

CIVIL GIDEON PILOT PROGRAM: REPORT TO THE CONNECTICUT GENERAL ASSEMBLY

JULY 1, 2019



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Background

The Connecticut General Assembly, pursuant to Special Act 16-19, § 1, established the *Task Force to Improve Access to Legal Counsel in Civil Matters* to “study the nature, extent and consequences of unmet legal needs of state residents in civil matters.” The Public Act directed the task force to “examine on a state-wide basis, the impact that the lack of access to legal counsel in civil matters is having on the ability of state residents to secure essential human needs.” Public Acts. Spec. Sess., June, 2016, No. 16-19, § 1 (a).

The task force issued its report on December 15, 2016, and recommended, among other things, that the General Assembly “establish a statutory right to civil counsel in three crucial areas where the fiscal and social cost of likely injustice significantly outweighs the fiscal cost of civil counsel:

- a. Restraining orders under General Statutes § 46b-15;
- b. Child custody and detained removal (deportation) proceedings;
- c. Defense of residential evictions”¹

In response, the General Assembly passed Sections 150 and 151 of Public Act 17-2 of the June Special Session, which established a yearlong pilot program to provide legal representation for applicants and respondents at any hearing on an application for a restraining order seeking relief from abuse brought under § 46b-15. Section 150 of the act was replaced by Section 18 of Public Act 18-75, but the only change was the date that this report was due.

The act directed the Judicial Branch to contract with one or more nonprofit organizations to provide legal counsel to indigent applicants. The act charged the Division of Public Defender Services with providing legal counsel to indigent respondents, and directed the Chief Court Administrator to designate one judicial district in which to pilot these services. Pursuant to Section 151, the Office of the Attorney General remitted \$200,000 to the Branch and \$200,000 to the Division of Public Defender Services for this purpose.

Statutory Requirements to Obtain Relief from Abuse

Subsection (a) of Connecticut General Statutes Section 46b-15 provides, “any family or household member, as defined in section 46b-38a, who has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening, including, but not limited to, a pattern of threatening, as described in section 53a-62, by another family or household member may make an application to the Superior Court for relief under this section.”²

¹ Judiciary Committee, Connecticut General Assembly, Report of Task Force to Improve Access to Legal Counsel in Civil Matters, page 4.

² Subsection (a) of Connecticut General Statutes, Section 46b-15.

Program Eligibility

To qualify for legal counsel under the program, the act requires that an individual be an applicant or respondent in a section 46b-15 proceeding pending in the judicial district designated by the Chief Court Administrator as the pilot location and must successfully demonstrate that he or she meets the statutorily defined criteria of indigency as listed below:

- (1) \$23,760 for an applicant or respondent with no dependents,
- (2) \$32,040 for an applicant or respondent with one dependent,
- (3) \$40,320 for an applicant or respondent with two dependents, and
- (4) \$48,600 for an applicant or respondent with three dependents.

If an applicant or respondent has more than three dependents, for each additional dependent the sum of \$8,320 is added to \$48,600.

Reporting Requirements

At the conclusion of the pilot period, the act requires the Judicial Branch to report to the Judiciary Committee: (1) The status and results of the pilot program, and (2) whether a permanent program that provides similar legal services should be established in the state. The act also states that the report may also include legislative recommendations concerning the establishment of a permanent program.

RFP Process and Selection of Waterbury as the Pilot Location

On March 23, 2018, the Judicial Branch issued a request for proposals (RFP) to nonprofit organizations to provide legal services for indigent applicants from July 1, 2018 to June 30, 2019. The services were limited to preparation for and representation at the hearing on the application for relief from abuse. The RFP capped the cost per client to \$350, with the overall program cost not to exceed \$200,000 annually for the Judicial Branch.

As part of the RFP process, the Judicial Branch reviewed the volume of section 46b-15 applications added annually in each Judicial District, examined statewide demographic data, and then narrowed the potential location of the pilot program to the following: Fairfield at Bridgeport, Hartford, New Britain, New Haven, Norwich, and Waterbury. The RFP permitted the respondents to recommend which Judicial District should host the pilot program and stated that the Chief Court Administrator would consider the recommendations when determining which district was most appropriate for the pilot location.

The Judicial Branch's Materials Management Unit solicited the RFP by public notice in three newspapers in the state. A representative from the Materials Management Unit publicly opened the submissions that were received by the deadline, and recorded the name of all respondents to the RFP at the public opening. A panel of Judicial Branch employees evaluated the proposals and scored them based upon predetermined programmatic and fiscal criteria.

In response to the RFP, the Branch received proposals from two organizations: Connecticut Legal Services, Inc. (CLS) and New Haven Legal Assistance Association, Inc. Ultimately, the Judicial Branch selected CLS as the successful bidder. In its proposal, CLS set forth a plan to provide two full-time attorneys to represent qualified applicants who sought legal representation through the pilot program in the Waterbury Judicial District. CLS estimated it would serve approximately 500 clients in Waterbury at a price of \$350.00 per client, resulting in a total program cost of approximately \$175,000.

