

**SOMEONE IN THEIR CORNER: PROTECTING
PENNSYLVANIA'S DOMESTIC VIOLENCE VICTIMS
WITH A CIVIL RIGHT TO COUNSEL IN FAMILY COURT
PROCEEDINGS**

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ABSTRACT

Domestic violence is a pervasive, nationwide problem, one that worsened during the COVID-19 pandemic, which trapped victims and abusers in the same home and often prevented victims from seeking legal relief. When victims do seek legal relief, it is usually in the form of civil protection orders, divorce, or custody, which can provide temporary or permanent relief and severance from their abusers. However, despite the benefits that having an attorney has on outcomes in civil protection order, divorce, and custody cases, there is no federal, constitutionally recognized right to counsel in these cases. Gideon v. Wainwright recognized the right to counsel for those facing criminal trial, but despite calls for a civil Gideon, the United States Supreme Court has repeatedly failed to recognize such right. As a result, some states and localities have enacted their own civil right to counsel initiatives. One of the most robust initiatives is the New York Family Court Act, section 262, which guarantees counsel to indigent litigants in domestic violence and custody proceedings, among other family court proceedings. Despite high levels of domestic violence and an indigent population whose legal needs consistently go unmet because of a lack of funding and resources, the Pennsylvania legislature has yet to recognize any civil right to counsel for indigent

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litigants. This Note proposes that Pennsylvania enact a civil right to counsel statute guaranteeing counsel to indigent domestic violence victims pursuing a Protection From Abuse Order, divorce, or custody. This statute should be modeled on the New York Family Court Act, section 262, with some necessary expansions and clarifications.

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INTRODUCTION

“You have a right to an attorney. If you cannot afford an attorney, one will be appointed for you.”¹ Anyone who has watched a crime drama on television would recognize this line as one of the crucial *Miranda* rights read to someone being

1. *Miranda Rights*, MIRANDARIGHTS.ORG, <http://www.mirandarights.org/> (last visited Apr. 1, 2023).

brought into police custody.² However, many are unaware that a person who cannot afford an attorney is only guaranteed one if they are facing a criminal trial, at least on a federal level.³ In the United States, there is no federally recognized right to civil counsel, even though a party's civil case could lead to devastating losses, like that of their home or the custody of their children.⁴ Additionally, many would likely expect and encourage courts to protect some of the most vulnerable litigants—indigent people seeking relief from domestic violence. However, New York is the only state in the country that provides a categorical right to counsel for indigent litigants pursuing certain cases in family court, but even that law has its shortcomings.⁵

Thus, due to widespread domestic violence, barriers preventing access to legal counsel, and the benefits of legal counsel in certain family law cases, the Pennsylvania legislature should codify a civil right to counsel for domestic violence victims seeking a Protection from Abuse Order, divorce, or child custody. This statute should be modeled after the New York Family Court Act, section 262, and include some necessary expansions to protect indigent victims of domestic violence seeking divorce and specific language to reduce the confusion that New York courts are experiencing.⁶ Ideally, the civil right to counsel would be guaranteed to all indigent civil litigants, but the proposed statute in this Note is intended to highlight and remedy the unique plight of indigent domestic violence victims in the court system.

This Note begins by laying out the historical background in Part I. This Part continues by examining the prevalence of

2. *Id.*

3. See generally Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 245 (2006) (describing the particular instances where states and the federal government do provide civil counsel).

4. See *id.* at 252; AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES 7–8 (2006) [hereinafter REPORT TO THE HOUSE OF DELEGATES].

5. See N.Y. FAM. CT. ACT § 262(a) (Consol. 2012); Abel & Rettig, *supra* note 3, at 252.

6. See, e.g., N.Y. Fam. Ct. Act § 262(a)-(c) (McKinney 2012).

domestic violence on a national level, its effects on society, and its recent exacerbation from the COVID-19 pandemic. Part II examines the seminal United States Supreme Court case, *Gideon v. Wainwright*, in which the Court constitutionalized a right to counsel for indigent defendants in criminal proceedings.⁷ Part III discusses the push for a “Civil *Gideon*” that has occurred over the last couple of decades, which advocates for the Supreme Court’s rationale for the guarantee of criminal counsel to apply in the civil context. Part IV addresses the cruciality for why domestic violence victims should receive a right to counsel by discussing the prevalence of domestic violence in Pennsylvania, the treatment of domestic violence victims by the legal system, and the effects and benefits legal counsel has on outcomes in divorce, custody, and civil protection order cases. Part V discusses the New York Family Court Act, section 262, how it works, and its shortcomings. Finally, Part VI lays out the proposed framework for Pennsylvania’s right to counsel statute, including proposals for funding and staffing.

I. DOMESTIC VIOLENCE: A WIDESPREAD PROBLEM⁸

Intimate partner violence consists of “[p]hysical violence, sexual violence, stalking and psychological aggression by a current or former intimate partner.”⁹ Intimate partner violence is a serious and pervasive problem, with approximately one in three women facing such violence at least once since they were fifteen years old.¹⁰ It can encompass many acts and causes

7. *Gideon v. Wainwright*, 372 U.S. 335, 399–45 (1963).

8. Author’s note: Most of the research that I have gathered reports on women who are victims of domestic violence, and generally those who were victimized by their male partners. However, domestic violence can be perpetrated by anyone and experienced by anyone, whether in a heterosexual or same-sex relationship. Throughout this Note, I will use gender-neutral language as often as possible to recognize the breadth of domestic violence and its wide effect on all people, not just women in heterosexual relationships.

9. Ctrs. for Disease Control & Prevention, *What is Intimate Partner Violence?*, YOUTUBE (May 15, 2018), <https://youtu.be/VuMCzU54334>.

10. See *Violence Against Women*, WORLD HEALTH ORG. (Mar. 9, 2021), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>; see also WORLD HEALTH ORG., *VIOLENCE AGAINST WOMEN PREVALENCE ESTIMATES*, 2018, at 33 (2018).

victims “to live ‘with a constant sense of danger and expectation of violence.’”¹¹ On a national level, more than twelve million American adults experience domestic violence each year—one in ten men and one in four women.¹² This amounts to twenty-four Americans per minute experiencing victimization in the form of physical violence, rape, or stalking by an intimate partner.¹³

Intimate partner violence is a pattern, and “is rarely a one-time event[.]”¹⁴ When there is no intervention at the outset of the abuse, or a victim’s attempt for legal relief fails, the violence will likely become more frequent and more severe.¹⁵ For example, a woman coming “to court [one] [d]ay with a black eye is likely to return a few months later with a permanent bald spot caused by her husband pulling a handful of hair out of her head, or with a few of her teeth knocked out with a hammer.”¹⁶ Escalation can continue until a victim is killed, as half of all female murder victims, and one in thirteen male murder victims, are killed by their intimate partners.¹⁷ At least three American women are murdered by their husband or boyfriend each day.¹⁸ While many of these statistics focus on heterosexual relationships, those in same-sex relationships experience equivalent or sometimes greater rates of domestic

11. Roberta L. Valente, *Addressing Domestic Violence: The Role of the Family Law Practitioner*, 29 FAM. L.Q. 187, 188 (1995) (quoting Jeffrey L. Edleson, Zvi Eisikovits & Edna Guttman, *Men Who Batter Women: A Critical Review of the Evidence*, 6 J. FAM. ISSUES 229 (1985)).

12. *Violence Prevention: Fast Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 11, 2020), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

13. *Domestic Violence Statistics*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/stakeholders/domestic-violence-statistics/> (last visited Apr. 1, 2023).

14. Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 7 (1999) [hereinafter *Effective Intervention*].

15. *See id.*

16. *Id.*

17. *See id.* at 7–8; *see also* NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE (2020), https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596811079991.

18. *Get the Facts*, FUTURES WITHOUT VIOLENCE, <http://www.futureswithoutviolence.org/resources-events/get-the-facts/> (last visited Apr. 1, 2023).

violence.¹⁹ Domestic violence also affects those of all gender identities, races, and economic statuses.²⁰ Thirty to fifty percent of transgender people will experience domestic violence in their lifetime.²¹ People of color are disproportionately affected by domestic violence; for example, Black women are less likely to report instances of domestic violence and are the victims of 22% of domestic violence-related homicides.²² Economic status also plays a role in vulnerability, as impoverished women experience domestic violence seven times more frequently than higher-earning women.²³

Intimate partner violence also has severe health-related effects that extend beyond the immediate instance of abuse. The Centers for Disease Control and Prevention (“CDC”) found that women subjected to intimate partner violence are more at risk for extensive health problems such as heart disease, stroke, asthma, and heavy drinking.²⁴ The COVID-19 pandemic exacerbated these health-related effects because domestic violence tends to increase during public health crises, holidays, and natural disasters—times when families spend extended time together under the same roof.²⁵ Stay-at-home orders,

19. *Domestic Violence and the LGBTQ Community*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE (June 6, 2018), <https://ncadv.org/blog/posts/domestic-violence-and-the-lgbtq-community>.

20. See *Dynamics of Abuse*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/dynamics-of-abuse> (last visited Apr. 1, 2023).

21. Megan Dottermusch, *Domestic Violence in the Transgender Community*, NO MORE BLOG (Apr. 29, 2016), <https://nomore.org/domestic-violence-transgender-community/>.

22. Feminista Jones, *Why Black Women Struggle More with Domestic Violence*, TIME (Sept. 10, 2014, 2:07 PM), <https://time.com/3313343/ray-rice-black-women-domestic-violence/>.

23. JENNIFER S. ROSENBERG & DENISE A. GRAB, INST. FOR POL’Y INTEGRITY, SUPPORTING SURVIVORS: THE ECONOMIC BENEFITS OF PROVIDING LEGAL ASSISTANCE TO SURVIVORS OF DOMESTIC VIOLENCE 4 (2015), <https://policyintegrity.org/files/publications/SupportingSurvivors.pdf>.

24. *Get the Facts*, *supra* note 18.

25. *Instances of Sexual Abuse and Domestic Violence Increase During Crises*, PA. COAL. AGAINST RAPE, <https://pcar.org/news/instances-sexual-abuse-and-domestic-violence-increase-during-crises> (last visited Apr. 1, 2023); Fletcher McClellan & Paige Oustrich, *Intimate Partner Violence, Pa.’s Silent Pandemic, Can Be Silent No Longer*, PA. CAPITAL-STAR (Feb. 19, 2021, 6:30 AM), <https://www.penncapital-star.com/commentary/intimate-partner-violence-pa-s-silent-pandemic-can-be-silent-no-longer-fletcher-mcclellan-and-paige-oustrich/>.

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which were enacted in at least forty-two states,²⁶ led to many victims being trapped at home with their abusers, unable to leave for purposes that provided them daily respite, such as going to work or a trip to the store.²⁷ This allowed abusers to further isolate their victims and cut them off from family, friends, and support networks, a quintessential abuse tactic.²⁸ This isolation steered many victims towards a feeling of loneliness, which can lead to anxiety, depression, post-traumatic stress disorder, negative perceptions of oneself as worthless and inferior, and a diminished potential for future positive psychological growth.²⁹

Moreover, the pandemic led to a diminished ability for mandated reporters to see and identify potential victims of abuse.³⁰ Instead of allowing in-person doctor appointments, many offices cancelled or held virtually the visits that were deemed “nonurgent.”³¹ These virtual appointments, and the potential discovery or disclosure of abuse, were also hindered by poor internet service or an abuser listening in from somewhere else in the home.³² According to the Pennsylvania Coalition Against Domestic Violence, abusers even withheld or gave false information about COVID-19 to their partners, hid insurance cards, and restricted access to personal hygiene supplies.³³ Additionally, people of color were more likely to

26. Sarah Mervosh, Denise Lu & Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> (Apr. 20, 2020).

27. See Megan L. Evans, Margo Lindauer & Maureen E. Farrell, *A Pandemic Within a Pandemic – Intimate Partner Violence During Covid-19*, 387 NEW ENG. J. MED. 2302, 2302 (2020); Ayana Jones, *Coronavirus Crisis Sparks Increase in Domestic Violence in Philadelphia*, PA. CAPITAL-STAR (Apr. 7, 2020, 7:10 AM), <https://www.penncapital-star.com/covid-19/coronavirus-crisis-sparks-increase-in-domestic-violence-in-philadelphia/>.

