



# INVESTING IN JUSTICE

A Roadmap to Cost-Effective Funding of  
Civil Legal Aid in Massachusetts

A Report of the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts



BOSTON BAR ASSOCIATION  
Statewide Task Force to Expand  
Civil Legal Aid in Massachusetts

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**Report of the Boston Bar Association Statewide Task  
Force to Expand Civil Legal Aid in Massachusetts**

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## I. INTRODUCTION

Every day in Massachusetts, poor people find themselves in courtrooms fighting for the necessities of life – a place to live, protection from violence, support for their families – all without the help of a lawyer. People who are charged with a crime have a right to a lawyer. But not so in most civil matters, even when those matters deal with such life essentials as a roof over one’s head or freedom from a batterer. Often, unrepresented litigants walk into a courtroom scared and confused. Without a lawyer, they struggle to make their case. An unfavorable outcome – eviction, lack of child support, denial of federal benefits – is often the result.

Civil legal aid agencies provide free legal services to low-income citizens in such critical matters, but the demand for such services far outstrips the resources of our legal aid agencies. People are turned away and left to fend for themselves, not because they do not qualify for legal aid or because they do not have a worthy claim. They are turned away because the legal aid agencies are swamped and do not have enough staff to take on their cases. In Massachusetts, civil legal aid programs turn away 64% of all eligible cases. Those people, often our most needy neighbors, are denied access to justice, a basic right for all.<sup>1</sup>

Providing assistance to those in need of civil legal aid has been a true public-private partnership in the Commonwealth. In 2013, the Commonwealth provided about one-third of the total direct funding for the civil legal aid programs funded by the Massachusetts Legal Assistance Corporation (MLAC).<sup>2</sup> Law firms, individual donors, foundations, and federal and local governments provide most of the remaining revenue. In addition, the estimated market value of the time donated by private attorneys working pro bono (without charge) for those who cannot afford a lawyer was \$17.6 million in 2013, some \$5.6 million more than the state appropriation in the same year.<sup>3</sup> Others, like our Access to Justice Commission, have developed many creative ideas and initiatives for dealing with unrepresented litigants.

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<sup>1</sup> In addition, many eligible Massachusetts residents with critical legal needs never even reach the turn-away stage because they give up when faced with long waits for service or fail to seek assistance because they do not know their problems may have a legal solution.

<sup>2</sup> The Massachusetts Legal Assistance Corporation (MLAC) is a non-profit corporation created by the Commonwealth to ensure that low-income people have access to critical civil legal aid. MLAC is funded primarily by state government appropriations and income distributed by the IOLTA Committee pursuant to Massachusetts Rules of Professional Conduct, Rule 1.15(g)(4). It funds civil legal aid provided by fourteen programs that collectively cover the entire Commonwealth. These are divided into statewide and regional programs. Seven MLAC statewide programs serve all of Massachusetts. The remaining seven programs operate in four regions—three in the Eastern Region, two in the Northeast, one in the Southeast, and one in the Central/West region.

<sup>3</sup> The FY2013 MLAC state appropriation was \$12 million. See *Massachusetts Legal Assistance Corp.*, Fact Book FY2013 (April 2014), [http://www.mlac.org/pdf/MLAC\\_Fact\\_Book\\_FY13.pdf](http://www.mlac.org/pdf/MLAC_Fact_Book_FY13.pdf).

Despite these private efforts, lack of funds is at the root of the problem. In 2007, Interest on Lawyers' Trust Accounts (IOLTA)<sup>4</sup> generated some \$31.8 million directed to civil legal aid. Yet for all of 2014 only \$4.5 million is expected to be generated from such interest. This \$27 million drop in funding has had a disastrous effect on the provision of civil legal aid to our most needy citizens. For example, according to a 2006 MLAC survey when IOLTA funding was much higher, Massachusetts legal aid agencies still turned away about 50% of eligible low-income people. By 2013, that figure had jumped to 64%. Likewise, the number of legal aid attorneys employed by that same group of legal aid agencies dropped from 191 in 2007 to 128 in 2013, according to data supplied by grantees in annual reports to MLAC. All of this has occurred while the number of our citizens eligible for civil legal aid grew from approximately 800,000 in 2008 to 974,277 in 2013. Moreover, federal funding from the Legal Services Corporation<sup>5</sup> for civil legal aid has steadily decreased over the years to the point where only \$4.8 million was directed to Massachusetts legal aid agencies in 2013.<sup>6</sup> Increased funding from our state government to support additional civil legal aid is urgently needed to assure that our residents, no matter how poor, get a fair shot at justice.

The work of three nationally recognized economic consultants featured in this report dramatically demonstrates the wisdom of such increased funding. By funding more civil legal aid, the state will actually save monies spent to house the homeless and provide medical care and other assistance for victims of domestic violence, and will increase the flow of federal monies into the state. *In fact, for every additional dollar spent in civil legal aid to combat homelessness and domestic violence, the return to the state is two dollars, and for every additional dollar spent in civil legal aid to assist Massachusetts residents to recover federal benefits, the return is close to five dollars.* Increasing civil legal aid is not only the right thing to do in order to assure equal access to justice for all, but a smart investment for the Commonwealth.

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<sup>4</sup> IOLTA is a program established by the Massachusetts Supreme Judicial Court whereby lawyers and law firms are required to establish interest-bearing accounts for client deposits when it is not economically feasible to set up a separate interest-bearing account for the client. The interest from these accounts funds civil legal aid programs and efforts to expand access to justice. IOLTA has been a significant provider of civil legal aid funding, but funding is variable depending on the current economic situation and is therefore inherently unreliable. IOLTA programs exist in all 50 states and the District of Columbia.

<sup>5</sup> Legal Services Corporation (LSC) is a private non-profit corporation established by the United States Congress to provide civil legal assistance to people who would not otherwise be able to afford it. While it is the single largest funder of civil legal aid for low-income Americans nationwide, it provides only \$4.8 million of the total legal aid funding in the Commonwealth. These funds are granted to four local legal aid programs. Since the 1980's, Congress has restricted the use of LSC funds such that they cannot be used to provide assistance in certain types of cases or to certain clients. LSC, <http://www.lsc.gov/> (last visited October 8, 2014).

<sup>6</sup> See LSC, *Legal Services Corp.*, Fact Book 2007 (June 2008), <http://grants.lsc.gov/sites/default/files/Grants/LSCFactBook2007sv.pdf>.

## **II. EXECUTIVE SUMMARY**

With close to two-thirds of eligible low-income Massachusetts citizens turned away by legal aid agencies because of lack of resources, the Task Force recommends increasing state funding for MLAC by \$30 million over three years. Not only will such an increased appropriation provide meaningful access to justice for our most needy citizens, while addressing the \$27 million drop in IOLTA funding since 2007, but it is a smart investment. For every dollar invested in civil legal aid, the return to the state and its residents is as much as \$2 to \$5 dollars.

### **A. The Turn-Away Problem**

Today, fully 64% of eligible Massachusetts residents who request civil legal aid are turned away by our legal services programs due to lack of resources. The Turn-Away Survey conducted by the Task Force shows that 80% of cases involving family law were turned away, employment and consumer matters had turn-away rates of over 70% and if an eligible family had a housing matter, the chances of being turned away was 56%. In total, in the past year, some 33,000 low-income residents in Massachusetts were denied the aid of a lawyer in life essential matters involving eviction, foreclosure, and family law such as cases of child abuse and domestic violence. Moreover, the staggering number of those turned away by legal aid agencies does not even include those low-income people who face a significant legal problem, but either fail to seek assistance, or who tried to reach a civil legal aid agency but gave up when their call was not answered in a timely manner.

### **B. Impact on the Courts**

The lack of civil legal aid also impacts our court system and all who use it. The Task Force's Judges' Survey demonstrates that unrepresented litigants are a growing problem for the courts. A vast majority of the responding judges noted that lack of representation consumed court staff time in assisting pro se litigants, slowed down procedures, and resulted in unclear presentation of evidence by those litigants without counsel. Perhaps most distressing is that 60% of the judges who responded felt that lack of representation negatively impacted the court's ability to ensure equal justice to unrepresented litigants because they are hindered in the presentation of evidence.

### **C. Inadequate Current Funding**

Current funding for civil legal aid in Massachusetts is estimated to be approximately \$56 million per year, with about a quarter of that amount provided by the state. Interest on Lawyers Trust Accounts has provided as much as \$31.8 million in funding for civil legal aid agencies, but due to lower interest rates and a slowdown in business transactions, that figure has plummeted to \$4.5 million in 2014. The effect of this dramatic drop in funding has been devastating. As compared to 2007, there are now 63 fewer legal aid attorneys at MLAC-funded legal aid agencies. As a result, the percentage of turn-aways has increased from 50% to 64% over that

same time frame. And all this was happening when the population in Massachusetts eligible for civil legal aid grew from approximately 800,000 in 2008 to 974,277 in 2013.

#### **D. Independent Economic Consultants' Findings**

The Task Force engaged three nationally known independent economic consulting firms to determine whether increased funding of civil legal aid could provide cost savings and other benefits to the Commonwealth. The Analysis Group undertook to study the impact on state expenditures of representation by a civil legal aid attorney in eviction and foreclosure cases. Alvarez & Marsal analyzed the costs of domestic violence and what savings could occur if additional civil legal aid representation was available in such cases. Finally, NERA evaluated the economic benefits to low-income state residents, and to the Commonwealth overall, from the provision of civil legal aid representation to those residents to assist in obtaining federal benefits.

The Analysis Group concluded that the monetary benefits of representing eligible beneficiaries in eviction and foreclosure proceedings far outweigh the costs of providing these services. Specifically, it found that if the Commonwealth and its legislature elect to fund representation for only that subset of eligible beneficiaries represented by the most at-risk families and individuals, the total annual cost to represent these beneficiaries who meet the criteria for eligibility is \$9.49 million, while the annual savings from representing this subset of the eligible population is \$25.51 million, or a net savings to the state of \$16.01 million. In other words, for every dollar spent on civil legal aid in eviction and foreclosure cases, the Commonwealth stands to save \$2.69 on the costs associated with the provision of other state services, such as emergency shelter, health care, foster care, and law enforcement.

In their study, Alvarez & Marsal found the marginal cost of investing in civil legal services for the low-income population is offset by the savings of short-run direct and indirect domestic violence costs that the Commonwealth will suffer. Alvarez & Marsal determined that each \$1 of investment in civil legal services saves at least the same amount in medical costs borne by the state based on the current Medicare reimbursement rates (the savings to the state would be as high as \$2 in the absence of such reimbursement). Thus, an investment in 100 new legal aid attorneys, which Alvarez & Marsal estimates to be an annual cost to the Commonwealth of \$8 million, will provide services for about 3,500 full representation cases, ultimately saving approximately \$16 million in avoided medical costs resulting from incidents of domestic violence, \$8 million of which will be saved by the state and \$8 million of which will be saved by the federal government.

Finally, NERA found that the financial impact in 2013 of increased access to federal benefits on the direct recipients of those benefits and their families is conservatively estimated at \$25.62 million, with the multiplier effect of this in-flow of benefits resulting in estimated economic benefits to the state economy of approximately \$51.3 million. NERA concluded that for every dollar invested in civil legal aid directed to recovery of federal benefits, very close to

\$5.00 is returned to the state as immediate direct benefits to individuals and resultant economic benefits to the state.

#### **E. Testimony and Statements From Legal Aid Clients and Business Leaders**

The Task Force did not limit its investigation to surveys and consultants' analysis. Compelling and sometimes heart-wrenching testimony was provided by three legal aid clients. Each of them described how a legal aid attorney saved them from very difficult circumstances involving life necessities such as housing and child custody.

Further, the Task Force sought statements from business leaders on the Task Force which described the importance of civil legal aid to their businesses and employees. They stated that civil legal aid helped to maintain safe and vibrant communities by keeping families safe from domestic violence and avoiding homelessness. It also allows our court system to function more efficiently for their companies by reducing the number of pro se litigants. Further, businesses benefit when employees come to work focused on their jobs and who are not distracted by legal problems they must handle on their own.

#### **F. Increased State Funding Urgently Needed**

To address the unmet need for civil legal aid, the Task Force urges the Legislature to significantly increase funding for MLAC to fund critical legal aid programs. Specifically, the Task Force recommends an increase in MLAC funding of \$30 million, which may be phased in at \$10 million per year over the next three fiscal years.

This \$30 million increase is warranted for at least two reasons. First, it will allow more of our most needy citizens to have the benefit of a lawyer, thereby providing them with a fair shake in the courtroom and meaningful access to justice. Second, the findings of the three independent economic consultants show that approximately \$30 million invested in civil legal aid will result in savings to the state and benefits to its low-income residents which far exceed the monies invested. Specifically, an increase of approximately \$30 million (i.e., \$9.5 million directed to housing matters, \$8 million directed toward domestic violence, and \$11 million directed toward federal benefits) would result in a total savings to the state of some \$34.5 million and \$51.3 million in economic benefits to the state overall, while increasing dramatically access to justice for our most needy citizens.

In addition, increasing legal aid will help alleviate the effects of the Commonwealth's prior reliance on IOLTA funds, which are inherently unstable and have plummeted by \$27 million per year between 2007 and 2013.

#### **G. Private Bar Partners With State to Address Unmet Need**

Addressing the unmet need for civil legal services has been a public/private partnership in the Commonwealth. In this regard, the Task Force found that in 2013 Massachusetts lawyers

provided in excess of 82,000 pro bono hours through four legal aid providers alone, at a value of \$17.6 million. Further, those same private attorneys regularly contribute millions of dollars directly to fundraising drives that support civil legal aid. Nonetheless, the Task Force report recommends several ways that pro bono efforts of the bar can be expanded.

The Task Force also noted the numerous projects and programs now being advanced by the Massachusetts Access to Justice Commission, all designed to provide access to justice to low-income persons in the Commonwealth, as well as the many programs directed at low-income people with legal problems sponsored by the Boston Bar Association, the Massachusetts Bar Association and the many county bar associations across the state. Finally, the Task Force urged consideration of several additional ways to address the unmet need for civil legal aid, including the feasibility of continuing the HomeCorps program, the expansion of law school clinical or incubator programs, and expansion of limited assistance representation, among others.

### **III. CREATION OF THE TASK FORCE**

To address the unmet need for civil legal aid in Massachusetts, in April 2013, then Boston Bar Association President, J.D. Smeallie, announced the creation of the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts (“Task Force”). The Task Force comprises thirty-one leaders in the legal and business community from across the Commonwealth:

**J.D. Smeallie** - Partner at Holland & Knight, Past-President of the Boston Bar Association (Chair)

**Susan Alexander** - Executive Vice President and Chief Legal Officer at Biogen Idec Inc.

**Michael Avitzur** – Director of Government Relations and Public Affairs at Boston Bar Association

**Lawrence Bacow** - Former President of Tufts University

**Christopher Barry-Smith** - Deputy Attorney General of the Commonwealth of Massachusetts

**Manisha Bhatt** - Senior Attorney at Greater Boston Legal Services

**Jonathan Chiel** - Executive Vice President and General Counsel at Fidelity Investments

**Hon. Martha Coakley** - Attorney General of the Commonwealth of Massachusetts

**Katherine Cook** - Chief Legal Counsel at The Office of the Governor

**Paul T. Dacier** - Executive Vice President and General Counsel at EMC Corporation, Past-President of the Boston Bar Association

**Lawrence S. DiCara** - Partner at Nixon Peabody LLP

**Russell Engler** - Professor of Law at New England Law | Boston

**Hon. John V. Fernandes** - State Representative at the Massachusetts House of Representatives, Tenth Worcester District

**Robert Holloway** – Past-President of the Massachusetts Bar Association

**Kathleen Joyce** – Senior Counsel at Boston Redevelopment Authority  
**James C. Kennedy** - Chief Legal Counsel at the Massachusetts House of Representatives  
**Joan Lukey** - Partner at Choate, Hall & Stewart LLP  
**Hon. Richard J. McMahon** - Justice at Probate and Family Court, Bristol County  
**Martha Minow** - Dean of Harvard Law School  
**Alice Moore** - Counsel to the Massachusetts Senate  
**Susan Murley** - Co-Managing Partner at Wilmer Cutler Pickering Hale and Dorr LLP  
**Joseph Nauman** - Senior Vice President and General Counsel at Acushnet Company  
**Lon Povich** - General Counsel at BJ's Wholesale Club  
**Lonnie Powers** - Executive Director of Massachusetts Legal Assistance Corporation (MLAC)  
**Mary Puma** - Chief Executive Officer of Axcelis Technologies  
**Faye B. Rachlin** - Deputy Director of Community Legal Aid in Worcester, MA  
**Jonathan Schreiber** – Legislation and Public Policy Manager at Boston Bar Association  
**Elizabeth Soule** - Executive Director of MetroWest Legal Services  
**Veronica Turner-Biggs** - Executive Vice President of 1199SEIU United Healthcare Workers East in Massachusetts  
**Hon. David Weingarten** - First Justice at Boston Municipal Court, Roxbury Division  
**Hon. Jim Welch** - State Senator at the Massachusetts State Senate, Hampden District

The Task Force first gathered data on the unmet need for legal services across the state, as well as the effect of unrepresented litigants on our courts. The Task Force then sought to determine the expected cost of providing civil legal aid to at least a portion of those in need,<sup>7</sup> as well as the economic benefits or cost savings to the state associated with providing counsel in matters involving life necessities such as eviction and domestic violence. The Task Force also considered ways in which the private bar could partner with the state to provide access to justice for those who cannot afford a lawyer.

Over the course of a year, the Task Force drafted, distributed, and quantified the results of surveys to legal aid providers and to the courts, and worked with nationally recognized economic consultants to complete studies on monies saved by the state, or obtained by Massachusetts residents, as a result of civil legal aid in three areas: (1) domestic violence; (2) evictions and foreclosure; and (3) federal benefits.<sup>8</sup> The Task Force also heard testimony from legal services

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<sup>7</sup> To qualify for civil legal aid, MLAC requires that a household has income which is less than 125% of the federal poverty threshold established by the U.S. Secretary of Health and Human Services. In 2014, this translated to a yearly income of \$14,587 for a single person and \$29,812 for a family of four (less than \$574 per week). A client or household may also receive assistance if a member of the household receives public assistance under the Massachusetts Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to Elders, Disabled and Children (EAEDC), means tested Veterans' benefits programs or Title XVI of the Social Security Act, or is eligible for assistance from the Mass Health program. In certain hardship cases, programs can assist households with incomes up to 200% of the federal poverty level. Programs also represent people over 60 years of age using limited funds from Area Agencies on Aging which do not carry with them explicit income limitations.

<sup>8</sup> As demonstrated by the Turn-Away Surveys discussed in Section IV below, some 33,000 eligible low-income Massachusetts residents were denied civil legal aid on family law and housing matters in the past year. Another

clients about the critical role that civil legal aid attorneys played in securing basic life necessities for them. Finally, the Task Force assembled impact statements from the business community as to the importance of civil legal aid to their companies and employees.

## **IV. TASK FORCE INITIATIVES AND FINDINGS**

### **A. Inability to Meet the Need: Civil Legal Aid Agency Surveys**

#### **1. The Surveys**

The Task Force undertook to examine the unmet need for legal services in Massachusetts through two surveys. The surveys were distributed to thirteen major legal services agencies that serve the majority of qualified low-income clients in the Commonwealth. Those agencies provide a representative cross-section of civil legal aid providers both in the areas of practice in which they provide services and in the regions of the state they serve. Importantly, these agencies maintain databases which facilitated accurate responses to the surveys. The surveys were drafted primarily by Task Force members who work in the legal services field and were similar to previous surveys performed by MLAC.

The Areas of Service Survey requested the total number of cases handled in one year by legal aid agencies by area of law. The Turn-Away Survey then sought a breakdown by the same areas of law of eligible clients whom the legal services provider was unable to serve. The surveys were distributed over three single-week periods: once during the week of November 12-18, 2013, again during the week of December 16-20, 2013, and finally during the week of March 17-21, 2014. Results of the two surveys are attached as Appendix A.

#### **2. Survey Results**

When the Turn-Away data collected over those three weeks is annualized, and then compared to the number of cases that are handled each year in a given practice area, the results are both stunning and discouraging.

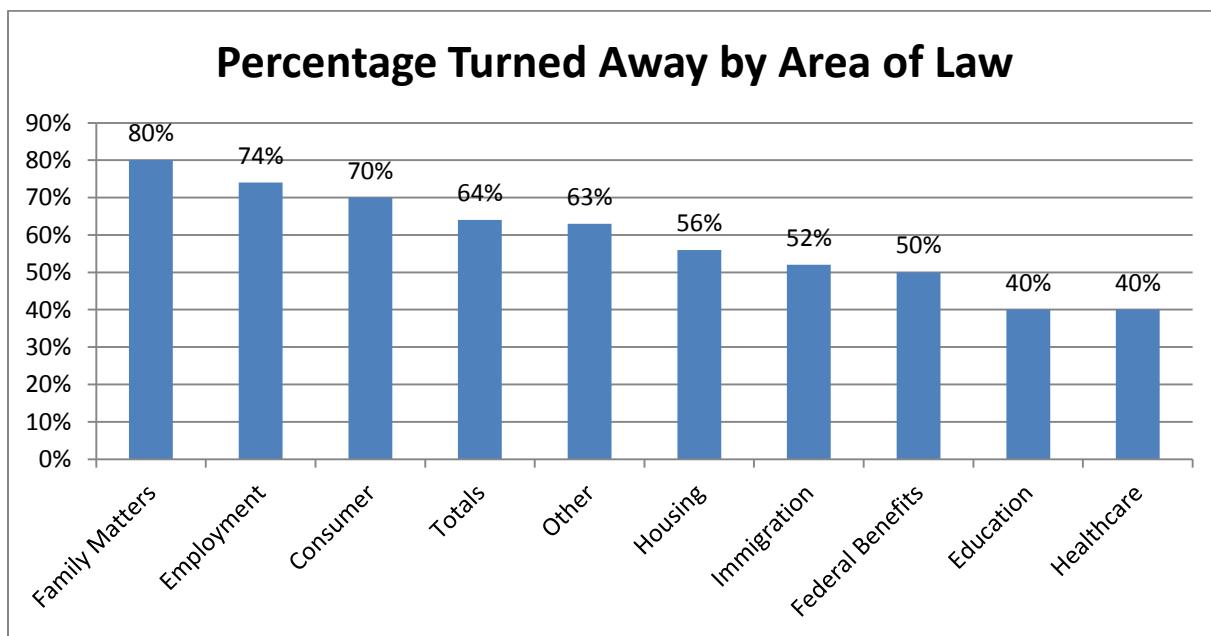
The surveys revealed that 64% of all eligible clients who request assistance are turned away by legal services programs simply due to lack of resources. In other words, only one out of three eligible persons is provided a legal aid attorney in civil matters. Cases involving family law had the highest percentage turned-away at 80%. Employment and consumer matters were 70% or more, while turn-away rates for housing and immigration matters were all over 50%. According

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4,869 eligible citizens with federal benefits issues were turned away. Thus, a large portion of the unmet need for civil legal aid falls into the three categories studied. However, this should not suggest that other areas of service are not important or that they do not present opportunities for savings to the state by the investment of increased civil legal aid. Moreover, it is important to note here that legal aid representation addresses the full range of the client's needs, and often a client's problems extend beyond the three categories studied. For example, job loss may lead to eviction, or an immigration problem can trigger domestic violence.

to the surveys, a whopping 11,843 disadvantaged individuals or families facing eviction or foreclosure were turned away over the course of one year, and some 21,197 persons with family matters such as cases involving child abuse and domestic violence were turned away in the same period.

Area of Law	Cases Handled in 1 year	Turn-Aways Scaled to 1 year	Percentage Handled	Percentage Turned Away
Consumer	1,364	3,195	30	70
Education	1,303	883	60	40
Employment	1,360	3,956	26	74
Family Matters	5,440	21,197	20	80
Healthcare	1,499	991	60	40
Housing	9,246	11,843	44	56
Immigration	3,689	3,982	48	52
Federal Benefits	4,907	4,869	50	50
Other	1,994	3,426	37	63
Totals	30,802	54,342	36	64



The Turn-Away Survey also revealed pockets of underserved low-income residents in certain regions of our state. For example, in the Southern region, some 79% of those with employment matters are turned away. Fully 93% of eligible persons with consumer matters are turned away in the Central/West region of the state. And, 84% of those in the Eastern region of the state with family law issues are turned away.

So what does this mean for a family which is facing eviction and qualifies for civil legal aid? The data from the Turn-Away Survey shows that the family's chances of being denied a civil legal aid lawyer to help them keep their home is 56%. If a low-income person needs help securing federal benefits, such as social security, he or she has a 50% chance of having to go it alone without a legal aid attorney. And a low-income person seeking help with a family law matter, such as child custody, has a 80% chance of being denied the help of a civil legal aid lawyer. While legal aid agencies do prioritize family law matters involving domestic violence, the Turn-Away Survey showed that 47% of domestic violence cases were still turned away in 2013.

When housing and family law matters are combined, the Turn-Away Survey demonstrates that we are turning away over 33,000 cases each year in our state on life-essential matters where low-income residents desperately need legal help.

In addition, and for a variety of reasons, significant numbers of low-income people who face a critical legal problem do not even seek help. Thus, the unmet need is even higher than the results of the surveys indicate. A recent report from the American Bar Foundation<sup>9</sup> demonstrates that low-income people facing a significant civil legal problem do not seek third party assistance from any source, or simply do nothing about a problem, about 16% of the time. And for some of the most serious problems, such as situations involving housing, they did nothing primarily because they did not realize their problem had a potential legal solution. Moreover, the Turn-Away Survey does not account for those eligible low-income residents who tried to reach a civil legal aid agency, but gave up because their call was not answered in a timely manner.<sup>10</sup>

The difficulties faced by clients in requesting assistance from civil legal aid programs and the high turn-away rates for those eligible clients who do seek assistance further discourage low-income people from seeking help in the first place. While legal aid agencies have responded by using technology in innovative ways through websites and social media,<sup>11</sup> much more can and

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<sup>9</sup> See Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (August 8, 2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_co ntemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf).

<sup>10</sup> The Legal Advocacy and Resource Center (LARC) operates a free legal hotline in support of its mission to help low-income Massachusetts residents with legal problems by providing legal information and advice, and by making referrals to legal and social service agencies. LARC also completes intake screenings for Greater Boston Legal Services and the Volunteer Lawyers Project of the Boston Bar Association, as well as family law intake screenings for Community Legal Services and Counseling Center and limited intake screenings for MetroWest Legal Services. LARC reports that over 51.5% of those who seek help over the phone hang up after having waited for between 30 minutes and 2 hours. For a three month period from June 1 to August 31, 2014, LARC reported 4,408 abandoned calls (not including 1,079 abandoned before the end of the entrance message). During this same period, LARC answered 4,150 calls and opened 2,962 cases. The average phone wait time was 38 minutes.

<sup>11</sup> See, e.g., MassLegal Services, <http://www.masslegalservices.org> (last visited October 8, 2014); MassLegalHelp, <http://www.masslegalhelp.org> (last visited October 8, 2014).

should be done to expand access to legal information and assistance through the use of technology, as a recent report of the Legal Services Corporation found.<sup>12</sup>

## **B. The Judges' Survey: Impact of Unrepresented Litigants**

### **1. The Survey**

Not only does a lack of civil legal aid impact underprivileged people with critical needs, but it creates serious problems for our court system, impacting those at all income levels who use it.

In order to determine the effect of unrepresented litigants on our court system, the Task Force prepared a Judges' Survey. The survey was designed to obtain input from judges who observe firsthand, and on a daily basis, the impact of unrepresented litigants on their courtrooms. With the help of Trial Court Chief Justice Paula M. Carey, the survey was distributed to Massachusetts trial court judges in November, 2013. Eighty judges responded.

### **2. Survey Results**

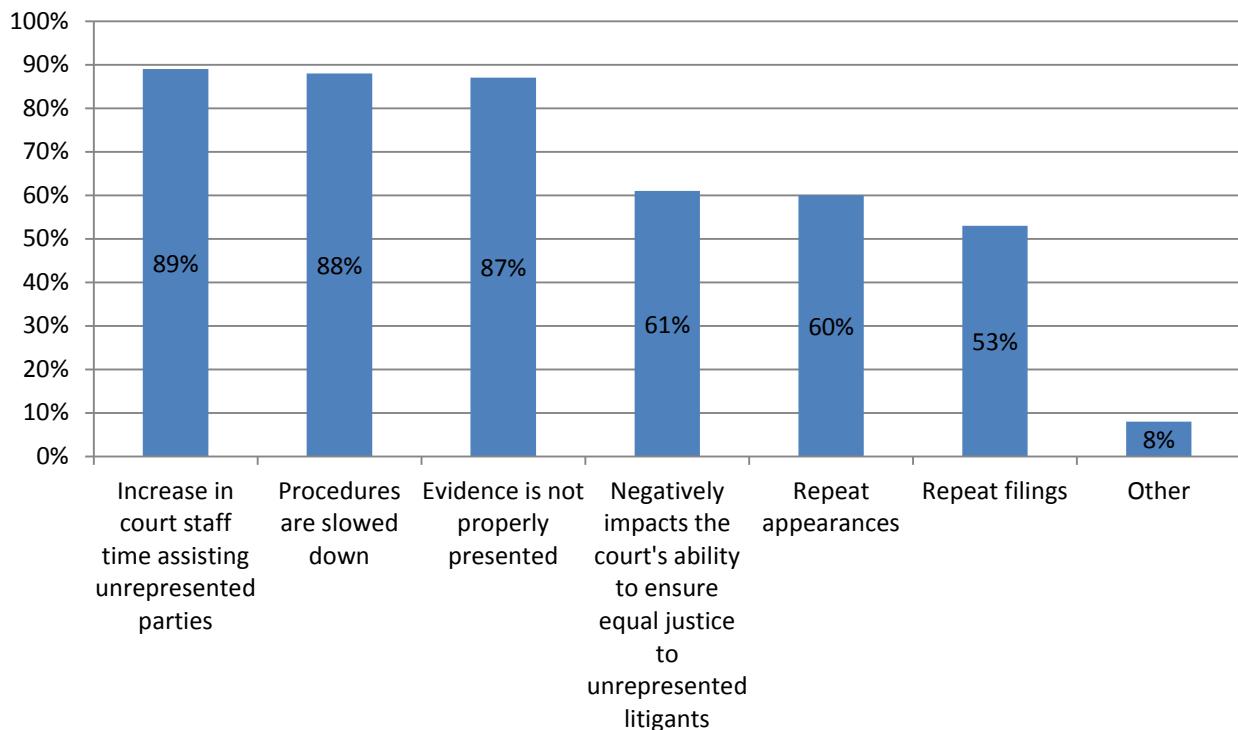
Attached to this report as Appendix B are charts which detail the results of the Judges' Survey. From the judges' responses, it is clear that unrepresented litigants are a current and growing problem for the courts. Uniformly across state courts and regions, a vast majority of respondents noted that lack of representation consumed court staff time in assisting pro se litigants, slowed down procedures, and resulted in the unclear presentation of evidence by those litigants without counsel.

Most disturbingly, 6 out of 10 judges who responded felt that lack of representation negatively impacted the courts' ability to ensure equal justice to unrepresented litigants. Those low-income litigants, who do not have the benefit of a lawyer, are hindered in presenting their cases. Meaningful access to justice, a basic right for all, is denied to them as a result.

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<sup>12</sup> See LSC, Report of The Summit on the Use of Technology to Expand Access to Justice (December 2013), [http://www.lsc.gov/sites/lsc.gov/files/LSC\\_Tech%20Summit%20Report\\_2013.pdf](http://www.lsc.gov/sites/lsc.gov/files/LSC_Tech%20Summit%20Report_2013.pdf).

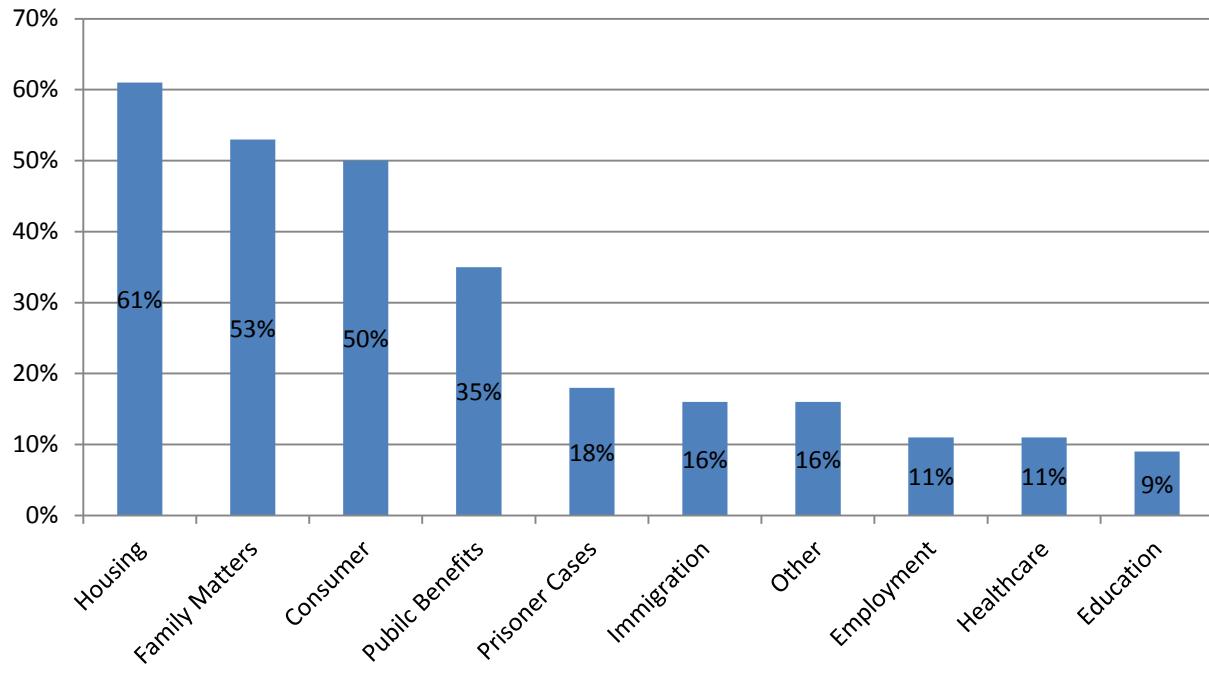
## Lack of Representation Impact on the Courts



Furthermore, the problem appears to be worsening. A majority of the judges who responded observed increases in cases commenced by unrepresented parties, as well as cases involving an unrepresented defendant or respondent. The increase seems to be most dramatic in courts in the Housing, Probate and Family, and Superior Courts, where matters involving evictions, child custody and domestic violence are often heard.

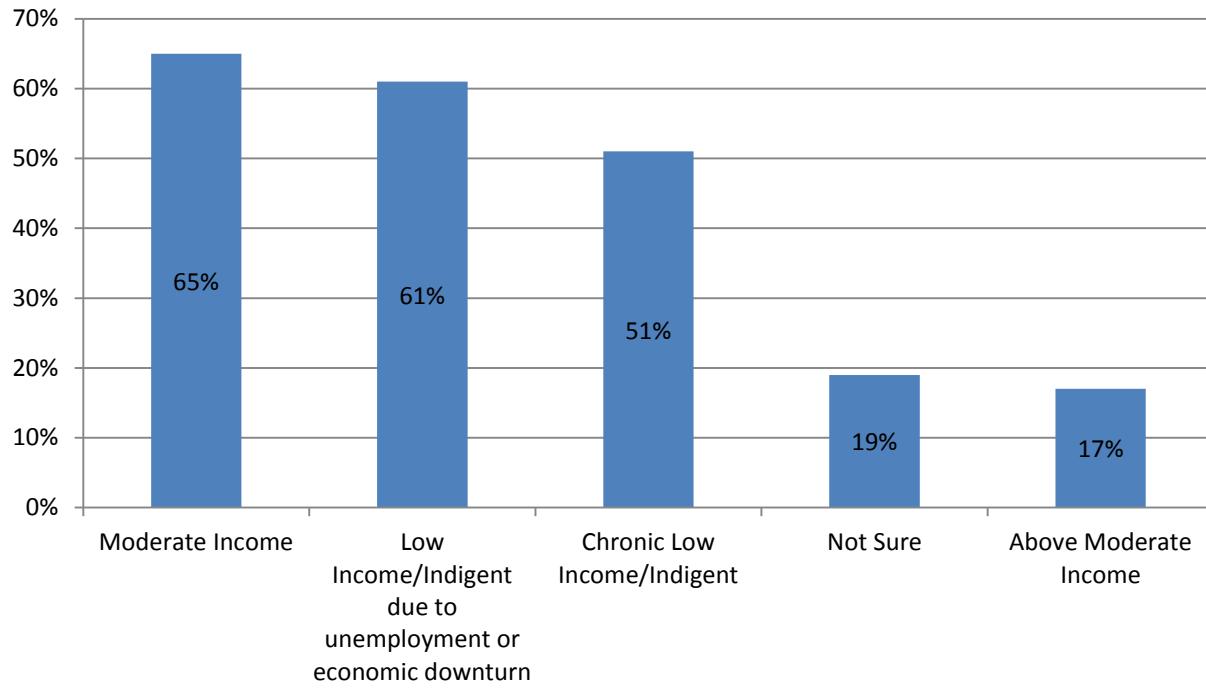
The judges further observed that unrepresented litigants created problems particularly in certain types of cases. More than 60% the judges said problems resulting from lack of representation were seen in housing matters. Over half of the judges saw problems in family and consumer matters. These areas often involve critical needs of shelter, protection from domestic violence, custody of children, and family debt.

## **Percentage of Judges Who Reported Problems Due to Lack of Representation by Practice Area**



Not surprisingly, the greatest increase in unrepresented litigants comes from moderate and low-income groups. More than 60% of the responding judges noticed an increase in unrepresented litigants of moderate-and low-income or indigence due to unemployment or the economic downturn. More than half of the responders noticed an increase in unrepresented litigants of chronic low income or indigence. These responses were spread evenly throughout the state and the various courts.

## Percentage of Judges Who Reported Increased Unrepresented Litigants by Economic Category



The problem is two-fold. Judges have seen a recent increase in unrepresented litigants with concomitant negative impacts on the functioning of their courts. Yet, the increase is coming largely from a population that cannot afford the services of an attorney. Thus, the situation is not likely to improve on its own.

