Family Law Issues Meeting

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FEBRUARY 1, 2018
11:40 A.M. – 3:30 P.M.
SAN FRANCISCO, CA

JUDICIAL COUNCIL OF CALIFORNIA
OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

Family Law Issues

Judicial Council Sequoia Room, 3rd Floor

11:40 a.m. – 12:15 p.m.	**Working Lunch (*Sequoia Room*)** Findings on Child Custody Matters from Shriver Access to Civil Counsel Evaluation *Bonnie Hough*
12:15 – 12:35 p.m.	Implementation of Self-Help Recommendations from the Futures Commission *Bonnie Hough*
12:35 – 12:55 p.m.	Tribal Court–State Court Forum Legislative Proposal on Recognition of Domestic Relations Orders from Tribal Courts *Ann Gilmour*
12:55 – 1:10 p.m.	Family Law Legislative Update *Andi Liebenbaum*
1:10 – 1:35 p.m.	Access to Visitation Grant Program: Plan for Unspent Funds *Shelly La Botte, Senior Analyst, CFCC*
1:35 – 1:55 p.m.	Expert Testimony and Hearsay Issues in Family Law After *People v. Sanchez* *Hon. Mark A. Juhas*
1:55 – 2:55 p.m.	AB 1058 Allocation Methodology and Best Practices: Next Steps *Hon. Mark A. Juhas* *Hon. Sue Alexander (Ret.), Commissioner, Superior Court of Alameda County* *Anna Maves, Supervising Attorney, CFCC*
2:55 – 3:30 p.m.	Family Law Rules and Forms: • Transfer of Jurisdiction *Tracy Kenny* • Settled Statements *Gabrielle Selden*

Family Law: Findings on Child Custody Matters from Shriver Access to Civil Counsel Evaluation

Annual Agenda Item:
Education
Contribute to planning efforts in support of family and juvenile law judicial branch education.

Background:
The Sargent Shriver Civil Counsel Act established pilot projects to provide legal representation for self-represented low-income parties in civil matters involving critical livelihood issues such as housing, child custody, domestic violence, guardianship, and conservatorship. Ten pilot projects, in seven counties, were selected by the Judicial Council of California and funded in fall of 2011. Three of these projects (in Los Angeles, San Francisco, and San Diego) focused on child custody cases, which were required by the legislation to involve cases in which the other party was represented, and one of the parties was seeking sole custody.

Update:
The Shriver projects included an evaluation component, and findings from the custody pilots were recently published as part of the comprehensive evaluation of the entire program. These findings may be of value to the committee as it thinks about its work pertaining to child custody matters.

Evaluation of the Sargent Shriver Civil Counsel Act (AB590)
Custody Pilot Projects

Submitted to:

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Submitted by:

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July 2017

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Evaluation of the Sargent Shriver Civil Counsel Act (AB590) Custody Pilot Projects

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July 2017

Informing policy and improving programs to enrich people's lives

This document is formatted for double-sided printing.

For more information about the evaluation or this report, contact Kelly Jarvis, Ph.D., Senior Research Associate at NPC Research, at jarvis@npcresearch.com.

ACKNOWLEDGEMENTS

This report was made possible with the effort and support of many people.

We would like to thank the Shriver pilot project staff members for their considerable effort collecting and providing the program services data for the evaluation. This group includes staff from several agencies: Greater Bakersfield Legal Assistance in Kern; Inner City Law Center, Legal Aid Foundation of Los Angeles, Neighborhood Legal Services of Los Angeles, Public Counsel, Los Angeles Center for Law and Justice, and Levitt and Quinn Law Office in Los Angeles; Legal Services of Northern California and Pacific McGeorge Housing Mediation Center in Sacramento; Legal Aid Society of San Diego and the San Diego Volunteer Lawyer Program; Justice and Diversity Center of the Bar Association of San Francisco; Legal Aid Foundation of Santa Barbara County; and Legal Services of Northern California in Yolo. It also includes staff from the Superior Courts of Kern, Los Angeles, Sacramento, San Diego, Santa Barbara, San Francisco, and Yolo counties. We also thank the individual litigants (both Shriver clients and non-Shriver cases) who agreed to be interviewed and share their experiences and perspectives with us.

We are grateful to the Judicial Council staff members who coded court case files, obtained relevant data and information, reviewed versions of this report, and provided invaluable guidance for the evaluation. This group includes **Bonnie Rose Hough**, Principal Managing Attorney; **Mary Lavery Flynn**, Consultant; **Don Will**, Principal Manager; **Karen Cannata**, Supervising Research Analyst; and **Kimberly Tyda**, Research Analyst. We also appreciate the support and oversight provided by **Charlene Depner**, Acting Director of the Center for Families, Children, and the Courts; **Millicent Tidwell**, Chief Operating Officer of the Operations and Programs Division; **Martin Hoshino**, Administrative Director of the Judicial Council; and the **Honorable Tani G. Cantil-Sakauye**, Chief Justice of California and Chair of the Judicial Council.

Further, we extend our gratitude to members of the Shriver Civil Counsel Act Implementation Committee, appointed by the Chief Justice to oversee the pilot projects, for their excellent stewardship of the Shriver Program and their responsiveness to the evaluation. Committee members include **Hon. Earl Johnson, Jr. (Ret.),** *Chair*, Associate Justice of the Court of Appeal; **Hon. Laurie D. Zelon,** *Vice Chair*, Associate Justice of the Court of Appeal Second Appellate District, Division Seven; **Mr. Kevin G. Baker,** Legislative Director of ACLU California; **Ms. Salena Copeland,** Executive Director of Legal Aid Association of California (LAAC); **Ms. Erika Frank,** General Counsel for the California Chamber of Commerce; **Hon. Terry B. Friedman (Ret.),** JAMS; **Ms. Pauline W. Gee,** Ret. Deputy Attorney General; **Ms. Luz E. Herrera,** Professor of Law and Associate Dean for Experiential Education at Texas A&M School of Law; **Ms. Donna S. Hershkowitz,** Deputy Chief Trial Counsel and Assistant Chief Trial Counsel; **Hon. James R. Lambden (Ret.),** ADR Services, Inc.; **Mr. John F. O'Toole,** Attorney, Ret. Director, National Center for Youth Law; **Ms. Clare Pastore,** Professor of the Practice of Law at the University of Southern California Gould School of Law; **Ms. Shirley E. Sanematsu,** Senior Health Attorney for the Western Center on Law & Poverty; **Mr. Thomas Smegal,** Administrative Patent Judge on the

Patent, Trial and Appeal Board for the United States Patent and Trademark Office; and **Ms. Julia R. Wilson,** Executive Director of OneJustice.

We also would like to thank the members of the Shriver Civil Counsel Act Evaluation Advisory Committee who provided expert guidance for the evaluation effort and helpful feedback on earlier versions of this report. Advisory committee members include **Russell Engler**, Professor of Law and Director of Clinical Programs at New England Law; **Bristow Hardin**, Senior Research Analyst for the Legal Services Corporation; **James Meeker**, Professor Emeritus of Criminology, Law, and Society at the University of California, Irvine; **Rebecca Sandefur**, Associate Professor of Sociology and Law at the University of Illinois at Urbana-Champaign; and **Hon. Earl Johnson, Jr. (Ret.)**, Associate Justice of the Court of Appeal.

Lastly, we are grateful to our colleagues—Michael Finigan, Juliette Mackin, and Charley Jaspera—who provided assistance with the study implementation and support in the compilation of this report.

This study was funded by California Assembly Bill 590 and administered through the Judicial Council of California.

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EXECUTIVE SUMMARY

The Sargent Shriver Civil Counsel Act (AB590)[1] established pilot projects to provide legal representation for self-represented[2] low-income parties in civil matters involving critical livelihood issues such as housing, child custody, domestic violence, guardianship, and conservatorship. Ten pilot projects, in seven counties, were selected by the Judicial Council of California and funded in fall of 2011. Six pilot projects focused on housing cases, three projects focused on child custody cases, and one project focused on guardianship and conservatorship (probate) cases.

All ten projects involve one or more legal services agencies working in collaboration with their local superior courts. The purpose of the pilot projects is to improve court access, increase court efficiency, and improve the quality of justice. Shriver services were intended for individuals with an income at or below 200% of the federal poverty level and facing an opposing party with legal representation.

The type of services available varied across the pilot projects and depended on their local circumstances. At each project, the legal services agencies provided a range of services, including *full representation* by a Shriver attorney on all aspects of the case and a variety of limited scope legal assistance (*"unbundled" services*) for discrete legal tasks, such as brief counsel and advice, preparation of forms, educational materials for trial preparation, or representation during mediation and settlement negotiations. Some pilot projects also entailed *court-based services* and innovations, such as the creation of a Housing Settlement Master, the staffing of a Probate Facilitator, the implementation of judge-facilitated settlement conferences for custody cases, and the expansion of court-based self-help assistance.

The evaluation of the Shriver pilot projects is one of the largest access to justice studies undertaken. The study utilizes data collected over the course of 5 years from multiple sources. In total, across the ten projects, demographic and service data were collected for more than 20,000 litigants, individual court case files were reviewed for more than 700 litigants, telephone interviews were conducted with more than 150 litigants, and interviews were done with dozens of legal aid and court staff. In addition, summary data were gathered from court case management systems and cost data were gleaned from administrative sources. The totality of this information provides a comprehensive understanding of the operations, outcomes, and costs of the Shriver Program in its first 5 years of funding.

[1] Assem. Bill 590; Stats. 2009, ch. 457.

[2] The term "self-represented" is used to refer to litigants who appear in court or undergo their case proceedings without representation by an attorney.

Summary of Findings for the Shriver Custody Pilot Projects

The Sargent Shriver Civil Counsel Act allocated up to 20% of program funding for child custody cases. The statute set several eligibility requirements, including that clients have low-income status (i.e., at or below 200% of the Federal Poverty Level), be facing an opposing party with an attorney (i.e., imbalanced representation), and be involved in a case with a parent trying to obtain a court order for sole custody of the child (Gov. Code Section 68651(b)(2)(B)).

Generally, child custody cases are complex and emotionally charged, have critical implications for families and children, and can remain open until the child turns 18 years old. A court order for sole custody can often leave the other parent with limited or no access to the child. Therefore, these cases can also be highly contentious. The Act mainly aimed to level the playing field in these types of cases by addressing imbalanced representation. Shriver projects served parents trying to obtain custody, as well as those trying to preserve custody.

The unique attributes of families, parent personalities, relationship dynamics, and circumstances of children can add intricacy and tension to proceedings. When cases are contentious, as most cases served by the Shriver custody pilot projects were, the adversarial nature of the judicial process can be compounded. Moreover, there are innumerable factors that can influence court decisions and determinations regarding the best interests of the child, many of which are not reliably documented in court case files.

The Shriver Program funded custody pilot projects in three counties: Los Angeles, San Diego, and San Francisco. Services were provided for one request for orders (RFO) during the life of a custody case. Data for the evaluation of the Shriver custody pilot projects were collected over the course of 5 years, from multiple sources including program service data recorded by Shriver attorneys, individual court case files, and interviews with custody litigants and project staff from legal aid agencies and the courts.

WHO WAS SERVED BY THE SHRIVER CUSTODY PILOT PROJECTS?

Shriver services were provided to both mothers and fathers, though most clients were female. The median monthly income of Shriver clients was $1,033, well below the 2014 Federal Poverty Level, and many demonstrated substantial needs in critical livelihood areas such as income, employment, and food security. Over half of Shriver cases had intertwined issues of domestic violence. Most clients were Hispanic/Latino or African American.

WHAT SERVICES WERE PROVIDED BY THE SHRIVER CUSTODY PILOT PROJECTS?

From October 2011 through October 2015, the first 4 years of implementation, the three custody projects provided services to 1,100 low-income parents. Over half of these clients received full representation by a Shriver attorney throughout their custody pleadings, and just under half received unbundled legal services, such as brief counsel and advice, education, and mediation preparation. Over time, the pilot projects in Los Angeles and San Francisco incorporated social workers into their projects to address their clients' serious and persistent social service needs. Moving families out of crisis and into self-sufficiency became a project goal, as this transition also eased emotional duress, enabled the creation of more stable environments for children, and supported sustainability of custody arrangements. In addition to

the legal aid services, the San Diego custody pilot project also offered Shriver settlement conferences conducted by a judge.

NOTABLE IMPACTS OF THE SHRIVER CUSTODY PILOT PROJECTS

Studies have acknowledged the myriad benefits of providing legal assistance to litigants in complicated family law matters (e.g., Engler, 2010). The Shriver custody pilot projects demonstrated several of these:

Shriver services helped level the playing field.

The statute required Shriver projects to serve cases with the potential for acute consequences for families. Specifically, services targeted self-represented parents who were facing opposing parties represented by attorneys in cases with sole custody at issue. Legal aid services attorneys explained that their primary goal was to level the playing field, ensuring both parents had adequate access to justice. Across all three projects, data showed that 89% of Shriver representation cases had attorneys on both sides (10% of clients faced an unrepresented party at the time of Shriver service intake, and 1% were unknown)**.**

Attorneys educated parents, which created efficiencies and eased tensions.

Attorneys helped to educate parents about the legal process and to shape reasonable expectations for their case outcomes. Consequently, court proceedings became more efficient, as judges spent less time managing litigants and benefited from more comprehensive information on which to base decisions. Shriver attorneys felt that they could ease tensions and reduce emotional turmoil that would otherwise cloud and complicate proceedings.

Litigants felt supported.

Parents reported feeling informed about their cases, supported throughout the process, and not lost in the system. Having an attorney's expertise and support mattered to parents despite the case outcomes. Specifically, litigants' perceptions of fairness of the judicial system varied with their satisfaction with their case outcomes: If they were satisfied with their case outcomes, they found the process was fair; if they were not satisfied with their outcomes, they found it not fair. In contrast, litigants' perceptions of the Shriver attorney were overwhelmingly positive, regardless of their satisfaction with their case outcomes.

Attorneys supported collaboration between parties.

Shriver project staff thought litigants were more willing to enter agreements when their attorneys helped them understand when terms were reasonable. By supporting successful negotiations and reducing emotional tensions between parties, Shriver attorneys were able to increase the likelihood of pre-trial settlements, which positively impacts the court and the families. This finding is supported by the quantitative data culled from the court case files at the San Diego project, where 54% of Shriver full representation cases resolved via settlement versus 30% of comparison cases.

This resulted in increased efficiencies for the court, as Shriver cases tended to involve fewer hearings and continuances than comparison cases. In San Diego, 16% of cases with Shriver representation resolved without any hearings at all, versus 2% of comparison cases. Further,

while nearly two thirds (63%) of comparison cases required hearings to resolve the pleading, less than half (40%) of Shriver representation cases did.

Combined effect of attorney representation and Shriver settlement conferences was positive.

The San Diego custody pilot project offered Shriver settlement conferences conducted by a judge, with attorneys present. Sixty percent of Shriver settlement conferences reached full or partial agreement during the session. In total, 34% of Shriver representation cases were fully resolved during the settlement conference, contrasted with 4% of Shriver cases that reached resolution during typical mediation sessions (which attorneys do not attend). The heightened success of Shriver settlement conferences is likely attributable to the presence of counsel—parents were more willing to enter into agreements under the guidance of their attorneys—and to the ability of the judge to provide immediate resolution.

Custody orders were more durable.

In San Diego, the combination of representation by a Shriver attorney and participation in a Shriver settlement conference yielded more durable custody orders. Within the 2 years after the pleading was resolved, only one in ten (11%) Shriver cases had filed an RFO to modify the existing custody orders, versus one in three (32%) comparison cases.

Custody orders that endure can help stabilize families and reduce the burden on courts. Importantly, this can translate into cost savings, as the investment costs of Shriver court-based services are more than recovered by the reduction in subsequent filings requesting a change to custody orders.

Increasing settlements and improving the durability of custody orders are important project achievements. While it is difficult to disentangle the independent contributions of legal representation and settlement conferences, preliminary data suggest that both are useful.

ADDITIONAL NEEDS NOTED BY PROJECTS

Shriver project staff expressed concern about the restrictive nature of the statute eligibility requirements. Specifically, they stated that meeting the income requirement and the opposing party representation requirement is challenging for many litigants, because if one parent is low income, then the other party is generally also low income and therefore not able to afford an attorney. Additionally, staff felt that many contentious custody cases would benefit from service, but were ineligible because neither parent was explicitly asking for sole custody.

INTRODUCTION

Over the last few decades, an increasing awareness has emerged regarding the prevalence of civil justice issues in the American public and the difficulties faced by low-income Americans in the civil justice system. An often-cited study by the Consortium on Legal Services and the Public (1994) estimated that roughly half of low- and moderate-income households experienced a civil justice problem in the prior 12 months. A recent study by the Legal Services Corporation (2017) found that 71% of low-income households had experienced at least one civil legal problem within the past year. This increase is hardly surprising, given that the economic recession has generally worsened circumstances for low-income Americans.

The prevalence of civil justice problems and the broad of range of livelihood issues that these problems impact is aptly described by Sandefur (2010):

> "For many members of the American public, civil justice problems emerge at the intersection of civil law and everyday adversity. These problems can involve family relationships, work, money, insurance, pensions, wages, benefits, housing, and property – to name just a few areas of contemporary life. Though these different types of problems affect different aspects of people's lives and concern different kinds of relationships, they share a certain important quality: they are problems that have civil legal aspects, raise civil legal issues and have consequences shaped by civil law."

Despite this, few low-income people receive legal assistance to resolve these issues. The Legal Services Corporation's recent report (2017) indicated that "86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help." This "justice gap" has persisted, and been documented, for at least a decade. In 2007, the Legal Services Corporation reported that 20% or fewer of the legal problems experienced by low-income people were addressed with the assistance of an attorney (private or legal aid).

Understanding the immense risks inherent in some civil cases (e.g., housing, child custody, domestic violence) and recognizing the indisputable disadvantage of unrepresented low-income litigants in the legal system led the American Bar Association to pass a resolution supporting the right to counsel in civil "adversarial proceedings where basic human needs are at stake." (American Bar Association, Resolution 112A, August 2006). In 2006, the California Conference of Delegates of the State Bar adopted a similar resolution.

IMPACT OF LEGAL REPRESENTATION IN CIVIL CASES

A small but growing body of literature has begun to address the question of whether and how attorney representation impacts civil case proceedings and outcomes, and some of these early studies have yielded mixed results. For example, in Sandefur's (2010) meta-analysis of 12 studies of representation for adjudicated cases across multiple areas of civil case law (e.g., eviction, Social Security Disability Insurance reconsideration, asylum requests), the likelihood of winning a case was anywhere from 19% to 1379% higher among represented parties than among unrepresented parties—a very wide range. Most of these studies did not employ random assignment, the lack of which can complicate the interpretation of results. Specifically, without random assignment, one cannot be sure that the study groups are equivalent. For example, it could be that people who seek out attorneys are different from those who choose

to self-represent, and it could be that cases taken on by lawyers are different (e.g., have higher merit) than cases not selected. The single study in Sandefur's sample that employed random assignment had middle-range results in her analysis (i.e., litigants with representation were approximately 4 times more likely to win than were unrepresented litigants). The author points out that the magnitude of the impact of legal representation is correlated with the level of procedural complexity in the case.

Housing cases

Eviction is one of the most urgent civil law issues for low-income individuals and families. The difficulties and obstacles faced by low-income renters in eviction (unlawful detainer) cases have been well documented (Public Justice Center, 2015; NY Office of Civil Justice Annual report, 2016). In addition to a host of characteristics that reflect considerable vulnerability should they lose their housing, tenants know very little about the housing court process or their rights as defendants (Public Justice Center, 2015). Further, research has shown that tenants are rarely represented, while most landlords are (e.g., Community Training and Resource Center, 1993). The lack of knowledge regarding housing court and eviction proceedings, coupled with the lack of legal representation, puts tenants at a considerable disadvantage in this process.

A small number of studies have investigated the impact of legal representation in unlawful detainer cases using a random assignment design. In New York, Seron, Frankel, Van Ryzin, and Kovath (2001) compared litigants who were randomly assigned either to receive representation by a legal aid attorney or to not receive services. This study found a range of positive outcomes for tenants who received representation relative to those who did not. Specifically, cases with represented tenants had significantly fewer defaults, fewer judgments against tenants, fewer writs issued, and fewer post-trial motions, as compared to cases with self-represented tenants. Further, a greater proportion of cases with represented tenants ended with stipulations for rent abatement or repairs, as compared to cases with self-represented tenants.

More recently, in Boston, two studies by James Greiner and colleagues investigated the impact of legal representation in eviction cases (Boston Bar Association, 2014). In one of these studies (Greiner, Pattanayak, & Hennessy, 2013), tenants were offered limited assistance which included education on the housing court process and help filing an answer. After this limited assistance, tenants were randomly assigned either to receive representation by an attorney or no further service. The study found that, compared to self-represented tenants, tenants with an attorney were more likely to retain possession of their homes and to obtain larger waivers of rent. Although cases with representation took longer to resolve, they did not place additional burden on the court.

In the second of these studies (Greiner, Pattanayak, & Hennessy, 2012), tenants were similarly offered limited assistance in the form of education and help filing an answer. After this limited service, tenants were randomly assigned either to receive a referral for representation from an attorney or a referral to the "lawyer for the day" program which provided tenants with brief, day-of-trial assistance (usually representation at trial or in hallway negotiations at the court). The study found no significant differences between these groups with regard to possession of the property or financial outcomes.

Child custody cases

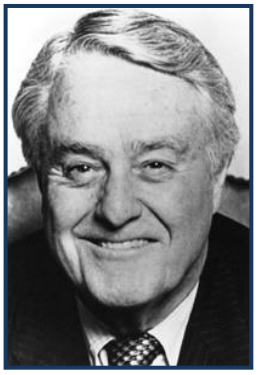
The impact of representation in child custody cases has been less studied than the impacts for housing cases. However, Engler (2010) and Poppe and Rachlinksi (2016) review studies that have examined the impacts of counsel for various types of family law cases. Generally, when these studies involved a comparison, the method involved comparing cases with balanced representation (i.e., attorneys on both sides) to cases with imbalanced representation (i.e., one parent has an attorney and one does not), but none used random assignment. One study by Maccoby and Mnookin (1992) found that balanced representation yielded higher rates of joint legal custody than did imbalanced representation. Further, in cases with imbalanced representation, having an attorney tended to increase the likelihood of custody being awarded to the represented parent, relative to being unrepresented (Maccoby & Mnookin, 1992; Women's Law Center of Maryland, Inc., 2006). Child custody cases are as complex and diverse as the families they reflect, which presents challenges for standardization and aggregation. Despite this, there is evidence that the presence of counsel can impact whether or not parents obtain the legal or physical custody they are seeking.

Conclusion

These early studies establish a foundation, but mixed findings and the use of various methodologies preclude strong conclusions and demand that the investigation of the impact of legal assistance in civil cases remains an important research endeavor. The current evaluation contributes to this growing body of knowledge in some important ways. For housing court, the current evaluation offers a randomized design across multiple projects with larger samples than those collected previously. The current study also expands the investigation of representation to child custody and guardianship cases, two areas that have received less attention.

The Sargent Shriver Civil Counsel Act

The Sargent Shriver Civil Counsel Act (California Assembly Bill 590), passed in 2009 on a bipartisan basis, authorizes pilot projects to study the provision of legal representation to low-income families facing critical legal problems involving basic human needs, such as possible loss of housing, child custody disputes, domestic violence, or the need for a family guardianship or conservatorship. The Act also supports innovative court services designed to ensure that self-represented parties obtain meaningful access to justice and to guard against the involuntary waiver or other loss of rights.



Sargent Shriver

In the years leading up to passage of AB 590, there was significant discussion about the importance of legal representation in the courtroom as a key component of the continuum of service. All too often, poor people appear in court without counsel, while their opponents have lawyers. There is great concern that justice is not being served when only one side is represented. Californians lack a right to legal representation in the majority of civil cases, yet many believe that it is at least as important to provide an attorney to indigent individuals who might lose their housing or custody of their children as it is to provide representation in minor criminal matters. Legal representation is often necessary to guard

against unnecessary defaults or the involuntary waiver of rights. A fundamental goal is to have cases determined purely on the merits and not on the presence of legal representation.

In the legislative findings of the Shriver Act, it was concluded that "equal access to justice without regard to income is a fundamental right in a democratic society"… and "in many cases the state has as great a responsibility to ensure adequate counsel is available to both parties… as it does to supply judges, courthouses, and other forums for the hearing of the cases…" The Act was intended to evaluate when the state needs to provide counsel in order to ensure equal access to justice and how that can be done most cost-effectively. It authorizes the funding of several pilot programs designed to explore those possibilities. The purpose of the pilot projects is to improve court access, increase court efficiency, and improve the quality of justice.

THE PILOT PROJECTS

All pilot projects included one or more legal services agencies working in collaboration with their local superior courts. The following 10 pilot projects in seven counties were awarded funding by the Judicial Council of California in the fall of 2011:

Kern County

- Housing pilot project implemented by Greater Bakersfield Legal Assistance and the Superior Court of Kern County;

Los Angeles County

- Housing pilot project implemented by Neighborhood Legal Services of Los Angeles County (and partner agencies) and the Superior Court of Los Angeles County;
- Child custody pilot project implemented by the Los Angeles Center for Law and Justice (and a partner agency) and the Superior Court of Los Angeles County;

Sacramento County

- Housing pilot project implemented by Legal Services of Northern California—Sacramento and the Superior Court of Sacramento County;

San Diego County

- Housing pilot project implemented by the Legal Aid Society of San Diego and the Superior Court of San Diego County;
- Child custody pilot project implemented by the San Diego Volunteer Lawyer Program (via partnership with the Legal Aid Society of San Diego) and the Superior Court of San Diego County;

San Francisco County

- Child custody pilot project implemented by the Justice & Diversity Center of the Bar Association of San Francisco and the Superior Court of San Francisco County;

Santa Barbara County

- Housing pilot project implemented by the Legal Aid Foundation of Santa Barbara County and the Superior Court of Santa Barbara County;

- Probate (guardianship/conservatorship) pilot project implemented by the Legal Aid Foundation of Santa Barbara County and the Superior Court of Santa Barbara County;

Yolo County

- Housing pilot project implemented by Legal Services of Northern California—Yolo and the Superior Court of Yolo County.

PILOT PROJECT COMPONENTS

The continuum of services available at each pilot project varied and depended on the project's local circumstances. The specific components of each pilot project are described in the Project Descriptions and Service Summaries in this report. Most projects involved a range of legal aid services and court-based services.

Legal Aid Services. Each pilot project offered a range of legal aid services specific to its local implementation model. All projects offered full representation by a Shriver attorney as well as some form(s) of limited scope legal assistance (often referred to as "unbundling"). Full representation involved an attorney providing assistance and representation for all aspects of the case from start to finish. Limited scope assistance (unbundled services) entailed legal help provided for discrete tasks, such as preparation of forms, collection of evidence for court, brief counsel and advice, representation during mediation or settlement negotiations, or day of trial representation. All Shriver pilot projects provided full representation to some clients and a range of unbundled services to some clients; the proportions depended on their unique project model. Throughout this report, the terms ***full representation***[3] and ***unbundled services*** are used to indicate these two levels of Shriver legal aid service. To be eligible for Shriver services, individuals must have an income at or below 200% of the Federal Poverty Level and be facing an opposing party with legal representation. Some projects had additional eligibility requirements.

Court-based Services*:* Court innovation is also a key component of the statute, which provides funds to courts to pilot innovative practices. Local superior courts are an integral part of the pilot projects, and several courts developed services or improved procedures designed to improve access and efficiency. Examples of ***court-based services*** included: special mediation procedures such as the creation of a Housing Settlement Master and judge-facilitated custody settlement conferences; new court staff positions such as the Probate Facilitator and dedicated judicial assistants; expanded self-help centers and litigant education efforts; and collaboration with housing inspectors.

Evaluation of the Sargent Shriver Civil Counsel Act

EVALUATION DESIGN

In 2012, the Judicial Council of California (JC) contracted with NPC Research to evaluate the recently funded Shriver pilot projects. NPC and the JC collaboratively formulated research questions that addressed the legislative mandates and the program stakeholders' broad range

[3] In the child custody pilot projects, the term ***representation*** is used to emphasize that Shriver attorneys provided full representation for the custody issue, but was limited in scope to custody only and did not include other family law matters.

of inquiries and worked with the pilot projects to establish parameters for data accessibility and information sharing. NPC designed an evaluation that encompassed four components:

1. *Project implementation* – This aspect of the study tracked the operation of each of the 10 pilot projects, including their project models, rates and types of service provision, and client populations. In short, this part of the study asked the question, "What services were provided and to whom?"
2. *Case outcomes* – This component of the study examined the outcomes of cases that received Shriver services, compared to similar cases that did not receive service. It addressed the question, "How did the provision of Shriver service affect the outcomes of cases?" Analyses used court case file data primarily to investigate the receipt of full representation by Shriver counsel.
3. *Project impacts* – This element of the study explored other impacts of the Shriver pilot projects that could not be reliably substantiated in the court case files. The perspectives of litigants and project staff were gathered to understand the potential impacts on the court, litigants, and the community.
4. *Cost* – This aspect of the study examined the costs to provide Shriver services, as well as any potential savings to the court as a result of this service provision.

The evaluation employed a mixed methods approach and used data from multiple sources to address the inquiries within each of these four study components. The methods and data sources are described in more detail below and are illustrated in Table 1.

METHODS AND DATA SOURCES

Project implementation

The evaluation tracked the implementation of all 10 pilot projects. Throughout the grant period, Shriver project staff recorded the services they provided and information on their clients and cases into the Shriver *Program Services Database*. Superior courts were also asked to provide *summary court statistics* to illustrate the context in which the pilot projects were operating and systemic trends over time.

Shriver Program Services Database. A uniform survey was developed to track client information in a standardized way across the pilot projects within each area (housing, custody, and probate). Collectively, these surveys are referred to as the ***program services database***. The database houses the following types of information: (a) client characteristics such as age, race, disability status, and income; (b) case characteristics such as whether the opposing party is represented, filing dates, the details of the eviction notice, and the pre-existing custody arrangements; (c) types of Shriver services provided such as brief counsel and advice, mediation services, or full representation and the number of attorney hours worked; and, whenever known, (d) case outcomes such as the manner in which the case was resolved (settlement, trial, dismissal, etc.), possession of the property, custody orders, and guardianship placements. Shriver project staff recorded demographic characteristics for all clients receiving any Shriver service, but case characteristics and outcomes were recorded for clients who received full representation, because that is when attorneys knew about case disposition.

Shriver project staff entered information into the program services database in an ongoing manner throughout the duration of the grant period. Because all 10 pilot projects provided data, this database represents the largest and most complete source of information about Shriver clients. At the end of 2015, the database held information for more than 20,000 Shriver clients. The program services database does not include information for non-Shriver cases.

Court Summary Statistics. Seven superior courts—specifically, those affiliated with the six housing pilot projects and the probate pilot project—were asked to provide summary statistics from their case management systems that spanned a 5-year period from before the Shriver pilot projects (2010-2011) to the mid-point of the Shriver project implementation (2014). The summary statistics included metrics relevant to understanding the service reach of the local Shriver pilot project (e.g., the number of unlawful detainer cases filed at the court, relative to the number of those that received Shriver services) and potential systemic changes related to project implementation (e.g., the number of unlawful detainer cases that ended by default before and after the Shriver pilot project began). Three housing courts and the lone probate court provided data.

Study of case outcomes

For the evaluation to make assertions about the effectiveness of the Shriver program on the outcomes of cases, it was necessary to compare litigants receiving services from Shriver counsel with a similar group of litigants undergoing the same civil court proceedings without representation (e.g., self-represented litigants). Innumerable, and often subjective, factors can be associated with case outcomes. For example, case merit and client vulnerability can impact the outcomes of unlawful detainer cases, whereas family dynamics and determinations of the best interests of the child can impact custody case outcomes. Quantifying all of the potentially relevant attributes predictive of case outcomes is complex and, in some cases, impossible. When implemented accurately, random assignment protocols can be assumed to establish intervention and comparison groups that can be considered equivalent across most factors. Therefore, when the groups are compared, any observed differences in outcomes can be reasonably attributed to the intervention, and not to characteristics of individuals. For this reason, random assignment is typically recognized as the gold standard of comparative study designs. However, random assignment protocols can be complicated to implement and are not appropriate for all contexts.

In the current evaluation, random assignment procedures were conducted for 1 month at three of the six housing pilot projects (Kern, San Diego, and Los Angeles). Random assignment methods were not possible at the custody or probate pilot projects, primarily due to the small number of litigants presenting for service. Thus, to examine case outcomes, alternate comparative study designs were implemented at two of the three custody projects (San Diego and San Francisco) and the probate project (Santa Barbara). The methods are described below.