28. See Jones, *supra* note 27.

29. See Lisa A. Goodman & Deborah Epstein, *Loneliness and the COVID-19 Pandemic: Implications for Intimate Partner Violence Survivors*, 37 J. FAM. VIOLENCE 767, 769 (Nov. 5, 2020).

30. See Evans et al., *supra* note 27, at 2302.

31. *Id.* at 2303.

32. *Id.*

33. *Domestic Violence Statistics*, PA. COAL. AGAINST DOMESTIC VIOLENCE, <https://www.pcadv.org/about-abuse/domestic-violence-statistics/> (last visited Apr. 1, 2023) [hereinafter *Pa. Domestic Violence Statistics*].

experience sickness and death from COVID-19 and were also significantly less likely to have jobs that allowed them to work from home, which led to them “suffering greater negative outcomes” of COVID-19.³⁴

Intimate partner violence also has a profound economic effect on society, as victims may be unable to return to work until they have recovered from their injuries.³⁵ The National Violence Against Women Survey found that women victimized by intimate partner violence lose 13.6 million days of productivity each year.³⁶ Coupled with a loss of productivity are victims’ lost earnings while they cannot work, and over one billion dollars of lost lifetime earning potential for those who do not survive their abusers.³⁷ Intimate partner violence also leads to frequent and increased medical care, which costs billions of dollars each year between victims’ emergency room, psychiatrist, and psychologist visits.³⁸ Additionally, COVID-19’s economic effects disproportionately harmed those most vulnerable to domestic violence, as about half of low-income families experienced pandemic-related job loss.³⁹ The continuing consequences of domestic violence and their increase from the COVID-19 pandemic, coupled with a legal system that is confusing, difficult, and sometimes hostile for domestic violence victims to navigate without an attorney, show the immediate need to protect some of society’s most vulnerable populations.⁴⁰

34. Rick Harrison, *Health Notes: People of Color Suffer Disproportionate Impact of COVID-19 Pandemic*, YALE SCH. OF MED. (Sept. 3, 2020), <https://medicine.yale.edu/news-article/health-notes-people-of-color-suffer-disproportionate-impact-of-covid-19-pandemic/>.

35. See ROSENBERG & GRAB, *supra* note 23, at 11.

36. *Id.* at 3.

37. *Id.* at 11.

38. See *id.*

39. AMANDA BENTON, ERICA MEADE & ALEC VANDENBERG, OFF. OF HUM. SERVS. POL’Y, THE IMPACT OF THE FIRST YEAR OF THE COVID-19 PANDEMIC AND RECESSION ON FAMILIES WITH LOW INCOMES 1 (2021), <https://aspe.hhs.gov/sites/default/files/2021-09/low-income-covid-19-impacts.pdf>; Melissa Jenco, *Study: COVID-19 Pandemic Exacerbated Hardships for Low-Income, Minority Families*, AM. ACAD. PEDIATRICS NEWS (June 3, 2020), <https://publications.aap.org/aapnews/news/13838>.

40. See *infra*, Sections IV.A–B.3.

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II. THE CONSTITUTIONAL RIGHT TO COUNSEL

In 1963, the Supreme Court of the United States expressly affirmed that indigent criminal defendants have the right to appointed counsel.⁴¹ In *Gideon v. Wainwright*, defendant Clarence Gideon, convicted of a felony, appeared before a Florida court lacking money and a lawyer, and asked the court to appoint counsel for him.⁴² His request was refused because Florida only appointed counsel in capital offenses.⁴³ Without a lawyer and with his freedom on the line, Gideon proceeded *pro se* and “conducted his defense about as well as could be expected from a layman,” which included giving an opening statement, cross-examining witnesses, and presenting witnesses on his own behalf.⁴⁴ He was ultimately convicted and sentenced to five years in prison.⁴⁵ Gideon then filed a habeas corpus petition, arguing that the Florida trial court’s failure to appoint counsel deprived him of his constitutional rights.⁴⁶ The case went to the United States Supreme Court, and the Court held that the right to counsel in a criminal proceeding is “fundamental and essential” to ensure that the defendant has a fair criminal trial.⁴⁷ “[E]very defendant [must] stand[] equal before the law” and because of the adversarial nature of the criminal justice system, the “obvious truth” was that any person who is unable to hire a lawyer is not given “a fair trial unless [and until] counsel is provided for him.”⁴⁸ The Court emphasized “that lawyers in criminal courts are necessities, not luxuries.”⁴⁹

In the years following *Gideon*, cases came before the Supreme Court asking for a right to counsel—this time for civil cases.

41. See *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

42. *Id.* at 336–37.

43. *Id.* at 337.

44. See *id.*

45. *Id.*

46. *Id.*

47. *Id.* at 344.

48. *Id.*

49. *Id.*

However, the Court never met these requests with the same zeal as it did in *Gideon*. In *Lassiter v. Department of Social Services*, the Court held that an indigent and unrepresented woman was not constitutionally entitled to appointed counsel in her parental rights termination proceeding.⁵⁰ Rather, the decision of whether due process required the appointment of counsel for such proceedings was for the trial court.⁵¹ The Court noted that the right to counsel is rooted in a defendant's interest in personal freedom, and that the right has only been recognized in cases where the litigant could lose their physical liberty as a result of losing their case, as seen in *Gideon*.⁵² Thus, as a litigant's interest in their personal liberty decreases, their right to appointed counsel does the same.⁵³ Although termination proceedings could be complex and beyond the understanding of many *pro se* parents, the Court ultimately decided that the Constitution did not require the right to counsel for these proceedings.⁵⁴

The Court again denied an absolute civil right to counsel in *Turner v. Rogers*, in which the plaintiff argued that he had the right to counsel in his civil contempt case stemming from his unpaid child support, for which he was sentenced to twelve months in jail.⁵⁵ In examining precedent, the Court noted that while it had previously found a right to counsel in cases involving incarceration and the loss of one's personal liberties—notable because Turner's freedom was at stake here—it did not mean that a right to counsel existed in all such cases.⁵⁶ The Court held that the Due Process Clause does not automatically provide counsel to indigent litigants at civil contempt child support proceedings, especially when the

50. See *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 20 (1981).

51. *Id.* at 31–32.

52. *Id.* at 25.

53. *Id.* at 26.

54. See *id.* at 31–34.

55. *Turner v. Rogers*, 564 U.S. 431, 436–38 (2011).

56. *Id.* at 441–43.

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supported parent is also unrepresented.⁵⁷ However, the Court noted “that the State must [provide] procedures that ensure a fundamentally fair determination of the critical incarceration related question [of] whether the [obligor] parent is able to comply with the support [demands].”⁵⁸ These procedures include giving “notice of the importance of [the] ability to pay [and a] fair opportunity to present . . . and . . . dispute . . . relevant information . . . and court findings.”⁵⁹

III. THE MODERN PUSH TOWARDS A CIVIL *GIDEON*

The fortieth anniversary of *Gideon* in 2003 initiated a “surge of activity” aimed towards enacting a civil *Gideon*, which would apply *Gideon*’s constitutionally-guaranteed right to counsel to indigent litigants pursuing civil cases.⁶⁰ Advocates formed the National Coalition for a Civil Right to Counsel, which aims to “encourage, support, and coordinate advocacy” through the implementation and expansion of the civil right to counsel for cases involving “basic human needs.”⁶¹ Additionally, Access to Justice Commissions began emerging on the state level.⁶² The year 2006 was important in the push for a civil *Gideon* because the American Bar Association’s (“ABA”) House of Delegates approved a resolution that advocated for a civil *Gideon*.⁶³ The Resolution urged “federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low-income persons in those categories of adversarial proceedings where basic human needs are at stake,” including “shelter, sustenance, safety, health or child custody.”⁶⁴

57. *Id.* at 448.

58. *Id.* at 435.

59. *Id.* at 448.

60. See Russell Engler, *Shaping a Context-Based Civil Gideon from the Dynamics of Social Change*, 15 TEMP. POL. & CIV. RTS. L. REV. 697, 700 (2006).

61. *A Civil Right to Counsel: The History*, NAT’L COAL. FOR A CIV. RIGHT TO COUNSEL, <http://civilrighttocounsel.org/about> (last visited Apr. 1, 2023); see also Engler, *supra* note 60, at 698–99.

62. Engler, *supra* note 60, at 699.

63. See REPORT TO THE HOUSE OF DELEGATES, *supra* note 4, at 1–2.

64. *Id.* at 1.

In advocating for this civil *Gideon*, the ABA noted how far behind the United States was in granting indigent people the civil right to counsel, as many European countries had been doing so for centuries.⁶⁵ The United States, however, “provid[es] representation only to however many poor people” attorneys can serve, whether through legal aid organizations or pro bono service.⁶⁶ As a result of this, low-income Americans do not receive sufficient legal assistance for “92% of their substantial civil legal problems.”⁶⁷ A 2022 study from the Legal Services Corporation (“LSC”),⁶⁸ found that civil legal assistance is a significant and pressing need for low-income households, with 74% of such households experiencing at least one civil legal problem per year, and 26% of those problems involving “[f]amily and safety.”⁶⁹

Though civil legal aid organizations are invaluable resources in the American legal market, the LSC estimates that 63% to 70% of low-income Americans who seek assistance from an LSC-funded legal aid receive either no legal services, or insufficient services, which leaves approximately 1.4 million legal problems unsolved.⁷⁰ The services that LSC-funded organizations can provide are limited, and range from providing resources and advice to the client to more “extended

65. *Id.* at 3–4.

66. *See id.* at 4.

67. LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1 (2022), <https://lsc-live.app.box.com/s/ueskoghtbipz71iy990r633gqzuffb9>.

68. The Legal Services Corporation is the “single largest funder of civil legal aid for low-income Americans in the nation” and “distributes more than 90% of its funding to 132 . . . legal aid programs with more than 800 offices.” *About LSC*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc> (last visited Apr. 1, 2023).

69. *See Section 3: The Prevalence of Civil Legal Problems*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/section-3-the-prevalence-of-civil-legal-problems/> (last visited Apr. 1, 2023) (explaining that the most common legal problems related to family and safety include “experience with domestic violence (affecting 10% of all households), problems collecting or paying child support (9%), and separation or divorce (9%)”).

70. *See Section 6: Reports from the Field*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/section-6-reports-from-the-field/> (last visited Apr. 1, 2023) [hereinafter *Reports from the Field*]; *The Unmet Need for Legal Aid*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/what-legal-aid/unmet-need-legal-aid> (last visited Apr. 1, 2023).

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services.”⁷¹ In a 2009 study, the LSC estimated that for every 6,415 low-income people, there is only one legal aid attorney available.⁷² Thus, there is a pressing need for states to enact civil right to counsel laws to offset the significant disparity in every community.⁷³ Without this right, many indigent people are left to navigate the confusing, overwhelming, and expensive legal system on their own, putting their rights and liberties at stake in the process.⁷⁴

As a result of the Supreme Court’s failure to recognize a constitutional civil right to counsel, many states and localities provide for a civil right to counsel in various “narrow” areas of the law.⁷⁵ These areas include granting counsel to parents in dependency proceedings, potential wards in guardianship proceedings, or related cases “in which interference with personal liberties are at stake.”⁷⁶ Though there has been

71. The LSC-funded services provide resources including giving guidance on filling out legal forms and explaining the requirements to file for custody, apply for benefits, or other legal processes. *Reports from the Field*, *supra* note 70. “[B]rief services and [a]dvice” may include giving advice related to a custody hearing or writing a demand letter to a landlord. “[E]xtended [s]ervices” includes a “wide variety of legal assistance” and requires “extensive attention,” such as representing a client in court. *Id.*

72. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1, 21 (2009).

73. See REPORT TO THE HOUSE OF DELEGATES, *supra* note 4, at 7–9.

74. See Section 4: *Seeking and Receiving Legal Help*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/section-4-seeking-and-receiving-legal-help/> (last visited Apr. 1, 2023) (noting that “53% of low-income Americans do not know if they would be able to find a lawyer that they could afford if they needed help with a serious civil legal problem”); see also *Effective Intervention*, *supra* note 14, at 5 (noting that domestic violence cases trigger civil and criminal cases, a “fragmented process” that is “hopelessly confus[ing] [to] most victims,” to the point where “few manage to file for all other forms of complementary relief they need”). The legal system is also expensive. In the Philadelphia Family Court, it costs \$333.73 to file for divorce, \$107.13 to file for custody, and \$323.23 to file for a PFA. *Office of Judicial Records Fee Schedule: Court of Common Pleas*, PA. CTS., <https://www.courts.phila.gov/pdf/prothyfees.pdf> (last visited Apr. 15, 2023). These fees are only to initiate the divorce, custody, or PFA proceeding, and do not include the cost of an attorney or any other expenses that may arise during the litigation, such as a \$200 home investigation in a custody case. *Id.*

75. See REPORT TO THE HOUSE OF DELEGATES, *supra* note 4, at 7; see also *Status Map*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org/map> (last visited Apr. 1, 2023).