Unrepresented litigants slow down our courts, delaying justice for everyone. Scarce judicial resources are used to assist pro se litigants in managing the court process. But, even more important, it is difficult, if not impossible, for the courts to provide meaningful access to justice to those low-income litigants without a lawyer because those litigants are handicapped in presenting their cases, all to their detriment. And, as the data provided by the judges shows, those cases most often involve essential life issues of housing and family matters.

## V. CURRENT FUNDING FOR CIVIL LEGAL AID IN MASSACHUSETTS

The Task Force estimates that Massachusetts civil legal aid programs currently receive a total of roughly \$56 million per year<sup>13</sup> in funding from various sources. Only about 24% of this money

<sup>13</sup> The Task Force compiled a listing of all 99 organizations that received bar foundation funding to provide civil legal services in fiscal year 2011. This may not be a complete listing of all civil legal aid organizations in the state. Those 99 organizations received \$56 million in funding, which included roughly \$10.5 million in state and local government funding, \$10 million in federal funding, \$7.5 million in IOLTA funding, \$19.5 million in private

comes from the state, or approximately \$13 million, primarily through MLAC. The rest of the civil legal aid budget, more than \$43 million, comes from a combination of IOLTA, private funding sources (including law firms, individuals, and bar foundations), and the federal government, in part through Title III of the Older Americans Act and the LSC.

Unfortunately, the current system of civil legal aid funding is set up in such a way that when the need is the highest – for example, during times of economic duress – the funding for civil legal aid is the lowest. This is caused in large part by the variable amount of monies earned on lawyer trust accounts. When interest rates are down, and economic activity slows, interest earned on such accounts is far less than in busy economic times and when banks offer higher interest rates. Yet, increased economic activity is no guarantee of more IOLTA funding as there has been an 85% drop in IOLTA revenue from \$31.8 million in 2007 to \$4.5 million for 2014, even though the economy has rebounded since the recession of 2008. IOLTA funding for civil legal aid in Massachusetts is unpredictable and therefore unreliable. State funding holds out the promise of the stability needed to balance fluctuations in IOLTA income.

## **VI. ACCOUNTABILITY OF LEGAL SERVICES PROGRAMS**

As part of its statutory charge, MLAC takes steps to assure that the monies appropriated by the state for civil legal aid are spent wisely.

### **A. MLAC's Annual Evaluation of Program Operations**

MLAC is required by statute to evaluate the performance of the programs it funds.<sup>14</sup> Every year, MLAC conducts onsite monitoring of several grantees. Monitoring of programs is staggered with the result that all MLAC-funded programs receive an on-site evaluation once every three years. The monitoring assesses the quality of programs' service delivery and the functioning of the organization as a whole using performance standards approved by the MLAC Board of Directors in March 2002.<sup>15</sup>

Consultants with backgrounds in legal services and program evaluation<sup>16</sup> are hired to assess programs against these standards. Each consultant works in cooperation with the MLAC Program Director to plan the monitoring effort. All members of the consulting team review

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funding, as well as \$8.5 million from other sources, including fees and contracts. This funding does not include the value of pro bono services or in-kind contributions.

<sup>14</sup> See Mass. Gen. Laws. ch. 221A, § 10 (requiring MLAC to annually submit a report that includes an evaluation of the performance of each of its funded programs).

<sup>15</sup> MLAC's Performance Standards are based on the American Bar Association Standards for the Provision of Civil Legal Aid and consist of six core areas: Strategic and Collaborative Planning Partnerships; Development and Utilization of Resources; Client Access; Quality Assurance; Effective Management and Administration; and Governance.

<sup>16</sup> To avoid any conflicts of interest, only consultants from outside of Massachusetts are selected.

program documents (funding applications, annual reports, strategic plans, litigation dockets, etc.), develop interview protocols, and analyze program data developed by MLAC staff. The consultants also prepare the draft and final reports from notes taken by those on the monitoring team. During the site visit, the consultants may offer technical assistance, helpful suggestions or provide connections to resources beneficial to the program. Since its adoption in 2006, the peer review model has been further refined to include desk review (data compilation and trend analysis) and anonymous, online surveys administered to programs' board and staff.<sup>17</sup>

Upon concluding the site visit, the monitoring team conducts an exit interview with the program's executive director and shares preliminary findings. Upon completion of the final report, programs compile a brief action plan that indicates how they will respond to the recommendations contained in the report. Programs report on their progress on the items in the action plan as part of their annual application for funding.

## **B. Management and Administration Costs of Civil Legal Aid Agencies Are Low**

Only a small percentage of monies awarded to MLAC-funded civil legal aid programs is used for management and administrative costs. As examples, independent auditors for four legal aid programs, Community Legal Aid ("CLA") (central and western Massachusetts), Greater Boston Legal Services ("GBLS"), Neighborhood Legal Services ("NLS") (northeastern Massachusetts)<sup>18</sup> and South Coastal Counties Legal Services ("SCCLS"), report the following percentage allocations:

	GBLS	CLA	NLS	SCCLS
Program Services	92%	86%	86%	91%
Management and General	5%	12%	13%	7%
Fundraising	3%	2%	0.7%	2%

MLAC reports the administration and management numbers for GBLS and SCCLS are quite low for non-profits around the country while those for CLA and NLS are well within the expected

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<sup>17</sup> Board members are asked to rate the board in the following six categories on a scale of one to five: Board Roles and Responsibilities; Strategic Planning; Board Development; Board Operations; Board Internal and External Relationships; Board Transparency; and Board Effectiveness. Board members are also asked to identify overarching issues, recent accomplishments and to suggest the Board's focus for the future. Staff members are asked to rate their program in the following eight categories on a scale of 1 to 5: Program Mission and Strategic Focus; Program Management and Communication; Program Culture; Program Support; Program Planning; Nature of the Work; and Commitment to Staff. They are also asked to identify strengths of the program, suggest program improvements, and identify issues important to staff or the program going forward.

<sup>18</sup> Neighborhood Legal Services is now a part of Northeast Legal Aid.

ranges. According to its FY14 audit, MLAC's own administrative expenses amounted to 6.4%, with the remainder allocated to grants and program support.

## **VII. INDEPENDENT ECONOMIC STUDIES CONFIRM INCREASED CIVIL LEGAL AID IS A SOUND ECONOMIC INVESTMENT**

In order to determine whether increased funding of civil legal aid could provide financial benefits to the Commonwealth, the Task Force engaged three nationally recognized economic consulting firms. All three donated their services to the Task Force, for which the Task Force is extremely grateful. Each consulting firm prepared a report to the Task Force, all of which are attached as Appendix C.

The Analysis Group undertook to study the impact on state expenditures of representation by a civil legal aid attorney in eviction and foreclosure cases. Alvarez & Marsal analyzed the costs of domestic violence and what savings could occur if additional civil legal aid representation was available in such cases. Finally, NERA evaluated the economic benefits to low-income state residents, and to the Commonwealth overall, from the provision of civil legal aid representation to those residents in obtaining federal benefits.

These three areas of legal services are representative examples of the broad range of services provided by civil legal aid programs. It was not practical for the Task Force to study all areas of service, and thus the three consultants' reports do not measure the value of the full range of assistance provided by civil legal aid programs to eligible clients. In addition to the cases of full representation studied by the consultants, legal aid clients benefit from general counseling and advice, and from more limited assistance where appropriate. Many legal aid programs further extend their reach by engaging in legislative and administrative advocacy to change laws, rules and regulations in ways that benefit clients. The programs also support pro bono activities of private attorneys and train the staff of social service providers to recognize legal problems of low-income people and to provide them with information and referrals. All these activities directly benefit low-income people with legal problems.

### **A. The Analysis Group: The Economic Impact of Legal Aid in Housing Cases – Every Dollar Invested Saves \$2.69 in Costs to the State**

The Analysis Group's report analyzes the impact of civil legal aid in eviction and foreclosure cases in the Commonwealth and, in turn, how evictions and foreclosures affect spending by the Commonwealth.

In 2012, there were 45,219 cases of eviction and foreclosure in the Commonwealth, causing a number of individuals and families to leave their homes involuntarily.<sup>19</sup> While a majority of

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<sup>19</sup> See Massachusetts Trial Courts, *Summary of Case Filings by Type: FY2005 to FY2012*, <http://www.mass.gov/courts/docs/courts-and-judges/courts/stats/2012-all-depts-stats-summary.pdf>; see also Law Libraries, Massachusetts Trial Court, <http://www.lawlib.state.ma.us/libraries/databases/index.html> (last visited

plaintiffs, typically landlords, are represented by legal counsel, as few as 6% of tenants are represented by counsel, even though a majority of these tenants qualify for free legal assistance.<sup>20</sup> This imbalance of representation puts tenants at a disadvantage. Primary research conducted by a team of Harvard University researchers has empirically shown that case outcomes are materially improved for tenants when they have access to full legal representation,<sup>21</sup> at least in part because “the inability of some self-represented litigants to understand and comply with court rules and procedures may make it impossible for their cases, however worthy, to be decided on the merits.”<sup>22</sup>

While some tenants will find alternative housing in the event of eviction or foreclosure, for many others the eviction or foreclosure process will result in either substantial worsening of living conditions or homelessness. In its report, the Analysis Group focuses on the latter category – foreclosures and evictions leading to homelessness – and quantifies their financial impact on the Commonwealth. This is not to say that the former category is unimportant or that it does not have economic consequences – even if homelessness is avoided, deterioration of living conditions can lead to stress, loss of productivity or work altogether, negative impacts on children and their education, and so on.<sup>23</sup>

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October 8, 2014); *see also Land Court Department, Fiscal Year 2012 Five Year Caseload Analysis*, <http://www.mass.gov/courts/docs/courts-and-judges/courts/land-court/fy2012fiveyear.pdf>. It is important to note that foreclosure cases most often also involved post-foreclosure evictions.

<sup>20</sup> Massachusetts Housing Court fiscal year 2012 statistics reports that 58.3% of plaintiffs are represented in summary process (eviction) cases, versus 5.7% of defendants. *See Additional Departmental Statistics*, Massachusetts Court System Housing Court Department, <http://www.mass.gov/courts/docs/courts-and-judges/courts/housing-court/2012-additional-departmental-stats.pdf>. According to the Massachusetts Legal Assistance Corporation (MLAC), approximately 75% of defendants in eviction cases meet these criteria.

<sup>21</sup> *See Dr. James Greiner, et al., The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 Harv. L. Rev., 901, 903 (2013) (conducted in conjunction with the Boston Bar Association’s Task Force on Civil Right to Counsel).

<sup>22</sup> *See The Supreme Judicial Court Steering Committee on Self-Represented Litigants (of Massachusetts), Addressing the Needs of Self-Represented Litigants in Our Courts: Final Report and Recommendations*, p. 4 (November 21, 2008), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/maselfrepfinalreport.authcheckdam.pdf>.

<sup>23</sup> See Elizabeth Gudrais, *Disrupted Lives - Sociologist Matthew Desmond Studies Eviction and the Lives of America's Poor*, Harvard Magazine, January-February 2014, <http://harvardmagazine.com/2014/01/disrupted-lives>. (“Many who are evicted end up in shelters or even on the street. When they do find housing, a record of eviction often means they are limited to decrepit units in unsafe neighborhoods. This transient existence is known to affect children’s emotional well-being and their performance in school; Desmond and his research team are also beginning to link eviction to a host of negative consequences for adults, including depression and subsequent job loss, material hardship, and future residential instability. Eviction thus compounds the effects of poverty and racial discrimination. ‘We are learning,’ says Desmond, ‘that eviction is a cause, not just a condition, of poverty.’”)

The Analysis Group's study is based on the number of families and individuals who are likely to enter a shelter when faced with loss of housing. This will likely underestimate the total number of families and individuals who become homeless as a result of eviction or eviction following foreclosure, as not all homeless families and individuals seek emergency shelter. For these reasons, and other reasons stated in its report, its analysis likely understates the full savings to society associated with the provision of civil legal aid for eviction and foreclosure cases.

In its report, the Analysis Group identified several major quantifiable sources of costs to the Commonwealth associated with evictions and foreclosures. The first, and most direct, cost is that of emergency shelters. Second, there are increased costs to the public health care system. Third, when families become homeless, their children sometimes enter the foster care system. While this could be traumatic for the families in and of itself, there is also a monetary cost to the Commonwealth associated with providing foster care for such children. Fourth, there are increased costs associated with police and policing activities.

The Analysis Group also found that there are other sources of costs to society beyond the immediately quantifiable categories listed above. For example, children in homeless families are less likely to attain the same level of education as other children, leading to long-term losses in productivity and earning potential. Academic literature has found that "homeless children fare worse than poor children who remain housed in terms of health, mental health, and educational outcomes."<sup>24</sup> For example, homeless children have a lower high school graduation rate when compared to other low-income children who are housed.<sup>25</sup> As a result, the effects of homelessness resulting from eviction or foreclosure can result in lower tax revenues and higher expenses to the Commonwealth, including "higher spending on public assistance, and higher crime rates."<sup>26</sup> While these costs are clearly important, the effects described are longer-term and more difficult to quantify.

There may also be other costs to the Commonwealth associated with underrepresentation in the legal system. For example, and as demonstrated by the Judges' Survey discussed above, sources

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<sup>24</sup> Yvonne Rafferty, et al., *Academic Achievement Among Formerly Homeless Adolescents and Their Continuously Housed Peers*, 42 J. of Sch. Psychology, 179, 180 (2004). See also, Janice M. Molnar, et al., *Constantly Compromised: The Impact of Homelessness on Children*, 46 J. of Social Issues, 109, 109-124 (1990); see also Yvonne Rafferty and Marybeth Shinn, *The Impact of Homelessness on Children*, 46 American Psychologist 1170, 1179 (1991).

<sup>25</sup> The National Center on Family Homelessness, America's Youngest Outcasts: State Report Card on Child Homelessness, Massachusetts, [http://www.homelesschildrenamerica.org/pdf/report\\_cards/short/ma\\_short.pdf](http://www.homelesschildrenamerica.org/pdf/report_cards/short/ma_short.pdf).

<sup>26</sup> John H. Tyler, and Magnus Lofstrom, *Finishing High School: Alternative Pathways and Dropout Recovery*, The Future of Children, Vol. 19 (1), Spring 2009, p. 77.

suggest that unrepresented parties cause the court to expend more time and resources than it does on represented litigants.<sup>27</sup>

The Analysis Group report proceeds in three general steps. It first estimates the number of people facing an eviction or foreclosure proceeding who may qualify for civil legal aid, and the costs associated with providing that aid, under different potential public policy goals (i.e., whether the legislature will fund civil legal aid services for all potentially eligible beneficiaries in eviction and foreclosure cases, or only a portion thereof). Second, it estimates the cost savings to the Commonwealth associated with the estimated reduction in homelessness attributable to providing civil legal aid to those people. Finally, it estimates the net savings to the Commonwealth.

Based on the analysis described in detail in its report, the Analysis Group concludes that the monetary benefits of representing eligible beneficiaries in eviction and foreclosure proceedings far outweigh the costs of providing these services. Specifically, it estimates that the total annual cost to represent all eligible beneficiaries in Massachusetts is \$28.48 million, while the annual savings from representing this population is \$76.52 million. If the Commonwealth and its legislature elect to fund representation for only a subset of eligible beneficiaries represented by the most at-risk families and individuals, the total annual cost to represent these beneficiaries who meet additional criteria for eligibility is \$9.49 million, while the annual savings from representing this subset of the eligible population is \$25.51 million or a net savings to the state of \$16.01 million. In other words, for every dollar spent on civil legal aid in eviction and foreclosure cases up to \$28.5 million, the Commonwealth stands to save \$2.69 on the costs associated with the provision of other state services, such as emergency shelter, health care, foster care, and law enforcement.

Given that the Analysis Group's analysis is limited to the presently quantifiable categories of savings, and does not consider the avoidance of long-term repercussions from homelessness, these savings estimates are likely to underestimate the true economic benefit to the Commonwealth associated with funding civil legal aid in eviction and foreclosure cases.

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<sup>27</sup> See The Supreme Judicial Court Steering Committee on Self-Represented Litigants (of Massachusetts), *Addressing the Needs of Self-Represented Litigants in Our Courts: Final Report and Recommendations*, p. 4 (November 21, 2008), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/maselfrepfinalreport.authcheckdam.pdf> (“Cases involving self-represented litigants often require significantly more time from judges and court staff.”).

**B. Alvarez & Marsal: Estimating the Cost of Intimate Partner Violence in Massachusetts and the Savings Obtained Through Increased Civil Legal Aid – For Every Dollar Invested in Civil Legal Aid, the State Will Save a Dollar (and the Federal Government Will Save Another Dollar)**

In its study, Alvarez & Marsal undertook to determine the extent to which an investment in civil legal aid might benefit the Commonwealth in avoiding the costs specifically associated with domestic violence. Although legal aid agencies in Massachusetts do a commendable job of providing legal aid for victims of domestic violence by prioritizing these cases during intake, they are still unable to serve all of those in need. As stated above, fully 47% of domestic violence cases were turned away, leaving those victims to fend for themselves against a violent intimate partner.

Alvarez & Marsal set out to calculate the cost to provide full representation by a legal aid lawyer in a case and then compared that to costs saved as a result of intervention by legal services in avoiding future intimate partner violence (“IPV”). While a cost per incident can be estimated, determining the number of incidents avoided requires consideration of the repetitive nature of IPV, which is characterized as a pattern of behavior as opposed to an isolated single incident.

The Alvarez & Marsal study analyzes available data to estimate at least a portion of the overall costs of IPV borne by the Commonwealth. It first estimates the number of annual incidents of non-fatal IPV among women 18 years or older in Massachusetts based on the 2010 National Intimate Partner and Sexual Violence Survey (“NIPSVS”) conducted by the Centers for Disease Control and Prevention (“CDC”). Using population data from the Bureau of Justice Statistics, they estimate approximately 66 % of these incidents will occur among the low-income population.

After estimating the expected annual incidents of IPV among the low-income population, Alvarez & Marsal then estimates certain short-run direct and indirect damage costs associated with these incidents. The NIPSVS categorizes IPV incidents as rape, physical assault, and stalking. In its study, Alvarez & Marsal adopts these categories, but notes that different types of IPV will incur different costs. For instance, rape and physical assault victims will incur higher medical care costs for physical trauma, while stalking victims will likely incur none. On the other hand, the protracted and lingering effects suffered by stalking victims result in higher mental healthcare costs.

Applying these short-run direct and indirect damage costs to estimated annual incidents yields the expected annual IPV costs. As Alvarez & Marsal noted, IPV is characterized by a pattern of repetitive behaviors. Therefore, a successful intervention will not simply avoid the next occurrence, but hopefully all future occurrences that befall any specific victim.

To estimate the number of incidents avoided by civil legal services interventions, Alvarez & Marsal estimates the number of cases each legal aid attorney can reasonably handle in a year. It

also estimates the resulting rate of success for such interventions as measured by results which have the effect of removing the victim from the batterer's reach. To the extent a civil legal aid intervention is successful, it then applies a pattern multiplier to estimate the number of incidents avoided for a victim during the year.

Based on their analysis, Alvarez & Marsal found the marginal cost of investing in civil legal services for the low-income population is offset by the savings of short-run direct and indirect costs that the Commonwealth will suffer. While not all legal services interventions are successful, the agencies providing such services indicate that the success rate in matters where the victim was provided full representation was extremely high (sometimes reported in excess of 90%). Further, Alvarez & Marsal assumed conservatively that civil legal services interventions will enjoy a 75 % success rate, and since IPV is a pattern of repetitive behavior, that a successful legal intervention avoids 1.76 incidents over the twelve months following the intervention.<sup>28</sup> Thus, Alvarez & Marsal determined that each \$1 of investment in civil legal services saves at least the same amount in medical costs borne by the state based on the current Medicare reimbursement rates (the savings to the state would be as high as \$2 in the absence of such reimbursement). To put this into context, an investment in 100 new legal aid attorneys, which Alvarez & Marsal estimate to be an annual cost to the Commonwealth of \$8 million,<sup>29</sup> will provide services for about 3500 full representation<sup>30</sup> cases, ultimately saving \$16 million in avoided medical costs, \$8 million of which will be saved by the state and \$8 million of which will be saved by the federal government.<sup>31</sup>

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<sup>28</sup> See *Special Report—Intimate Partner Violence*, U.S. Department of Justice, Bureau of Justice Statistics (1993-2010).

<sup>29</sup> As set forth in its report, Alvarez & Marsal assumes the legal aid attorney will have an annual salary of \$48,000. When benefits and an appropriate overhead allowance is added to that salary, the estimated cost of an additional attorney is \$80,000. According to MLAC, the \$48,000 annual salary is for a lawyer with three years of experience.

<sup>30</sup> Legal aid lawyers provide a broad range of services to their clients, ranging from brief advice in a phone call all the way to full representation where the lawyer will represent a client through a series of court appearances until resolution. MLAC estimates that full representation in domestic violence cases can involve an average of six court appearances and many months, if not years, to resolve.

<sup>31</sup> Alvarez & Marsal also calculated certain costs from IPV which are not borne directly by the state – the value of lost productivity and lost household services. When these costs are added to direct medical costs and direct mental healthcare costs borne by the state, the return on a dollar invested in civil legal aid to the Commonwealth exceeds \$1.

**C. NERA Economic Consulting: For Every Dollar Invested in Civil Legal Aid Directed to Recovery of Federal Benefits, Close to \$5 is Returned to the State as Immediate Direct Benefits to Families and Resultant Economic Benefits to the State**

**1. Federal Benefits**

In its study, NERA undertook to evaluate the economic benefits to low-income state residents, and to Massachusetts overall, from the provision of civil legal aid to assist families to obtain access to various benefits for which they are eligible. Specifically, NERA:

- Evaluated the current year's financial impact of increased access to several federal programs on the direct recipients of those benefits and their families as well as to the Commonwealth of Massachusetts overall.
- Estimated the long-term financial impact on the direct recipients and their families of increased access to certain federal programs and other payments for which they can expect long-term, on-going eligibility and benefits.
- Evaluated the economic impact of the flow of federal benefits into the Massachusetts economy as a whole.
- Compared the flow of federal benefits into Massachusetts to the excess federal tax burden borne by residents of the state.

NERA reviewed MLAC summaries of the dollar value of federal benefits received by low-income residents in Massachusetts as a result of the provision of civil legal aid by programs funded by the MLAC from fiscal years 2008 to 2013.

After reviewing that data, as well as publicly available data, NERA concluded:

- The financial impact in 2013 of increased access to federal benefits on the direct recipients of those benefits and their families is conservatively estimated as \$25.62 million.
- An additional \$1.35 million of federal funds were brought into the state as a consequence of the provision of civil legal aid through reimbursements to the state as well as legal representation fees.
- Multiplier effects for the in-flow of \$25.62 million in federal benefits to program recipients in Massachusetts in 2013 alone result in estimated economic benefits to the state economy of approximately \$51.3 million.
- The economic benefits derived from additional federal funds paid directly to successful clients and through State reimbursements effectively reduce, by about 0.3%,

Massachusetts' excess tax burden (the difference between the amount of money Massachusetts residents pay to the federal government and the amount they receive from it), which is currently about \$8 billion.

## **2. Child Support Payments**

Additionally, NERA estimated the current year's and long-term impact of child support payments obtained through the help of civil legal aid agencies on the direct recipients of those benefits and their families. It found the additional economic benefit in 2013 from child support payments is estimated as \$11.64 million.

## **3. Return on Investment in Civil Legal Aid**

Thus, in those cases involving assistance in securing federal benefits and child support payments, the Commonwealth and its low-income residents benefit significantly. In fact, the long-term future financial impact of increased access from the provision of civil legal aid ranges as high as \$177 million over ten years, depending upon the expected duration of continued participation in key federal programs and child support payments.

Given the flow of federal funds and other benefits to the Commonwealth from the efforts of civil legal aid attorneys, the NERA study shows that an additional \$11 million in state funding for legal aid in that direction can only result in multiples of this amount in federal monies going to low-income beneficiaries in the Commonwealth, with a resulting economic benefit to the state as a whole. The Areas of Service survey found that 4,907 federal benefits cases were handled by the surveyed civil legal aid agencies last year. Those cases, conservatively, brought \$25.6 million in federal benefits to lower income Massachusetts residents in 2013. In addition, NERA estimated a total of \$51.3 million in immediate economic benefits would flow from the \$25.6 million in federal benefits received in 2013.<sup>32</sup> The Turn-Away Surveys show that 50% (4,869 individuals) of all eligible low-income citizens seeking help with federal benefits and related matters are not able to be served. Using the Alvarez & Marsal calculations on the cost of legal aid attorneys, NERA concluded that 4,800 federal benefits cases could be handled by civil legal aid attorneys, at a cost of approximately \$11 million. If \$25.6 million were recovered for 4,907 citizens in 2013 resulting in a collective \$51.3 million in economic benefits to the state, NERA found that similar amounts could be obtained in such combined benefits for those 4,800 citizens and the state at a cost of only \$11 million in civil legal aid, nearly a \$5 return to the state residents and the state overall for every \$1 invested.<sup>33</sup>

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<sup>32</sup> The \$51.3 million figure includes the \$25.6 million in federal benefits obtained.

<sup>33</sup> Based on information supplied by MLAC, the NERA study found that in 2013 the following amounts were reimbursed directly to the state as a result of civil legal aid representation: (1) \$490,000 in reimbursement for EAEDC state benefits; (2) \$500,000 in federal Medicaid reimbursements to the state for autistic children in needy families; and (3) \$360,000 in attorneys' fees granted by the Social Security Administration for representation on SSI and SSD cases, which flowed directly to state-funded legal aid agencies.

## **VIII. LEGAL AID CLIENTS' TESTIMONY: COMPELLING PERSONAL STORIES**

The Task Force did not limit its investigation to surveys and data analysis. Legal aid clients appeared before the Task Force<sup>34</sup> to tell their personal stories about how representation by a legal aid attorney saved them from very difficult circumstances. Their testimony is moving and compelling.

### **A. Ginette: Legal Aid Kept a Roof Over Her Head**

When Ginette, a devoted single-mother of three children, tried to get her piece of the American dream, she found only trouble. Ginette, who came to this country as a 16-year old immigrant, spent 25 years working at Beth Israel hospital, gradually saving up her money with the hopes of buying a house where she could raise her children.

When her father passed away in Haiti, leaving her some inheritance, she seized the opportunity to move into a rent-to-own house, working out a payment plan with a member of her community who claimed to be a real estate broker and financer. She finally had her own place to raise her children.

For months, Ginette faithfully made timely payments, so she was shocked to receive an eviction notice in the mail. When Ginette went to speak with her broker, she discovered that he had been arrested. She frantically started researching how to respond to the eviction notice.

It would take weeks and a lot of litigation for the full story to emerge. Ginette's landlord turned out to be a scam artist who collected her checks, but had sold her mortgage to a mortgage company seven months ago. The mortgage company then violated the law by failing to give Ginette notice of its assumption of her debts within 30 days.

Luckily for Ginette, when she appeared in court, the judge postponed her case for a few weeks, referring her to a legal aid attorney. "When I finally got to a legal services provider, it was as if an angel fell from the sky, because at least I knew that my kids would have a place to sleep that night, and in the days until the court date. And when I walked into the court again, I had support, not only legal support, but moral support and the idea that they were there for us and would not leave," said Ginette.

Ginette worked with a team of legal services attorneys all day on a Sunday preparing for her case. She will never forget the picture of the attorneys hard at work late on a Sunday evening while one of their young children played in the office, waiting for her mother to finish working.

Her legal services team was able to secure Ginette's possession of the premises in addition to compensation for the financial harm she suffered.

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<sup>34</sup> The Task Force is very grateful to Veritext, which provided pro bono court reporting services for such testimony.

As Ginette stated, “[s]o, if anything I can say, if there’s anything we can do, whatever help, whatever amount it is to the legal services, I’ll go get it . . . There’s more Ginettes out there . . . a lot who needs a roof over their heads . . . So please help us. Help them so they can help us.”

#### **B. Christine: Pregnant and Sleeping in a Stairwell**

When Christine found herself pregnant and homeless, she moved into a women’s Emergency Assistance (EA) shelter in March 2013. The baby’s father was not allowed to stay there, so when she learned of an opening at a non-EA transitional living program for a family, she left the women’s shelter and moved into the new program. She lived there for seven months until the baby’s father violated a program rule and he, Christine, and their now seven-week-old baby were asked to leave.

Now homeless, the family applied for Emergency Assistance shelter together, but under the Department of Housing and Community Development’s regulations, the entire family was denied shelter due to the father’s rule violation. Thus, the family resorted to sleeping in the hallway of a publicly subsidized housing building with no access to a restroom or other facilities. As Christine testified, “it was scary, because every time the baby cried, I would have to put her in my coat and calm her down so we didn’t get kicked out of the hallway.” When the Department of Children and Families (“DCF”) learned of the situation, it threatened to take away her child if she didn’t get a roof over their heads.

Christine called a legal services provider after receiving a flyer about the program. Legal services lawyers got involved with her case, helping Christine navigate through a confusing bureaucracy, arguing that Christine had a right to apply for Emergency Assistance.

After a full day of advocacy and negotiation, legal services attorneys convinced the Department of Housing and Community Development to allow Christine and her family back into the shelter that night. During the course of her seven-day EA stay, legal services attorneys advocated with the social service agency that ran the transitional living program where Christine had stayed before she became homeless. Fortunately, they agreed to let Christine and her baby back into the program and to assist them with finding permanent housing.

Without legal services, Christine testified “my daughter would probably be in DCF custody, and I don’t even know where I would be. I mean, on the street, probably in a worse situation.”

#### **C. Anne: Desperate for Help When An Abusive Husband Takes Her Babies to Africa**

When Anne’s physically abusive husband of ten years, James, walked out on her and their two sons who were 2 years and 3 months old, respectively, Anne knew she would have to struggle. She had to stop nursing school and quit her full-time job to take care of her children. Things got worse when James decided to put all the couple’s belongings in storage, leaving Anne homeless with her two boys.

The young mother fled to New York to stay with relatives. When James came to visit and left with her oldest son, Anne had no choice but to follow him to Boston to try to regain custody through the courts. A legal services attorney assisted Anne in drafting a motion for custody of the children, resulting in her winning custody of the boys. However, a week later, at the full hearing on the matter, James had an attorney. Anne did not. James left the courthouse that day with temporary custody of both boys.

At that point, Anne got in touch with another legal services attorney who started working on her case. After pulling together key information on Anne's husband's lack of credibility, her attorney was able to convince the court to return custody of the boys to Anne. James maintained weekend visitation rights.

Two months later, James took the boys for a weekend and did not return them when the week started. Anne was able to obtain police aid to assist in retrieving the boys. With local police now on the case, Anne was soon dismayed to discover that James had fled to his native Africa with the boys. Her legal aid attorney redoubled her efforts, filing a motion to allow Anne to get U.S. passports for the boys, subpoenaing Anne's husband's employment records to obtain information regarding his trip, and getting updated materials from his employer. Anne's attorney then contacted the FBI to report that the boys had been kidnapped, the Boston Police Department to seek a warrant for Anne's husband's arrest based on a charge of custodial interference, and Senator John Kerry's office for help navigating State Department bureaucracy.

After negotiating through layers of bureaucracy, Anne's attorney was able to secure the return of Anne's children. A joyful Anne was able to greet the boys at the airport on the day of their return.

Being a single mother with two young boys provides Anne more than enough challenges today, but, as she explains, each day she grows stronger thanks to the support she received from legal services. “[W]ere it not for legal aid, I don't know where I would have been right now. I am so, so grateful for the work of my attorney, very grateful, and I always will be grateful because what they have done has changed my life. I mean, I have my freedom back, I have my babies. Even though it is hard, I am one happy mother.”

## **IX. IMPACT STATEMENTS FROM THE BUSINESS COMMUNITY**

The Task Force also sought statements from Task Force members representing leading Massachusetts companies about the importance of civil legal aid to their businesses and employees, several of which are included below.

**Mary Puma** – Axcelis, Chairman and Chief Executive Office. Axcelis is a world-leading provider of equipment and services to the semiconductor manufacturing industry. It employs over 900 people worldwide. Its world headquarters is located in Beverly, Massachusetts.

“The workforce in Massachusetts is key to the success of all businesses in Massachusetts, including Axcelis. We rely on having engaged and healthy workers to carry out the daily activities required to keep our company vibrant and competitive.

When something causes an imbalance in an employee’s ability to do his or her job well, it puts pressure on the internal workings of the company. We all know from anecdotal and scientifically collected evidence that problems at home with family, money, housing, etc. add significantly to the anxiety our employees’ experience. Whether this stress manifests itself in lost work days, accidents or poor work habits, it ultimately hurts both the employer – in lost productivity, and the employee – in lost pay and perhaps even in loss of job.

Issues that require civil legal aid definitely encompass the types of issues that can create these serious distractions. Although these issues will always ultimately create anxiety, having legal representation to address the issues at hand as quickly as possible, will hopefully minimize the disruption. Those without civil legal aid assistance may deal with their issues for longer periods of time, with considerably more anguish, and potentially more negative outcomes.

Good employees are key to good employers, which in turn are critical to a healthy local economy. Therefore, it is in the best interests of employers to urge the Commonwealth to support the speedy resolution of these social issues through more and better civil legal aid.”

**Lon Povich** – Executive Vice President, General Counsel, and Secretary of BJ’s Wholesale Club. BJ’s Wholesale Club is an American membership-only warehouse club chain headquartered in Westborough, Massachusetts. It employs roughly 25,000 people nationwide, and 3,900 in Massachusetts.

“Civil legal aid is important to the business community in Massachusetts for the same reasons that it is important to the citizens of Massachusetts. Civil legal aid improves the functioning of the courtrooms and the judicial process in Massachusetts ensuring better outcomes for all.

While representation for those who cannot otherwise afford it is beneficial to individuals with crucial civil matters (i.e., housing, benefit programs and family issues), it also benefits businesses in the Commonwealth. Unrepresented parties are a weight on the entire court system. Saying that these individual, civil cases “clog” court dockets makes it sound like they are unimportant, which they are not, but they take more time of our overworked judges and staff than do similar matters involving represented parties. As a result, the current deluge of pro se litigants limits the effectiveness of the courts for all individuals and businesses in our state.

As people struggle to lift themselves out of poverty, a common path often includes an entry-level minimum-wage jobs and part-time schedules. Businesses benefit tremendously from employees who come to work every day focused on doing their jobs. Employees who are unreasonably distracted by legal matters, are disadvantaged in litigation because they are acting without counsel, or who have to make repeated appearances solely because they are unrepresented in an unfamiliar court system, cannot reasonably be expected to give 100% to their employer (or to their family and communities). Providing representation in the most important civil matters to those who cannot otherwise afford it will have benefits for the Massachusetts courts, for the litigants and for their Massachusetts employers.”

**Susan Alexander** – Executive Vice President, General Counsel, and Corporate Secretary for Biogen Idec, Inc. Biogen Idec is a biotechnology company specializing in drugs for neurological disorders, autoimmune disorders, and cancer. It is headquartered in Weston, Massachusetts. It employs more than 4,200 people worldwide and more than 3,000 in Massachusetts.

“The companies that drive the Massachusetts economy would not be able to do business without seasoned attorneys to represent their interests. Similarly, low-income people face severe disadvantages when they must turn to the courts alone. Pro se cases strain judicial resources and create delays, and often place a burden on judges, who must fulfill their role as neutral decision-makers while also insuring that pro se litigants are heard. Civil legal aid benefits Massachusetts businesses by helping to insure that courts can devote time and attention to the substantive issues before them, including in cases that are important to the business community.

Civil legal aid is a vital component of a society committed to respect for, and equal justice under, the law. Respect for the law and for the dignity of every individual promotes fairness, productivity, social stability and personal and societal pride. Biogen Idec is proud as a company to share responsibility for achieving these goals with those who provide civil legal aid. As a biopharmaceutical company discovering, developing, and delivering therapies to improve the lives of patients, Biogen Idec is particularly sensitive to the importance of civil legal aid directed to individuals who need legal assistance securing access to healthcare programs. Commitment to patients is at the heart of Biogen Idec’s business, and we support civil legal aid aimed at protecting patients’ access to healthcare programs.

Our company employs more than 3,000 people in Massachusetts, and if we want to grow and generate more jobs here we need healthy employees and safe neighborhoods in which to do business. Legal aid has the power to maintain safe and vibrant communities during difficult economic times by keeping families from homelessness and poverty. That is why I urge our elected officials to increase civil legal aid funding now. Such an investment will pay dividends for the Commonwealth, its businesses, and its most vulnerable residents now and into the future.”

**Joe Nauman** – Executive Vice President, Legal & Corporate for Acushnet Company. Acushnet Company is the leading manufacturer of golf equipment and clothing and is headquartered in Fairhaven, Massachusetts. It employs roughly 3,000 people in Massachusetts.

“Civil Legal Aid is a good investment, a critical part of the society we aspire to, and contributes to an environment where businesses can succeed. Legal representation for those in need has a profound impact on the state – making it a better place to live and work. Legal aid makes neighborhoods safer and more stable and reduces emergency shelter spending by helping people stay in their homes. It eases the stress on hospitals and social services by reducing the number of abused and elderly people who require emergency services. It increases the amount of federal aid flowing into the state, saves jobs, and helps families get the services they need for themselves and their children. Furthermore, legal aid helps maintain a sound judicial system with fair access to justice for all, which results in a nicer and more stable society both to do business and to live in.”

As is evident from the foregoing statements, major employers in our state recognize the importance of civil legal aid in maintaining a productive workforce and a well-functioning court system.

## X. RECOMMENDATIONS FOR ACTION

It is clear that there is overwhelming unmet need for civil legal aid in Massachusetts and that unrepresented litigants are negatively impacting our justice system, while that very justice system is failing to serve our lowest-income citizens in matters of basic human necessities. What can be done to provide true and meaningful access to justice for those who need it the most and can least afford it?

### A. A Significant Increase in Funding for the Massachusetts Legal Assistance Corporation to Fund Critical Civil Legal Aid Programs

The Task Force believes that the cost to provide civil legal aid representation to all eligible low-income residents in Massachusetts who currently request services is more than \$150 million.<sup>35</sup> It is not realistic to think that there are available resources to meet that need today. Nonetheless, the state can and should appropriate necessary funds to start to close the gap, while the private sector continues to pitch in to do its part to address the unmet need as well.