Random Assignment Study of Housing Cases. At the three participating pilot projects, litigants who presented for services were checked for eligibility (had an income not more than 200% the FPL and were facing an opposing party with legal representation) and, if eligible, were randomly

assigned either to receive full representation by a Shriver attorney[4] or to receive no Shriver services (comparison). The comparison litigants were provided "business as usual" services, namely access to the respective county's free self-help services, which typically amounted to modest help filing an answer to the unlawful detainer complaint (not legal representation).

To address ethical concerns about serving as many people as possible, a 2:1 assignment protocol[5] was exercised, whereby two litigants were assigned to receive Shriver services for every one litigant assigned to the comparison group. One exception was made to the random assignment process. At two projects, individuals with housing subsidies (e.g., Section 8, Housing Choice Vouchers) were permitted to bypass the random assignment process and directly receive Shriver services. Shriver staff felt that the potential loss of current and future public assistance was too great a risk to justify a possible assignment to the comparison group (and non-receipt of services). Thus, these litigants were included in the program service database, but were excluded from the random assignment study.

Across the three housing pilot projects, 280 litigants were assigned to receive Shriver full representation, and 144 litigants were assigned to the comparison group. To examine the impact of Shriver representation on case outcomes, these two groups were compared using information from their individual court case files.

Court case file review. NPC Research worked with the Judicial Council to identify the data elements within case files that would best represent the events and outcomes of unlawful detainer cases. These included, for example, dates of filing and resolution; which party retained possession of the property; whether case ended by default, settlement, dismissal, or trial; and other orders involving financial and credit outcomes related to the case. A case review instrument was developed to guide the collection of information in a standardized manner. Due to issues of confidentiality and familiarity with court case file contents, the JC recruited legal experts to conduct the case file reviews using the standardized instrument. Once the review was complete, raw de-identified data files were sent to NPC for analysis.

Comparative Study of Custody Cases. At the San Diego pilot project, a sample of cases that had received representation by Shriver counsel was identified using the program services database. NPC Research worked with staff in the superior court, who selected comparison cases by querying their court case management system. The identified comparison cases met certain criteria to make them similar to Shriver cases (e.g., sole custody was at issue, at least one party had a fee waiver granted, case was seen by one of two judges handling Shriver cases), but did not receive Shriver services. Because durability of the custody orders was a key study question, all sampled cases had to have at least 2 years since the resolution of custody pleading. In total, this analysis compared 53 cases with a Shriver-represented party to 56 comparison cases.

At the San Francisco pilot project, before services began, the Shriver project staff observed court calendars and identified litigants who would be eligible for Shriver services (e.g., cases

[4] One of the three projects did a second tier random assignment among litigants whose opposing party was not represented. These individuals were randomly assigned to receive expanded self-help services (not full legal representation) or to a control group. Because the group sizes for this component of the study were very small, the findings are not presented here.

[5] NPC Research developed the assignment protocol and trained legal aid staff to implement it with fidelity. More detail on the assignment protocol can be obtained from the authors.

with imbalanced representation and sole custody at issue). These litigants were recruited for the comparison group. After Shriver services began, a sample of clients who received representation by a Shriver attorney was identified for analysis. These two groups—in total, 25 Shriver cases and 24 comparison cases—were compared.

Court case file review. As was done for the housing projects, NPC worked with the Judicial Council to develop a data collection instrument to standardize the reviewing and coding of the case files. Data elements of interest included dates of filings, other allegations such as domestic violence or child abuse, requests for legal and physical custody, orders for legal and physical custody, whether the case was resolved by settlement or judicial decision, number of hearings, and whether a request to modify the custody orders was filed afterward. The Judicial Council recruited experts to conduct the file review, and the data were sent to NPC for analysis.

Comparative Study of Probate (Guardianship and Conservatorship) Cases. Due to the small number of litigants presenting for service, random assignment was not possible at the probate pilot project. Instead, a group of litigants who received Shriver full representation was selected from the program services database, a group of litigants who received assistance from the probate facilitator (but not legal aid representation) was identified from the probate facilitator's database, and a group of comparison litigants who received no Shriver services was identified by superior court staff using the court case management system. All sampled cases had evidence of low-income status and had filed petitions to establish guardianships or conservatorships (i.e., not to terminate a guardianship or some other reason). In total, analyses compared 48 cases with Shriver full representation, 43 cases with probate facilitator assistance, and 47 comparison cases.

Court case file review. As was done for the other projects, NPC developed a data collection instrument to standardize the reviewing of the case files. Data elements of interest included dates of filings, number of hearings and continuances, and whether a guardianship or conservatorship was granted and to whom. The Judicial Council recruited experts to conduct the file review, and the data were sent to NPC for analysis.

Project impacts

To gauge the impacts of the pilot projects beyond those pertaining to case outcomes, interviews were conducted with litigants and with Shriver project staff.

Litigant Interviews. In 2013, litigants who were randomly assigned at two of the three projects (Kern and San Diego) were contacted for a telephone interview approximately 1 month after their housing case was closed. Interviews were primarily concerned with the outcomes of the housing case, the interviewees' perception of the case outcomes, and their experience with the legal system, including perceived fairness, procedural justice, and satisfaction with outcomes. Efforts were made to contact all litigants who were randomly assigned at the two projects. However, locating individuals after their case had closed proved difficult, as contact information was frequently invalid and voicemails were often not returned. Across the two projects, a total of 132 interviews were completed (92 Shriver clients and 40 comparison litigants).

A second round of qualitative interviews occurred in 2014, when NPC attempted to contact all litigants who had completed a case closure interview. These follow-up interviews were conducted when litigants' housing cases had been closed for approximately 1 year and they

sought to understand the circumstances of litigants' lives after their case closure, including their experience of eviction and relocation, any public services they needed and/or utilized, and their perception of the impact of the unlawful detainer case on their lives. Efforts were made to contact all 132 case closure interviewees. However, presumably due to the high mobility of the population and the age of the contact information (obtained at Shriver intake), locating these individuals proved difficult. Ultimately, 1-year follow-up interview surveys were conducted with 66 litigants (45 Shriver clients and 21 comparison litigants).

Staff and Stakeholder Interviews. Shriver project staff from both the legal aid agencies and superior courts across all pilot projects were interviewed twice during the grant period. The first interview focused on gaining a better understanding of each project's unique service model, goals, and operational context. The second interview, conducted in the fourth year of implementation, inquired about the impacts of the pilot projects, as perceived by the staff and stakeholders. This included impacts on litigants, the court, the community, and other relevant parties (e.g., landlords for housing cases, children for custody cases).

Cost information

Estimates of program costs—specifically, how much does it cost to provide legal assistance to low-income litigants?—were derived using information from the project invoices submitted to the Judicial Council and information in the program services database. These figures are used to estimate the average cost to provide representation for a housing case, a custody case, and a guardianship case at each of the projects.

In addition, staff from one court in each subject area were interviewed regarding the tasks involved in processing typical cases and the resources (e.g., staff time) required to complete those tasks. This information yielded estimated costs to process a typical case, and further analysis of the case file review data enabled a comparison of costs to process a case receiving Shriver services. This comparison helps elucidate any potential savings to the court as a result of the pilot projects.

Table 1 illustrates the range of data sources used in the evaluation and the representativeness of each.

Table 1. Data Sources and Sample Representation

Data Source	Number of Pilot Projects Represented	Litigants Represented	
		Shriver Clients	Comparison Litigants
Housing Pilot Projects (*n*=6)			
Implementation			
Program Service Data	6	Yes	No
Court Summary Statistics	3		
Study of Case Outcomes			
Court Case File Review	3	Yes	Yes
Project Impacts			
Litigant Interview	2	Yes	Yes
Staff/Stakeholder Interview	6		
Cost Study			
Program Costs	6	Yes	
Cost Effectiveness	1	Yes	Yes
Child Custody Pilot Projects (*n*=3)			
Implementation			
Program Service Data	3	Yes	No
Study of Case Outcomes			
Court Case File Review	2	Yes	Yes
Project Impacts			
Litigant Self-Sufficiency Assessment	1	Yes	No
Litigant Interview	1	Yes	No
Staff/Stakeholder Interview	3		
Cost Study			
Program Costs	3	Yes	
Cost Effectiveness	1	Yes	Yes
Probate (Guardianship) Pilot Project (*n*=1)			
Implementation			
Program Service Data	1	Yes	No
Court Summary Statistics	1		
Study of Case Outcomes			
Court Case File Review	1	Yes	Yes
Project Impacts			
Staff/Stakeholder Interview	1		
Cost Study			
Program Costs	1	Yes	
Cost Effectiveness	1	Yes	Yes

THIS REPORT

The 10 Shriver pilot projects began implementation in fall 2011. All but one project (Sacramento housing pilot project) continued service provision for 6 years. The full Shriver Act evaluation report presented data and analyses on the services provided and outcomes achieved collected through the end of 2015, reflecting the first 4 years of project implementation, across all 10 pilot projects. The full report included a chapter on the housing pilot projects, a chapter on the child custody pilot projects, and a chapter on the probate (guardianship and conservatorship) pilot project. The full Shriver Act evaluation report is available on the Judicial Council's website.

This report, which presents findings for the three custody pilot projects, provides readers with: (a) an overview of the contents and structure, (b) an introduction to the case events and court proceedings typical for child custody cases, (c) an overview of the cross-project implementation and a description of each of the three pilot projects, (d) results of case outcomes studies that compare court case file data for litigants who received Shriver representation with those who did not, (e) findings from interviews with litigants after their cases ended, (f) a summary of the program impacts as described by pilot project staff and stakeholders, and (g) estimates of program costs and any potential cost savings to the court via the provision of Shriver services. The appendix provides more detailed Service Summaries for each pilot project and other additional data.

Shriver Custody Pilot Projects

Overview

Overview

The Sargent Shriver Civil Counsel Act (AB590) allocated up to 20% of program funding for child custody cases. In addition to the broader service eligibility criteria for low-income status (i.e., at or below 200% of the Federal Poverty Level) and imbalanced representation (i.e., facing an opposing party with an attorney), the statute also required custody projects to handle cases in which one party was seeking sole custody of the child (Gov. Code Section 65661 (b)(2)). Sole custody requests are not typical in California, and such arrangements can often leave one parent with limited or no access to the child. These cases can also be highly contentious. The legislation mainly aimed to level the playing field in these types of cases. Shriver projects served parents trying to obtain custody as well as those trying to preserve custody. Services were generally provided for one pleading (i.e., one request for orders [RFO]) during the life of a custody case (which remains open until the child turns 18). The Shriver Program funded custody pilot projects in three counties: Los Angeles, San Diego, and San Francisco.

This report presents data collected from the three Shriver custody pilot projects that received Shriver Program funding in the fall of 2011. Data were collected from a variety of sources and stakeholders using a variety of research methodologies, including compilation of service data, review of court case files, and interviews with litigants and project stakeholders. The report compiles and presents the findings across these evaluation activities implemented over the course of 5 years. The report is organized in the following sections:

Introduction to Child Custody Cases

This section provides an overview of the child custody case process, including a description of the various events and proceedings related to the processing of custody pleadings, which are essential to understanding the impact of Shriver services. This section also provides important and relevant context for these cases by highlighting the “best interests of the child” guidelines and the impact of contentious custody disputes on children and the court system.

Implementation Overview and Pilot Project Descriptions

This section provides a brief overview of the work done by legal aid service agencies and superior court staff, as a result of Shriver funding, to serve 1,100 low-income litigants across the three pilot projects. In addition, an individual description is provided for each project that outlines the project context, implementation model and service structure, and goals for clients, as articulated by project stakeholders during interviews and site visits. In Appendix A, the reader can find a detailed Service Summary for each project that presents quantitative data on the numbers and characteristics of people served, services provided, and case characteristics and outcomes. Information for these analyses was recorded by Shriver staff in an ongoing manner into the program services database, a standardized data collection platform, throughout the grant period as they provided legal services.

Litigant Experiences

Child custody arrangements can be strongly influenced by characteristics and conditions of the parents. However, these factors are often subjective and are rarely documented in a standardized way in service logs or court case files. To better understand the life situations of

the families seeking Shriver services, the evaluation analyzed self-sufficiency assessment data collected from 109 Shriver clients at one of the custody projects (Los Angeles). These data help elucidate how these families were functioning across a variety of life domains—such as employment, health, housing, child care, and social support networks—at the time of Shriver service intake.

A small sample of 21 litigants from one of the custody projects (San Francisco) were interviewed over the phone after their pleading was resolved to discuss their perceptions of their case and the legal process, as well as the level of cooperation with the other parent. These Shriver clients were also asked about their experiences with the assistance they received.

Case Outcomes Study

A study of case outcomes was conducted at two of the three custody projects (San Diego and San Francisco) using data gleaned from individual court case files. Random assignment was not conducted in any of the custody projects, primarily due to the small numbers of cases, but comparative samples were drawn at these two sites. In San Diego, a group of 53 cases that received Shriver representation were compared to a group of 56 custody cases without Shriver services identified by the court database. In San Francisco, legal aid services attorneys recruited a sample of 25 comparison cases by reviewing the court calendar and identifying cases that would otherwise be eligible for Shriver services, and this was done before the project funding began. These cases were compared to 25 cases that received Shriver representation. For both projects, after the custody pleadings were resolved, the court files for the Shriver and non-Shriver comparison cases were reviewed for relevant information, such as case resolution and outcomes. Analyses then compared the outcomes for cases that received Shriver representation and those that did not.

Staff and Stakeholder Perceptions

Four years into the project implementation, stakeholders at each pilot project were interviewed about their perceptions of the impact of the Shriver pilot project at their site, including impacts on litigants, the court, and the community. In total across the three projects, perspectives were gathered from five staff at the legal aid services agencies and six staff at the participating Superior Courts. A cross-project summary is presented.

Cost Study

The costs to provide Shriver services were estimated for all three custody pilot projects using data from project invoices submitted to the Judicial Council, online cost information, and data recorded in the project services database. Potential cost savings to the court were calculated for one project that had available data from court staff and sufficient sample size (San Diego). Potential costs beyond the court are also discussed.

Summary

Findings from the various study components and preceding sections are synthesized to offer a summary of the Shriver custody pilot projects' implementation and impacts.

Typical Shriver Custody Case

It is difficult to describe a "typical" child custody case because every family is different. For example, differences in relationship dynamics and history, personalities, child age, parental capacity and desires, and available resources can have strong implications for custody cases. The legislative directives regarding income, imbalanced representation, and sole custody requests fostered some situational homogeneity among Shriver cases, but there was still wide variability in the case characteristics and outcomes. Cases served by the Shriver custody pilot projects often involved procedural complexities, highlighting the need for counsel. Many involved intersecting issues of domestic violence. And most Shriver clients also needed social services in addition to their legal services. To illustrate the types of cases served by the Shriver pilot project, some examples of cases are provided throughout this report.

Some key terms used throughout this report:

Throughout this report, the term ***self-represented*** is used to describe litigants who appear in court and go through their case proceedings without representation by an attorney.

Each pilot project offered a range of legal services specific to the local implementation model. All projects offered representation by a Shriver attorney as well as some form(s) of limited scope legal assistance (often referred to as "unbundling"). Representation involved an attorney providing representation for all aspects of the child custody pleading from start to finish—but not other aspects of the family law case (i.e., "limited scope" within the family law case). Unbundled services entailed legal help provided for discrete tasks, such as assistance with preparing and filing forms, collection of evidence, provision of brief counsel and advice, representation during mediation or settlement negotiations, or assistance at the self-help center. Projects differed in the types of unbundled services offered. All Shriver pilot projects provided representation to some clients and a range of unbundled services to some clients; the proportion depended on their unique program model. Throughout this report, the terms ***representation*** and ***unbundled services*** are used to indicate these two levels of Shriver service.

All custody pilot projects served low-income parents, regardless of gender or role in the case. Thus, Shriver clients could be the ***moving party*** (i.e., the party who filed the pleading and requested orders from the court) or the ***responding party*** (i.e., the party who was responding to the pleading filed by the moving party, who may or may not request something of the court). Shriver clients' goals were also variable; clients could be petitioning the court for sole custody of child(ren) or attempting to stop the other parent from obtaining sole custody (i.e., attempting to reserve what parenting time they currently had).

Shriver Custody Pilot Projects

Introduction to Child Custody Cases

Shriver client "Martina."
Until she was 8 years old, Anna had lived with Martina, and her father visited sporadically. After the Juvenile Dependency Court found that Martina did not do enough to protect Anna from witnessing domestic violence against Martina by a subsequent partner, the court ordered sole physical and legal custody of Anna to her father. The court also gave Martina monitored visits three times per week at unspecified times, with the father to approve the monitor. Despite the orders, after a few months, the father returned Anna to Martina and resumed visiting sporadically. After 4 years, a support hearing was set by the County. Before that hearing, the father left with Anna to an unknown location in Seattle. Martina tried and failed three separate times to obtain ex parte (emergency) orders to have the child returned, finally losing her composure with the clerk in the courtroom. But the court did set a hearing and the self-help center referred her to the Shriver project. At the hearing, where the father did not appear, the Court said that it was uncomfortable changing the Juvenile Dependency Court order because: (a) multiple ex parte orders were denied, and (b) Martina had an outburst in court. The Shriver attorney was able to address the Court's concerns, successfully arguing that the ex parte orders were denied because of procedural problems and not due to the facts in the case. The attorney pointed out that Anna had been living with Martina her whole life, and submitted extensive supporting evidence. After considering the evidence in its totality, the court concluded that Anna had been living with Martina. The court issued orders for Martina to have sole custody of Anna, and for the father to have visits to take place at Martina's discretion which would be supervised by a professional to be paid by father.

Introduction to Child Custody Cases

Child Custody Cases

Child custody cases are heard in family law courtrooms in California. Child custody cases arise when the parents of minor children are separated (or otherwise not together) and need a court order to determine how to share parenting responsibilities. Sometimes parents can agree to a parenting plan on their own, and other times they need the help of the court to come up with a plan that is in the best interests of their child(ren). Parenting plans may include general or specific schedules of days and times, including vacations, transportation, counseling and treatment services, and other details. Orders in child custody cases stand, and can be modified based upon the best interests of the child, until the child turns 18 years old or is emancipated. The Family Code is flexible and provides judicial officers wide discretion to make orders specific to the best interests of the child in each case. Given that, there are some basic concepts and terms that apply to child custody cases generally.

TYPES OF CUSTODY

Child custody is composed of two major types: ***legal custody*** and ***physical custody***. Legal custody involves the authority to make important decisions such as those related to healthcare, education, religion, and other child welfare issues. Physical custody is defined as with whom the child(ren) will live and how much time each parent spends with the child(ren).

For legal custody, a parent can have *sole custody* (i.e., only one parent has the right and responsibility to make important decisions about health, education, and welfare) or the parents can have *joint custody,* by which either parent can make such decisions. Under joint custody, parents do not have to agree on every decision, but both parents have the right to make decisions about aspects of their child's life (i.e., either parent can decide alone). However, if parents do not cooperate with one another, they may ask the court to make a decision.

Physical custody is similar to legal custody, in that a parent can have *sole* (or primary) *custody* or share *joint custody*. Sole physical custody means that the child lives with one parent most of the time, and usually visits the other parent. Likewise, joint physical custody means the child lives with both parents. Joint physical custody does not mean that the child must spend exactly half the time with each parent, but the amounts of parenting time allotted to both parents are substantial. Although a child support order is separate from a child custody and visitation order, they are related, as the amount of time each parent spends with the child will affect the amount of child support paid. The percentage of parenting time associated with sole physical custody varies by jurisdiction, but is typically 70% or more for the primary custodian.

Parents may share joint legal custody, but one parent may have primary physical custody. In this case, both parents share the responsibility of making important decisions in the child's life such as where the child will go to school, but the child lives with one parent most of the time.

If a parent has less than half time with the child, the time that parent spends with the child is generally characterized as ***visitation*** or ***parenting time***. Visitation orders are varied and can be used to specify parenting time schedules when parents share joint physical custody. There are generally four different types of visitation orders: reasonable visitation, visitation according to a

schedule, supervised visitation, and no visitation. **Reasonable visitation** orders are typically open-ended and allow parents the flexibility to work out the schedule outside of court. This type of visitation plan can work if parents get along and communicate well with one another. Generally, it helps the parents and child to have detailed visitation plans to prevent conflicts and confusion, so parents and courts often come up with a **visitation schedule** detailing the dates and times that the child will be with each parent. Visitation schedules can include holidays, special occasions (such as birthdays, Mother's Day, Father's Day, and other important dates for the family), and vacations.

In cases where the child's safety and well-being are in question (e.g., concerns about domestic violence, child abuse, or parental drug use), supervised visitation may be ordered. The person supervising the visit can be the other parent, another adult, or a professional. Supervised visitation can also be used in cases where a child and a parent need time to become more familiar with each other—for example, if a parent has not seen the child in a long time and they need to slowly get to know each other again. In some situations, it is in the child's best interests to have **no visitation** with the parent. This option is used when visiting the parent, even with supervision, would be physically or emotionally harmful to the child.

Inclination toward joint custody

California Family Code Section 3020 provides that "it is the public policy of this state to ensure that children have frequent and continuing contact with both parents after the parents are separated...and to encourage parents to share the rights and responsibilities of child rearing…" unless that would not be in the best interests of the child. Family Code Section 3011 sets out factors that must be considered by the courts in determining those best interests. Those include the health, safety, and welfare of the child; the nature and amount of contact with both parents; a history of child or intimate partner abuse; and habitual or continual abuse of alcohol or controlled substances.

GENERAL COURT PROCESS

If parents can agree to parenting plans, they do not necessarily need to go through a court process. However, if one parent does not follow the agreement, a court cannot enforce it until it becomes a *court order*. If both parents agree to a parenting plan, but want a court order that either parent can enforce, they can prepare their agreement in the form of a legal document and file it in an existing family law court case or establish a new case. A judge will review and generally sign such an agreement. After the agreement is signed by the judge, it is filed with the clerk's office and becomes a court order that is enforceable.

Filing the initial petition & requests for orders

If the court has not previously ruled on child custody and visitation, a parent will file a petition to open a child custody case. The kind of petition filed depends on the parents' current status and case circumstances. One of the most common types of petitions is for *dissolution of marriage* (i.e., divorce). Custody and visitation orders are included in any divorce that involves children. If the parents are not married or registered domestic partners, a parent may file a *parentage* case, which asks the court to issue an order to establish the legal parents of a child.

There are three other common types of petitions that either married or unmarried parents may file to obtain custody and visitation orders. These include a request for a *domestic violence restraining order* (when there are allegations of abuse, harassment, stalking, etc.), *petition for custody and support of minor children*, or a *governmental child support* case. A governmental child support case arises in two circumstances: (a) either one of the parents has applied for public benefits for the child and the state is asking for a child support order to help reimburse the state and to allow the requesting parent to help care for the child, or (b) a parent simply requests the assistance of the government in establishing a child support order. Once any of the above types of cases are opened, a parent may ask for custody and visitation orders.

If parents are unable to come to agreement on a parenting plan, either parent may file a request for orders (RFO) with the court to set a hearing and have the judge make a decision about child custody and visitation. The RFO may raise other issues such as child support, a request for orders of protection, or division of property. The parent filing the RFO is referred to as the *moving party* and is responsible for having the other parent (the *responding party*) served with a notice about the court hearing. The moving party must generally have this notice served at least 16 days before the hearing, which gives the responding party time to prepare a *responsive declaration* (i.e., an optional, formal response to the pleading), which will be reviewed at the hearing. The moving party must also file *proof* that the service of notice was completed. Both parties are usually required to attend mediation provided by Family Court Services (FCS), and additional activities may be required, depending on the case characteristics. If the parents are not able to come to an agreement at mediation, the judge will review all the information at the hearing and will come to a decision or continue the hearing to a new date, if more information is needed (such as an evaluation). A trial may also be scheduled for more complex or contested issues.

If the court has issued an order in a child custody case and a parent would like to make a modification to the existing custody or visitation order, the parent would file a new RFO. Notice would need to be given to the other party, and the parties would normally be required to attend mediation again before a hearing.

In some situations, a parent may believe that there is risk of immediate harm to the child (e.g., domestic violence, sexual abuse, child maltreatment) or they may believe that the child is at risk of being removed from the State of California. In these situations, a parent may ask for emergency (*ex parte*) orders along with the RFO. An ex parte hearing will be set by the court as soon as possible to review the facts of the case. These orders are difficult and complicated to obtain, and are only in place for a short time until a regular hearing is held on the RFO and longer term orders are made.

Relationship with juvenile court

When Child Protective Services has concerns that a child has been subjected to abuse or neglect, they remove the child from the parents' case and open a case in Juvenile Dependency Court. When this happens, the juvenile court acquires exclusive jurisdiction over the issue of child custody. Juvenile dependency cases have a strict timeline and guidelines. The files are confidential. If the child is returned to one or both parents, the juvenile court issues a final judgment (commonly known as an "exit order") which sets out an order regarding custody and any provisions for visitation. This judgment can either start a new and non-confidential family

law case or be filed in an existing family law case. Any modifications to the final judgment from juvenile court are then made in the family law case using the RFO procedure. It was possible for Shriver cases to be initiated from juvenile exit orders, and it was also possible for cases to be transferred from family court to juvenile court if it appeared that there was grave risk to the child (or if Child Protective Services opens a case while the family court case is pending). In juvenile dependency cases, both parents and children are provided with their own attorneys.

Hearings and trials

A hearing on the issue of child custody is an appropriate procedure during which to ask the court to decide on a discrete issue(s) when the parties cannot agree. A regular hearing takes a relatively short period of time (about 20 minutes) and is conducted in a less formal manner than a trial (usually based on the parties' written declarations and their testimonies before the judicial officer at the hearing). Parties often request a hearing for the court to make temporary orders about how they will share custody before a judgment is made in the case. They can also ask for a hearing when they want to modify the temporary child custody or parenting plan orders if circumstances change before a judgment is entered. Other typical hearings are about where a child will attend school, whether a child can travel outside of the state or country with a parent for vacation, or how a child will spend summer vacations with a parent. A hearing is also a process by which the court can determine whether the matter needs to proceed to trial before the judicial officer can make a determination.

In addition to regular hearings, there are review hearings, temporary emergency (ex parte) hearings, and long cause hearings. A review hearing is often scheduled by the court to check in and see how a custody and visitation arrangement is working. It provides the opportunity for parties to return to court for review and to potentially change the order without having to file additional pleadings. An ex parte or emergency hearing is held in cases where there is an immediate threat of danger to the child or for handling scheduling issues such as needing to change a court hearing date.

When a party requests, or the court sets, a trial, the process is more formal. The parties (or their counsel) often propound discovery, issue subpoenas for witnesses to testify, exchange trial briefs, and lodge exhibits and present evidence in court so that the judicial officer can make a determination on specific issues relating to child custody. The "trial day" is generally a period of no less than two and a half hours of a single court day, though trials can last for many days or weeks. While there are many issues that can be raised at trial, typical issues include those addressing legal and physical custody and parenting plans that will be entered into the judgment. If one parent wants to move with the child to a location that will make it difficult for regular physical contact with the other parent, a trial may be required so that the parents can present evidence about the relationship each has with the child, the reason for the move, and the child's specific needs. Following a trial, the court usually enters a judgment on the matter.

BEST INTERESTS OF CHILD

Up until the late 20th century, mothers in child custody cases had a distinct advantage. The tender years doctrine was a legal principle in common law that presumed the mother should have custody of a young child, because she was considered to be the best parent to raise the child during these "tender years." By the late 20th century, all states replaced this doctrine with

a focus on what kind of custody arrangement would best serve a child's physical and emotional well-being (Burchard v. Garay, 1986). According to the case law, courts do not automatically give custody to the mother or the father, no matter what the age or sex of the children. Absent a showing of harm to the child, courts will also not deny a parent's right to custody or visitation just because they were never married to the other parent, or because one parent has a physical disability or a different lifestyle, religious belief, or sexual orientation (Judicial Council of California, n.d.).

Interparental Contentiousness

If parents are asking the court to make decisions about their children, there is generally some interparental contentiousness. As described by Koel, Clark, Straus, Whitney, and Hauser (1994), "Litigation is often an index of interparental conflict and/or poor communication" (p. 265). In a national study, researchers discovered that only 25% of custody cases involved active collaboration between parents 2 years following the custody litigation (Furstenberg, Nord, Peterson, & Zill, 1983). In fact, in the majority of the custody cases reviewed, communication between parents happened only around visitation schedules.

Contentiousness in custody cases has a range of impacts, including protracted legal disputes, heightened emotional tensions, and negative effects on the children. It can also cause parents to return to the court repeatedly for custody-related matters that they are unable to resolve on their own, which can contribute to court congestion, family instability, and increased conflict.

Contentiousness and Child Outcomes

Exposure to interparental conflict has been related to a wide range of child adjustment difficulties, from depression and anxiety to conduct and behavioral problems to poor academic performance. In fact, acrimony between parents has been recognized as the primary cause for a child's emotional maladjustment following their parents' separation, having a stronger impact than the divorce itself (Booth & Amato, 2001; Chase-Lansdale, Cherlin, & Kiernan, 1995; Leon, 2003; Schepard, Atwood, & Schlissel, 1992). The level of conflict also matters: Researchers who studied the guardian ad litem reports for 105 children involved in custody cases found that emotional distress among children was linked to the level of conflict between their parents (Ayoub, Deutsch, & Maraganore, 1999). Contentiousness between parents often leads to protracted custody cases and repeated pleadings over time. Substantial research has found that contentious custody battles and continual litigation can have harmful effects on the children involved (Grych & Fincham, 1992; Johnston, 1994; Kelly, 2003; Zeitler & Moore, 2008). The typical challenges faced by children of divorced parents are aggravated when parents continually use the court system to resolve custody disputes (Zeitler & Moore, 2008).

Contentiousness and Court Involvement

Many parents seek the assistance of the courts to establish custody orders. One study found that approximately one fifth of California divorce cases with children ended up in the court system to adjudicate custody matters (Johnston, 1994). A study of more than 1,000 California families found that 10% of parents in custody litigation experienced "substantial legal conflict" and an additional 15% experienced "intense legal conflict" (Maccoby & Mnookin, 1992). While California instituted a requirement that parents attempt to resolve their case with the

assistance of court-provided mediators before their hearing, parents often need the assistance of a judge in making an order.

Custody cases can remain open for years (until the child reaches the age of majority). While the court endeavors to establish custody arrangements that are in the best interests of the child and are durable, it is not uncommon for parents to request modifications to existing custody orders. One might think that joint custody orders would be more likely to endure. However, Elrod (2001) reviewed law studies and legal cases and found that joint custody orders were just as likely to be re-litigated as were sole custody orders.

In many cases, these modifications are necessary to accommodate changing life circumstances of parents and children. However, in some instances, frequent re-litigation is a symptom of interparental conflict and limited ability to negotiate independently. Studies have found anywhere from 10% (Hetherington & Kelly, 2002) to roughly half (Koel et al., 1994) of divorced parents continue to use the court system to re-litigate related, and sometimes the same, custody issues following initial divorce proceedings. Contentious cases are more likely to recur on the court calendar (Henry, Fieldstone, & Bohac, 2009; Kelly, 2003). Estimates indicate that approximately 10% of parents—those who are high conflict—are responsible for using 90% of the time and resources spent by family courts on custody cases (Neff & Cooper, 2004). Thus, it is no surprise that "The longer a case lingers in the court system, the higher the cost to the court and the community" (Henry et al., 2009). The costs of attorney fees, experts, and other professionals can often add extraordinary stress on parents and potentially take away resources that could be provided to the children for their education and other needs.

Potential Value of Mandatory Settlement Conferences

In research on interventions for contentious custody cases, Kelly (2003) writes that a small group of chronically contentious and litigious parents are responsible for using the court's resources and exposing children to events that may harm them emotionally and in other ways. Kelly concludes that "Mandatory settlement conferences with judges, immediately following failed mediations, give those angry parents who want their day in court the opportunity to be heard, without all the preparation for a more formal hearing or trial" (p. 40). The San Diego Shriver custody pilot project implemented mandatory settlement conferences, conducted by a judicial officer, for this purpose, and this report includes an examination of this court innovation. Settlement conferences are also held for custody cases in Los Angeles County, but were not specific to the Shriver project.

Shriver Custody Pilot Projects

Implementation Overview & Project Descriptions

Shriver client "Suzanne."
When Suzanne applied for Shriver services, she had already filed a motion with the court seeking an order allowing her to move with her children out of the county. The father was largely absent in the children's lives, but the children had spent quite a bit of time with their paternal grandparents, who lived nearby. The paternal grandparents were adamantly opposed to the move and hired an attorney to embark on extensive litigation in an effort to prevent Suzanne from moving. The paternal grandparents successfully intervened in the case, and then both the father and the paternal grandparents were seeking custody of the children due to Suzanne's request to move. This meant Suzanne was fighting for custody against both the father and his parents, who both were represented by attorneys. Suzanne was clearly at a great disadvantage in the proceedings. This changed after she became a Shriver client. Her attorney represented her during a lengthy and contentious battle. The case culminated in a trial that involved testimony from multiple witnesses and hundreds of proposed exhibits for the court to consider. In the end, the opposing party and his parents' requests were denied and Suzanne's request was granted. She was allowed to move with the children, and they are doing well in their new home.