76. See REPORT TO THE HOUSE OF DELEGATES, *supra* note 4, at 7. Some states have more permissive provisions, which grant courts the discretion to provide counsel, but do not require

progress, there are many other proceedings in which an indigent person's right to an attorney should be guaranteed—namely, civil protection orders and custody or divorce proceedings in which the petitioner's motivating force is escaping intimate partner violence. New York is the only state in the country with a guaranteed statutory right to counsel for indigent people involved in certain family court proceedings.⁷⁷ Section 262 of the New York Family Court Act guarantees the right to counsel for indigent petitioners in many family court proceedings, including for petitioners and respondents in civil protection order cases and for both parties in custody litigation.⁷⁸ Indigent custody litigants are entitled to counsel in New York regardless of whether domestic violence is involved.⁷⁹

Pennsylvania, at both the state and local level, provides a right to counsel for litigants in certain civil actions.⁸⁰ At the state level, Pennsylvania guarantees a right to counsel for, among others, indigent parents in parental rights termination proceedings, children in contested parental rights termination proceedings, people being subjected to court-ordered involuntary mental health treatments, and parties involved in any proceeding under the Juvenile Act.⁸¹ In November 2020,

it. A Wyoming statute, for example, allows, but does not require, the court to appoint an attorney to "assist and advise" a petitioner seeking an order of protection. WYO. STAT. ANN. § 35-21-103(e) (2003).

77. See N.Y. FAM. CT. ACT § 262(a) (Consol. 2012); see also Abel & Rettig, *supra* note 3, at 252.

78. See § 262(a)(ii); see also Abel & Rettig, *supra* note 3, at 252.

79. See § 262(a).

80. See *Pennsylvania, NAT'L COAL. FOR A CIV. RIGHT TO COUNS.*, http://www.civilrighttocounsel.org/major_developments?jurisdiction=Pennsylvania (last visited Apr. 1, 2023).

81. See 23 PA. CONS. STAT. § 2313(a)–(a.1) (1992) (guaranteeing that, in an involuntary termination proceeding, "[t]he court shall appoint counsel to represent the child . . ." and "[t]he court shall appoint counsel for a parent whose rights are subject to termination . . . if . . . the court determines the parent is unable to pay for counsel . . ."); 50 PA. CONS. STAT. § 7304(c)(3) (2019) (stating that, upon a petition showing reasonable cause, a "court shall appoint an attorney" to represent someone subject to court-ordered involuntary treatment "unless it shall appear that [t]he [person] can afford . . . private representation"); 42 PA. CONS. STAT. § 6337 (2012) (stating that "a party is entitled to representation by legal counsel at all stages of any proceedings under [The Juvenile Act]," and if the party cannot afford an attorney, the court will provide counsel).

Philadelphia's City Council voted unanimously to guarantee low-income tenants in certain zip codes access to an attorney if they are evicted.⁸² Despite these important strides, however, Pennsylvania legislators have failed to continue this progress with a civil right to counsel that protects some of the Commonwealth's most vulnerable litigants—indigent victims of domestic violence.⁸³

The level of domestic violence in Pennsylvania shows a pressing need to protect victims through the guarantee of counsel because in 2021, 112 Pennsylvanians died from intimate partner violence, and in 2020, there were 34,678 cases filed by people seeking a Protection From Abuse order (PFA).⁸⁴ There is also a demonstrated need by potential indigent litigants because 1.9 million Pennsylvania residents qualify for and seek legal aid, but only half receive assistance, with the other half unable to be served due to the lack of resources.⁸⁵

COVID-19 and subsequent stay-at-home orders throughout Pennsylvania also impacted levels of domestic violence.⁸⁶ Philadelphia's Women Against Abuse saw a 30% increase in calls to the domestic violence hotline within the first week of the city's stay-at-home order.⁸⁷ While Pennsylvania saw a 29% decline of domestic violence reports during county shutdowns, this decrease likely was not the result of lower levels of domestic violence, but rather the result of victims being stuck at home with their abusers and being unable to safely reach out for help.⁸⁸ Illustrating the difficulty for victims to reach out for help during this time is that calls for help increased once Pennsylvania's counties reopened, leading to an amount of

82. *Right to Counsel*, PHILLYTENANT, <https://clsphila.org/rtc/> (last visited Apr. 1, 2023).

83. See *Pennsylvania*, *supra* note 80.

84. See *Pa. Domestic Violence Statistics*, *supra* note 33; *Protection from Abuse (PFA) Caseload*, UNIFIED JUD. SYS. OF PA., <https://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/protection-from-abuse> (last visited Apr. 1, 2023).

85. See *About the PLAN Network*, PA. LEGAL AID NETWORK, <https://palegalaid.net/about-membership#dv> (last visited Apr. 1, 2023).

86. See *Jones*, *supra* note 27.

87. *Id.*

88. See McClellan & Oustrich, *supra* note 25; see also Evans et al., *supra* note 27, at 2302.

pending PFA cases that was 53% higher than those of the previous three years.⁸⁹ The unmet civil legal needs of indigent litigants, combined with Pennsylvania's willingness to recognize a right to counsel in certain civil cases and the prevalence of domestic violence in the Commonwealth, presents state legislators with the opportunity to protect domestic violence victims.

IV. THE IMPORTANCE OF A RIGHT TO COUNSEL IN FAMILY COURT MATTERS

A civil right to counsel for indigent domestic violence victims seeking divorce, custody, and civil protection orders—referred to as Protection From Abuse orders in Pennsylvania—is necessary because the courtroom is where victims and their children can be permanently and legally severed from their abusers.⁹⁰ Although the legal process can be successful in protecting victims, there are still many shortcomings.⁹¹ Thus, states should pass legislation to ensure the legal protections offered to victims are solid and attainable by guaranteeing the right to counsel.

A. *The Need to Protect Domestic Violence Victims Through a Civil Right to Counsel*

Domestic violence victims have historically had the law against them, as a husband's right to abuse his wife was often protected by early American courts.⁹² In *State v. Black*, the Supreme Court of North Carolina held that a husband who was convicted of assaulting his wife should receive a new trial because "[a] husband is responsible for the acts of his wife and

89. See McClellan & Oustrich, *supra* note 25.

90. See *Effective Intervention*, *supra* note 74, at 24–25 (noting that "permanent relief" for domestic violence victims includes "divorce, paternity and support, or custody actions," and should be pursued after the petitioner files for a protection order, but many victims do not know they can do this because they are often not represented by counsel).

91. See discussion *infra* Section IV.A.

92. See *State v. Black*, 60 N.C. 266, 267 (1864).

he is required to govern his household, and for that purpose the law permits him to use towards his wife such a degree of force as is necessary to control an unruly temper and make her behave herself”⁹³ The law would step in only when there was a “permanent injury,” “an excess of violence,” or a high “degree of cruelty.”⁹⁴ Rather than the court using its power to protect abused wives, it refused to intervene and sent the parties home to make up and continue their marriage.⁹⁵ By refusing to intervene in these situations, courts became institutions that “legitimiz[ed] and perpetuat[ed] [domestic] violence.”⁹⁶

Only recently has the courtroom become a place where domestic violence victims can seek refuge and protection.⁹⁷ It took until the late nineteenth century for states to move away from allowing a husband’s abuse, though many states held on to ideals like North Carolina’s, where only the most “serious” abuse required intervention.⁹⁸ However, between 1976 and 1992, every state enacted legislation allowing victims of domestic violence to seek a civil protection order, with the “vast majority” of them also allowing for ex parte relief, which gives victims court-ordered protection for the period between the filing of the suit and the trial.⁹⁹ Civil protection orders are issued by judges and serve to keep victims safe by prohibiting the abuser from contacting them, and often include other forms of

93. *Id.*

94. *Id.* While the court in *Black* does not provide an example of an act constituting the high degree of cruelty that would warrant legal intervention, it notes that such cruelty must indicate “malignity and vindictiveness,” and a husband pulling his wife to the ground by her hair did not meet that standard. *See id.* at 267–68.

95. *See id.*

96. *See* Beverly Balos, *Domestic Violence Matters: The Case for Appointed Counsel in Protective Order Proceedings*, 15 TEMP. POL. & CIV. RTS. L. REV. 557, 563 (2006).

97. *See* Deborah Epstein, *Redefining the State’s Response to Domestic Violence: Past Victories and Future Challenges*, 1 GEO. J. GENDER & L. 127, 129–30 (1999) [hereinafter *Redefining the State’s Response*] (explaining how the treatment of domestic violence in courts evolved from condoning domestic violence to providing court-ordered protection to victims of domestic violence).

98. *Id.* at 129.

99. *Id.* at 130; *see also* Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL’Y & L. 499, 502 (2003).

relief such as temporary custody provisions and requiring abusers to surrender their firearms and move out of the house they share with their victim.¹⁰⁰ This is especially important because once the abuser is served with the order and knows of the victim's intent to leave the relationship, it can lead to "separation assault," thus putting the victim at a heightened risk for violence.¹⁰¹

Many states also adopted criminal contempt laws, which help enforce civil protection orders.¹⁰² Without these criminal and civil remedies working together, the latter would be essentially useless because effective and successful enforcement of a protection order is necessary to ensure the victim's safety and the abuser's "meaningful compliance."¹⁰³ As the officials who enact these orders, judges are incredibly important to victims' safety because the "[j]udges who do not understand the seriousness" of the domestic violence presented before them may grant a protective order without all of the crucial remedies, such as "custody, child support, and other forms of financial [aid]."¹⁰⁴ Additionally, judges' attitudes towards domestic violence victims are so important that they can have the positive impact of showing victims "that they do not deserve to be abused."¹⁰⁵ This can help victims "gain the strength to separate from their batterers."¹⁰⁶

However, the legal system is far from perfect, and many victims still face adversity when they go to court to seek freedom from their abusers.¹⁰⁷ Some court officials, including

100. *Protection Orders*, PA SAFE L., <https://pasafelaw.org/resources/protection-orders/> (last visited Apr. 1, 2023).

101. *Redefining the State's Response*, *supra* note 97, at 130; see Balos, *supra* note 96, at 560 (defining "separation assault" as "[t]he occurrence of violence upon separation or attempts at separation," and noting that "[s]eparation from the abuser [is] 'an important risk factor for lethal violence and injury'").

102. *Redefining the State's Response*, *supra* note 97, at 131.

103. *Id.*

104. *Effective Intervention*, *supra* note 74, at 43.

105. *Id.* at 43–44.

106. *Id.* at 44.

107. See *id.* at 39–44, 50 (discussing the hardships domestic violence victims experience at the hands of judges and clerks and the need for reform).

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judges, clerks, and lawyers, may hold harmful biases and opinions towards domestic violence victims.¹⁰⁸ Court officials may bring long-held misconceptions regarding domestic violence into the courtroom, such as the idea that victims could easily leave their abusers if they wanted to.¹⁰⁹ Another misconception is that victims fabricate abuse to give them an advantage in divorce or custody proceedings.¹¹⁰ However, this is far from the truth, as victims are more likely to see their own abuse through the eyes of the abuser, leading them to “minimiz[e] or deny[] the abuse” they are facing.¹¹¹

In addition to misconceptions about domestic violence, victims seeking relief may also face cruel comments from legal professionals.¹¹² When victims refile cases and return to court after dropping previous abuse charges, there are instances in which judges say “oh, it’s you again,” or “how long are you going to stay this time?”¹¹³ A North Dakota judge once told a returning petitioner: “[i]f you go back [to the perpetrator] one more time, I’ll hit you myself.”¹¹⁴ Egregious comments that minimize the petitioners’ experiences reinforce the stereotypes already present in domestic violence litigation, as the abusers are often seen by the court as “charming, respectful, and persuasive,” while the victims are seen as “hysterical, vindictive, or prone to exaggeration.”¹¹⁵ These stereotypes “can lead [some] judges to identify with the batterer” and withhold from the victim the critical protection that is often a matter of life or death.¹¹⁶ Notably, some judges find it “frustrating” to assist *pro se* petitioners seeking protection orders, which is

108. *See id.* at 39–40.