As described above, the decrease in IOLTA revenue used to fund civil legal aid has been both dramatic and devastating. Civil legal aid agencies are now operating with \$27 million less in

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<sup>35</sup> The Turn-Away Surveys indicate that 64% of all eligible low-income residents are turned away. Thus, it can be estimated that 36% of eligible persons are provided services at an estimated cost of \$55 million statewide. In order to service all 100% of those eligible, the cost would be \$151.35 million.

IOLTA funding than they were in 2007. Because of reduced IOLTA funding, there are 63 fewer legal aid attorneys since 2007, and a resultant increase of turn-aways from approximately 50% to 64% since 2006. Even at the peak of IOLTA funding in 2007, civil legal aid programs were unable to address the full legal needs of 50% of those eligible because they were underfunded even then. The plunge in IOLTA funding from 2007 to today puts into stark relief the long-standing inadequacies of our system for funding civil legal aid.

It is not that our Legislature has not been mindful of the need for sufficient legal aid funding. Despite the difficult economic circumstances resulting from the recession of 2008, the Legislature maintained funding for MLAC at \$9.5 million for fiscal years 2010 and 2011, and has since steadily increased funding by about \$1-2 million per year such that the current MLAC appropriation is \$15 million. Yet such funding is not coming close to addressing the unmet need for critical civil legal aid described above.

As the consultants' reports addressing homelessness and domestic violence demonstrate, for every dollar invested by the state collectively in civil legal aid in these areas the state will save just about \$2.00 in costs.<sup>36</sup> Moreover, as a result of civil legal aid to low-income families, some \$25.6 million in federal benefits were secured in 2013 alone, with immediate resulting economic benefits to the state of \$51.3 million. Given the economic benefit to the State, as well as its low-income citizens, demonstrated in this report, increased funding of civil legal aid is a wise investment for the Commonwealth. ***The Task Force therefore recommends an increase in funding for MLAC of \$30 million, to be phased in at \$10 million per year over the next three fiscal years.***

This \$30 million increase is justified for several reasons. First, it will enable legal aid programs to meet more of the unmet legal needs of low-income people, providing them a fair shake in the courtroom and true access to justice. Even the highest levels of funding for programs in 2007/2008 were not sufficient to allow civil legal aid programs to meet the needs of more than 50% of eligible clients who came to them seeking legal assistance. Second, it fills the huge \$27 million gap created by the drop in IOLTA funding since 2007, and would return civil legal aid funding to levels that existed then.<sup>37</sup> Third, and most fundamentally, a \$30 million increase

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<sup>36</sup> The Analysis Group determined that \$9.5 million invested in civil legal aid in eviction and foreclosure cases will result in \$25.5 million in cost savings to the state. Likewise, Alvarez & Marsal found that \$8 million invested in civil legal aid to combat domestic violence will save the state \$8 million in medical costs. Thus, a combined investment of \$17.5 million in civil legal aid in these areas will yield a combined \$33.5 million in cost savings to the state or \$1.91 on every dollar invested.

<sup>37</sup> Since that time, MLAC-funded civil legal aid programs have lost 36% of their attorneys resulting in a 25% drop in cases closed for clients from 2008 to 2013, the last year for which there are complete figures. The decline in cases closed would be even greater if programs had not shifted to handling cases that can be resolved more quickly to serve more clients at the expense of more complete representation. Additionally, the remaining staff have added to their already extensive workloads to maintain services to as many clients as possible despite the loss of over one-third of the programs' attorneys.

will more than pay for itself and bring many millions more dollars into the Commonwealth. The consultants' findings in the particular substantive areas they studied support such funding by illustrating some of the benefits generated by increased funding for civil legal aid.

In its report and based on the estimated annual cost of \$91,429 for a civil legal aid attorney, the Analysis Group found that the annual cost to represent that subset of eligible beneficiaries who are most likely to benefit from civil legal aid in housing matters is \$9.49 million. Such expenditure would have a direct impact on homelessness costs, saving the state \$25.51 million, or a net savings to the state of \$16.01 million according to the Analysis Group.

Further, Alvarez & Marsal found that an investment of \$8 million in civil legal aid directed at domestic violence matters would fund 100 civil legal aid attorneys, who on average can handle 35 full representation cases per year.<sup>38</sup> Thus, an additional 3500 victims would have the help of a lawyer in finding ways to eliminate further instances of domestic violence, which would save the state some \$8 million in various health care costs, while at the same time avoiding millions in lost productivity and other costs not borne by the state.

Finally, NERA concluded that an additional \$11 million in state funding for civil legal aid directed to recovery of federal benefits would result in recovery of \$25 million in federal benefits for low-income Massachusetts residents, and \$51 million in overall economic benefits to the state, almost a \$5 return on every dollar invested.

Thus, if \$9.5 million were to be appropriated for increased civil legal aid directed to housing matters, \$8 million directed toward domestic violence and \$11 million toward federal benefits, a total increase of approximately \$30 million would be needed. Based on the consultants' reports, this is a sound investment for the Commonwealth, with a total savings to the state of some \$34.5 million<sup>39</sup> and \$51 million in economic benefits to the state overall, while increasing dramatically access to justice for our most needy citizens.<sup>40</sup>

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<sup>38</sup> Of course, a civil legal aid attorney will not only handle an estimated 35 full representation cases of domestic violence, but will also spend most of his or her time advising and counseling hundreds of clients in more limited ways.

<sup>39</sup> This \$34.5 million in annual savings to the state is comprised of \$25.5 million saved on homelessness costs, \$8 million saved on domestic violence costs and \$1 million reimbursed to the state by the federal government.

<sup>40</sup> As noted above, civil legal aid programs assist eligible clients in many substantive areas other than the three that are described in this report. These three, though critical in the lives of clients, are not the only places where additional resources are needed. Civil legal aid programs flexibly apply their resources on the most pressing needs of clients. Thus, while a \$30 million increase in funding is warranted by the consultants' findings described in this report, low-income clients with pressing legal needs in other areas are equally deserving of access to justice.

Other states have funded civil legal aid appropriations through a mandatory add-on to annual registration fees paid by attorneys,<sup>41</sup> and by filing fee surcharges.<sup>42</sup> In fact, under the original MLAC statute, MLAC was funded by a filing fee surcharge. However, while that surcharge has continued to be collected, it now is directed to the General Fund. Restoring a dedicated filing fee surcharge would be one way to partially fund an increased appropriation. Another idea is to impose a filing fee on counterclaims. West Virginia recently instituted a \$200 fee for filing a counterclaim which is directed entirely to the funding of civil legal aid.<sup>43</sup>

## B. Other Initiatives to Address Access to Justice Needs

Increased government investment in legal services is not the complete solution to the problems identified by the Task Force. For its part, the private bar and other organizations are already partners with the state in addressing the unmet need for civil legal services. Numerous efforts are already underway and some new ideas have emerged which warrant serious consideration. This is not all about more state funding. The private sector and the state both need to increase support of civil legal aid to remedy the situation. However, even with increased pro bono service by private attorneys and implementation of many of the creative ideas of the Access to Justice Commission described below, the private bar cannot come close to meeting the pressing and urgent need for adequate civil legal aid representation.

### 1. What the Private Bar Is Doing and Can Do to Address the Unmet Need

In Massachusetts, lawyers are expected to donate at least 25 hours per year of their time to provide free legal services to persons of limited means, so-called “pro bono” legal services.<sup>44</sup> There are few other professions with such rigorous standards for volunteer charitable service.

Massachusetts attorneys have taken this expectation to heart, providing in excess of 82,000 pro bono hours through four legal aid providers alone, at a value of more than \$17.6 million in 2013.<sup>45</sup>

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<sup>41</sup> See e.g., *Lawyers to pay new fee to fund legal aid for poor*, Columbia Daily Tribune, November 9, 2013, [http://www.columbiatribune.com/news/lawyers-to-pay-new-fee-to-fund-legal-aid-for/article\\_e2ed074a-48fb-11e3-948c-10604b9ffe60.html](http://www.columbiatribune.com/news/lawyers-to-pay-new-fee-to-fund-legal-aid-for/article_e2ed074a-48fb-11e3-948c-10604b9ffe60.html).

<sup>42</sup> See Lisa Coryell, *NJ Senate OKs Court Filing Fee Hikes To Fund E-Court*, Law 360, June 25, 2012, <http://www.law360.com/articles/353453/nj-senate-oks-court-filing-fee-hikes-to-fund-e-court>.

<sup>43</sup> See Mike Mellace, *Increase in Civil Filing Fees*, The West Virginia State Bar, June 2, 2014, <http://www.wvbar.org/increase-in-civil-filing-fees/>.

<sup>44</sup> See Mass. Rules of Prof'l Conduct, R. 6.1. In fact, the trend is to ask lawyers to donate 50 hours annually. See Rule 6.1 of the New York Rules of Professional Conduct, 22 N.Y.C.R.R. 1200.

<sup>45</sup> These numbers represent a compilation of data provided by the largest civil legal pro bono providers in Massachusetts for FY13: MLAC, the Women's Bar Foundation, Volunteer Lawyers Project, and the Massachusetts

For example, in 2012, 914 attorneys provided a total of over 45,000 hours of pro bono services in coordination with MLAC-funded programs, with an estimated value of more than \$10 million. The Volunteer Lawyers Project, which is funded by the federal Legal Services Corporation not MLAC, provides legal representation in civil matters to underprivileged people in Boston through its panel of some 1,000 private attorneys who offer their services pro bono. In 2012 alone, those attorneys donated nearly 20,000 hours of their time to civil legal services for those of limited means at a value of more than \$4 million.

Thus, it is apparent that private lawyers are committed to making a major effort to meet the unmet need for civil legal services.<sup>46</sup> Moreover, these same lawyers regularly contribute millions of dollars directly to fundraising drives of agencies like Greater Boston Legal Services, and Community Legal Aid, as well as to foundations like the Boston Bar Foundation (BBF) and the Massachusetts Bar Foundation (MBF). Both the BBF and MBF also use IOLTA funds to assist civil legal aid through annual grants,<sup>47</sup> with the BBF supporting programs within the Greater Boston area and the MBF supporting programs across the state.<sup>48</sup>

Nonetheless, lawyers can always do more, and the Task Force urges an increased commitment to pro bono legal services by private attorneys. In this regard, the Task Force encourages large law firms to consider providing senior attorneys with space, overhead, and support to do pro bono work. Further, the Task Force urges consideration of the expansion of programs like the BBA Lawyer for the Day in the Boston Housing Court, perhaps to other courts.

And here it should be noted that many of the pro bono opportunities for private lawyers are supported by the civil legal aid community. Those programs train and support outside attorneys to assist low-income clients without compensation. Thus, an increase in legal aid funding will leverage significant pro bono activity by private attorneys that would not otherwise be contributed.

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Justice Project (the last three through consultation). See *Massachusetts Legal Assistance Corp.*, Fact Book FY2013 pp. 17-18 (April 2014), [http://www.mlac.org/pdf/MLAC\\_Fact\\_Book\\_FY13.pdf](http://www.mlac.org/pdf/MLAC_Fact_Book_FY13.pdf). Thus, it is limited information and does not include the tens of thousands of hours donated by private attorneys in the form of pro bono work through other channels.

<sup>46</sup> Massachusetts lawyers contributed \$1 million to civil legal aid in 2013 by way of a voluntary donation check off when paying their annual Board of Bar Overseers dues. Moreover, fees for admission of out-of-state attorneys on a pro hac vice basis in Massachusetts actions generated \$200,000 in 2013.

<sup>47</sup> Due to the drop in IOLTA funding, the total legal services grants awarded by the BBF has plummeted from \$1,955,361 in 2007 to \$825,500 in 2014. To address this huge shortfall, the BBF increased the amount of its own funds directed to civil legal aid grants from \$258,125 in 2007 to \$381,500 in 2014, such that it now funds 46.2% of its grants. Since 2009, the BBF has dedicated \$2.2 million of its own funds to legal services grants.

<sup>48</sup> These contributions totaled nearly \$8 million in FY12 consisting of more than \$6 million in private and law firm donations and \$1.9 million in bar foundation grants. See *Massachusetts Legal Assistance Corp.*, Fact Book FY2012 pp. 8-9 (April 2013), [http://www.mlac.org/pdf/MLAC\\_Fact\\_Book\\_FY12.pdf](http://www.mlac.org/pdf/MLAC_Fact_Book_FY12.pdf).

## **2. The Massachusetts Access to Justice Commission**

This commission, created by the Supreme Judicial Court in 2005, has been pursuing the goal of achieving equal justice for all persons in the Commonwealth. It pursues its mission by striving to (1) strengthen the civil legal services community in providing legal services for those unable to afford counsel; (2) enlarge the number of attorneys who provide pro bono legal services to those of limited means; (3) improve the ability of self-represented litigants to present their claims in court; (4) coordinate efforts of a broad network of organizations to improve access to justice by sharing information and best practices; and (5) recommending reforms and initiatives. Some of the strategies, objectives and goals for the Commission in 2013 included:

- A campaign to recruit categories of attorneys to perform pro bono work who traditionally have not done so.
- Support of Court Services Centers which provide assistance to self-represented litigants.
- Increasing attorneys' fee revenues from claims pursued by civil legal aid attorneys in cases where fee awards are available.
- Examining ways to increase IOLTA funding.
- Enhancement of the Access to Justice Fellows Program through which retired lawyers perform pro bono services at legal aid providers.
- Coordination of the access to justice community's efforts, thereby increasing the effectiveness of the delivery system statewide.

Equally important, the Commission has thoughtfully considered, and is energetically promoting, numerous additional projects and programs to advance access to justice to low-income persons in Massachusetts, many of which involve the private bar.

## **3. Bar Programs Directed at Low-Income People with Legal Problems**

Most of the bar associations in our state work diligently to create opportunities for their members to improve access to justice and engage in pro bono work.

The Boston Bar Association (BBA) plays an active role in engaging attorneys and facilitating their assistance to those in need of civil legal aid. It is estimated that over 1,200 volunteers have assisted over 15,500 individuals through the BBA Lawyer for the Day in the Boston Housing Court Program. The BBA is currently exploring pilot programs in other courts. The BBA also runs a Marathon Assistance Project where BBA volunteer attorneys have helped small business owners and individuals with a variety of legal matters that arose from the tragic Marathon bombings in 2013. In addition, the BBA runs a dedicated intake line to connect military personnel and their families to pro bono and low fee attorneys. The dedicated line has had over

1,000 calls since it began in 2011. Lastly, since September 2013, the BBA has trained 619 new volunteers through 23 training programs to take pro bono cases.

The Massachusetts Bar Association (MBA) runs various service programs to facilitate assistance provided by MBA volunteer attorneys to those in need.<sup>49</sup> The MBA Marathon Bombing Victims Legal Assistance Program provided victims of the Boston Marathon bombing with pro bono legal assistance in areas such as One Fund applications, medical bills, employment and housing matters, and other collateral issues through the work of 87 volunteers in 2013. The MBA provided volunteer attorneys with information and training, and continues to facilitate this program. In addition, the MBA runs a Dial-A-Lawyer service, providing free legal advice each month via phone with an emphasis on serving individuals who do not qualify for free legal services or cannot afford a lawyer. Finally, the MBA recently started its “12 for 12” program asking 12,000 lawyers across the Commonwealth to ask 12 of their clients to call or email their legislators to voice their support for increased funding for the courts and legal aid programs.

The various county bar associations also very effectively engage their members. Many of the county associations have local Lawyer for the Day programs, conciliation programs, and direct service programs. The county bars have shown an exceptional ability to involve almost their entire memberships in their pro bono efforts.

#### **4. Task Force Ideas for Additional Solutions**

In the course of Task Force discussions, a number of additional ways to provide civil legal aid for low-income residents were identified. Some are being pursued by the Access to Justice Commission, as discussed above. In addition, the Task Force discussed the following ideas and concepts, some of which were recommended by judges in the Judges’ Survey:

- Explore the feasibility of continuing the HomeCorps program, implemented by the Office of the Attorney General, beyond August of 2015 when current funding ends. This program has successfully provided legal services to distressed borrowers to avoid foreclosure and loss of their homes. Utilizing funds stemming from the recent nationwide state-federal settlement over unlawful foreclosures, the HomeCorps Borrower Representation Initiative has provided direct legal representation to distressed borrowers, with the goals of resolving legal issues which prevent loan modification, blocking unlawful foreclosures and pursuing other potential claims. Attorneys at civil legal aid agencies across the state are funded by the HomeCorps program to provide these legal services at no charge to qualifying borrowers.

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<sup>49</sup> See *Public and Community Services*, Massachusetts Bar Association, <http://www.massbar.org/for-the-public> (last visited October 8, 2014).

- Explore the feasibility of establishing or expanding law school clinical and/or incubator style programs. Much attention has focused recently on the so-called “justice gap” between unemployed or underemployed recent law school graduates and individuals of modest means who do not qualify for civil legal aid, but need a lawyer at affordable rates. Many cannot understand why a connection cannot be made between these two groups. So-called “incubator” programs seek to bridge that gap. The proposals vary by institution, but essentially the idea is to provide office space, resources and client referrals to new attorneys to provide reduced-fee legal services to clients of modest means, as well as mentoring and training to those new attorneys.
- Encourage the expansion of limited assistance representation to more courts.<sup>50</sup>
- Expand the Court Service Center programs to more locations and provide online self-help materials in multiple language and media.
- Explore ways to increase the availability of funded fellowships for new lawyers to provide legal assistance.

These ideas all address access to justice issues and merit further discussion and possible implementation. Nonetheless, the ideas are not a substitute for a significant increase in civil legal aid, which is the cornerstone to ensuring meaningful access to justice and a smart financial investment for the Commonwealth as well.

## **XI. CONCLUSION**

In this report, the Task Force has identified ways in which civil legal aid to our most needy citizens can be expanded, focusing primarily on increased state funding. We make the case that increased state funding will actually save the state money, while increasing the flow of federal benefits to state residents. However, it is important not to lose sight of the fact that when two-thirds of those who seek legal aid are denied a lawyer, they are foreclosed from true and meaningful access to justice to which we all are entitled. The words of Justice Black in *Gideon v. Wainright*, 372 U.S. 335 (1963), ring true today in civil matters where life essentials are at stake: “reason and reflection require us to recognize that in our adversary system of . . . justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Expanding civil legal aid assures basic fairness and justice for a portion of our citizenry which is far too often left to fend for themselves in our adversary system of justice. Expanding civil legal aid is not only a good investment, it is the right thing to do.

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<sup>50</sup> Limited Assistance Representation (LAR) is when an attorney represents or assists a litigant with part, but not all, of his or her legal matter. The attorney and litigant enter into a detailed agreement defining what tasks the attorney will be responsible for and what tasks the litigant will be responsible for.

# **Appendix A**

### Turn-Away Percentage by Region

Practice Area	Total Percentage Turned Away	STATEWIDE PROGRAMS Percentage Turned Away	EASTERN MA PROGRAMS Percentage Turned Away	NORTHEAST MA PROGRAMS Percentage Turned Away	CENTRAL/WEST MA PROGRAMS Percentage Turned Away	SOUTHERN MA PROGRAMS Percentage Turned Away
CONSUMER (INCLUDING BANKRUPTCY AND DEBT RELIEF)	70%	N/A	65%	55%	93%	55%
EDUCATION	40%	59%	70%	14%	97%	N/A
EMPLOYMENT (INCLUDING, E.G., WAGE AND HOUR, FAMILY MEDICAL LEAVE ACT, AND DISCRIMINATION; DOES NOT INCLUDE UNEMPLOYMENT)	74%	95%	67%	N/A	91%	79%
FAMILY MATTERS (INCLUDING DOMESTIC VIOLENCE, CHILDREN, GUARDIANSHIP)	80%	N/A	84%	78%	69%	72%
HEALTHCARE	40%	93%	39%	37%	14%	15%
HOUSING (INCLUDING EVICTIONS, FORECLOSURES, EMERGENCY ASSISTANCE SHELTER, AND HOMELESSNESS)	56%	89%	64%	43%	48%	12%
IMMIGRATION	52%	N/A	53%	78%	52%	4%
INCOME (INCLUDING VETERANS, WAGE, DISABILITY, UNEMPLOYMENT, AND OTHER GOVERNMENT BENEFITS: SSI/SSDI, DTA, SNAP)	50%	73%	59%	48%	34%	20%
OTHER (INCLUDING WILLS AND ESTATES)	63%	81%	56%	59%	85%	50%
Total	64%	87%	67%	58%	60%	41%

The above table shows the percentage of cases that are turned away, both in total and broken down by region. Some programs serve clients statewide (and these are presented in their own column), while others serve only populations within one of four regions of the state. The breakdown of service providers is further detailed below on this page.

The percentages were calculated, in each instance, by dividing the number of cases turned away over the course of a year (as calculated on page 41) by the total of that same number plus the number of cases handled in a single year (as shown on page 40). Take, for example, the figure in the top left of the table above, showing that 70% of all consumer cases were turned away. Page 41 shows our estimate that 3,195 such cases are turned away in a year, and page 40 shows that 1,364 were taken on.  $3,195/(3,195+1,364)=.70$ , or 70%.

Boxes marked N/A indicate that either there were no cases turned away or no cases served in these areas.

Program Regional Breakdown:

Region	Program(s)
Statewide Programs	Disability Law Center, Legal Advocacy and Resource Center (this organization does intake both for some statewide and eastern region, hence they are listed in both places. However, in the calculations the total number of cases was subdivided by region), Massachusetts Advocates for Children, Center for Public Representation
Eastern Region	Community Legal Services and Counseling Center, Greater Boston Legal Services, Legal Advocacy and Resource Center, MetroWest Legal Services
Northeastern Region	Children's Law Center of Massachusetts, Merrimack Valley Legal Services, Neighborhood Legal Services
Central/West Region	Community Legal Aid
Southern Region	South Coast Legal Services

## Areas of Service Survey Results

Practice Area	Legal Advocacy and Resource Center	Disability Law Center	Mass Advocates for Children	Center for Public Representation	Community Legal Services and Counseling Center	MetroWest Legal Services	Greater Boston Legal Services	Volunteer Lawyers Project*	Neighborhood Legal Services	Children's Law Center of Massachusetts	Merrimack Valley Legal Services, Inc.	Community Legal Aid	South Coast Legal Services All Cases	Total
CONSUMER (INCLUDING BANKRUPTCY AND DEBT RELIEF)					255	255	91	131	1	121	91	419		1,364
EDUCATION		147	86		62	32			862		6	108		1,303
EMPLOYMENT (INCLUDING, E.G., WAGE AND HOUR, FAMILY MEDICAL LEAVE ACT, AND DISCRIMINATION; DOES NOT INCLUDE UNEMPLOYMENT)		45			3	1,249	7				42	14		1,360
FAMILY MATTERS (INCLUDING DOMESTIC VIOLENCE, CHILDREN, GUARDIANSHIP)	17				288	344	1,451	231	285	140	395	1,290	999	5,440
HEALTHCARE		23			234	680		10	15	5	334	198		1,499
HOUSING (INCLUDING EVICTIONS, FORECLOSURES, EMERGENCY ASSISTANCE SHELTER, AND HOMELESSNESS)		128			96	583	3,847	106	793	13	392	1,601	1,687	9,246
IMMIGRATION					445	131	2,259		55	24	1	400	374	3,689
INCOME (INCLUDING VETERANS, WAGE, DISABILITY, UNEMPLOYMENT, AND OTHER GOVERNMENT BENEFITS: SSI/SSDI, DTA, SNAP)		25		100		250	1,949	41	290	8	119	1,244	881	4,907
OTHER (INCLUDING WILLS AND ESTATES)		194			100	139	927		14	239	17	82	282	1,994
Total	17	562	86	100	929	2,001	12,649	476	1,578	1,302	1,050	5,090	4,962	30,802

The above table shows the number of cases handled in a single year by legal services providers grouped by practice area of service.

\*This is the only table that includes statistics for the Volunteer Lawyers Project (VLP). VLP largely works to facilitate pro bono service by volunteer attorneys. However, it also employs some staff attorneys who handle certain cases and provide partial representation as well as brief advice services. Due to this unique make-up, VLP staff attorneys only provide legal services and do not turn away potential clients. However, many of their cases come from the Legal Advocacy and Resource Center, which screens the cases on their behalf, effectively turning away clients they are unable to take on. Both because these turn-aways are already part of our calculation of total turn-aways, and in an effort to be conservative with our estimates of turn-away percentages, we have included cases handled by VLP staff.

## Turn-Away Survey Results

Practice Area	Legal Advocacy and Resource Center	Disability Law Center	Mass Advocates for Children	Center for Public Representation	Community Legal Services and Counseling Center	MetroWest Legal Services	Greater Boston Legal Services	Neighborhood Legal Services	Children's Law Center of Massachusetts	Merrimack Valley Legal Services, Inc.	Community Legal Aid	South Coast Legal Services	Total
CONSUMER (INCLUDING BANKRUPTCY AND DEBT RELIEF)	16				1	7	47	11		7	65	30	184
EDUCATION	1	14	5				12		8		11		51
EMPLOYMENT (INCLUDING, E.G., WAGE AND HOUR, FAMILY MEDICAL LEAVE ACT, AND DISCRIMINATION; DOES NOT INCLUDE UNEMPLOYMENT)	30	40			1	8	119			3	24	3	228
FAMILY MATTERS (including domestic violence cases from 1st 2 weeks)	55	3			1	7	98	19	4	3	54	35	279
Non-Domestic Violence Family Matters (3 <sup>rd</sup> week only)	40	1				12	110	14	3	9	22	23	234
Domestic Violence Family Matters (3 <sup>rd</sup> week only)	10					1	0	1		15	7		34
HEALTHCARE	6	13		2		7	23			1	3	2	57
HOUSING (INCLUDING EVICTIONS, FORECLOSURES, EMERGENCY ASSISTANCE SHELTER, AND HOMELESSNESS)	232	3		1		19	276	40		12	85	13	681
IMMIGRATION	2				33	8	144	12	2	2	25	1	229
INCOME (INCLUDING VETERANS, WAGE, DISABILITY, UNEMPLOYMENT, AND OTHER GOVERNMENT BENEFITS: SSI/SSDI, DTA, SNAP)	65	3			1	9	130	21		1	37	13	280
OTHER (INCLUDING WILLS AND ESTATES)	43	36		1		5	48	18	1	3	26	16	197
Total	500	113	5	4	37	83	1007	136	18	56	359	136	2454

The above table shows the number of cases turned away by legal services providers over three single week periods, with the exception of Family Matters. The Family Matters row shows cases turned away for two single week periods. The non-domestic violence and domestic violence family law rows show results for a single week. The surveys asked for a recording of clients turned away who were eligible but unable to be served – meaning that the turned away applicant was financially eligible for representation and the case presented was not: (a) eligible for court appointed representation, (b) being referred to another LSC or MLAC-funded legal services program, or (c) being referred to an organization not funded by either MLAC or LSC that would provide full representation for the client.

**Turn-Away Survey Results Normalized to One-Year**

Practice Area	Normalized Statewide Total	Normalized East Region Totals	Normalized North East Totals	Normalized Central West	Normalized South Coast	Normalized Totals
CONSUMER (INCLUDING BANKRUPTCY AND DEBT RELIEF)	104	1,126	313	1,130	522	3,195
EDUCATION	330	222	139	191	-	883
EMPLOYMENT (INCLUDING, E.G., WAGE AND HOUR, FAMILY MEDICAL LEAVE ACT, AND DISCRIMINATION; DOES NOT INCLUDE UNEMPLOYMENT)	922	2,513	52	417	52	3,956
FAMILY MATTERS (including domestic violence cases from 1st 2 weeks)	442	3,829	676	1,404	910	7,261
Non-Domestic Violence Family Matters (3 <sup>rd</sup> week only)	572	7,904	1,352	1,144	1,196	12,168
Domestic Violence Family Matters (3 <sup>rd</sup> week only)	156	416	832	364	-	1,768
HEALTHCARE	296	591	17	52	35	991
HOUSING (INCLUDING EVICTIONS, FORECLOSURES, EMERGENCY ASSISTANCE SHELTER, AND HOMELESSNESS)	1,078	8,156	904	1,478	226	11,843
IMMIGRATION	-	3,252	278	435	17	3,982
INCOME (INCLUDING VETERANS, WAGE, DISABILITY, UNEMPLOYMENT, AND OTHER GOVERNMENT BENEFITS: SSI/SSDI, DTA, SNAP)	330	3,287	383	643	226	4,869
OTHER (INCLUDING WILLS AND ESTATES)	835	1,478	383	452	278	3,426
Total	5,065	32,774	5,329	7,712	3,462	54,342

The above table is a regional breakdown of the turn-away survey results, grouped by practice area and region and normalized to one year. See Appendix A, page 43, for the non-normalized turn-away survey results. Generally, because the surveys were distributed over three, single-week periods, the page 43 results were multiplied by 17.39, the equivalent of 1/3 of a year. However, because the turn-away survey was changed for the third distribution to break out the number of domestic violence related family law cases, the “Family Matters” row contains results from the first two single-week surveys multiplied by 26, while the following two rows detailing domestic violence and non-domestic violence turn-away information multiplied by 52.

Because of the multiplication by non-whole numbers, some of the individual numbers, which were rounded off for ease of reading this table, do not add up to the normalized total. The totals are all correct.

## **BBA Statewide Task Force to Expand Civil Legal Aid in Massachusetts Areas of Service Survey**

*This survey was distributed to legal service providers one time and asked for service numbers by area of practice for an entire year.*

### **Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts Civil Legal Aid Areas of Service Survey**

Name of Organization \_\_\_\_\_ Address\_\_\_\_\_

Executive Director \_\_\_\_\_

Contact Person \_\_\_\_\_ Title of Contact Person\_\_\_\_\_

Contact Number \_\_\_\_\_ Fax Number \_\_\_\_\_ Email Address \_\_\_\_\_

Please check the region of Massachusetts that best describes your organization's service area:

Statewide\_\_\_\_ Eastern\_\_\_\_ Northeastern\_\_\_\_ Southeastern\_\_\_\_ Central/Western\_\_\_\_

CASES<sup>1</sup> HANDLED IN FISCAL YEAR: FROM \_\_\_\_\_ TO \_\_\_\_\_  
(mm/dd/year) (mm/dd/year)

A. If your organization provided "direct legal assistance" please indicate the number of clients served.

---

<sup>1</sup> Case definition: A case is a client's distinct legal problem or set of closely related legal problems and the legal activities or processes used in resolving those problems.

- Only services provided to clients who are eligible for and have been accepted for legal assistance through a program's intake system or other procedure for verifying case and client eligibility may be considered a case.
- Programs may not report the referral of an eligible applicant as a case when the referral is the only form of assistance that the applicant receives from the program.
- A client with two or more closely related legal problems is considered as presenting a single case if all of the problems will be resolved through a single legal process or forum.
- Once a case is reported to MLAC as closed, it counts as a single case. If a client returns for additional case services in subsequent years, the program may report the additional services as a separate case at that time.
- Report all case services that involve direct legal assistance to Massachusetts clients, not just the services funded by MLAC.
- A Massachusetts client is someone who is living in, or receiving assistance with his or her individual case in, Massachusetts.

LEGAL SERVICES	CASES CLOSED	PEOPLE BENEFITTED
<b>CONSUMER</b> (BANKRUPTCY AND DEBT RELIEF)		
<b>EDUCATION</b>		
<b>FAMILY MATTERS</b> (DOMESTIC VIOLENCE, CHILDREN, GUARDIANSHIP, AND FAMILY STABILITY)		
<b>HEALTHCARE</b>		
<b>HOUSING</b> (EVICTIONS, FORECLOSURES, EA SHELTER, AND HOMELESSNESS)		
<b>IMMIGRATION</b>		
<b>INCOME</b> (WAGE, DISABILITY, AND OTHER GOVERNMENT BENEFITS)		
<b>OTHER</b> (SPECIFY SUBSTANTIVE AREAS): OTHER INCLUDES: WILLS AND ESTATES		

Total		

- B. If your organization provided “other legal assistance”<sup>2</sup> to clients as a result of IOLTA and/or Other Funding from MLAC, BBF, MBF or LSC, please indicate the legal services provided.

OTHER LEGAL ASSISTANCE	PEOPLE SERVED	PEOPLE BENEFITTED
CONSUMER (BANKRUPTCY AND DEBT RELIEF)		
EDUCATION		
FAMILY MATTERS (DOMESTIC VIOLENCE, CHILDREN, GUARDIANSHIP, AND FAMILY STABILITY)		
HEALTHCARE		
HOUSING (EVICTIONS, FORECLOSURES, EA SHELTER, AND HOMELESSNESS)		

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<sup>2</sup> “Other legal assistance” includes: presentations, workshops, legal trainings to non-legal services groups, legal clinics, legal hotlines, referrals, written material distribution, and other similar non-case forms of legal aid.

<b>IMMIGRATION</b>		
<b>INCOME (WAGE, DISABILITY, AND OTHER GOVERNMENT BENEFITS)</b>		
<b>OTHER (SPECIFY SUBSTANTIVE AREAS): OTHER INCLUDES: WILLS AND ESTATES</b>		
	<b>Total</b>	

## **BBA Statewide Task Force to Expand Civil Legal Aid in Massachusetts Turn-Away Survey**

*This survey was distributed to legal services providers for completion over three single-week periods: once during the week of November 12-18, 2013, again during the week of December 16-20, 2013, and finally during the week of March 17-21, 2014. The March survey (shown here) differed from that sent out the prior two weeks by breaking out the “Family Matters” row into domestic violence and non-domestic violence categories and including the intakes accepted for service column.*

### **Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts**

#### **Civil Legal Aid Turn Away and Intake Survey**

*The Boston Bar Association’s Statewide Task Force to Expand Civil Legal Aid in Massachusetts, comprised of many leaders in the Massachusetts legal community, is working to quantify and find cost effective ways to meet the need for civil legal aid across the state. New York State implemented a similar program with great success. The goal of this survey is to educate the task force about the number and practice areas of cases the legal services community is unable to serve.*

#### **Instructions:**

This survey is adapted from surveys conducted by the Legal Services Corporation in 2004 and Massachusetts Legal Assistance Corporation in 2006.

The matrix below can be used by those answering intake calls to count those whom the program was unable to serve and the number of case intakes during the same period. The Statewide Task Force to Expand Civil Legal Aid in Massachusetts is asking for the totals collected in each category for the program during one week. This means that one form should be completed for each of the weeks specified below.

**Please note that this survey differs from the previous ones you may have completed in the following ways:**

- It asks for case intakes during the same time period
- Family Law is broken down into Family Law Domestic Violence and Non-Domestic Violence categories

Please complete separate forms for the week of **XXX-XXX**. On the following pages you will find definitions for the titles of each column in the matrix.