Implementation of Pilot Program

The Chief Court Administrator chose the Waterbury Judicial District for the pilot program. Preparation for and implementation of the pilot program involved many Judicial Branch employees working in different areas.

Coordination

Periodic meetings were held with representatives from CLS, the Public Defenders, the Chief Clerk and Deputy Chief Clerk of the Waterbury Judicial District, and the Presiding Judge for Family Matters of the Waterbury Judicial District to discuss implementation issues, such as available space at the courthouse, obtaining copies of restraining order paperwork, and the distribution and collection of participant surveys.

Communications Plan

The Judicial Branch established a communications plan to promote the pilot program. This plan included releasing a media advisory and creating posters and information cards that were available in English and Spanish. The Judicial Branch placed the posters throughout the courthouses at 300 and 400 Grand Street in Waterbury, and the information cards were available at the Waterbury Judicial District law library, Court Service Center, and Clerk's Office.

New Forms were Developed

The Judicial Branch created a new limited appearance form specifically for this pilot program. This form allowed the Branch to track the number of appearances filed by attorneys from CLS and the Division of Public Defender Services on behalf of qualified applicants and respondents. The limited appearance form also enabled the attorneys from CLS and the Division of Public Defender Services to appear only for the limited purpose of the hearing on the application for relief from abuse. Additionally, the *Notice of Free Legal Representation For Qualified Individuals - Application for Relief From Abuse Pilot Program* was included in the restraining order packet and provided

notice to the parties of the pilot program. Finally, the Judicial Branch developed palm cards for applicants and respondents and made them available in English and Spanish. The palm cards explained the pilot program and the criteria to qualify, and provided contact information.

Representation

During the pilot program, 432 applications for restraining orders were filed in the Waterbury Judicial District. Applicants requested representation services in approximately one-half of the cases, while respondents requested services in over one-third of the cases. Most of those who applied for representation services were determined to be eligible (8 out of 10). In summary, CLS filed appearances on behalf of 217 applicants and the Division of Public Defenders represented 130 respondents.

Challenges Encountered by the Pilot Program Attorneys

There were times when the applicant also had a temporary restraining order filed against him or her, and therefore, became the respondent in the case. CLS and the Division of Public Defender Services agreed to represent the person who first came to them. Thus, if an applicant became a respondent, a CLS attorney represented the person in both actions. Similarly, if a respondent became an applicant, an attorney from the Division of Public Defender Services represented the person in both actions.

Legal Services Provided

The Division of Public Defender Services hired one attorney, a social worker and a part-time clerical person to staff the pilot. Additionally, a public defender assigned counsel, a private attorney under contract to the Division of Public Defender Services, was retained to handle conflict of interest cases and to assist with emergency coverage. If there was a co-occurring criminal matter relating to the temporary restraining order, the attorney in the pilot would follow the case and represent the respondent in the GA court. The social worker provided service referrals and assisted with both the criminal and civil process.

The statute establishing the pilot program required CLS to represent all applicants who requested services and met the financial eligibility standards at the hearing only. This limitation diverged from CLS' model of providing assistance to indigent clients after assessing all of their legal needs. Although not compensated for providing additional representation, CLS advised and represented numerous applicants who were also victims of domestic violence in matters involving custody, divorce and child support. These individuals would not have had access to these essential legal services without CLS going beyond the statutory and contractual requirements, without compensation.

Performance Measures

As the legislation did not define what results would be considered a successful pilot program, the report provides: (1) statistics that it regularly keeps, and (2) satisfaction surveys, so that individuals may draw their own conclusion as to the success of the pilot program.

Results of the Pilot Program

Judicial Branch Statistics

The Judicial Branch collects and analyzes a large volume of data including the number of cases added, the number of cases disposed, case outcomes and the length of time for a case to be disposed, by case type and by court location. The Judicial Branch relies on this information to assist it in allocating resources and creating efficiencies within the Branch.

In order to evaluate whether having attorneys affected the outcome of the cases, the Judicial Branch collected statistics from its case management system. The chart below compares the outcome of the restraining order applications filed during the pilot program (July 1, 2019 through April 22, 2019) with the outcome of the restraining order applications filed prior to the pilot program period (July 1, 2017 to April 22, 2018) in the Waterbury Judicial District.

It is important to note that 12% of the applicants decided to withdraw the action during the pilot program, as compared with 6% for the period prior to the pilot program. CLS reports that this may be because the applicants were able to find alternate solutions to better resolve their situation with the advice and assistance of counsel.