109. *Id.* at 39; *Redefining the State’s Response*, *supra* note 97, at 140.

110. Valente, *supra* note 11, at 191.

111. *Id.*

112. *See Effective Intervention*, *supra* note 74, at 40.

113. *Id.*

114. *Id.*

115. *Id.* at 41.

116. *Id.*

troubling because the “vast majority” of victims seeking these orders are unrepresented.¹¹⁷

While negative and dismissive attitudes towards victims have been improving, “[s]tudies of gender bias in courts found that judges commonly trivialize or excuse domestic violence.”¹¹⁸ This serves to reinforce dangerous misconceptions about domestic violence that could work to deter victims from seeking much-needed legal relief.¹¹⁹ Additionally, there have been instances where judges question the credibility of those survivors seeking relief who are not seen as the “typical” victim of domestic violence, i.e., a woman with a male partner, or deny a protection order based on the petitioner’s sexual orientation.¹²⁰ Judges have questioned the credibility of men who seek protective orders from their female abusers, and one survivor in Pennsylvania was denied a protective order against her male relative because the judge thought her same-sex relationship was “immoral” and she was thus undeserving of protection.¹²¹

The court’s clerks can also contribute to the hostility faced by victims.¹²² Some clerks “complain bitterly about domestic violence cases,” finding them to be a lot of work because they may be for naught if the petitioner drops the case and returns to their abuser.¹²³ A witness observing clerks in Missouri stated that their attitude towards domestic violence victims seeking relief was “why fill out the paperwork when you will just go back [to the perpetrator].”¹²⁴ This attitude leads to clerks who

117. *Id.* at 43.

118. Deborah T. Poritz, Mary Schroeder, Sally Goldfarb & Julie Goldscheid, *Ending Violence Against Women*, 34 *WOMEN’S RTS. L. REP.* 105, 119 (2013); *Domestic Violence*, 21 *GEO. J. GENDER & L.* 253, 291 (2020).

119. See *Effective Intervention*, *supra* note 74, at 39–44.

120. See COMM. ON RACIAL & GENDER BIAS IN THE JUST. SYS., FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM 398 (1999) [hereinafter PA. FINAL REPORT].

121. *Id.*

122. See *Effective Intervention*, *supra* note 74, at 39.

123. *Id.*

124. *Report of the Missouri Task Force on Gender and Justice*, 58 *MO. L. REV.* 485, 503 (1993).

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may refuse to help victims, with some going so far as to “discourag[e] them from filing for civil protection orders,” refuse to tell them that such orders are available, refuse to help them “complet[e] the necessary forms,” or even falsely tell them that they “can only get one protection order in [their] lifetime.”¹²⁵ Some clerks have even broken the court’s rules to “screen” domestic violence cases, picking and choosing which ones are heard by a judge.¹²⁶ These attitudes toward and negative views of petitioners who drop their cases are often unwarranted, as petitioners may drop their case because of fear of or threats from the abuser, or the financial insecurity and inability to afford the forthcoming court proceedings.¹²⁷ Women of color may also withdraw their petitions out of fear that their abuser will be disproportionately harmed by the justice system, for example, if the abuser is a Black man or is undocumented.¹²⁸

Because of the continued adversity, harm, and trauma faced by victims in the courtroom, additional measures must be taken to further guarantee and protect victims’ access to remedies within the legal system, while also increasing their comfort with the system.¹²⁹ One such measure is the training of judges on how to treat and work with domestic violence victims.¹³⁰ In 1999, the National Judicial Institute on Domestic Violence (“NJIDV”) began offering programs for judges to help educate them on best practices in navigating domestic violence cases and supporting victims, to combat against the harmful attitudes some may hold towards the victims who seek relief in their

125. *Effective Intervention*, *supra* note 74, at 39–40.

126. *Id.* at 40; C.J. A.M. “Sandy” Keith, *Domestic Violence and the Court System*, 15 *HAMLIN L. REV.* 105, 111 (1991); *Minnesota Supreme Court Task Force for Gender Fairness in the Courts: Final Report*, 15 *WILLIAM MITCHELL L. REV.* 825, 877 (1989).

127. *PA. FINAL REPORT*, *supra* note 120, at 390–91.

128. *Id.* at 391.

129. *See infra* Part VI (arguing for the implementation of a civil right to counsel statute in Pennsylvania that guarantees counsel to indigent domestic violence victims seeking a PFA, divorce, or custody).

130. *About Us*, NAT’L JUD. INST. ON DOMESTIC VIOLENCE, <https://njidv.org/about-us> (last visited Apr. 1, 2023).

courtrooms.¹³¹ These programs are interactive, consisting of role-playing, discussion, and hypotheticals, and serve to increase judges' understanding of domestic violence cases and give them a better view of the "courtroom and community roles" they play in helping to end domestic violence and holding perpetrators accountable.¹³² To date, the NJIDV has served over 9,000 judges with its programs.¹³³

However, judicial training alone will not fully mitigate the harms faced by domestic violence victims in the courtroom. To supplement these crucial education programs, a statutory civil right to counsel can further strengthen the hope that the courtroom and its officials provide to victims seeking relief.¹³⁴ Such a permanent and concrete guarantee of legal assistance is crucial because for indigent domestic violence victims, seeking relief can be a matter of life and death.¹³⁵ If they do not obtain relief from the legal system, their abuser "may feel more empowered to continue the pattern of abuse or even to intensify it."¹³⁶ With a right to counsel, indigent domestic violence victims could know that, even in the face of a hostile judge or court staff, they would have a lawyer guaranteed to help them navigate the complicated legal process; they would have someone to fight for them.

B. *The Impact of Counsel on Divorce, Custody, and Civil Protection Order Cases*

In many lawsuits, having counsel is an important step that helps a party work towards a successful outcome in their case.¹³⁷

131. *Id.*

132. *Id.*; *Course Offerings*, NAT'L JUD. INST. ON DOMESTIC VIOLENCE, <https://njidv.org/course-offerings> (last visited Apr. 1, 2023).

133. *About Us*, *supra* note 130.

134. *See infra* Parts V, VI; *see also Effective Intervention*, *supra* note 74, at 13 (discussing reforms that must occur within the police, prosecutors, the court system, and the judiciary to create an improved system for handling domestic violence cases).

135. *See* PA. FINAL REPORT, *supra* note 120, at 392.

136. *Id.*

137. *See infra* Section IV.B (discussing the benefit of lawyers in PFA, divorce, and custody proceedings).

The same is true for cases resolved in family court, which is a “person-oriented court . . . that makes the law work for the people,” and is more tailored toward each specific family.¹³⁸ Such areas of family law in which counsel is particularly important include divorce, custody, and civil protection orders because litigants pursuing each of these forms of relief are proven to have better outcomes when they have counsel.¹³⁹ Additionally, victims may withdraw their cases because they do not have the money to move forward, especially when the case will involve not only a civil protection order but also a lengthier and more extensive proceeding such as divorce and custody.¹⁴⁰ Access to counsel reduces the likelihood of future domestic violence and further victimization because it provides victims with the tools to break free from their abusers in the form of long-term legal remedies.¹⁴¹ Thus, attorneys in these cases should be viewed as “necessities, not luxuries.”¹⁴²

However, victims of domestic violence who seek legal relief from their abusers in these types of cases are “highly unlikely to have legal representation,” leaving them to navigate complicated and intricate processes on their own, and advocate on their own behalf in legal areas they may not fully understand.¹⁴³ These types of cases have incredibly high stakes, as petitioners may lose custody of their children and may not be able to obtain a divorce or receive a protection order, which could lead to them returning to the abusive relationship.¹⁴⁴ The

138. Gerald W. Hardcastle, *Adversarialism and the Family Court: A Family Court Judge's Perspective*, 9 U.C. DAVIS J. JUV. L. & POL'Y 57, 75 (2005) (quoting William J. O'Neil & Barry C. Schneider, *Recommendations of the Committee to Study Family Issues in the Arizona Superior Court: A Family Court System*, 37 FAM. & CONCILIATION CTS. REV. 179, 181 (1999)).

139. See *infra* Sections IV.B.1–3.

140. See PA. FINAL REPORT, *supra* note 120, at 391.

141. See ROSENBERG & GRAB, *supra* note 23, at 5.

142. See *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

143. Balos, *supra* note 96, at 569.

144. See ROSENBERG & GRAB, *supra* note 23, at 7 (“[B]ecause legal services help women with practical matters (such as protective orders, custody, and child support) they appear to actually present women with real, long-term alternatives to their relationships.”) (quoting Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMPORARY ECON. POL'Y 158, 164 (2003)).

stakes are even higher when losing a case means going back to an abusive spouse, or an abuser gaining partial custody of children.¹⁴⁵

These stakes were elevated during the COVID-19 pandemic, as many courts throughout the country closed, and as a result, civil cases piled up and many hearings were held virtually.¹⁴⁶ Cities like Philadelphia enacted special measures to help domestic violence victims navigate court closures and docket pileup, with special hotlines created to take the place of consultations and police officers helping victims access their virtual hearings.¹⁴⁷ Problems occurred, however, in cities like Boston, where civil protection order hearings were required to be held in person.¹⁴⁸ Indigent domestic violence victims who were previously able to be assisted by legal aid organizations or other pro bono services faced a shortage of attorneys, as many of the organizations would not allow their attorneys to risk their health by appearing in person.¹⁴⁹

1. *The effect of counsel in divorce cases*

In Pennsylvania, divorce can be obtained through fault or no-fault grounds.¹⁵⁰ There are two options in obtaining a divorce

145. See *Effective Intervention*, *supra* note 74, at 44 (noting that “rapid resolution” of custody and child support are important in civil protection order cases because abusers “commonly use financial leverage and threats of child kidnapping to manipulate and control their victims”).

146. *Justice Delayed: Civil Cases Pile Up Amid the Coronavirus Pandemic*, WNYC STUDIOS: THE TAKEAWAY (Oct. 6, 2020), <https://www.wnycstudios.org/podcasts/takeaway/segments/civil-cases-pile-amid-coronavirus-pandemic>.

147. Vinny Vella, *As Courts Close for the Coronavirus, Officials and Advocates Adjust to Protect Domestic Violence Victims*, PHILA. INQUIRER, <https://www.inquirer.com/news/coronavirus-protection-from-abuse-orders-philadelphia-domestic-violence-20200406.html> (Apr. 6, 2020).

148. *Domestic Violence Victims in the U.S. Are Lacking Resources During Pandemic*, WNYC STUDIOS: THE TAKEAWAY (Dec. 1, 2020), <https://www.wnycstudios.org/podcasts/takeaway/segments/domestic-violence-victims-us-are-lacking-resources-during-pandemic>.

149. *Id.*

150. See 23 PA. CONS. STAT. § 3301 (2022). Fault grounds for divorce in Pennsylvania include “willful and malicious desertion,” adultery, “cruel and barbarous treatment” of one spouse by another, one spouse entering into another marriage while married and thus knowingly committing bigamy, one spouse being sentenced to prison for two or more years upon commission of a crime, and one spouse rendering the other spouse’s condition intolerable and making the spouse’s life “burdensome.” *Id.* § 3301(a)(1)–(6).

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when neither party is at fault.¹⁵¹ First, one spouse may file for divorce and in the complaint “allege that the marriage is irretrievably broken.”¹⁵² Ninety days after this complaint is served on the defendant spouse, divorce can be granted if each party files an affidavit consenting to the divorce.¹⁵³ Second, divorce may be granted if one spouse files for divorce, “alleging that the marriage is irretrievably broken,” and files an affidavit stating that the couple has been living “separate and apart” for “at least one year.”¹⁵⁴ If the defendant spouse “[d]oes not deny the allegations . . . in the affidavit” then no hearing is held, or if the defendant spouse “[d]enies one or more allegations,” then a hearing will be held.¹⁵⁵ If the court determines “that the parties have lived separate and apart . . . for at least one year and that the marriage is irretrievably broken,” a divorce can be granted.¹⁵⁶

During the hearing, the court could also determine that there is a “reasonable prospect of reconciliation,” in which case the court will continue the case for ninety to 120 days.¹⁵⁷ During this continuance period, the court can require the parties to attend counseling.¹⁵⁸ After that period, if the parties have not reconciled and one party still maintains that the marriage is irretrievably broken, there will be a hearing in which the court will determine whether the marriage is in fact irretrievably broken, and grant or deny the divorce based on that determination.¹⁵⁹ Fault divorces, however, may be granted to the “innocent” party if the court determines that the defendant

151. *See id.* § 3301(c)-(d).