Program: \_\_\_\_\_

Time period: \_\_\_\_\_

	<b>Eligible and Unable to Serve (includes certain referrals. See notes on following page)</b>	<b>Intakes Accepted for Service</b>
<b>CONSUMER (INCLUDING BANKRUPTCY AND DEBT RELIEF)</b>		
<b>EDUCATION</b>		
<b>EMPLOYMENT (INCLUDING, E.G., WAGE AND HOUR, FAMILY MEDICAL LEAVE ACT, AND DISCRIMINATION; DOES NOT INCLUDE UNEMPLOYMENT)</b>		
<b>NON-DOMESTIC VIOLENCE FAMILY MATTERS (INCLUDING CHILDREN, GUARDIANSHIP)</b>		
<b>DOMESTIC VIOLENCE FAMILY MATTERS (INCLUDING CHILDREN, GUARDIANSHIP)</b>		
<b>HEALTHCARE</b>		
<b>HOUSING (INCLUDING EVICTIONS, FORECLOSURES, EMERGENCY ASSISTANCE SHELTER, AND HOMELESSNESS)</b>		
<b>IMMIGRATION</b>		
<b>INCOME (INCLUDING VETERANS, WAGE, DISABILITY, UNEMPLOYMENT, AND OTHER GOVERNMENT BENEFITS: SSI/SSDI, DTA, SNAP)</b>		

<b>OTHER (SPECIFY SUBSTANTIVE AREAS): OTHER INCLUDES: WILLS AND ESTATES</b>		
<b>Total</b>		

**Eligible and Unable to Serve.** When an applicant is rejected at intake, count the applicant as “unable to serve” where:

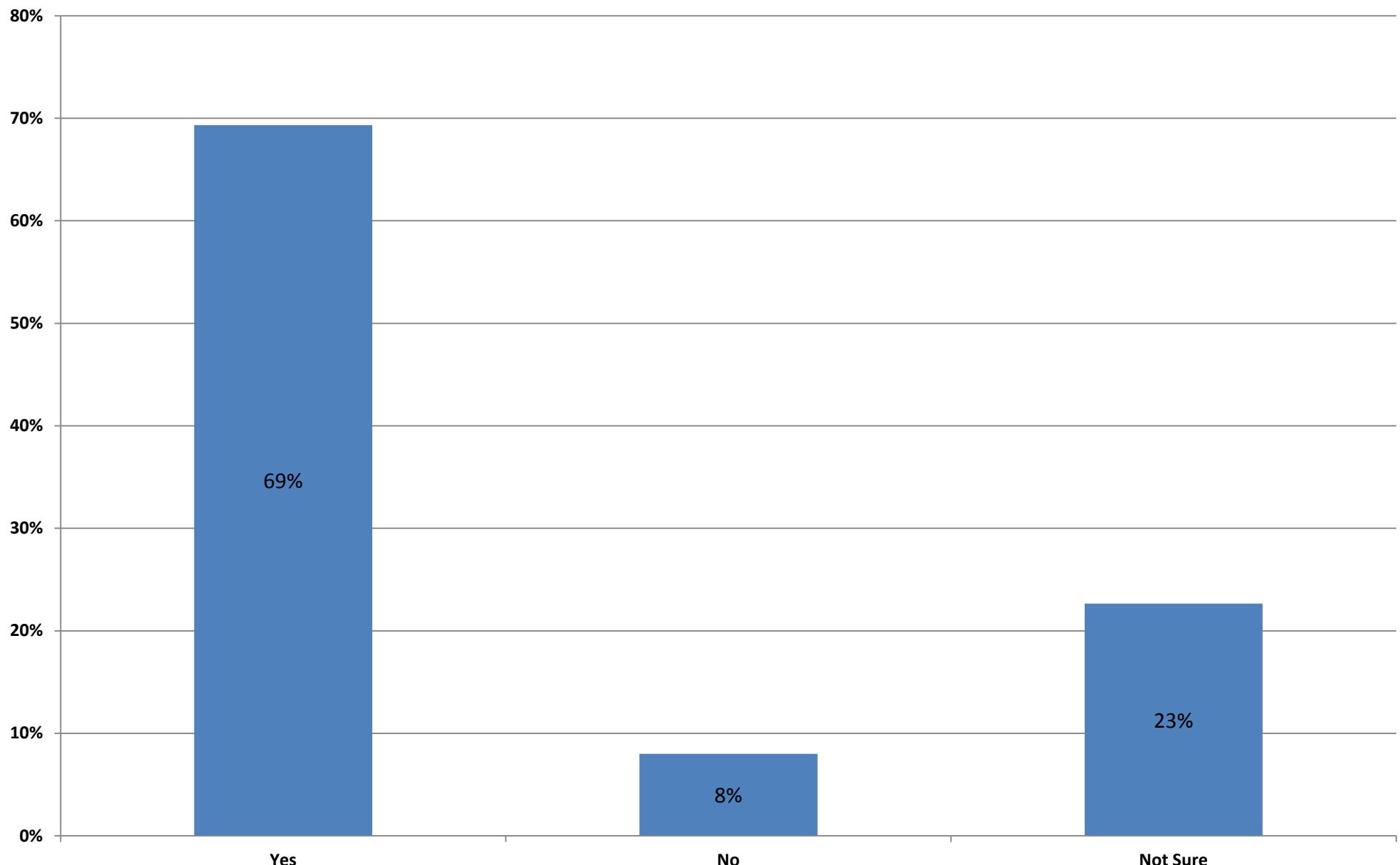
- The applicant is financially eligible for representation and
- The case presented was **not**:
  - (a) eligible for court appointed representation (i.e. criminal, DSS child removal or mental health commitment), or
  - (b) being referred to another LSC or MLAC-funded legal services program (whether or not that program can be expected to provide services - this will avoid double counting), or
  - (c) being referred to an organization not funded by either MLAC or LSC that will provide full representation for the client.<sup>3</sup>

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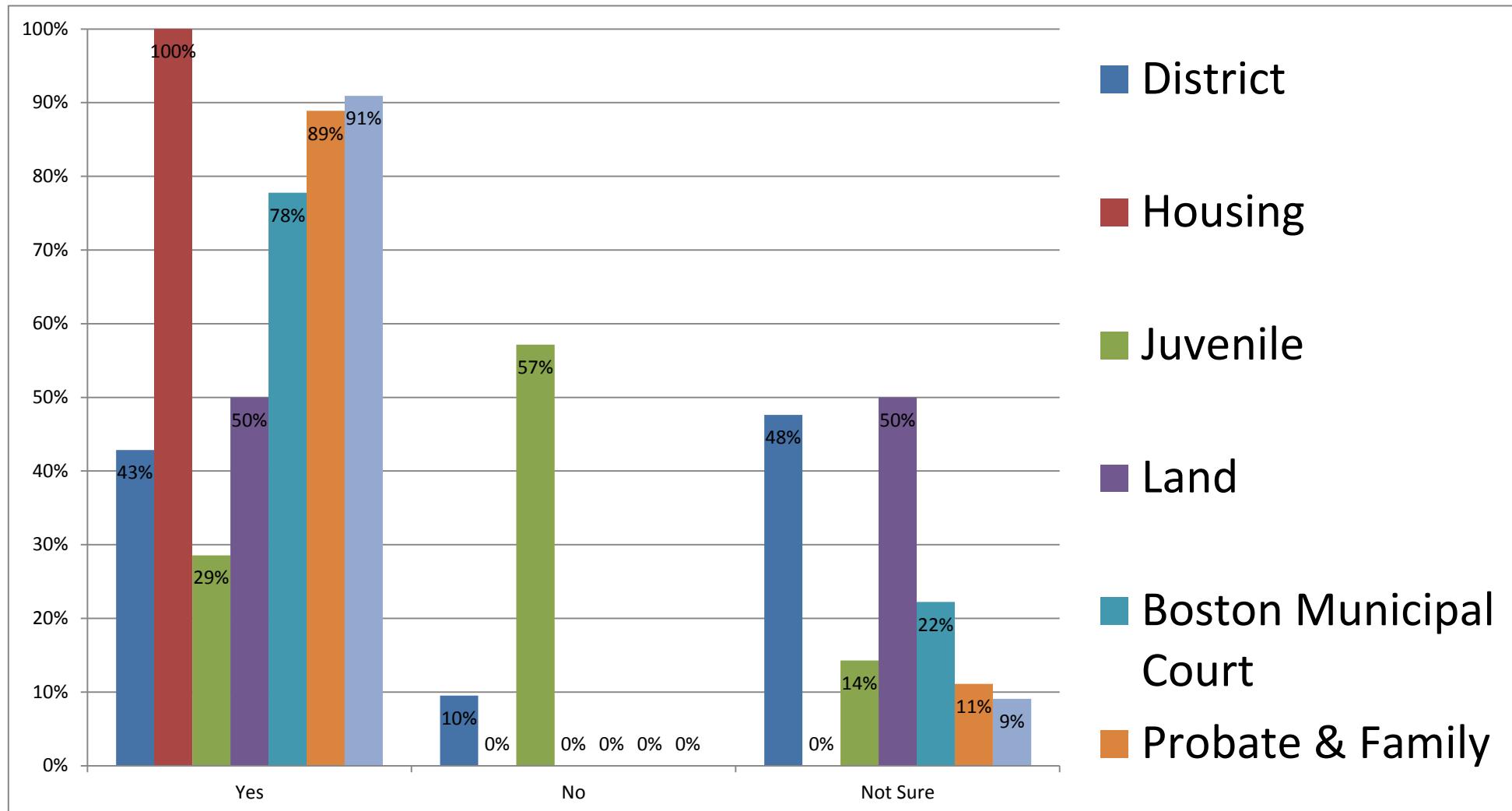
<sup>3</sup> No program can ever be sure that another program will accept a case. We are asking that you not count as “unable to serve” those cases that you expect will receive extended representation from another program. If, for example, you are referring a case to a private bar program that routinely handles cases of the type presented by the applicant, don’t count that case as “unable to serve.” If, however, the organization you are referring the case to may or may not take the case, count it as “unable to serve.” In reporting on the results, BBA will make it clear that the possibility that some applicants may receive services is a source of possible over-count.

# **Appendix B**

**Question 1: In the past few years, has there been an increase in cases commenced by unrepresented parties?**

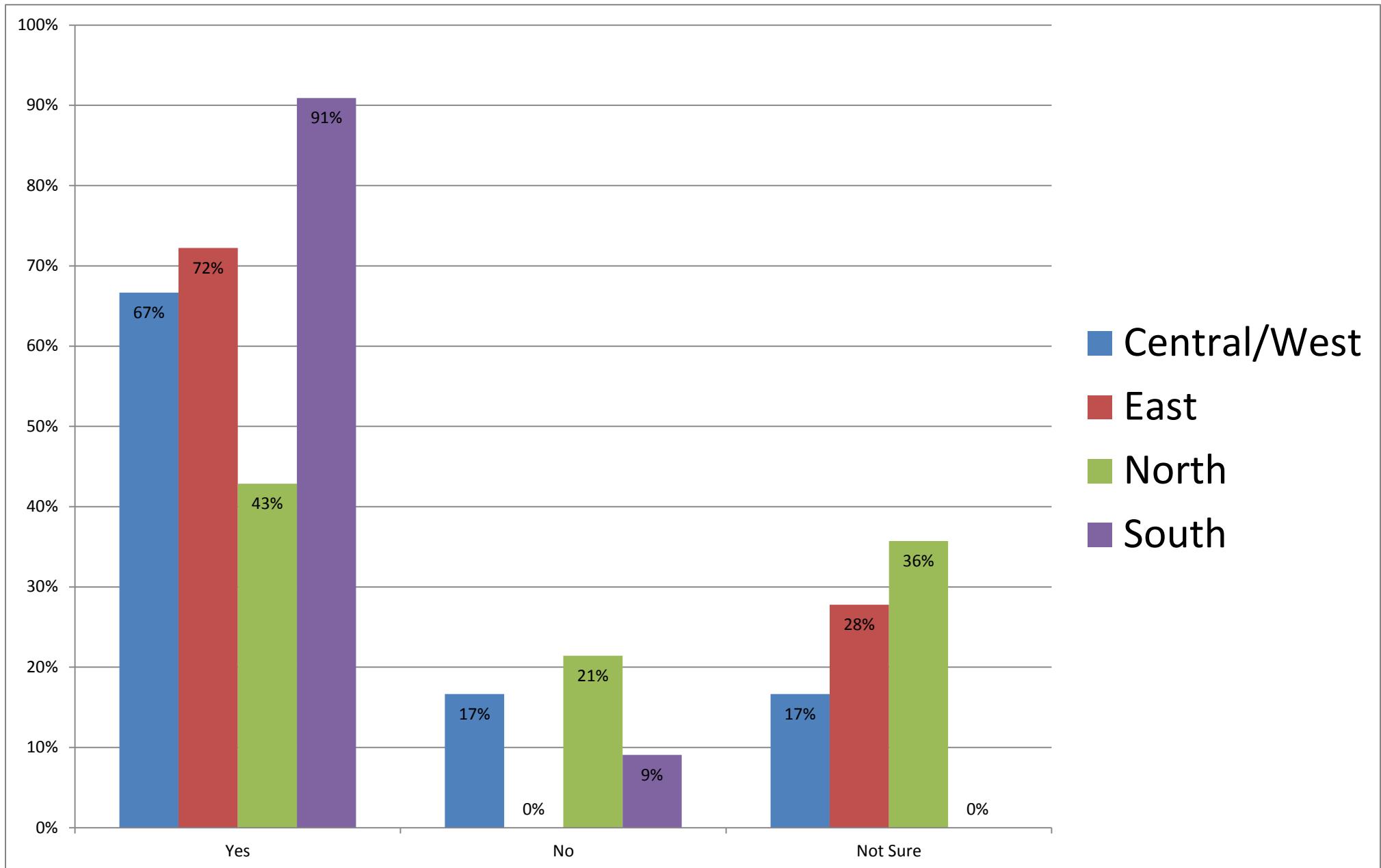


**Question 1: In the past few years, has there been an increase in cases commenced by unrepresented parties?**  
**(Answers grouped by court)**

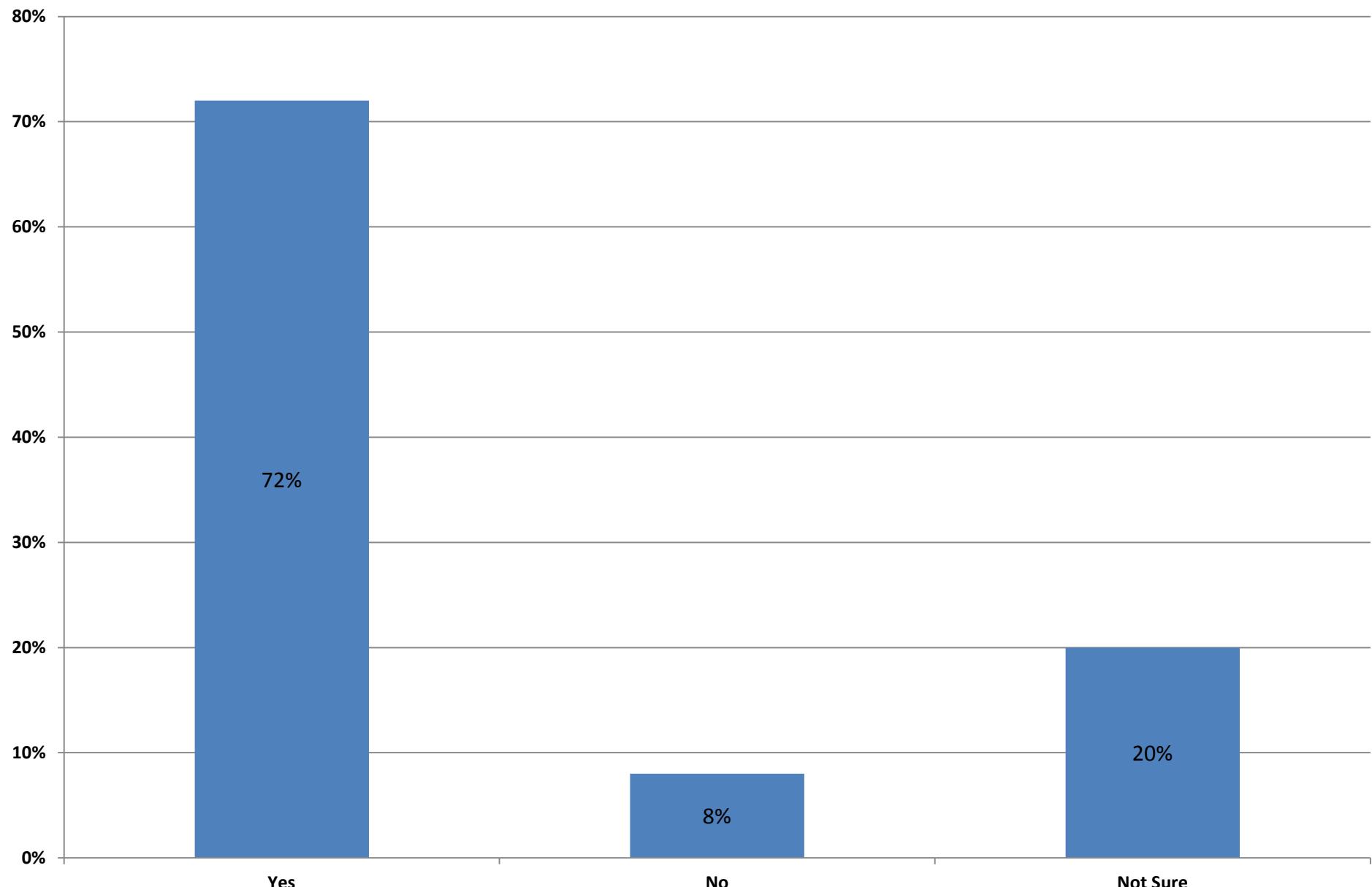


Note that Juvenile Court judges are less likely to have witnessed an increase in cases commenced by unrepresented parties, because juveniles are much more likely to have appointed counsel, even in civil proceedings, than litigants in other courts.

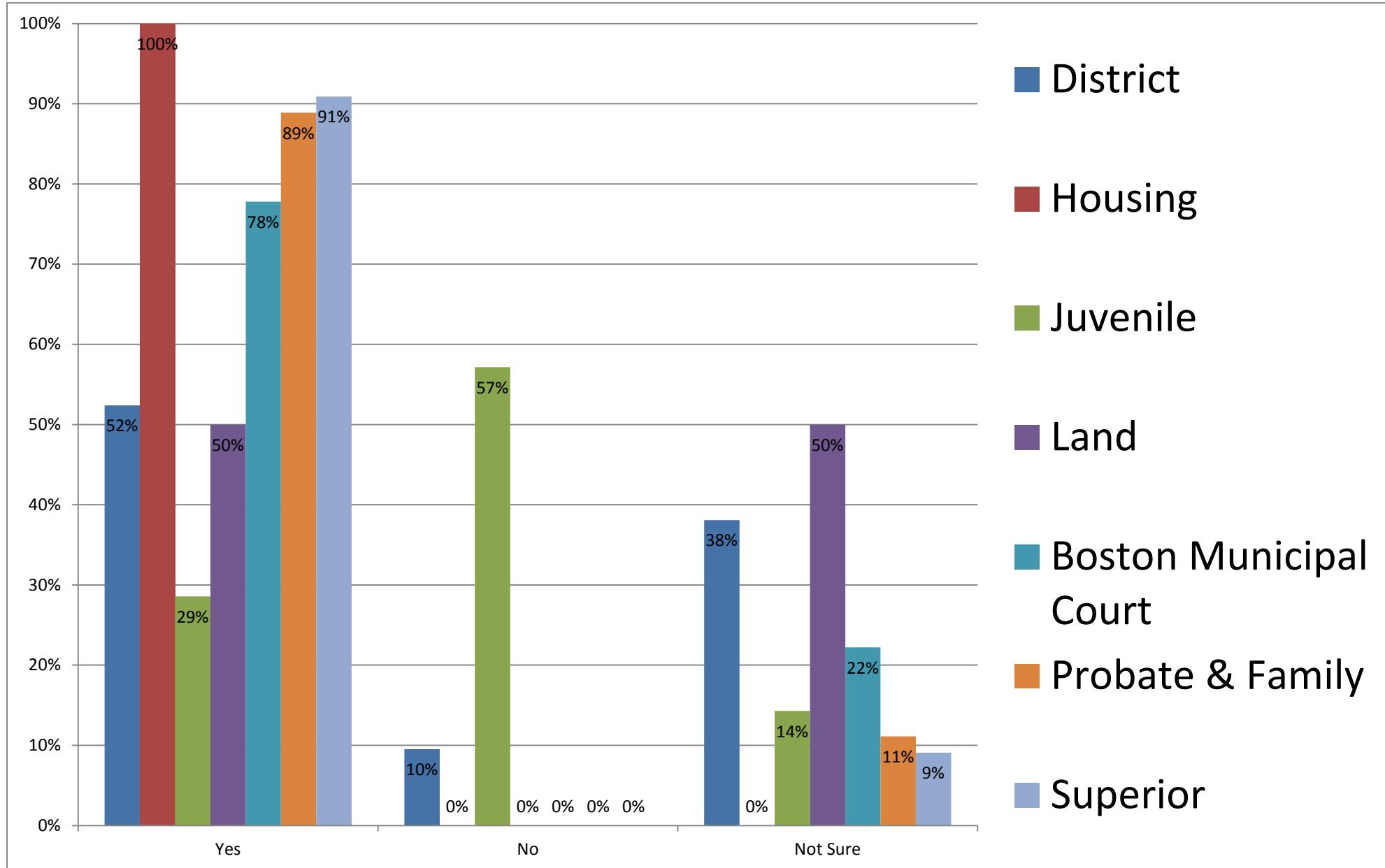
**Question 1: In the past few years, has there been an increase in cases commenced by unrepresented parties?**  
**(Answers grouped by region)**



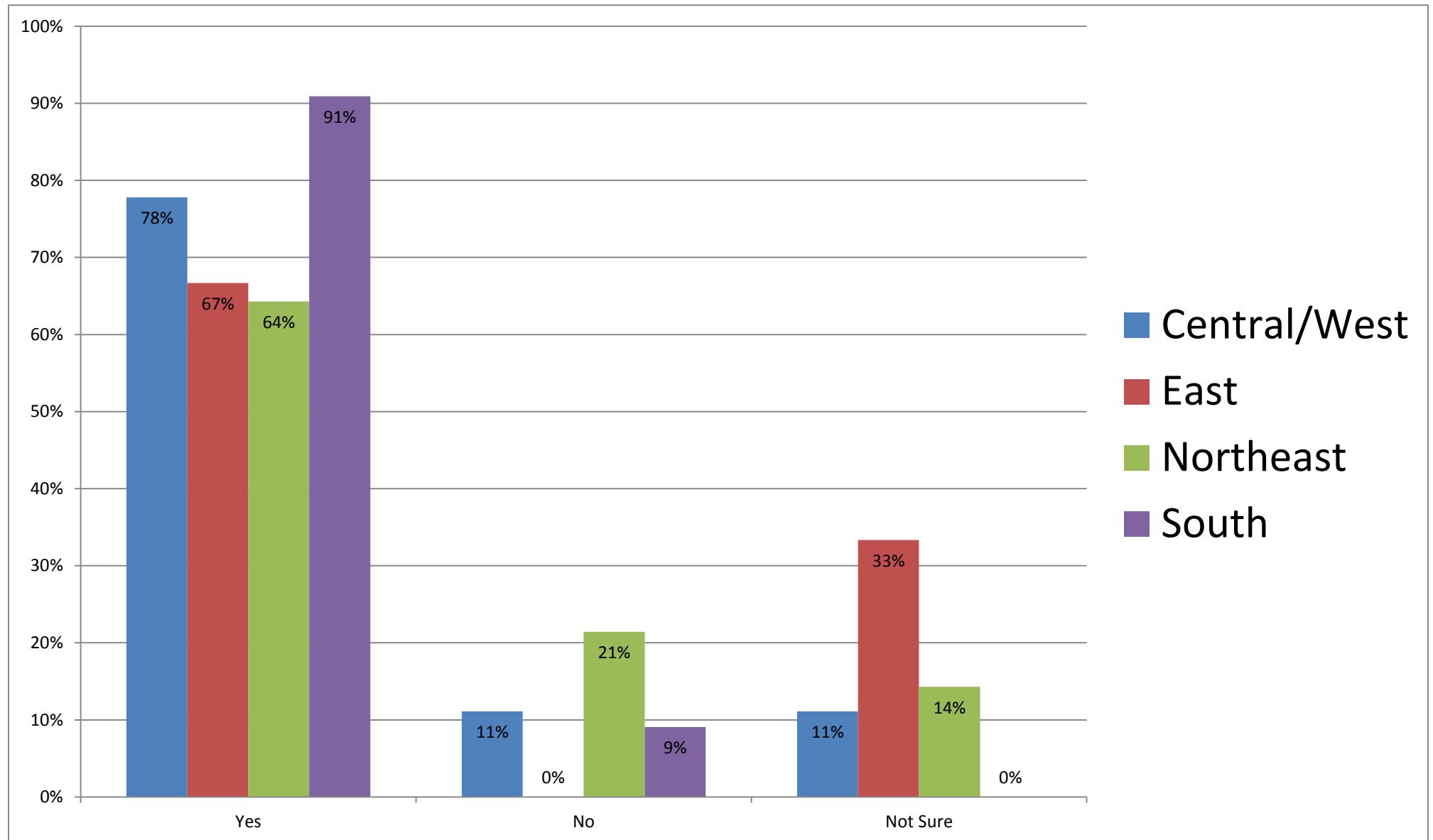
**Question 2: In the past few years, has there been an increase in cases in which the defendant/respondent is unrepresented?**



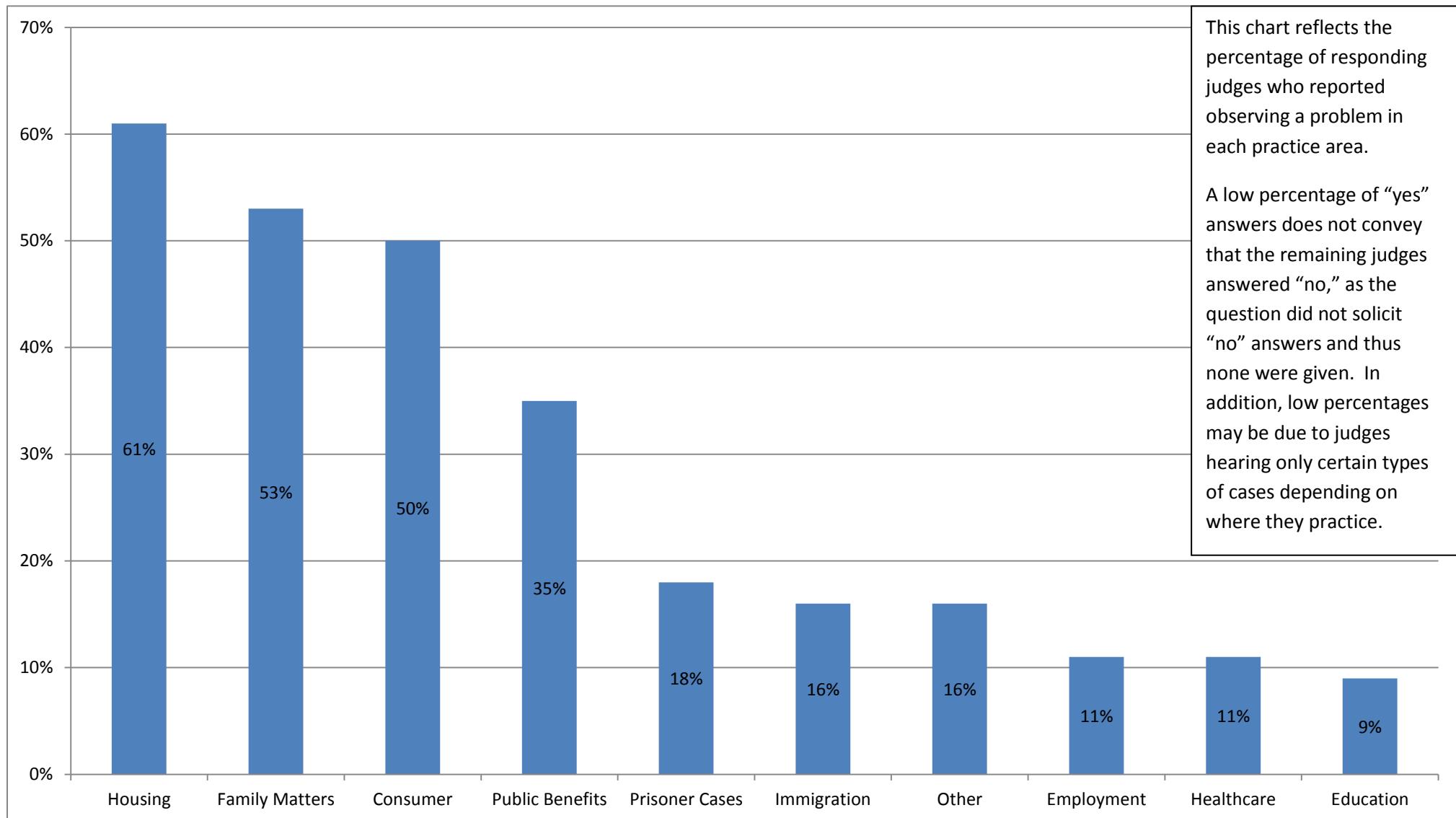
**Question 2: In the past few years, has there been an increase in cases in which the defendant/respondent is unrepresented?**  
**(Answers grouped by court)**



**Question 2: In the past few years, has there been an increase in cases in which the defendant/respondent is unrepresented?**  
**( Answers grouped by region)**

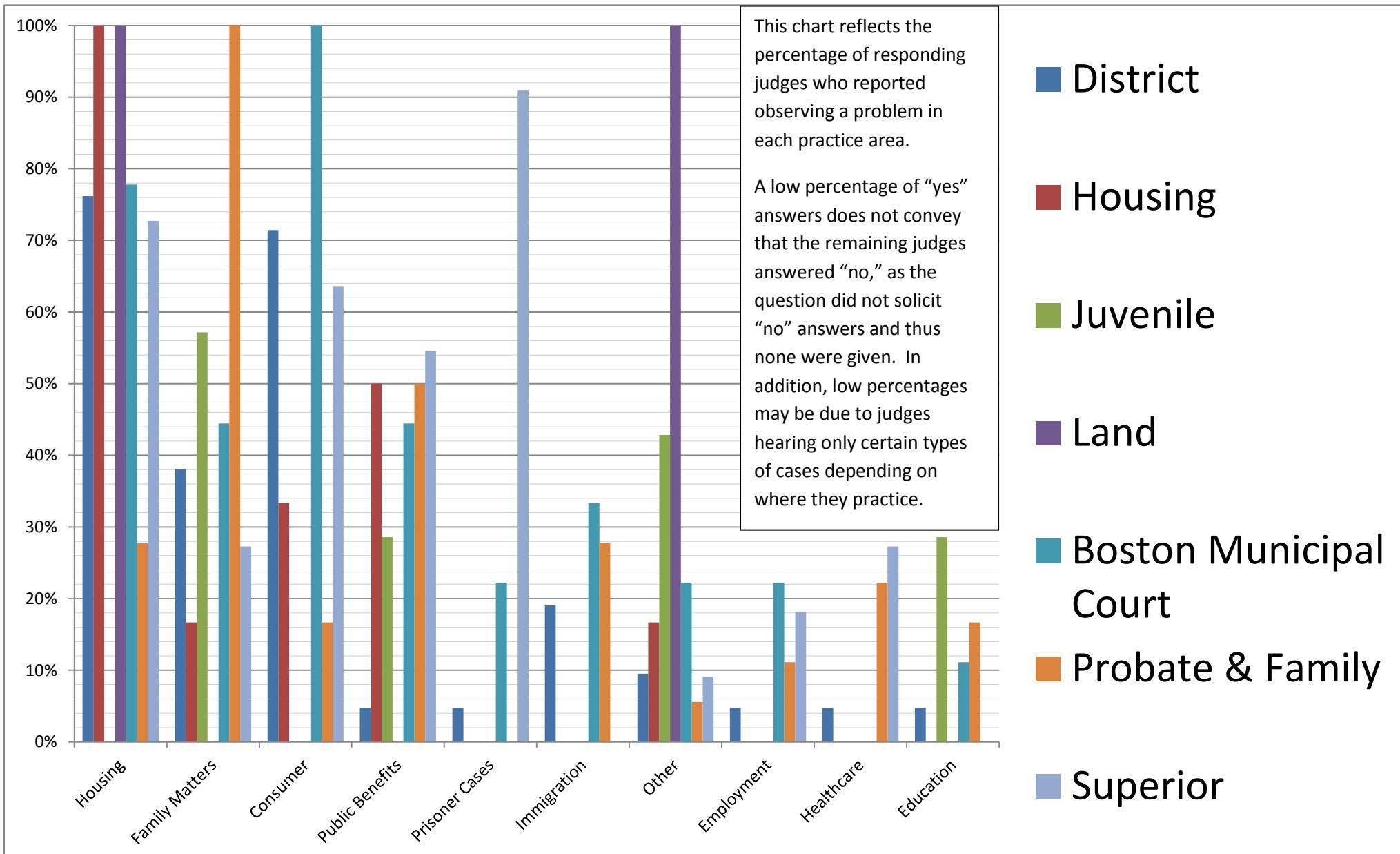


**Question 3: In your experience and observation, has the fact that parties are not represented created problems in certain practice areas?<sup>1</sup>**  
**(Answers grouped by practice areas)**

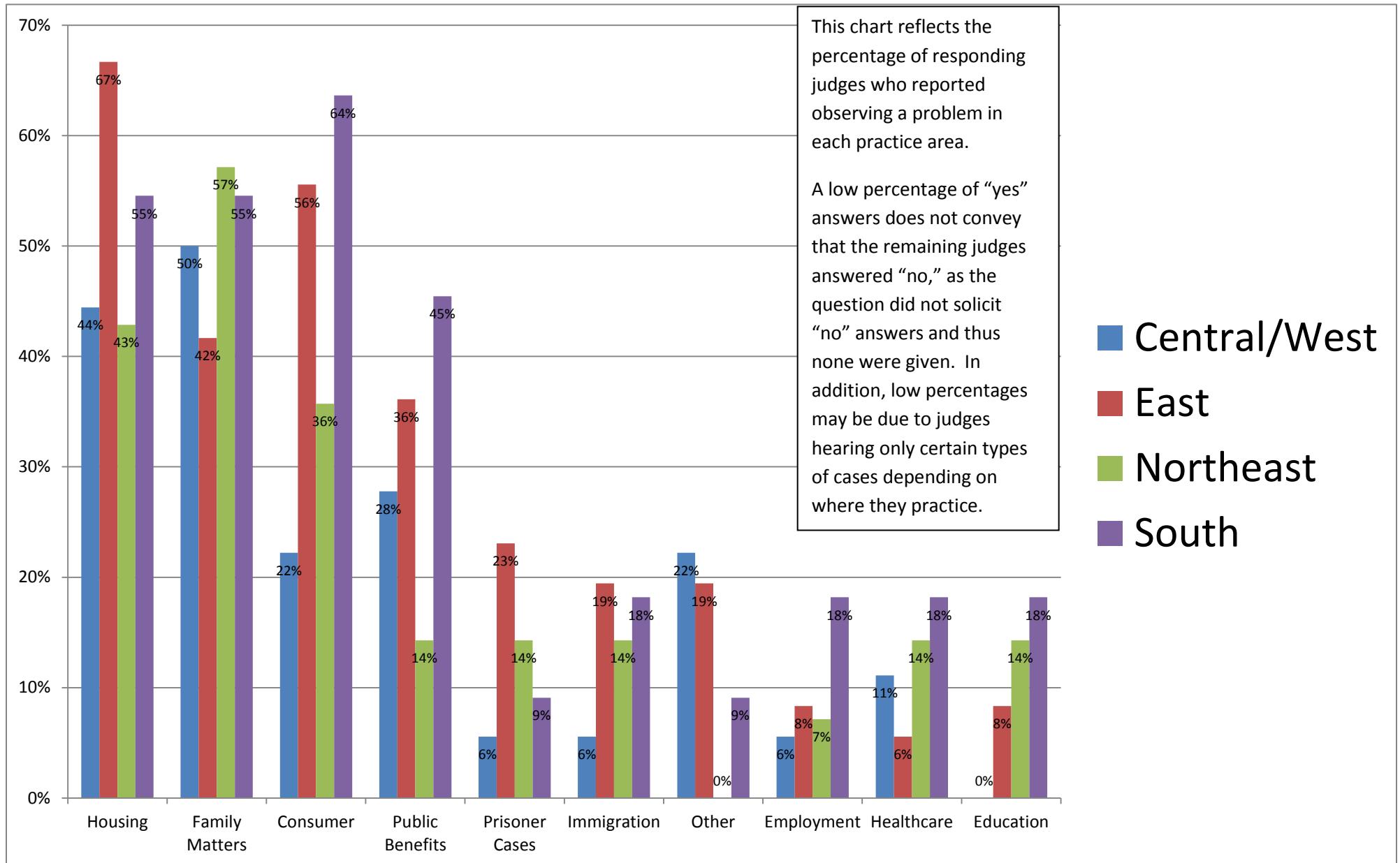


<sup>1</sup> This chart appears in the body of the report on page 13 under the title "Percentage of Judges Who Reported Problems Due to Lack of Representation by Practice Area." Judges could select more than one response.