During Pilot Program July 1, 2018 through April 22, 2019		
Outcome	Total	Percentage
RESTRAINING ORDER GRANTED	184	42%
JUDGMENT OF DISMISSAL	167	39%
WITHDRAWAL OF ACTION	51	12%
RESTRAINING ORDER DENIED	27	6%
EXPIRED OR RESPONDENT COULD NOT BE SERVED	3	1%
Total	432	100%

Prior to Pilot Program July 1, 2017 through April 22, 2018		
Outcome	Total	Percentage
RESTRAINING ORDER GRANTED	189	40%
JUDGMENT OF DISMISSAL	171	36%
WITHDRAWAL OF ACTION	27	6%
RESTRAINING ORDER DENIED	82	17%
EXPIRED OR RESPONDENT COULD NOT BE SERVED	4	1%
Total	473	100%

The chart above illustrates that the percentage of restraining orders that were granted during the pilot program was 42% compared with 40% for the corresponding period prior to the pilot program.

Judicial Branch Surveys

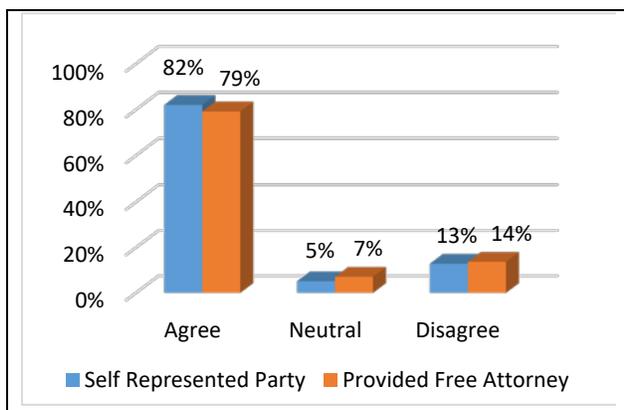
The surveys were developed for the applicants and respondents (whether represented by counsel or not), public defenders, legal aid attorneys, family relations counselors and judges to complete. The reason for surveying multiple groups involved in the process was to obtain feedback from different perspectives.

The Judicial Branch recruited interns to assist with the data collection component of the pilot program. The interns distributed survey questionnaires to all individuals who came to court for a restraining order hearing, regardless of whether they were eligible for the pilot. They collected 285 surveys from applicants and respondents, both those represented by an attorney and those who were not. Of those, 40 self-represented parties completed the surveys, 232 applicants and respondents who were provided with attorneys free of charge completed the surveys, 12 applicants and respondents who were represented by private counsel completed the surveys and 1 person who completed the survey did not provide this information.

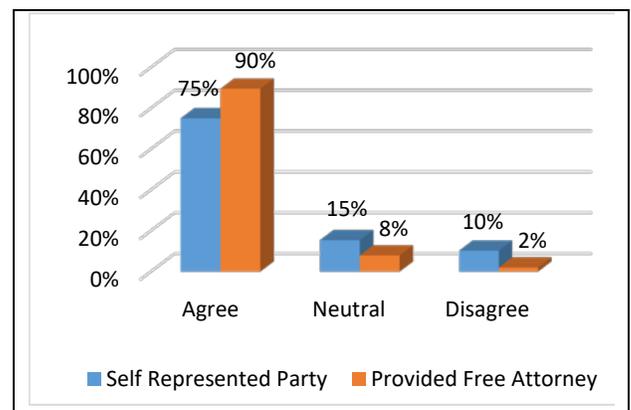
For the same time-period, CLS attorneys completed 213 surveys and attorneys working for the Division of Public Defender Services completed 126 surveys. Additionally, family relations counselors completed 114 surveys and judges completed 191 surveys.