152. *Id.* § 3301(c)(1).

153. *Id.*

154. *Id.* § 3301(d)(1).

155. *Id.*

156. *Id.*

157. *Id.* § 3301(d)(2).

158. *Id.* § 3301(d)(2); § 3302(b)-(c) (In a divorce on the grounds of mutual consent, the court can require up to three counseling sessions if either party requests it, and for a divorce on the grounds of irretrievable breakdown, the court can require up to three counseling sessions during the continuation period if either party requests it or if “the parties have at least one child under [sixteen]”).

159. *Id.* § 3301(d)(2).

was at fault for ending the marriage, for example, by treating the spouse with “cruel and barbarous treatment,” or endangering the life of the other spouse.¹⁶⁰

Although the goals of parties differ in divorce cases, and it can be difficult to determine who “wins,” there are studies that show the benefit of legal counsel in divorces.¹⁶¹ These benefits could be amplified in cases of domestic violence since abusers may not consent to a divorce.¹⁶² Consequently, victims are left to advocate for themselves on fault grounds—they must convince a judge that their spouse’s abusive behavior was at fault for the divorce—which may be difficult considering the hostility some judges hold towards victims.¹⁶³ Proceeding with a divorce *pro se* can also be disadvantageous because the petitioner has less help filling out forms and a lower likelihood of requesting spousal support, the latter of which may be crucial for keeping victims from returning to their abuser.¹⁶⁴ Additionally, the decision of whether to hire counsel often hinges on the party’s financial ability to do so, which puts indigent victims at a disadvantage.¹⁶⁵

Studies show that counsel has a beneficial impact on divorce litigation.¹⁶⁶ A study examining the effect of counsel in Wisconsin divorces found that counsel was more likely to be employed when the divorce was made “more complex” by the parties having children together.¹⁶⁷ Although the divorce process generally took longer when both parties were represented, spousal and child support “were more frequently awarded . . . [when] the wife, or both parties, had legal

160. *Id.* § 3301(a)(3).

161. See, e.g., Judith G. McMullen & Debra Oswald, *Why Do We Need a Lawyer?: An Empirical Study of Divorce Cases*, 12 J.L. & FAM. STUD. 57, 59 (2010); Christine Perkins, *Too Poor to Divorce?*, HARVARD L. TODAY (Dec. 14, 2018), <https://hls.harvard.edu/today/too-poor-to-divorce/>.

162. See McMullen & Oswald, *supra* note 161, at 59.

163. See *supra* Section IV.A.

164. McMullen & Oswald, *supra* note 161, at 66, 68–69.

165. See *id.* at 80.

166. See ELLEN DEGNAN, THOMAS FERRISS, D. JAMES GREINER & ROSEANNA SOMMERS, TRAPPED IN MARRIAGE 10 (2018).

167. McMullen & Oswald, *supra* note 161, at 59, 72.

counsel.”¹⁶⁸ Researchers McMullen and Oswald found that spousal support “was never awarded in . . . cases where only the husband had counsel.”¹⁶⁹

Although this study did not focus on divorces motivated by domestic violence, there is still important information to glean from the results.¹⁷⁰ The spousal support finding is especially critical for litigants seeking to flee violent marriages because the loss of their abuser’s financial support is “one of the primary reasons that victims return to” the relationship.¹⁷¹ Access to legal counsel for indigent victims seeking divorces could make them more likely to get the support they need, and if they have children, “a child support award may be the key to freedom,” as it prevents them from having to return to their abuser because of financial insecurity.¹⁷² Additionally, lawyers are the experts in their particular state’s divorce code and are likely more capable than *pro se* litigants to understand when a judge may award financial support.¹⁷³

The presence of counsel benefits Pennsylvania’s divorce litigants.¹⁷⁴ A study examining divorce in Philadelphia County found that litigants with lawyers were 87.7% more likely to be in a courtroom litigating their divorce within eighteen months, and 87.4% more likely to be granted a divorce in thirty-six months, versus only 5.1% of unrepresented litigants obtaining a divorce in thirty-six months.¹⁷⁵ The Philadelphia study also found that “lawyers unquestionably made a difference, an enormous difference, to low-income would-be divorcees in Philadelphia.”¹⁷⁶ The study found that lawyers made a difference because Philadelphia’s divorce procedures were

168. *Id.* at 59.

169. *Id.* at 78.

170. *See id.* at 58–59, 70–71.

171. *Redefining the State’s Response*, *supra* note 97, at 130.

172. *See id.*

173. *See* McMullen & Oswald, *supra* note 161, at 82.

174. *See generally* DEGNAN ET AL., *supra* note 166, at 5–6, 8–9 (providing results of a study conducted in Philadelphia County of pro bono services for divorce cases).

175. *Id.* at 6–7.

176. *Id.* at 10.

complicated, with “no statewide, court-approved pro se forms,” “no self-help center” in Philadelphia’s courthouse, a surplus of legal jargon, and a form that a litigant could only get from the court and had to fill out with a typewriter.¹⁷⁷ “[T]he overwhelming fraction of [the] study[s] participants did not achieve the goal of terminating their marriages unless they had lawyers.”¹⁷⁸

Philadelphia has since taken strides to improve its divorce process with the creation of the Family Court Help Center, which operates in the Philadelphia Family Court for three hours each weekday and provides “legal information” about custody to *pro se* litigants.¹⁷⁹ On Tuesday and Thursday mornings, Help Center volunteers spend two and a half hours providing legal information about divorce to *pro se* litigants.¹⁸⁰ Additionally, the forms required to litigate a divorce in Philadelphia are now available online, so a typewriter is no longer needed.¹⁸¹ While this is a step in the right direction, and the Help Center provides *pro se* litigants with important information to get their divorces started, the Help Center does not provide any specific legal

177. *See id.* at 8–9, 39–40.

178. *Id.* at 9.

179. *Philadelphia Family Court Help Center*, PHILA. CTS., <https://www.courts.phila.gov/pdf/forms/domestic-relations/Family-Court-Help-Center.pdf> (last visited Mar. 20, 2023). “[L]egal information” provided by the Help Center includes “[c]hild custody basics,” such as how to file for custody, how to file other petitions involved in custody litigation (such as a “Petition to Modify a Custody Order” or an “Emergency Petition for Custody”), how to serve these petitions, how to prepare for custody hearings, and handouts containing other resources. *Id.*

180. *Id.* “[L]egal information” provided by the Help Center in the divorce context includes “[d]ivorce basics,” such as how to apply to get “a no-fault divorce,” how to serve divorce papers, and how to finalize a divorce. *Id.*

181. *See* DEGNAN ET AL., *supra* note 157, at 9 (“[A]t a certain stage in the divorce process in Philadelphia, a *pro se* litigant was instructed that she had to obtain a blank form from the court [and] that she had to fill in portions of the form with a typewriter.”); *Free Printable Divorce Forms for Pennsylvania*, PAONLINEDIVORCE.COM, <https://paonlinedivorce.com/free-printable-divorce-forms-for-pennsylvania/> (last visited Mar. 25, 2023) (“Nowadays, divorcing spouses don’t need to get a lawyer to have their paperwork completed and submitted to the court. Since getting legal help costs a lot in Pennsylvania, free do it yourself divorce forms for uncontested marriage dissolution are becoming quite popular.”); *see also* *Divorce Proceedings*, UNIFIED JUD. SYS. OF PA., <https://www.pacourts.us/learn/representing-yourself/divorce-proceedings> (last visited Mar. 20, 2023).

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advice and does not provide actual representation.¹⁸² To supplement such a crucial resource, a statutory right to counsel for divorce could actually provide indigent litigants with the representation that is found to be important in obtaining a divorce.¹⁸³

Counsel is also more prevalent when the married couple has minor children, as it reflects the “important interests at stake” in the litigation.¹⁸⁴ Although it is possible for indigent litigants to resolve their divorces *pro se*, the presence of children “make[s] self-representation inadvisable.”¹⁸⁵ With the presence of minor children in the relationship, the divorce process can be complicated by concerns about the custodial time each parent will receive, the wellbeing of the children during long and arduous divorce proceedings, and the loss of “important relationships or economic benefits” that the children had during their parents’ marriage.¹⁸⁶ Thus, parties with children under eighteen years old may be more inclined to take the “financial sacrifice” of hiring a lawyer in the interest of their children, as well as to provide for more seamless divorce proceedings.¹⁸⁷ However, many people simply lack the resources to make this sacrifice, so providing these litigants with counsel could allow them to better protect themselves and their children throughout the divorce proceeding in a way that they would not be able to do on their own. Overall, counsel is important in divorce cases and can help lead victims to positive

182. Philadelphia Family Court Help Center, *supra* note 179.

183. See DEGNAN ET AL., *supra* note 166, at 9.

184. McMullen & Oswald, *supra* note 161, at 81.

185. *Id.*

186. See *id.*; see also *Children and Divorce*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Children-and-Divorce-001.aspx (Jan. 2017) (noting that divorce can affect children in many ways and lead them to: think they caused the divorce, feel “frightened and confused,” experience changes in mood and behavior, neglect schoolwork, suffer from low self-esteem, “feel deep sadness and loss,” and even have problems “with their own relationships”).

187. See McMullen & Oswald, *supra* note 152, at 81.

outcomes that protect their safety, their children's safety, and provide for their future support.¹⁸⁸

2. *The effect of counsel in custody cases*

There are two types of child custody in Pennsylvania: legal and physical.¹⁸⁹ In a custody proceeding, parties could be awarded shared or sole legal custody, and primary, partial, sole, shared, or supervised physical custody.¹⁹⁰ In determining the custody award, the judge looks at sixteen factors to determine the "best interest of the child."¹⁹¹ Notably, these factors include "[any] abuse committed by a party[,] . . . whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision to the child."¹⁹² The "overwhelming majority" of women who seek protective orders have children, so being able to retain custody and keep children out of the hands of an abuser is of the utmost importance in seeking a legal remedy.¹⁹³

"[P]erhaps no right is more fundamental than the right to raise one's children,"¹⁹⁴ and the stakes of protecting this right are even higher when the parent is trying to prevent an abuser from gaining custody.¹⁹⁵ Similar to divorce, there have not been

188. See *id.* at 83; see also Ann O'Connell, *How To Protect Yourself During Divorce*, DIVORCENET, https://www.divorcenet.com/states/california/steps_to_protect_yourself_during_divorce (last visited Apr. 1, 2023).

189. See 23 PA. STAT. AND CONS. STAT. ANN. § 5322(a) (West 2011). In Pennsylvania, "legal custody" is the right to make "major decisions on behalf of the child, including . . . medical, educational, and religious and educational decisions." *Id.* Physical custody is "actual physical possession and control of a child," including the more minor and day-to-day decision-making. *Id.*

190. *Id.* § 5323(a).

191. *Id.* § 5328(a).

192. *Id.* § 5328(a)(2).

193. Balos, *supra* note 96, at 564.

194. Ryan Fortson & Troy C. Payne, *Lawyering Up: The Effects of Legal Counsel on Outcomes of Custody Determinations*, 22 U.C. DAVIS J. JUV. L. & POL'Y 1, 4 (2018).