Implementation Overview & Pilot Project Descriptions

Implementation of the Shriver custody pilot projects was tracked through the collection of quantitative service data. At each project, legal services agency staff entered information into the program services database to record characteristics of the clients, cases, and services provided. In this section, a brief cross-project implementation overview is provided based on these aggregated data.

To understand the unique implementation circumstances and approaches of each pilot project, legal services staff and court staff were interviewed about their project's context, service structure, and goals. This information was synthesized to create a thorough description of each project, which are also provided in this section.

Detailed Service Summaries for each custody pilot project, inclusive of several additional indicators and project-specific service data, can be found in Custody Appendix A. To fully understand each Shriver pilot project, the reader is strongly advised to read these Project Service Summaries.

BRIEF OVERVIEW OF CROSS-PROJECT IMPLEMENTATION

What services were provided by the Shriver Custody Pilot Projects?

The legislation sought to create services for low-income individuals and families, specifically those with incomes at or below 200% the Federal Poverty Level. The legislation also intended for services to reach parents who faced an opposing party with legal representation and who had other potential disadvantages navigating the legal system (e.g., limited English proficiency) or other risk factors that could impact their or their child's well-being (e.g., domestic violence, mental health issues). Services were offered to mothers and fathers, as well as to parents who sought to obtain custody and those who sought to preserve it.

As the highest level of Shriver service, attorneys provided representation to clients for their custody cases. This involved the attorney working on all aspects of the child custody case (essentially providing full representation for the custody proceedings), but was "limited scope" in that the legal assistance did not address other family law matters. In this report, this level of service is termed Shriver ***representation***. The projects also offered a range of ***unbundled services***, which entailed legal help for discrete tasks such as assistance preparing forms, education, brief counsel and advice, and representation for a mediation session.

Shriver projects offered a range of legal services and each project employed a unique service model based on its local circumstances. At all sites, Shriver services involved legal assistance provided by legal aid services attorneys, and some included services provided by Superior Court staff. A description of each project's service structure follows.

Who was served by the three Shriver Custody Pilot Projects?

The legislation sought to create services for low-income individuals and families, by reaching parents who faced an opposing party with legal representation and who had other potential disadvantages navigating the legal system or other risk factors that could impact their or their child's well-being. Service data indicate that Shriver projects reached this population.

From the start of the Sargent Shriver program in October 2011 through October 2015, across the three custody pilot projects, 1,100 low-income clients received legal assistance with their child custody cases. Just over half of these litigants (54%; *n*=592) were provided representation by an attorney for the custody case, and just under half (46%; *n*=508) were provided unbundled services. The type of unbundled services offered and the proportion of clients who received representation versus unbundled services varied across the pilot projects and was based on their unique program models.

DEMOGRAPHIC CHARACTERISTICS OF CLIENTS

The majority of Shriver clients were female (73%) and non-White (55% Hispanic/Latino, 17% African American, 6% Asian). Over 40% of Shriver clients had a high school diploma or less, nearly one third had limited English proficiency, and one fifth experienced disability. One third of Shriver clients received CalFresh benefits, and their average monthly income was $1,197 (median = $1,033), well below the 2014 Federal Poverty Level threshold of $2,613 for a family of at least two.

FAMILY AND CONTEXTUAL CHARACTERISTICS

In addition to the demographic risk factors (e.g., low income, limited English proficiency), Shriver clients also tended to report a variety of other risk factors for themselves and their children. More than half of the cases involved allegations of domestic violence within the past 5 years. More than one third involved allegations of drug and alcohol abuse. Over one quarter involved current or previous involvement with Child Protective Services, and over one third reported police involvement in the 3 months prior to seeking Shriver services.

CASE CHARACTERISTICS

Roughly half (54%) of Shriver clients were the moving party (i.e., the person who initiated the pleading), and 39% were responding parties (6% were other, <1% were missing data). Half of clients were seeking to modify an existing custody order, and 43% were seeking to obtain an initial custody order (6% were other issues, <1% were missing data). On average, the custody cases had been open for 2 years before the Shriver attorneys became involved.

Of those litigants who received representation by a Shriver attorney, 89% were facing an opposing party who had representation at the time of Shriver intake (10% had self-represented opposing parties at the time of intake and 1% were missing data). On average, Shriver custody cases involved one or two children. The average age of the children was 6 years and nearly one fifth of them experienced disability.

How Did Custody Cases with Shriver Representation Proceed?

Data on case outcomes in the program services database centered largely on the custody and visitation orders. However, it is understood that these data elements, alone, may be insufficient to reflect the complexity of these cases or the impact of Shriver services on case outcomes. Determining successful outcomes in a child custody case is difficult because evaluation of the results can be subjective (one party's opinion may not agree with another party's opinion, and some circumstances may weigh more heavily than others). Leveling the playing field and ensuring child-centered results are more important goals than whether the Shriver client obtained custody, as that might not necessarily be the best result for the child. Further, in some instances, the client's goal may not be to obtain sole custody, but instead to prevent the loss of parenting time or prevent the other parent from moving out of state with the child, and legal representation may help avert these negative outcomes for the client. While important, these outcomes are difficult to capture in a standardized manner with quantitative data.

Despite the measurement challenges, across the three pilot projects, the following themes emerged:

Joint legal custody orders occurred in half or more of cases. Across the three projects, 59% of cases resulted with parties sharing joint legal custody, 16% of clients were awarded sole legal custody, and 16% of opposing parties were awarded sole legal custody. The rate at which parties were ordered to have joint legal custody ranged across projects from 49% in Los Angeles, to 58% in San Francisco, to 71% in San Diego.

Joint physical custody orders occurred in less than one quarter of cases. Despite California's statutorial inclination toward joint physical custody, and the notable frequency of joint legal custody orders, across the three projects, just 22% of cases resulted in joint physical custody

orders. This ranged from 16% in Los Angeles, to 18% in San Diego, to 29% in San Francisco, potentially highlighting the special parenting challenges present in these cases.

Sole physical custody orders varied. Across the three projects, at intake, 23% of Shriver clients had sole physical custody of the child and 66% wanted it. At resolution, 38% of clients were awarded sole physical custody. In contrast, at intake, 25% of opposing parties had sole physical custody and 54% wanted it. At resolution, 30% of opposing parties were awarded sole physical custody. These proportions varied by project, likely due to the differences in client populations across the sites. Among Los Angeles cases, 55% ended with the Shriver client awarded sole physical custody and 16% with the opposing party obtaining sole custody. Among San Diego cases, 40% ended with the Shriver client awarded sole physical custody and 30% with the opposing party awarded sole physical custody. In San Francisco, where a smaller proportion of Shriver clients were seeking to gain sole custody, 23% of cases ended with the Shriver client awarded sole physical custody and 43% with the opposing party awarded sole physical custody.

Scheduled, unsupervised visitation for the non-custodial parent was common. Of the cases in which one party was awarded sole physical custody, 66% of non-custodial parents were awarded parenting time that was scheduled and unsupervised. Orders for "reasonable visitation" (i.e., parenting time that is unscheduled and determined via negotiation between parents) were rare (1% to 10% of cases across sites), underscoring the necessity for the court to provide structure for the custody arrangements and parental interactions given the issues in these cases.

Among the three projects, 18% of cases involved non-custodial parents (sometimes the Shriver client, sometimes the opposing party) being awarded scheduled and supervised parenting time with the children. Primary reasons for supervision pertained to concerns regarding domestic violence, reintroduction, abduction, or a combination of these concerns.

Other orders occurred in a minority of cases. Across the three projects, parenting classes were ordered for either the client or the opposing party in 14% of cases. Therapy was ordered for Shriver clients in 12% of cases, for the opposing parties in 7% of cases, and for children in 16% of cases. Orders issued by a criminal court, such as protective orders and participation in a batterer intervention program, were documented rarely with regard to the family law case, but this is likely because those orders occurred in separate proceedings.

SHRIVER PILOT PROJECT DESCRIPTION: LOS ANGELES

This section describes how the Shriver Los Angeles custody pilot project addressed child custody cases. This summary includes information on the program context, involved agencies, and service model. Detailed information on the litigants served, case characteristics, and outcomes can be found in the Project Service Summary in Custody Appendix A.

Project Context

COMMUNITY

In 2014, the population of Los Angeles County was an estimated 10 million individuals, of which 17.8% were living under the Federal Poverty Level. The median household income was $55,909 (or $4,659 per month) and the average number of persons per household was 3.0.[6]

AGENCIES AND COURTS INVOLVED

The Los Angeles custody pilot project is a collaboration between the Los Angeles Center for Law and Justice (LACLJ) and the Levitt & Quinn Family Law Center (L&Q), which offer legal aid services,[7] and three entities at Superior Court's Stanley Mosk ("Mosk") Courthouse—namely, the Self-Help Resource Center (SHRC), Family Court Services (FCS), and the domestic violence clinic of the Los Angeles County Bar Association. LACLJ serves as the primary point of contact for the project and coordinates all services. The two-firm structure allows the project to handle conflicts of interest and to provide services to both parents in family law cases if the parties are eligible. All LACLJ and L&Q client-facing staff members are bilingual in English and Spanish.

The Superior Court of California, County of Los Angeles has more than 40 courthouses that cover the 4,000-square-mile county. The Mosk courthouse, which houses the Los Angeles custody pilot project, is in the Central District; it is the largest court and has the largest SHRC and FCS offices in the County. Mosk also covers many of the poorest areas of Los Angeles—Skid Row, South Los Angeles, and Pico-Union—where many vulnerable individuals and families with limited capacity to access courts, secure representation, or represent themselves reside.

Legal aid services to litigants with family law cases have diminished in recent years and, in Los Angeles County, had been limited primarily to cases involving domestic violence. Before the implementation of the Shriver custody pilot project in Los Angeles, there were few agencies offering free or low-cost legal services to litigants in custody cases, and many of the litigants who are eligible for free Shriver services may not have qualified for the free or low-cost services that LACLJ or L&Q offered previously. Furthermore, the Shriver project targeted services toward the most complex cases, whose long-lasting and high-conflict natures often made it impossible for existing nonprofit agencies to effectively address. Self-represented litigants could also seek assistance from the SHRC, which provides legal information and education to help parties complete their paperwork and represent themselves in their cases, but services are based on a

[6] Demographic data were retrieved from the U.S. Census Bureau, County & States QuickFacts at www.census.gov in July 2015.

[7] The Los Angeles custody pilot project initially contracted with Barrio Action Youth and Family Center to offer case management services and also with the Asian Pacific American Legal Center for interpreter services, but these programs were discontinued due to underutilization.

first-come, first-served basis and are limited to basic information and assistance rather than coaching, advice, and representation.

Project Implementation Model

The Los Angeles custody pilot project entailed legal aid services provided by two agencies, with referrals coming through the SHRC, FCS, and LA Bar Association located at the Mosk Courthouse. LACLJ staffed a project coordinator and stationed the pilot project office at the courthouse to manage the referrals and services.

LEGAL AID SERVICES

Services offered, referral sources, and eligibility requirements

The Los Angeles custody pilot project offers unbundled legal services, such as legal advice and document preparation, as well as limited scope representation ("representation") to eligible clients. The project also funded interpreters for clients when meeting with their lawyers and other court staff, such as FCS, a service now provided by the court.

LACLJ and Levitt & Quinn provide legal services for clients meeting the project criteria: (a) a monthly income not greater than 200% of Federal Poverty Level, and a case that (b) involves a "high-conflict" custody issue and (c) is pending at the Mosk courthouse. To assess whether a case is high conflict and to determine eligibility and level of service, attorneys determine whether the opposing party has legal representation and consider the legal merits of the client's position, history of mental illness and other disabilities, domestic violence, immigration status, age, language access, current custodial status, and child welfare. Every client, whether or not they are offered representation, is provided with a detailed assessment of and advice about their case and education about the legal process.

Partners at the Mosk courthouse—namely, the SHRC, FCS, and the Los Angeles Bar Association Domestic Violence Services Project—are the primary sources of project referrals. Many self-represented litigants seek assistance from the SHRC, which provides information to help litigants represent themselves in their custody cases. SHRC services are provided through workshops and on a first-come, first-served basis and are generally not appropriate for litigants with complex, high-conflict custody issues. FCS also sees many self-represented litigants, who are ordered to complete mediation in custody cases. The Los Angeles Bar Association Domestic Violence Services Project provides legal help to victims of domestic violence, many of whom are simultaneously contending with issues related to child custody. SHRC staff, FCS mediators, and DV Services Project staff screen and refer litigants in high-conflict custody cases to the Los Angeles custody pilot project office. LACLJ and L&Q enroll eligible litigants as clients and provide legal advice, document preparation, representation, mediation, and support services.

In addition to legal services, the Los Angeles custody pilot project provides clients with social service support and referrals. LACLJ includes master's-level social work student interns as part of its legal team. These "Community Care Advocates" (CCAs) conduct a comprehensive assessment of litigants when they present for Shriver services. Litigants who receive brief legal services (e.g., legal advice) are given a list of available local services, and litigants who receive extended legal services receive more ongoing support and assistance from the CCA over the course of their cases. The services provided are determined by the case attorney, supervised by

a Licensed Clinical Social Worker (LCSW), aligned with client goals, and might include education about domestic violence, safety planning, warm handoff for mental health treatment, referrals for housing placements, or accompaniment to various appointments.

Additional referral sources include other legal aid agencies in Los Angeles County, private bar attorneys, and judges. The court also includes notices in its mailings to litigants informing them of services available at the self-help center, and the project coordinator stays in contact with court deputies who are aware of eligible cases. The Shriver project also works closely with other local nonprofits, including local domestic violence services agencies, to refer clients to the LACLJ for legal assistance needs.

COURT-BASED SERVICES

Services offered, referral sources, and eligibility requirements

At the start of the Los Angeles custody pilot project, the court offered an 8-hour, Shriver-funded parenting class which was designed for parents in high-conflict custody disputes and explained the impacts of such disputes on children. The project offers the class to all parents going through FCS. LACLJ collaborated with FCS to create a six-part video series (in English and dubbed in Spanish) that is available online, and accessible when the court orders litigants to complete parenting courses. FCS also created a shorter version, to be publicly available via the court and LA custody pilot project websites.

These Shriver-funded services are in addition to the existing (not Shriver-funded) mediation services, through FCS, that are mandatory for all families in custody disputes. As part of these mediation services, Los Angeles Superior Court offers an online program to prepare families for the sessions. The program is designed to provide information to litigants on the mediation process and to prepare them to attend. The online program is available in English and Spanish.

Table C1. Legal Aid Services and Court-Based Shriver Services Available from the Los Angeles Custody Pilot Project

	Shriver Service Location	
Services Available	**Legal Services**	**Court**
In-person parenting class		√
Online parenting class		√
Brief counsel and advice	√	
Document preparation	√	
Legal education	√	
Court representation	√	
Language interpretation	√	√
Representation	√	

GOALS FOR CLIENTS

The main goal of the Los Angeles custody pilot project is to provide access to quality legal services for parents in high-conflict custody cases to help bring about the most beneficial results for the family. The project avoids tactics that needlessly discredit the opposing party, as that is not conducive to resolving conflict (and typically increases it). The project encourages settlement when appropriate, attempts to decrease non-meritorious litigation, and strives to obtain child-centered custody orders. In cases where the attorney determines that the client's legal position lacks merit or that the client is encouraging conflict, the attorney provides legal advice and will not encourage the client to move forward with that particular request.

Brief Summary of Service Provision

Below is a list of service provision highlights. For a more extensive and detailed accounting of services provided, the reader should refer to the full Project Service Summary in Appendix A.

Information regarding the service provision, case characteristics, and outcomes was obtained from the program services database. Data were collected by LACLJ and L&Q staff on all parties seeking services from February 2012 through November 2015. This section presents data pertaining to the legal aid services clients only; data were not available for the litigants who attended parenting classes or watched the parenting video at the court.

WHO RECEIVED LEGAL AID SERVICES?

Between February 2012 and November 2015, the Los Angeles custody pilot project provided legal aid services to litigants in 403 cases. At intake, Shriver attorneys collected information about their clients, including demographics, household characteristics, and aspects of the custody case. Overall, the average client age was 35 years (median = 34), 82% were female, 73% were Hispanic or Latino, 46% had some post-secondary education, 17% had known or observable disabilities,[8] and 62% had limited English proficiency (i.e., could not effectively communicate in English without the assistance of an interpreter). Demographic characteristics varied slightly between the litigants who received representation and those who received unbundled services. Table C2 shows the characteristics of the 403 litigants receiving Shriver legal aid services, by level of service received.

[8] The most common type of disability or disorder was a psychiatric or emotional disability (6%, *n*=25), followed next by more than one disability/disorder, (5%, *n*=22), physical disability (2%, *n*=7), or other disability (4%, *n*=16).

Table C2. Demographic Characteristics of Shriver Legal Aid Services Clients

	Level of Service		
Client Level Characteristics	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Age (years)			
18 to 24	19 (10%)	27 (13%)	46 (11%)
25 to 44	157 (81%)	140 (67%)	297 (74%)
45 to 61	17 (9%)	39 (19%)	56 (14%)
62 or older	0 (0%)	2 (1%)	2 (<1%)
Unknown/not collected	1 (1%)	1 (<1%)	2 (<1%)
Gender			
Male	26 (13%)	44 (21%)	70 (17%)
Female	164 (85%)	165 (79%)	329 (82%)
Transgender	1 (1%)	0 (0%)	1 (<1%)
Unknown/not collected	3 (2%)	0 (0%)	3 (1%)
Race/Ethnicity[a]			
Black or African American	19 (11%)	44 (20%)	63 (16%)
Hispanic/Latino	153 (78%)	142 (68%)	295 (73%)
White	8 (4%)	14 (7%)	22 (5%)
Other	12 (6%)	9 (4%)	21 (5%)
Unknown/declined	2 (1%)	0 (0%)	2 (<1%)
Education			
High school degree or less	98 (50%)	115 (55%)	213 (53%)
Any post-secondary	92 (47%)	93 (45%)	185 (46%)
Unknown/not collected	5 (3%)	0 (0%)	5 (1%)
Limited English Proficiency			
Yes	128 (66%)	122 (58%)	250 (62%)
No	66 (34%)	87 (42%)	153 (38%)
Disability			
Yes	29 (15%)	41 (19%)	70 (17%)
No	163 (84%)	164 (79%)	327 (81%)
Unknown/not collected	2 (1%)	4 (2%)	6 (1%)
Total	194 (100%)	209 (100%)	403 (100%)

Note. Data from the Shriver project services database (as of 11/12/15). [a] Litigants who identified as Hispanic/Latino and any other race are included in the Hispanic/Latino row.

Approximately half (45%) of Shriver clients received CalFresh benefits[9] and 53% received public health benefits, such as Medi-Cal.[10] The median monthly household income was $952 (mean = $1,126), which is far below the 2014 income threshold of $2,613 for a family of at least two.

[9] The CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP; formerly "food stamps"), provides qualified, low-income households with monthly electronic benefits that can be used to buy most foods at many markets and food stores.

[10] Medi-Cal offers free or low-cost health coverage for low-income children, pregnant women, and families.

(The income of the opposing party was not known.) Table C3 shows the household characteristics for litigants receiving Shriver legal services, by level of service.

Table C3. Household Characteristics of Shriver Legal Aid Services Clients

Clients' Household Level Characteristics	Level of Service		
	Representation	Unbundled Services	Total
Monthly Income			
Mean	$1,182	$1,074	$1,126
Median	$995	$906	$952
SD	$892	$752	$823
Range	$0 to $4,575	$0 to $3,530	$0 to $4,575
Received CalFresh Benefits, *N* (%)			
Yes	77 (39%)	104 (50%)	181 (45%)
No	117 (61%)	105 (50%)	222 (55%)
Received Public Health Benefits, *N* (%)			
Yes	101 (52%)	113 (54%)	214 (53%)
No	93 (48%)	96 (46%)	189 (47%)
Total	194 (100%)	209 (100%)	403 (100%)

Note. Data from the Shriver project services database (as of 11/12/15).

CASE CHARACTERISTICS AND OUTCOMES

From February 2012 through November 2015, the Los Angeles custody pilot project provided services to litigants in 403 cases. Nearly half (48%) of these cases received representation, and half (52%) received unbundled services. Of those litigants who received representation, 70% were facing an opposing party with legal representation. When Shriver attorneys provided representation for a case, they spent an average of 237 days (or 7.8 months) and worked an average of 46 hours (median = 28). When Shriver attorneys provided unbundled services, they worked an average of 6 hours (median = 4) on each case.

Among cases that received representation by Shriver counsel:

Legal custody. At intake, 19% of Shriver clients had sole legal custody of the child and 63% wanted it. At resolution, 30% of clients were awarded sole legal custody. In contrast, at intake, 10% of opposing parties had sole legal custody and 30% wanted it. At resolution, 8% of opposing parties were awarded sole legal custody. The percentage of cases with joint legal custody increased from 31% at intake to 49% at resolution. Many of these changes are due to the 36% of cases without legal custody orders at intake (see Table C4).

Physical custody. At intake, 33% of Shriver clients had sole physical custody of the child and 81% wanted it. At resolution, 55% of clients were awarded sole physical custody. In contrast, at intake, 17% of opposing parties had sole physical custody and 41% wanted it. At resolution, 16% of opposing parties were awarded sole legal custody. The percentage of cases with joint physical custody was 12% at intake and 16% at resolution. Many of these changes are due to the 36% of cases without custody orders at intake (see Table C4).

Visitation/ Parenting time. Of the cases in which one party was awarded sole physical custody, 66% of non-custodial parents received scheduled, unsupervised parenting time with the child(ren). For the 33 cases where supervised visitation was ordered for the non-custodial parent (see Table CA8 in the Appendix), the primary reasons were concerns for domestic violence (42%), reintroduction when a parent had not had contact with a child for a significant period of time (9%), or multiple reasons (12%).

Table C4. Child Custody Orders at Intake, Client's Goals, Opposing Party's (OP's) Goals, and Custody Outcomes for Shriver Representation Clients

Custody Orders	Status at Intake *N* (%)	Client's Goals *N* (%)	OP's Goals *N* (%)	Outcome *N* (%)
Legal Custody				
No previous orders	70 (36%)	--	--	--
Client has sole custody	37 (19%)	122 (63%)	6 (3%)	58 (30%)
Share joint custody	61 (31%)	66 (34%)	86 (44%)	95 (49%)
OP has sole custody	19 (10%)	0 (0%)	59 (30%)	16 (8%)
Other	0 (0%)	0 (0%)	1 (<1%)	1 (<1%)
Not applicable	--	2 (1%)	1 (<1%)	21 (11%)
Missing/unknown	7 (4%)	4 (2%)	41 (21%)	3 (2%)
Physical Custody				
No previous orders	69 (36%)	--	--	--
Live with client all or most of the time	64 (33%)	157 (81%)	22 (11%)	106 (55%)
Share equal time (joint custody)	23 (12%)	28 (14%)	50 (26%)	32 (16%)
Live with OP all or most of the time	33 (17%)	5 (3%)	79 (41%)	32 (16%)
Other	0 (0%)	0 (0%)	4 (2%)	0 (0%)
Not applicable	--	1 (<1%)	0 (0%)	0 (0%)
Missing/unknown	5 (3%)	3 (2%)	39 (20%)	24 (12%)
Visitation				
No previous orders	73 (38%)	--	--	--
Reasonable visitation	4 (2%)	8 (4%)	10 (5%)	3 (2%)
Scheduled (unsupervised) visitation	64 (33%)	109 (56%)	98 (51%)	114 (59%)
Supervised visitation for client	13 (7%)	1 (1%)	19 (10%)	6 (3%)
Supervised visitation for OP	11 (6%)	52 (27%)	4 (2%)	28 (14%)
No visitation for client	3 (2%)	0 (0%)	5 (3%)	0 (0%)
No visitation for OP	16 (8%)	13 (7%)	1 (1%)	7 (4%)
Other	3 (2%)	4 (2%)	7 (4%)	5 (3%)
Not applicable	--	4 (2%)	3 (2%)	26 (13%)
Missing/Unknown	7 (4%)	3 (2%)	47 (24%)	5 (3%)
Total	194 (100%)	194 (100%)	194 (100%)	194 (100%)

Note. Data from the Shriver project services database (as of 11/12/15). Includes representation cases (*n*=194).

Other case outcomes. A small proportion of cases entailed additional orders. Parenting classes were ordered for either the client or opposing party in 7% to 9% of cases. Clients in 4% of cases were ordered or agreed to participate in therapy, and child therapy was ordered for 10% of cases. A restraining order was granted for the client in 15% of cases. Criminal protective orders had been issued in a criminal proceeding for the client in 2% of cases and the opposing party was ordered to participate in a 52-week batterer's intervention program in 3% of cases.

In highly contentious custody cases, law enforcement is often involved. When asked about the frequency of police involvement in the 3 months before Shriver intake and the 3 months prior to case resolution, 23% of Shriver clients reported a decrease in the frequency of police involvement and 4% reported an increase.[11]

[11] Fourteen percent of clients reported the same level of police involvement; 39% reported no police involvement at either time point; and 20% were unknown or missing this information.

SHRIVER PILOT PROJECT DESCRIPTION: SAN DIEGO

This section describes how the Shriver San Diego custody pilot project addressed child custody cases. This summary includes information on the program context, involved agencies, and service model. More detailed information on the litigants who received services, case characteristics, and outcomes can be found in Custody Appendix A.

Project Context

COMMUNITY

In 2014, the population of San Diego County was an estimated 3.2 million individuals, of which 14.4% were living below the Federal Poverty Level. The median county household income was $62,962 (or $5,247 per month) and the average number of persons per household was 2.8.[12]

AGENCIES AND COURTS INVOLVED

The San Diego custody pilot project involved a collaboration between the San Diego Volunteer Lawyer Program (SDVLP) and the San Diego Superior Court. Before the Shriver project, there were no free legal services available for self-represented litigants facing a represented opposing party in custody and visitation disputes. The Family Law Facilitator's (FLF's) Office, part of the court, provides information to self-represented parents who have questions about family law issues, but FLF services are based on a first-come, first-served model and do not include help in the courtroom. With the addition of Shriver services in San Diego, low-income litigants involved in custody disputes could access free legal services, regardless of their current custody status, and the services offered at SDVLP were expanded beyond victims of domestic violence.

The San Diego Superior Court has four divisions across the county: Central (downtown), North County, South County, and East County. The Shriver San Diego custody pilot project serves litigants whose cases are heard in the downtown (Central) courthouse. In late 2013, the Shriver project was expanded to include litigants in the East County courthouse. Custody litigants may receive self-help assistance at the Central Courthouse or at the Family Law Courthouse, which, at the time of this study, was located approximately seven blocks from the Central Courthouse.

Project Implementation Model

The San Diego custody pilot project entailed both legal aid services and court-based services. Specifically, SDVLP provided representation and unbundled services to parties in custody cases. In addition, the San Diego Superior Court implemented Shriver settlement conferences, an innovation for this court, whereby a judge facilitated a settlement conference with the parties in custody disputes. The FLF's Office collaborated with SDVLP to streamline the referral process, by referring litigants and by including information about Shriver services in all form packets.

The project began in February 2012 and involved representation to litigants in custody and visitation disputes where one party was seeking sole legal or physical custody and the opposing party had retained legal representation. In response to litigant needs, and amid concerns that the original eligibility criteria were too restrictive, the initial service structure was adapted in

[12] Demographic data were retrieved from the U.S. Census Bureau, County & States QuickFacts at www.census.gov in July 2015.

January 2013 in an effort to assist a greater number of litigants. The second phase of the project allowed unbundled services to be provided to custody cases with self-represented litigants on both sides.

LEGAL AID SERVICES

Services offered, referral sources, and eligibility requirements

SDVLP served as the central point of contact for the San Diego custody pilot project. SDVLP staff screened cases for eligibility and provided legal services (including representation) to eligible litigants. SDVLP also coordinated training for providers of expanded self-help services, while this component of the project was active.[13, 14]

To be eligible to receive representation from an attorney at SDVLP, a litigant must have a monthly income not greater than 200% of the Federal Poverty Level (FPL), be involved in a custody dispute in which at least one party is requesting sole legal or physical custody, and be facing an opposing party represented by an attorney. SDVLP provided Shriver services to anyone who met these eligibility criteria; cases meeting additional merit criteria were prioritized for representation, which involved assistance by the attorney on all aspects of the custody dispute. If the opposing party in the custody dispute was also self-represented, the Shriver client was provided with unbundled services such as education, brief counsel and advice, and other paperwork preparation.

Litigants were referred to the Shriver project through a variety of sources. Shriver services were publicized on the court's website and flyers were stapled to the front of the court packets containing custody forms. The FLF's Office handed out informational flyers, which included general eligibility guidelines, and litigants waiting in line to receive assistance from the FLF's Office were screened for Shriver eligibility by a Shriver staff member. Litigants could also call a legal aid hotline, staffed by Legal Aid Society of San Diego, where they were screened for eligibility and referred to SDVLP for services.

COURT-BASED SERVICES

Services offered, referral sources, and eligibility requirements

In addition to the legal aid services provided by SDVLP, the San Diego Superior Court implemented Shriver settlement conferences. Self-represented litigants were scheduled for settlement conferences through the Family Law Business Office (or clerk's office), and the conference was overseen by a judge, but in a less formal setting than a court hearing. These

[13] For a limited time, when both sides in the custody dispute were self-represented, each party was provided expanded self-help services (i.e., legal advice and counsel) by certified law students, supervised by faculty members, before the start of the settlement conference. The certified law students and faculty were trained by attorneys at SDVLP. This component of the San Diego custody pilot project is no longer in operation, and data for these cases were not available for this report.

[14] In the original project proposal, SDVLP also planned to implement a Fast Track program, whereby litigants seeking services at the beginning of the court case would be set up with a series of conferences and expedited hearings designed to resolve the case within 60 days of filing, as opposed to the typical 4- to 6-month timeframe. However, litigants seeking Shriver services often did not approach SDVLP at the outset of their cases (i.e., many waited until immediately before their hearings to seek assistance), which made the Fast Track program ultimately not possible to implement.

settlement conferences were designed specifically to serve Shriver litigants and were conducted when both parties agreed to participate. Litigants could be referred for Shriver settlement conferences at any point in their cases, and the referral could come from SDVLP or from the case's presiding judge.

Table C5. Legal Aid Services and Court-Based Shriver Services Available from the San Diego Custody Pilot Project

	Shriver Service Location	
Services Available	**SDVLP**	**Court**
Settlement conferences		√
Legal education	√	
Brief counsel and advice	√	
Representation at settlement conferences	√	
Document preparation	√	
Representation	√	

GOALS FOR CLIENTS

The San Diego custody pilot project reported that its top goals were to resolve cases as soon as possible through alternative dispute resolution services, such as settlement conferences and mediation. Settlement conferences are seen as, potentially, the best option for the litigant, the children, and the court. Stakeholders explained that when the parties play a role in the negotiation and settlement of their cases, they have the ability to exercise some control over the outcomes of their cases and are, therefore, typically more satisfied with the arrangement and less likely to return to court for the same matter. Early resolution helps to ensure stability for the children, and stakeholders reflected that parents seem more likely to respectfully collaborate (or "co-parent") on custodial matters, which serves the best interests of the child.

Brief Summary of Service Provision

Below is a list of service provision highlights. For a more extensive and detailed accounting of services provided, the reader should refer to the full Project Service Summary in Appendix A.

Information regarding the types of services provided, case characteristics, and outcomes were obtained from the program services database entered by SDVLP staff.

WHO RECEIVED SHRIVER SERVICES?

Between February 2012 and November 2015, the San Diego custody pilot project provided legal aid services to litigants in a total of 470 cases. Of these cases, 36% received representation and 64% received unbundled services. During this same period, a total of 129 Shriver cases participated in at least one settlement conference. Of these cases, 123 were receiving Shriver representation and six were receiving unbundled services.

At the time of Shriver intake, SDVLP staff members collected information about their clients, including demographics, household characteristics, and characteristics pertinent to the custody cases. The average age of the client was 31 years, 75% were female, 49% were Hispanic or Latino, half had at least some post-secondary education, 21% had known or observable

disabilities,[15] and 8% could not effectively communicate in English without interpretation (limited English proficiency). Demographic characteristics varied modestly between litigants who received representation and those who received unbundled services. Table C6 displays the demographic characteristics of the 470 litigants served by SDVLP, by level of service.