Applicant and Respondent Survey Results

I was satisfied with the outcome of my case today

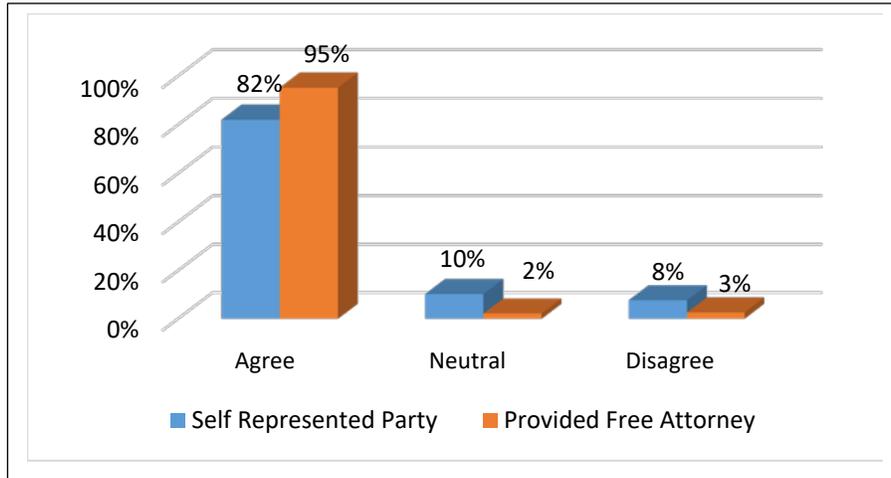


I felt prepared for today's court hearing



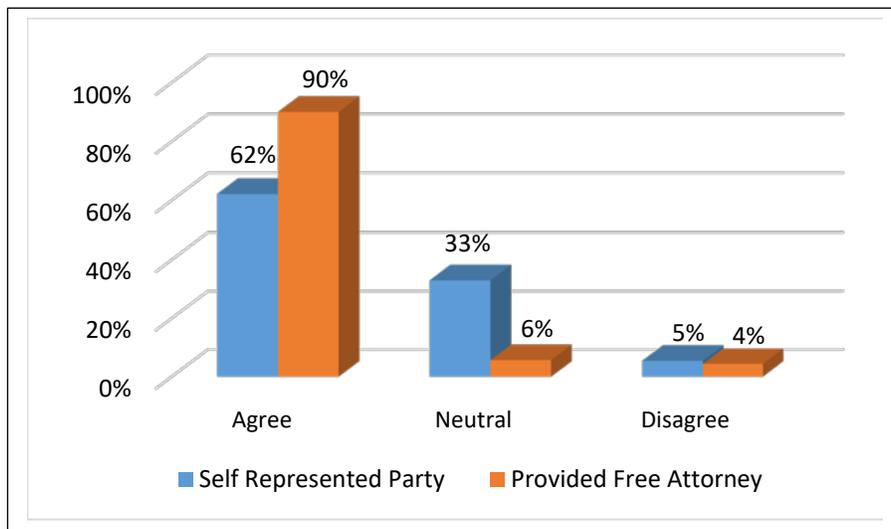
Remarkably, self-represented parties were more likely to indicate that they were satisfied with the outcome of their case as compared to those who were represented by an attorney, and almost three-quarters of the self-represented parties indicated that they felt prepared, despite not having representation.

Applicants and respondents were asked: I understood the court process today



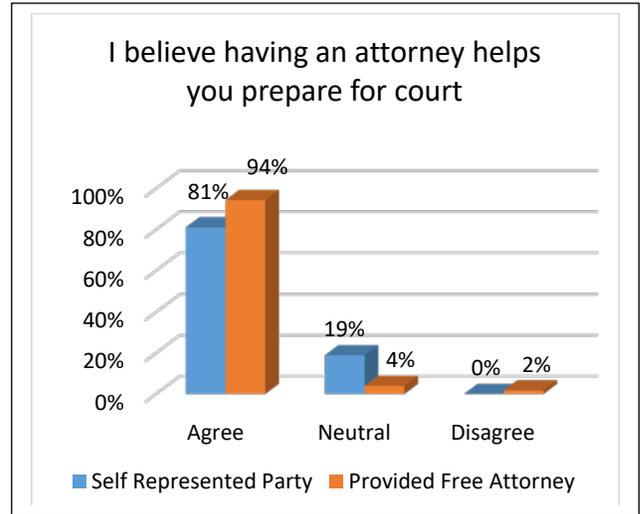
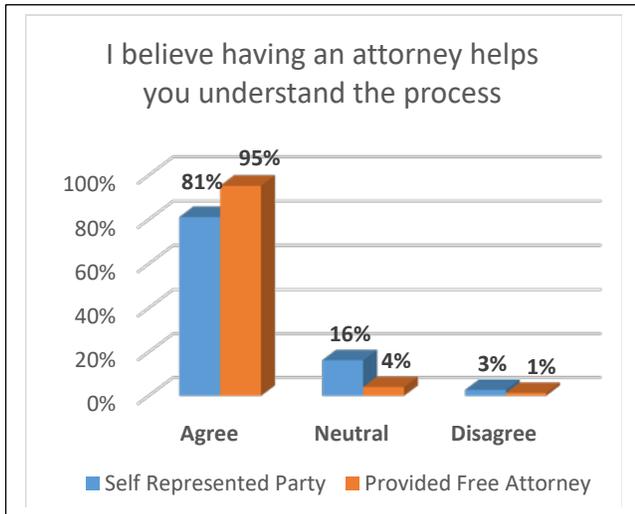
95% of the parties who were provided with an attorney at no cost to him or her agreed or strongly agreed that they understood the court process, while 82% of the self-represented parties reported that they understood the court process.

Applicants and respondents were asked: Whether I had an attorney or not, I believe having an attorney helps you get the outcome you want



Individuals who were represented by an attorney at no cost to them believed that attorneys positively contributed to the outcome in their case (90%). Interestingly, self-represented parties were less likely to indicate that an attorney would help secure a desired outcome (62%).

