for detained immigrants facing deportation. Beginning with a $500,000 investment by New York City in 2013, NYIFUP soon grew as New York State initiated pilot programs in upstate New York immigration courts. Since 2017, with support from New York City and New York State, NYIFUP legal teams have ensured that in every immigration court in the state, people in detention and facing deportation have representation. Representation is now provided in New York City by Brooklyn Defender Services, the Bronx Defenders, and the Legal Aid Society. For immigrants whose cases begin in upstate New York, representation is provided by the Volunteer Lawyers Project of the Erie County Bar Association, Prisoners' Legal Services of New York, and the New York Legal Assistance Group. Promoting fairness in immigration proceedings, NYIFUP ensures that no immigrant in detention facing immigration proceedings in New York is denied an attorney simply because they do not have the resources to hire one.

Providing legal counsel keeps families together, economies stable, and communities strong. Vera's evaluation of the New York City pilot program found that NYIFUP clients had lived in the United States for an average of 16 years, and nearly half were parents, to thousands of children in the United States. The clients in the study were projected to contribute $2.7 million in federal, state, and local taxes each year. Immigrants are part of the fabric of New York State: more than one in three children has an immigrant parent, more than 280,000 immigrants are New York business owners, and immigrants make up more than one quarter of the state's workforce.

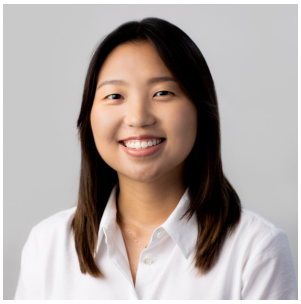
New York's successful investment in NYIFUP has paved the way for an expansion of universal representation. NYIFUP has been instrumental in demonstrating the benefits of enacting a right to representation in immigration proceedings, building power behind the campaign to pass the Access to Representation Act (S81/A1961) in New York State, and launching the federal Fairness to Freedom Campaign. It also fueled a movement in states, counties, and cities nationwide, leading to the establishment of similar deportation defense efforts in more than 50 jurisdictions across the country, including members of Vera's SAFE Network.

View The State of New York infographic.

Staff

Shayna Kessler State Advocacy Manager skessler@vera.org

Rosie Wang Senior Program Associate rwang@vera.org



Ji-Won Choi Research Analyst jchoi@vera.org

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Right to Counsel Movement Gains Traction

Tenants who face eviction are not guaranteed legal counsel, and usually go to court unrepresented. But a longtime effort to change that is finally bearing some fruit.

By Shelby R. King -
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UPDATED Dec. 22 | Free access to legal representation is a cornerstone of the U.S. court system—at least it is when the defendant is accused of committing a crime. In courts nationwide, public defenders line the benches during criminal arraignment hearings, ready for the presiding judge to assign them to represent defendants who can't afford to hire their own attorneys.

Renters facing eviction don't get free access to a public defender; the constitutional right to legal counsel only extends to defendants in criminal cases. Because of that, 9 out of 10 tenants who receive an eviction notice won't have a lawyer with them in court. Instead they'll face the daunting task of representing themselves in front of a judge and prosecuting attorney, and they'll likely lose.

Eviction hearings are often likened to cattle calls, with names called in rapid succession while tenants are summarily booted from their homes.

“The eviction process was designed for a system in which tenants don’t have any right to legal representation,” says Eric Dunn, director of litigation at the National Housing Law Project. “So the expectation is that most tenants aren’t going to show up.”

Landlords, on the other hand, nearly always appear with a lawyer to represent their interests.

> ‘It’s not fair because it was never designed to be fair. It was designed to be fast and cheap and easy for landlords.’

But that imbalance is changing: Several cities, counties, and states have passed or are considering right-to-counsel legislation. For example, Kansas City, Missouri, recently passed an ordinance guaranteeing full representation for all tenants facing eviction, regardless of income; the program will be implemented in June 2022. Philadelphia, Pennsylvania, passed a right-to-counsel ordinance in 2019 that covers low-income tenants, and the city recently approved $1 million in funding to pilot the program over the next several months.

While these changes haven’t come fast enough to protect the thousands or renters who’ve been evicted since the moratorium ended in August 2021, the progress already made may have mitigated some of the worst effects in some places. And although the issue has become increasingly urgent during the COVID-19 pandemic to keep with the CDC’s stay-at-home orders, the right-to-counsel movement isn’t new. Housing advocates and activists have been fighting to secure civil court defendants the right to free attorney representation for decades—winning several major successes over the last few years.