Table C6. Demographic Characteristics of Shriver Legal Aid Services Clients

	Level of Service		
Client Level Characteristics	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Age (years)			
18 to 24	21 (12%)	80 (27%)	101 (21%)
25 to 44	135 (79%)	199 (67%)	334 (71%)
45 to 61	15 (9%)	20 (7%)	35 (7%)
62 or older	0 (0%)	0 (0%)	0 (0%)
Unknown/not collected	0 (0%)	0 (0%)	0 (0%)
Gender			
Male	30 (18%)	88 (29%)	118 (25%)
Female	140 (82%)	211 (71%)	351 (75%)
Transgender	0 (0%)	0 (0%)	0 (0%)
Unknown/not collected	1 (1%)	0 (0%)	1 (0%)
Race/Ethnicity[a]			
Asian	14 (5%)	8 (5%)	22 (5%)
Black or African American	18 (11%)	62 (21%)	80 (17%)
Hispanic/Latino	72 (42%)	160 (54%)	232 (49%)
White	56 (33%)	39 (13%)	95 (20%)
Other	16 (9%)	15 (5%)	31 (7%)
Unknown/declined	1 (1%)	9 (3%)	10 (2%)
Education			
High school degree or less	48 (28%)	152 (51%)	200 (43%)
Any post-secondary	96 (56%)	141 (47%)	237 (50%)
Unknown/not collected	27 (16%)	6 (2%)	33 (7%)
Limited English Proficiency			
Yes	17 (10%)	21 (7%)	38 (8%)
No	154 (90%)	278 (93%)	432 (92%)
Unknown/not collected	0 (0%)	0 (0%)	0 (0%)
Disability			
Yes	58 (34%)	41 (14%)	99 (21%)
No	97 (57%)	190 (64%)	287 (61%)
Unknown/not collected	16 (9%)	68 (23%)	84 (18%)
Total	171 (100%)	299 (100%)	470 (100%)

Note. Data from the Shriver project services database (as of 11/12/15). [a] Litigants who identified as Hispanic/Latino and any other race/ethnicity are included in the Hispanic/Latino row.

[15] Most common were a psychiatric or emotional disability (9%, *n*=41), multiple disabilities/disorders (4%, *n*=18), a substance use disorder (4% *n*=17), physical disability (2%, n=9), or other disability (3%, *n*=14).

More than one third of Shriver clients (37%) received CalFresh benefits,[16] and 51% received public health benefits, such as Medi-Cal.[17] The median household monthly income was $1,200 (mean = $1,302), which is far below the 2014 income threshold of $2,613 for a family of at least two. The income of the opposing parent was not known. Table C7 details the household characteristics for Shriver clients served by SDVLP, broken down by level of service.

Table C7. Household Characteristics of Shriver Legal Aid Services Clients

	Level of Service		
Client's Household Level Characteristics at Shriver Intake	**Representation**	**Unbundled Services**	**Total**
Monthly Income			
Mean	$1,235	$1,340	$1,302
Median	$1,194	$1,200	$1,200
SD	$756	$900	$851
Range	$0 to $3,118	$0 to $4,350	$0 to $4,350
Missing	0 (0%)	0 (0%)	0 (0%)
Received CalFresh Benefits, *N* (%)			
Yes	71 (42%)	101 (34%)	172 (37%)
No	100 (58%)	198 (66%)	298 (63%)
Missing	0 (0%)	0 (0%)	0 (0%)
Received Public Health Benefits, *N* (%)			
Yes	65 (38%)	173 (58%)	238 (51%)
No	106 (62%)	126 (42%)	232 (49%)
Missing	0 (0%)	0 (0%)	0 (0%)
Total	17 (100%)	299 (100%)	470 (100%)

Note. Data obtained from the Shriver project services database (as of 11/12/15).

CASE CHARACTERISTICS AND OUTCOMES

From February 2012 through November 2015, SDVLP provided legal aid services to litigants in 470 cases. Of these cases, 36% received representation and 64% received unbundled services. Of those litigants that received representation, 97% were facing an opposing party with legal representation. Shriver attorneys spent an average of 26 hours (median = 20) providing representation for a case and an average of 3 hours (median = 3) on each unbundled services case. Among the 171 cases provided representation by SDVLP, 72% participated in Shriver settlement conferences.

Among cases that received representation by Shriver counsel:

Legal custody. At intake, 12% of Shriver clients had sole legal custody of the child and 54% wanted it. At resolution, 9% of clients were awarded sole legal custody. In contrast, at intake, 9% of opposing parties had sole legal custody and 39% wanted it. At resolution, 8% of opposing parties were awarded sole legal custody. The percentage of cases with joint legal custody

[16] The CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP; formerly "food stamps"), provides qualified, low-income households with monthly electronic benefits that can be used to buy most foods at many markets and food stores.

[17] Medi-Cal offers free or low-cost health coverage for low-income children, pregnant women, and families.

increased from 37% at intake to 71% at resolution. Many of these changes are due to the 42% of cases without legal custody orders at intake (see Table C8).

Physical custody. At intake, 32% of Shriver clients had sole physical custody of the child and 85% wanted it. At resolution, 40% of clients were awarded sole physical custody. In contrast, at intake, 18% of opposing parties had sole physical custody and 63% wanted it. At resolution, 30% of opposing parties were awarded sole physical custody. The percentage of cases with joint physical custody was 11% at intake and 18% at resolution. Many of these changes are due to the 39% of cases without physical custody orders at intake (see Table C8).

Visitation/Parenting time. Of the cases where one party was awarded sole physical custody, 81% of non-custodial parents received scheduled, unsupervised parenting time with the child(ren). For the 13 cases where supervised visitation was ordered for the non-custodial parent, the primary reason pertained to concerns about domestic violence (23%), abduction (8%), and reintroduction (8%).

Other case outcomes. A minority of cases involved additional court orders. Therapy was ordered for Shriver clients in 16% of cases and for children in 19% of cases. Parenting classes were ordered for either parent in about 20% of cases.

In highly contentious custody cases, law enforcement is often involved. When asked about the frequency of police involvement in the 3 months prior to Shriver intake and the in the 3 months prior to case resolution, 18% of clients reported a decrease in the frequency of police involvement and 2% reported an increase (not depicted).

Table C8. Child Custody Orders at Intake, Client's Goals, Opposing Party's (OP's) Goals, and Custody Outcomes for Shriver Representation Clients

Custody Orders	Status at Intake *N* (%)	Client's Goals *N* (%)	OP's Goals *N* (%)	Outcome *N* (%)
Legal Custody				
No previous orders	71 (42%)	--	--	--
Client has sole custody	20 (12%)	93 (54%)	0 (0%)	16 (9%)
Share joint custody	64 (37%)	78 (46%)	99 (58%)	122 (71%)
OP has sole custody	16 (9%)	0 (0%)	67 (39%)	14 (8%)
Other	0 (0%)	0 (0%)	0 (0%)	2 (1%)
Not applicable	--	0 (0%)	0 (0%)	3 (2%)
Missing/unknown	0 (0%)	0 (0%)	5 (3%)	14 (8%)
Physical Custody				
No previous orders	67 (39%)	--	--	--
Live with client all or most of the time	54 (32%)	145 (85%)	17 (10%)	68 (40%)
Share equal time (joint custody)	18 (11%)	14 (8%)	43 (25%)	31 (18%)
Live with OP all or most of the time	31 (18%)	11 (6%)	107 (63%)	51 (30%)
Other	1 (1%)	1 (1%)	0 (0%)	0 (0%)
Not applicable	--	0 (0%)	0 (0%)	0 (0%)
Missing/unknown	0 (0%)	0 (0%)	4 (2%)	21 (12%)
Visitation				
No previous orders	69 (40%)	--	--	--
Reasonable visitation	6 (4%)	13 (8%)	22 (13%)	1 (1%)
Scheduled (unsupervised) visitation	61 (36%)	95 (56%)	98 (57%)	129 (75%)
Supervised visitation for client	11 (6%)	0 (0%)	30 (18%)	7 (4%)
Supervised visitation for OP	11 (6%)	48 (28%)	0 (0%)	6 (4%)
No visitation for client	4 (2%)	0 (0%)	6 (4%)	1 (1%)
No visitation for OP	4 (2%)	6 (4%)	0 (0%)	2 (1%)
Other	5 (3%)	9 (5%)	8 (5%)	9 (5%)
Not applicable	--	0 (0%)	0 (0%)	2 (1%)
Missing/Unknown	0 (0%)	0 (0%)	7 (4%)	14 (8%)
Total	171 (100%)	171 (100%)	171 (100%)	171 (100%)

Note. Data from the Shriver project services database (as of 11/12/15).

SHRIVER PILOT PROJECT DESCRIPTION: SAN FRANCISCO

This section describes how the Shriver San Francisco custody pilot project addressed child custody cases. This summary includes information on the program context, involved agencies, and service model. More detailed information on the litigants who received services, case characteristics, and outcomes can be found in Custody Appendix A.

Project Context

COMMUNITY

In 2014, the population of San Francisco County was an estimated 805,195 individuals, of which 12.1% were living under the Federal Poverty Level. The median county household income was $78,378 (or $6,532 per month) and the average number of persons per household was 2.3.[18]

AGENCIES AND COURTS INVOLVED

The San Francisco custody pilot project was a collaboration between the Justice & Diversity Center of the Bar Association of San Francisco (JDC; formerly the Volunteer Legal Services Program) and the San Francisco Superior Court, where family law cases are seen at the Civic Center Courthouse.

Project Implementation Model

The project is administered by the Justice & Diversity Center of the Bar Association of San Francisco (JDC). JDC offers limited scope representation ("representation") to litigants in custody cases who meet the Shriver eligibility criteria. The San Francisco Superior Court does not provide services directly to parties in a custody case, but does refer self-represented litigants to the JDC for services and provides office space for the project.

The San Francisco custody pilot project began in October 2011 by staffing the Court's self-help center with a JDC attorney who provided legal information to self-represented litigants seeking assistance with custody matters. The self-help attorney assisted litigants with paperwork and other information about the custody legal process. In January 2012, the JDC began offering Shriver legal services and representation to custody litigants.

LEGAL AID SERVICES

Services Offered, Referral Sources, and Eligibility Requirements

The JDC serves as the central point of contact for the San Francisco custody pilot project, provides case screening (by an attorney staffed at the self-help center as well as by the project coordinator), and provides legal services (specifically, limited scope representation) to eligible litigants. To be eligible for representation from a JDC attorney, a litigant must have a monthly income not greater than 200% of the Federal Poverty Level, be involved in a custody dispute where at least one party is requesting sole legal or physical custody, and the opposing party must have legal representation. The San Francisco custody pilot project does not screen for

[18] Demographic data were retrieved from the U.S. Census Bureau, County & States QuickFacts at www.census.gov in September 2016.

merit. The project is staffed by one lead representing attorney and one part-time representing attorney who both provide limited scope representation to custody litigants, a part-time project coordinator, and the self-help attorney (located at the court self-help center). In April 2015, the project added a part-time social services advocate, who helps connect Shriver clients to needed social services and community resources.

Approximately half of the project's clients are identified and recruited from the Family Court's Readiness Calendar,[19] which is devoted to new filings and scheduling cases for mediation and follow-up hearings. Project staff review the Readiness Calendar in advance to identify cases in which only one side is represented. If the case has imbalanced representation, they then approach the self-represented litigant to introduce the Shriver project and conduct an initial income screening.

JDC also receives referrals from the Shriver self-help attorney and other staff at the court's self-help center. If self-represented litigants are income eligible and sole custody is at issue, or it is likely that the opposing party will obtain counsel, the litigants will be referred to the Shriver project coordinator, who conducts further eligibility screenings and intake interviews.

Other referral sources include the JDC's Family Law Project staff, private bar attorneys, and judges. The court also includes notices in its mailings to litigants informing them of services available at the self-help center. The project coordinator supplies program fliers to court deputies who disseminate the fliers to self-represented litigants in any case in which only one side has legal representation. The Shriver project also works closely with other nonprofits in San Francisco, including local domestic violence services agencies, to refer clients to the JDC for legal assistance needs.

COURT-BASED SERVICES

Services offered, referral sources, and eligibility requirements

The San Francisco custody pilot project did not implement any new court-based services at the San Francisco Superior Court. The project did, however, staff a JDC attorney at the Court's self-help center. This self-help attorney offers assistance with paperwork and information about the legal process, but does not provide legal advice. Important to the Shriver project, the self-help attorney is a primary source of referrals to the JDC attorneys offering Shriver legal services and representation. To receive self-help services from the self-help attorney, litigants must be self-represented and meet the income requirements.

Table C9. Legal Aid Services and Court-Based Shriver Services Available from the San Francisco Custody Pilot Project

	Shriver Service Location	
Services Available	**JDC**	**Court**
Assistance at self-help center		√
Representation	√	

[19] The calendar in each courtroom may have from five to 15 cases on the morning docket.

GOALS FOR CLIENTS

The San Francisco custody pilot project has several goals for its clients, the first being to eliminate the advantage that a parent with legal representation has over a self-represented parent. When appropriate for the client, the project aims to settle cases, as opposed to going to trial, the outcomes of which are often unpredictable. Shriver staff think that, because parents participate in formulating the terms of settlement agreements, they more fully comprehend the terms to which they are agreeing and are less likely to challenge or protest, and thus, the orders will stand for longer. JDC attorneys also seek to educate clients about family court, so that they have a more informed understanding of the process and more realistic expectations for case outcomes. Attorneys hope that a better understanding of the court process, and more informed involvement in that process, will help parents feel that the court system provided just and fair results. All of these goals serve the ultimate end of providing a more stable environment for the children who are the focus of these complex and highly emotional cases.

Brief Summary of Service Provision

Below is a list of service provision highlights. For a more extensive and detailed accounting of services provided, the reader should refer to the full Project Service Summary in Appendix A.

Information regarding the types of services provided, case characteristics, and outcomes were obtained from the program services database. No information was available about the litigants who received assistance from the self-help center at the courthouse.

WHO RECEIVED COURT-BASED SELF-HELP SERVICES?

Between October 2011 and September 2015, the San Francisco custody pilot project provided assistance at the Self-Help Resource Center, located at the courthouse, to 1,742 litigants involved in custody cases.

WHO RECEIVED LEGAL AID SERVICES?

Between January 2012 and November 2015, the San Francisco custody pilot project provided representation to litigants in a total of 227 cases.

At the time of Shriver intake, JDC staff members collected information about their clients, including demographics, household characteristics, and characteristics pertinent to the custody case. As shown in Table C10, the average age of the client was 39 years (median = 37), 53% were female, 35% were Hispanic or Latino, 35% had at least some post-secondary education, 24% could not effectively communicate in English without the assistance of an interpreter (limited English proficiency), and 20% had known or observable disabilities.[20]

Notably, the San Francisco custody pilot project has a higher proportion of male clients than the other two Shriver custody projects. Shriver staff members believe this may be due to the general availability of legal services to domestic violence survivors residing in the San Francisco metropolitan area, relative to other areas. Specifically, other local organizations provide legal assistance to female victims of domestic violence (but not necessarily to alleged abusers). Once

[20] Most common types of disability or disorder were a psychiatric or emotional disability (7%, *n*=16), substance use disorder (7%, *n*=16), more than one disability/disorder, (3%, *n*=6), or physical disability (2%, *n*=5).

these women have an attorney, their male partner becomes eligible for Shriver services because he is facing a represented opposing party.

Table C10. Demographic Characteristics of Shriver Legal Aid Services Clients

Client Level Characteristics	*N* (%)
Age (years)	
18 to 24	9 (4%)
25 to 44	162 (71%)
45 to 61	50 (22%)
62 or older	4 (2%)
Unknown/not collected	2 (1%)
Gender	
Male	107 (47%)
Female	120 (53%)
Transgender	0 (0%)
Unknown/not collected	0 (0%)
Race/Ethnicity[a]	
Asian	33 (14%)
Black or African American	40 (18%)
Hispanic/Latino	79 (35%)
White	55 (24%)
Other	9 (4%)
Unknown/declined	11 (5%)
Education	
High school degree or less	57 (25%)
Any post-secondary	80 (35%)
Unknown/not collected	90 (40%)
Limited English Proficiency	
Yes	54 (24%)
No	173 (76%)
Unknown/not collected	0 (0%)
Disability	
Yes	45 (20%)
No	114 (50%)
Unknown/not collected	68 (30%)
Total	227 (100%)

Note. Data from the Shriver project services database (as of 11/12/15).
[a] Litigants who identified as Hispanic/Latino and any other race/ethnicity are included in the Hispanic/Latino row.

Thirteen percent of Shriver clients received CalFresh benefits.[21] The median monthly household income was $900 (mean = $1,107), which is far below the 2014 income threshold of $2,613 for a family of at least two. Information about the opposing party's income was not available. Table C11 details the household characteristics for Shriver clients served by JDC.

Table C11. Household Characteristics of Shriver Legal Aid Services Clients

Client's Household Level Characteristics	*N* (%)
Monthly Income	
Mean	$1,107
Median	$900
SD	$1,102
Range	$0 to $5,360
Missing	0 (0%)
Received CalFresh Benefits, *N* (%)	
Yes	29 (13%)
No	198 (87%)
Missing	0 (0%)
Total	227 (100%)

Note. Data from the Shriver project services database (as of 11/12/15).

CASE CHARACTERISTICS AND OUTCOMES

From January 2012 through November 2015, JDC provided representation to parents in 277 cases. Among these, 98% of clients faced an opposing party with legal representation. Shriver attorneys spent an average of 23 hours (median = 15) working on each case.

Among these cases receiving Shriver representation:

Legal custody. At intake, 5% of Shriver clients had sole legal custody of the child and 32% wanted it. At resolution, 10% of clients were awarded sole legal custody. In contrast, at intake, 26% of opposing parties had sole legal custody and 51% wanted it. At resolution, 28% of opposing parties were awarded sole legal custody. The percentage of cases with joint legal custody increased from 37% at intake to 58% at resolution. Many of these changes are due to the 32% of cases without legal custody orders at intake (see Table C12).

Physical custody. At intake, 9% of Shriver clients had sole physical custody of the child and 40% wanted it. At resolution, 23% of clients were awarded sole physical custody. In contrast, at intake, 37% of opposing parties had sole physical custody and 58% wanted it. At resolution, 43% of opposing parties were awarded sole physical custody. The percentage of cases with joint physical custody was 24% at intake and 29% at resolution. Many of these changes are due to the 30% of cases without physical custody orders at intake (see Table C12).

[21] The CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP; formerly "food stamps"), provides qualified, low-income households with monthly electronic benefits that can be used to buy most foods at many markets and food stores.

Visitation/Parenting time. Of the cases where one party was awarded sole physical custody, 54% of non-custodial parents received scheduled, unsupervised parenting time with the child(ren) and 12% received reasonable visitation (i.e., no set schedule or the schedule is to be worked out between the parents). For the 27 cases where supervised visitation was ordered for the non-custodial parent (see Table CA32 in the Appendix), the primary reason was due to concerns for domestic violence (26%), abduction concerns (11%), reintroduction (7%), or multiple reasons (7%).

Table C12. Child Custody Orders at Intake, Client's Goals, Opposing Party's (OP) Goals, and Case Outcomes for Shriver Representation Clients

	Child Custody Orders			
Share of Child Custody	**At Intake** ***N* (%)**	**Client's Goals** ***N* (%)**	**OP's Goals** ***N* (%)**	**Outcome** ***N* (%)**
Legal Custody				
No previous orders	72 (32%)	--	--	--
Client has sole custody	11 (5%)	73 (32%)	1 (0%)	23 (10%)
Share joint custody	84 (37%)	129 (57%)	54 (24%)	132 (58%)
OP has sole custody	60 (26%)	5 (2%)	116 (51%)	63 (28%)
Other	0 (0%)	2 (1%)	2 (1%)	1 (<1%)
Not applicable	--	3 (1%)	2 (1%)	7 (3%)
Missing/unknown	0 (0%)	15 (7%)	52 (23%)	1 (0%)
Physical Custody				
No previous orders	69 (30%)	--	--	--
Live with client all or most of the time	21 (9%)	91 (40%)	5 (2%)	53 (23%)
Share equal time (joint custody)	54 (24%)	89 (39%)	37 (16%)	65 (29%)
Live with OP all or most of the time	83 (37%)	26 (11%)	132 (58%)	97 (43%)
Other	69 (30%)	7 (3%)	2 (1%)	0 (0%)
Not applicable	--	3 (1%)	2 (1%)	0 (0%)
Missing/unknown	0 (0%)	11 (5%)	49 (22%)	12 (5%)
Visitation				
No previous orders	84 (37%)	--	--	--
Reasonable visitation	15 (7%)	34 (15%)	23 (10%)	22 (10%)
Scheduled (unsupervised) visitation	78 (34%)	111 (49%)	72 (32%)	120 (53%)
Supervised visitation for client	25 (11%)	2 (1%)	35 (15%)	24 (11%)
Supervised visitation for OP	5 (2%)	9 (4%)	1 (0%)	5 (2%)
No visitation for client	19 (8%)	2 (1%)	20 (9%)	12 (5%)
No visitation for OP	1 (0%)	8 (4%)	0 (0%)	6 (3%)
Other	0 (0%)	3 (1%)	2 (1%)	9 (4%)
Not applicable	--	49 (22%)	8 (4%)	29 (13%)
Missing/Unknown	0 (0%)	9 (4%)	66 (29%)	0 (0%)
Total	227 (100%)	227 (100%)	227 (100%)	227 (100%)

Note. Data from the Shriver project services database (as of 11/12/15).

Other case outcomes. A minority of Shriver cases involved additional court orders. Parenting classes were ordered for either the client or opposing party in about 15% of cases. Shriver clients were ordered or agreed to participate in therapy in 16% of cases. Child therapy was ordered for 18% of cases. Restraining orders were granted for the opposing party in 16% of cases, and criminal protective orders were issued in a criminal court proceeding for the opposing party in 3% of cases. In highly contentious custody cases, law enforcement is often involved. When asked about the frequency of police involvement in the 3 months prior to Shriver intake and the 3 months prior to case resolution, 7% of clients reported a decrease in the frequency of police involvement and 4% reported an increase.[22]

[22] Five percent of clients reported the same amount of police involvement; 43% reported no police involvement at either time point; and 41% were unknown (missing information).

Shriver Custody Pilot Projects

Litigant Experiences

Shriver client "Nancy."
Nancy is 23 years old and has been with her husband, Bob, for about 5 years. She is the primary caretaker of their 15-month old son. Bob had been abusive to Nancy throughout their relationship. At various times, he has dragged Nancy across the floor by her hair, punched and slapped her, and threatened to kill himself if she were ever to leave him. He has also stalked her and repeatedly taken her phone in order to track her communications. In self-defense, Nancy periodically responded to the abuse with violence. After Nancy was arrested based on Bob's false statements, Bob and Nancy each obtained domestic violence protection orders in separate courts, with each order giving sole custody to the petitioner and no visitation to the other parent. Bob had access to money to pay for an attorney and had family members eager to testify against Nancy. Bob's attorney returned to court and obtained a modification of Nancy's restraining order giving her no custody or visitation, which was possible because Nancy did not understand the legal process. Bob used his position against Nancy to try to pressure her into giving up custody of the child.

Until receiving Shriver counsel, Nancy was easily intimidated because of the violent history with Bob and she was not able to fully participate in the legal process. Shriver counsel was able to negotiate a 50/50 custody arrangement and obtained specific orders regarding exchanges which are designed to minimize conflict. The project also provided separately funded services to help Nancy obtain a child support order that was more than double the amount that Bob offered and helped her file a dissolution action to allow her to leave the abusive relationship.

LITIGANT SELF-SUFFICIENCY AT SHRIVER INTAKE

As shown in the previous section, Shriver custody pilot projects served parents with very low income levels. Thus, one could reasonably expect that these individuals may be encountering other hardships that could impact their parenting, such as difficulties with housing or transportation. Gaining a better understanding of the circumstances of these parents when they are seeking legal assistance can support a clearer interpretation of the results.

Child custody cases are often complex due to complicated interpersonal dynamics, aspects of family functioning, and circumstances or attitudes of individual parties. These elements can weigh into judges' decisions about what is in the best interests of the child(ren). Although these characteristics may be well understood by the parties in the case, they are generally not systematically documented in the official court case file or attorney service logs.

To collect more comprehensive information about their clients' lives and these important issues, one Shriver custody pilot project implemented a standardized assessment of self-sufficiency to all its clients.[23] This section presents the data from these assessments.

Los Angeles Custody Project Litigant Self-Sufficiency Assessments

From June 2015 to June 2016, the Los Angeles custody pilot project administered the Arizona Self-Sufficiency Matrix (ASSM)[24] to its Shriver clients. The assessment measures an individual's functioning across 18 life domains, including: housing, income, employment, adult education, food security, healthcare coverage, health/disabilities, safety, mental health, substance abuse, child care, transportation, criminal legal issues, family/social relations, community involvement, children's education, life skills, and parenting skills. The assessment was administered by a Shriver project advocate, who interviewed each client and assigned scores for each life domain on the following Likert scale:

1	2	3	4	5
"in crisis"	*"at risk"*	*"building capacity"*	*"stable"*	*"thriving"*

Scores of 3 or lower indicated a need in that area and resulted in a follow-up conversation with the advocate to look for possible social service referrals or other assistance.

Clients were assessed at their initial meetings with their attorneys.[25] As of June 2016, when the data were obtained by the evaluation team, 109 clients had received baseline assessment

[23] The self-sufficiency assessment was identified and implemented by the project as part of its local protocol. It was not an activity prompted by the cross-site evaluation team. The Los Angeles project staff shared its data with the evaluation team for inclusion in this report.

[24] *Self Sufficiency Matrix*. Retrieved from http://www.performwell.org/index.php/find-surveyassessments/outcomes/employment-a-housing/housing-and-shelter/self-sufficiency-matrix-an-assessment-and-measurement-tool-created-through-a-collaborative-partnership-of-the-human-services-community-in-snohomish-county See Appendix CA8 for scoring criteria for the Arizona version.

[25] The project team members re-assessed their limited scope representation clients every 3 months until their cases closed. Due to issues with sample size and alignment of follow-up assessments, the follow-up data are not presented here. This report presents data for all clients, regardless of service level, at the initial assessment.

scores. This section summarizes the data from these 109 initial assessments to provide a snapshot of clients' lives at the time they sought assistance from the Shriver pilot project.

Findings

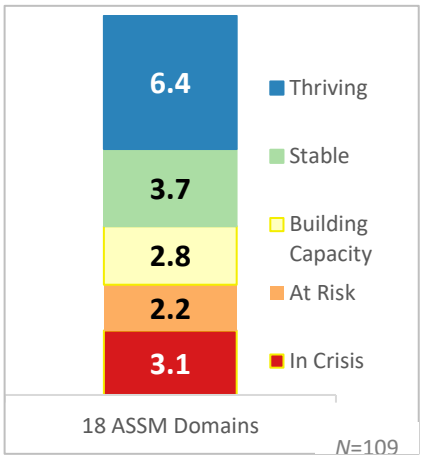
The ASSM data collected at Shriver services intake were analyzed, and findings are presented in three sections: (a) the five domains in which Shriver clients exhibited the lowest self-sufficiency and greatest need, (b) the eight intermediate domains in which Shriver clients exhibited adequate self-sufficiency, and (c) the five domains in which Shriver clients exhibited the highest self-sufficiency and were most likely to be thriving.

Overall Assessment

At the time of Shriver intake, clients were considered *stable* or *thriving* (scores of 4 or 5), on average, in 10 domains. Clients were considered unstable (a score of 3 or lower), on average, in eight domains.

Of the eight domains in which Shriver clients were most often scored as unstable, clients were, on average, scored as *in crisis* in three domains and *at risk* in two domains. Figure C1 (right) shows the average number of domains falling into each rating category for a typical Shriver client.

Figure C1. Average Number of Domains in Each Rating Category



Top Five Needs at Initial Meeting

Of the 18 domains assessed, more than 50% of Shriver clients were assessed as unstable (i.e., a score of 3 or lower) in five domains, including: **employment**, **food**, **income**, **education**, and **family/social relations**. These domains are interdependent, with the first four strongly tied to household income and resources. Thus, struggle in these areas might be expected based on the low-income eligibility requirements for Shriver services.

The percentage of Shriver clients with assessment scores in each of the categories is shown in Figure C2, followed by a description of each domain. The vertical line in the graph represents the threshold between scores indicating stability and those indicating instability. The green (score = 4) and blue (score = 5) bars on the right side of the center line represent the proportion of clients with scores indicating adequate self-sufficiency and stability in that domain. The yellow (score = 3), orange (score = 2), and red (score = 1) bars on the left side of the center line represent the proportion of clients with scores indicating instability or need in that domain. Clients on the left side would have been asked by the social services advocate if they would like assistance seeking support services in that area. For instance, Figure C2 shows that with respect to employment, 8% of clients were stable or thriving and 92% were unstable or in need.

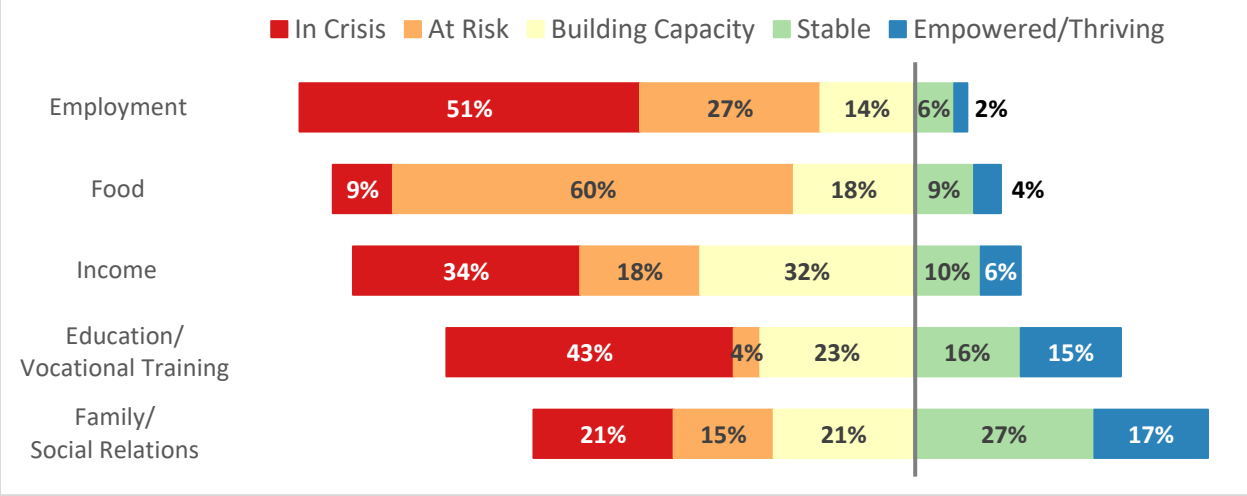
Employment. Clients were asked if they had a full or part-time job or if they were looking for work. More than half (51%) of clients reported being unemployed (as noted in the red bar in Figure C2). Twenty-seven percent reported being employed in part-time or seasonal work (orange bar), and 14% reported full-time work, but with inadequate pay and few or no benefits (yellow bar). Only 6% of clients reported having full-time work with adequate income and

benefits (green bar) and 2% were thriving in this area. None reported being stay-at-home parents, or otherwise out of the workforce due to disability, retirement, or lack of a work permit. Overall, 8% of clients were stable or thriving with regard to employment, and 92% were either under- or unemployed.

Food. This domain inquired about access to food, including any assistance the client may receive, such as CalFresh. If clients are reliant on subsidies and services to secure food for their families, they are considered unstable in this domain. The majority of clients (60%; orange bar) indicated that they receive regular financial assistance to meet household food needs and an additional 18% (yellow bar) reported needing occasional assistance. Nine percent of clients reported no or limited access to food (red bar), and relied significantly on free or low-cost food. Thirteen percent of clients were stable in this domain, and 87% were not.

Income. Questions about household income were framed in terms of whether clients were able to meet basic human needs, their level of debt management, and the presence of discretionary funds. To quality for Shriver services, litigants' income could not exceed 200% of the Federal Poverty Level, thus it is not surprising that 84% of assessed clients needed some sort of financial assistance. One third (34%; red bar) of clients indicated that they had no income, thus scored as *in crisis* in this area. The other 50% (orange and yellow bars combined) had inadequate income or needed subsidies to meet basic needs. Sixteen percent reported being able to meet basic needs without assistance.

Figure C2. Domains in which More than 50% of Clients Demonstrated Low Self-Sufficiency



Note. Percentages may not total 100% due to missing data or rounding.

Adult Education/Vocational Training. Clients were asked about their levels of education, their literacy skills, and about issues they may have obtaining work because of their education levels. Education was rated in terms of its capacity to prepare clients for a career. Forty-three percent of clients (red bar) had barriers to attaining jobs, including literacy issues and no high school diploma or GED. Four percent (orange bar) were currently enrolled in a literacy or GED program and 23% (yellow bar) had a high school diploma or GED. Of the 31% rated as stable, half (16% of the total; green bar) needed additional education to improve their current employment

situation and half (15% of total; blue bar) had complete education/training to be fully employed.