Applicants and respondents were asked: Whether I had an attorney or not, I believe having an attorney helps you understand the process and/or prepare for court

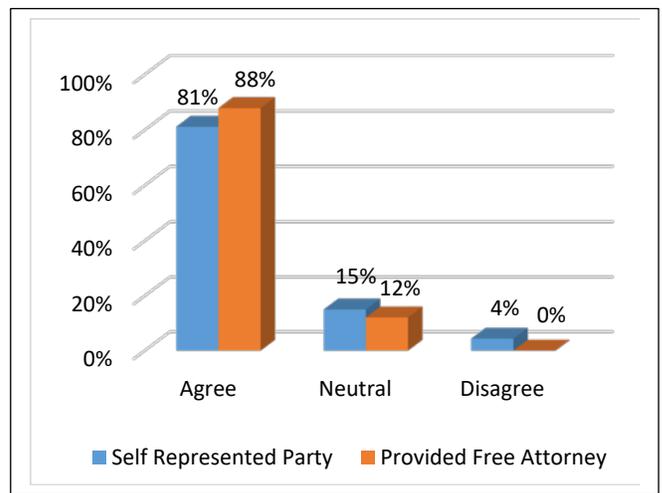
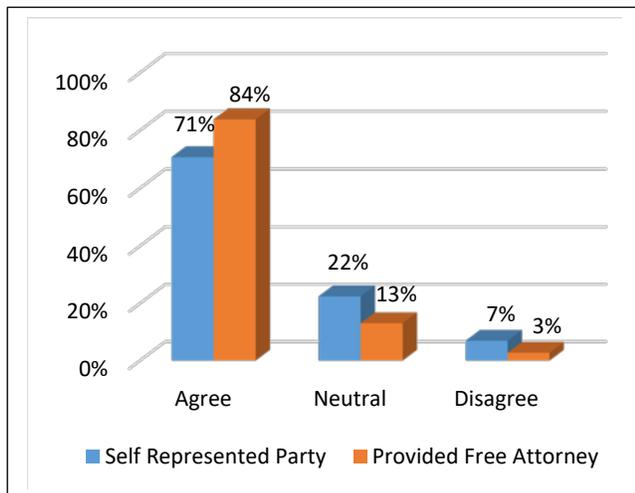


Almost all of the individuals who were represented by an attorney at no cost to them believed that an attorney helps you understand the process and helps you prepare for court, while 81% of the self-represented parties believe that an attorney helps you understand the process and prepare for court.

Judge Survey Results

Were the parties prepared for their court hearing?

Did the parties understand the court process?



Although the results indicated that the judges perceived those with attorneys as more prepared for court hearings, judges believed that self-represented parties were prepared in almost three-quarters of the judge's observations.

Similar to the judge's observation regarding preparedness of the parties, the judges' responses indicated that both self-represented parties and those represented by attorneys understood the process (81% and 88%, respectively.)

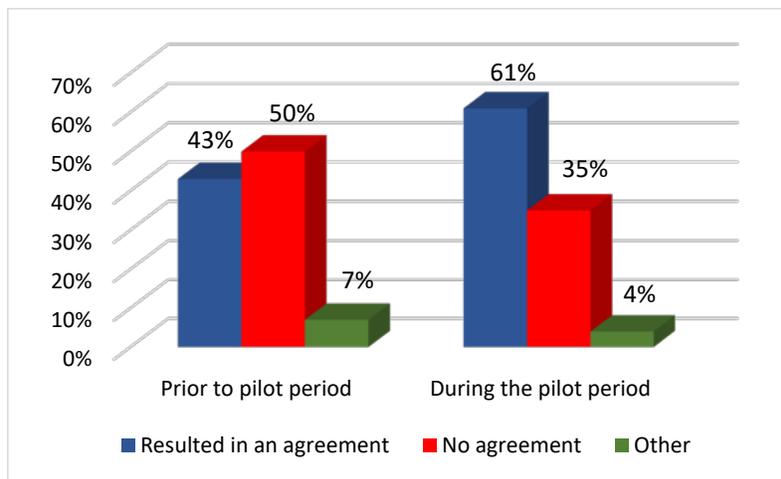
Family Relations Counselors Survey Results

Family relations counselors are Judicial Branch employees who assist parties in family cases to achieve mutually agreeable solutions to disputed issues. Additionally, in cases involving restraining orders, family relations counselors prepare a report that includes:

- any existing or prior orders of protection (obtained from the protection order registry)
- information on any pending criminal case or past criminal case in which the respondent was convicted of a violent crime
- any outstanding arrest warrants for the respondent
- the respondent's level of risk based on a risk assessment tool utilized by the Court Support Services Division

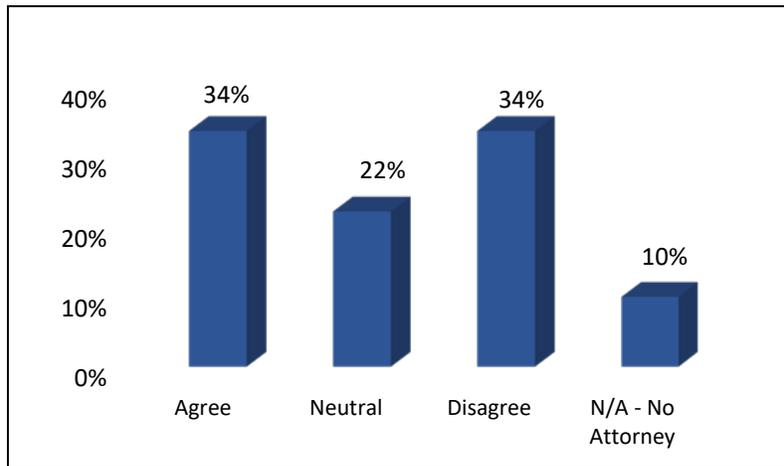
The report may also include information pertaining to any pending or disposed family matters case involving the applicant and respondent. Family relations counselors provide the report to the judge, the applicant and the respondent.