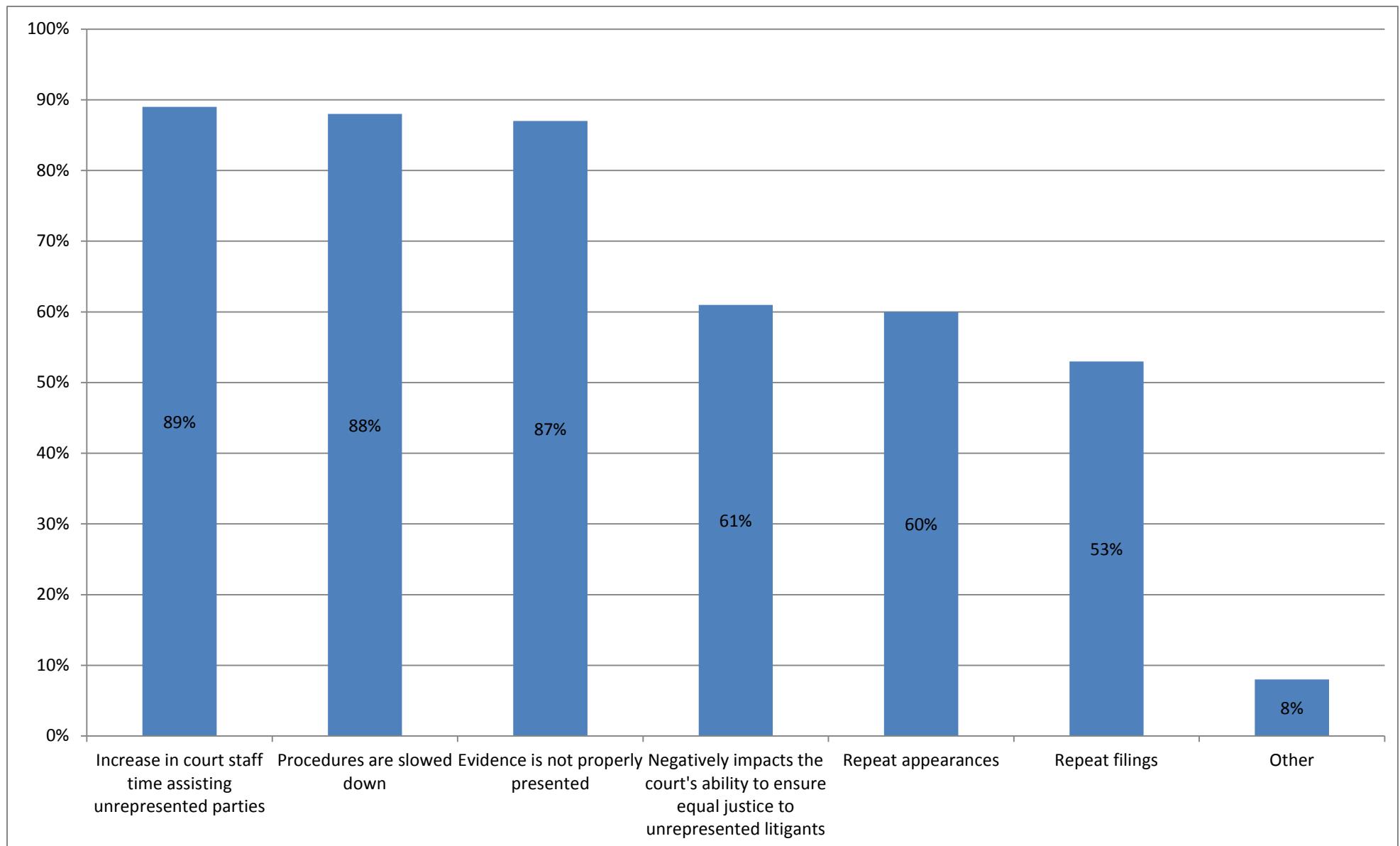
**Question 3: In your experience and observation, has the fact that parties are not represented created problems in certain practice areas?**  
**(Answers grouped by court)**



**Question 3: In your experience and observation, has the fact that parties are not represented created problems in certain practice areas?  
(Answers grouped by region)**

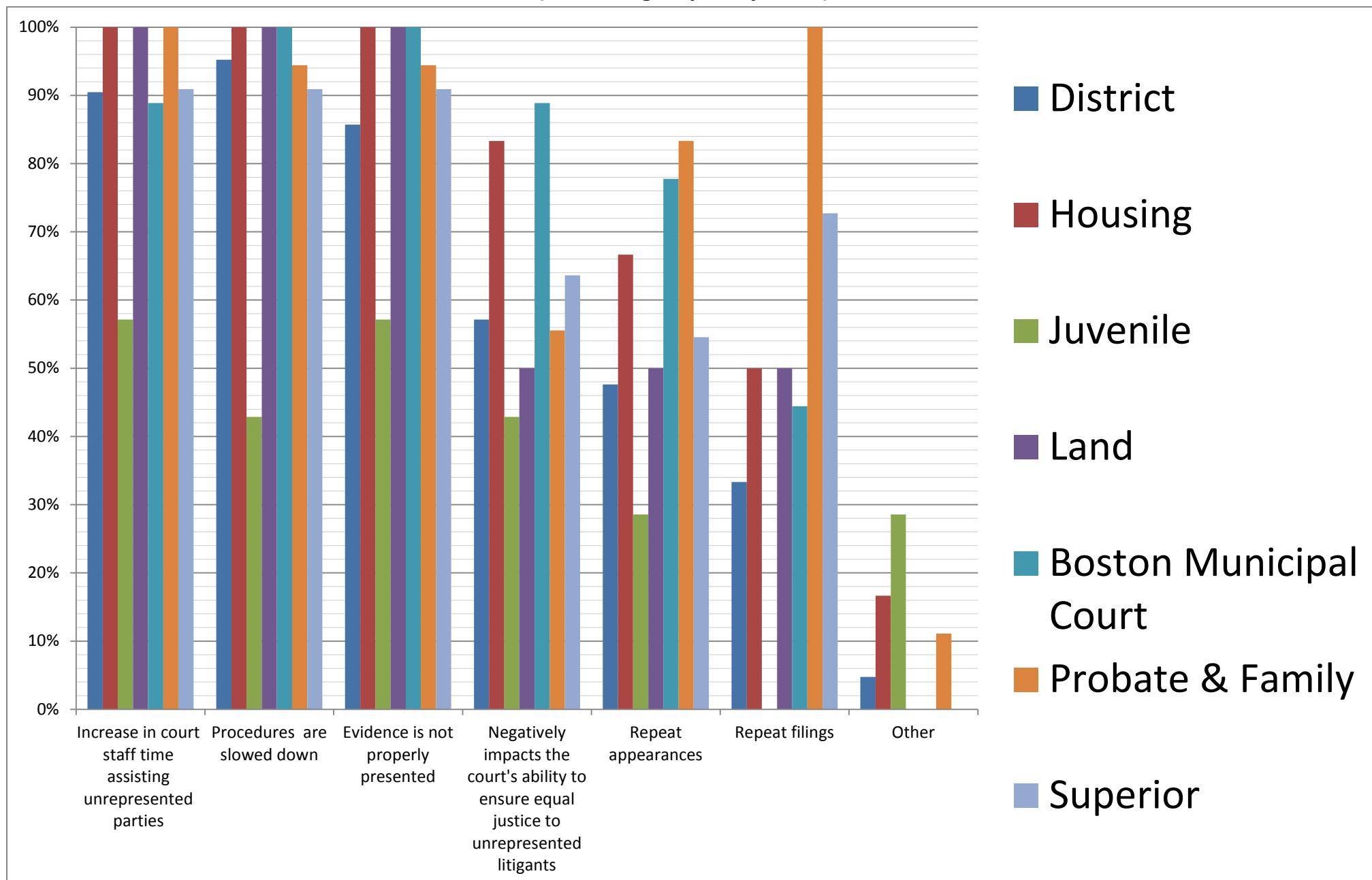


**Question 4: What impact, if any, does lack of representation have on the courts?<sup>2</sup>**  
**(Answers grouped by observed impact category)**

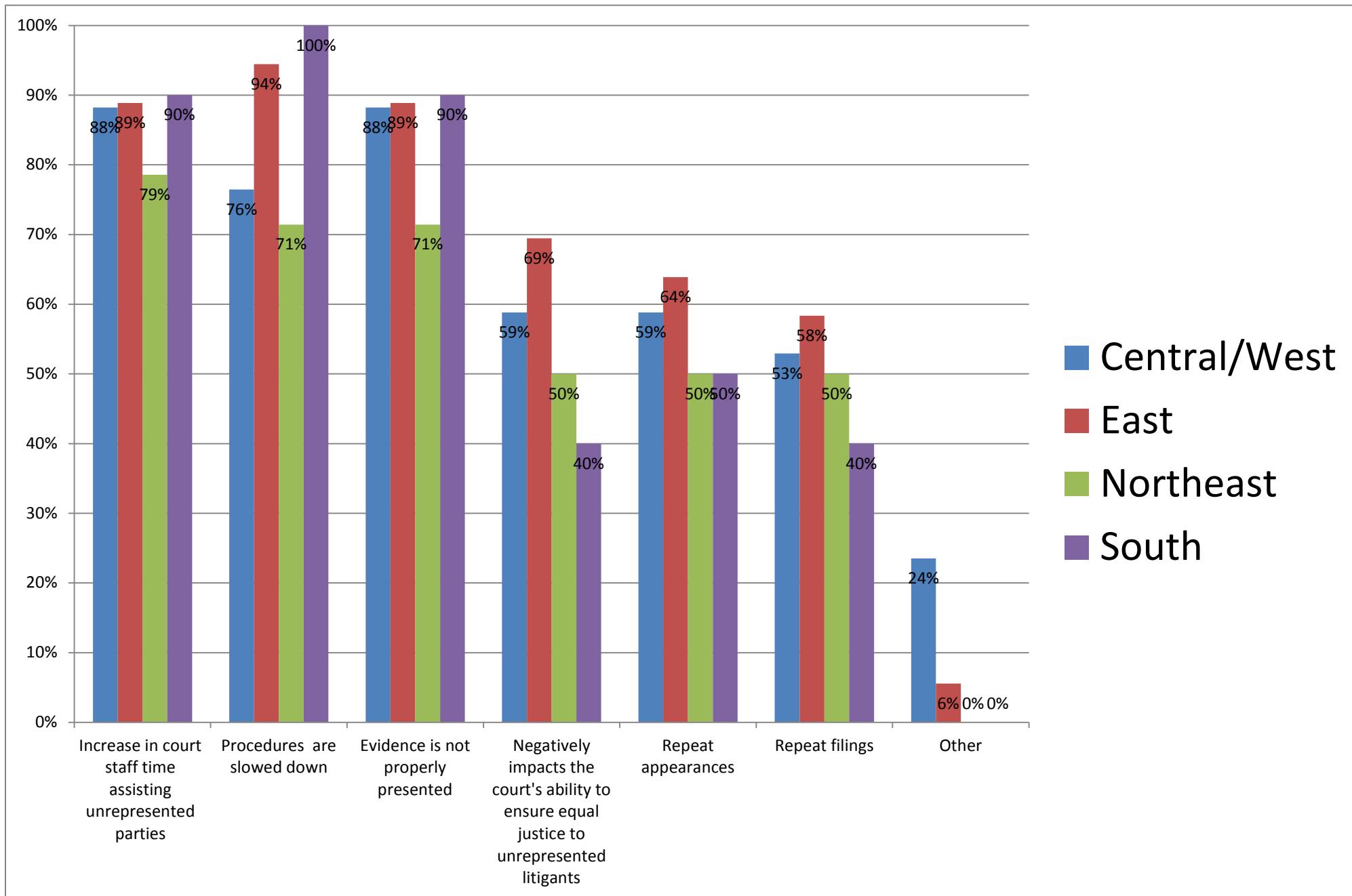


<sup>2</sup> This chart appears in the body of the report on page 12 under the title "Lack of Representation Impact on the Courts." Judges could select more than one response. The chart reflects the percentage of responding judges who observed an impact in each category.

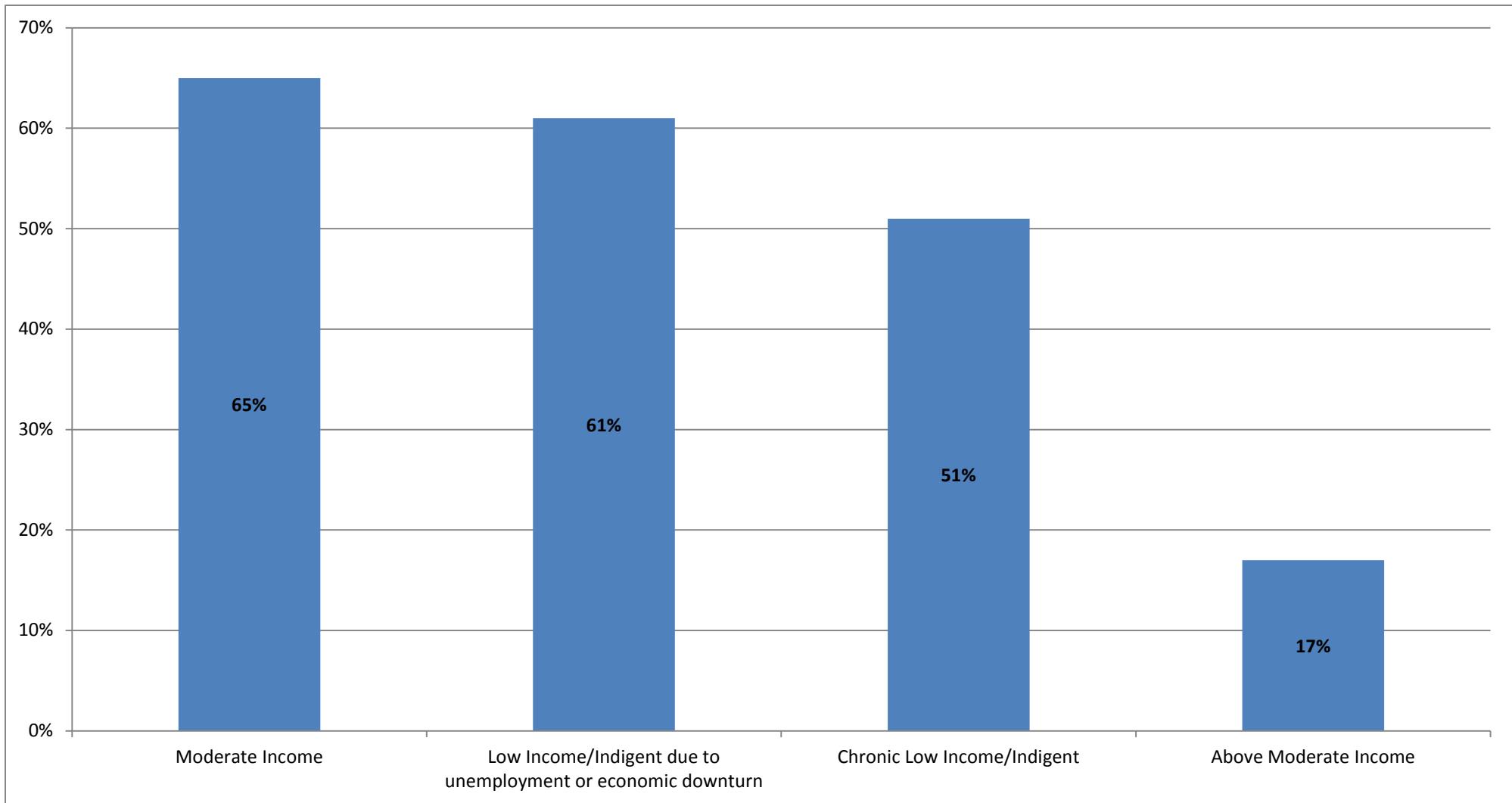
**Question 4: What impact, if any, does lack of representation have on the courts?**  
**(Answers grouped by court)**



**Question 4: What impact, if any, does lack of representation have on the courts?**  
**(Answers grouped by region)**

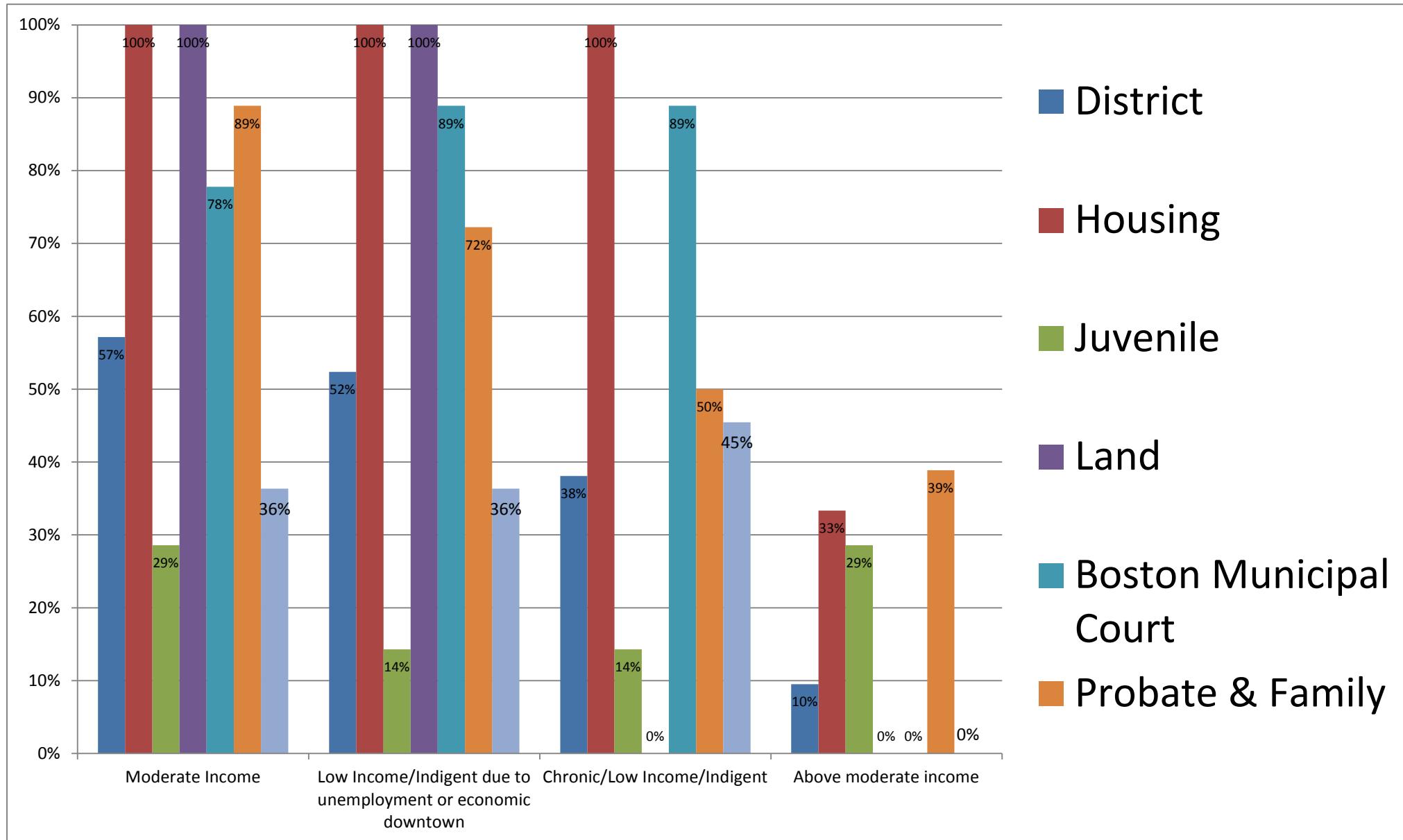


**Question 5: Have you noticed an increase in unrepresented litigants from certain economic categories?<sup>3</sup>**  
**(Answers grouped by economic category of litigants)**

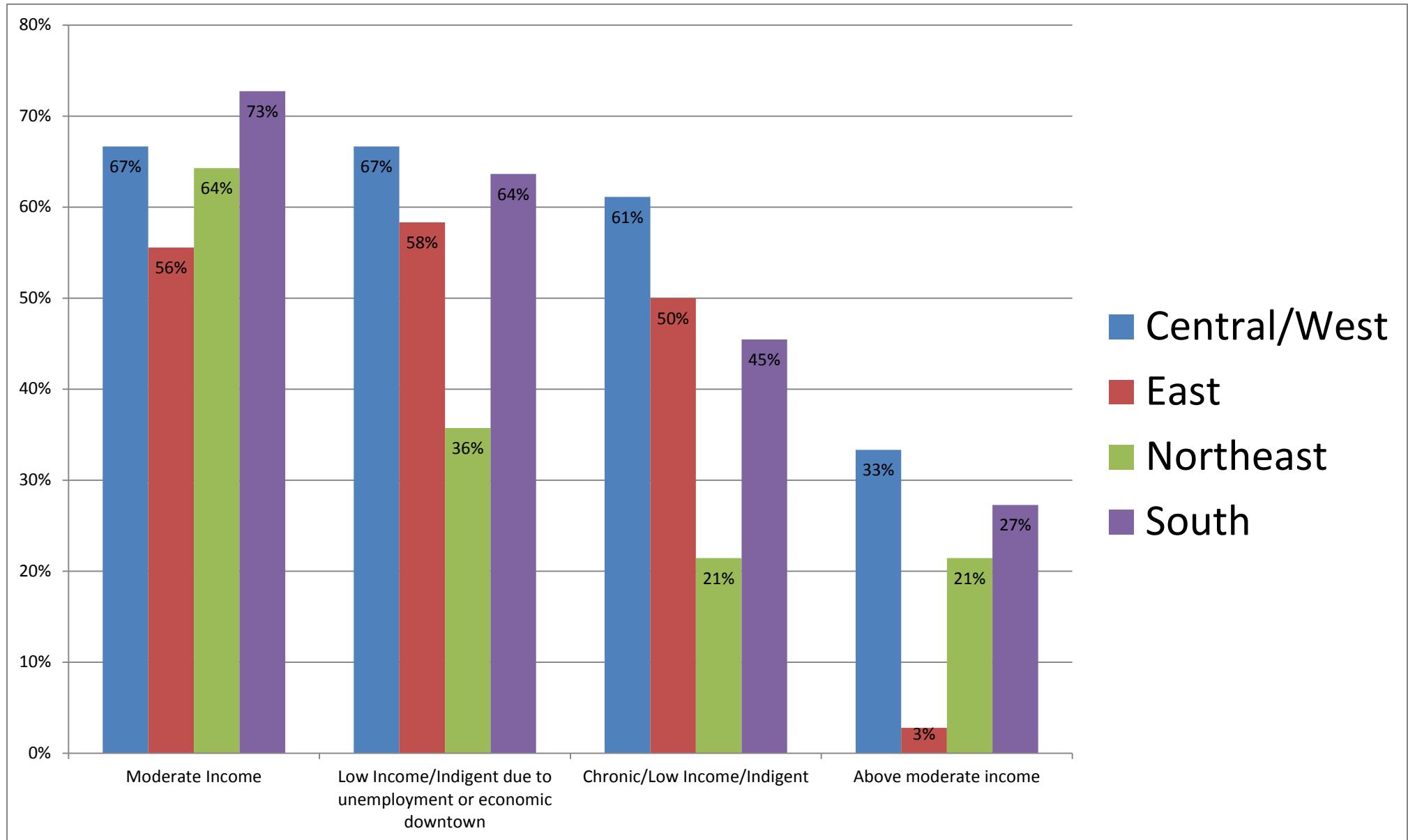


<sup>3</sup> This chart appears in the body of the report on page 14 under the title "Percentage of Judges Who Reported Increased Unrepresented Litigants by Economic Category." This chart reflects the percentage of responding judges who observed an increase in unrepresented litigants from each economic category. Judges could select more than one response but were not given an option to answer "no" regarding the impact on any economic category. This question also contained a "not sure" option, and 19% of judges checked that box. Because it was unclear whether that answer meant that they were unsure whether they had noticed an increase in unrepresented litigants from certain economic categories or that they had noticed an increase but were not sure from which economic category, we chose not to include that result in the final graphs.

**Question 5: Have you noticed an increase in unrepresented litigants from certain economic categories?**  
**(Answers grouped by court)**



**Question 5: Have you noticed an increase in unrepresented litigants from certain economic categories?**  
**(Answers grouped by region)**



## **BBA Statewide Task Force to Expand Civil Legal Aid in Massachusetts Judge's Survey**

*This survey was provided to all Massachusetts State Court Judges through the office of Chief Justice of the Trial Court, Paula M. Carey, in the form of a web-link. It was filled out and submitted electronically by 80 judges. While most judges who responded answered every question and provided all the requested information, this level of participation was not required, and judges were able to submit as much or as little information as they desired.*

### **Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts Survey of Massachusetts Judges**

*The Boston Bar Association's Statewide Task Force to Expand Civil Legal Aid in Massachusetts, comprised of many leaders in the Massachusetts legal community, is working to quantify and find cost effective ways to meet the need for civil legal aid across the state. New York State implemented a similar program with great success. The goal of this survey is to educate the task force about what judges think about the impact that unrepresented litigants have on their courtrooms.*

1. Survey response time-frame: Please return by mail or email on or before Nov. 15, 2013, to attention of Jonathan Schreiber at the BBA 16 Beacon Street, Boston, MA 02108, [jschreiber@bostonbar.org](mailto:jschreiber@bostonbar.org).
2. Should you have any questions or comments, please contact: Jonathan Schreiber, BBA Legislative & Public Policy Manager, [jschreiber@bostonbar.org](mailto:jschreiber@bostonbar.org), (617) 778-1922.

Please indicate the following:

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Court: \_\_\_\_\_

City/County: \_\_\_\_\_

1. In the past few years, has there been an increase in cases commenced by unrepresented parties?
  - Yes
  - No
  - Not Sure
2. In the past few years, has there been an increase in cases in which the defendant/respondent is unrepresented?
  - Yes
  - No
  - Not Sure
3. In your experience and observation, has the fact that parties are not represented created problems in the areas of: (Please mark all that apply)

- Consumer (bankruptcy and debt relief)
  - Education
  - Employment
  - Family Matters (including domestic violence, children, guardianship)
  - Healthcare (including insurance disputes)
  - Housing (including foreclosure and eviction)
  - Immigration
  - Prisoner Cases
  - Public Benefits (including veterans, wage, disability, unemployment, and other government benefits: SSI/SSDI, DTA, SNAP)
  - Other, please specify
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4. What impact, if any, does the lack of representation have on the courts? (Please mark all that apply)

- Procedures are slowed down
  - Court staff time assisting unrepresented parties increase
  - Ascertaining the facts is difficult as evidence is not properly presented
  - Repeat appearances
  - Repeat filings
  - Negatively impacts the court's ability to ensure equal justice to unrepresented litigants
  - Other, please specify
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5. Have you noticed an increase in unrepresented litigants from the following economic categories? (Please mark all that apply)

- Chronic/Longterm Low Income/Indigent
- Low Income/Indigent due to recent unemployment or other economic downturn factors
- Moderate Income
- Above Moderate Income
- Not sure

6. Can you suggest any alternatives to provide assistance to low income people? (Including without limitation: the ability of the court to appoint counsel, lawyer of the day, limited assistance, and law student programs). Please offer any other comments that you think would be helpful to the Task Force.

## Judges Survey Responses by Court and Region<sup>4</sup>

Court	Region				
	Central/West	East	Northeast	South	Total
Boston Municipal Court	0	9	0	0	9
District	4	9	5	4	22
Housing	5	1	0	2	8
Juvenile	3	1	4	1	9
Land	0	2	0	0	2
Probate & Family	5	6	4	3	18
Superior	1	8	1	1	11
Unspecified	0	0	0	0	1
<b>Total</b>	<b>18</b>	<b>36</b>	<b>14</b>	<b>11</b>	<b>80</b>

<sup>4</sup> Not all judges replied to every question.

# **Appendix C**

## **Independent Economic Analyst Reports**

# ECONOMIC IMPACT OF LEGAL AID IN EVICTION AND FORECLOSURE CASES

*Martha Samuelson  
Nikita Piankov  
Brian Ellman  
Isabelle Bensimon*

October 7, 2014

## Abstract

The Commonwealth of Massachusetts offers locally and federally funded legal services programs in order to assist low-income and elderly people with non-criminal legal matters in areas of family law, health care, housing, and immigration, among others. Free legal intervention at this stage has been shown to decrease the incidence of costly social issues later on. This report analyzes the monetary effects on the Commonwealth of providing full legal representation to eligible beneficiaries in housing matters, and specifically, in eviction and foreclosure cases. We find that by providing civil legal aid in eviction and foreclosure matters, the Commonwealth ultimately saves on the costs associated with homelessness, including emergency housing and shelter, as well as increased health care, foster care, and police costs. Specifically, we find that for every dollar spent on civil legal aid in eviction and foreclosure cases, the Commonwealth ultimately saves approximately \$2.69 on the costs associated with homelessness. Given the limitations in analyzing some of the societal costs associated with eviction and foreclosure, these estimates are likely to be conservative and underestimate the true benefit of providing civil legal aid in housing matters.

## Economic Impact of Legal Aid in Eviction and Foreclosure Cases

by Martha Samuelson, Nikita Piankov, Brian Ellman, and Isabelle Bensimon<sup>1</sup>

### I. Introduction

This report analyzes the impact of civil legal aid on eviction and foreclosure cases in the Commonwealth of Massachusetts and, in turn, how evictions and foreclosures affect societal costs and the level of spending by the Commonwealth. We rely on existing academic literature and research papers to derive estimates of impact from investment in civil legal aid services.

Evictions and foreclosures are an important issue for social policy in Massachusetts. In 2012, there were 45,219 cases of eviction and foreclosure in the Commonwealth, causing a number of individuals and families to involuntarily leave their homes.<sup>2</sup> While a majority of plaintiffs, typically landlords, are represented by legal counsel, as few as 6% of tenants are represented by counsel, even though a majority of these tenants qualify for free legal assistance.<sup>3</sup> It has been speculated that this imbalance of representation puts tenants at a disadvantage; primary research conducted by a team of Harvard University researchers has empirically shown that case outcomes are materially improved for tenants when they have access to full legal representation.<sup>4</sup>

While some people will find alternative housing in the event of eviction or foreclosure, for many others the eviction or foreclosure process will result in either substantial worsening of living conditions or homelessness. In this report, we focus on the latter category – evictions and foreclosures resulting in homelessness – and quantify their financial impact on the Commonwealth. This is not to say that the former category is unimportant or that it does not have economic consequences – even if homelessness is avoided, deterioration of living

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<sup>1</sup> The authors are consultants with Analysis Group, Inc., in Boston, Massachusetts. The views expressed in this paper are those of the authors alone, not those of Analysis Group's clients.

<sup>2</sup> "Massachusetts Trial Courts: Summary of Case Filings by Type: FY2005 to FY2012," *Commonwealth of Massachusetts*, available at <http://masswildlife.com/courts/courtsandjudges/courts/stats/2012-all-depts-stats-summary.pdf>; "Law Libraries," *Massachusetts Trial Court*, available at <http://www.lawlib.state.ma.us/libraries/databases/index.html>; and "Land Court Department: Fiscal Year 2012 Five Year Caseload Analysis," *Commonwealth of Massachusetts*, available at <http://www.mass.gov/courts/courtsandjudges/courts/landcourt/fy2012fiveyear.pdf>

<sup>3</sup> Massachusetts Housing Court fiscal year 2012 statistics reports that 58.3% of plaintiffs are represented in summary process cases, versus 5.7% of defendants. See "Additional Departmental Statistics," *Commonwealth of Massachusetts*, available at <http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/2012-additional-departmental-stats.pdf>. According to the Massachusetts Legal Assistance Corporation (MLAC), approximately 75% of defendants in eviction cases meet these criteria.

<sup>4</sup> Greiner, Dr. James, Cassandra Wolos Pattanayak, and Jonathan Hennessy, "The Limits of Unbundled Legal Assistance: A Randomized Study In a Massachusetts District Court And Prospects for the Future," *Harvard Law Review*, Vol. 126 (901), p. 903. See also "Addressing the Needs of Self-Represented Litigants in Our Courts: Final Report and Recommendations," *The Supreme Judicial Court Steering Committee on Self-Represented Litigants (of Massachusetts)*, November 21, 2008, p. 4 ("the inability of some self-represented litigants to understand and comply with court rules and procedures may make it impossible for their cases, however worthy, to be decided on the merits").

conditions can lead to stress, loss of productivity or work altogether, negative impacts on children and their education, and so on.<sup>5</sup>

Moreover, our analysis is based on the number of families and individuals who are likely to enter a shelter when faced with eviction or foreclosure. This will likely underestimate the total number of families and individuals who become homeless as a result of eviction or foreclosure, as not all homeless families and individuals seek emergency shelter. For these reasons, and other reasons stated below, our analysis likely understates the full savings to society associated with the provision of civil legal aid for eviction and foreclosure cases.

We have identified several major quantifiable sources of costs to the Commonwealth associated with evictions and foreclosures resulting in homelessness. The first, and most direct, cost is that of emergency shelters. Second, there are increased costs to the public health care system. Third, when families become homeless, their children sometimes enter the foster care system. While this could be traumatic for the families in and of itself, there is also a monetary cost to the Commonwealth associated with providing foster care for such children. Fourth, there are increased costs associated with police and policing activities.

There are other sources of costs to society beyond the immediately quantifiable categories listed above. For example, children in homeless families are less likely to attain the same level of education as other children, leading to long-term losses in productivity and earning potential. Academic literature has found that “homeless children fare worse than poor children who remain housed in terms of health, mental health, and educational outcomes.”<sup>6</sup> For example, homeless children have a lower high school graduation rate when compared to other low-income children who are housed.<sup>7</sup> As a result, the effects of homelessness resulting from eviction or foreclosure can result in lower tax revenues and higher expenses to the Commonwealth, including “higher spending on public assistance, and higher crime rates.”<sup>8</sup> While these costs are clearly important, the effects described are longer-term and more difficult to quantify.

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<sup>5</sup> See Gudrais, Elizabeth, “Disrupted Lives: Sociologist Matthew Desmond Studies Eviction and the Lives of America’s Poor,” *Harvard Magazine*, January–February 2014, available at <http://harvardmagazine.com/2014/01/disrupted-lives>. (“Many who are evicted end up in shelters or even on the street. When they do find housing, a record of eviction often means they are limited to decrepit units in unsafe neighborhoods. This transient existence is known to affect children’s emotional well-being and their performance in school; Desmond and his research team are also beginning to link eviction to a host of negative consequences for adults, including depression and subsequent job loss, material hardship, and future residential instability. Eviction thus compounds the effects of poverty and racial discrimination. ‘We are learning,’ says Desmond, ‘that eviction is a *cause*, not just a *condition*, of poverty.’”)

<sup>6</sup> Rafferty, Yvonne, Marybeth Shinn and Beth C. Weitzman, “Academic Achievement Among Formerly Homeless Adolescents and Their Continuously Housed Peers,” *Journal of School Psychology*, Vol. 42, 2004, pp. 179–199 at p. 180. See also Molnar, Janice M., William R. Rath, and Tovah P. Klein, “Constantly compromised: The Impact of Homelessness on Children,” *Journal of Social Issues*, Vol. 46, 1990, (4), pp. 109 - 124 and Rafferty, Yvonne and Marybeth Shinn, “The Impact of Homelessness on Children,” *American Psychologist*, Vol. 46, 1991, pp. 1170 - 1179.

<sup>7</sup> “America’s Youngest Outcasts: State Report Card on Child Homelessness – Massachusetts,” *The National Center on Family Homelessness*, available at [http://www.homelesschildrenamerica.org/pdf/report\\_cards/short/ma\\_short.pdf](http://www.homelesschildrenamerica.org/pdf/report_cards/short/ma_short.pdf)

<sup>8</sup> Tyler, John H. and Magnus Lofstrom, “Finishing High School: Alternative Pathways and Dropout Recovery,” *The Future of Children*, Vol. 19 (1), Spring 2009, p. 77.

There may also be other costs to the Commonwealth associated with underrepresentation in the legal system. For example, some sources suggest that unrepresented parties cause the court to expend more time and resources than represented litigants.<sup>9</sup>

The report proceeds in three general steps. We first estimate the number of people facing an eviction or foreclosure proceeding who may qualify for civil legal aid, and the costs associated with providing that aid, under different potential public policy goals (i.e., whether the legislature will fund civil legal aid services for all potentially eligible beneficiaries in eviction and foreclosure cases, or only a portion thereof). Second, we estimate the cost savings to the Commonwealth associated with the estimated reduction in homelessness attributable to providing civil legal aid to those people. Finally, we estimate the net savings to the Commonwealth.

Based on our analysis, we conclude that the provision of civil legal aid to assist eligible beneficiaries in eviction and foreclosure proceedings is likely to have a net *positive* impact on the Commonwealth's budget because every dollar invested in the program can potentially save up to \$2.69 in costs that the Commonwealth will not have to incur. Again, this estimate is a likely understatement as many of the societal costs are not quantified.

## **II. Analyzing the Empirical Effects of Providing Civil Legal Aid in Eviction/Foreclosure Cases**

### **a. Assessing the cost of civil legal aid for all eligible individuals**

In order to determine the net savings to the Commonwealth from providing civil legal aid in eviction and foreclosure cases, it is first necessary to estimate the cost of providing full representation in all eviction and foreclosure cases that meet the criteria for aid. This requires three inputs: (1) the number of families and individuals who are facing eviction/foreclosure; (2) the percent of families and individuals who qualify for civil legal aid; and (3) the average cost of representing each eviction/foreclosure case.

#### **i. Total number of eviction/foreclosure cases**

Based on the historical annual number of summary process (eviction) and foreclosure cases in Massachusetts, we project that there will be a total of 48,868 summary process and foreclosure cases in 2014.<sup>10</sup>

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<sup>9</sup> "Addressing the Needs of Self-Represented Litigants in Our Courts: Final Report and Recommendations," *The Supreme Judicial Court Steering Committee on Self-Represented Litigants (of Massachusetts)*, November 21, 2008, p. 4 ("Cases involving self-represented litigants often require significantly more time from judges and court staff"). See also the results of a 2013 survey of judges in Massachusetts conducted by the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts.

<sup>10</sup> "Massachusetts Trial Courts – Summary of Case Filings by Type: FY2005 to FY2012," *Commonwealth of Massachusetts*, available at <http://www.mass.gov/courts/courtsandjudges/courts/stats/2012-all-depts-stats-summary.pdf>. Estimates for 2014 are based on the compound annual growth rate of the number of summary procedure cases (including Housing Court and all other Courts) from 2005 to 2012 (4.0%), and the compound annual growth rate of the number of foreclosure cases (filed as foreclosure, mortgage foreclosure, or tax lien foreclosure) from 2010 to 2012 (2.2%).

## ii. Percent of eviction/foreclosure cases that qualify for civil legal aid

Defendants are eligible for civil legal aid if their income is below 125% of the Federal Poverty Guidelines, if they are a senior age 60 or older, or if they are a Medicare recipient.<sup>11</sup> According to the Massachusetts Legal Assistance Corporation (MLAC), approximately 75% of defendants in eviction cases meet these criteria.<sup>12</sup> Therefore, we estimate that 36,651 eviction/foreclosure cases in 2014 would qualify for civil legal aid.<sup>13</sup>

Based on the primary research conducted by Harvard University researchers, the potential benefits from civil legal aid representation are unevenly distributed across the population of beneficiaries. Specifically, the subset of eligible eviction cases that could benefit *most* from civil legal aid representation depend on: “(1) the vulnerability of the tenant; (2) the power of the landlord; (3) the affordability of the unit; (4) whether there appeared to be cognizable defenses; (5) whether the loss of shelter might jeopardize other basic human needs of the tenant, such as safety, subsistence, health or child custody; and (6) other indicia of power imbalances between the parties.”<sup>14</sup> We assume that at least a subset of these criteria also applies to foreclosure cases that could benefit most from civil legal aid representation. We refer to this subset of potential beneficiaries as those who meet “targeted criteria.” These beneficiaries are most likely to benefit from civil legal aid representation. Identification of those beneficiaries who meet the “targeted criteria” would require pre-screening of eviction and foreclosure cases.

An attorney who participated in the primary research study reported that 20–25% of cases met at least one of the targeted criteria.<sup>15</sup> However, the actual percentage of cases that would meet the targeted criteria may be even higher than 25%. For example, in Quincy, the Harvard University researchers found that 27% of the cases screened met at least one of the targeted criteria.<sup>16</sup> Given that we derive our estimate of the effect of representation on case outcomes from Quincy primarily,<sup>17</sup> we estimate that 25% of defendants in eviction/foreclosure cases meet these targeted criteria.<sup>18</sup> Therefore, we estimate that 12,217

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<sup>11</sup> “Free Legal Assistance in Massachusetts: Legal Services Programs,” *MassResources.org*, available at <http://www.massresources.org/legal-services.html#eligible>.

<sup>12</sup> We understand that most foreclosures lead to eviction. For this reason and due to absence of other data, in this report, we assume that foreclosure cases have characteristics similar to those of eviction cases.

<sup>13</sup> Calculated as 48,868\*75%.

<sup>14</sup> “The Importance of Representation in Eviction Cases and Homelessness Prevention,” *Boston Bar Association Task Force on the Civil Right to Counsel*, March 2012, available at .

<sup>15</sup> “In post-project interviews, the NLS attorney who described utilizing the looser screen – finding eligible cases that met the project criteria if one of the six components [...] was met – estimated that eligible cases made up 20 to 25% of the docket, a figure that would be lowered with a tighter screen” (“The Importance of Representation in Eviction Cases and Homelessness Prevention,” *Boston Bar Association Task Force on the Civil Right to Counsel*, March 2012, p. 28).

<sup>16</sup> 129 of the 470 cases screened met the targeted criteria in Quincy (“The Importance of Representation in Eviction Cases and Homelessness Prevention,” *Boston Bar Association Task Force on the Civil Right to Counsel*, March 2012, p. 28).

<sup>17</sup> See Section II.b.

<sup>18</sup> In its March 2012 report regarding the findings of the Harvard University researchers, the BBA estimated that between 10% and 20% (or perhaps 25%) of litigants in eviction cases meet the targeted criteria. This range was based on the review of cases in Quincy, where 27% of reviewed cases were found to meet the targeted criteria, and in the Northeast, where 13.8% of reviewed cases met the targeted criteria. (“The Importance of

eviction/foreclosure cases in 2014 would meet the targeted criteria for civil legal aid.<sup>19</sup>

Note that while some of the targeted criteria are related to the likelihood of the tenant prevailing in court (e.g., “whether there appeared to be cognizable defenses”), some of these criteria are related to the vulnerability of the tenant (e.g., “whether the loss of shelter might jeopardize other basic human needs of the tenant, such as safety, subsistence, health or child custody”). Therefore, as the estimated 25% of defendants who meet the targeted criteria include individuals and families who are particularly vulnerable, the Commonwealth may be more susceptible to incurring costs – for health care or foster care, for example – associated with this population if evicted. Our estimates of savings to the Commonwealth associated with the provision of civil legal aid in eviction and foreclosure cases to beneficiaries who meet the targeted criteria may therefore be conservative.