Family/Social Relations. This domain focused on financial and emotional support, resources available in the client's social network, and the presence of abuse. Twenty-one percent of Shriver clients were in a crisis state (red bar), indicating the absence of necessary supports and/or the presence of abuse or child neglect. Fifteen percent of clients reported having family, but their family did not have the resources to provide necessary supports (orange bar). Twenty-one percent reported some family support, with acknowledgement and willingness to change existing negative behaviors (yellow bar). The remaining 44% of clients reported strong support from family and friends (green and blue bars).

DOMAINS OF INTERMEDIATE NEED

At intake, there were eight domains in which approximately 50% to 75% of Shriver clients were assessed as *stable* or *thriving* (scores of 4 or 5). These included **housing, child care, life skills, community involvement, healthcare coverage, transportation, mental health,** and **safety**. Despite the economic hardships faced by many Shriver clients, most clients were able to care adequately for themselves and their families or were building capacity in these areas. Fewer than 30% of clients were *in crisis* or *at risk* in these domains. Figure C3 shows the proportions of clients scoring in each category, followed by a brief narrative of each domain.

Housing. This domain concerns the client's current living situation, including housing stability and affordability. More than half (53%; green and blue bars combined) of assessed clients were living in safe, adequate housing, either subsidized or unsubsidized. Eighteen percent (yellow bar) were living in stable housing, but it was considered marginally adequate for the client's needs. The remainder of clients were either living in temporary housing (20%; orange bar) or reported being homeless or threatened with eviction (9%; red bar).

Community Involvement. This domain measures a person's connectedness with formal and informal group associations outside of the family—for example, participation in church or religious groups, advisory groups, or support groups. To be *thriving* (score of 5), a client must have the ability to connect to, not just be involved with, various community groups—that is, someone assessed as *stable* might be involved in some community groups, but exhibit barriers to fully connecting, such as challenges with transportation or child care. More than half (53%; green and blue bars) of clients had some community involvement, but many of these individuals (43%; green bar) had some barriers to participation. One fourth (26%; yellow and orange bars) were either somewhat isolated or had no desire to participate, and 20% were in some sort of crisis ("survival mode"; red bar), where community involvement was not feasible.

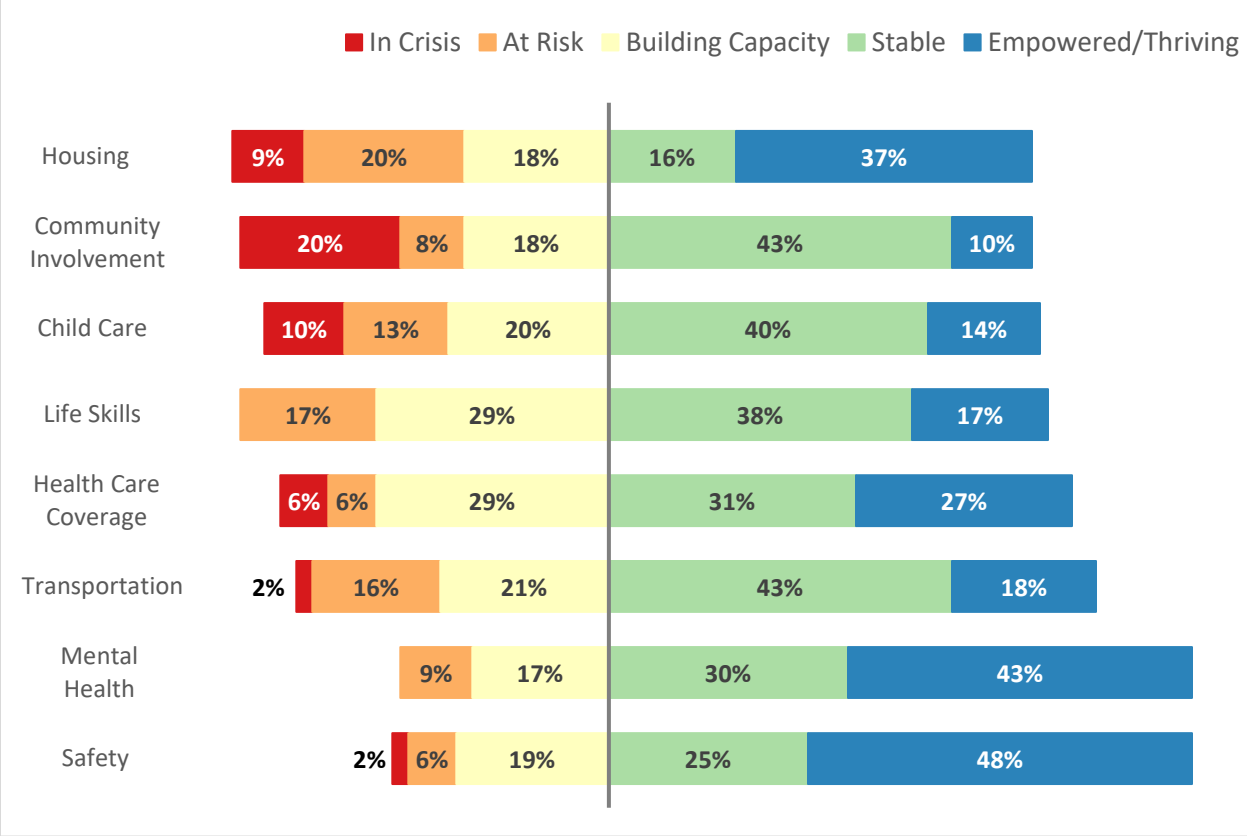
Child Care. Clients with younger children (*n*=98) were asked whether they needed support with child care and whether their current child care was affordable and reliable. More than half (54%; green and blue bars) of clients could afford reliable child care without the need for subsidies, and another 20% (yellow bar) had access to subsidy-supported child care, although they reported the options were often limited. About one quarter of clients reported either having no access to child care (10%; red bar) or that the child care they could access was unreliable, unaffordable, or had inadequate supervision (13%; orange bar).

Life Skills. Life skills are a measure of daily functioning, including basic needs such as hygiene and food availability, as well as daily living needs, which include behaviors beyond basic needs such as addressing family needs (e.g., household and money management), organizing activities, and planning for the future. More than half (55%; green and blue bars) of clients reported they were able to meet all basic needs of daily living without assistance. Twenty-nine percent (yellow bar) said they could meet most, but not all, daily needs; and 17% (orange bar) could meet only the most basic needs without help. No clients were assessed to be *in crisis*.

Healthcare Coverage. Clients were asked if they had medical coverage, access to adequate healthcare, and the ability to afford healthcare. Fifty-eight percent of clients (green and blue bars) reported that all of their household members had medical coverage, with another 29% (yellow bar) indicating that some members (e.g., children) of their household had medical coverage (including Medi-Cal). Twelve percent (orange bar) of clients reported having no medical coverage, and about half of them (6%; red bar) were in immediate need.

Transportation. Clients were asked about their access to transportation and whether they felt it was affordable and reliable. Sixty-one percent of clients reported having reliable access to transportation to meet at least their basic travel needs (green and blue bars). Another 21% (yellow bar) had access to transportation, but it was limited and/or inconvenient. Eighteen percent either did not have access to transportation, including public transportation (2%; red bar), or their access was unreliable and/or unpredictable (16%; orange bar).

Figure C3. Domains in which 50% to 75% of Clients Demonstrated Adequate Self-Sufficiency



Note. Percentages may not total 100% due to missing data or rounding. For example, the Child Care row sums to 97% because 3% of respondents were missing information for this item.

Mental Health. This domain describes daily functioning, suicidal ideation, and receipt of mental health services. None of the clients were assessed as being a danger to themselves or others, or exhibited signs of extreme psychological distress. The majority of clients (73%; green and blue bars) were assessed as highly functioning, with only minimal symptoms that are expectable responses to life stressors. About one quarter (26%) of clients had mild or recurrent symptoms, that occasionally (17%; yellow bar) or persistently (9%; orange bar) impacted their daily functioning, but did not endanger the health and welfare of themselves or others.

Safety. Clients were asked about issues of safety, including their neighborhood climate and the occurrence of domestic violence. Almost half (48%; blue bar) of clients reported that their home environment was safe and stable. Another 25% (green bar) reported they currently lived in a safe environment, but the future was uncertain. For 19% of clients (yellow bar), the level of safety was minimally adequate, and 8% reported living in unsafe conditions, where the threat of loss of life was high (6%; orange bar) or extremely high (2%; red bar).

TOP FIVE THRIVING DOMAINS

These five domains are those in which Shriver clients, at intake, were primarily thriving—that is, more than 75% of clients were assessed as *stable* or *thriving*. These areas included health and disabilities, children's education, criminal legal issues, parenting skills, and substance use. Few clients were impacted by disabilities, substance use, or criminal legal issues. Most children had regular attendance at school, and clients generally exhibited good parenting skills (Figure C4).

Health/Disabilities. The health and disabilities domain targeted temporary or permanent health conditions that would impact the client's family for several months. (This does not include ordinary illnesses such as a cold or flu, or disabilities that do not impact housing, employment, or social interactions). Further, if the disabled person is *thriving*, then no disability is indicated for assessment. Ninety-one percent of clients were assessed as either having no health issues (85%; blue bar) or regularly controlled health issues (6%; green bar). Only 3% (yellow bar) of clients were assessed as experiencing chronic symptoms that affected housing or employment, and the remaining 6% of clients either sometimes (3%; red bar) or rarely (3%; orange) experienced symptoms that negatively impacted aspects of their lives.

Children's Education. Clients with school-aged children (*n*=85) were asked about their children's school attendance and academic performance. Ninety-one percent (green and blue bars) of parents reported that their children were enrolled in school and attending class most of the time. Four percent reported that at least one school-aged child had not been enrolled in school (2%; red bar) or was enrolled but not attending classes (2%; orange bar).

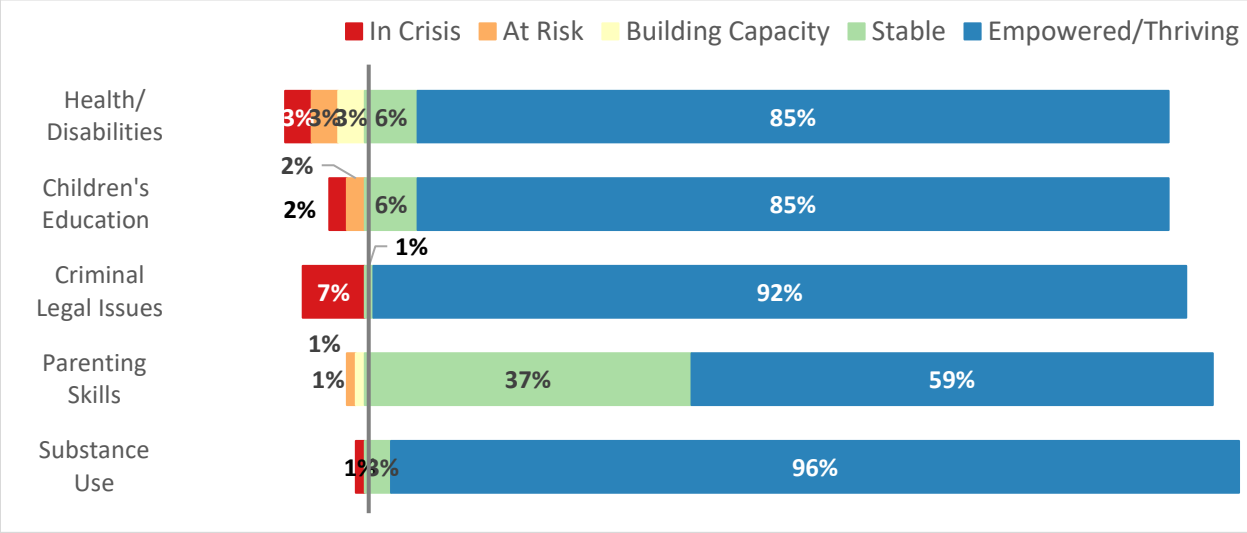
Criminal Legal Issues. Clients were asked about the extent to which they had criminal legal problems, from tickets and warrants to probation and pending trials. Almost all (92%; blue bar) of clients reported having no active criminal justice involvement or felony history in the last 12 months. Another 1% (yellow bar) reported successful completion of mandated supervision in the same time period. Seven percent (red bar) reported outstanding tickets or warrants.

Parenting Skills. Clients with minor children (*n*=98) were also asked how they felt about their parenting skills. No clients self-identified concerns regarding safety for their children, and very few (2%) self-reported their parenting skills as inadequate. Thirty-seven percent of parents

described their parenting skills as adequate (green bar), and 59% described their parenting skills as well-developed (i.e., no areas in which they would like more support; blue bar).

Substance Use. Clients were asked about their use of substances and whether their use was compulsive and repetitive enough to impact their households. Almost all (96%; blue bar) clients reported no drug or alcohol use in the last 6 months, and 3% (green bar) reported some use, but with no negative consequences. One percent of clients reported symptoms that may have met the criteria for severe substance use disorder, one that might require inpatient treatment.

Figure C4. Domains in which 75% or More of Clients Demonstrated High Self-Sufficiency



Note. Percentages may not total 100% due to missing data or rounding.

Summary

Overall, at the time of Shriver intake and assessment, many clients were dealing with economic hardships, yet were still successfully meeting the demands in most other aspects of their lives. The typical Shriver client was unemployed and without adequate income, which may have been due to a low level of education and/or literacy posing barriers to obtaining employment.

While some Shriver clients reported strong social networks, and most were involved in community groups, more than half did not have family or friends to whom they could turn for financial or emotional support. The typical Shriver client relied on food subsidies, such as CalFresh, but was not living in subsidized housing and, in fact, generally reported that current housing was safe and adequate. Moreover, the client's environment was generally safe, free from domestic violence, substance use, and criminal justice involvement.

Almost all household members had access to adequate healthcare. However, any related costs would have put a strain on clients' very limited budgets. Day-to-day functioning, including transportation, was not reported to be a significant problem for the typical Shriver client. Most clients reported no disabilities or chronic health conditions and were doing well in the area of mental health.

For those Shriver clients who had young children, they felt positively about their parenting skills and were generally able to obtain suitable child care. The typical client had children who were enrolled in school and attending classes regularly.

Most Shriver clients exhibited adequate self-sufficiency in a preponderance of life domains. However, more than 80% of Shriver clients demonstrated limited self-sufficiency (in some cases, dire need) in a few critical areas—namely, employment, income, and food. Given the impact of these areas on family livelihood and child well-being, these significant needs should not be ignored. The Los Angeles Shriver pilot project incorporates Masters-level social work students as interns to assist their low-income custody clients in obtaining social service assistance in these areas, as well as with parenting classes and other support services helpful for their custody case. The San Francisco pilot project staff includes a social worker to provide similar services for their clients. This additional support enables the Shriver attorneys to focus on the legal work, rather than having to address the other critical needs faced by their clients. The extent to which legal aid services agencies are the most appropriate or effective conduit for this type of assistance and referral remains to be seen.

It is worth noting that although the ASSM has been validated with other low-income and at-risk populations, it is nevertheless based on self-report. While self-report instruments are a cornerstone of social science research and a valid methodology, the possibility of reporting bias exists. In this study, it is possible that some clients' reports may have been biased in an effort to benefit their cases.

LITIGANT PERCEPTIONS AT SHRIVER EXIT

To better understand litigants' experiences of their custody cases and their perceptions of Shriver services, phone interviews were conducted with litigants who were selected to be part of the comparison study at the San Francisco Shriver pilot project. This section presents data from these interviews; the next section presents findings from the court files for these cases.

Methodology

SAMPLE

The study sample drawn at the San Francisco custody pilot project consisted of 25 litigants who received Shriver representation and 25 comparison litigants who met Shriver eligibility criteria but did not receive project services. After the resolution of their custody pleadings, these 50 litigants were invited to participate in telephone interviews to discuss their perceptions of their cases, the legal process, and (for the Shriver group) the services they received. In total, 21 litigants receiving Shriver representation and four litigants in the comparison group completed exit interviews (see Table C13).[26]

Table C13. Proportion of Litigants Interviewed at Case Closure

San Francisco Project	Total Sample *N*	Total with Exit Interview *N (% of* total)	Included in Analysis?
Representation clients	25	21 (84%)	Yes
Comparison litigants	25	4 (16%)	No

ANALYTIC APPROACH

The very small number of comparison group respondents (*n*=4) precluded comparative analyses between the study groups. Interview data for this group were consequently omitted from this report. The remainder of this section summarizes the interview responses for the 21 litigants who received Shriver representation.

Findings

CASE CHARACTERISTICS

Interparental cooperation and conflict

Litigants were asked six questions about their relationship with the other parent. Items included aspects of co-parenting, such as "*We basically agree about our child's needs"* and "*We usually manage to work together as parents."* For each item, clients rated their agreement on a four-point scale, with higher scores indicating greater cooperation between the parties.

[26] The small number of comparison litigants interviewed was primarily due to an inability to contact these individuals. These litigants were identified by the local Shriver project staff prior to the evaluation, but because they were not provided Shriver services, the staff did not have consistent contact with them over time. Thus, at the time their pleadings were resolved, they were difficult to locate for interviews. However, court case file data were pulled for all Shriver and comparison cases, and these analyses are presented in the next section.

Across these six items, for the 21 clients with complete data, the average score was 2.4—the mid-point on the scale. While the average seems to suggest modest cooperation across the sample, individual scores ranged from 1 (highly contentious) to 4 (highly cooperative), indicating notable variability across cases. In particular, half of the clients (*n*=10) had a scale score of 1 or 2, indicating a contentious relationship with the opposing party, and half (*n*=10) had a scale score of 3 or 4, indicating a cooperative relationship.

Children involved

Half of these cases (*n*=11) involved the custody of one child. Another eight cases involved two children; one case involved three children; and one case involved six children. The average age of the children in these cases was just under 9 years, ranging from 1 to 16 years.

Purpose of pleading

Of the 21 Shriver clients interviewed, almost half (48%; *n*=10) were seeking an initial order for custody. The remaining cases were seeking either to modify an existing custody or visitation order (38%; *n*=8) or to enforce an existing custody or visitation order (14%; *n*=3).

CLIENTS' GOALS FOR THEIR CASES

Legal and physical custody goals

The majority of interviewees reported seeking joint legal (71%; *n*=15) and/or joint physical (67%; *n*=14) custody. Approximately one quarter (24%) were seeking sole legal and physical custody. This did not vary by whether the pleading was for an initial custody order or to modify an existing order. Table C14 displays the legal and physical custody goals of the interviewed Shriver clients by the objective of the pleading.

Table C14. Shriver Client Goals for Case

	Objective of Custody Pleading			
Client's Goals	Obtain Initial Order	Modify Existing Order	Enforce Existing Order	Total
Legal Custody				
Sole legal custody to me	3 (30%)	1 (13%)	1 (33%)	5 (24%)
Sole legal custody to the other parent	0 (0%)	1 (13%)	0 (0%)	1 (5%)
Joint legal custody	7 (70%)	6 (75%)	2 (67%)	15 (71%)
Physical Custody				
Sole physical custody to me	3 (30%)	1 (13%)	1 (33%)	5 (24%)
Sole physical custody to the other parent	0 (0%)	2 (25%)	0 (0%)	2 (10%)
Joint physical custody	7 (70%)	5 (63%)	2 (67%)	14 (67%)

N=21. Obtain initial order *n*=10; Modify existing order *n*=8; Enforce existing order *n*=3.

Other Goals

Shriver clients were asked what, if any, additional goals (beyond custody and visitation arrangements) they held for their custody pleadings. Seven clients (33%) hoped that the pleading would go away and be dismissed. Two clients wanted parenting classes for themselves and six wanted parenting classes ordered for the other parent. Two clients hoped to receive therapy for themselves and four hoped for the children to receive therapy. One client sought a

restraining order protecting her/him from the other parent. One client wanted to get substance abuse counseling for themselves and for the other parent. Taken together, these responses seem to suggest that parents are seeking social services and that they feel the help of the court is needed to ensure the other parent participates in those services. Goals for the case separated by the objective of the custody pleading are summarized in Table C15.

Table C15. Other Case Goals of Shriver Clients

	Objective of Custody Pleading			
Client's Goal	**Obtain Initial Order**	**Modify Existing Order**	**Enforce Existing Order**	**Total**
The case would go away and be dismissed.	2 (20%)	4 (50%)	1 (33%)	7 (33%)
I would get therapy.	2 (20%)	0 (0%)	0 (0%)	2 (10%)
The children would get therapy.	2 (20%)	2 (25%)	0 (0%)	4 (19%)
I would get a restraining order protecting me from the other parent.	0 (0%)	1 (13%)	0 (0%)	1 (5%)
I would get substance abuse counseling.	1 (10%)	0 (0%)	0 (0%)	1 (5%)
The other parent would get substance abuse counseling.	1 (10%)	0 (0%)	0 (0%)	1 (5%)
I would take a parenting class.	1 (10%)	1 (13%)	0 (0%)	2 (10%)
The other parent would take a parenting class.	4 (40%)	2 (25%)	0 (0%)	6 (29%)

Note: Respondents may have more than one goal for the case. Percentages do not add to 100%.
N=21. Obtain initial order *n*=10; Modify existing order *n*=8; Enforce existing order *n*=3.

SATISFACTION WITH CASE OUTCOMES AND PERCEIVED FAIRNESS OF THE LEGAL SYSTEM

Litigants were asked about their satisfaction with the outcomes of their custody pleadings and their perceptions of fairness and procedural justice with regard to their cases.

Satisfaction with case outcomes

Interview participants were asked if to the outcomes in their cases were *about what they expected*, *a lot better, somewhat better, somewhat worse,* or *a lot worse* than they expected. Eight clients (40%) felt that the case outcomes were in line with their expectations. Seven clients (35%) felt that the case outcomes were somewhat worse or a lot worse than their expectations, while five clients (25%) thought that the case outcomes were somewhat better or a lot better than they expected.

Table C16. Outcomes and Litigant Expectations

Overall, what was ordered or agreed to was…	**N (%)**
A lot better	3 (15%)
Somewhat better	2 (10%)
About what I expected	8 (40%)
Somewhat worse	3 (15%)
A lot worse	4 (20%)

Note: One respondent did not answer the question.

Clients were also asked to rate their level of satisfaction with their case outcomes of a scale from 1 (*very dissatisfied*) to 5 (*very satisfied*). The average rating was 3.6, indicating that, on average, litigants were somewhat satisfied with the outcomes of their cases. However, the range of responses from 1 to 5 indicated notable variation in client satisfaction.

Perceptions of fairness in the legal process

Fairness was assessed using a 4-item scale adapted from Frazer (2006) that included statements such as "*My case was handled fairly by the court"* and "*My legal rights were taken into account*." Interviewees rated how much they agreed with each statement on a 5-point scale, from 1 (*strongly disagree)* to 3 (*neither agree nor disagree*) to 5 (*strongly agree).* A scale score was calculated as the average across the scale items.[27] Higher scores indicate greater perceived fairness with court proceedings.

Fairness scores could be calculated for 19 clients. These respondents had an average fairness score of 3.2 (range = 1 to 5), indicating that, on average, litigants were unsure whether the court process was fair.

Perceptions of procedural justice

Perceptions of procedural justice were computed using an 8-item scale adapted from the Specific Procedural Justice Scale (Bornstein, Tomkins, & Neeley, 2011) and included items such as "*The judge listened to what I had to say"* and "*I was treated the same as others in the same position*." Interviewees rated their agreement with each statement on the same 5-point scale used for the fairness measure, and a scale score was calculated as a mean across the items.[28] Higher scores indicate greater perceived procedural justice.

Procedural justice scores could be calculated for 17 clients. The average procedural justice score for these respondents was 3.8 (range = 2 to 5), indicating that respondents perceived a modest amount of procedural justice in their proceedings.

Satisfaction with case outcomes and perception of fairness and procedural justice

Scores on the fairness and procedural justice scales were related to clients' satisfaction with their case outcomes (see Table C17). Clients were categorized as *dissatisfied* if they reported being *somewhat* or *very dissatisfied* with their case outcomes, and others were categorized as *satisfied* if they reported being *somewhat* or *very satisfied* with their case outcomes. Clients dissatisfied with case outcomes had an average fairness score of 1.8, as compared to an average score of 4.0 among clients satisfied with their case outcomes. This difference was statistically significant.[29] For perceptions of procedural justice, average score was 2.8 among clients dissatisfied with their case outcomes, versus 4.3 among satisfied clients. This difference was also statistically significant.[30]

[27] Mean scores were calculated for litigants who answered at least 75% (3 out of 4) of scale items.
[28] Mean scores were calculated for litigants who answered at least 63% (5 out of 8) of scale items.
[29] $t(17) = 3.60$, $p < .01$ d = 1.75
[30] $t(17) = 3.18$, $p < .01$ d = 1.64

Table C17. Mean Fairness and Procedural Justice Scores by Satisfaction with Case Outcomes

Scale	Dissatisfied with Outcomes *Mean (SD)*	Satisfied with Outcomes *Mean (SD)*
Fairness of Legal Process *[sig.]*	**1.8** (1.1)	**4.0** (1.4)
Procedural Justice *[sig.]*	**2.8** (0.5)	**4.3** (1.0)

N=17 for Fairness of Legal Process. *N*=19 for Procedural Justice.
Dissatisfied clients *n*=7; Satisfied clients *n*=12.
Note. *ns* = not significantly different across groups; *sig*. = significant difference between groups; noted in bold.

Perceptions of Shriver representation, fairness, and procedural justice

Notably, clients who scored low on the fairness and procedural justice scales still reported being satisfied with the services they received from the Shriver pilot project. Of the 11 clients who scored below the mid-point of either the fairness or procedural justice scales, nine clients (82%) indicated satisfaction with the legal services and/or with Shriver representation. Clients observed that Shriver counsel was knowledgeable and professional and that the attorney effectively helped them through the proceedings. Overall perceptions of Shriver services are described in more detail at the end of this section.

OTHER SERVICES RECEIVED BY CLIENTS

Clients were asked if they sought any government or community services or resources to help them with their situations while their cases were active, followed by a question about their success in obtaining the resources or services they sought. As shown in Table C18, 33% of clients (*n*=7) sought other government or community services, and most (62%) did not. Of the seven clients who sought services, three sought intervention from police, two sought help from Child Protective Services, one sought help from a domestic violence shelter, one sought financial assistance, and one went to the bar association for legal help.[31] Of the seven clients who sought services, three (43%) were successful in accessing them and four were unsuccessful. The three who were successful received services from the police and from a domestic violence emergency shelter. (Note: This respondent added that she could access the emergency shelter, but was struggling to obtain other supportive services.)

Table C18. Services Requested and Received by Litigants

	N (%)
Did you seek services?	
Yes	7 (33%)
No	13 (62%)
Declined to answer	1 (5%)
Did you receive those services?	
Yes	3 (43%)
No	3 (43%)
Unsure	1 (5%)

[31] Respondents could indicate seeking more than one type of service, so the numbers may not sum to seven.

In April 2015, the San Francisco custody pilot project added a social services coordinator to its project staff who helped identify needs and resources and provided service referrals. This staffing addition came after the client interviews were complete. Thus, it is possible that clients who received Shriver services later in the project implementation had more success obtaining needed resources due to this additional assistance.

PERCEPTIONS OF THE IMPACTS OF THE CUSTODY CASE AND OF SHRIVER SERVICES

Impacts of the custody case

Clients discussed their perceptions of the impacts of their custody cases on their lives. In particular, they were asked "*Do you think the results of your custody case will make a difference in your life or your family's life in any way?"* Of the 21 clients interviewed, 11 (52%) described something positive, eight (38%) described something negative, and two (10%) were neutral.

Positive Perception:

- Two clients gave generally positive comments, such as "*It's just in the better interests of my children…their having both parents involved in their lives."*
- Nine clients expressed positive sentiments about their case outcome. For example, "*Absolutely, because they finally established an order that both parents can live with in taking care of the child*" and "*I wouldn't have been able to see my kids or speak to them on the phone for 4 years without the legal help*" and "*I feel that my son has a better structure and it's more consistent. It's best for him and me."*

Negative Perception:

- Five clients reported something negative about their case in general, such as "*It's negatively affecting my son, so it's negatively affecting me*."
- Three clients expressed negativity about their case outcome. For example, "*My intention was to move out of state and I was not able to do that because of the court order. My life has been stagnant. I feel like I'm kind of stuck. I have the same child care issues I had before."*

Neutral Perception:

- Two clients gave neutral responses, such as "Everything is fine."

Impact of Shriver representation

Lastly, clients were asked to describe the impact of the services they received through the San Francisco custody pilot project. Specifically, they were asked "*Do you think having received legal services at the Justice & Diversity Center for your custody case will make a difference in your life or your family's life in any way?"* Twenty clients answered this question, and all of them were very positive about and grateful for Shriver services, despite any negative impact their cases may have had for them. Most often, clients expressed appreciation for the Shriver attorney's knowledge and gratitude for the support he provided to them. They felt that they were better equipped for the legal process and better able to have their voice heard in court. A few clients even expressed regret that the Shriver project could not continue to help them with the rest of their custody cases. Some examples of responses follow:

"Having somebody in the court is very important. [The Shriver attorney] helped me. He is knowledgeable and fair. He knows the law and could tell me what was possible."

"The legal services actually made my life a lot better and easier. They helped me through a system that most people without legal knowledge cannot navigate."

"I was just very grateful for the support. I found out the other side was represented 2 days before the court date. I received documents in the mail from his attorney. [The Shriver attorney] was able to help me immediately."

"Receiving legal services has already made a difference. I've been seeing my daughter regularly. The services were great. [The Shriver attorney] and [Project Coordinator] were very passionate about helping me out. He has a heavy caseload and I appreciate his effort."

"I never realized I'd be receiving these services, and the professionalism and fairness put me at ease."

"If I represented myself, I wouldn't know all the laws. Since I had the free attorney, he helped out a lot. They would have made me out to be the bad guy. They made accusations. My attorney said, 'In that case, we want to do the TR-2 investigation,' and the other party backed down and said that wouldn't be necessary."

"He helped me push a decision in the court hearing because he had a lot more legal knowledge. He guided me through the process and made me feel comfortable with my case."

"The other lawyer might have pushed me around or confused me with legal jargon. [The Shriver attorney] was able to make sure my voice was heard. It leveled the playing field. When it came from [the Shriver attorney], it weighed more. I felt that [the Shriver attorney] was more competent and better educated than my ex-husband's lawyer, who he was paying for. [The Shriver attorney] was 10 times better. Having [the Shriver attorney] there for me, it was priceless. He was phenomenal."

"Yes, through [the Shriver attorney's] support I got my children. He made me believe in the court system."

Summary

Twenty-one Shriver clients from the San Francisco custody pilot project were interviewed after the resolutions of their custody pleadings to understand their perceptions of the legal process and of the Shriver services. With the custody pleadings, most of the interviewed clients were seeking joint legal custody and/or joint physical custody of their children, and many were asking the court to make orders regarding therapy or other services.

There was variation in clients' satisfaction with the outcomes of their cases. Forty percent of clients felt that their case outcomes were in line with their expectations, while 35% thought the outcome was worse than expected and 25% thought it was better than expected. On average, Shriver clients perceived a modest amount of fairness of the legal system and only a slightly higher level of procedural justice. However, these perceptions were closely related to their satisfaction with their case outcomes. Clients who were satisfied with the outcomes of their cases perceived higher levels of fairness and procedural justice than did clients who were dissatisfied with their case outcomes, who perceived lower levels of both.

Importantly, even when clients were dissatisfied with their case outcomes, or when they perceived low levels of fairness or procedural justice, they reported high levels of satisfaction with Shriver services. Nearly all clients reported appreciation for the knowledge and support of the Shriver attorney.

These interview data reflect a small subsample (*n*=21) of the litigants assisted by the San Francisco custody pilot project. Comparison (non-Shriver) litigants were unable to be reached for interviews. Due to the small sample size, and lack of comparison, findings should be considered exploratory.

Shriver Custody Pilot Projects

Case Outcomes Study

Shriver client "William."
William is a 40-year-old Afghani man with three young children. He has a degenerative brain disease and does not speak much English. He and his parents, who act as his translators and caretakers, were referred to the Shriver project by the court's family law self-help center. With the Shriver project's help, he and the children's mother were able to reach a custody stipulation that granted William alternate weekend visitation with his children. William and his family had been overwhelmed and confused by the legal paperwork needed to establish a custody order to ensure his visits with his children following the parents' separation. The Shriver project attorneys spent considerable time explaining all issues and discussing rights and obligations to him in terms simple enough that he could understand. Travel back and forth to the courthouse was also physically and financially burdensome for the family, so the stipulation also eliminated the need for the parties to return to court (the attorneys also consulted with William and his family remotely). Both William and the mother have extremely low incomes – William lives with his parents and receives Supplemental Security Income (SSI) benefits, and the mother was living in a homeless shelter and subsisting on food stamps. Additionally, the parties live an hour apart by public transit, and neither parent is able to afford the full cost of public transit tickets for themselves and three children. The Shriver social services advocate helped the family to obtain a reduced public transit fare for low-income families to ensure that the visits could happen. William and his family were very grateful for the Shriver project's assistance in navigating them through this difficult process and especially for helping to re-connect the children with their father.