195. See MARY A. KERNIC, FINAL REPORT OF THE "IMPACT OF LEGAL REPRESENTATION ON CHILD CUSTODY DECISIONS AMONG FAMILIES WITH A HISTORY OF INTIMATE PARTNER VIOLENCE STUDY", at ii-iii (2015) (noting that the presence of counsel helps decrease an abuser's visitation with their child and increases a victim's chances of receiving sole legal custody).

many studies on the effect of legal counsel on the outcome of custody determinations.¹⁹⁶ However, some studies have pointed to the successes brought about by the presence of counsel.¹⁹⁷ A study discussing Maryland custody cases found that “[r]epresented parties were about twice as likely to get sole custody” than if they were not represented.¹⁹⁸ This could be crucial for indigent victims seeking custody because providing them counsel could lead to them receiving sole custody of their child, thus fully keeping the child away from an abuser.¹⁹⁹

Additionally, in some cases of represented mothers and unrepresented fathers, “mothers [were] more likely to receive sole legal and primary physical custody,” and when the roles were reversed, shared custody was more common.²⁰⁰ A study of Washington custody cases found that in those involving domestic violence, petitioners who were represented by “legal aid attorney[s] . . . were 85% more likely to have visitation denied to” their abuser, and “77% more likely to have restrictions or conditions placed on the” abuser’s visitation.²⁰¹

These denials or restrictions on visitation are crucial, as “the potential for renewed violence is greatest [when there is] visitation” between the child and the petitioner’s abuser.²⁰² The Washington study also found that legal aid-represented victims were “47% more likely to have treatment” required of their abuser, and “46% more likely to have sole decision-making” authority, or legal custody, granted to them.²⁰³ This trend was similar in custody cases in which the victim was represented by

196. See *id.* at 6–7; see also McMullen & Oswald, *supra* note 161, at 68.

197. See KERNIC, *supra* note 195, at 6–7; see also McMullen & Oswald, *supra* note 161, at 68.

198. Fortson & Payne, *supra* note 194, at 8–9 (discussing findings from a study conducted in Maryland on legal representation and its effects on custody outcomes).

199. See *id.* at 9, 25; see, e.g., KERNIC, *supra* note 195, at ii–iii. In Pennsylvania, “[s]ole legal custody” is defined as “[t]he right of one individual to exclusive legal custody of the child,” and “[s]ole physical custody” is defined as “[t]he right of one individual to exclusive physical custody of the child.” 23 PA. CONS. STAT. ANN. § 5322(a) (West 2011).

200. Fortson & Payne, *supra* note 194, at 25.

201. KERNIC, *supra* note 195, at ii.

202. *Redefining the State’s Response*, *supra* note 97, at 130–31.

203. KERNIC, *supra* note 195, at ii.

a private attorney, with the victim being “63% more likely to have supervis[ed] . . . visitation ordered” for the abuser, and “36% more likely to [require] treatment.”²⁰⁴ Thus, a victim of domestic violence being represented by counsel in a custody case led to greater protection for both the victim and the victim’s children.²⁰⁵ Additionally, the importance of protecting victims and their children from the custody of an abuser cannot be overstated, as “children who witness domestic violence suffer from behavioral, emotional, and cognitive problems.”²⁰⁶ There is also an “increased [likelihood] of child abuse in families [that] experienc[e] domestic violence.”²⁰⁷ Thus, providing domestic violence victims with counsel for their custody proceedings will protect not only the victim, but also their children, from further victimization and harm.²⁰⁸

3. *The effect of counsel in civil protection order cases*

In Pennsylvania, a petitioner can file for a PFA with the court in a petition that accuses the defendant of abuse.²⁰⁹ Abuse includes “[a]ttempting to cause or intentionally, knowingly or recklessly causing bodily injury . . . rape, . . . or incest with or without a deadly weapon . . . and placing another [person] in reasonable fear of imminent serious bodily injury.”²¹⁰ An adult or emancipated minor can file on behalf of themselves, while an adult may also file on behalf of their minor child.²¹¹ In order to be eligible for a PFA, the petitioner and the alleged abuser must have a relationship as “family or household members, sexual or

204. *Id.* at iii.

205. *See id.*

206. Valente, *supra* note 11, at 190.

207. *Id.*

208. *See id.*; *Redefining the State’s Response*, *supra* note 97, at 130–31.

209. 23 PA. CONS. STAT. § 6106(a) (2019); *How to Get a Restraining Order*, PA. COAL. AGAINST DOMESTIC VIOLENCE, <https://www.pcadv.org/about-abuse/intervention/how-to-get-a-restraining-order/> (last visited Apr. 1, 2023) (“A person can file for a PFA order from the court for themselves, or on behalf of their minor children.”).

210. § 6102(a)(1)-(2).

211. *Id.* § 6106(a).

intimate partners,” or parties who have a child together.²¹² The court will hold a hearing within ten days of filing.²¹³ If the petitioner “alleges [an] immediate and present danger of abuse,” an ex parte hearing is held, where the court can enter a temporary protective order to protect the petitioner and any minor children.²¹⁴

In a protection order, the court may grant various types of relief to the petitioner, including possession of the home, temporary custody or visitation, a prohibition on contact between the defendant and the petitioner and any children, a prohibition on the defendant from possessing firearms, the defendant’s payment to the petitioner for abuse-related losses, and any other appropriate relief.²¹⁵ These protection orders last for up to three years and may be extended if the court finds that the defendant continued the abuse after the final order.²¹⁶ Civil protection orders were a crucial development in the fight against domestic violence, as they brought a historically private and legally-tolerated act to the public courtroom.²¹⁷

“Survivors of domestic violence have rated . . . a protective order as one of two . . . most effective tools for stopping [their abuse], second only to leaving [their] abuser,” so access to a strong protection order is critical.²¹⁸ Protection orders help reduce abuse and make victims less afraid of future abuse; in a National Center for State Courts study, respondents reported low re-abuse rates following their protection orders, and 95% of victims stated that “they would seek a protection order again.”²¹⁹ Civil protection orders are a crucial resource because they help victims feel “more in control of their lives” and relationships.²²⁰ Allowing victims to access the courts and

212. *Id.* §§ 6102(a), 6106.

213. *Id.* § 6107(a).

214. *See id.* § 6107(b)(1)–(2).

215. *Id.* § 6108(a)(2), (4), (6)–(8), (10).

216. *Id.* § 6108(d), (e)(1)(i).

217. *See Balos, supra* note 96, at 563–64.

218. ROSENBERG & GRAB, *supra* note 23, at 7.

219. *Id.* at 8.

220. *Id.*

resources like civil protection orders gives them the ability “to reclaim ‘what abuse has systematically stripped from them: their control over their activities, their bodies, and their lives.’”²²¹ Further, there is a connection between receiving a successful, robust protection order and the presence of legal counsel for the petitioner.²²² In one study, 83% of victims who were represented by an attorney successfully obtained protection orders, while only 32% of unrepresented victims did.²²³ Another study found that the likelihood of receiving a protection order increased by 14% with the presence of legal counsel.²²⁴

Unfortunately, despite the connection between representation and obtaining protection orders, an “overwhelming[.]” number of victims who seek these orders are unrepresented.²²⁵ This lack of counsel not only affects the actual granting of the order, but also the quality of the order that is granted.²²⁶ Having legal counsel makes a petitioner “significantly more likely” to obtain a comprehensive, robust protection order that provides all the necessary protections.²²⁷ Not only are *pro se* victims less likely to obtain protection orders, but if they are granted one, it is less likely to contain all the necessary and “appropriate” provisions, including temporary custody, restrictive visitation, and removal of the defendant from the residence, which are crucial for the continuing safety of petitioners and their children.²²⁸ *Pro se* petitioners are not lawyers, so they do not fully understand the

221. Balos, *supra* note 96, at 564 (quoting Karla Fischer & Mary Rose, *When “Enough is Enough”: Battered Women’s Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 423 (1995)).

222. See ROSENBERG & GRAB, *supra* note 23, at 7; PETER FINN & SARAH COLSON, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 19 (1990); Balos, *supra* note 96, at 569; Murphy, *supra* note 99, at 511.

223. ROSENBERG & GRAB, *supra* note 23, at 7.

224. See *id.* at 7–8.

225. Balos, *supra* note 96, at 567.

226. See *id.* at 569; FINN & COLSON, *supra* note 222, at 19.

227. Balos, *supra* note 96, at 569; see FINN & COLSON, *supra* note 222, at 19.

228. See FINN & COLSON, *supra* note 222, at 19.

law and the protection order process as well as an attorney does, and therefore, they likely do not know what to ask for.²²⁹ Victims also are “far less likely” to draft their petitions in a way that shows exactly the danger and fear that they are in.²³⁰ As important as these orders are, they are only temporary, which is why Pennsylvania should also guarantee a right to counsel for the more permanent remedies of custody and divorce, which can legally sever survivors from their abusers.²³¹

V. NEW YORK’S CIVIL RIGHT TO COUNSEL IN FAMILY COURT MATTERS

New York is the ideal model for Pennsylvania’s civil right to counsel statute because currently New York is the only state that explicitly grants the right to counsel in custody and civil protection order cases, among other family court proceedings.²³² The New York Family Court Act, section 262, enacted in the early 1970s,²³³ contains “the broadest right to counsel in family cases of any state.”²³⁴ Under section 262, indigent litigants have the right to counsel if they are “the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child,” or “the petitioner [or] the respondent in any proceeding under article eight of this act.”²³⁵ The policy behind this right to counsel is that certain types of family court proceedings may infringe on a party’s “fundamental interests and rights,” and

229. See *id.*; see also Balos, *supra* note 96, at 569; Murphy, *supra* note 99, at 511 (“The lack of legal representation in CPO proceedings makes it difficult for litigants to understand and complete the process and learn about the existence of other services.”).

230. COMM. ON RACIAL & GENDER BIAS IN THE JUST. SYS., FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM 394 (1999).

231. See ROSENBERG & GRAB, *supra* note 23, at 7.

232. *Status Map*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org/map> (last visited Apr. 1, 2023); Laura K. Abel, *Toward a Right to Counsel in Civil Cases in New York State: A Report of the New York State Bar Association*, 25 TOURO L. REV. 31, 36 (2013).

233. N.Y. FAM. CT. ACT § 262; Abel, *supra* note 232, at 36.

234. Abel, *supra* note 232, at 36.

235. § 262(a)(ii), (v).

that the assistance of counsel is often required to ensure that litigants receive due process and that the court makes the most reasoned and knowledgeable decisions possible.²³⁶ Indigent litigants pursuing a custody case in New York, or any other proceedings listed under section 262(a), are guaranteed the right to counsel regardless of whether they are victims of domestic violence.²³⁷

Article Eight of the New York Family Court Act governs domestic violence proceedings, which occur when a petitioner files “[a]n allegation that the respondent assaulted . . . his or her spouse, or former spouse, parent, child or other member of the same family or household.”²³⁸ A domestic violence proceeding is also commenced if someone has engaged in other acts such as sexual abuse, stalking, or harassment.²³⁹ In 2008, Governor David A. Paterson expanded access to family courts so that civil protection orders could be obtained by intimate partners of all types, including dating or unmarried couples, same-sex couples, and teenage couples.²⁴⁰ One weakness of the New York Family Court Act, however, is its failure to provide a right to counsel in divorce cases, whether motivated by domestic violence or not.²⁴¹

Judges must advise parties of their right to counsel when they first appear in family court for any proceeding that is explicitly guaranteed counsel by section 262.²⁴² Parties are told that they have the right to be represented by their own counsel, the right to confer with an attorney, and the right to have the court assign counsel if they cannot afford it.²⁴³ In practice, the right to

236. *Id.* § 261.

237. *See id.* § 262(a) (“Each of the persons described below in this subdivision has the right to the assistance of counsel.”).

238. *Id.* § 821(1)(a).

239. *Id.*

240. *Governor Signs “Fair Access to Family Court” Law*, THE SARATOGIAN, <https://www.saratogian.com/2008/07/22/governor-signs-fair-access-to-family-court-law/> (July 22, 2021, 6:42 AM).

241. *See* § 262.

242. *Id.*

243. *Id.*

counsel is regarded as “so important” that a judge’s failure to advise an indigent party of this right is a reversible error.²⁴⁴ In reversing such errors, New York courts have stated that “the presence of counsel at every significant stage in the proceedings is an integral part of the right to counsel.”²⁴⁵

The right to counsel granted by section 262 is viewed with high importance.²⁴⁶ This right is so important that if a litigant is denied counsel when it is statutorily guaranteed, New York courts must reverse the error.²⁴⁷ In *Patricia L. v. Steven L.*, an indigent mother in a custody battle appealed to the Supreme Court of New York after the court compelled her to proceed *pro se* because her lawyer was late to the hearing, which led to her having to testify and conduct cross-examination on her own.²⁴⁸ The father was granted permanent custody.²⁴⁹ On appeal, the court stressed the importance of the right to counsel, holding that the mother was prejudiced by being forced to continue without the lawyer she was guaranteed under New York law.²⁵⁰ Because she was an “inexperienced lay person” presenting her case and not an attorney, she was unable to expose the flaws in her ex-husband’s case, which cost her custody of her children.²⁵¹ The court also noted that counsel is important in custody cases, and the lower court’s refusal to wait for the mother’s lawyer to arrive improperly elevated the court’s interest in efficiency over “the best interests of the child.”²⁵²

Although New York’s right to counsel is an excellent start, section 262 has shortcomings that should be considered and remedied when crafting Pennsylvania’s right to counsel

244. *Patricia L. v. Steven L.*, 119 A.D.2d 221, 224 (N.Y. App. Div. 1986); 2 N.Y. PRAC. GUIDE: DOMESTIC RELS. § 34.09 (2021).