New York City in 2017 became the first large metro to codify the right to legal representation for low-income renters facing eviction. Since then, several other counties and cities—such as San Francisco, Baltimore, and Boulder—have either passed similar legislation or have drafted bills in the pipeline. Connecticut and Delaware are in the process of finalizing right-to-counsel bills, and several other states have legislation pending. According to John Pollock, coordinator for the National Coalition for a Civil Right to Counsel, the pandemic is just one of the factors that has ramped up interest in the existing movement to establish the right to civil counsel.

“The organizing community has made this a priority. Tenant organizing has been around for a long time, but the right to counsel wasn’t really a focus,” says Pollock. “I think [tenant organizers] started seeing it as a tool, not only to change the way evictions happen, but really to change the power dynamic altogether between landlords and tenants.”

Granting tenants the legal right to counsel is an incredibly effective tool for keeping renters housed. For example, in fiscal year 2020, New York City renters who accessed the right-to-counsel program were able to remain in their homes 86 percent of the time.

In San Francisco, which passed Proposition F in 2018 granting tenants the right to receive free legal counsel, landlords filed 10 percent fewer eviction cases between 2018 and 2019. Of the San Francisco tenants who received legal representation during their eviction trial, 67 percent were able to stay housed via the program. Additionally, 80 percent of Black tenants who accessed the program were able to stay in their homes.

In Cleveland, Ohio, which launched a right-to-counsel program in mid-2020, 93 percent of tenants who received legal representation successfully fought their evictions.

A System Designed to Be Unfair

The tenant-landlord power dynamic has played out in courtrooms across the country in the months since the eviction moratorium ended, leaving tenants—millions of whom are still unemployed and owe thousands in back rent—vulnerable even with federal emergency rent assistance money on its way. The power imbalance impacts disproportionately heavily on

communities of color and on low-income women—especially Black women—who are more than twice as likely as white people to have evictions filed against them. Overall, 35 percent of eviction filings are made against Black renters, even though only about 21 percent of renters are Black.

Black and Brown families are far more likely to rent than own: just 45 percent of Black families and 49 percent of Latinx families own the homes they live in, compared to nearly 74 percent of white households, according to first-quarter data from the U.S. Census Bureau.

“It’s not fair because it was never designed to be fair. It was designed to be fast and cheap and easy for landlords,” Dunn says. “Being an unrepresented tenant, you don’t know how the law applies in your situation, so you don’t know what rights and defenses you might have.”

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Not only that, but landlords illegally evict tenants all the time. When they get away with it, it’s often because tenants don’t know they have a defense, says Emily Benfer, a law professor at Wake Forest University, chair of the American Bar Association’s COVID-19 Task Force Committee on Eviction, and co-creator of The Eviction Lab COVID-19 Housing Policy Scorecard.

“Many landlords engage in serial eviction filing . . . with the intent to collect rent, control behavior, and assign fees to the tenant which increase their monthly rent amount by as much as $180,” Benfer says. “We often see cases of tenants facing eviction solely because they reported unsanitary, unsafe, dangerous living environments.”

Most tenants don’t have the knowledge or resources to raise a defense in illegal cases. An attorney could easily identify retaliatory or otherwise illegal evictions and connect tenants with the proper fair housing organizations. But even when they’re represented, tenants remain at a disadvantage, Benfer says. This is especially true in states that allow no-cause evictions, such as Oregon, or states like South Carolina, where landlords can collect back rent and boot the renter anyway for breaching the original contract. And renters behind on lease payments are treated significantly harsher than homeowners who fail to make their mortgages.

“[Landlords] can just file an eviction complaint … and have someone out within the month, whereas if you’re a homeowner, the foreclosure process can take a year, easy,” says Matt Hill, an attorney at the Public Justice Center in Baltimore, and team leader of the Human Right to Housing Project. “And then when you layer on the ways in which America through public policy for centuries has denied Black people in particular access to homeownership and building equity and the security of homeownership … this really is a racial equity issue, and when we talk about disparate impacts on Black people, that’s why.”

Right to Counsel Reforms in Maryland

Hill of the Public Justice Center in Baltimore and others are working on Baltimore-specific right-to-counsel laws, while the state of Maryland became one of the first (along with Washington state) to enact right-to-counsel bills ensuring that low-income renters have access to legal representation. Maryland’s law, which took effect in October, created a program to provide attorneys for households with an annual income at or below 50 percent of the state’s median income—which was about $95,500 in 2019. However, Maryland’s bill lacks dedicated funding: the General Assembly failed to adopt HB 31, which would have raised eviction filing fees to help pay for the program.

Right now, Maryland landlords pay $15 to file an eviction—less than the cost of a parking ticket. HB 31 would have increased the filing fee to $57. The increase was also meant to reduce the glut of eviction notices Maryland landlords typically file—the state had at least 120,000 and as many as 180,000 pending eviction cases at the end of September. There are only 700,000 to 800,000 rent-paying households in all of Maryland, according to Deb Seltzer, deputy director at Maryland Legal Services Corporation. With such a low fee, Maryland landlords can file an eviction notice on a tenant each month.