Case Outcomes Study

Methodology and Analytic Approach

A custody matter in family court can be addressed and requests for orders (RFO) filed until the child reaches the age of majority (18 years). Because of this, cases often involve multiple pleadings over the course of time. The Shriver pilot project addressed a single pleading—one RFO—at any time during the life of the case. A single RFO can involve several court events (hearings, etc.) and can last for several weeks or months. For the purposes of this study, this RFO is considered the ***study relevant pleading*** (SRP). For the comparison group, one pleading during the same timeframe that involved a sole custody request was selected to be the SRP. Analyses examined outcomes related to the SRP for both groups (not outcomes for other pleadings in the case).

Case outcomes were investigated using data gleaned from court case files reviewed at two custody projects: the San Diego pilot project and the San Francisco pilot project. Random assignment was not conducted in any of the custody projects, due primarily to the relatively small number of eligible cases. Alternative sample selection procedures were used (explained below). Due to the differences in sample selection procedures and Shriver service models, data for the two custody projects were analyzed separately.

Determining a "successful" outcome in a custody case is very complex, because there are innumerable variables and complicated personal and family dynamics that can influence court orders. Moreover, custody decisions are driven by the best interests of the child, which is often not easily quantifiable or reliably substantiated in the case file. Given the nature and complexity of custody cases, and the limitations of data available in the case file, the analyses are largely exploratory. Outcome analyses for custody cases focused on the litigants' requests, the case events, and orders for the study relevant pleading. Cases that received Shriver representation were compared with cases that did not receive Shriver services. Data were examined for two primary areas: (a) court efficiency and (b) case events and outcomes.

Outcome area #1: Court efficiency

Analyses examined case elements that are potentially indicative of court efficiency, including the rate at which cases were resolved by settlement versus hearing/trial, number of hearings, and length of time to resolve a pleading. In San Diego, the impact of mandatory Shriver settlement conferences, a court innovation unique to that project, was explored.

Outcome area #2: Case events and outcomes

Analyses examined the outcomes related to legal and physical custody and visitation for the study relevant pleading among Shriver cases and comparison cases. This included requests by the moving party, requests by the responding party, and resulting court orders. Potentially mitigating factors that can affect custody—such as domestic violence, child abuse, substance use, or mental health—were also assessed. Analyses examined the durability of the custody orders to assess whether Shriver services resulted in orders that were maintained over time. This was analyzed by examining whether parties submitted a request to modify existing custody orders (i.e., those reached at the end of the SRP) within 2 years after the resolution of the SRP.

ANALYTIC APPROACH

Throughout this section, descriptive information is presented about case characteristics and outcomes of interest across the two study groups (Shriver cases and comparison cases). In addition, where possible, differences between the study groups were tested for statistical significance.[32] A statistically significant difference represents a real difference between groups, one that is not likely due to chance. For custody cases, differences between the two study groups were analyzed using *t*-tests and chi squared analyses. A *t*-test is appropriate for studying differences between groups on continuous or numerically scaled variables (e.g., number of hearings) and a chi squared test is appropriate for testing for difference on categorical variables (e.g., whether a pleading was resolved via settlement). For some continuous variables that were not normally distributed, such as pleading length, nonparametric tests were used to test for differences between groups.

Understanding custody outcomes is intricate and requires a broader perspective of the case. That is, knowing that a parent was not granted sole custody makes more sense in light of knowing what that parent had requested (i.e., was the parent seeking sole custody or seeking to maintain their current amount of parenting time). In the current relatively small samples, the combinations of these relevant variables yielded very small cell sizes. Thus, in these instances, only descriptive analyses were performed (i.e., counts and percentages are presented) and data were not analyzed for statistical significance.

[32] When a result has less than a 5% probability of occurring by chance (i.e., $p < .05$), the result is said to be statistically significant.

SAN DIEGO CUSTODY PILOT PROJECT CASE OUTCOMES STUDY

Methodology

As part of the San Diego pilot project, in addition to representation by San Diego Volunteer Lawyer Program (SDVLP) attorneys, the San Diego Superior Court implemented mandatory settlement conferences conducted by a judge.[33] SDVLP sought to have all Shriver cases participate in Shriver settlement conferences. Therefore, the evaluation sought to study the impact of these joint services. Because random assignment was not possible at this site, an alternative case selection method was employed.

To select cases for the Shriver representation group, the program services database was used to identify cases that received both Shriver representation and participated in a Shriver settlement conference. Because the durability of orders was a key research question, cases were removed from the sample if they had completed Shriver services less than 2 years earlier (i.e., did not have a full 2-year follow up period) or had an older adolescent child at the time of Shriver services (for whom a custody arrangement may time out within 2 years). After these adjustments, 55 Shriver cases remained in the sample.

Technology staff at the San Diego Superior Court then identified a sample of 60 comparison cases from the court case management system with pleadings during the same timeframe, but that did not receive any Shriver services. To approximate the Shriver sample, comparison cases had to have a pleading regarding sole custody, a fee waiver[34] granted to at least one party, at least 2 years since resolution, no older adolescent children, and to have been seen by one of the two judges who handled Shriver cases. Comparison cases were also selected to maintain a proportion of initial pleadings to requests for modification that corresponded with the proportion among the Shriver cases. This selection criterion was based on previous evidence suggesting that mediation is more effective with parties at the initial pleading than with parties who have engaged in multiple modifications (AOC, 2012).

Attempts were made to review the individual court case files for all selected cases, but a few files were unavailable. The final analytic sample included a total of 109 cases: 53 cases with a Shriver-represented party and 56 cases from the comparison group.

Description of Sampled Custody Cases

Type of petition

Custody arrangements are requested via several types of petitions. While parties can petition the court for custody, it is more common for them to file a petition in family court for another matter—most often, dissolution of marriage—in which child custody is among the issues subject to disposition by the court. In the current sample, nearly all (98%) of the comparison cases were initiated with a petition for dissolution of marriage. By contrast, cases that received Shriver representation showed more variability in the initial circumstances that led them to

[33] Prior to the Shriver project, the San Diego Superior Court required settlement conferences only for cases set for trial. These conferences were facilitated by an attorney and the parties did not have counsel present.

[34] Low-income litigants can request a court fee waiver, and the court can approve or deny this request. To qualify for a fee waiver, a litigant's income cannot exceed 150% of the Federal Poverty Level.

petition the court. Among Shriver cases, 42% (*n*=22) were initiated by a petition for dissolution of marriage, 28% (*n*=15) by a uniform parentage petition, 23% (*n*=12) by a governmental child support petition[35], 8% (*n*=4) by a petition for custody/visitation, 4% (*n*=2) by a domestic violence restraining order petition, and 4% (*n*=2) by a final judgment for custody in a juvenile court case (commonly known as an "exit order").[36] The homogeneity of the comparison group is likely due to the case selection methods used by the court technology staff and with the capabilities of the court case management system. This difference in the study groups may indicate a lower rate of marriage among Shriver cases, which may be relevant for case outcomes, given the additional challenges often faced by low-income, never-married parents navigating the family law and child support systems (Boggess, 2017).

Children involved

In the custody cases sampled for this study, all parties were parents (mothers and fathers). Across the 53 Shriver representation cases, 104 children were involved—on average, two children per case (mean = 1.9)—and the average child age was 5.6 years. In the 56 comparison cases, a total of 82 children were involved—on average, between one and two children per case (mean = 1.6)—and the average child age was 8.3 years.

Study relevant pleading (SRP)

Custody cases can remain open for years. After the initial custody orders are issued, it is possible for the parties to submit a request to modify the existing orders. Such modification requests can be submitted multiple times over the life of a case, as circumstances in the parents' and children's lives change. Shriver clients could be at various points in their cases when they sought help, but were only provided services for one RFO (i.e., the "study relevant pleading," or SRP). The study relevant pleading was the initial custody pleading for 53% (*n*=28) of Shriver representation cases and 66% (*n*=37) of comparison cases. Among the remaining 25 Shriver representation cases, the study relevant pleading was a request to modify existing custody orders and ranged from the second to the 16th RFO filed. In the 19 comparison cases for which the study relevant pleading was a modification request, the SRP ranged from the second to the 10th RFO filed. For both groups, when the SRP was a request for modification (i.e., not the initial pleading), it was, on average, the third RFO filed.

[35] Governmental child support cases are filed by the local child support agency, and the County is named as the petitioner and the non-custodial parent is the respondent. Governmental child support cases are always filed if the custodial parent seeks welfare (Temporary Assistance for Needy Families [TANF]) benefits for the child, or if the child becomes a ward of the state in a dependency action and foster care funds are provided for the child. As the petitioner, the child support agency does not always have the most up-to-date information on how to serve the non-custodial parent; thus, there can be a delay between case filing and service on that parent. In addition, any parent can request the services of the child support agency to establish parentage, or to obtain, modify or collect a child support order at no charge. While the local child support agency provides assistance only with the child support portion of the case, California law provides that custody and visitation can be determined in these cases. The mechanism for requesting a custody or visitation order is to legally "join" the custodial parent after parentage has been established, which involves filing papers with the court. Once the parent has been joined, either parent can file a motion for child custody or visitation and those issues will normally be heard in the family law court in the same way that a divorce, parentage, or other family law case would proceed.

[36] There may be more than one type of petition that initiated a custody case. Percentages do not add to 100%.

To illustrate the age of the case at Shriver intake, the number of days between the petition and the study relevant pleading was calculated. Table C19 shows the average length of time separately for those cases in which the study relevant pleading was the initial custody pleading and for those in which the relevant pleading was a request to modify existing orders.[37]

Table C19. Time from Petition to Study Relevant Pleading by Study Group

Time from Petition to the SRP, when….	Shriver Representation	Comparison
SRP is the initial custody pleading[a]	28 (53%)	37 (66%)
Mean (SD) number of days from petition to SRP	96 (223.4)	144 (238.0)
Median number of days from petition to SRP	7	56
Range	0 - 948	0 - 1259
SRP is a request for modification of existing orders	25 (47%)	19 (34%)
Mean (SD) number of days from petition to SRP	1261 (1327.0)	1079 (999.9)
Median number of days from petition to SRP	712	854
Range	31 - 4527	3 - 4775

N=109. Shriver representation *n*=53; Comparison *n*=56.
Note: SRP = "study relevant pleading," which refers to the segment of the custody case that received Shriver services or the segment of the comparison cases that is being used for comparative analysis. SD = standard deviation.
[a] Cases with a petition for governmental child support were omitted from the mean and median calculations due to their unique circumstances and the impact on case length (see footnote).

Complicating issues and allegations

Custody cases can involve other allegations that may complicate the proceedings, such as domestic violence, child maltreatment, mental health problems, or substance use issues. These issues can bear on the court's ability to determine fit parents and the best interests of the child. They may also reflect the level of dysfunction in the home or contentiousness between parties. Table C20 shows the issues raised by either party over the life of the custody case (not just the SRP). Altogether, 72% of Shriver representation cases involved at least one allegation, versus 55% of comparison cases. The most frequent allegation pertained to domestic violence. On average, Shriver representation cases involved 1.6 issues, versus 1.2 issues per comparison case. (Note: Allegations may or may not have been substantiated.)

Table C20. Issues Raised Over Life of Custody Case by Study Group

Allegation made by either party regarding…	Shriver Representation	Comparison
Domestic violence	24 (45%)	19 (34%)
Mental health	18 (34%)	11 (20%)
Child abuse	15 (28%)	8 (14%)
Child neglect	14 (26%)	12 (21%)
Substance abuse	15 (28%)	18 (32%)
No Issues	15 (28%)	25 (45%)

N=109. Shriver representation *n*=53; Comparison *n*=56.
Note: Multiple issues can be raised in each case, thus percentages do not add to 100%.

[37] Given the additional steps to file a governmental child support case (see prior footnote), motions for child custody in these cases can be filed significantly after the initial petition. Because of this, cases started with a petition for governmental child support were omitted from analysis. Of the 12 cases with a petition for governmental child support in the sample, seven had sufficient data to calculate the number of days from petition to SRP. For these cases, the durations were longer than for the rest of the sample: mean number of days = 1,180, median = 755, range = 55 to 3,542.

Study Relevant Pleading

What was the role of the Shriver client in the study relevant pleading?

The San Diego pilot project (as with all the custody projects) provided representation to parents who met the project eligibility criteria, regardless of their gender or their role in the case. Among the 53 Shriver cases sampled for analysis, mothers were the Shriver client in 89% (*n*=47) of cases and father s were the client in 11% (*n*=6) of cases. Further, the Shriver client was the moving party (i.e., the person who instigated the pleading) in 49% (*n*=26) of cases and the responding party in 51% (*n*=27) of cases. Table C21 shows this distribution.

Table C21. Shriver Client Role in Case

Shriver Client was…	Mother	Father	Total
Moving party	23	3	26 (49%)
Responding party	24	3	27 (51%)
Total	47 (89%)	6 (11%)	53 (100%)

Note: SRP stands for "study relevant pleading," which refers to the segment of the custody cases that received Shriver services or the segment of the comparison cases that is being used for comparative analysis.

Were cases likely to have representation on both sides?

As per the legislative direction, Shriver custody pilot projects intended to balance the playing field by reaching self-represented parents who faced a represented opposing party. As seen in Table C22, for the SRP, the majority (92%) of Shriver cases had legal representation on both sides. The four remaining cases had information in the case file that suggested imbalanced representation. In contrast, 50% (*n*=28) of comparison cases had both parties unrepresented, 16% (*n*=9) had both sides represented, and 18% (*n*=10) had imbalanced representation. (Representation status of both parties could not be established for nine cases. This information can be difficult to determine from the case files because attorneys may substitute in and out over the life of the case.)

Table C22. Party Representation by Study Group

Representation Status	Shriver Representation	Comparison
Both sides represented	49 (92%)	9 (16%)
Both sides self-represented	0 (0%)	28 (50%)
One side represented, one side self-represented	4 (8%)	10 (18%)
Unknown	0 (0%)	9 (16%)

N=109. Shriver representation *n*=53; Comparison *n*=56.

What was requested by parties in the study relevant pleading?

Shriver representation was intended for cases with sole custody at issue. Sole *legal* custody provides one parent the right and responsibility to make all decisions related to the health, education, and welfare of the child, without having to consult the other parent. Sole *physical* custody pertains to the parent who has primary physical custody of the child or the greater percentage of parenting timeshare (i.e., child is with that parent most or all of the time). Table C23 shows the legal and physical custody requests made by the moving and responding parties. Approximately 50% of cases in both groups involved a moving party requesting sole legal

custody and roughly 50% requesting joint legal custody. In contrast, roughly 80% of moving parties requested sole physical custody.

Not all cases involved a responding party who submitted a responsive declaration to make counter requests. However, responsive declarations were more common among Shriver representation cases (87%; *n*=46) than among comparison cases (41%; *n*=23). Among responses, 28% of Shriver cases involved a responding party requesting sole legal custody, versus 9% of comparison cases. More than two thirds of Shriver cases involved a responding party requesting sole physical custody, versus less than one quarter of comparison cases.

Table C23. Legal and Physical Custody Requests by Study Group

	Shriver Representation		Comparison	
Custody Requests	Moving Party Request	Responding Party Request	Moving Party Request	Responding Party Request
Legal Custody				
Sole to mother	12 (23%)	9 (17%)	14 (25%)	3 (5%)
Sole to father	12 (23%)	6 (11%)	13 (23%)	2 (4%)
Joint	26 (49%)	26 (49%)	28 (50%)	13 (23%)
None/NA	3 (6%)	12 (23%)	1 (2%)	38 (68%)
Physical Custody				
Sole to mother	21 (40%)	24 (53%)	26 (46%)	10 (18%)
Sole to father	20 (38%)	8 (15%)	23 (41%)	2 (4%)
Joint	9 (17%)	10 (19%)	6 (11%)	6 (11%)
None/NA	3 (6%)	11 (21%)	1 (2%)	38 (68%)

N=109. Shriver representation *n*=53; Comparison *n*=56.

Sole physical custody is defined differently in different jurisdictions. A parent with sole physical custody can have shares of time with the child(ren) from 70% on up. Arrangements with 100% time given to one parent are rare, and pleadings that request 100% timeshare—i.e., no time for the other parent—are one potential indication of high contentiousness. In this sample, seven Shriver representation cases and six comparison cases involved requests for 100% timeshares.

Outcome Area #1: Court Efficiency

Shriver settlement conferences

Shriver settlement conferences were a key court innovation of the San Diego pilot project. These special conferences, conducted by a designated judge to ensure consistency, provided an opportunity for parties to reach an agreement before the case went to hearing or trial.[38] Shriver settlement conferences were scheduled for all Shriver cases and were held for 85% of them (*n*=45). A few settlement conferences did not occur, most often because an agreement was reached before the conference date or because one of the parties did not appear. Number of days from the SRP filing date to the Shriver settlement conference date ranged from 0 to 382, with an average of 95 days (median = 80).[39]

[38] Shriver settlement conferences, facilitated by a judge and offered to Shriver cases, were distinct from extant settlement conferences, which were facilitated by a volunteer attorney and offered only to cases set for trial.
[39] The average time was based on 40 cases with data; five cases were missing data on case length.

Shriver settlement conferences could result in varying levels of agreement between parties, including full agreement on all issues, partial agreement (parties agree on some issues, but others remain unresolved and require additional court intervention), or no agreement on any issues. Table C24 shows the levels of agreement as a result of the Shriver settlement conferences and the ultimate method of resolution for the SRP. Of the 45 cases with Shriver settlement conferences, 42% (*n*=19) reached full agreement, 18% (*n*=8) reached partial agreement, and 33% (*n*=15) reached no agreement (3 cases were missing this data). Of the 15 cases with no agreement, 11 were decided at a hearing. Of the eight reaching partial agreement, three were decided at a hearing. Among those with partial agreement, three cases agreed on legal custody, two on physical custody, and two on visitation, while the other aspects of the cases remained in dispute (three cases were missing these data). Whether parties reached agreement during the Shriver settlement conference was not related to the pleading type (initial orders vs. modification) nor to other allegations in the case.

Table C24. Levels of Agreement via Settlement Conference, for Shriver Representation Cases Ultimately Resolved by Various Methods

	Agreement Reached via Settlement Conference			
Ultimate Method of SRP Resolution	**Full Agreement**	**Partial Agreement**	**No Agreement**	**Unknown**
Mediation by Family Court Services	0	1	0	0
Settlement conference	16[a]	1	0	1
Settlement before hearing	1	2	2	0
Decided at hearing	1[b]	3	11	2
Became Dependency Case	0	0	1	0
Unknown/Missing	0	1	1	0

Note. SRP = study relevant pleading. *N* = 44 cases with Shriver representation cases and a settlement conference. One case had indication of agreement reached during the Shriver settlement conference, but no formal indication of the ultimate method of resolution. This case is not included in this above table.

[a] Five cases had reached an agreement on custody and visitation terms at the settlement conference but disagreed on other issues of the pleading (e.g., child support). For purposes of these custody analyses, these pleadings were categorized as reaching full agreement in the settlement conference.

[b] One case reached an agreement at a settlement conference but had a subsequent court hearing. During the hearing, the court adopted the FCS recommendations.

How were study relevant pleadings ultimately resolved?

Table C25 shows the methods of resolution for the SRP for all cases in each of the study groups. Eighteen cases (40% of the 45 cases that involved a settlement conference and 34% of the 53 Shriver representation cases) were ultimately resolved by a Shriver settlement conference. Anecdotally, judges and attorneys involved in the Shriver project described that these settlement conferences were effective at narrowing the issues, even if agreement was not reached. Of the remaining Shriver representation cases, most were either decided at a hearing (40%; *n*=21) or settled before the hearing outside of a settlement conference (15%; *n*=8). In the comparison group, nearly two thirds of cases were resolved at a hearing (63%; *n*=35), and nearly one third (30%; *n*=17) were settled before the hearing.

Approximately three quarters of both groups participated in at least one Family Court Services (FCS) mediation session, but the proportion of cases ultimately resolved by FCS mediation (4%)

was notably smaller than the proportion resolved via Shriver settlement conference (34%). This may reflect the benefit of having counsel present during the negotiation to help clients determine whether terms are reasonable and to facilitate agreement.

Overall, 54% of Shriver representation cases were ultimately settled, versus 30% of comparison cases. Further, 40% of Shriver cases were decided at a hearing, versus 63% of comparison cases. (A small number of cases in both groups—8%—were resolved in another manner.) These differences were statistically significant, indicating that Shriver cases were more likely to settle and less likely to be decided by the court.[40]

Table C25. Method of Resolution of SRP by Study Group

Method of Resolution	Shriver Representation	Comparison
Mediation by Family Court Services	2 (4%)	0 (0%)
Settlement conference	18 (34%)	n/a
Settlement before hearing	8 (15%)	17 (30%)
Decided at hearing	21 (40%)	35 (63%)
Became Dependency Case	1 (2%)	0 (0%)
Other	0 (0%)	2 (4%)
Unknown/Missing	3 (6%)	2 (4%)

N=109. Shriver representation *n*=53; Comparison *n*=56.

Were there fewer hearings?

When parties are amicable, and agreement can be easily reached, court hearings are not necessary. In theory, proceeding without a hearing is the least time- and resource-intensive path for the court and involved parties. When agreement cannot be reached, hearings become necessary for the court to determine case direction and outcomes. A single pleading can involve multiple hearings, particularly when the case is contentious. Table C26 shows the proportion of cases in each study group resolved with and without hearings. Among Shriver representation cases, 16% were resolved without a hearing, versus just one (2%) comparison case. This difference was statistically significant.[41] Of those cases with at least one hearing, the average number of hearings was equivalent between the two groups (mean = 2.5).

Table C26. Number of Hearings per SRP by Study Group

Hearings	Shriver Representation	Comparison
Cases with no hearings *[sig.]*	8 (**16%**)	1 (**2%**)
Cases with at least one hearing	42 (84%)	55 (98%)
Of those cases with at least one hearing, average number of hearings (SD) [ns]	2.5 (1.7)	2.5 (1.7)

N= 106. Shriver representation *n*= 50; Comparison *n*= 56. Number of hearings was missing for three representation cases.
Note. S*ig*. = significant difference between groups; noted in bold. *ns* = not significantly different across groups.

[40] $\chi^2(1) = 4.28$, $p < .05$, Cramer's V = .206.
[41] $\chi^2 (1) = 6.869$, $p < .01$

Though the average number of hearings per pleading did not vary between the groups, the type of hearings held did. Overall, there were a total of 105 hearings among Shriver representation cases and 140 hearings among comparison cases. Table C27 lists the types of hearings that occurred for cases within each study group. Among the hearings held by Shriver representation cases, 59% (*n*=62) were regular, 23% (*n*=24) were review, 10% (*n*=11) were long cause, and 8% (*n*=8) were temporary emergency (ex parte) hearings. In the comparison group, the majority of hearings were regular hearings (82%; *n*=115), and the remaining hearings were review (9%; *n*=13), ex parte (7%; *n*=10) and long cause (1%; *n*=2). The differences in hearing types between study groups was statistically significant.[42] Specifically, the Shriver cases had fewer regular hearing and more review hearings, relative to the comparison group. Review hearings are often used by the court to allow families some time to try out a new custody/visitation arrangement and then to report back to the court on the suitability of the arrangement. In this way, review hearings can alleviate the need for parents to file a new RFO to change existing custody orders that are not working out well.

Table C27. Type of Hearing by Study Group

Hearing Type	Shriver Representation	Comparison
Regular *[sig.]*	62 (**59%**)	115 (**82%**)
Review *[sig.]*	24 (**23%**)	13 (**9%**)
Long cause	11 (10%)	2 (1%)
Ex parte	8 (8%)	10 (7%)
Total	105 (100%)	140 (100%)

N=109. Shriver representation *n*=53; Comparison *n*=56.
Note. S*ig*. = significant difference between groups; noted in bold.

Were pleadings resolved faster?

The length of the study relevant pleading was defined as the length of time, in days, between the filing of the SRP by the moving party and the date of order, settlement, or judgment. Table C28 compares the SRP length by study group. On average, proceedings lasted about 4 months in both groups. For Shriver representation cases, the average length was 140 days and the median was 111 days. In the comparison group, the average length was 135 days and the median was 99 days. These differences were not statistically significant.[43]

Table C28. Length of SRP (in days) by Study Group

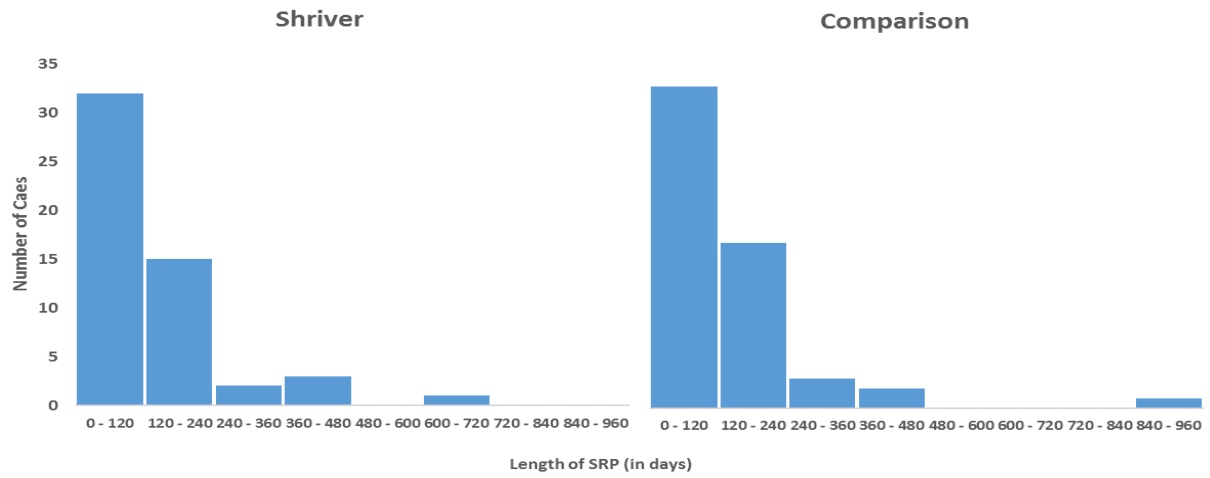
Number of Days	Shriver Representation	Comparison
Mean (SD)	140.0 (113.3)	134.8 (131.5)
Median *[ns]*	111	99
Range	26 - 614	0 - 849

N=109. Shriver representation *n*=53; Comparison *n*=56.
Note. *ns* = not significantly different across groups.

[42] $\chi^2(3) = 21.022$, $p < .001$, Cramer's V = .293.
[43] Given the skewed distribution, a nonparametric test was used. Mann-Whitney U = 1399.5, $p = .608$.

There was variability in the SRP length across cases. In particular, although the majority of pleadings within both study groups were resolved within 4 months, a couple of cases took nearly 2 years to resolve. These outlying values cause the mean SRP length to be higher than the median (Table C28). Practically speaking, it is important to note that very few cases had pleadings that lasted this long. Figure C5 shows the distribution of SRP length for both groups.

Figure C5. Length of SRP (in Days) by Study Group



Outcome Area #2: Case Events and Outcomes

Child custody cases are complex. Myriad requests can be made, diverse outcomes are possible (e.g., various derivations of timeshare between parents), and a litigant's role in the case (i.e., moving party vs. responding party, self-represented litigant or not, current custodial parent or not) matters and can change over time. To establish an equivalent structure between the study groups and consistent perspective from which to interpret findings, data were analyzed according to the gender of the parent—specifically, mother and father. (Note that all couples in the study sample were opposite-gender.) Among the 53 cases receiving Shriver representation in San Diego, the mother was the Shriver client in 89% (n=47) of cases. To isolate the effect of Shriver representation, analyses compared the outcomes for mothers and fathers among the 47 Shriver representation cases with mothers as clients and among the 56 comparison cases. Analyses compared case outcomes and custody orders of the mother, regardless of whether the mother was the moving party or the responding party for the SRP.

Regarding attorney representation, all of the mothers in the Shriver representation group were, by nature of being a Shriver client, represented. Among the comparison group, 70% of mothers (*n*=39) were self-represented (16 of whom had received help filing legal paperwork from the family law facilitator), 23% (*n*=13) were represented by an attorney, and four cases (7%) were missing data about the mother's representation status.

What custody and visitation orders were issued for the study relevant pleading?

Table C29 shows the legal and physical custody orders for mothers and fathers for each study group, regardless of resolution method. Regarding legal custody, 81% (*n*=38) of Shriver representation cases and 75% (*n*=42) of comparison cases resulted in joint legal custody, a

difference that was not statistically significant.[44] Regarding physical custody, roughly one quarter of both groups (26% Shriver representation cases, 27% comparison cases) resolved with joint physical custody. Comparison cases appeared to have a greater proportion of cases with sole physical custody ordered to the mother (54%; *n*=30) compared to Shriver representation cases (45%; *n*=21). However, this difference was not statistically significant.[45]

Table C29. Legal and Physical Custody Orders by Study Group

Custody Orders	Shriver Representation	Comparison
Legal Custody *[ns]*		
Sole to Mother	5 (11%)	6 (11%)
Sole to Father	4 (8%)	6 (11%)
Joint	38 (81%)	42 (75%)
Physical Custody *[ns]*		
Sole to mother	21 (45%)	30 (54%)
Sole to father	14 (30%)	9 (16%)
Joint	12 (26%)	15 (27%)

N=107. Shriver representation *n*=47; Comparison *n*=554 Information was missing for custody orders for two Shriver representation cases: one was noted as "issue was not addressed" and one noted that the mother failed to appear due to illness.
Note. *ns* = not significantly different across groups.

Table C30 compares the visitation orders for study groups, organized by the physical custody orders issued. For example, if sole physical custody was granted to the mother, the type of visitation granted to the father is shown. "*Reasonable visitation*" is a term used when the court enables the parties to establish a visitation schedule and routine that works for them without court order or supervision. This type of arrangement tends to happen in cases with a high level of cooperation and low conflict between parties. As seen in Table C30, no Shriver cases involved an order of reasonable visitation, and only one comparison case did, suggesting that the court felt that these families would benefit from additional structure.

Scheduled visitation was most commonly ordered among both study groups. This type of visitation occurs according to a schedule that is ordered by the court and that both parties are expected to adhere to. For many families, the visits are scheduled, but unsupervised, which means the parent has time with the child independently. However, for some families when concerns for child safety are present, the court orders the visits to be supervised by a third party. When the mother was granted sole physical custody, in both study groups, roughly 80% of fathers were granted scheduled and unsupervised visitation and about 10% of fathers (9% of the Shriver cases and 13% of comparison cases) were ordered to have scheduled and supervised visitation. When the father was granted sole physical custody, a greater percentage of mothers were ordered to have scheduled and supervised visitation—specifically, 31% of Shriver representation cases and 44% of comparison cases.

[44] $\chi^2(2) = 0.207$, $p = .902$.
[45] $\chi^2(2) = 2.536$, $p = .281$.

Table C30. Visitation Orders by Physical Custody Ordered and Study Group

Visitation Order	Shriver Representation			Comparison		
	Mom has Sole	Dad has Sole	Joint	Mom has Sole	Dad has Sole	Joint
Reasonable visitation	0 (0%)	0 (0%)	0 (0%)	1 (3%)	0 (0%)	0 (0%)
Scheduled, unsupervised	17 (81%)	9 (69%)	8 (67%)	24 (80%)	5 (56%)	7 (47%)
Scheduled, supervised	2 (9%)	4 (31%)	0 (0%)	4 (13%)	4 (44%)	0 (0%)
Other	0 (0%)	0 (0%)	0 (0%)	1 (3%)	0 (0%)	2 (13%)
None	1 (5%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Not applicable	1 (5%)	0 (0%)	4 (33%)	0 (0%)	0 (0%)	6 (40%)
Total	21	14	12	30	9	15

Note. Data were missing for the terms of visitation for one Shriver case with sole custody ordered for the father.

What were the physical custody orders, in relation to the physical custody requests?

Reviewing the legal and physical custody orders that resulted from the study relevant pleading is informative. However, it does not provide a full understanding of the trajectory of the case. To better understand the outcomes, and the potential impacts of Shriver representation, it is helpful to examine the orders in the context of what the parties were requesting. Figure C6 illustrates the trajectories of cases, relative to physical custody, and according to:

- *study group membership*—Shriver representation cases with mother clients (*n*=47) and comparison cases (*n*=56);
- *mother's role in the case*—namely, whether she was the moving party (who prompted the pleading and requested something of the court) or the responding party (who may or may not have submitted a counter request);
- *requests made by the moving party regarding physical custody*—specifically, what the moving party asked the court to order (*Note*: Figure C6 does not show any requests made by the responding party); and
- *orders regarding physical custody*—specifically, the results of the study relevant pleading, including determination of sole or joint custody and the custodial parent.