245. *Patricia L.*, 119 A.D.2d at 224.

246. *See id.* (“The right [to counsel] is so important that the failure to advise a party of it is reversible error.”).

247. *See id.*

248. *Id.* at 222–24.

249. *Id.* at 224.

250. *See id.* at 225–26.

251. *Id.* at 225.

252. *Id.* at 225–26.

statute.²⁵³ First, New York's statute only provides for the right to counsel if the proceeding is litigated in family court.²⁵⁴ In New York, custody and civil protection order cases are filed in family court, while divorce actions are filed in the state's supreme courts.²⁵⁵ Because divorce actions are not litigated in family court, divorce litigants are not guaranteed the right to counsel under section 262.²⁵⁶ If an indigent litigant brings a divorce and custody case, New York courts may sever the divorce action from the custody action so that the indigent party receives counsel only for the custody case.²⁵⁷ This could be especially harmful if one litigant is more financially secure than the other, as they could initiate a custody proceeding in a New York supreme court specifically to make obtaining counsel difficult for the other, less wealthy, party.²⁵⁸

Judges in different counties disagree over whether the right to counsel applies in New York supreme courts.²⁵⁹ For example, in *Borkowski v. Borkowski*, an indigent party litigated a divorce and custody case in a New York supreme court.²⁶⁰ If the case had been in family court, he would have been guaranteed counsel for the custody dispute.²⁶¹ While the judge did allow the supreme court to exercise the family court's power and granted him counsel for the custody issue, other jurisdictions have decided differently.²⁶² In *McGee v. McGee*, the indigent party

253. See Robert M. Elardo, *Equal Protection Denied in New York to Some Family Law Litigants in Supreme Court: An Assigned Counsel Dilemma for the Courts*, 29 FORDHAM URB. L.J. 1125, 1127 (2002) (examining the confusion caused by the Family Court Act only providing counsel to indigent litigants in the state's family courts and not supreme courts).

254. *Id.* at 1127; N.Y. FAM. CT. ACT § 262 (Consol. 2012).

255. *Domestic Violence Order of Protection Basics*, N.Y. STATE UNIFIED CT. SYS., <https://www.nycourts.gov/courthelp/Safety/OP.shtml> (Aug. 22, 2019); *Custody & Visitation*, N.Y. STATE UNIFIED CT. SYS., https://ww2.nycourts.gov/COURTS/nyc/family/faqs_custodyandvisitation.shtml (last visited Apr. 1, 2023); *Divorce Basics*, N.Y. STATE UNIFIED CT. SYS. (May 5, 2021), <https://www.nycourts.gov/courthelp/family/divorceBasics.shtml>.

256. See *Divorce Basics*, *supra* note 255; § 262(a).

257. See *Borkowski v. Borkowski*, 396 N.Y.S.2d 962, 963 (Sup. Ct. 1977).

258. See Elardo, *supra* note 253, at 1130–31.

259. *Id.* at 1133–34.

260. See *id.* at 1135; *Borkowski*, 396 N.Y.S.2d at 963.

261. *Borkowski*, 396 N.Y.S.2d at 963; see also Elardo, *supra* note 253, at 1135–36.

262. *Borkowski*, 396 N.Y.S.2d at 963; see also Elardo, *supra* note 253, at 1135–40.

also faced a divorce and custody dispute litigated in a New York supreme court, but was denied counsel because the judge felt it was “inappropriate” to stray from the words of the statute, which only grants the right to counsel in family court.²⁶³ These jurisdictional limits on an indigent litigant’s right to counsel can lead to confusing results and litigants being denied their statutorily-guaranteed right to counsel.²⁶⁴

VI. SHAPING PENNSYLVANIA’S CIVIL RIGHT TO COUNSEL: MODELING AFTER THE NEW YORK FAMILY COURT ACT, SECTION 262

Despite the high levels of domestic violence in Pennsylvania and the impact that legal counsel has on a litigant’s success in divorce, custody, and civil protection order proceedings,²⁶⁵ the Commonwealth does not provide any civil right to counsel for these cases, either through Pennsylvania’s constitution, legislation, or judicial doctrine.²⁶⁶ In *Weir v. Weir*, a respondent in a PFA case argued that he was entitled to “effective and competent representation” in such a proceeding.²⁶⁷ The Pennsylvania Superior Court noted that, in Pennsylvania, there are only two categories of cases in which a right to counsel is recognized: “(1) cases in which the right to counsel is statutorily

263. *McGee v. McGee*, 694 N.Y.S.2d 269, 275 (Sup. Ct. 1999); *see also* Elardo, *supra* note 253, at 1137–40.

264. *See* Elardo, *supra* note 253, at 1133–41.

265. *See supra* Section IV.B; NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE IN PENNSYLVANIA (2021), <https://assets.speakcdn.com/assets/2497/pennsylvania-2021101912193522.pdf> (stating how “37.1% of Pennsylvania women and 30.4% of Pennsylvania men” experience domestic violence and how in 2020, 2,574 domestic violence victims were provided domestic violence services in Pennsylvania in a single day); *Domestic Violence in Philadelphia*, WOMEN AGAINST ABUSE, <https://www.womenagainstabuse.org/education-resources/learn-about-abuse/domestic-violence-in-philadelphia> (last visited Apr. 1, 2023) (“Domestic violence is a debilitating public health epidemic in Philadelphia, where: the Philadelphia Police respond to more than 100,000 9-1-1 calls each year that are domestic in nature.”).

266. *See* *Karch v. Karch*, 879 A.2d 1272, 1274 (Pa. Super. Ct. 2005) (“There is no right to counsel in divorce, custody, or support proceedings.”); *see also* *Witt v. LaLonde*, 762 A.2d 1109, 1110 (Pa. Super. Ct. 2000) (“As this is not a criminal case, Appellant does not have a constitutional right to counsel. Moreover, the order does not affect Appellant’s statutory right to have counsel when the case is heard by the court.”).

267. *Weir v. Weir*, 631 A.2d 650, 656 (Pa. Super. Ct. 1993).

mandated; or (2) cases in which the defendant could be deprived of a fundamental or substantial right under the United States or Pennsylvania Constitutions.”²⁶⁸ Additionally, in *Karch v. Karch*, the Pennsylvania Superior Court stated that “[t]here is no right to counsel in divorce, custody, or support proceedings.”²⁶⁹ In reaching this decision, the court drew on a previous case, *Witt v. LaLonde*, in which a mother appealed a decision requiring an attorney-free custody mediation.²⁷⁰ She argued that this mediation would require her to “relinquish . . . her constitutional right to effective assistance of counsel.”²⁷¹ In denying her appeal, the Pennsylvania Superior Court held that the Sixth Amendment right to counsel applies only to criminal cases, and custody is not a criminal case.²⁷² The Pennsylvania Constitution also fails to guarantee a civil right to counsel.²⁷³ Even in criminal prosecutions, the Pennsylvania Constitution states only that “the accused hath a right to be heard by himself and his counsel.”²⁷⁴

Since the civil right to counsel is denied through both the federal and state constitutions, the only remaining solution, according to the *Weir* court, is a statutorily-mandated right to counsel.²⁷⁵ In creating Pennsylvania’s right to counsel statute, legislators should take what is beneficial from New York’s law, expand it where necessary, and change what is troublesome. Like the New York statute, Pennsylvania’s statute should guarantee the right to counsel for indigent parties in both child custody and civil protection order cases.²⁷⁶ Unlike New York’s statute, Pennsylvania’s should also guarantee the right to counsel for indigent domestic violence victims seeking

268. *Id.* at 656–57.

269. *Karch*, 879 A.2d at 1274.

270. *Karch*, 879 A.2d at 1274; *Witt*, 762 A.2d at 1110.

271. *Witt*, 762 A.2d at 1110 (quoting Appellant’s brief).

272. *Id.* at 1110–11.

273. *See* PA. CONST.

274. *Id.* art. 1, § 9.

275. *See Weir v. Weir*, 631 A.2d 650, 656–57 (Pa. Super. Ct. 1993).

276. *See* N.Y. FAM. LAW § 262(a) (Consol. 2012).

divorce.²⁷⁷ New York's statute does not limit its right to counsel in family court only to indigent domestic violence victims, but guaranteeing counsel to such victims in Pennsylvania is important, as it will protect some of the most vulnerable litigants with the greatest needs for support.²⁷⁸ Thus, the right to counsel in Pennsylvania custody and divorce proceedings should initially be limited to only those petitioners who are seeking custody or divorce because of domestic violence. Ideally, though, this legislation would be a steppingstone to a wider civil right to counsel for all indigent parties in Pennsylvania family court proceedings, regardless of a history of abuse.

In another variation from the New York statute, Pennsylvania's statute should have language that explicitly makes the right to counsel for indigent domestic violence victims applicable in all of the Commonwealth's courts. In Pennsylvania, each county's Court of Common Pleas handles divorce, custody, and PFA litigation, often through the court's Family Division or Family Court.²⁷⁹ Family court cases, such as custody disputes, may be litigated in the Commonwealth's higher courts, like the Superior Court, when on appeal.²⁸⁰ Thus, Pennsylvania's statute should explicitly apply to any state court in which indigent victims could find themselves petitioning for relief, thus avoiding the confusion New York litigants may face.²⁸¹ In having a blank slate to work with regarding the civil right to counsel, Pennsylvania legislators have the unique

277. *See id.*

278. *See id.*; *see also supra* Section IV.A.

279. *See e.g., Family Division, ALLEGHENY CTS.*, <https://www.alleghencycourts.us/family/departments/> (last visited Apr. 1, 2023); *Family Court Division, LEHIGH CNTY. CT. OF COMMON PLEAS*, <https://www.lccpa.org/family/> (last visited Apr. 1, 2023); *Court of Common Pleas, Family Division - Domestic Relations, PHILA. CTS.*, <https://www.courts.phila.gov/common-pleas/family/dr/> (last visited Apr. 1, 2023); *General Information, ALLEGHENY CTS.*, <https://www.alleghencycourts.us/family/departments/protection-from-abuse/general-information/> (last visited Apr. 1, 2023).

280. *See* 210 PA. CODE § 65.14 (2009); *Expedited Appeals, OFF. OF CHILD. & FAMS. IN THE CTS.*, <https://ocfcpacourts.us/judges-legal-professionals/expedited-appeals/> (last visited Apr. 1, 2023).

281. *See supra* notes 253–64 and accompanying text.

opportunity to see what works and what causes confusion in New York, and be mindful in drafting a statute that is clear and unambiguous.

A. Funding

An important concern for any statutory proposal is funding. A civil right to counsel requires procuring funds so that court-appointed family law attorneys will not become overworked and underpaid like Pennsylvania's public defenders.²⁸² Thus, a Pennsylvania civil right to counsel statute should contain a funding mechanism to ensure sufficient resources for the court-appointed attorneys. This statutory funding would be a step in the right direction because Pennsylvania's public defenders are not even funded by the state.²⁸³

Current state funding for legal and domestic violence services show room for improvement.²⁸⁴ In Pennsylvania's 2021-2022 state budget, which amounts to over \$38 billion, only \$4.1 million is allotted to "legal services," which includes providing indigent litigants assistance with "family, consumer, housing, employment, and other civil legal problems through a contract with a statewide legal aid non-profit."²⁸⁵ The purpose of funding such services is to provide emergency legal aid in areas of the law that "threaten the basic needs of individuals."²⁸⁶ Additionally, the Commonwealth allocates a little over \$20 million for domestic violence services, which include

282. Christopher Welsh, *Pennsylvania Is the Only State that Doesn't Fund Public Defenders. That Needs to Change.*, PHILA. INQUIRER, <https://www.inquirer.com/opinion/commentary/public-defenders-funding-pennsylvania-20211011.html> (Oct. 11, 2021).