Family relations counselors were asked: What was the outcome of the case conference during the pilot period?



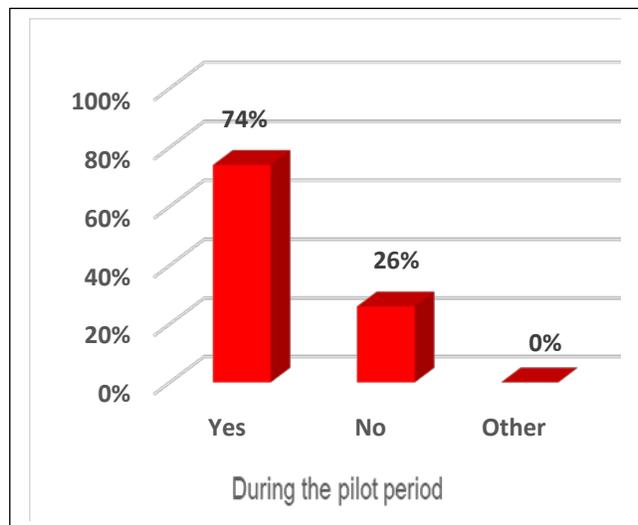
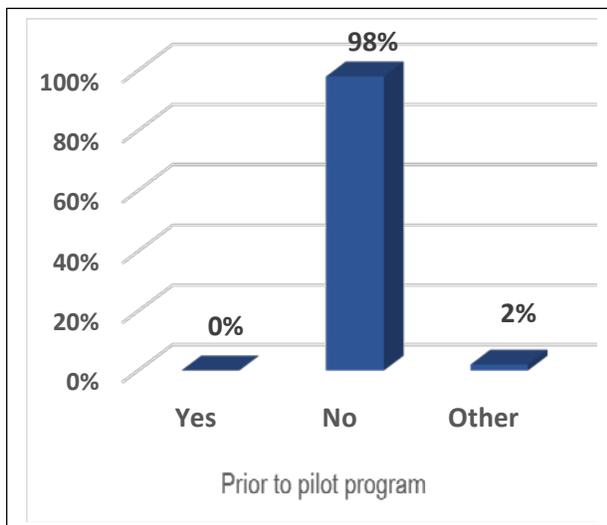
Family Relations Counselors reported that the parties reached an agreement with their assistance in 61% of the cases during the pilot program period. For comparison purposes, family relations counselors were able to assist the parties to reach an agreement in 43% of the cases during the period prior to the pilot program.

Family relations counselors were asked: Did the presence of an attorney for either side create a more efficient conference?



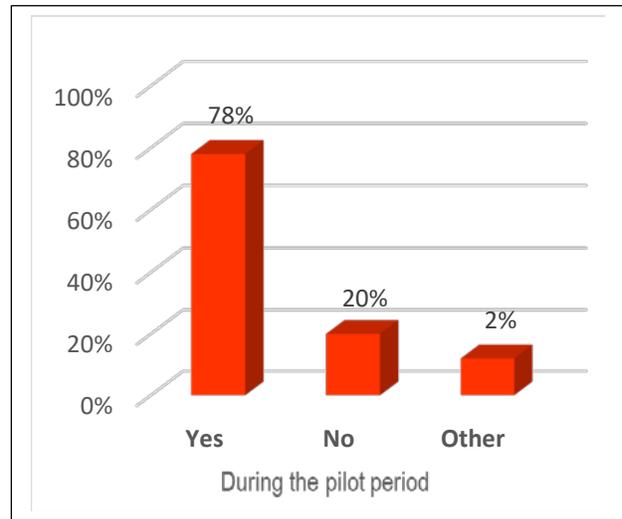
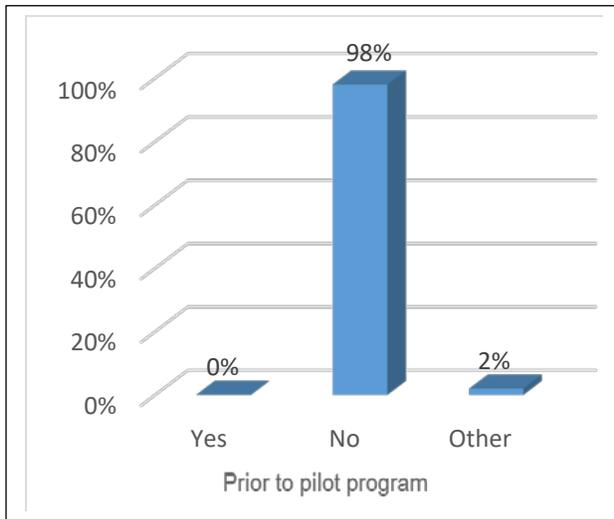
Family relations counselors were split as to whether they thought the presence of an attorney at the case conference created a more efficient conference: 34% agreed, while 34% disagreed.