As shown in Figure C6, the study relevant pleadings often involved a sole custody request by the moving party.[46] In Shriver representation cases, roughly half of the clients (mothers) were the moving party (*n*=23) and roughly half were the responding party (*n*=24). In the 23 cases in which the mother was the moving party, 70% (*n*=16) involved the mother requesting sole physical custody for herself, 9% (*n*=2) involved the mother requesting the father have sole custody, and 9% (*n*=2) involved her requesting joint custody (three cases did not include a request for physical custody). In the 16 cases in which the mother requested sole custody for herself, she was granted sole custody 50% of the time (*n*=8), joint custody was granted 31% of the time (*n*=5), and sole custody was granted to the father 19% of the time (*n*=3).

[46] Having sole custody at issue was part of the eligibility criteria for Shriver representation and for the comparison case selection. Note that Figure C6 does not include specific requests made by the responding party (these are shown later), and it is possible that in some cases this party requested sole custody in response to the moving party's pleading. Also, please note that Figure C6 pertains only to physical (not legal) custody. It is possible that the parties requested sole legal custody, and were therefore eligible for Shriver services, but not sole physical custody.

In the 24 cases in which the mother was the responding party, 67% (*n*=16) involved the father filing for sole custody, 8% (*n*=2) involved the father requesting the mother to have sole custody, and 25% (*n*=6) involved the father requesting joint custody. In the 16 cases in which the father requested sole physical custody for himself, the mother was granted sole custody in three (19%) cases, joint custody was granted in seven cases (44%), and the father was granted sole custody in six cases (38%).

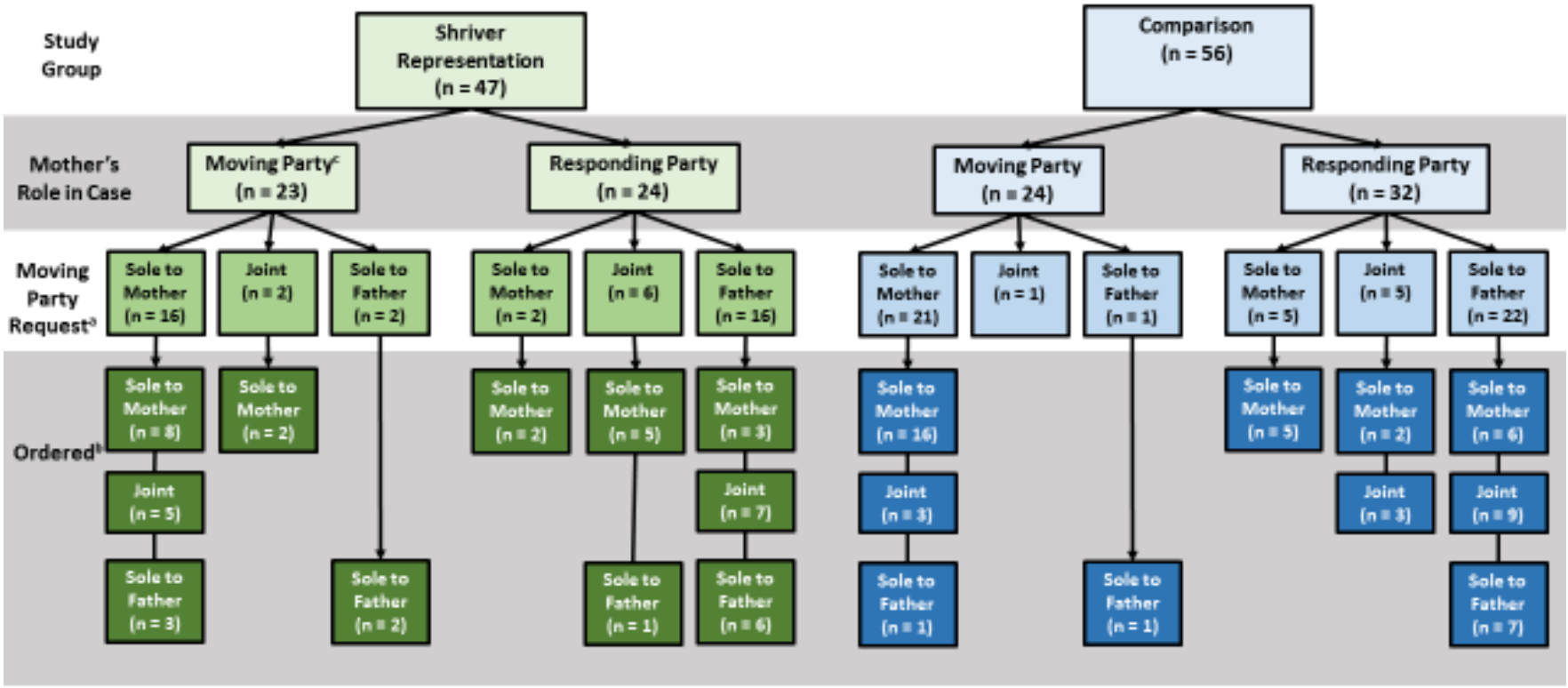
Trajectories in the comparison group show a somewhat similar trend. Mothers were the moving party in 24 cases and the responding party in 32 cases. When mothers were the moving party, almost all (*n*=21) requested sole physical custody to the mother.

In the 24 comparison cases in which the mother was the moving party, 88% (*n*=21) involved the mother requesting sole physical custody for herself, one case involved the mother requesting the father have sole custody, and one involved her requesting joint custody (one case was missing this information). In the 21 cases in which the mother requested sole custody for herself, she was granted sole custody 76% of the time (*n*=16), joint custody was granted 14% of the time (*n*=3), and sole custody was granted to the father 5% of the time (*n*=1).

In the 32 comparison cases in which the mother was the responding party, 69% (*n*=22) involved the father filing for sole custody, 16% (*n*=5) involved the father requesting the mother to have sole custody, and 16% (*n*=5) involved the father requesting joint custody. In the 22 cases in which the father requested sole physical custody for himself, the mother was granted sole custody in six (27%) cases, joint custody was granted in nine cases (41%), and the father was granted sole custody in seven cases (32%).

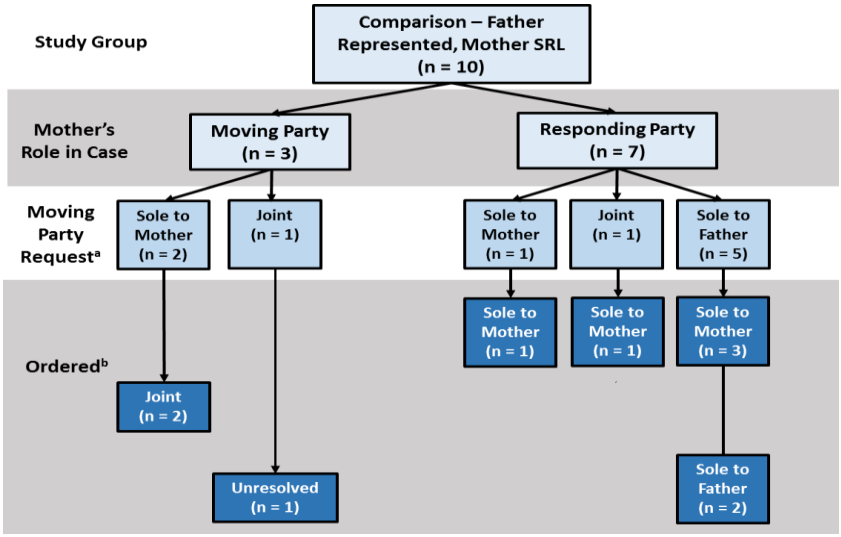
Given the heterogeneity of representation status among the comparison cases, it is helpful to examine the case trajectories separately for those cases with lopsided representation, those with both parties self-represented, and those with both parties with legal counsel. Figure C7 illustrates the moving party requests and the case outcomes regarding physical custody for these subgroups of the comparison cases. The reader should be advised: The numbers of cases in each of these conditions gets very small, so these estimates should be considered exploratory and interpreted with caution.

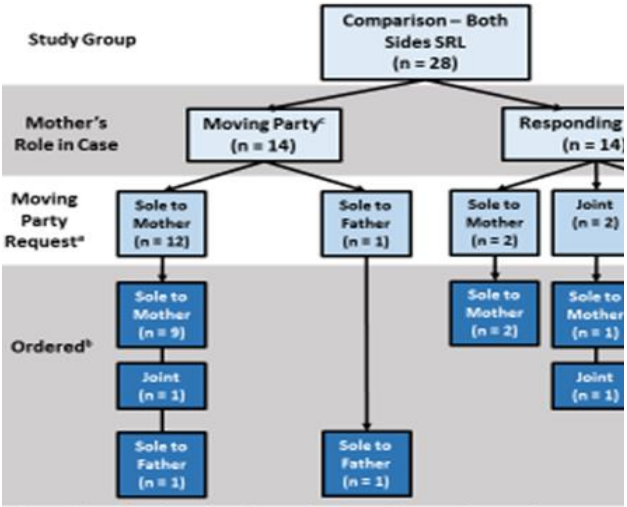
Figure C6. Physical Custody Requests and Orders by Study Group



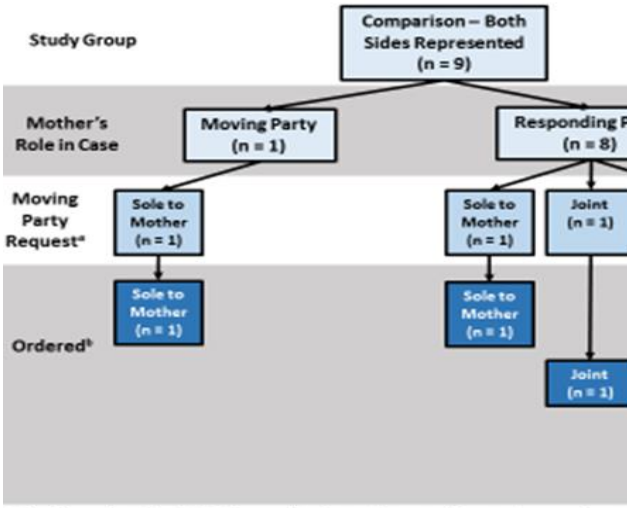
Note. Figure is oriented to the mother in each case—figures show outcomes when mother was moving party or responding party.
[a]Custody arrangements requested in study relevant pleading (SRP) by the moving party.
[b]Custody arrangements at case close, either settled or court ordered.
[c]Three cases involved legal custody requests but did not involve physical custody requests

Figure C7. Physical Custody Requests and Orders in Comparison Group by Parties' Representation Status





Note. Figure is oriented to the mother in each case—figures show outco
was moving party or responding party.
[a]Custody arrangements requested in study relevant pleading (SRP) by th
[b]Custody arrangements at case close, either settled or court ordered.
[c]One case involved legal custody requests but did not involve physical cu



Note. Figure is oriented to the mother in each case—figures show outcom
was moving party or responding party.
[a]Custody arrangements requested in study relevant pleading (SRP) by the r
[b]Custody arrangements at case close, either settled or court ordered.

What additional orders were issued at the resolution of the study relevant pleading?

Given that these custody cases often involved serious concerns regarding the welfare of the child(ren) and concerns about parental fitness, additional orders beyond legal and physical custody and visitation were often requested by parties. Such additional orders included, for example, mandated mental health treatment, substance abuse counseling, parenting classes, or batterer intervention programs. Table C31 shows whether any of these additional orders were issued, for either party, at the end of the study relevant pleading.

Parenting classes constituted the most frequent order in both groups. They were issued to a significantly higher proportion of Shriver representation cases (38%; *n*=20) than comparison cases (18%; *n*=10).[47] Other orders,[48] such as those for mental health treatment or substance abuse counseling, were made for a small number of cases in both study groups. For Shriver representation cases, four cases (8%) involved orders for a parent to attend therapy or mental health counseling and an additional four cases (8%) ordered substance abuse counseling. Among the comparison group, four cases (7%) involved orders for therapy or mental health treatment, and an additional two cases (4%) involved orders for substance abuse counseling. Ten (19%) Shriver representation cases and four comparison cases involved non-specified "other" orders. These were typically more detailed and case-specific orders for the parents to follow, such as provisions prohibiting the parents from using drugs around the children, and limiting parents' ability to move away or take the children on vacation.

Overall, a significantly greater proportion of Shriver representation cases (66%) had additional orders, relative to comparison cases (34%).[49] This may be due to the added expertise brought by the Shriver attorneys. In particular, attorneys know what can be ordered by the judge and what is reasonable to request, while self-represented litigants may not know these options exist. Further, having counsel on both sides of a case likely yields more comprehensive information about the case for the court, which could result in additional orders.

Table C31. Other Court Orders for the SRP by Study Group

Court Orders	Shriver Representation	Comparison
Parenting class *[sig.]*	20 (**38%**)	10 (**18%**)
Therapy/mental health treatment	4 (8%)	4 (7%)
Substance abuse counseling	4 (8%)	2 (4%)
Other	10 (19%)	4 (7%)
No other orders *[sig.]*	18 (**34%**)	37 (**66%**)

N=109. Shriver representation *n*=53; Comparison *n*=56.

Note. There may be more than one issue ordered in each case, so percentages do not add to 100%.

sig. = significant difference between groups; noted in bold.

[47] $\chi^2(1) = 5.394$, $p < .05$, Cramer's V = .222.

[48] No cases in either group involved a restraining order being issued as part of the custody determination or a batterer intervention program being ordered. It is likely that these orders, if granted, were part of other hearings.

[49] $\chi^2(1) = 11.230$, $p < .01$, Cramer's V = .321.

Were custody orders related to any additional orders granted by the court?

Table C32 displays whether any additional orders for mothers and fathers were issued, organized by which party was granted physical custody. As shown in the table, additional orders for outside services (e.g., mental health treatment, substance use counseling) were more common for cases in which one parent was given sole custody (i.e., not those granted joint custody), in both study groups. Further, these orders more often targeted the non-custodial parent—a potential indication of the court's understanding of the best interests of the child—and constitute the safest parenting environment. These findings may provide some insight into external circumstances that impacted custody decisions.

Table C32. Additional Orders by Physical Custody Awarded by Study Group

	Shriver Representation			Comparison		
Additional Orders	Sole to Mom	Sole to Dad	Joint	Sole to Mom	Sole to Dad	Joint
Therapy						
For mom	1 (5%)	1 (7%)	0 (0%)	1 (3%)	1 (11%)	1 (7%)
For dad	3 (14%)	1 (7%)	0 (0%)	2 (7%)	1 (11%)	0 (0%)
For child	2 (10%)	1 (7%)	1 (8%)	4 (13%)	0 (0%)	1 (7%)
Substance Use Counseling						
For mom	0 (0%)	3 (21%)	0 (0%)	0 (0%)	1 (11%)	1 (7%)
For dad	1 (5%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Parenting Classes						
For mom	7 (33%)	5 (36%)	1 (8%)	5 (17%)	0 (0%)	2 (13%)
For dad	7 (33%)	5 (36%)	1 (8%)	6 (20%)	1 (11%)	2 (13%)
Other						
For mom	3 (14%)	3 (21%)	1 (8%)	1 (3%)	1 (11%)	2 (13%)
For dad	2 (10%)	2 (14%)	0 (0%)	0 (0%)	0 (0%)	1 (7%)
Total	21	14	12	30	9	15

Note. There may be more than one additional order, or no such orders, in each case, so percentages do not add to 100%.

Were the custody orders among Shriver cases more durable?

Stakeholders in the San Diego pilot project believed that the Shriver settlement conferences had the power to increase the engagement of, and buy-in from, parties, and thus to yield more durable settlements. The evaluation therefore explored the durability of the orders by examining whether and how often parties returned to the court requesting a modification of the custody orders granted at the end of the SRP. Because custody cases can involve repeated requests for modifications, especially in contentious cases, this examination may help elucidate whether providing representation and more intensive settlement services can help ease tensions between the parties and make cooperation more plausible. Increased durability of custody orders will facilitate court efficiency over the longer term, as fewer cases will be repetitively congesting the court.

Durability of orders was defined by whether a subsequent RFO to modify legal or physical custody orders was filed during the 2 years after the SRP resolution. When a subsequent RFO was filed, the time between the resolution of the SRP and the filing date of the RFO was examined. As shown in Table C33, 11% (*n*=6) of Shriver representation cases filed a subsequent custody-related RFO within 2 years. In contrast, 32% (*n*=18) of comparison cases filed one

during this time. This difference was statistically significant.[50] The proportion of Shriver representation cases filing an RFO within 2 years was similar among those cases that participated in a settlement conference—that is, of the 45 cases with a settlement conference, 11% (*n*=5) filed a subsequent RFO within 2 years. In sum, Shriver representation cases were significantly less likely to return to court to modify their custody orders within the 2-year follow-up period; their orders appear to be more durable.

Table C33. Durability of Custody Orders (2 years) by Study Group

Did either party file an RFO to modify the custody orders established by the SRP?[a]	Shriver Representation	Comparison
Yes *[sig.]*	6 (**11%**)	18 (**32%**)
No	47 (89%)	38 (68%)

N=109. Shriver representation *N*=53; Comparison *N*=56.
[a] Within 2 years after the resolution of the study relevant pleading (SRP).
Note. *sig*. = significant difference between groups; noted in bold.

Previous research by the Judicial Council of California (formerly the "Administrative Office of the Courts of California") has found that mediation in custody cases is more likely to yield durable settlements when conducted with parents requesting initial orders, versus modified orders (AOC, 2012). That is, if parties have cycled through the court multiple times and have established a pattern of modifying existing orders, mediation is less likely to be effective. With this understanding, Table C34 shows the durability of orders separately for those cases in which the SRP was for initial custody orders or for a request for modification.

In the Shriver representation group, there was no difference in the rate of subsequent RFO filings within 2 years by whether the SRP was the initial custody pleading or modification. In both circumstances, nearly 90% of Shriver cases did not return to court. In the comparison group, there was a notable difference in the durability of orders based on whether the SRP was the initial custody pleading or a modification. In particular, 22% of cases in which the SRP was the initial pleading returned to court within 2 years—that is, the custody orders were durable for about three quarters of these cases. In cases where the SRP was a modification, 53% of cases had filed a subsequent RFO within 2 years—that is, the custody orders were durable for less than half of the cases.

Table C34. Durability of Custody Orders (2 years) by Study Group and Timing of SRP

	Shriver Representation		Comparison	
Did either party file an RFO to modify the custody orders established by the SRP?[a]	SRP was the Initial Pleading	SRP was a Modification	SRP was the Initial Pleading	SRP was a Modification
Yes	3 (11%)	3 (12%)	8 (22%)	10 (53%)
No	25 (89%)	22 (88%)	29 (78%)	9 (47%)

N=109. Shriver representation *n*=53: SRP initial pleading *n*=28, SRP modification *n*=25. Comparison *n*=56: SRP initial pleading *n*=37, SRP modification *n*=19.
[a] Within 2 years after the resolution of the study relevant pleading (SRP).

[50] $\chi^2(1) = 6.876$, $p < .01$, Cramer's V = .251.

Of those cases that filed a subsequent request to modify existing custody orders, Shriver cases appeared to take longer to return to court. Among those few cases for which the study relevant pleading was the initial pleading, the three Shriver representation cases filed a subsequent RFO an average of 408 days after the SRP resolution (median = 450, range = 288 to 487) and the eight comparison cases filed an average of 182 days after the SRP resolution (median = 169, range = 26 to 546). Among those cases for which the study relevant pleading was a modification, the three Shriver representation cases filed a subsequent RFO an average of 314 days after the SRP resolution (median = 245, range = 71 to 626) and the 10 comparison cases filed an RFO an average of 293 days after the SRP resolution (median = 138, range = 48 to 724). These group differences were not tested for significance, given the very small sample sizes.

Did Shriver clients become self-represented litigants in pleadings filed after the receiving Shriver service (after the study relevant pleading was resolved)?

Project stakeholders wondered whether Shriver clients would revert to self-representation after the study relevant pleading was resolved and Shriver services concluded. In total, 16 Shriver cases had a subsequent RFO filed within the 2 years after the study relevant pleading. (Of these, six RFOs sought to modify the custody orders, which is why they are shown in Tables C57 and C58 representing the durability of the custody orders. The remaining 10 RFOs pertained to other issues.) Across these 16 cases, the representation status of the Shriver client was examined at the time of the subsequent RFO: five (31%) had attorney representation; five (31%) were self-represented, and six (38%) were missing representation data. Shriver clients were mostly mothers, but of these 16 cases, two involved the fathers as clients. At the subsequent RFO, one father was self-represented and the other was missing data.

Summary

To assess the potential impact of the Shriver custody pilot project in San Diego, a total of 53 cases that received Shriver representation were compared to 56 comparison cases that took place before the Shriver pilot project began. For all 109 cases, data were gathered via a review of the individual court case files and reflect a single pleading that involved sole custody.

The Shriver pilot project assisted both moving parties and responding parties. The majority of their clients were mothers, most likely because oftentimes fathers' incomes were higher and they were able to afford counsel, which then rendered the mother eligible. Relative to the comparison group, a larger proportion of Shriver representation cases involved allegations of domestic violence, child maltreatment, substance use, or mental health issues (45% vs. 72%, respectively).

Determining whether Shriver representation resulted in better custody outcomes was very difficult. The rates of sole and joint custody orders did not appear to differ significantly between the study groups, but it was not possible for the analysis to take into consideration all of the potential mitigating factors in these decisions. For both study groups, the study relevant pleadings ended with the majority (75% to 81%) of cases being awarded joint legal custody. Regarding physical custody, the study relevant pleadings ended with roughly one quarter of both study groups awarded joint custody and half of mothers awarded sole custody (45% of Shriver cases and 54% of comparison cases).

Despite the difficulty in determining differences in custody orders, some notable differences were found between cases that received Shriver representation and comparison cases. Data suggest that Shriver services appeared to:

Level the playing field

- Shriver services targeted cases in which a self-represented parent was facing a parent with legal representation. Court data showed that 92% of Shriver representation cases had attorneys on both sides, indicating that the project succeeded in "leveling the playing field." By contrast, 16% of comparison cases had representation on both sides, 18% had representation on one side only, and 50% had two self-represented parents (data were missing for 16%).

Having legal representation benefits parents because their sides of the story are more adequately represented in court and they are able to more effectively navigate the legal system and cause fewer delays. Representation can also benefit the court by ensuring that judges have comprehensive information on which to base custody decisions; the more informed these decisions are, the better they can serve the best interests of the child.

Increase the rate of settlements

- Settlement conferences, conducted by a judge, were a court innovation implemented by the San Diego Shriver project. All cases receiving Shriver representation were scheduled for a conference, and 85% participated in one. (Conferences did not occur when the parties settled beforehand or one party did not show up.)
    - 60% of cases with a settlement conference reached full or partial agreement on the custody pleading.
- Pleadings in 54% of Shriver representation cases were ultimately resolved by settlement (via mediation, settlement conference, or other), versus 30% of comparison cases.
    - The difference in the rate of settlements between Shriver cases and comparison cases is largely due to agreements from settlement conferences.
- Pleadings in 40% of Shriver representation cases were ultimately decided at a hearing, versus 63% of comparison cases.

Increasing the rate at which parties settle in custody cases has a number of potential benefits. This helps parents feel that they were heard and that they played active roles in their cases (rather than just having the court decide for them), which can contribute to a greater sense of satisfaction with the outcome. In addition, it also reduces the burden on the court because fewer cases will require hearings and trials to resolve the child custody issue.

Improve the durability of custody orders

- Over time, custody cases can involve multiple requests to modify existing orders. Within the 2 years after the study relevant pleading was resolved, only 1 in 10 (11%) Shriver representation cases had filed an RFO to modify the existing custody orders, versus 1 in 3 (32%) of comparison cases.

- Custody orders were durable for 89% of Shriver cases, and this applied to cases litigating initial custody orders or modifying previous orders. In the comparison group, orders were durable for 78% of cases obtaining initial custody orders, but for only 47% of those seeking to modify existing orders.

Having custody orders that are durable offers several benefits. Durable orders reduce the number of families returning to court, which in turn can improve court efficiency and congestion. More importantly, having custody orders remain in place for long periods of time increases stability for children of separated parents and, hopefully, reflects improved interparental cooperation.

Increasing settlements and improving the durability of custody orders are important project achievements. While it is difficult to disentangle the separate contributions of legal representation and mandatory settlement conferences, preliminary data suggest that both are useful. In practice, these project elements are intertwined, because attorneys attend the conferences and are often instrumental in facilitating agreements. During a settlement conference, attorneys can provide their clients with advice about terms, educate them about the process, and counsel them about reasonable expectations. This can increase litigants' confidence entering into agreements and their investment in the success of those agreements.

Litigants were not randomly assigned to receive Shriver representation, so it is possible that non-equivalence in the study groups has impacted the findings. For example, the Shriver representation cases demonstrated greater heterogeneity in the circumstances that brought them to the family court than did the comparison cases. In particular, Shriver clients had asked the court for custody orders after filing a range of petitions, including uniform parentage, governmental child support, and domestic violence. Just 42% of Shriver clients had filed a dissolution of marriage petition, whereas all of the comparison cases were instigated by divorce petitions. The homogeneity of the comparison group is due to the methods used by the court technology staff, and with the capabilities of the court case management system, to identify cases for the study sample. However, this difference in the study groups may have been influential in their custody proceedings, in that parties who were never married may have more challenges in collaborating and co-parenting than those who took the step to get married.

SAN FRANCISCO PILOT PROJECT CASE OUTCOMES STUDY

Methodology

In San Francisco, legal services staff from the Justice & Diversity Center (JDC) had undertaken a local data collection effort before the Shriver evaluation began. In particular, they observed court readiness calendars and identified cases that they thought would be appropriate for Shriver services (specifically, cases with imbalanced representation and sole custody at issue) before the project formally began. Staff recruited these litigants for study participation as comparison cases, gathered basic information about them, and did not provide services to the parties, even if the case continued into the Shriver implementation period. Rather than increase the existing data collection and recruitment burden on the project staff and clients, the evaluation team agreed to use the same sampled litigants already recruited by the JDC staff for their local investigation. This sample included 25 Shriver cases and 24 comparison cases.

Attempts were made to review the court files for all 49 cases. However, upon review, six cases had characteristics that precluded them from study inclusion (e.g., pleading during study period did not involve custody, files had been transferred and were no longer in San Francisco's jurisdiction). In total, three Shriver representation cases and three comparison cases were removed from analysis. The final analytic sample had a total of 43 cases: 22 cases with a Shriver-represented party and 21 comparison cases.

Description of Sampled Custody Cases

Type of petition

Custody cases can be derived from a variety of different petitions. For cases receiving Shriver representation, petition types included dissolution of marriage (32%; *n*=7), governmental child support (27%; *n*=6), custody/visitation (23%; *n*=5), uniform parentage request (18%; *n*=4), and domestic violence restraining order (18%; *n*=4). In the comparison group, the majority of cases were initiated by a petition for dissolution of marriage or separation (57%; *n*=12) or domestic violence (38%; *n*=8). Few cases were initiated by petitions for uniform parentage (10%; *n*=2), governmental child support (10%; *n*=2), or custody/visitation (5%; *n*=1).

Children involved

Among the 22 Shriver representation cases, most had one or two children (mean = 1.6) and the average child age was 7 years. Among 20 of the comparison cases (one case was missing data), most had one or two children (mean = 1.6) and the average child age was 8 years.

Study relevant pleading (SRP)

As described earlier, Shriver services addressed one RFO (request for orders) in the life of the custody case (i.e., the study relevant pleading [SRP]). A single RFO can involve several events and last for several weeks or months. Five (23%) Shriver representation cases were seeking initial custody orders, as were nine (43%) comparison cases. Among the remaining cases that were seeking to modify existing orders, the study relevant pleading ranged from the second to the 26th RFO in Shriver cases and from the third to the 10th RFO in the comparison cases. In both groups, on average (median), the SRP was the fourth RFO filed in the case.

Table C35 displays the average number of days between the initial petition and the study relevant pleading. The table shows this separately for those cases in which the study relevant pleading was the first custody pleading and for those in which the relevant pleading was a request for modification of existing orders.

Table C35. Time from Initial Custody Petition to Study Relevant Pleading by Study Group

	Shriver Representation	Comparison
SRP is the initial custody pleading	5 (26%)	9 (45%)
Mean (SD) number of days from petition to SRP	73 (126)	275 (131)
Median number of days from petition to SRP	1	85
Range	0 – 219	0 – 1535
SRP is a request for modification	14 (74%)	11 (55%)
Mean (SD) number of days from petition to SRP	1,474 (1,057)	1,861 (1,308)
Median number of days from petition to SRP	1,227	1,329
Range	76 – 3,694	571 – 4,436

N=39. Shriver representation *n*=19; Comparison *n*=20. Data missing for three Shriver cases, one comparison case.
Note: SRP = "study relevant pleading," which refers to the segment of the custody case that received Shriver services or the segment of the comparison cases used for comparative analysis.

Study Relevant Pleading

What was the role of Shriver clients in the study relevant pleading?

The San Francisco Shriver custody pilot project provided representation to parents who met the program eligibility criteria, regardless of their gender or their role in the case. Among the 22 Shriver representation cases, the Shriver client was the moving party in 14 cases (64%) and the responding party in eight cases (36%). Across the 21 comparison cases, seven involved a self-represented moving party; seven involved a self-represented responding party; and seven involved balanced representation (i.e., both sides were either self-represented or represented by an attorney), or not enough information was available regarding representation for both parties.[51] The client's role is displayed in Table C36.

Table C36. Client Role in Case

Client Role	*N*	% of Group	% of Total Sample
Shriver Cases			
Moving party client	14	64%	33%
Responding party client	8	36%	19%
Comparison Cases			
Moving party self-represented (SRL)	7	33%	16%
Responding party self-represented (SRL)	7	33%	16%
Balanced cases/unknown representation	5	24%	12%
Unknown representation	2	10%	5%

[51] Determining whether a party has representation for a single custody pleading can be difficult because attorneys often substitute in and out over the life of a case, and these shifts are not always documented clearly in case files.

As shown in the Project Description and Service Summary, the San Francisco custody pilot project served a higher proportion of fathers than did the other two projects. The cases sampled at their site for analysis also had a greater proportion of father clients. Among the 22 Shriver representation cases sampled, the client was the father in 73% (*n*=16) of cases and the mother in 27% (*n*=6). In addition, the Shriver client was the moving party in 64% (*n*=14) of cases and the responding party in 36% (*n*=8) of cases. Table C37 shows this distribution.

In the comparison group, recall that there were 14 cases with unbalanced representation. Eight of these cases involved a self-represented mother facing a represented father, and six cases involved a self-represented father facing a represented mother. The remaining seven cases in the comparison had balanced representation on both sides of the case or were missing data on the representation status of both parties.

Table C37. Distribution of Mothers and Fathers for San Francisco Custody Cases

Client Role	Mother	Father
Shriver Cases		
Moving party client	2 (14%)	12 (86%)
Responding party client	4 (50%)	4 (50%)
Comparison Cases with Unbalanced Representation[a]		
Moving party self-represented litigant	3 (43%)	4 (57%)
Responding party self-represented litigant	5 (71%)	2 (29%)

[a] Figures shown in the table reflect only the 14 comparison cases with one self-represented party and one represented party. The other seven comparison cases had balanced representation.

Were cases likely to have representation on both sides?

Table C38 displays the representation status of both parties across cases. Among Shriver cases, 82% (*n*=18) had both parties represented by an attorney and 14% had information in the case file suggesting imbalanced representation. Among comparison cases, 67% (*n*=14) involved imbalanced representation, where one party was self-represented and the other had an attorney, and 24% involved balanced representation. (Recall that representation status is sometimes difficult to determine from court case files because attorneys frequently substitute in and out over the life of a custody case.)

Table C38. Party Representation by Study Group

Representation Status	Shriver Representation	Comparison
Both sides represented	18 (82%)	3 (14%)
Both sides unrepresented	0 (0%)	2 (10%)
One side represented, one side SRL	3 (14%)	14 (67%)
Unknown	1 (5%)	2 (10%)

N=43. Shriver representation *n*=22; Comparison *n*=21.

What was requested in the study relevant pleading?

Table C39 shows the legal and physical custody requests made by both parties in the study relevant pleading. Regarding legal custody, among Shiver representation cases, 42% of moving parties were requesting sole custody and 45% of responding parties were. In the comparison cases, 29% of moving parties and responding parties were requesting sole custody to one parent. Most often, in both groups, moving parties were requesting joint legal custody (55% of Shriver representation cases and 38% of comparison cases).