Taken together, for purposes of our calculations, we use an estimated range of 12,217 (those that meet targeted criteria) to 36,651 (all who qualify for civil legal aid) eviction/foreclosure cases per year that would qualify for civil legal aid to account for different potential public policy goals of the Commonwealth and its legislature.

### **iii. Average cost of each eviction/foreclosure case**

The average cost to provide full representation in each eviction/foreclosure case depends on the hourly rate of Massachusetts civil legal aid lawyers and the average number of hours per case. According to estimates provided by MLAC, the average cost of fielding an attorney for MLAC-funded legal aid programs is approximately \$46 per hour.<sup>20</sup>

Based on a pilot study in Quincy that measured the incremental benefit of civil legal aid representation in eviction cases, a full-representation eviction case requires an average of 17 hours of lawyer time.<sup>21</sup>

Taken together, we estimate that each eviction/foreclosure case costs approximately \$777 to represent.<sup>22</sup>

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Representation in Eviction Cases and Homelessness Prevention,” *Boston Bar Association Task Force on the Civil Right to Counsel*, March 2012, pp. 28-29). As we derive our estimate of the effect of representation on case outcomes from Quincy, for purposes of our calculations, we have assumed that 25% of cases would meet the targeted criteria. Again, we assume that foreclosure cases have characteristics similar to those of eviction cases.

<sup>19</sup> Calculated as  $48,868 * 0.25 = 12,217$ .

<sup>20</sup> According to MLAC, the average annual cost of fielding an attorney for MLAC-funded legal aid programs is \$91,429. If one assumes that each MLAC lawyer has 2,000 potential working hours, this estimate translates to lawyer costs of \$45.71 per hour.

<sup>21</sup> “The Importance of Representation in Eviction Cases and Homelessness Prevention,” *Boston Bar Association Task Force on the Civil Right to Counsel*, March 2012, p. 29. Again, we assume that foreclosure cases will require a similar number of lawyer hours to the eviction cases, not studied in Quincy.

<sup>22</sup> Calculated as  $\$45.71 * 17 = \$777$ . See Table 1.

Based on these figures, we estimate that the total annual cost to represent all eligible beneficiaries in Massachusetts is approximately \$28.5 million.<sup>23</sup> We estimate that the total annual cost to represent all eligible beneficiaries who *also* meet at least one of the targeted criteria is approximately \$9.5 million.<sup>24</sup> The cost will ultimately depend on the public policy goals of the Commonwealth.

**Table 1**

		Beneficiaries that Meet Targeted Criteria	All Eligible Beneficiaries
<b>i. Total number of eviction/foreclosure cases</b>			
Projected number of eviction/foreclosure cases in 2014	[1]	48,868	48,868
<b>ii. Percent of eviction/foreclosure cases that qualify for civil legal aid</b>			
Percent of eviction/foreclosure cases that qualify for civil legal aid [2]		25%	75%
Eligible eviction/foreclosure cases	[3]=[1]*[2]	12,217	36,651
<b>iii. Average cost of each eviction/foreclosure case</b>			
Cost per hour of lawyer time	[4]	\$45.71	\$45.71
Average hours per case	[5]	17.00	17.00
Average cost per case	[6]=[4]*[5]	\$777	\$777
<b>Annual cost to represent all eligible eviction/foreclosure cases</b>	[3]*[6]	<b>\$9.49 M</b>	<b>\$28.48 M</b>

**b. Assessing the incremental benefit of full legal representation on success rates**

Based on a randomized test and control study conducted in Quincy, it was estimated that an *additional* 33% of tenants prevail (i.e., retain possession of housing) when they receive full legal representation in eviction cases.<sup>25</sup> Given that the unrepresented tenants (control group) in this study received *limited* legal assistance, albeit not full representation, this 33% likely underestimates the impact of legal representation; the incremental impact of full legal representation on the outcome of eviction/foreclosure cases could be even higher.<sup>26</sup> Using this conservative estimate of the impact of representation on the outcome of eviction/foreclosure cases, we estimate that an *additional* 4,072 to 12,217 individuals would preserve housing if provided with full legal representation. In other words, without representation, between 4,072 and 12,217 families and individuals would be evicted or foreclosed on; with representation, those people would preserve housing.<sup>27</sup>

<sup>23</sup> Calculated as \$777\*36,651=\$28,483,433. See Table 1.

<sup>24</sup> Calculated as \$777\*12,217=\$9,494,478. See Table 1.

<sup>25</sup> Greiner, Dr. James, Cassandra Wolos Pattanayak, and Jonathan Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study In a Massachusetts District Court And Prospects for the Future,” *Harvard Law Review*, Vol. 126 (901), p. 903. Note that for the subset of individuals who prevail, we assume that the individual will retain housing following an eviction or foreclosure proceeding for at least the remainder of the fiscal year. Similar to above, we assume that the degree of success in foreclosure cases, while not studied in Quincy, will be similar to that of eviction cases.

<sup>26</sup> For instance, many of the study participants, including the control group, “received limited legal assistance in the form of how-to clinics run by a Greater Boston Legal Services (GBLS) staff attorney.” (Greiner, Dr. James, Cassandra Wolos Pattanayak, and Jonathan Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study In a Massachusetts District Court And Prospects for the Future,” *Harvard Law Review*, Vol. 126 (901), p. 908.) Therefore, the overall impact of civil legal aid may be higher than the 33% estimated in the study.

<sup>27</sup> Calculated as 12,217\*33.3%=4,072 and 36,651\*33.3%=12,217. See Table 2.

**Table 2**

		<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
Eligible eviction/foreclosure cases (See II.a)	[1]	12,217	36,651
Additional % of people that prevail with full representation	[2]	33%	33%
<b>Additional number of people that prevail due to civil legal aid</b>	<b>[1]*[2]</b>	<b>4,072</b>	<b>12,217</b>

**c. Assessing the incremental benefit of full legal representation on homelessness**

A proportion of evicted people will become homeless. By providing full legal representation in eviction and foreclosure cases, as discussed above, the number of people who are evicted and subsequently become homeless has been demonstrated to decrease. This reflects potential savings to the Commonwealth.

As a next step in our calculation, we estimate the number of people that are likely to be saved from homelessness when provided with full legal representation. To calculate the cost savings to the Commonwealth, we first derive an estimate of the number of families and individuals who *would have* entered the emergency shelter system if they had been evicted. As not all homeless individuals seek emergency shelter, it is likely that the true number of individuals who become homeless as a result of eviction and foreclosure is even higher, making our savings estimates conservative.

It is estimated that 15% of evicted families and 20% of evicted individuals end up in the shelter system.<sup>28</sup> Based on the ratio of eviction cases involving families (77%) and individuals (23%),<sup>29</sup> we estimate that 479 to 1,436 families,<sup>30</sup> and 187 to 562 individuals,<sup>31</sup> could be kept out of the shelter system if provided with full legal representation in eviction and foreclosure cases.

**Table 3**

		<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
Additional number of people that prevail due to civil legal aid (See II.b)	[1]	4,072	12,217
Percent of eviction cases involving families	[2a]	77%	77%
Percent of evicted families that end up in the shelter system	[3a]	15%	15%
<b>Number of families kept out of the shelter system due to civil legal aid</b>	<b>[1]*[2a]*[3a]</b>	<b>479</b>	<b>1,436</b>
Percent of eviction cases involving individuals	[2b]	23%	23%
Percent of evicted individuals that end up in the shelter system	[3b]	20%	20%
<b>Number of individuals kept out of the shelter system due to civil legal aid</b>	<b>[1]*[2b]*[3b]</b>	<b>187</b>	<b>562</b>

<sup>28</sup> “Civil Legal Aid Yields Economic Benefits to Clients and to the Commonwealth,” *Massachusetts Legal Assistance Corporation*, FY2012, available at [http://www.mlac.org/pdf/Economic\\_Benefits\\_FY12.pdf](http://www.mlac.org/pdf/Economic_Benefits_FY12.pdf).

<sup>29</sup> “The Importance of Representation in Eviction Cases and Homelessness Prevention,” *Boston Bar Association Task Force on the Civil Right to Counsel*, March 2012, available at <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>, p. 10.

<sup>30</sup> Calculated as 4,072\*77%\*15% (479) to 12,217\*77%\*15% (1,436). See Table 3.

<sup>31</sup> Calculated as 4,072\*23%\*20% (187) to 12,217\*23%\*20% (562). See Table 3.

#### **d. Assessing the measurable savings derived from preventing homelessness**

Having derived estimates for the number of families and individuals that are saved from homelessness due to receiving full representation in eviction/foreclosure cases, it is necessary to determine the costs associated with homelessness that are ultimately saved through this intervention.

We have identified four categories of costs to the Commonwealth related to homelessness for which the body of existing literature provides sufficient information for our calculation of potential savings. As discussed above, there are many other societal costs associated with homelessness that are not included in our analysis. Therefore, the potential savings to the Commonwealth associated with providing civil legal aid are perhaps significantly greater than the estimates provided below.

##### **i. Reduction in emergency housing and shelter costs**

Based on the Massachusetts Department of Housing and Community Development, the costs to the Commonwealth of providing emergency shelter are, on average, \$23,685 per family per shelter stay<sup>32</sup> and \$1,500 per individual per shelter stay.<sup>33, 34</sup>

Using the estimates of families and individuals kept out of the shelter system as a proxy for individuals who would become homeless if not for civil legal aid representation in eviction and foreclosure cases, we estimate that the Commonwealth would save approximately \$12 to \$35 million on emergency housing and shelter costs annually by providing full legal representation in these cases (see Table 4).

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<sup>32</sup> The average cost per family across housing types (Shelter (Congregate and Scattered) and Motel) weighted by usage of each housing type (“Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, First Quarterly Report,” *Department of Housing and Community Development*, March 22, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q1eareport.pdf>; “Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, Second Quarterly Report,” *Department of Housing and Community Development*, March 22, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q2eareport.pdf>; “Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, Third Quarterly Report,” *Department of Housing and Community Development*, May 8, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q3eareport.pdf>; and “Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, Fourth Quarterly Report,” *Department of Housing and Community Development*, August 7, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q4eareport.pdf>).

<sup>33</sup> “Report of the Special Commission Relative to Ending Homelessness in the Commonwealth,” December 28, 2007, available at [http://www.mhsa.net/matriarch/documents/FINALCommissionReportReleased\\_1.28.08.pdf](http://www.mhsa.net/matriarch/documents/FINALCommissionReportReleased_1.28.08.pdf), p. 5; Friedman, Donna Haig et al., “Preventing Homelessness and Promoting Housing Stability: A Comparative Analysis,” *The Boston Foundation*, 2007, available at <http://www.coopmet.org/Documents/ANEFH/BostonFndtnReportJune07.pdf>, p. 7.

<sup>34</sup> Massachusetts recently introduced a homelessness prevention program called HomeBASE as a potential alternative to emergency shelter. As there is insufficient data to assess whether and the extent to which beneficiaries of the HomeBASE program also use shelter resources, or the economic impact to the Commonwealth of the program, costs and benefits associated with this program have not been quantified.

**Table 4**

		<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
Number of families kept out of the shelter system due to civil legal aid (See II.c)	[1a]	479	1,436
Average annual cost per family in the shelter system	[2a]	\$23,685	\$23,685
<b>Annual shelter cost savings for families due to civil legal aid</b>	<b>[3a]=[1a]*[2a]</b>	<b>\$11,333,580</b>	<b>\$34,000,741</b>
Number of individuals kept out of the shelter system due to civil legal aid (See II.c) [1b]		187	562
Average annual cost per individual in the shelter system	[2b]	\$1,500	\$1,500
<b>Annual shelter cost savings for individuals due to civil legal aid</b>	<b>[3b]=[1b]*[2b]</b>	<b>\$280,993</b>	<b>\$842,980</b>
<b>i. Annual shelter cost savings for families and individuals due to civil legal aid</b>	<b>[3a]+[3b]</b>	<b>\$11,614,574</b>	<b>\$34,843,721</b>

## ii. Reduction in health care costs

According to a March 2011 report of the Massachusetts Housing and Shelter Alliance, the average annual health care cost for homeless individuals was \$28,436, whereas the average annual health care cost for individuals who obtained housing was \$6,056. The underlying study tracked a cohort of homeless people over a five-year period, and compared health care costs for those who remained homeless to those who obtained housing. As such, this study suggests a savings of \$22,380 per individual kept from homelessness.<sup>35,36</sup>

For purposes of our calculation of potential savings to the Commonwealth related to health care costs, we conservatively assume that there are only two individuals per family. Using the estimates of families and individuals kept out of the shelter system as a proxy for individuals who would become homeless if not for civil legal aid representation in eviction and foreclosure cases, we estimate savings of approximately \$26 to \$77 million on health care costs annually by providing full legal representation in eviction and foreclosure cases. It is our understanding that the federal government reimburses the Commonwealth for 50% of the cost of state-provided health care. As such, we estimate that the Commonwealth would save approximately \$13 to \$38 million on health care costs annually by providing full legal representation in eviction and foreclosure cases (see Table 5).<sup>37</sup>

<sup>35</sup> “Home & Healthy for Good: A Statewide Housing First Program, Progress Report,” *Massachusetts Housing and Shelter Alliance*, March 2011, p. 2. The results of this study are similar to those of another study in Massachusetts that assessed average annual health care costs for a group of homeless individuals before and after the Commonwealth provided them with housing. Before being provided with housing, average health care costs were \$26,124 per person; after housing, average health care costs fell to \$8,499. (“Summary of Studies: Medicaid/Health Services Utilization and Costs,” *Corporation for Supportive Housing*, September 2009, available at [http://pschousing.org/files/SH\\_cost-effectiveness\\_table.pdf](http://pschousing.org/files/SH_cost-effectiveness_table.pdf), p. 3.)

<sup>36</sup> Note that this study was based on costs incurred by a cohort of chronically homeless individuals, who are the highest-end utilizers of the state’s health care systems. These individuals have repeated or extended stays of a year or more on the streets and in shelters (and thus may incur more costs in a year than the average homeless individual). Therefore, it is possible that this \$22,380 estimate overstates the average health care costs associated with homelessness from eviction.

<sup>37</sup> Note that health care cost savings to the federal government are not included in our estimates and may indirectly benefit taxpayers in the Commonwealth.

**Table 5**

		<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
Average yearly health care costs for a homeless individual	[1]	\$28,436	\$28,436
Average yearly health care costs for a previously homeless individual	[2]	\$6,056	\$6,056
Annual health care savings from homelessness avoidance	[3]=[1]-[2]	\$22,380	\$22,380
Number of families kept out of the shelter system due to civil legal aid (See II.c)	[4a]	479	1,436
Number of individuals per family (conservative)	[5]	2	2
<b>Annual health care cost savings for families due to civil legal aid</b>	<b>[6a]=[3]*[4a]*[5]</b>	<b>\$21,418,165</b>	<b>\$64,254,496</b>
Number of individuals kept out of the shelter system due to civil legal aid (See II.c)	[4b]	187	562
<b>Annual health care cost savings for individuals due to civil legal aid</b>	<b>[6b]=[3]*[4b]</b>	<b>\$4,192,421</b>	<b>\$12,577,262</b>
<b>Annual health care cost savings for families and individuals due to civil legal aid</b>	<b>[7]=[6a]+[6b]</b>	<b>\$25,610,586</b>	<b>\$76,831,758</b>
<b>ii. Annual health care cost savings to the Commonwealth due to civil legal aid</b>	<b>[7]*50%</b>	<b>\$12,805,293</b>	<b>\$38,415,879</b>

### iii. Reduction in foster care costs

According to a report published by the Boston Foundation, children in about 20% of homeless families are placed in the foster care system.<sup>38, 39</sup> This represents a significant cost to the Commonwealth. To estimate the potential savings to the Commonwealth associated with preventing homelessness and the resulting additional costs to the foster care system, we conservatively assume that families are able to immediately regain custody of their children once they are no longer homeless. We then multiply the average length of family shelter stay (7.5 months)<sup>40</sup> by the average monthly foster care cost in Massachusetts for two children (\$1,214)<sup>41</sup> to obtain the average per-family cost of keeping children from evicted and homeless families in the foster care system (\$9,145).<sup>42</sup>

<sup>38</sup> Friedman, Donna Haig et al., “Preventing Homelessness and Promoting Housing Stability: A Comparative Analysis,” *The Boston Foundation*, 2007, available at <http://www.coopmet.org/Documents/ANEFH/BostonFndtnReportJune07.pdf>, p.40

<sup>39</sup> We have not identified any studies that compare the costs or likelihood associated with the provision of foster care for homeless families to disadvantaged families that are not homeless. For purposes of this analysis, we assume that beneficiaries who would not become homeless would not require the foster care system. To the extent that the Commonwealth incurs these costs for beneficiaries who would not become homeless, this assumption may overstate the potential savings to the Commonwealth associated with this cost category.

<sup>40</sup> “Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, First Quarterly Report,” *Department of Housing and Community Development*, March 22, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q1eareport.pdf>; “Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, Second Quarterly Report,” *Department of Housing and Community Development*, March 22, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q2eareport.pdf>; “Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, Third Quarterly Report,” *Department of Housing and Community Development*, May 8, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q3eareport.pdf>; and “Commonwealth of Massachusetts Emergency Assistance Program (EA): Fiscal Year 2013, Fourth Quarterly Report,” *Department of Housing and Community Development*, August 7, 2013, available at <http://www.mass.gov/hed/docs/dhcd/hs/ea/fy13q4eareport.pdf>.

<sup>41</sup> “Hitting the M.A.R.C.: Establishing Foster Care Minimum Adequate Rates for Children,” *Childrensrights.org*, 2008, <http://www.childrensrights.org/wp-content/uploads/2008/08/ma.pdf>.

<sup>42</sup> Calculated as 7.53\*\$1,214=\$9,145.

We estimate that the Commonwealth would save approximately \$1 to \$3 million on foster care costs annually by providing full legal representation in eviction and foreclosure cases (see Table 6).

**Table 6**

		<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
Number of families kept out of the shelter system due to civil legal aid (See II.c)	[1]	479	1,436
Percent of homeless families whose children are placed in the foster care system	[2]	20%	20%
Number of families kept out of the foster care system due to civil legal aid	[3]=[1]*[2]	96	287
Average monthly length of family shelter stay	[4]	\$1,214	\$1,214
Average monthly foster care cost in Massachusetts for two children	[5]	7.53	7.53
Annual per-family cost to keep children of homeless families in the foster care system [6]=[4]*[5]		\$9,145	\$9,145
<b>iii. Annual foster care cost savings for families due to civil legal aid</b>	<b>[3]*[6]</b>	<b>\$875,197</b>	<b>\$2,625,591</b>

#### **iv. Reduction in police costs**

In a study conducted in Nashville, Tennessee, researchers calculated the cost of all homeless arrests, and divided this cost among all homeless people, in order to obtain the costs per homeless person associated with homeless arrests. They estimated police costs at \$370 per person, jail costs at \$396 per person, and court costs at \$365 per person, for a total of \$1,131 per homeless person.<sup>43, 44</sup>

Using the estimates of individuals kept out of the shelter system as a proxy for individuals who would become homeless if not for civil legal aid representation in eviction and foreclosure cases, we estimate that the Commonwealth would save approximately \$0.2 to \$0.6 million on police costs annually by providing full legal representation in eviction and foreclosure cases (see Table 7).

**Table 7**

		<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
Number of individuals kept out of the shelter system due to civil legal aid (See II.c)	[1]	187	562
Per person police, jail, and court costs for homeless arrests in a year	[2]	\$1,131	\$1,131
<b>iv. Annual police cost savings for individuals due to civil legal aid</b>	<b>[3]=[1]*[2]</b>	<b>\$211,869</b>	<b>\$635,607</b>

<sup>43</sup> Voorhees, Courte C.W. et al., “The Hidden Costs of Homelessness in Nashville: A Report to the Nashville Metro Homelessness Commission,” *Center for Community Studies*, 2008. While we use law enforcement costs related to homeless individuals from Nashville, Tennessee, as proxy for costs in the Commonwealth, we note that the cost of living in Nashville is lower than that of Massachusetts (Boston, Fitchburg-Leominster, Framingham-Natick, and Pittsfield), based on December 2013 data from the Council for Community and Economic Research (see “Cost of Living: How Far Will My Salary Go in Another City?,” *CNNMoney*, available at <http://money.cnn.com/calculator/pf/cost-of-living/>). This suggests that our estimates for cost savings associated with the provision of law enforcement may be conservative.

<sup>44</sup> We have not identified any studies that compare the costs of police services for homeless individuals and disadvantaged individuals that are not homeless. For purposes of this analysis, we assume that the Commonwealth would not incur police costs associated with beneficiaries who would not become homeless. To the extent that the Commonwealth incurs these costs for beneficiaries who would not become homeless, this assumption may overstate the potential savings to the Commonwealth associated with this cost category.

Taken together, we find that the Commonwealth would save approximately \$26 to \$77 million per year by providing civil legal aid in eligible eviction/foreclosure cases (see Table 8).

**Table 8**

	<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
i. Annual shelter cost savings for families and individuals due to civil legal aid	\$11,614,574	\$34,843,721
ii. Annual health care cost savings for families and individuals due to civil legal aid	\$12,805,293	\$38,415,879
iii. Annual foster care cost savings for families due to civil legal aid	\$875,197	\$2,625,591
iv. Annual police cost savings for individuals due to civil legal aid	\$211,869	\$635,607
<b>Total annual savings due to civil legal aid</b>	<b>\$25,506,933</b>	<b>\$76,520,799</b>

### **III. Additional Long-Term Cost Savings of Providing Civil Legal Aid in Eviction/Foreclosure Cases**

In addition to the cost savings discussed in Section II.d, there are benefits to the Commonwealth from providing civil legal aid in eviction and foreclosure cases that are difficult to quantify within a given fiscal year. Here, we outline additional cost savings and benefits to the Commonwealth that cannot be included in the framework outlined above. For this reason, the cost savings outlined above are likely conservative, and underestimate the true benefit of providing civil legal aid in eviction and foreclosure cases.

#### **a. Reduction in education delay and truncation for children**

As discussed above, approximately 20% of evicted families end up in the shelter system. In addition to an increased likelihood that the children in these families will be placed in the foster care system, it has been observed that homeless children have a significantly reduced rate of high school graduation. For instance, according to a 2010 fact sheet from the National Center on Family Homelessness, the high school graduation rate for homeless children is less than 25%,<sup>45</sup> compared to the 74% graduation rate for low-income children in Massachusetts in 2013.<sup>46</sup>

It is well documented that average fiscal contributions of 18–64 year olds with a high school diploma far exceed the fiscal contributions of those that did not graduate high school. These contributions include federal and state tax payments, cash transfers (e.g., unemployment benefits), non-cash transfers (e.g., value of food stamps), and jail/prison costs.<sup>47</sup> According to the National Center on Family Homelessness, adults with a high school degree contribute an average of \$127,000 more to society in their lifetime than an adult without a high school degree.<sup>48</sup> Other sources cite even higher differentials between the societal contributions of a

<sup>45</sup> “America’s Youngest Outcasts: State Report Card on Child Homelessness – Massachusetts,” *The National Center on Family Homelessness*, available at [http://www.homelesschildrenamerica.org/pdf/report\\_cards/short/ma\\_short.pdf](http://www.homelesschildrenamerica.org/pdf/report_cards/short/ma_short.pdf).

<sup>46</sup> “Cohort 2013 Four-Year Graduation Rates – State Results,” *Massachusetts Department of Elementary and Secondary Education*, available at <http://www.doe.mass.edu/infoservices/reports/gradrates/2013-4yr.pdf>.

<sup>47</sup> McLaughlin, Joseph, “The Fiscal Returns to Completing High School and Additional Years of Schooling Beyond High School in the U.S. and Massachusetts,” *North Eastern University Center for Labor Market Studies*, January 2012, available at [http://www.bostonpic.org/sites/default/files/Fiscal\\_Returns\\_to\\_Completing\\_High\\_School.pdf](http://www.bostonpic.org/sites/default/files/Fiscal_Returns_to_Completing_High_School.pdf), pp. 2-4.

<sup>48</sup> “America’s Youngest Outcasts: State Report Card on Child Homelessness – Massachusetts,” *The National Center on Family Homelessness*, available at [http://www.homelesschildrenamerica.org/pdf/report\\_cards/short/ma\\_short.pdf](http://www.homelesschildrenamerica.org/pdf/report_cards/short/ma_short.pdf).

high school graduate versus a dropout. For instance, according to the Northeastern University Center for Labor Market Studies, the lifetime net fiscal contribution to society is approximately \$467,023 higher in Massachusetts for a high school graduate compared to a dropout.<sup>49</sup>

While the graduation rate for homeless children due to eviction/foreclosure has not been researched, assuming this rate is comparable to homeless children overall, it is likely that significant long-term savings to the Commonwealth are realized by preventing homelessness in children through eviction/foreclosure prevention.

**b. Reduction in use of court staff time and resources**

In 2013, the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts distributed a survey to judges in Massachusetts. Of the 80 judges who responded to the survey, 72% said that in the past few years, there had been an increase in the cases in which the defendant/respondent was unrepresented. Furthermore, “Housing” was the most frequently cited area where lack of representation causes “problems,” such as increased costs to the court system. Fully, 89% of these judges said that lack of representation caused the use of the court’s staff time to increase – the most frequently cited negative impact that lack of representation has on the court.<sup>50</sup>

**c. Reduction in other social problems not related to homelessness**

In addition, even when an evicted family or individual does not end up homeless (i.e., in the shelter system), there are often still societal costs from the eviction/foreclosure. A large proportion of evicted families and individuals end up staying with friends, family, or “decrepit units in unsafe neighborhoods” for an extended period of time. Congestion at these residences can lead to domestic issues that can lead to lower productivity and impact the Commonwealth’s social services, such as education, health care, foster care, and law enforcement.<sup>51</sup>

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<sup>49</sup> McLaughlin, Joseph, “The Fiscal Returns to Completing High School and Additional Years of Schooling Beyond High School in the U.S. and Massachusetts,” *North Eastern University Center for Labor Market Studies*, January 2012, available at

[http://www.bostonpic.org/sites/default/files/Fiscal\\_Returns\\_to\\_Completing\\_High\\_School.pdf](http://www.bostonpic.org/sites/default/files/Fiscal_Returns_to_Completing_High_School.pdf).

<sup>50</sup> Note that other sources state that represented litigants may require more court time than unrepresented litigants (see, for example, Greiner, Dr. James, Cassandra Wolos Pattanayak, and Jonathan Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study In a Massachusetts District Court And Prospects for the Future,” *Harvard Law Review*, Vol. 126 (901), p. 909).

<sup>51</sup> See Gudrais, Elizabeth, “Disrupted Lives: Sociologist Matthew Desmond Studies Eviction and the Lives of America’s Poor,” *Harvard Magazine*, January–February 2014, available at <http://harvardmagazine.com/2014/01/disrupted-lives>. (“Many who are evicted end up in shelters or even on the street. When they do find housing, a record of eviction often means they are limited to decrepit units in unsafe neighborhoods. This transient existence is known to affect children’s emotional well-being and their performance in school; Desmond and his research team are also beginning to link eviction to a host of negative consequences for adults, including depression and subsequent job loss, material hardship, and future residential instability. Eviction thus compounds the effects of poverty and racial discrimination. ‘We are learning,’ says Desmond, ‘that eviction is a *cause*, not just a *condition*, of poverty.’”)

Similarly, if a court rules in favor of the plaintiff in an eviction proceeding, consumer reporting agencies may receive “information relating to eviction proceedings.”<sup>52</sup> Studies have shown that a “report containing negative information not only can make securing replacement housing difficult, but also can adversely affect the tenant’s ability to secure employment, insurance, or other business opportunities.”<sup>53</sup> Therefore, eviction/foreclosure may result in other collateral consequences for the Commonwealth, including loss of income tax revenue, use of unemployment benefits, and other well-documented costs related to unemployment.

#### **IV. Conclusion**

In conclusion, we have found that the monetary benefits of representing eligible beneficiaries in eviction and foreclosure proceedings far outweighs the costs of providing these services. Specifically, we estimate that the total annual cost to represent all eligible beneficiaries in Massachusetts is approximately \$28.48 million, while the annual net savings from representing this population is approximately \$48.04 million. If the Commonwealth and its legislature elect to fund representation for only a subset of eligible beneficiaries represented by the most at-risk families and individuals, the total annual cost to represent these beneficiaries who meet additional criteria for eligibility is approximately \$9.49 million, while the annual net savings from representing this subset of the eligible population is approximately \$16.01 million. In other words, for every dollar spent on civil legal aid in eviction and foreclosure cases up to \$28.5 million, the Commonwealth stands to save approximately \$2.69 on the costs associated with the provision of other state services, such as emergency shelter, health care, foster care, and law enforcement.<sup>54</sup>

Given that this analysis is limited to the presently quantifiable categories of savings, and does not consider the avoidance of long-term repercussions from homelessness, these savings estimates are likely to underestimate the true economic benefit to the Commonwealth associated with funding civil legal aid in eviction and foreclosure cases.

**Table 9**

	<b>Beneficiaries that Meet Targeted Criteria</b>	<b>All Eligible Beneficiaries</b>
Total annual cost to represent all eligible eviction/foreclosure cases (See II.a) [1]	\$9.49 M	\$28.48 M
Total annual savings by representing all eligible eviction cases (See II.d) [2]	\$25.51 M	\$76.52 M
<b>Net Savings to the Commonwealth</b>	<b>[2]-[1]</b>	<b>\$48.04 M</b>
<b>Savings per dollar spent on civil legal aid</b>	<b>[2]/[1]</b>	<b>\$2.69</b>

<sup>52</sup> Spector, Mary, “Tenant Stories: Obstacles and Challenges Facing Tenants Today,” The John Marshall Law Review, Vol. 4 (2), 2007, available at <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1273&context=lawreview>, p. 416.

<sup>53</sup> Spector, Mary, “Tenant Stories: Obstacles and Challenges Facing Tenants Today,” The John Marshall Law Review, Vol. 4 (2), 2007, available at <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1273&context=lawreview>, p. 416.

<sup>54</sup> See Table 9.



**ALVAREZ & MARSAL  
GLOBAL FORENSIC AND  
DISPUTE SERVICES**

REPORT OF

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TO THE



**STATEWIDE TASK FORCE TO EXPAND  
CIVIL LEGAL AID IN MASSACHUSETTS**

**OCTOBER 7, 2014**

## **I. INTRODUCTION**

1. The Statewide Task Force to Expand Civil Legal Aid in Massachusetts (the “Task Force”) is assessing the extent and nature of the current unmet civil legal needs of low-income residents in the Commonwealth, and seeks to identify ways to meet that need. This unmet need for civil legal assistance can profoundly impact all Commonwealth residents, whether low income or not, and can increase homelessness, poverty, and fail to prevent domestic violence. Such societal ills levy an economic burden on all residents.

2. Prominent among these social ills is domestic violence. The costs of domestic violence are borne not only by individuals and families but also, to a great extent, by communities and society as a whole. Individual victims suffer both physical and mental harm, and often incur direct out-of-pocket expenses for medical and mental health care. If these individuals are eligible for Medicaid or some other state funded coverage, society carries the cost directly. There are also considerable indirect costs of domestic violence on society. Individuals and their families bear the burden of reduced income, reduced savings and loss of household output. Victims’ families experience a change in their consumption choices as a result. Communities cover the costs of private services provided by local agencies such as churches or volunteer workers in crisis centers. Municipal, state and federal governments bear the costs of public services offered within their jurisdictions, as well as supporting private initiatives through granting programs. Overall, society as a whole is affected by the monetary losses resulting from domestic violence.<sup>1</sup>

3. The societal costs of violence are widespread. Every recognizable effect of violence has a cost whether it is direct or indirect. Direct costs come from the use of goods and services for which a monetary exchange is made. Direct costs exist for capital, labor and material inputs. Indirect costs stem from the effects of violence that have an imputed monetary value even though they do not involve an actual monetary exchange, such as lost productivity, lost income, or reduced profits. To determine the overall beneficial impact greater access to civil

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<sup>1</sup> See Day, McKenna & Bowlus, *The Economic Costs of Violence Against Women: An Evaluation of the Literature*, United Nations, 2005, p.11

legal aid would have on the Commonwealth, neither direct nor indirect costs of violence saved as a result should be ignored.

4. The National Coalition Against Domestic Violence defines domestic violence as

*The willful intimidation, physical assault, battery, sexual assault, and/or abusive behavior perpetrated by a family member against another. Violence against women is often accompanied by emotionally abusive and controlling behavior, and thus is part of a systematic pattern of dominance and control. Domestic violence results in physical injury, psychological trauma, and sometimes death. The consequences of domestic violence can cross generations and truly last a lifetime.<sup>2</sup>*

5. The Department of Health and Human Services defines intimate partner violence (“IPV”) as

*[V]iolence committed by a spouse, ex-spouse, or current or former boyfriend or girlfriend. It occurs among both heterosexual and same-sex couples and is often a repeated offense.<sup>3</sup>*

6. Both men and women are victims of IPV, but the literature indicates that women are much more likely than men to suffer physical and probably psychological injuries from IPV:

- From 1994 to 2010, about 4 in 5 victims of IPV were female. Those in the 18-to-24 and 25-to-34 age group generally experienced the highest rates of IPV;
- Of female IPV victims ages 18 to 49, about 76.9 percent had been previously victimized by the same offender; and
- Females living in households comprised of one female adult with children experienced IPV at a rate more than 10 times higher than households with married adults with children and 6 times higher than households with one female only.<sup>4</sup>

7. Even where IPV costs per incident can be estimated, determining the number of incidents avoided requires that due consideration be given to the repetitive nature of domestic violence and IPV, both of which are characterized as a pattern of behavior as opposed to an isolated single incident. Therefore, a successful legal intervention can allow a victim to avoid not only the next repeat offense by her abuser, but potentially a multiplicity of future repeat

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<sup>2</sup> [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf)

<sup>3</sup> Costs of Intimate Partner Violence Against Women in the United States, Department of Health and Human Services, Centers of Disease Control & Prevention, National Center for Injury Prevention and Control, Atlanta GA, March 2003, p.3

<sup>4</sup> Intimate Partner Violence, 1993-2010, U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics, November 2012

occurrences. Also, studies have shown that abused women experience more physical health problems and have a higher incidence of depression, drug and alcohol abuse, and suicide attempts than do women who are not abused. Further, children living in households where domestic violence occurs, and who witness these events, suffer from a greater level of physical, emotional, psychological, and behavioral difficulties, which interfere with their natural development and education process. Such interference has also been shown to contribute to intergenerational IPV (*i.e.*, the increased probability that children who witness IPV can themselves become abusers). All of these longer run effects will impact a variety of direct and indirect costs to the Commonwealth, many of which could have been saved had further IPV victimizations been avoided.

8. Among the low-income population of Massachusetts, many of the direct and indirect costs that individual victims incur (referred to herein as “IPV costs”) are ultimately borne by the Commonwealth itself through various state-funded insurance programs and other agencies. Based on previous studies in other states, the Task Force believes that increased funding to improve the availability of civil legal services to low-income households in Massachusetts can significantly reduce IPV costs that the Commonwealth bears. This economic analysis has been designed to determine the extent to which available data supports this hypothesis. In other words, this analysis identifies certain costs to the Commonwealth to provide civil legal services to Massachusetts women in low-income households who experience IPV, and attempts to determine the concomitant savings to the Commonwealth of avoiding future IPV incidents through the availability and assistance of civil legal aid lawyers. To the extent the marginal benefit of increased availability and use of civil legal services by the low income population (*i.e.*, the alleviation of IPV costs borne by the Commonwealth) exceeds the marginal cost of providing civil legal services, it is economically efficient to incur the marginal cost and provide the civil legal services.

## **II. EXECUTIVE SUMMARY**

9. The cost incurred by the Commonwealth to provide civil legal services to Massachusetts women in low-income households is relatively straightforward to determine. The annual salary, benefits, and incremental variable costs to hire each attorney are readily available.

Making reasonable assumptions about how many cases an attorney can handle per year, on average, and the success rate of providing IPV victims with full representation in rape, physical assault or stalking matters, one can estimate the average cost per case incurred by the Commonwealth to provide these civil legal services.

10. To determine the extent to which such an investment is beneficial to the Commonwealth, it must be compared to per-case IPV costs that would have been incurred by the Commonwealth on behalf of an IPV victim who, but for access to state-funded civil legal aid, would have continued to be subject to such victimization. Estimating the type and magnitude these IPV costs per incident as well as appropriately factoring in the repetitive nature of IPV is not so straightforward.

11. This report outlines a framework by which available data can be used to estimate *a portion* of the overall IPV costs borne by the Commonwealth for women in low-income households; that is, short-run direct costs. Short-run costs represent those incurred after the victimization to deal with immediate medical and counseling needs. Long run costs represent those related to the higher rate of physical health problems, occurrences of depression, drug and alcohol abuse, and suicide attempts that abused women suffer for considerable periods of time – often a lifetime – after immediate medical needs are met. This report deals with direct short-run costs only. As a result, any comparison to investment in increased access to civil legal aid is understated.

12. We first estimate the number of women 18 years and older who will suffer non-fatal IPV victimization each year, and then estimate the portion of these victimizations that can be expected to occur among the low-income population (defined herein as households earning as much as, but not more than, 125 percent of the national poverty level).<sup>5</sup>

13. After estimating the number of expected annual victims among low-income women, we then estimate certain short-run direct IPV costs associated with these incidents. Short-run direct costs include items such as medical care, emergency department visits, hospital stays, physician visits, dental visits, physical therapy, psychotherapy and counseling costs,

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<sup>5</sup> We understand that victims from households with income not exceeding 125 percent of the federal poverty level are eligible for state funded civil legal aid.

medications, and others. Some of the difficulty in making IPV cost estimates from existing studies is due to the fact that researchers have been unable to agree on a consistent definition of IPV. In some studies, IPV includes only acts that may cause pain or injury, while ignoring behaviors designed to control or intimidate, such as stalking, humiliation, verbal abuse, imprisonment, and denial of access to money, shelter or services.

14. Several of the studies upon which we rely categorize IPV incidents as “rape,” “physical assault,” and “stalking.” In this study, we adopt these categories. This is useful, as different types of IPV will incur different costs. For instance, rape and physical assault victims will incur higher hospital, emergency department, and medical care costs, while stalking victims may incur none of these. On the other hand, the protracted and lingering effects suffered by stalking victims can result in prolonged incurrence of mental healthcare costs.