“The dockets are very large, and very few tenants actually show up to their hearing, whether that’s because they can’t get off work or they think it’s not worth it to attend because they don’t know that they have a defense to their eviction,” Seltzer says. “There are certain tenants who are getting a case filed against them every month. Right now, landlords don’t have to give tenants notice that they’re filing an eviction. They just file and the tenant gets served.”

As part of Maryland’s legislation, landlords will be required to provide tenants with 10 days’ written notice before they file the eviction. The notice must include a list of legal providers and information on how to contact them. Seltzer says the hope is that tenants will be encouraged to ask for help.

“The idea is to reach people and give them the knowledge and the tools up front so they can reach out if they have a dispute and hopefully get assistance to prepare for any sort of case,” Hill says. “It’s not perfect, but there’s provisions in both the state and city laws for money to be spent on outreach and education by tenant associations and community groups.”

Right to Counsel Reforms in Boulder, Colorado

In addition to keeping tenants in their homes, outreach efforts help keep eviction cases out of the court system, persuade landlords to negotiate other solutions, and connect tenants to social services and financial assistance. Attorneys can persuade landlords to work with tenants much more effectively and can negotiate deals to give tenants time to move out without the burden of carrying an eviction on their rental record, says Bruce Wiener, a Boulder, Colorado-based attorney who’s the founder and executive director of Bridge to Justice, a nonprofit that worked with local activists to pass the city’s right-to-counsel legislation in November 2020.

[**RELATED: Evicted—Navigating the Eviction Process and Its Lasting Impact**]

Boulder’s program, unlike Maryland’s, has a dedicated funding source. It will eventually be funded by a $75 annual licensing fee landlords must pay starting Jan. 1, 2022, to rent out property within the city limits, Wiener says. But city officials knew they needed to act immediately.

“It was just fortuitous that it was placed on the ballot at the height of COVID. City council and the city attorney, once it passed and COVID was raging, decided they didn’t want to wait until the funding went into effect,” Wiener says. “So they borrowed money from their general fund. The initiative passed the first week of November [2020], and the program was up and running the first week of January.”

Right to Counsel Reforms in Denver

Just down the road, Denver City Council in June passed a bill giving tenants who earn 80 percent or less of the area median income ($54,950 for a single-person household) the right to free attorney representation in eviction cases. Once it’s signed by Mayor Michael Hancock, the legislation took effect on Sept. 1. The city has offered free legal services since launching a pilot program in 2018. The bill codifies the existing program and adds a provision requiring landlords to tell tenants help is available.

While the ordinance and legal defense program prevents some evictions among lower-income renters, Wren Echo, a housing activist who works with No Eviction Without Representation (NEWR) Denver, says it’s not enough.

“The legal resource services are really overburdened and underfunded,” Echo says. “It’s only the poorest people who are getting access, and the city’s program creates administrative hurdles renters need to jump through, which is going to exclude people who can’t verify income in the way they need to. Independent contractors are going to be left out. Undocumented workers are going to be left out.”

NEWR Denver, which got its start in the Denver-area Democratic Socialists of America chapter, filed its own initiative for the November ballot that called for a $75 annual per-unit fee on landlords. Beginning in 2022, landlords will have to apply for per-

parcel operating licenses that must be renewed every four years. Echo, who's worked in local housing activism for years, says the pandemic added momentum to the tenant advocacy movement.

"We're absolutely looking at organizing tenants' unions, we're working on an eviction defense outreach program, and a lot of us were lobbying for SB 173 that reforms the eviction process and puts limits on late fees," Echo says. "There are a lot of people in Denver lobbying for that kind of legislation. Until now, it's been a really landlord-friendly state, and there are finally a lot of people in Denver working to change that."

A Cost-Saving Tool

Right-to-counsel programs are also significant money-saving tools for states, counties, and municipalities dealing with the secondary costs of homelessness. A 2020 analysis conducted in Baltimore found that an approximately $5.7 million investment in a right-to-counsel program could reduce "the current cost of disruptive displacement caused by eviction or avoid costs related to disruptive displacement" by $17.5 million each year. Among the cost savings is $10.6 million for emergency shelter and housing programs, nearly $5 million related to public school funding and transportation costs, and $2 million on Medicaid and foster care, according to a report.

"It's a very cost-effective and proven way of really preventing the worst of the displacement and eviction cases," Hill says. "So, when you have really good data like that, it's very helpful to make that case that here's this one small thing we can do to really make a huge dent in the eviction crisis, and actually save the city."