Family relations counselors were asked: Was the *applicant* represented by counsel for this case conference?



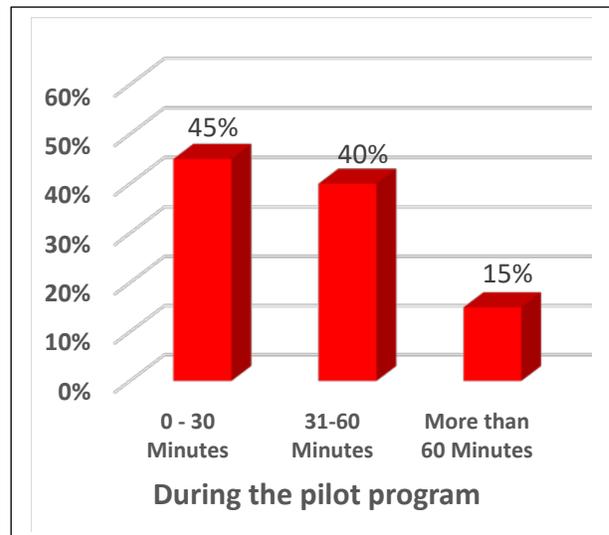
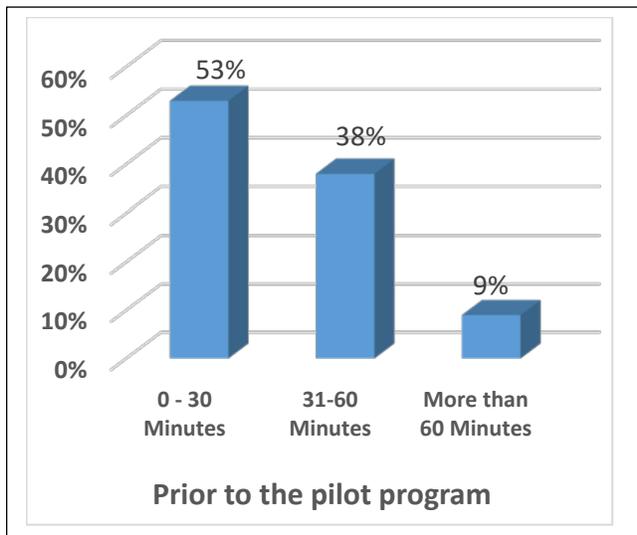
As depicted above, family relations counselors reported that 0% of the applicants were represented by counsel during the period of time prior to the pilot program compared with 74% of the applicants being represented by counsel during the pilot program. Please note that some family relations counselors did not answer all of the questions in the survey. In the first chart, 2% of the family relations counselors did not respond.

Family relations counselors were asked: Was the *respondent* represented by counsel for this case conference?



As depicted above, family relations counselors reported that 0% of the respondents were represented by counsel prior to the pilot program compared with 78% of the respondents being represented during the pilot program.

Family relations counselors were asked: Approximately how long did the case conference last?

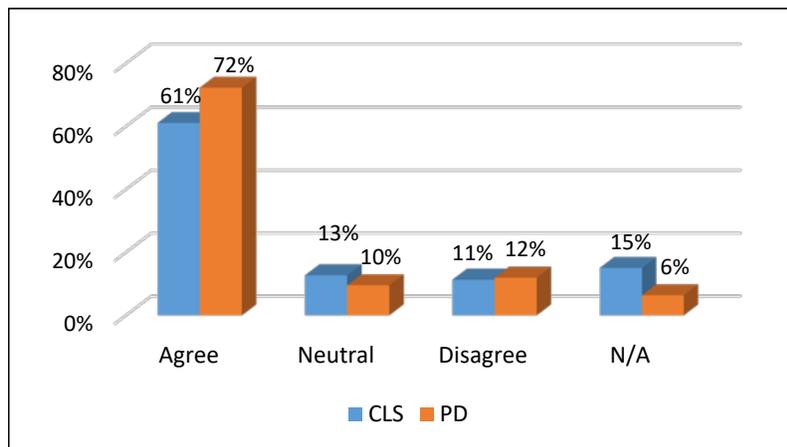


As depicted above, family relations counselors reported that the length of the case conference increased during the pilot program with 15% of the case conferences lasting more than 60 minutes during the pilot program and only 9% of the case conferences lasting more than 60 minutes during the period of time immediately preceding the pilot program.

Responses from Attorneys from the Division of Public Defender Services and Connecticut Legal Services

As was stated previously, lawyers from the Division of Public Defender Services represented the respondents and the lawyers from CLS represented the applicants.