15. While not included in the benefit-cost decision analysis of this study, we also discuss certain indirect costs of IPV. These are mostly related to the loss of productivity, household output or other loss of potential value creation. Since the Commonwealth benefits from the productivity of its populace through greater tax revenues, higher spending (along with the associated multiplier effect), as well as reduced unemployment benefits payouts, it is appropriate to consider the impact that increased civil legal aid can have on avoiding such loss of productivity.

16. As many medical and psychological studies confirm, IPV is a pattern of repetitive behaviors. Therefore, a successful intervention will not simply avoid the next occurrence, but hopefully all future occurrences that would have befallen any specific victim. To the extent a civil legal intervention is successful, we must consider the number of incidents avoided for a victim during the year. Since IPV is a pattern of repetitive behavior, the assumption that a successful intervention will avoid only a single future IPV incident is imprudent, if not foolhardy.

17. Based on our analysis, the marginal cost of increasing access to civil legal services by female residents in low-income households is offset more than 2-to-1 by the potential avoidance of short-run direct IPV costs that the victims would have suffered. By limiting our study to this specific low-income population, these short-run direct IPV costs are the type of health care costs that would be covered by MassHealth, the public health insurance program for

low- to medium-income residents of Massachusetts.<sup>6</sup> Since the Federal government pays half of the cost of MassHealth, these savings would be split 50-50 with state government.<sup>7</sup> Therefore, the Commonwealth's investment in additional civil legal aid attorneys would be directly offset (*i.e.*, a 1-to-1 offset) by its 50 percent portion of these avoided short-run direct IPV costs. Again, it is important to consider the extent to which this calculated 'cost savings' to the Commonwealth is conservative. These calculations are limited to female victims (men are victims of IPV as well), consider short-run direct costs only (even though long run health care costs from IPV can exceed short-run costs), and do not include other societal costs of domestic and intimate partner violence. These can include justice and law enforcement costs in response to IPV matters, the cost to government agencies of providing and administering various social services to victims and their families, and added demand for special education services related to behavioral problems and learning disabilities in children who witness abuse at home.<sup>8</sup> Therefore, the indicated potential 1-to-1 offset by the Commonwealth (and 2-to-1 offset to the Commonwealth and federal government together) between the marginal cost of adding civil legal aid attorneys and expected avoidance of short-run direct health care should be considered a floor as actual cost savings will likely be much higher than incremental attorney costs.

### **III. COST TO PROVIDE INCREASED ACCESS TO CIVIL LEGAL AID**

18. The Massachusetts Legal Assistance Corporation ("MLAC") provided information about typical remuneration for a civil legal aid lawyer. Inquiries were also made to several legal aid service providers for other statistics, and it was determined that, on average, legal aid attorneys have the capacity to provide services in support of 30 to 45 full representation cases a year. This assumption excludes the provision of brief services and short-term legal counseling, which is a customary part of the work of every legal services attorney. For this analysis, we assumed 35 cases a year. This results in an estimate of an attorney cost per case of \$2,286, as discussed in paragraph 19 below.

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<sup>6</sup> Medicaid, the national health insurance program for low-income residents, and the Children's Health Insurance Program (CHIP) are combined into one program in Massachusetts called MassHealth.

<sup>7</sup> Federal Medical Assistance Percentages (FMAP) for Massachusetts in 2014 is 50 percent. (See <http://aspe.hhs.gov/health/reports/2014/FMAP2014/fmap2014.cfm>)

<sup>8</sup> A more complete list of costs not included in this study is reflected in the Summary section of this report.

***Table 1 – Estimated Cost of a Civil Legal Aid Attorney***

Full-time attorney salary	\$48,000
Fringe benefits (29.4%)	14,112
Fully burdened salary	62,112
MLAC estimate of associated overhead cost is 47.2 percent of salary cost (\$62,112 x .472 = \$29,317)	29,317
Total	<u><u>\$91,429</u></u>

19. Note that the effort here should be to determine the incremental or marginal cost to add each attorney. With regard to the 47.2 percent of associated overhead, only the variable portion of these costs would increase by adding new attorneys. We understand that this associated overhead includes rent, office equipment, supplies, administrative support, program administration, training, travel, and other similar expenses. By their description, some of these overhead costs may not increase in direct proportion to an increase in the number of attorneys. In other words, each additional attorney may not require a proportionate increase in facilities, equipment, and other administrative costs. Assuming as much as 60 percent of the \$29,317 overhead cost is variable, the incremental cost of each additional attorney is about \$80,000. If each additional attorney takes on a caseload of 35 cases, this is an incremental cost per case of \$2,286 ( $\$80,000 \div 35$ ).

#### **IV. IPV COST SAVINGS THROUGH INCREASED ACCESS TO CIVIL LEGAL AID**

20. The Task Force believes that increased funding to improve the availability of civil legal services to low-income households in Massachusetts can significantly reduce IPV costs that the Commonwealth bears. As the previous section is a determination of the per-case increased funding to the Commonwealth for incremental civil legal aid resources, we now turn to the potential savings the Commonwealth would enjoy as a result of future incidents avoided.

### A. Number of Incidents Avoidable Through Increased Civil Legal Aid

21. In order to measure costs saved, there must first be an estimation of the number of IPV victimizations avoided in any one year. This estimate is based on a combination of the number of IPV victimizations expected to occur among Massachusetts females age 18 or older in any one year, the portion of those incidents expected to occur among the State's low-income population, and the extent to which a civil legal aid intervention is successful at avoiding future incidents. We calculate 13,477 victims can avoid suffering IPV each year, as shown in the calculation presented in Table 2 below:

***Table 2 – Annual Victimization Avoided***

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1. Massachusetts female population age 18+ expected in 2015	2,770,512
2. Average annual percentage of females victimized (1993-2010)	0.983%
Expected number of Massachusetts females age 18+ victimized each year	27,227
3. Portion of population in households earning equal to or less than 125 percent of Federal Poverty Level Guidelines.	66%
4. Civil legal aid success rate	75%
Potentially avoidable IPV victims a year	<u>13,477</u>

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***Table 2 Notes:***

#### ***1. Massachusetts female population age 18+ expected in 2015***

22. According to the 2010 U.S. Census data, there were approximately 2,677,459 women in the State of Massachusetts, age 18 and older. According to the latest University of Massachusetts Donahue Institute population estimates, there will be 2,770,512 females age 18+ in the Commonwealth by 2015.<sup>9</sup>

#### ***2. Average annual percentage of females victimized***

23. To estimate the number of IPV occurrences in a year, we obtained annual occurrence rates from 1993 through 2010 for the relevant female population (age 18+) in the

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<sup>9</sup> See pep.donahue-institute.org. Compares to 2,740,608 according to the 2010 census.

nation.<sup>10</sup> Over this 17-year period, a little less than 1 percent (0.983%) of females in this age group were victimized each year, on average.

***3. Portion of population in households earning equal to or less than 125 percent of Federal Poverty Level Guidelines***

24. In 2000, the U.S. Department of Justice published a Bureau of Justice Statistics Special Report – Intimate Partner Violence. This included an analysis of IPV by household income. Comparing these income levels to concurrent Federal Poverty Level Guidelines, we estimate that 66 percent of victims are in low-income households (*i.e.*, those earning equal to or less than 125 percent of the Federal Poverty Level).

***4. Civil legal aid success rate***

25. In order to determine the number of IPV victimizations avoided, an estimate of the extent to which a civil legal aid intervention is successful is required. Several Massachusetts legal aid service providers shared information that included case statistics, such as success rate, description of positive outcome, number of domestic violence cases that go to trial *v.* settlement, time spent and costs incurred in a full trial *v.* settlement, etc.<sup>11</sup> The questionnaire responses indicate that, in addition to being able to handle 30 to 45 full representation cases a year, these cases enjoy a high success rate and positive outcome that is estimated to be in the high 90 percent range. The positive outcome may include obtaining a successful divorce, maintaining child custody and/or securing child support orders, increasing physical safety, retaining affordable housing or shelter placement, obtaining legal immigration status, or other results which serve to reduce the probability for further IPV.

26. Unfortunately, these questionnaires also provided information on the substantial number of people who are turned away from legal aid service providers due to insufficient resources to meet the needs of all victims. This is a situation that continues to plague both the

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<sup>10</sup> These were available in a Special Report on Intimate Partner Violence, 1993-2010, published by the U.S. Department of Justice, Office of Justice Programs, *Bureau of Justice Statistics*.  
<http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>

<sup>11</sup> Thirteen Massachusetts based agencies were surveyed in the Spring of 2014. Ten of the thirteen agencies provided responses to the survey questions, and these included: Community Legal Services and Counseling Center, Center for Public Representation, MetroWest, Neighborhood Legal Services, Merrimack Valley Legal Services, Children's Law Center, Community Legal Aid, Volunteer Lawyers Project, Disability Law Center and Greater Boston Legal Services.

victims and the legal aid service providers – conclusive evidence that there is still a significant unmet need for civil legal services among low-income women in Massachusetts.<sup>12</sup>

27. For the purposes of these calculations, we assume a success rate of 75 percent. While this is significantly lower than success rates reported in the legal service provider surveys, it is reasonable to assume that the higher the volume of cases taken on, the lower the expected success rate, due to the ability to take on a wider range of cases. We chose the 75 percent rate to reflect this tendency and to be conservative in our calculations.

28. Based on these calculations, we estimate that direct costs relating to 13,477 individual low-income female IPV victims could be avoided each year through increased access to civil legal aid.

## **B. Annual Direct Costs Avoidable Through Increased Civil Legal Aid**

29. The Commonwealth enjoys economic benefits from reduced IPV victimization. By preventing future IPV incidents, the Commonwealth avoids, in the short-run, both direct and indirect costs incurred by victims for whom the State provides Medicaid or other insurance coverage. We discuss these two cost categories separately.

30. Direct costs typically include medical care, *e.g.*, hospitalization, physician costs, emergency room visits, ambulance and paramedic services, physical therapy, dental visits and the like. Direct costs also include mental healthcare costs such as psychiatric care, professional counseling services, substance abuse treatment facilities, and other therapy costs. Since this study is limited to the short-run direct costs incurred by victims who are low-income residents, whose health care costs are covered by a state-funded Medicaid program, any saved or avoided direct costs represent a savings not to the victim but to the Commonwealth. Table 3 below shows that in excess of \$62 million of direct costs can be saved by the Commonwealth annually, by avoiding the IPV victimization of 13,477 women each year. This equals about \$4,609 per

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<sup>12</sup> A turn-away is defined as a case that is deemed “eligible and unable to serve” but for which sufficient resources to accept the case do not exist. In other words, the applicant was financially eligible for representation and a) the case was not eligible for court-appointed representation (*e.g.*, criminal, DSS child removal or mental health commitment); or b) the case was not simply referred to another LSC or MLAC funded legal services program; or c) the case was not referred to an organization not funded by LSC or MLAC that will provide full representation for the client.

case, which, when compared to incremental attorney costs to provide civil legal aid of \$2,286 (see paragraph 20 above), supports a savings of a little over \$2.00 in direct costs avoided for each \$1 invested in increased civil legal aid. Again, due to the conservative nature of these calculations, the savings rate is likely higher. Each item in the calculation is discussed in detail in the paragraphs that follow.

***Table 3 – Annual Direct Costs Saved***

Incidence overlap 1.	Estimated cases 2.	Factor for recurring pattern 3.	Percent requiring medical care 4.	Number requiring medical care 5.	Per-incident cost		Annual cost 6.
Rape only	4.4%	593	1.769	22.1%	232	\$10,341	\$2,397,673
Physical assault only	56.8%	7,655	1.769	22.1%	2,993	\$10,594	31,708,911
Stalking only	2.6%	350	1.769	22.1%	137	\$1,281	175,497
Physical assault and rape	8.7%	1,172	1.769	22.1%	458	\$15,764	7,227,249
Stalking and rape	0.6%	81	1.769	22.1%	32	\$11,622	367,455
Stalking and physical assault	14.4%	1,941	1.769	22.1%	759	\$11,875	9,010,860
Stalking, physical assault, and rape	12.5%	1,685	1.769	22.1%	659	\$17,045	11,227,712
Annual totals	100.0%	<u>13,477</u>					<u>\$62,115,355</u>
Average savings of direct costs per case							<u><u>\$4,609</u></u>

***Table 3 Notes:***

***1. Incidence overlap***

31. Table 2 reflects that, in any given year, we can expect 13,477 women in low-income households will be IPV victims. These victimizations include rape, physical assault, stalking or any combination of those three. For example, a single victimization could include someone who was physically assaulted solely, or a single victimization could include someone who was stalked, physically assaulted, and then raped.

32. In 2010, National Center for Injury Prevention and Control (part of the Centers for Disease Control (“CDC”) in Atlanta) launched the National Intimate Partner and Sexual Violence Survey (“NIPSVS”) with the support of the National Institute of Justice (“NIJ”) and the Department of Defense (“DOD”). The development of the NIPSVS was informed by the 1995

National Violence Against Women Survey (“NVAWS”),<sup>13</sup> which provided a starting point for the development of the survey instrument/questionnaire. The NIPSVS is an ongoing, nationally representative survey that assesses experiences of sexual violence, stalking, and intimate partner violence among adult women and men in the United States and for each individual state. It is a national random digit dial (RDD) telephone survey that collected information from the non-institutionalized English and/or Spanish-speaking U.S. population, aged 18 or older. The survey was conducted in 50 states and the District of Columbia and was administered from January 22, 2010 through December 31, 2010. In all, a total of 18,049 interviews were conducted and a total of 16,507 adults (9,086 females and 7,421 males) completed the survey.

33. The primary objectives of the NIPSVS are to describe:

- a. The prevalence and characteristics of sexual violence, stalking, and intimate partner violence;
- b. Who is most likely to experience these forms of violence;
- c. The patterns and impact of the violence experienced by specific victims; and
- d. The health consequences of these forms of violence.

34. According to the NIPSVS, of the women who experienced an episode of violence by an intimate partner:

- 4.4 percent experienced rape alone;
- 56.8 percent experienced physical assault alone;
- 2.6 percent experienced stalking alone;
- 8.7 percent experienced physical assault and rape;
- 0.6 percent experienced stalking and rape;
- 14.4 percent experienced stalking and physical assault; and
- 12.5 percent experienced stalking, physical assault, and rape.<sup>14</sup>

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<sup>13</sup> The NVAWS was a telephone survey that was conducted from November 1995 to May 1996 by the Center for Policy Research with funding from the NIIJ and the CDC. The NVAWS was to generate information about the incidence, prevalence, characteristics, and consequences of physical assault, rape, and stalking perpetrated against U.S. women ages 18 and older by all types of perpetrators, including intimate partners.

<sup>14</sup> National Intimate Partner and Sexual Violence Survey: 2010 Summary Report, Figure 4.1, page 41

## 2. *Estimated cases*

35. Applying the above percentages to annual victims yields an estimate of each category of IPV as well as estimates of cases where a victim suffered more than one type of IPV. This categorization is necessary to properly cost each victimization and to determine the value of avoided costs on a *per-case* basis.

## 3. *Factor for repeat occurrences*

36. To this point, the estimate relates to 13,477 Massachusetts females in low-income households who can be expected to suffer IPV victimization in any given year. It does not, however, account for multiple victimizations of any one female. The U.S. Department of Health and Human Services defines domestic violence as “*a pattern* (emphasis added) of assaultive and/or coercive behaviors … that adults use against their intimate partners to gain power and control in that relationship.” Domestic violence is about the issue of control, and the entitlement to control others. The intention of the abusive partner is to gain *and maintain* power over his/her partner through fear and intimidation. While many theories address the cause of IPV, there are several that discuss the dynamic patterns seen in IPV. For example, “the power and control wheel theory” as described in The Primary Care Companion to the Journal of Clinical Psychiatry illustrates that violence is part of a pattern of repetitive controlling behaviors.

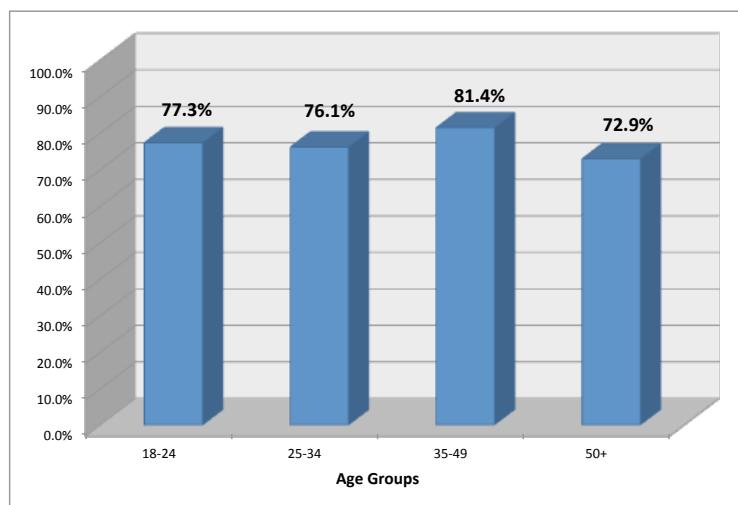


37. Contributing to this pattern is the dynamic of perpetrators’ behavior over time. “Aggressive acts increase the likelihood of a person being aggressive again. At the first act of violence, perpetrators may be distressed and express contrition about their abusive behavior.

However, with repetition, perpetrators become desensitized, and the shock and self-reproof extinguish over time. The physical aggression can squash victim resistance, while the denigration will batter the victim's self-concept and self-efficacy.<sup>15</sup> As a result, abusive behaviors tend to continue until victims decide to break away from the pattern or some other intervention occurs.

38. Since a successful civil legal aid intervention has the ability to not only stop the next occurrence of IPV, but also to interrupt and potentially discontinue this pattern of repetitive behaviors, this must be taken into consideration in determining saved costs. While our research has indicated little information quantifying the specific number of times an abuser will use violence in any one year, there is published evidence on the fact that IPV is a repeated pattern of behavior. When asked whether or not IPV victims had been previously victimized by the same offender, the response was the following:

***Chart 1 – Victims Claiming They Were Victimized Previously By the Same Offender***



Source: Special Report – Intimate Partner Violence, 1993-2010, U.S. Department of Justice,  
*Bureau of Justice Statistics*

39. Based on this data, 76.9 percent of victims on average who were IPV victims had been victimized by the same offender previously. Note that the survey responses were simply "yes/no" to the previous victimization question, and do not indicate the number of previous victimizations suffered. Our use of 1.769 as the recurring pattern factor assumes that (a) 76.9

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<sup>15</sup> Katerndahl, Burge, et al., *Complex Dynamics in Intimate Partner Violence: A Time Series Study of 16 Women*, The Primary Care Companion to The Journal of Clinical Psychiatry, Physicians Postgraduate Press Inc., 2010.

percent of victims will ever suffer a repeat occurrence and (b) this will be limited to a single repeat occurrence. Given the nature and dynamic of IPV, this is clearly a conservative assumption.

#### ***4. Percent of injured victims requiring medical care***

40. The NIPSVS also studied impacts of IPV on victims. These impacts included things like increased fearfulness, concern for safety, Post Traumatic Stress Disorder (PTSD) symptoms, and injury, among others. Also, according to the NIPSVS, while 41.6 percent of victims were injured in their IPV attack, 22.1 percent of victims sought medical care for their injuries.<sup>16</sup> After identifying the number of victims and victimizations, we apply this 22.1 percent rate as those requiring medical care.

#### ***5. Per-incident cost***

##### **a. Medical Care**

41. The NVAWS was also a telephone survey that was conducted by the Center for Policy Research with funding from the NIJ and the CDC. From November 1995 to May 1996, a national probability sample of 8,000 women and 8,000 men ages 18 and older were surveyed via telephone using a computer-assisted interviewing system. Female interviewers surveyed female respondents. A Spanish-language version of the survey was used with Spanish-speaking respondents. The NVAWS generated information about the incidence, prevalence, characteristics, and consequences of physical assault, rape, and stalking perpetrated against U.S. women ages 18 and older by all types of perpetrators, including intimate partners.

42. In a subsequent study in 1997, which relied on the original NVAWS, the CDC and the Office of the Assistant Secretary for Planning and Evaluation, a component of the Department of Health and Human Services (“HHS”), contracted with Wendy Max, Dorothy Rice, Jacqueline Golding, and Howard Pinderhughes at the University of California, San Francisco, to use a methodology they had developed earlier (Rice *et al.* 1996) to review draft survey questions and to recommend changes that would enable cost data to be collected with the NVAWS. The survey questions sought to detail the type of violence; the circumstances surrounding the

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<sup>16</sup> National Intimate Partner and Sexual Violence Survey, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2010, p. 56

violence; the relationship between victim and perpetrator; and consequences to the victim, including injuries sustained, use of medical and mental health care services, contact with the criminal justice system, and time lost from usual activities.<sup>17</sup>

43. Patricia Tjaden and Nancy Thoennes (1999) later used the NVAWS data and U.S. Census figures for the population of women ages 18 and older to generate national estimates of the incidence and prevalence of IPV-related injuries among women. The CDC also funded the Research Triangle Institute International (RTI) to derive measures of reliability for the incidence, prevalence, and cost estimates. Additionally, RTI, along with others, developed estimates of the present value of lifetime earnings for fatal IPV by combining economic data with IPV homicide data from the Federal Bureau of Investigation.<sup>18</sup>

44. In 2003, HHS and the CDC's National Center for Injury Prevention and Control published the *Costs of Intimate Partner Violence Against Women in the United States Survey* ("CIPVAW"). The study states that "rather than duplicating efforts, the CDC approached the National Institute of Justice about supplementing its previous grant to Tjaden and Thoennes to broaden the size and scope of the NVAWS by increasing the sample size ... and adding questions about violence in same-sex intimate relationships." The broader survey could then be used as the basis for calculating more reliable cost estimates of IPV and other forms of violence. Both the NIJ and the Center for Policy Research agreed to delay the survey to accommodate the CDC's proposed changes. The supplemental funds expanded the survey population to a number large enough to provide reliable national estimates of the incidence and prevalence of forcible rapes, physical assault, and stalking; related injuries and health care costs, including those for mental health care services; and indirect costs due to lost productivity of paid work and household chores.

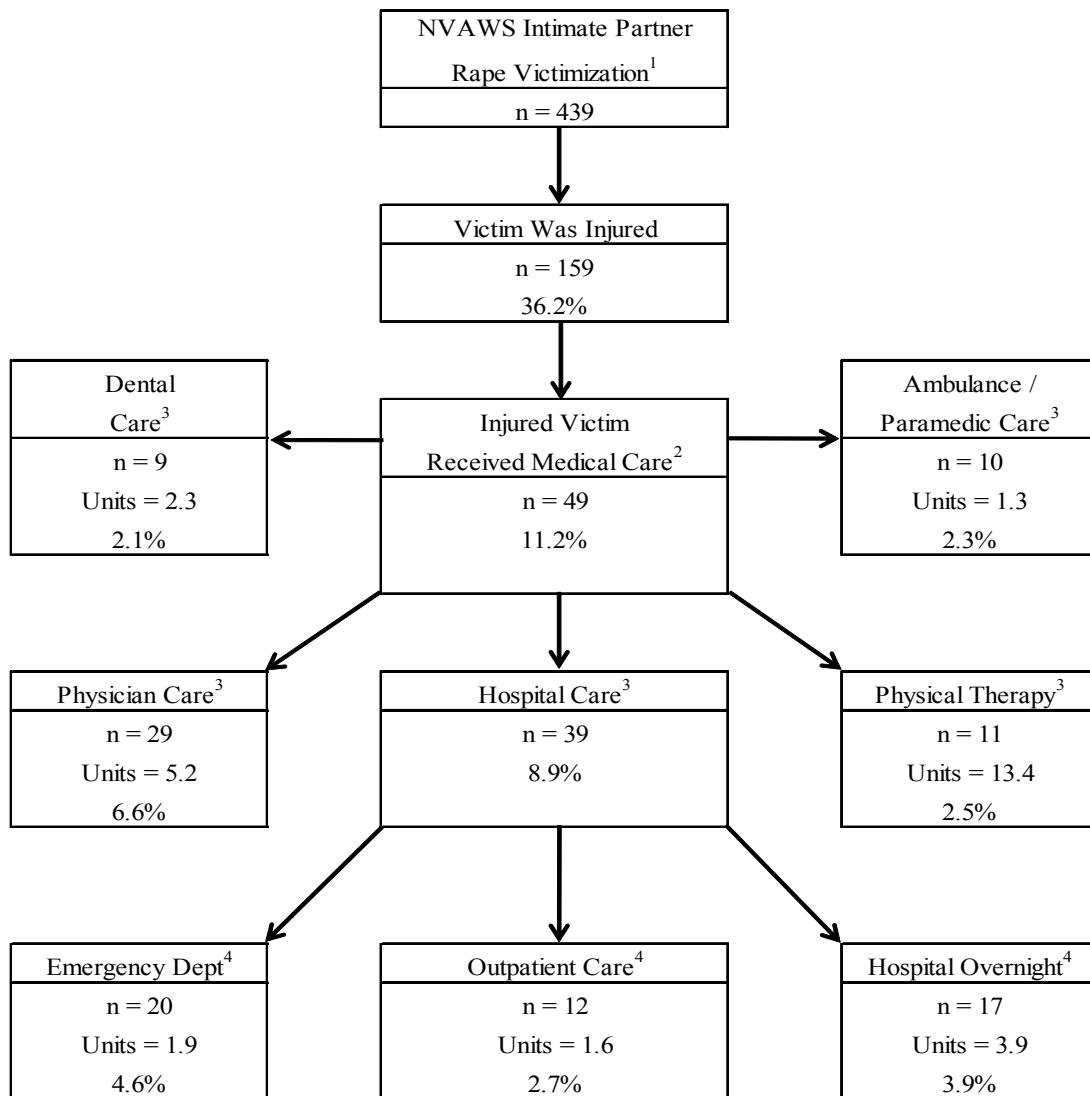
45. In Figures 1A and 1B below, we reproduce the victimization percentage distributions of U.S. adult female victims of IPV by medical care service use, as published in the CIPVAW (2003). Figure 1A reflects rape and Figure 1B reflects physical assaults.

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<sup>17</sup> National Center for Injury Prevention and Control, Costs of Intimate Partner Violence Against Women in the United States, Atlanta (GA): Centers for Disease Control and Prevention; 2003.

<sup>18</sup> *Id.*

**Figure 1A -- Rape Victimization Medical Cost Distribution**



**Sources:**

Cost of Intimate Partner Violence Against Women in the United States - Department of Health and Human Services Centers for Disease Control and Prevention National Center for Injury Prevention and Control ("CDC Report") published March 2003, Figure 1 & Table 4.

Tjaden and Thoennes 2000

**Notes:**

Percentages are based on the percent of total victimizations.

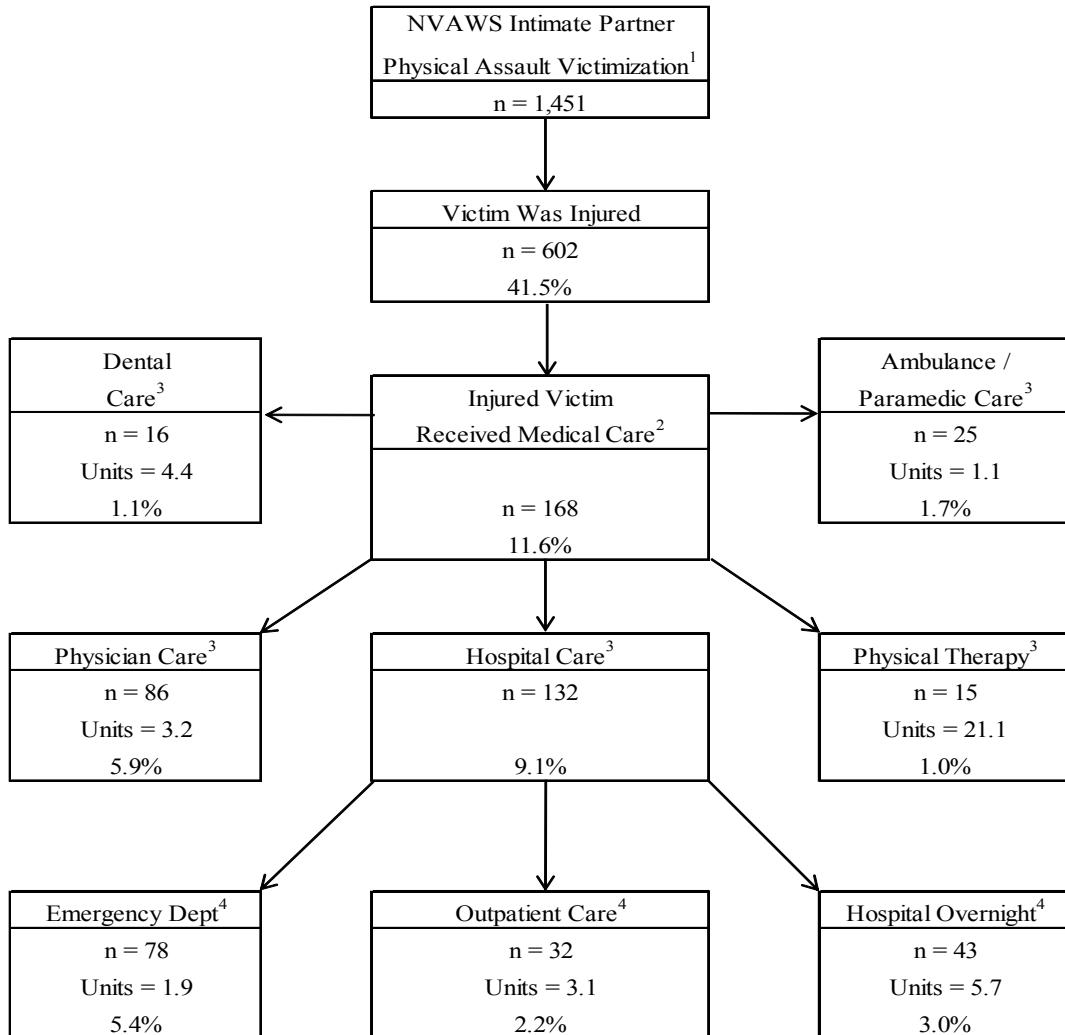
1 Estimates are based on the most recent intimate partner victimization since the age of 18.

2 The number of victims who received medical care is based on 158 responses from victims who were injured, excluding one "don't know" response

3 Estimates are based on responses from victims who received medical care.

4 Estimates are based on responses from victims who received hospital care.

**Figure 1B -- Physical Assault Victimization Medical Cost Distribution**



**Sources:**

Cost of Intimate Partner Violence Against Women in the United States - Department of Health and Human Services Centers for Disease Control and Prevention National Center for Injury Prevention and Control ("CDC Report") published March 2003, Figure 2 & Table 4.  
Tjaden and Thoennes 2000

**Notes:**

Percentages are based on the percent of total victimizations.

1 Estimates are based on the most recent intimate partner victimization since the age of 18.

2 The number of victims who received medical care is based on 598 responses from victims who were injured, excluding 4 "don't know" responses.

3 Estimates are based on 168 responses from victims who received medical care, although the percentage of victims who received physician care is based on 166 respondents, excluding 2 "don't know" responses.

4 Estimates are based on responses from victims who received hospital care.

46. Based on the units of medical care service utilized and the medical cost distributions shown in Figures 1A and 1B (adjusted for inflation and standard of living in Massachusetts), we estimate average direct medical care costs per incident for the injured victims that seek medical care. Table 4 reflects our calculations of average direct medical care costs for each incident of rape at \$8,526, and average direct medical care costs for each incident of physical assault at \$8,706.

**Table 4 – Direct Medical Care IPV Costs Per Incident**

Type of Care	Rape Victims Requiring Medical Care				Times: CPI Inflation	Times: MA Std of Living	Medical Care Cost (2014)
	No. of Victims receiving care*	Avg no. of uses/rape	Unit Cost Per Service	Medical Care Cost (1995)			
[1]	[2]	[3]	[4]=[1]*[2]*[3]	[5]	[6]	[7]=[4]*[5]*[6]	
Emergency Department Visits	20	1.9	\$ 346.73	\$ 13,175.74	1.56	1.19	\$ 24,459.44
Outpatient Visits	12	1.6	\$ 347.59	\$ 6,673.73	1.56	1.19	\$ 12,389.11
Hospital Overnights	17	3.9	\$ 2,519.90	\$ 167,069.37	1.56	1.19	\$ 310,147.58
Physician Visits	29	5.2	\$ 112.21	\$ 16,921.27	1.56	1.19	\$ 31,412.64
Dental Visits	9	2.3	\$ 308.90	\$ 6,394.23	1.56	1.19	\$ 11,870.25
Ambulance/Paramedic Services	10	1.3	\$ 121.13	\$ 1,574.69	1.56	1.19	\$ 2,923.25
Physical Therapy Visits	11	13.4	\$ 89.74	\$ 13,227.68	1.56	1.19	\$ 24,555.86
Total medical care costs							\$ 417,758.13
Number of rape victims receiving medical care*							49
<b>Average direct medical care costs per rape incident</b>							<b>\$ 8,526</b>

Source: Costs of Intimate Partner Violence Against Women in the United States (March 2003), Fig. 1 on pg 16 and Table 8, pg 36.

\* See Figure 1A

Type of Care	Physical Assault Victims Requiring Medical Care				Times: CPI Inflation	Times: MA Std of Living	Medical Care Cost (2014)
	No. of Victims receiving care*	Avg no. of uses/assault	Unit Cost Per Service	Medical Care Cost (1995)			
[1]	[2]	[3]	[4]=[1]*[2]*[3]	[5]	[6]	[7]=[4]*[5]*[6]	
Emergency Department Visits	78	1.9	\$ 346.73	\$ 51,385.39	1.56	1.19	\$ 95,391.83
Outpatient Visits	32	3.1	\$ 347.59	\$ 34,480.93	1.56	1.19	\$ 64,010.39
Hospital Overnights	43	5.7	\$ 2,519.90	\$ 617,627.49	1.56	1.19	\$ 1,146,563.67
Physician Visits	86	3.2	\$ 112.21	\$ 30,880.19	1.56	1.19	\$ 57,325.99
Dental Visits	16	4.4	\$ 308.90	\$ 21,746.56	1.56	1.19	\$ 40,370.31
Ambulance/Paramedic Services	25	1.1	\$ 121.13	\$ 3,331.08	1.56	1.19	\$ 6,183.81
Physical Therapy Visits	15	21.1	\$ 89.74	\$ 28,402.71	1.56	1.19	\$ 52,726.79
Total medical care costs							\$ 1,462,572.80
Number of physical assault victims receiving medical care*							168
<b>Average direct medical care costs per physical assault incident</b>							<b>\$ 8,706</b>

Source: Costs of Intimate Partner Violence Against Women in the United States (March 2003), Fig. 2 on pg 17 and Table 10, pg 38.

\* See Figure 1B

**b. Mental Health Care**

47. Regarding direct costs for mental healthcare, we utilized the basic framework of the CDC/NVAWS analysis. Table 5 reflects the national costs in 1995 dollars utilized in the CDC study. Updating these to reflect Massachusetts' price levels and inflating to 2014 dollars yields the values reflected.

***Table 5 – Direct Mental Healthcare Costs Per Incident<sup>19</sup>***

	Rape	Physical Assault	Stalking
Mean cost per incident among victims receiving treatment (1995 dollars)	\$978	\$1,017	\$690
Factor to inflate costs to 2014 dollars	156%	156%	156%
Factor reflecting healthcare component of Mass cost of living (National = 100 percent)	119%	119%	119%
Mental healthcare costs per incident	<u>\$1,816</u>	<u>\$1,888</u>	<u>\$1,281</u>

Table 6 combines Tables 4 and 5 to yield total direct IPV costs per incident:

***Table 6 – Total Direct IPV Costs Per Incident***

	Rape	Physical Assault	Stalking
Direct medical costs (Table 4)	\$8,526	\$8,706	\$0
Direct mental healthcare costs (Table 5)	<u>1,816</u>	<u>1,888</u>	<u>1,281</u>
Total direct costs per IPV victimization	<u>\$10,341</u>	<u>\$10,594</u>	<u>\$1,281</u>

48. The per-incident costs shown in Table 3 above come directly from the combined medical and mental health costs reflected in Table 6. In certain circumstances, Table 3 reflects an incidence overlap of two or more categories, for which we made the following adjustments.

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<sup>19</sup> National Center for Injury Prevention and Control, Costs of Intimate Partner Violence Against Women in the United States, Atlanta (GA): Centers for Disease Control and Prevention; 2003

- a. For stalking and rape, and for stalking and physical assault, we combined the costs for each category. Therefore, direct costs for victims of both stalking and rape total \$11,622 (\$1,281 + \$10,341). Direct costs for victims of both stalking and physical assault total \$11,875 (\$1,281 + \$10,594).
- b. For the combinations that include both physical assault and rape, both IPV categories include the same or similar direct costs (*e.g.*, emergency department visits, hospital overnights, or physician visits). It stands to reason that on average, and all else equal, a victim who is both physically assaulted and raped will incur greater medical care costs than a victim who is either physically assaulted or raped (obviously individual circumstances can differ widely). However, there is no basis to assume that a person who is physically assaulted and raped will require twice the emergency department visits, hospital overnights, or physician visits, etc. than a person who is either physically assaulted or raped solely. Therefore simply combining costs for these categories did not seem appropriate. Absent another way to reflect combined costs, and for purposes of these calculations solely, for victims of both physical assault and rape, we valued the physical assault at 100 percent of the \$10,594 shown in Table 6, plus rape at 50 percent of the \$10,341 (or \$5,170) shown in Table 6.

### **C. Direct Cost Summary**

49. In Table 2 above, we can expect that, in any given year, an increase in access to civil legal aid has the potential to save 13,477 females in low-income households in Massachusetts from being IPV victims. These victimizations could include rape, physical assault, stalking, or some combination of two or more of these. Since IPV is most often a repeated pattern of behavior from the abuser, a significant number of these women will suffer multiple incidents. While many will suffer injuries, studies show that, in 22.1 percent of cases, victims will seek medical or mental health care. Based on average per-incident costs, we estimate that the Commonwealth can expect to incur in excess of \$62 million in direct medical and mental health care costs for by low-income female victims of IPV each year, or about \$4,609 per case. This is the amount that can potentially be saved through increased access to civil legal aid for low-income victims. Compared to the per-case incremental investment in civil legal services of \$2,246, each \$1 invested in increased access to civil legal aid has the potential to save a little over twice that amount in avoided direct IPV costs.