283. *Id.*

284. See GOVERNOR TOM WOLF, EXEC. BUDGET 2022-2023, at E27-39–E27-40 (2022), <https://www.budget.pa.gov/Publications%20and%20Reports/CommonwealthBudget/Documents/2022-23%20Proposed%20Budget/Budget%20Book%202022-23.pdf> [hereinafter EXEC. BUDGET 2022-2023]; 2021-2022 *Budget*, PA. TREASURY, <https://www.patreasury.gov/transparency/budget.php> (last visited Apr. 1, 2023).

285. EXEC. BUDGET 2022-2023, *supra* note 284, at E27-39, E27-41; Justin Sweitzer, *Everything You Need to Know About PA's 2021-22 Budget*, CITY & STATE PA. (July 19, 2021), <https://www.cityandstatepa.com/policy/2021/07/everything-you-need-know-about-pas-2021-22-budget/364527/>.

286. EXEC. BUDGET 2022-2023, *supra* note 284, at E27-39.

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prevention and education programs, along with “crisis intervention, counseling, victim advocacy, information and referral, and temporary shelter for victims and their dependent children.”²⁸⁷

While the Commonwealth funds free legal and domestic violence services, the amount of funding appropriated to legal services is “about equal” to the appropriation given in 1973, meaning that with inflation, the amount “falls far below” its actual value.²⁸⁸ Additionally, the Commonwealth’s estimated budgets through 2027 maintain the same inadequate level of funding for legal and domestic violence services, despite the demonstrated increase of domestic violence during the last two years because of the COVID-19 pandemic, and the consistent unmet civil legal needs of indigent people.²⁸⁹ The Commonwealth should change these funding levels in a civil right to counsel statute.

The Commonwealth has shown that areas of pressing importance can receive increased funding.²⁹⁰ For example, after seeing that there was a failure to deliver high-quality education to Pennsylvanians, the Commonwealth recognized that a lack of funding was part of the problem and sought to remedy it through increased appropriations.²⁹¹ The 2021-2022 state budget saw a record \$416 million increase in education funding.²⁹² The Commonwealth should follow this same logic and increase the funding for legal and domestic violence

287. *Id.* at E27-40 to E27-41.

288. *Administer Funding for Legal Aid*, PA. LEGAL AID NETWORK, <https://palegalaid.net/administer-funding-legal-aid> (last visited Apr. 1, 2023).

289. EXEC. BUDGET 2022-2023, *supra* note 284, at E27-41; see Ayana Jones, *Coronavirus Crisis Sparks Increase in Domestic Violence in Philadelphia*, PA. CAPITAL-STAR (Apr. 7, 2020, 7:10 AM), <https://www.penncapital-star.com/covid-19/coronavirus-crisis-sparks-increase-in-domestic-violence-in-philadelphia/>; see also *About the PLAN Network*, *supra* note 85 (“A recent study indicated that nationally one in every two individuals who qualify for and actually seek assistance from legal aid programs is turned away because of a lack of resources. The study also verified that at least [80%] of the legal needs of the poor go unmet.”).

290. See Sweitzer, *supra* note 285.

291. See *id.*

292. *Id.*

services, as there are demonstrated and pressing problems in these areas that need immediate assistance.²⁹³

Funding could be supplemented with smaller federal grants that aim to help states improve their domestic violence services. For example, the Violence Against Women Reauthorization Act provides for the Grants to Support Families in the Justice System Program, which seeks to improve the response of the civil and criminal justice systems to families with abusive histories.²⁹⁴ States are eligible to apply for this grant, and over \$13 million was awarded to twenty-four recipients in 2020.²⁹⁵ Additionally, the Social Services Block Grant Program, which supports social services that “prevent[] or remedy[] neglect, abuse, or the exploitation of children and adults,” is already used to fund legal aid in Pennsylvania and would continue to serve as a crucial supplement to increased state funding.²⁹⁶ In 2022, the Grant Program allocated over \$1.7 billion to various States and Territories.²⁹⁷

Sufficient funding will ensure that Pennsylvania’s court-appointed attorneys who represent indigent domestic violence victims will not face the same plight as those in New York. New York’s court-appointed family court attorneys make \$75 per hour, an amount which has remained the same for seventeen years.²⁹⁸ Conversely, federal court-appointed attorneys receive \$155 per hour, a rate that has increased fourteen times over the last twenty years.²⁹⁹ In July 2021, ten

293. See *Get the Facts*, FUTURES WITHOUT VIOLENCE, <http://www.futureswithoutviolence.org/resources-events/get-the-facts/> (last visited Apr. 1, 2023); *About the PLAN Network*, *supra* note 85.

294. U.S. DEP’T OF JUST. OFF. ON VIOLENCE AGAINST WOMEN, JUSTICE FOR FAMILIES PROGRAM, <https://www.justice.gov/ovw/page/file/1117471/download> (last visited Apr. 1, 2023).

295. *Id.*

296. ADMIN. FOR CHILD. & FAMS. OFF. OF CMTY. SERVS., SOCIAL SERVICES BLOCK GRANT (SSBG), https://www.acf.hhs.gov/sites/default/files/documents/ocs/COMM_OCS_SSBG%20FactSheet_FY2022.pdf; *Administer Funding for Legal Aid*, *supra* note 288.

297. ADMIN. FOR CHILD. & FAMS. OFF. OF CMTY. SERVS., *supra* note 296.

298. Madison Hunt, *New York’s Family Court Attorneys File Lawsuit for Better Pay*, THE IMPRINT (Nov. 1, 2021, 6:00 AM), <https://imprintnews.org/top-stories/new-yorks-family-court-attorneys-file-lawsuit-for-better-pay/59975>; N.Y. JUD. LAW § 35(3) (Consol. 2010).

299. Hunt, *supra* note 298.

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New York bar associations filed a lawsuit against the state to increase the pay for court-appointed attorneys in the family courts, and the New York State Senate added a 2022-2023 budgetary proposal to increase their pay to \$150 per hour.³⁰⁰ The budgetary provision was rejected in April 2022.³⁰¹

With the current low pay rate, many court-appointed family court attorneys take on too many cases to stay financially afloat, which can harm the quality of representation given to their clients who face potential loss of custody, failed civil protection orders, and more.³⁰² Being paid “pennies” for their work also prevents court-appointed attorneys from hiring support staff to help draft documents and take some work off their hands.³⁰³ In drafting Pennsylvania’s statutory right to counsel, legislators can help avoid the plight of New York’s court-appointed family court attorneys by ensuring a pay rate similar to \$150 per hour, monitoring the rate with each annual budget, and increasing it when needed.

B. Staffing Mechanisms

This proposed legislation should also contain a staffing mechanism, as attorneys will be needed to represent indigent domestic violence victims in their PFA, divorce, and custody proceedings. The statute’s initial proposal should include a partnership between the Commonwealth and its legal aid and domestic violence organizations to identify and hire attorneys to represent indigent victims of domestic violence. There are currently sixty-eight organizations in Pennsylvania that provide domestic violence services, and seventy-four legal aid

300. *Id.*; Megan Conn, *New York Governor, Lawmakers to Decide if Family Court Attorneys Will Get a Raise After 18 Years*, THE IMPRINT (Apr. 1, 2022, 6:28 PM), <https://imprintnews.org/child-welfare-2/new-york-family-court-attorneys-raise/63937>.

301. Megan Conn & Adilia Watson, *New York Governor Rejects Legislature’s Proposals to Boost Child Welfare Funding*, THE IMPRINT (Apr. 14, 2022, 5:05 PM), <https://imprintnews.org/child-welfare-2/new-york-governor-rejects-certain-spending-boosts/64247>.

302. *See* Hunt, *supra* note 298.

303. *Id.*; Conn, *supra* note 300.

organizations.³⁰⁴ As a result of the increased state funding, this partnership could allow legal aid and domestic violence organizations to hire more lawyers, who could then represent indigent domestic violence victims in PFA, divorce, and custody cases.³⁰⁵ Courts would be informed of the attorneys available to be appointed when an indigent domestic violence victim comes to seek help. Victims would benefit from this because they will not only have an attorney, but they will have one who has expertise in working with low-income clients who experience domestic violence, which can help victims avoid the trauma and judgment they often face in the legal system.³⁰⁶

Ideally, this partnership would be successful, and with each passing year more funding would be allotted to domestic violence and legal aid services, so that attorneys could continue to be hired and victims could continue to obtain the legal services they need and deserve. This would be similar to the structure of Philadelphia's recent right to counsel for certain indigent tenants, as tenants in need call the Philly Tenant Hotline and then representation is provided by various legal aid organizations, like Community Legal Services.³⁰⁷ Here, an indigent domestic violence victim could call the National Domestic Violence Hotline, or a regional one like the Philadelphia Domestic Violence Hotline.³⁰⁸ From there, the caller would be directed to local services such as a legal aid or domestic violence organization.³⁰⁹ Through its partnership with

304. *Pennsylvania Legal Aid Network – Legal Aid Providers*, PA. LEGAL AID NETWORK, <https://palegalaid.net/legal-aid-providers-in-pa> (last visited Apr. 1, 2023); *Pennsylvania Domestic Violence Help, Programs and Statistics*, DOMESTICSHELTERS.ORG, <https://www.domesticshelters.org/help/pa> (last visited Apr. 1, 2023).

305. *See supra* Section IV.B.

306. *See supra* Section IV.A.

307. Press Release, Health & Hum. Servs., Managing Dir.'s Off., City Launches Right to Counsel for Eligible Philadelphia Tenants (Jan. 31, 2022), <https://www.phila.gov/2022-01-31-city-launches-right-to-counsel-for-eligible-philadelphia-tenants/>.

308. *See Here for You*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/> (last visited Apr. 1, 2023); *Philadelphia Domestic Violence Hotline*, WOMEN AGAINST ABUSE, <https://www.womenagainstabuse.org/get-help/pdvh> (last visited Apr. 1, 2023).

309. *What to Expect When You Contact Us*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/what-to-expect-when-you-contact-us/> (last visited Apr. 1, 2023).

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the Commonwealth and the court system, the legal aid organization's intake form would screen the applicant for income verification and history of domestic violence, which many already do.³¹⁰ Then, if the applicant qualifies as an indigent domestic violence victim seeking a PFA, custody, or divorce, the organization would refer the petitioner to the court, where an attorney would be appointed and work on their case could begin.

CONCLUSION

Pennsylvania is an ideal candidate for legislation guaranteeing the right to counsel for victims of domestic violence seeking legal relief because of the high rates of domestic violence, an indigent population in need, and no civil right to counsel present in its statutes, constitution, or judicial decisions.³¹¹ Legal relief may come in the form of divorce, custody, or filing for a PFA, three areas in which there are demonstrated benefits of having counsel.³¹²

Pennsylvania can and should follow the national call for a civil *Gideon*.³¹³ By modeling a right to counsel statute off the New York Family Court Act, section 262, Pennsylvania should guarantee the right to counsel for indigent domestic violence victims seeking divorce, custody, or a PFA. Pennsylvania's Superior Court once stated that "[t]he purpose of the [PFA act] is to protect victims of domestic violence from the perpetrators of that type of abuse and to prevent domestic violence from occurring."³¹⁴ However, the Commonwealth's failure to provide counsel to PFA petitioners and domestic violence victims in other family court proceedings shows that it does not

310. See, e.g., *Apply Here*, LEGAL AID OF SE. PA., <https://www.lasp.org/apply> (last visited Apr. 1, 2023); *Apply Online*, PHILA. LEGAL ASSISTANCE, <https://philalegal.org/apply> (last visited Apr. 1, 2023).

311. See *supra* Part VI.

312. See *supra* Section IV.B.

313. See *supra* Part III.

314. *Ferko-Fox v. Fox*, 68 A.3d 917, 921 (Pa. Super. Ct. 2013) (quoting *Scott v. Shay*, 928 A.2d 312, 314 (Pa. Super 2007)).

live up to this goal.³¹⁵ While a statewide civil right to counsel for all indigent litigants is ideal for the future, as a first step, it is necessary for Pennsylvania to grant a statutory right to counsel to indigent victims of domestic violence seeking relief through a PFA, divorce, or custody.³¹⁶ When victims in Pennsylvania take the courageous first step to legally sever themselves from their abusers, the first thing they should hear is: “You have a right to an attorney. If you cannot afford an attorney, one will be appointed for you.”³¹⁷

315. See generally ROSENBERG & GRAB, *supra* note 23 (discussing the benefits of legal counsel in civil protection order cases and how the inefficiencies of current legal services may require the need for government assistance and intervention).

316. See *supra* Parts IV, VI.

317. See *Miranda Rights*, *supra* note 1.