My client was satisfied with the outcome of his or her hearing.



CLS attorneys reported that 61% of their clients were satisfied with the outcome, while 72% of the public defenders reported that their clients were satisfied with the outcome.

Recommendations

During the first nine months of the pilot program, the Judicial Branch received 6,200 applications for relief from abuse. It is important to note that the Waterbury Judicial District processed only 7% of these applications, which means that, if the Legislature wants to expand the pilot program statewide, significant resources would need to be made available.

It is significant that 82% of the self-represented parties reported that they were satisfied with the outcome of their case compared with only 79% of the parties who were represented by an attorney at no charge to them. Additionally, only 62% of the self-represented parties believe that having an attorney helps you get the outcome you want compared with 90% of the parties who were represented by counsel. Finally, we know that 82% of the self-represented parties reported that they understood the process, compared with 95% of the parties who were represented by counsel at no cost to them.

There may be several reasons why more self-represented parties reported that they were satisfied with the outcome of their case compared with those parties who were represented by an attorney at no cost to them.

First, self-represented parties may have felt that they had more control over their case and that the judge listened intently on what they had to say.

Second, the Judicial Branch has developed resources to assist self-represented parties, such as court service centers, that are staffed with knowledgeable employees who are available to:

- Provide work space, where available, to prepare forms and documents.
- Provide one-on-one staff to assist patrons to complete court forms.
- Answer questions about court deadlines and how to figure them out.
- Explain and answer questions about how the court works.
- Provide general information about court rules, procedures, and practices.
- Provide court schedules and information on how to get a case heard by the court.
- Provide information about a case file.
- Provide language assistance to limited English proficient or non-English speaking court patrons.

Also, the Judicial Branch has established Volunteer Attorney Programs to assist with family, foreclosure, contract collections and small claims cases. While the attorneys do not represent the parties, these programs provide self-represented parties with access to competent legal counsel at no cost.

Additionally, the Judicial Branch has developed plain language forms, brochures, pamphlets and frequently asked questions in English, Spanish, Polish and Portuguese to assist individuals seeking a restraining order.

Finally, the role of family relations counselors cannot be underestimated. They meet separately with the applicant and respondent before the parties appear before a judge to gather information and identify the nature of the issues. The family relations counselor assists the parties to reach an agreement.

While most in the legal community would agree that it is much better for the parties and for the system as a whole for parties to be represented by competent counsel, the survey results would suggest that funding for legal representation might be more impactful if directed toward other court processes where there are greater unmet needs. As such, the Judicial Branch recommends that the Legislature consider the other recommendations of the report of *The Task Force to Improve Access to Legal Counsel in Civil Matters*. Recognizing the value of legal representation, if the Legislature sees fit to continue funding unmet legal needs, the Branch would recommend that a pilot program be established in one judicial district to provide legal representation for defendants and plaintiffs in residential eviction cases, as was recommended by the *Task Force to Improve Access to Legal Counsel in Civil Matters*.

The report of the task force states: “Few would dispute that housing is an essential human need. The impact of even short-term homelessness and housing insecurity can be devastating. Living without a home or in unhealthy or unsafe conditions ‘can lead to stress, loss of productivity or work altogether, negative impacts on children and their education, and so on.’”³

Connecticut’s Housing Courts are historically a place where tenants routinely appear without an attorney and are at great risk of losing their homes. It is less likely to see landlords appearing in court without an attorney, but it does happen.

A significant portion of the cases involve tenants who have limited resources and are unable to hire attorneys. They must argue their cases against landlords’ attorneys who have a full understanding of housing laws and the court process, resulting in an uneven playing field for the parties. The legal defenses and mitigating factors applicable in eviction actions are not easily navigated by a self-represented tenant, and thus, just outcomes may not be achieved.

This unequal access to justice can have devastating effects for an individual tenant and their family as outlined in the report of the *Task Force to Improve Access to Legal Counsel in Civil Matters*. Additionally, a tenant with an eviction on their record may find it extremely difficult to find stable and safe housing long into the future.

A pilot program in the Hartford Housing Session, the largest housing court in Connecticut, would provide the Judicial Branch with the opportunity to determine whether providing low-income self-represented tenants and landlords with legal representation impacts the outcome of their cases, thus reducing the long-term effects of homelessness and housing insecurity.

As such, the Judicial Branch suggests that the General Assembly enact legislation to establish a pilot program to provide legal representation to indigent defendants facing eviction and to indigent landlords seeking to have a tenant evicted. If this recommendation is enacted into law, the Judicial Branch further requests that it not be responsible for contracting with legal services due to the Judicial Branch’s essential role as a neutral party in any court case.

³ Report of the Task Force to Improve Access to Legal Counsel in Civil Matters, submitted to the CT General Assembly’s Judiciary Committee on December 15, 2016, pursuant to Subsection (f) of Section 1 of Special Act No. 16-19, page 12.