#### D. Indirect IPV Costs Per Incident

50. Indirect costs stem from the effects of violence that have an imputed monetary value even though they do not involve an actual monetary exchange, such as lost productivity, lost income, or reduced profits. As stated previously, IPV victims and their families bear the burden of reduced income, reduced savings and loss of household output. Victims' families experience a change in their consumption choices as a result. Communities cover the costs of private services provided by local agencies such as churches or volunteer workers in crisis centers. Municipal, state and federal governments bear the costs of public services offered within their jurisdictions, as well as supporting private initiatives through granting programs. Overall, society as a whole is affected by the monetary losses resulting from domestic violence. To determine the overall beneficial impact of greater access to civil legal aid on the Commonwealth, saved indirect costs of violence cannot be ignored.

51. The Commonwealth benefits, financially and otherwise, through economic growth, and IPV inhibits such growth through various factors.

- a. The *capabilities* of an individual are shaped by poor health status, including physical and mental health, which is often an outcome of IPV. Health status in turn shapes the stability of employment, the acquisition of skills, and degree of mobility, all of which impact the capabilities of individuals. These, in turn affect human capital formation, productivity and economic growth.
- b. *Trauma* has also been identified as an important factor with regard to the affects of IPV. Trauma impacts employment stability, absenteeism and presenteeism<sup>20</sup> impacts on productivity, and the magnitude of disability adjusted life years. Fear is also an important mechanism that increases trauma leading to poor mental health status, depression and other psychological effects with subsequent impacts on productivity and human capital formation; and
- c. The impact of IPV in *intra-household gender relations* relates directly to the lasting effects of suffering from or witnessing violence. Loss of income at the household level can potentially reduce consumption as well as savings, affecting welfare consumption and household utility.<sup>21</sup>

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<sup>20</sup> Presenteeism, as opposed to absenteeism, relates to IPV victims who come to work but operate far below their normal efficiency, affecting not only their individual output but that of any teams of which they are a part.

<sup>21</sup> See Duvvury, Callan, Carney & Raghavendra, *Intimate Partner Violence: Economic Costs and Implications for Growth and Development*, The World Bank (2013) for a more detailed discussion of IPV impact on economic growth.

52. As previously discussed, the NVAWS measured the impact of lost productivity and lost household services suffered by the victims. According to NVAWS estimates,

- a. More than one-fifth (21.5 percent) of the women raped by an intimate partner reported losing time from paid work, and 13.5 percent reported a temporary inability to perform household chores;
- b. Approximately one in six (17.5 percent) victims of physical assault reported time lost from paid work, and one in ten (10.3 percent) reported lost time from household chores; and
- c. More than one-third (35.3 percent) of stalking victims reported time lost from paid work and 17.5 percent reported lost time from household chores.

53. Indirect non-medical costs are costs emerging outside of healthcare and indirectly associated with the injury and related intervention. These costs are commonly restricted to productivity costs.<sup>22</sup> In the health care setting, productivity costs can be defined as costs associated with paid and unpaid production loss and replacement due to illness, disability, or death of productive persons.<sup>23</sup> The inclusion of productivity costs in economic evaluations is not without debate in the literature. Where the purpose of the economic evaluation is to determine the impact of an intervention on a healthcare payer (*e.g.*, an insurer), costs would be limited to those falling on the healthcare payer's budget. In other words, if the main aim of an economic evaluation is considered to be informing decision makers who wish to maximize (or optimize) population health from a given health care budget, only costs falling on the health care budget are relevant. Costs falling outside the health care sector, including productivity costs, then are irrelevant. By contrast, evaluations from a societal perspective must include all relevant societal costs (and effects), regardless of where these costs fall.<sup>24</sup> If it is assumed that the decision maker has the broader objective of contributing to maximizing social welfare, costs falling outside the

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<sup>22</sup> Gold M, Siegel J, Russell L, Weinstein M. *Cost-Effectiveness in Health and Medicine*. Oxford: Oxford University Press; 1996.

<sup>23</sup> Brouwer WB, Koopmanschap MA, Rutten FF. *Productivity Costs in Cost-effectiveness Analysis: Numerator or Denominator: A Further Discussion*. Health Econ. 1997 Sep-Oct;6(5):511-514.

<sup>24</sup> Drummond MF, Sculpher MJ, Torrance GW, O'Brien BJ, Stoddart GL. *Methods for the Economic Evaluation of Health Care Programmes*. 3rd ed. Oxford ; New York: Oxford University Press; 2005.

health care budget can be considered equally important as those falling on the health care budget. Then, obviously, loss of productivity costs are fully relevant, and included in the analysis.<sup>25</sup>

54. To the extent victims are not currently in the workforce but provide household services, we borrow from the professionally recognized and courtroom admissible methods of estimating the value of household services in civil claims regarding personal injury and wrongful death, to value lost household services at opportunity cost rates.

55. Victims of IPV lose time from their regular activities due to injury and mental health issues. They may also be at greater risk for other health problems, such as chronic pain and sleep disturbances, which can interfere with or limit daily functioning (McCauley et al. 1995).<sup>26</sup> The NVAWS showed various amounts of time lost, as reflected in Tables 4A and 4B below. In valuing those days lost, we used daily income at minimum wage (\$8/hour × 8 hours = \$64).

***Table 7A – Value of Lost Productivity***

	Rape	Physical Assault	Stalking
Daily minimum wage	\$64	\$64	\$64
Average days lost per victim	8.1	7.2	10.1
Value of lost productivity	\$518	\$461	\$646

***Table 7B – Value of Lost Household Services***

	Rape	Physical Assault	Stalking
Daily minimum wage	\$64	\$64	\$64
Average days lost per victim	13.4	8.4	12.7
Value of lost household output	\$858	\$538	\$813

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<sup>25</sup> Krol, Marieke, *Productivity Costs in Economic Evaluations*, Erasmus University Rotterdam, December 21, 2012.

<sup>26</sup> National Center for Injury Prevention and Control. *Costs of Intimate Partner Violence Against Women in the United States*, Atlanta (GA): Centers for Disease Control and Prevention; 2003.

56. Using minimum wage as a valuation tool is based on the human capital approach in benefit-cost analysis often used by the CDC. Benefit-cost analysis is a type of economic evaluation method where the costs of the program or intervention are compared to the benefits of the intervention, and both costs and benefits use the same units: dollars.<sup>27</sup>

57. The human capital approach for valuing indirect benefits in a benefit-cost analysis is based on the theory of investment. People are viewed as capital investments whose sole purpose is to produce for society at large. The value of their production potential in society is based on the wages they earn, including all the benefits associated with those wages, with some adjustments for their production potential within the household as well.

## **V. SUMMARY**

58. Our study provides an estimate of the potentially avoidable incidents of IPV among females in lower income households in the Commonwealth of Massachusetts and some of the associated potentially avoidable IPV costs.<sup>28</sup> We measure short-term direct costs incurred as a result of IPV and estimate conservatively that direct costs in excess of \$62 million each year can potentially be avoided through increased access to civil legal aid among this low-income population. Based on our analysis, the marginal cost of increasing the availability of civil legal services to female victims of IPV in low-income households is more than offset by the savings of short-run direct IPV victim costs. We estimate that, for every \$1 of attorney cost investment, the Commonwealth saves roughly \$2.00 in avoided short-run victim IPV costs. Since the Federal Medical Assistance Percentage for Massachusetts is 50 percent, the net savings to the Commonwealth of avoided short-run direct IPV costs would about equal the cost of additional civil legal aid attorneys. We also see this as an extremely conservative estimate of IPV related cost savings due to the following:

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<sup>27</sup> Benefit-cost analysis is typically used at the executive level of government when considering regulatory proposals that would be costly to implement but that would have potentially large economic benefits to society. Examples of these regulatory actions are the Clean Air Act and the Clean Water Act. Application of benefit-cost analysis to public health interventions is a more recent phenomenon.

<sup>28</sup> We have been provided various documents and information in connection with this assignment. These resources included discussions with the Task Force, relative studies concerning domestic violence issues, current statistics provided by the Bureau of Labor Statistics for Massachusetts, and our analysis of other publicly available data and information.

- a. While studies show that both men and women suffer IPV, we only consider violence against women in this analysis;
- b. We only consider short-run direct costs to the victim, such as medical care costs and mental health care costs. We have not included losses of productivity and the temporary inability to perform household services in our valuation;
- c. We have not considered potential savings in other state costs tangential to IPV, such as law enforcement, social services, and education costs;
- d. Research has shown that women who suffer from IPV have a higher incidence of alcohol and drug abuse, ongoing depression, suicide attempts, experience more physical health problems, and are less able to hold down permanent employment. These issues have a significant ongoing economic impact on the Commonwealth, including direct medical and mental health care costs covered by state-funded agencies as well as considerable loss of productivity over an extended period of time. Our study does not attempt to measure these or any other long-run IPV costs;
- e. We do not consider the short-run or long run costs to family members beyond the IPV victim. Studies have shown that children who witness IPV in their household are less likely to graduate from high school or complete college, have more difficulty with alcohol, drug abuse, and other self-destructive behaviors, and are likely to be less productive in society when compared to their non IPV-influenced peers; and
- f. Children living in households where domestic violence is prevalent can themselves become victims for which direct costs would be incurred. Children who either witness IPV in their households, or are themselves victims of abuse, suffer from a greater level of physical, emotional, psychological, and behavioral difficulties, which interfere with their natural development and education process. These difficulties typically will last into adulthood and, again, could have a significant economic impact on the Commonwealth over an extended period of time.

Please note this list is not intended to be exhaustive. Its purpose is to highlight some of the more recognizable cost exclusions.

59. Considering these other costs, we estimate that victim IPV costs potentially avoided by making civil legal services available to the Commonwealth's low-income population would exceed the marginal cost of additional civil legal aid attorneys.

Respectfully Submitted,



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Jeffrey L. Baliban



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Emily Chiu



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Renee Miller-Mizia

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Renee Miller-Mizia

**Report by Elizabeth Becker to**

**The Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in  
Massachusetts**

**October 7, 2014**

**I. Qualifications**

1. I am a Senior Vice President at NERA Economic Consulting, a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. I hold a Ph.D. in applied economics from Clemson University. I am experienced in preparing economic and statistical assessments for both plaintiffs and defendants in numerous matters involving single plaintiff and class action allegations of employment discrimination, class action allegations of violations of wage and hour regulations, warranty claim and consumer class action matters. I have testified in deposition, at trial, or in arbitration more than 35 times. My empirical research has been published in peer-reviewed academic publications.

**II. Assignment and Summary of Findings**

2. I was asked by the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts (“Task Force”) to evaluate the economic benefits to low-income state residents and to Massachusetts overall from the provision of civil legal aid to low-income Massachusetts residents and their families to assist them in obtaining access to various benefits for which they are eligible. I performed the analyses for the Task Force pro bono. Specifically, I was asked to:

- Evaluate the current year’s financial impact of increased access to several federal programs on the direct recipients of those benefits and their families as well as to the State of Massachusetts overall;
- Estimate the long-term financial impact on the direct recipients and their families of increased access to certain federal programs and other payments for which they can expect long-term, on-going eligibility and benefits;

- Evaluate the economic impact of the flow of federal benefits into the Massachusetts economy as a whole;
- Compare the flow of federal benefits into Massachusetts to the excess federal tax burden borne by residents of the state;
- Evaluate the return to state residents that could be enjoyed from the provision of additional legal aid services to eligible low income citizens that are otherwise turned away and not able to be served; and
- Estimate the current year's and long-term impact of child support payments obtained due to civil legal aid on the direct recipients of those benefits and their families.

3. Representatives from Task Force provided me with summaries of the dollar value of federal benefits as well as child support received by low-income residents in Massachusetts as a result of the provision of civil legal aid by programs funded by the Massachusetts Legal Assistance Corporation (“MLAC”) from fiscal years 2008 to 2013. I was told by the Task Force that the figures provided by MLAC only account for about half of the total civil legal aid provided in Massachusetts. I have reviewed these data, as well as publicly available data. I also reviewed the Alvarez and Marsal report regarding the costs associated with providing civil legal aid. Having reviewed this information, I find:

- The financial impact in 2013 of increased access to federal benefits on the direct recipients of those benefits and their families is conservatively estimated as \$25.62 million.
- An additional \$1.35 million of federal funds were brought in to the state as a consequence of the provision of civil legal aid through reimbursements to the State as well as legal representation fees.
- The long-term future financial impact of increased access from the provision of civil legal aid ranges as high as \$177 million, depending upon the expected duration of continued participation in key federal programs and other support payments.
- Multiplier effects for the in-flow of federal benefits to program recipients in Massachusetts in 2013 alone in the amount of \$25.62 million result in estimated economic benefits to the state economy of approximately \$51.25 million.
- These economic benefits derived from additional federal funds directly to program receipts and through State reimbursements effectively reduce Massachusetts's excess tax burden of approximately \$8 billion by about 0.3 percent.

- Considering the incremental cost of providing additional civil legal aid to eligible citizens that otherwise are likely to be turned away from service, the return to the state residents is approximately \$5 for every dollar invested by the state.
  - The additional economic benefit in 2013 from child support payments to the direct recipients of those benefits and their families is estimated as \$11.64 million.
4. In this report, I summarize the various benefits evaluated, the data received from the Task Force regarding increased access to these benefits reported by MLAC and publicly available data, my methodology for evaluating financial and economic impacts from this increased access, and the overall financial and economic impacts.

### **III. Summary of Benefits and Payments Evaluated**

5. Provision of civil legal aid enables low-income state residents to obtain access to benefits under several key federal programs that are targeted at the neediest in our population. Among these are the following benefits and refunds:

- Supplemental Security Income: SSI is a federal program that makes monthly payments to people who have low-income and few resources and are age 65 or older, blind or disabled. Eligibility for SSI depends upon income and the household value of certain assets.
- Social Security Disability Income: SSD is a federal program that pays monthly benefits to people who cannot work because they have a medical condition that is expected to last at least one year or result in death. Eligibility is tested with specific rules regarding recent work and duration of work, as well as a determination of disability by doctors and disability specialists.
- Unemployment Compensation provided by the federal government: The Emergency Unemployment Compensation program is a federal extension of unemployment benefits that provides additional weeks of unemployment benefits after regular state unemployment benefits have been exhausted. These extended benefits were available throughout 2013.
- Medicare benefits funded by the federal government: Medicare is a federally funded health insurance program for Social Security beneficiaries.
- Federal Tax Refunds and Liability Reductions through Appeals: In an event there is a disagreement with the IRS's determination tax payers may request an Appeals conference by filing a written protest. Filers may represent themselves, or have a professional represent them. The representative must be an attorney, a certified public accountant, or an enrolled agent authorized to practice before the IRS.

6. Access to these programs and payments may be barred for low-income residents for a number of reasons. They may not be aware of the programs or of their eligibility. Determining eligibility can be complicated and require knowledge of complex rules and regulations. Proof of eligibility may require documents and/or information that are difficult for low-income persons to access or obtain. As a result, provision of civil legal aid may be the only avenue available to low-income residents to ensure that they qualify for federal benefits and other payments they are entitled to. Provision of these resources results in substantial cost savings for state and local governments to whom these needy families would likely turn instead.

7. I also analysed child support payments, which assist the clients of civil legal aid programs although they are not counted as a federal benefit or refund. These payments are made to a parent who has custody of a child living separately from the other child's parent who has successfully filed a petition in Family Court asking the court to enter an order for the "non-custodial parent" to pay child support.

8. The Task Force provided me with data reported by MLAC detailing the dollar value of benefits directly received by clients of civil legal aid from cases completed in 2013. These benefits include SSI, SSD, child support, federal unemployment benefits, federal reimbursement for Medicare benefits, and federal tax refunds and liability reduction through federal appeals. Where appropriate, the value of these benefits was reported separately for back awards and on-going monthly benefits. I used the benefits and support payments data to estimate the value of benefits obtained and support payments received by Massachusetts residents as a result of the provision of civil legal aid. In addition to direct benefits, MLAC also reported federal funds brought in to the state due to the provision of civil legal aid in the form of state reimbursements for Emergency Aid to Elders, Disabled and Children (EAEDC) and Medicaid, as well as payments for attorney's fees.

#### **IV. Estimated Value of Benefits and Payments Received as a Result of Civil Legal Aid**

##### **A. *Supplemental Security Income and Social Security Disability Income Received in 2013***

9. The largest category of federal funds brought into Massachusetts by the provision of civil legal aid to low-income residents is SSI and SSD income. These amounts may include back awards as well as on-going monthly benefits for cases closed in 2013. These amounts are

reported in column (1) of rows B and C in Table 1. Federal funds also may be received in 2013 from on-going benefits for cases closed in recent years. On-going receipt of benefits under these programs occurs because the duration of participation, once a person is qualified and enrolled, is quite lengthy. The estimated duration of participation prior to retirement age 65 is 9.7 years for SSD and 10.5 years for SSI.<sup>1</sup> Monthly benefits received in 2013 from cases closed between 2008 through 2012 are reported in columns (2) to (6) in row C of Table 1.

10. I evaluated the total economic impact of the receipt of these amounts for 2013 by annualizing the monthly benefits for each year. As benefits under these federal programs are routinely adjusted for inflation, I adjusted the monthly benefits received from past case closings upward using the Consumer Price Index.<sup>2</sup> I then added the value of the back awards from 2013 to this total value of monthly benefits. The estimated 2013 value of federal benefits to program participant brought into Massachusetts under these two programs is approximately \$22.56 million.

11. Massachusetts was also granted about \$490,000 in federal funds as reimbursement for EAEDC state-benefits that its clients received while eligible for SSI and SSD. In addition, attorneys' fees in the amount of about \$360,200 were granted by the Social Security Administration for representation of several SSI and SSD cases, reducing the cost of civil legal aid granted to state residents. In total in 2013, SSI and SSD benefits to program participants and state and legal fee reimbursements amount to \$23.41 of federal funds brought into the state as a result of SSI and SSD cases closed by civil legal aid.

**B. *Child Support Received in 2013***

12. In 2013 the provision of civil legal aid helped clients claim a total of about \$2.35 million in child support. In total, 321 child support cases were closed in 2013. The average support received per case is \$141 per week. Under the prudent assumption that the child support granted will continue to be received for the next 12 months, the annualized payments amount to \$2.35 million in child support. See column (1) of Table 2. Assuming that child support

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<sup>1</sup>Kalman Rupp and Charles G. Scott, "Trends in the Characteristics of DI and SSI Disability Awardees and Duration of Program Participation," *Social Security Bulletin*, vol.59, No.1, Spring 1996: pp. 3 – 21.

<sup>2</sup> The CPI Index is obtained from the Bureau of Labor Statistics.

payments are received for an average of 9 years<sup>3</sup>, payments from cases closed in previous years would also bring in additional payments in 2013. Using the historical information provided to me by the Task Force regarding the number of child support cases closed from 2009 to 2012 by civil legal aid programs as well as the average weekly payments obtained, I estimate that an additional \$9.29 million of child support benefits were received by civil legal aid clients in 2013 from child support cases previously closed in 2009 through 2012. See columns (2) through (5) in Table 2. Based on the numbers described above, child support payments received in 2013 by civil legal aid clients from cases closed in 2013, and in previous years, amount to about \$11.64 million.

**C.     *Expected Future Value from SSI/SSD and Child Support***

13. Note that the estimation of both the SSI/SSD benefits and the value of child support payments described in sections A and B are conservative estimates of the value provided to clients as a result of the provision of civil legal aid. It captures the value of payments paid only in 2013. This is an understatement of financial impact because the expected duration of child support receipt as well as the expected on-going participation in the SSI/SSD is considerably longer than five years. An alternative method for estimating the value of these closed cases is to consider the value of the expected future stream of benefits, given the long expected duration of future participation and receipt for low-income residents that have been found eligible. The estimates of the value of these expected future benefits are shown in Table 3.

14. In the first approach, I estimated future value of SSI/SSD benefits as well as child support payments as a result of the provision of civil legal services provided on cases closed in 2013 alone. I projected over five years the value of the on-going monthly benefits from cases closed in 2013. These amounts are shown in columns (2) through (6) of rows A and E for the SSI/SSD benefits and child support payments, respectively. In order to convert these future values to present value, I discounted the future values using the prime rate of interest at 3.25 percent, with SSI/SSD discounted values shown in row B and the child support discounted values in row F. The 5-year future value of cases closed in 2013 is approximately \$25.02 million. Alternatively, the value of the cases closed in 2013 could be projected for 10 years, as in columns (2) through

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<sup>3</sup> Liu, Shirley H., The Effect Parental Divorce and Its Timing on Child Educational Attainment: A Dynamic Approach, 2007, available at [http://moya.bus.miami.edu/~sliu/Research\\_files/divorcetiming.pdf](http://moya.bus.miami.edu/~sliu/Research_files/divorcetiming.pdf).

(10) of row A and row E. As stated previously, the assumed average duration of time on child support is 9 years based on the average age of children during divorce.<sup>4</sup> Hence I assign a zero value to the child support for the tenth year of the projection. This would yield a present value of future benefits of about \$40.58 million.

15. In the second approach, I estimated the present value of expected on-going future benefits from all cases closed between 2008 through 2012 for SSI/SSD and child support cases closed between 2009 and 2012. These amounts are shown in columns (2) through (6) of row C for a five-year projection of SSI/SSD benefits and in row G for child support payments. Columns (2) through (10) of row C show the ten-year projection of SSI/SSD benefits. Columns (2) through (10) of row G show the nine-year projection of child support payments. Again the values are converted to present value using the prime rate and presented in row D and H, respectively. In combination, the five-year projection of SSI/SSD and child support payments is estimated at \$137.66 and \$177.38 million for the ten-year projection. Thus, the future value of recently closed cases far exceeds the more conservative estimate from a methodology that only measures benefits received in 2013.<sup>5</sup>

#### **D. Federal Emergency Unemployment Compensation Extension Benefits in 2013**

16. The Emergency Unemployment Compensation program is a federal extension of unemployment benefits that provides additional weeks of unemployment benefits after regular state unemployment benefits have been exhausted. In Massachusetts, unemployed persons are generally eligible for 26 weeks of benefits. Extended federal benefits may be available from the federal program for up to a maximum of 63 weeks, depending upon the circumstances of the unemployed person. Based on estimates from the U.S. Department of Labor, Massachusetts recipients were eligible for an average of 24.1 weeks of federal Emergency Unemployment Compensation. MLAC reports that programs under its provision have assisted unemployed residents gaining awards to federal unemployment compensation benefits after a process of appeals. Based on the average weekly benefits obtained in a sample of these programs, the

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<sup>4</sup> Ibid.

<sup>5</sup> Data regarding the future value of child and Spousal Support cases closed in recent years were not available to me. If recently closed cases of this type provide on-going future benefits these are understated.

estimated amount of federal unemployment benefits obtained by clients is \$2.41 million in 2013. See Table 1 row G.

**E. Medicare Coverage and Medicaid State Reimbursements in 2013**

17. Civil legal aid also helps elderly and disabled Massachusetts residents access Medicare coverage when they were previously wrongly denied benefits. In 2013, Medicare coverage awarded to residents with the help of MLAC programs amounted to about \$273,000. Advocacy efforts also led to an increase of \$500,000 in annual federal Medicaid reimbursements to the State for autistic children in needy families. See Table 1 rows H and I.

**F. Federal Tax Refunds and Liability Reductions in 2013**

18. Representation from civil legal aid assisted 144 low-income families in the process of federal income tax appeals. These cases resulted in a total of federal tax refunds of about \$135,000 and \$250,000 in reduced tax liability. The total federal refunds and reduction in tax liability totaled about \$385,000, funds that were unlikely to be obtained without the proper representation and assistance. See Table 1 rows J and K. Additional tax help was provided to low-income residents, assisting families obtain millions of dollars' worth of Earned Income Tax Credits and federal tax refunds.

**G. Total Value of Federal Benefits to Massachusetts and Service Participants**

19. The total amount of direct federal benefits granted to low-income state residents described above due to the provision of civil legal aid amounted to about \$25.62 million in fiscal year 2013. The value of direct benefits increases further to approximately \$37.26 million, once accounting for child support obtained with the help of the civil legal aid. Further reimbursements to the State and legal representation accounted for an additional \$1.35 million of federal funds brought in to the state as a consequence of civil legal aid. Together, all federal funds and benefits amounted to approximately \$38.62 million.

**V. Economic Impact on the Massachusetts Economy From Multiplier Effects**

20. Provision of federal benefits to eligible low-income Massachusetts residents provides benefits not only to them and their families, but to the state as a whole. Beneficiaries are empowered to spend money on housing, food, clothing and other support for their families. Thus,

every extra dollar brought in to the state results in a stimulus to the state economy overall and benefits all state residents.

21. As provision of civil legal aid result in a continuous stream of federal benefits in to the state and to disperse locations within the state using the multiplier of 2 is fairly accepted. This multiplier implies that every dollar brought into the Massachusetts economy generates an extra dollar of value in stimulus to the economy overall.<sup>6</sup> Applying this multiplier to the \$25.62 million in incremental federal benefits yields an overall positive impact on the state economy of about \$51.25 million. See Table 4. This value excludes the \$1.35 million of federal reimbursements for State-funded aid and legal representation fees in SSI and SSD cases. If federal reimbursements were to also be immediately spent in the Massachusetts economy then an additional \$2.7 million of stimulus would be generated in the state, applying the same multiplier value of 2.

## **VI. Reduction in Excess Massachusetts Federal Tax Burden**

22. It is helpful to view these financial inflows into the state in the context of its relationship with the federal government. Therefore, I evaluated the value of the incremental federal benefits brought into Massachusetts from the provision of civil legal aid, relative to the state's excess federal tax burden. The Tax Foundation reports that Massachusetts sends a great deal more money to Washington in taxes than it receives back in federal expenditures. Massachusetts receives only 77 cents for every dollar that it pays in federal tax.<sup>7</sup> Massachusetts's total federal income tax liability is approximately \$35 billion, making its excess tax liability at about \$8 billion.<sup>8</sup> The \$26.97 million in incremental federal expenditures in Massachusetts represents 0.3 percent of the State's access tax liability. See Table 5. Hence even with the increase in federal funds brought in to the state due to the provision of civil legal aid Massachusetts still pays more federal taxes then it receives back. Efforts by civil legal aid help reduce the excess tax liability of Massachusetts.

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<sup>6</sup>Giuliani et al., Economic and Fiscal Impact of the 2004 Democratic National Convention in Boston: A Report to Mayor Thomas M. Menino, 2004.

<sup>7</sup>Curtis S. Dubay, "Federal Tax Burdens and Expenditures by State: Which States Gain the Most from Federal Fiscal Operations?" *Tax Foundation Special Report*, March 2006.

<sup>8</sup>IRS, Statistics of Income Division, Individual Master File System, December 2012.

## **VII. Rate of Return From Incremental Expenditures on Civil Legal Aid**

23. Provision of civil legal aid provides substantial economic value to recipients of benefits and to the state overall. Moreover, even considering the cost of providing additional assistance, the rate of return to the state from increasing access to assistance would be high.

24. The Areas of Service survey conducted by the Task Force found that 4,907 federal benefits cases were handled by the surveyed civil legal aid agencies last year. As noted above, those cases, conservatively, brought over \$25 million in federal benefits to lower income Massachusetts residents in just 2013 alone. Further, over \$51 million in overall economic benefits would flow to the state as a multiplier effect from the infusion of those incremental direct benefits.<sup>9</sup>

25. The Turn Away Surveys conducted by the Task Force show that 50% (4,869 individuals) of all eligible low income citizens seeking help with federal benefits and related matters are not able to be served. To determine what it would cost to provide legal aid to these low income citizens, I rely on the Alvarez & Marsal report. Alvarez & Marsal estimated the annual cost of a civil legal aid attorney to be \$91,429, and given variable overhead, the incremental cost of an additional attorney at \$80,000 per year, and estimate that each legal aid lawyer handles 35 full representation cases each year. Thus, Alvarez & Marsal estimated that 100 additional legal aid attorneys could handle 3,500 cases at a cost of about \$8 million. Extrapolating from those figures, approximately 4,800 federal benefits cases could be handled by civil legal aid attorneys, at a cost of approximately \$11 million. If \$25 million was recovered for 4,907 citizens resulting in a collective \$51 million in economic benefits to the state, it could be expected that similar amounts could be obtained in such combined benefits for those 4,800 citizens unable to receive assistance. If the incremental cost to the state of providing these services is only \$11 million in civil legal

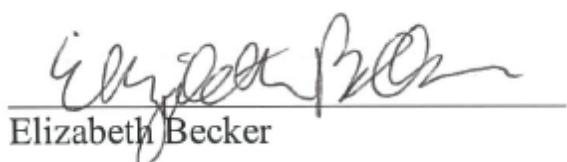
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<sup>9</sup> Note that these figures do not account for the long-term financial impact of increased access to benefits resulting from the provision of civil legal aid. As reported above, this value could range as high as \$177 million, depending upon the expected duration of continued participation in key federal programs.

aid, the benefits amount to close to a \$5 return to the state residents and the state itself for every \$1 invested.<sup>10</sup>

### VIII. Conclusion

26. Provision of civil legal aid provides substantial economic value to help support low-income and disabled Massachusetts residents. The economic value to the beneficiaries and their families of federal benefits and child support payments secured as a result of these services is conservatively estimated at about \$37.3 million for 2013 alone. An additional \$1.35 million of federal funds were brought in to the state due to federal reimbursements for State-funded aid and legal fees. The provision of civil legal aid to needy families to assist them in obtaining benefits also provides a significant stimulus to the Massachusetts economy overall, and comes with an extremely high rate of return, considering the cost of providing the services. Considering the multiplier effect of the federal funds brought into the state, the positive impact is about \$51.2 million if only direct federal benefits are considered. An additional stimulus of \$2.7 is also possible if State and legal fee reimbursements are disseminated back in to the state's economy. Moreover, the extra federal expenditure in Massachusetts moves the State modestly towards fairness in terms of its relative burden of federal taxation. Finally, the provision of civil legal services represents an investment for the future. The expected future value of on-going participation in programs like SSI and SSD and child support for services provided in 2013 has an estimated value of more than \$177 million over the coming ten years.



Elizabeth Becker

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<sup>10</sup> As discussed above, in 2013 the following amounts were reimbursed directly to the state as a result of civil legal aid representation: (1) \$490,000 in reimbursement for EAEDC state benefits; (2) \$500,000 in federal Medicaid reimbursements to the state for autistic children in needy families; and (3) \$360,000 in attorneys' fees granted by the Social Security Administration for representation on SSI and SSD cases, which flowed directly to state-funded legal aid agencies.

**Table 1. Total Federal Funds Received by the State of Massachusetts in 2013  
Due to the Provision of Legal Aid Programs in 2013 and Recent Years**

	Cases Completed in 2013	Benefits Received in 2013 From Past Years' Cases					Total Impact in 2013
		2012	2011	2010	2009	2008	
(Dollars in Millions)							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
A. Inflation Rate (2013 Dollars) <sup>1</sup>		0.00 %	1.47 %	3.59 %	6.83 %	8.60 %	8.26 %
<b>SSI/SSD</b>							
B. SSI/SSD back awards	\$ 3.14						
C. Annualized monthly SSI/SSD Benefits	3.15	3.22	3.16	2.84	2.95	3.22	
D. Inflation-adj. SSI/SSD Benefits (2013 Dollars)		3.27	3.27	3.04	3.20	3.49	
E. Federal reimbursement for EAEDC payments	0.49						
F. Federal payments for attorneys' fees	0.36						
<b>Total Regarding SSI/SSD</b>	<b>7.14</b>	<b>3.27</b>	<b>3.27</b>	<b>3.04</b>	<b>3.20</b>	<b>3.49</b>	<b>23.41</b>
<b>Federal Unemployment Compensation</b>							
G. Federal Unemployment Compensation (24.1 weeks)	2.41						2.41
<b>Health Care</b>							
H. Federal share of Medicare benefits	0.27						
I. Federal reimbursement for Medicaid autism coverage	0.50						
<b>Total Regarding Health Care</b>	<b>0.77</b>						<b>0.77</b>
<b>Federal Taxes</b>							
J. Tax refunds won through federal Appeals	0.13						
K. Reduction in tax liability through federal Appeals	0.25						
<b>Total Regarding Federal Taxes</b>	<b>0.38</b>						<b>0.38</b>
<b>L. Total benefits received in 2013</b>	<b>\$ 10.70</b>						<b>\$ 26.97</b>

Note:

<sup>1</sup> Year-over-year percent change in average monthly CPI index value.

Sources:

<sup>1</sup> The CPI Index is obtained from the Bureau of Labor Statistics.

<sup>2</sup> Massachusetts Legal Assistance Corporation Economic Benefit Analysis FY 2008 - 2013.

**Table 2. Impact of Child Support Payment in 2013  
Due to the Provision of Legal Aid Programs in 2013 and Recent Years**

	Cases Completed in 2013	Benefits Received in 2013 From Past Years' Cases				Total impact in 2013
		2012	2011	2010	2009	
	(1)	(2)	(3)	(4)	(5)	(6)
A. Inflation Rate (2013 Dollars)		0.00 %	1.47 %	3.59 %	6.83 %	8.60 %
B. Number of child support cases won		321	375	429	195	106
C. Average weekly payments received in similar cases		\$141	\$175	\$150	\$151	\$121
D. Annualized child support payments (C x 52 weeks)		\$7,332	\$9,100	\$7,800	\$7,852	\$6,292
E. Estimated total child support benefits in 2013 (BxD) (millions)		\$2.35	\$3.41	\$3.35	\$1.53	\$0.67
F. Inflation-adj. total child support benefits (2013 Dollars) (millions)		<b>\$2.35</b>	<b>\$3.46</b>	<b>\$3.47</b>	<b>\$1.64</b>	<b>\$0.72</b>
						<b>\$11.64</b>

Note:

<sup>1</sup> Child Support figures were not available for 2008.

Sources:

<sup>1</sup> The CPI Index is from obtained from the Bureau of Labor Statistics.

<sup>2</sup> Massachusetts Legal Assistance Corporation Economic Benefit Analysis FY 2008 - 2013.

**Table 3. Economic Value Created from Expected Future Participation in SSI/SSD and Child Support**

	Cases Completed in 2013	Projected Future Benefits (Dollars in Millions)									
		2014	2015	2016	2017	2018	2019	2020	2021	2022	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
A. SSI/SSD cases completed in 2013 (annualized monthly benefits)	\$ 3.15	\$ 3.15	\$ 3.15	\$ 3.15	\$ 3.15	\$ 3.15	\$ 3.15	\$ 3.15	\$ 3.15	\$ 3.15	
B. Discounted at Prime Rate (3.25%)		3.05	2.95	2.86	2.77	2.68	2.60	2.52	2.44	2.36	
C. SSI/SSD benefit received in 2013 from past years' cases	\$ 16.27	\$ 16.27	\$ 16.27	\$ 16.27	\$ 16.27	\$ 12.78	\$ 9.58	\$ 6.55	\$ 3.27	\$ 0.00	
D. Discounted at Prime Rate (3.25%)		15.76	15.26	14.78	14.32	10.89	7.91	5.23	2.53	0.00	
E. Child support cases completed in 2013	\$ 2.35	\$ 2.35	\$ 2.35	\$ 2.35	\$ 2.35	\$ 2.35	\$ 2.35	\$ 2.35	\$ 2.35	\$ 0.00	
F. Discounted at Prime Rate (3.25%)		2.28	2.21	2.14	2.07	2.01	1.94	1.88	1.82	0.00	
G. Child support received in 2013 from past years' cases	\$ 9.29	\$ 9.29	\$ 9.29	\$ 9.29	\$ 9.29	\$ 8.56	\$ 6.93	\$ 3.46	\$ 0.00	\$ 0.00	
H. Discounted at Prime Rate (3.25%)		9.00	8.71	8.44	8.17	7.30	5.72	2.77	0.00	0.00	
I. Current value of SSI/SSD and child support projected future benefits: 5-year projection											
J. Cases Completed in 2013	<b>25.02</b>										
K. Benefits from Past Years' Cases	<b><u>112.64</u></b>										
L. Total 5- year projection:	<b>\$ 137.66</b>										
M. Current value of SSI/SSD and child support projected future benefits: 10-Year Projection											
N. Cases Completed in 2013	<b>40.58</b>										
O. Benefits from Past Years' Cases	<b><u>136.80</u></b>										
P. Total 10 - year projection:	<b>\$ 177.38</b>										

Note:

<sup>1</sup> Assumed duration of child support is 9 years based on the number of years between the average age of children at divorce and age of majority.

Sources:

<sup>1</sup> WSJ Prime rate available at <http://www.bankrate.com/rates/interest-rates/prime-rate.aspx>

<sup>2</sup> Average age of children at divorce taken from Liu, Shirley H., The Effect Parental Divorce and Its Timing on Child Educational Attainment: A Dynamic Approach, 2007, available at [http://moya.bus.miami.edu/~sliu/Research\\_files/divoracetiming.pdf](http://moya.bus.miami.edu/~sliu/Research_files/divoracetiming.pdf).

**Table 4. Economic Impact on Massachusetts Economy  
From Federal Benefits to Program Participants**

<b>A. Total federal funds received by program recipients (millions)</b>	<b>\$ 25.62</b>
<b>B. Multiplier</b>	<b>2.00</b>
<b>C. Economic stimulus effect of federal funds (millions)</b>	<b>\$ 51.25</b>

Notes:

<sup>1</sup> Child Support payments are excluded since they are not received from the federal government.

<sup>2</sup> Federal funds in the amount of \$1.35 million brought in to the State are excluded from the amount above since they do not constitute direct benefits to low income residents. Assuming reimbursed funds are funneled back into the state economy increases the economic stimulus by an additional \$2.7 million.

Source:

<sup>1</sup> Giuliani et al., Economic and Fiscal Impact of the 2004 Democratic National Convention in Boston: A Report to Mayor Thomas M. Menino, 2004.

**Table 5. Reduction in Federal Excess Tax Burden**

A. Total MA state taxburden <sup>1</sup> (millions)	\$ 35,294
B. MA state ratio of federal spending to tax collected <sup>2</sup>	0.77
C. Federal spending received (millions)	\$ 27,176
D. Net tax payment (millions)	\$ 8,118
E. Federal funds brought in to state in 2013 (millions)	\$ 26.97
<b>F. Federal funds as percentage of net tax payments</b>	<b>0.3 %</b>

Sources:

<sup>1</sup> IRS, Statistics of Income Division, Individual Master File System, December 2012.

<sup>2</sup> Tax Foundation, "Federal Tax Burdens and Expenditures by State: Which States Gain Most from Federal Fiscal Operations?," Special Report No. 139, March 2006.



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