Regarding physical custody, among Shriver representation cases, 45% of moving parties and 45% of responding parties requested sole custody. Among comparison cases, 39% of moving parties and 48% of responding parties requested sole custody. Notably, nearly half of the moving parties in both groups (41% of Shriver cases and 43% of comparison cases) requested joint physical custody. The timeshare cutoff that defines the difference between sole and joint physical custody can be blurry in practice. The San Francisco pilot project used 70% timeshare as the basis for determining that a request was for sole physical custody, because the non-custodial parent would spend less than 30% of time with the child. This project-level distinction of "sole" custody may not have aligned with the court case file denotation of sole custody (thus, the proportion of Shriver cases with "joint" custody requests may be high).

Not all responding parties submitted a responsive declaration involving counter requests. About two thirds of cases in both groups had a responsive declaration filed: 63% (*n*=12) of Shriver representation cases and 68% (*n*=15) of comparison cases.

Table C39. Legal and Physical Custody Requests by Study Group

	Shriver Representation		Comparison	
Custody Requested	**Moving Party Request**	**Responding Party Request**	**Moving Party Request**	**Responding Party Request**
Legal Custody				
Sole to mother	3 (14%)	8 (36%)	5 (24%)	4 (19%)
Sole to father	4 (28%)	2 (9%)	1 (5%)	2 (10%)
Joint	12 (55%)	4 (18%)	8 (38%)	4 (19%)
None/NA	3 (14%)	8 (36%)	7 (33%)	11 (52%)
Physical Custody				
Sole to mother	6 (27%)	8 (36%)	6 (29%)	6 (29%)
Sole to father	4 (18%)	2 (9%)	2 (10%)	4 (19%)
Joint	9 (41%)	4 (18%)	9 (43%)	2 (10%)
None/NA	3 (14%)	8 (36%)	4 (19%)	7 (33%)

N=43. Shriver representation *n*=22; Comparison *n*=21.

Complicating issues and allegations

Custody cases can involve other issues or allegations—such as domestic violence, child maltreatment, substance use, or mental health—that influence court orders regarding custody and visitation. Table C40 shows the numbers of cases with these issues raised as part of the SRP by either party. Over three quarters (77%) of Shriver representation cases had at least one issue raised, in contrast with 62% of comparison cases. Among Shriver cases, the most common issue raised was domestic violence (59%).

Table C40. Issues Raised in Study Relevant Pleading by Study Group

Allegation made by either party regarding…	Shriver Representation	Comparison
Domestic Violence	13 (59%)	10 (48%)
Mental Health	9 (41%)	10 (48%)
Child Abuse	9 (41%)	9 (43%)
Child Neglect	9 (41%)	9 (43%)
Substance Abuse	10 (46%)	10 (48%)
No Issues	5 (23%)	8 (38%)

N=43. Shriver representation *n*=22; Comparison *n*=21.
Note. More than one issue can be raised in a case, so percentages do not sum to 100%.

Outcome Area #1: Court Efficiency

How did study relevant pleadings ultimately resolve?

Among cases receiving Shriver representation, half were settled before a hearing (50%; *n*=11), and roughly half (45%; *n*=10) were decided at hearing. In the comparison group, just under half (43%; *n*=9) of the cases were settled before a hearing, and just over half (52%; *n*=11) were decided at a hearing. [One case (5%) in both groups did not have child custody or visitation orders issued.] The rates of resolution did not differ between the two groups.[52] Table C41 displays the method of resolution for the study relevant pleading.

Table C41. Method of Resolution of SRP by Study Group

SRP was resolved via…	Shriver Representation	Comparison
Settlement before hearing	11 (50%)	9 (43%)
Decided at hearing	10 (45%)	11 (52%)
Other (no custody orders issued)	1 (5%)	1 (5%)

N=43. Shriver representation *n*=22; Comparison *n*=21.
Note. No statistically significant differences found across groups.

Were there fewer hearings/continuances?

Table C42 displays the average number of hearings that occurred for the study relevant pleading in both groups. All Shriver representation cases involved at least one hearing, whereas four comparison cases (19%) did not have a hearing. Among cases with Shriver representation, the average number of hearings was 2.8 (median = 2). Among comparison cases with at least

[52] χ^2 (1) = .223, p = .758

one hearing for the SRP, the average number of hearings was 2.1 (median = 2). This difference was not significant.[53]

Table C42 also compares the number of continuances that occurred during the SRP in both study groups. Six (33%) Shriver representation cases did not involve a continuance, versus 11 (55%) comparison cases. Across cases with at least one continuance, the average number of continuances was not significantly different between the groups (Shriver group mean = 2.0, range = 1 to 5; comparison group mean = 3.1, range 1 to 8).

Table C42. Number of Hearings and Continuances per SRP by Study Group

Court Events	Shriver Representation	Comparison
Hearings		
Cases with no hearings	0 (0%)	4 (19%)
Cases with at least one hearing	22 (100%)	17 (81%)
Of those cases with at least one hearing, average number of hearings (SD)	2.8 (1.7)	2.1 (1.3)
Continuances		
Cases with no continuances	6 (33%)	11 (55%)
Cases with at least one continuance	12 (67%)	9 (45%)
Of those cases with at least one continuance, average number of continuances (SD)	2.0 (1.4)	3.1 (2.4)

For Hearings *N*=43. Shriver representation *n*=22; Comparison *n*=21.
For Continuances *N*=38. Shriver representation *n*=18; Comparison *n*=20.
Note: Data for continuances was missing for four Shriver cases and one comparison case.
No statistically significant differences found across groups for hearings or continuances.

The proportion of different types of hearings was similar between the groups.[54] Across Shriver representation cases, there was a total of 61 hearings, and across comparison cases, there was a total of 35 hearings. In particular, more than three fourths of the hearings in both groups were regular hearings, and about 13% were review hearings. Long cause and ex parte hearings were rare in both groups. Table C43 displays the types of hearings held for both study groups.

Table C43. Type of Hearing by Study Group

Hearing Type	Shriver Representation	Comparison
Regular	48 (79%)	27 (77%)
Review	8 (13%)	5 (14%)
Long cause	1 (2%)	1 (3%)
Ex parte	4 (7%)	2 (6%)
Total	61 (100%)	35 (100%)

Note. No statistically significant differences found across groups.

[53] Given the skewed distribution, a nonparametric test was used. Mann-Whitney U = 145.5, p =.221.
[54] $\chi^2(3) = 0.213$, p = .975

Were pleadings resolved faster?

Length is defined by the number of days between the filing of the study relevant pleading and the date of the order, judgment, or settlement that resolved the pleading. Table C44 shows the average length of time for a pleading between the two groups. On average, pleadings took between 5 and 6 months to resolve. For cases receiving Shriver representation, the average length was 167 days (median = 84). In the comparison group, the average length was 180 days (median = 92). This was not a statistically significant difference.[55]

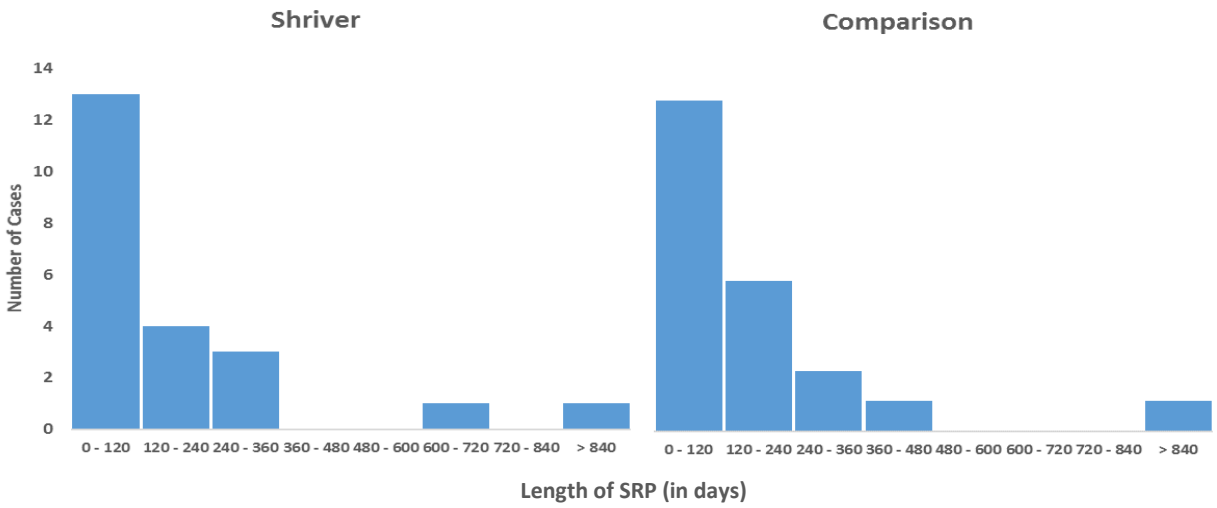
Table C44. Length of SRP (in days) by Study Group

Number of Days from SRP Filing to Resolution	Shriver Representation	Comparison
Mean (SD)	167 (208)	180 (235)
Median	84	92
Range	0 - 840	23 - 1078

N=43. Shriver representation *n*=22; Comparison *n*=21.
Note. No statistically significant differences found across groups.

There was variability in the SRP length across cases. In particular, within both study groups, although the majority of pleadings were resolved within 6 months, a couple of cases took more than 2 years to resolve. These outlying values cause the mean SRP length to be higher than the median (Table C44). Practically speaking, it is important to note that very few cases had pleadings that lasted this long. Figure C8 shows the distribution of SRP length for both groups.

Figure C8. Length of SRP (in days) by Study Group



[55] Given the skewed distribution, a nonparametric test was used. Mann-Whitney U = 204.5, p = .696.

Outcome Area #2: Case Events and Outcomes

What custody and visitation orders were issued for the study relevant pleading?

The legal and physical custody orders issued at the SRP resolution are shown in Table C45. Regarding legal custody, joint legal custody was ordered for more than half of both groups—specifically, 55% of Shriver representation cases and 52% of comparison cases—and sole legal custody was awarded to the mother in about 30% of cases. No statistically significant differences existed in legal custody orders between the groups.[56]

With regard to physical custody, joint physical custody was less common; it was ordered for 32% of Shriver cases and 24% of comparison cases. Half or more of cases were resolved with sole physical custody awarded to the mother—specifically, 50% of Shriver cases and 57% of comparison cases. There were no significant differences in physical custody orders between the two study groups.[57]

Table C45. Legal and Physical Custody Orders by Custody and Study Group

Custody Orders at the SRP Resolution	Shriver Representation	Comparison
Legal Custody		
Sole to mother	7 (32%)	6 (29%)
Sole to father	1 (5%)	2 (10%)
Joint	12 (55%)	11 (52%)
None/NA	2 (9%)	2 (10%)
Physical Custody		
Sole to mother	11 (50%)	12 (57%)
Sole to father	3 (14%)	2 (10%)
Joint	7 (32%)	5 (24%)
None/NA	1 (5%)	2 (10%)

N=43. Shriver representation *n*=22; Comparison *n*=21.
Note. No statistically significant differences found across groups for legal or physical custody.

Table C46 displays the visitation orders, by the physical custody orders, for both groups. Visitation essentially applies to the parameters of the timeshare of the non-custodial parent. For example, if sole physical custody was ordered to the mother, the visitation type refers to the parenting time arrangements for the father. In both groups, orders for reasonable visitation were rare (only one comparison case was issued these orders). This may reflect the contentiousness between the parties and the court's perception of their inability to negotiate and sustain mutually coordinated arrangements.

In both groups, most non-custodial parents were awarded unsupervised visitation according to a schedule. In the Shriver representation group, 55% of non-custodial fathers and 67% of non-custodial mothers were awarded unsupervised, scheduled visitation, versus 75% and 100%, respectively, in the comparison group. The majority of the remaining non-custodial parents were awarded supervised, scheduled visitation. This applied to 27% of non-custodial fathers and 33% of non-custodial mothers in the Shriver representation group, versus just one case in

[56] $\chi^2(2) = 0.428$, $p = .807$.
[57] $\chi^2(2) = 0.478$, $p = .787$.

the comparison group. This likely reflects the high rate of serious issues in these families, such as domestic violence, child maltreatment, and substance use issues.

Table C46. Visitation Orders by Physical Custody Ordered and Study Group

	Shriver Representation			Comparison		
Visitation Order	**Mom has Sole**	**Dad has Sole**	**Joint**	**Mom has Sole**	**Dad has Sole**	**Joint**
Reasonable visitation	0 (0%)	0 (0%)	0 (0%)	1 (8%)	0 (0%)	0 (0%)
Scheduled, unsupervised	6 (55%)	2 (67%)	3 (43%)	9 (75%)	2 (100%)	2 (40%)
Scheduled, supervised	3 (27%)	1 (33%)	0 (0%)	1 (8%)	0 (0%)	0 (0%)
None	1 (9%)	0 (0%)	3 (43%)	1 (8%)	0 (0%)	3 (60%)
Not applicable	1 (9%)	0 (0%)	1 (14%)	0 (0%)	0 (0%)	0 (0%)
Total	11	3	7	12	2	5

What were the physical custody orders in relation to the physical custody requests?

Examining the custody orders issued at the resolution of the study relevant pleadings, and inspecting differences between the Shriver and comparison cases, is informative. However, it is more informative to consider the custody orders in the context of what was requested and the representation status of the parties. Figure C9 displays the trajectories of physical custody requests and orders by study group. The top panel (green) shows the trajectories of Shriver representation cases, according to:

- *Shriver client*—which parent received Shriver representation;
- *client's role in the case*—namely, whether the Shriver client was the moving party (who prompted the pleading and requested something of the court) or the responding party (who may or may not have submitted a counter request);
- *requests made by the moving party regarding physical custody*—specifically, what the moving party asked the court to order (*Note*: Figure C9 does not show any requests made by the responding party); and
- *orders regarding physical custody*—specifically, the orders issued by the court for the study relevant pleading, including the determination of sole or joint custody and the custodial parent.

The bottom panel, in blue, displays case trajectories for pleadings in the comparison group. To enable a more suitable comparison to Shriver representation cases, the comparison cases are organized by parent gender and representation status. The first row shows the representation status of parents. (Note: Cases with unknown representation status are excluded from this figure.) The second row organizes cases according to the mother's role in the case as either moving party or responding party. The last two rows (physical custody requests and orders) correspond to those in the Shriver representation cases panel.

Due to the very small sample sizes, these analyses are considered preliminary and exploratory. Readers should interpret them with caution.

As shown in Figure C9, among the cases sampled for these analyses, fathers were the majority of Shriver clients (16 fathers and 6 mothers). Close to half (45%; *n*=10) of the moving parties requested sole physical custody to one parent and 41% (*n*=9) involved a joint physical custody

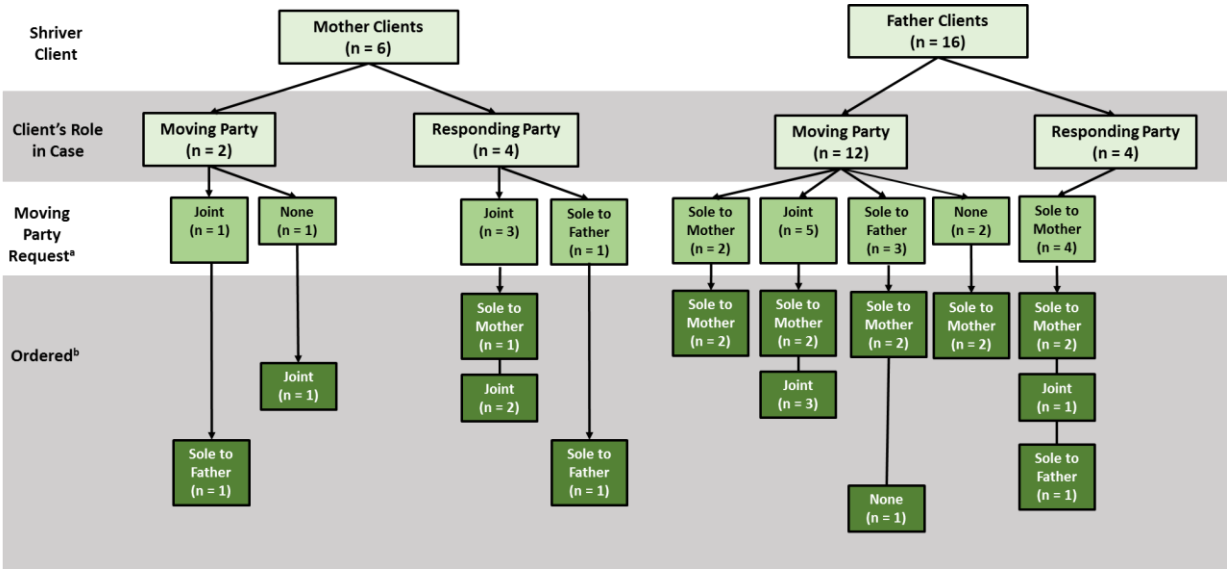
request. Cases in the comparison group show a similar pattern, with half of cases (50%, *n*=9) involving a sole physical custody request from the moving party and the other half (50%, *n*=9) involving a joint physical custody request from the moving party.

In Shriver representation, fathers were the Shriver client and the moving party in twelve cases. Three fathers requested sole custody for themselves (none of them were awarded sole custody), five requested joint custody (three of them were awarded joint custody), and two requested sole custody for the mother (which was awarded both times). (Two fathers made requests in the pleading that did not pertain to custody.) Fathers were the Shriver client and the responding party in four cases. In all four cases, the mother (who was the moving party) requested sole custody for herself. At resolution, sole custody was awarded to the mother twice, to the father once, and joint custody was awarded once.

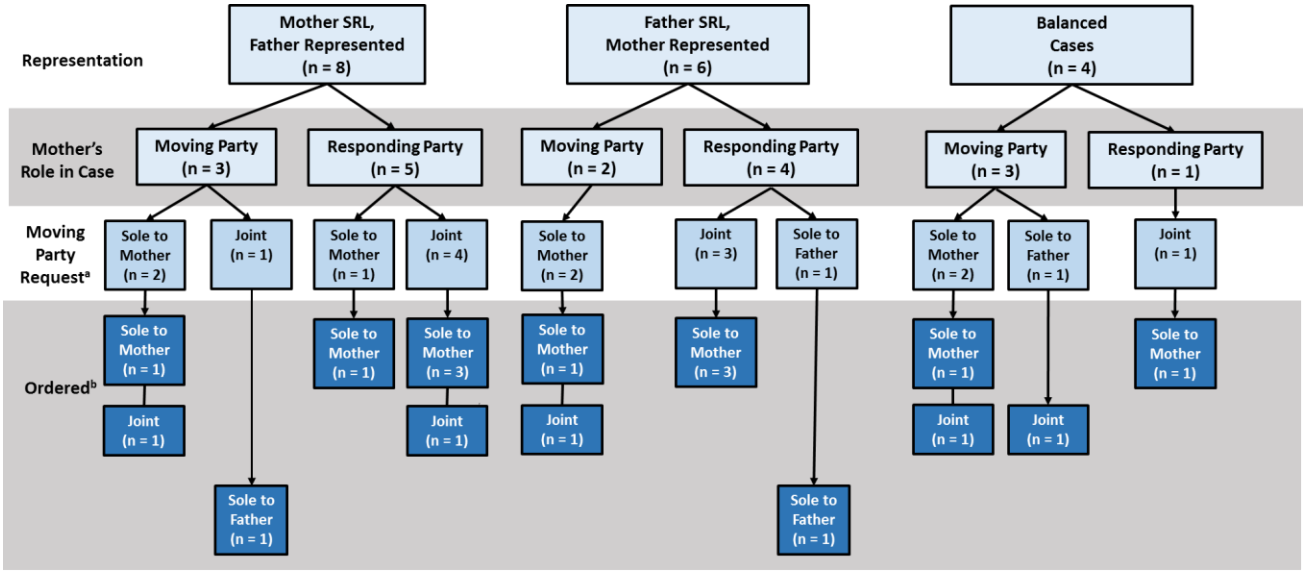
In the comparison group, there were six cases in which the father was self-represented and facing a mother with an attorney. In four of these cases, the father was the responding party. Of these, three fathers requested joint custody (custody was ordered for the mother in all three cases), and one requested sole custody for himself (which was ordered). In two cases, the father was the moving party and requested sole physical custody for the mother. At resolution, one case resolved with sole custody to the mother and one resolved with joint custody.

Figure C9. Physical Custody Requests and Orders by Study Group

Shriver Representation



Comparison Group



Note. Figure is oriented to the mother in each case—figures show outcomes when mother was moving party or responding party.
[a]Custody arrangements requested in study relevant pleading (SRP) by the moving party.
[b]Custody arrangements at case close, either settled or court ordered.

What additional orders were issued at the resolution of the study relevant pleading?

Custody cases may involve mitigating factors that influence the custody orders, such as domestic violence, mental health, and substance abuse. (Recall from Table C40 that allegations of mental health, substance abuse, or child abuse/neglect were common in the SRP.) In custody cases, parties can request, and the court can issue, additional orders that pertain to the custody arrangement or to the best interests of the child.

Despite the prevalence of allegations in the pleadings, additional court orders were rare (see Table C47). The majority of Shriver representation cases (86%) involved no additional orders. Of those with additional orders, one case involved an order for therapy/mental health treatment for both parents, one case involved reunification therapy for the father, and another case involved a restraining order to protect the mother. In the comparison group, 67% (*n*=14) did not involve any additional orders. Of those with additional orders, one case involved therapy ordered for the mother, two cases had restraining orders issued to protect the mother, and two cases had parenting classes ordered for the father (one of which had joint physical custody ordered and the other had sole physical custody awarded to the mother). The proportion of pleadings with additional orders did not significantly differ between the study groups.[58]

It is possible that few additional orders were given as part of the custody pleadings because these issues were being addressed in a separate court case (e.g., domestic violence). This is plausible, particularly given the higher rates at which the court ordered the non-custodial parents in Shriver cases to have supervised visitation. It may also be due to the general lack of resources of this nature for low-income people; the court may be cautious of referring parents into services that they cannot afford.

Table C47. Additional Court Orders for the SRP by Study Group

Additional Court Orders	Shriver Representation	Comparison
Parenting class	0 (0%)	2 (10%)
Therapy/mental health treatment	1 (5%)	1 (5%)
Substance abuse counseling	0 (0%)	0 (0%)
Restraining order	1 (5%)	2 (10%)
Other	1 (5%)	2 (10%)
No other orders	19 (86%)	14 (67%)

N=43. Shriver representation *n*=22; Comparison *n*=21.
Note: Percentages may not sum to 100% because more than one additional order could be issued in a case.
No statistically significant differences found across groups.

Summary

To assess the potential impact of the Shriver custody pilot project in San Francisco, a pre-existing sample of cases, recruited by JDC legal aid staff before the evaluation started, was used. This sample included 22 cases that received Shriver representation and 21 comparison

[58] $\chi^2(1) = 2.336$, $p = .126$

cases that did not receive Shriver service. For all 43 cases, data were gathered via a review of the individual court case files and reflect a single pleading that involved sole custody.

The Shriver pilot project assisted both moving parties and responding parties. The majority of San Francisco clients were fathers, likely because low-income women who experienced domestic violence had other resources available to them through which they were able to acquire counsel, which then rendered the father eligible. Relative to the comparison group, a larger proportion of Shriver representation cases involved allegations of domestic violence (59% vs. 48%). Combing all allegations recorded—domestic violence, child maltreatment, substance use, or mental health issues—more Shriver cases (77%) included at least one issue than did comparison cases (62%), which may reflect extant family dysfunction and disharmony.

Determining whether Shriver representation resulted in better custody outcomes was very difficult. The rates of sole and joint custody orders did not appear to differ significantly between the study groups, but it was not possible for the analysis to take into consideration all of the potential mitigating factors in these decisions. For both study groups, the study relevant pleadings ended with more than half (55% of Shriver and 52% of comparison) of cases being awarded joint legal custody. Regarding physical custody, the study relevant pleadings ended with roughly 30% of both study groups awarded joint custody and half of mothers awarded sole custody (50% of Shriver cases and 57% of comparison cases).

Despite the difficulty in determining differences in custody orders, some differences between cases that received Shriver representation and comparison cases emerged. That said, early indications include:

- **Settlement**: Although the difference was not statistically significant, a greater proportion of Shriver representation cases (50%) were resolved through a settlement before court hearings than of comparison cases (43%).
- **Time to resolution**: Although the difference was not significant, on average, the pleadings of Shriver representation cases were resolved more quickly (mean = 167 days, median = 84) than were the pleadings among comparison cases (mean = 180 days, median = 92).
- **Hearings**: Shriver representation cases were more likely to involve hearings. All Shriver representation cases had at least one hearing for the study relevant pleading, while 19% of comparison cases resolved without a hearing.
    - On average, among cases with at least one hearing, Shriver representation cases involved three hearings per pleading (mean = 2.8), versus two hearings for comparison cases (mean = 2.1).
- **Continuances**: Shriver representation cases were more likely to involve continuances. One third (33%) of Shriver representation cases resolved without a continuance, versus 55% of comparison cases.
    - On average, among cases with at least one continuance, Shriver representation cases involved two continuances per pleading (mean = 2.0) and comparison cases involved three (mean = 3.1).

Shriver representation cases had a higher likelihood of involving hearings and continuances, as opposed to the comparison group. However, Shriver case pleadings tended to be resolved earlier than those of comparison cases and may be more likely to settle. Despite these minor differences in court events and time to resolution, the legal and physical custody outcomes did not appear to vary widely.

Relative to the comparison group, there was a higher proportion of non-custodial parents in Shriver cases who were awarded supervised visitation, which aligns with the higher proportion of Shriver cases that involved allegations of dangerous conditions (e.g., violence, substance use). These elements suggest that the court may have identified additional concerns among these families. From this lens, it is perhaps understandable that additional hearings would be necessary and perhaps laudable that the proceedings were not protracted as a result.

These findings are based on a very small sample of clients, and random assignment to study groups was not possible to implement. Very small sample sizes can make it difficult for statistical tests to reach conventional levels of significance. Thus, some of the differences in this section may have reached statistical significance with a larger sample. On the balance, small sample sizes can also cause difficulty with generalizability—that is, the small subset of cases may not adequately reflect the larger population it is meant to represent. Gathering data on additional cases could result in different estimates. Therefore, these findings should be considered preliminary, the analysis exploratory, and the results interpreted with caution.

Shriver Custody Pilot Projects

Staff and Stakeholder Perceptions

Shriver client "Lucinda."
When Lucinda first sought help from the Shriver project, there was an action for Dissolution of Marriage filed, but no previous custody orders in place. Her former husband filed a request for orders, seeking sole legal and physical custody, claiming that Lucinda was withholding the children and brainwashing them. The Shriver project prepared a response for Lucinda to explain that the father's strained relationship with his children was due to his own actions. Parties participated in a Shriver settlement conference and reached a full stipulation for joint legal custody and primary physical custody to Lucinda, with therapeutic visitation to the father. As a monolingual Spanish speaker, Lucinda would have struggled to navigate the court system and deal with an aggressive opposing counsel, had she not been represented by a Shriver attorney.

Staff and Stakeholder Perceptions

During a round of telephone interviews conducted in 2015, staff and stakeholders at all three custody pilot projects were asked about the impacts they perceived the Shriver pilot projects having had on litigants, the court, and the community. This section presents a summary of their responses, presented separately for legal aid services agency staff and court staff.

Methodology

Sample

Legal aid services agencies. Interviews were conducted with five legal aid services representatives from the three custody projects. These representatives included staff from legal aid services agencies that provided direct Shriver services to clients. This included one person in Los Angeles County, three in San Diego County, and one in San Francisco County.

Superior courts. Interviews were conducted with six court staff. This included one person in Los Angeles County, four in San Diego County, and one in San Francisco County.

Analytic Approach

Interview questions about the project impacts were open-ended and responses were captured as close to verbatim as possible during the phone interviews (none were audio-recorded). Responses were then summarized to represent the main themes articulated by the interviewees. Data were analyzed separately for respondents from legal aid services agencies and from the court.

Legal Aid Services Agencies Staff Perceptions of Project Impacts

Impact of Shriver Custody Pilot Project Generally

Overall, legal aid services staff felt that the services provided by the Shriver pilot project helped to increase collaboration and reduce contentiousness between parties, which in turn positively impacted the parents by calming their disputes and educating them on the legal process. They also stated that the project services positively impacted the children by reducing the interparental conflict to which they are exposed and the court by improving information flow, efficiency, and the likelihood of settlement.

One respondent explained that when both sides of a custody dispute are represented, communication happens between attorneys, which decreases the amount of direct conflict between litigants, which eases overall tensions. Further, knowledgeable intervention through the legal system can offset other, more intensive system responses and can preserve the ability for parents to negotiate. One interviewee stated that if parents are in a panic, but decide to call their Shriver attorney for help before calling Child Protective Services or before an “abduction happens… it’s a good thing because it cuts down on public drama and stipulations are way up.”

IMPACT ON PARTIES

Legal services staff felt that the project had the most pronounced impacts on the parents and children. They emphasized the importance of support and education for parents, which improved parents' perceptions of fairness and benefited the children by calming interparental tension.

Interviewees explained that the custody court process is intimidating and unfamiliar for parents, and that having the support and expertise of an attorney helped reduce stress and make the process more manageable. Having legal representation meant that parents did not have to try to "figure everything out on their own." Also, given the highly charged emotional setting, litigants without counsel often behave in ways that make it harder for them to effectively plead their cases, thus they obtain little to no satisfaction with the outcome. A legal aid services agency representative explained, "Some of the cases are in a situation where the client got themselves in a bad position because they were representing themselves and now they are digging themselves out." Interviewees noted that an attorney can help rectify, or prevent, these situations. They also felt that parents were more likely to achieve their case goals when represented.

Respondents described the positive impact of litigants being educated by their attorneys on the legal process and reasonable expectations in their cases. "Having representation on both sides improves matters due to the education aspect alone," said one interviewee. When parents are knowledgeable, they generally feel more empowered during the process and more amenable to accept the outcome of their cases. This can also benefit the court because these litigants are less likely to challenge the orders by filing another pleading. At least for the custody aspect of the family law case, interviewees felt that the court has less to do when attorneys were involved.

The impact of Shriver services on the children was also underscored by legal aid services interviewees. One respondent explained that having legal representation on both sides can help increase collaboration, and successful collaboration can foster subsequent co-parenting efforts, which require a good deal of communication where there may be only anger at first. "If they collaborate, the litigants are reducing harm to themselves and harm to their children."

Finally, interviewees felt that represented opposing parties also benefited. Respondents believed that opposing counsel was likely pleased when there was legal representation on both sides, because "it calms down the situation quite a bit." This can increase collaboration and efficiency, and it also makes the need to return to court due to legal technicalities less likely.

IMPACT ON THE COURTS

Concerning the Shriver pilot project's impact on the courts, legal services interviewees felt that judges prefer to deal with lawyers rather than with parents who are trying to muddle their way through self-representation. One interviewee recognized the challenge of navigating the court system and explained, "It's harder for that person to keep up with the legal documents coming at them." Further, interviewees reported that the presence of attorneys influences courtroom behavioral standards, which may consequently impact court decisions. One respondent explained that, without counsel, parents can resort to "interrupting or yelling at the judge. They just don't conduct themselves well in the courtroom," and that this type of behavior can hurt their cases, even though it is not necessarily an indication that they are bad parents.

Legal aid services interviewees mentioned that custody cases could go on "forever" when one or both sides are self-represented. Interviewees thought that having representation on both sides increased efficiency and cut down on the need for hearings.

Lastly, respondents from the San Diego project noted that the way the Shriver settlement conferences were implemented improved the information available for the judge to make an informed decision and produced more durable orders. One interviewee explained that the settlement conferences allowed a "full airing of all the issues and the facts came to light so that the court had really good credible information to make its decision. You have a much better chance of getting that when you have an attorney on the case." Other respondents felt that the settlement conferences resulted in fair decisions with buy-in from parties, which would curtail the number of people returning to the court system "over and over again."

Additional Needs Noted by Project Staff

Some legal aid services staff thought that there was a broader need for legal services for low-income families involved in custody cases than what the Shriver project was able to address. They felt the statutorial eligibility requirements were too restrictive. In particular, the statute required that, for a parent to be eligible for Shriver services, she must have an income at or below 200% of the Federal Poverty Level, be facing an opposing party with legal representation, and have a case with sole custody at issue. Legal services staff explained that, in practice, if one parent is poor enough to meet the income eligibility requirements, then the opposing party is often similarly poor and therefore unable to retain counsel. Thus, enforcing both the income requirement and the opposing party representation requirement excluded many low-income families that would have benefited from services.

Further, some legal services staff were concerned that the sole custody requirement also screened out families who would have otherwise been suited for service. Interviewees described dismay when they were unable to provide assistance to parents embroiled in contentious custody cases, because no one was explicitly asking for sole legal or physical custody. These staff also felt it would be helpful to expand the legal issues targeted for their services to issues such as divorce and child support.

Superior Court Staff Perceptions of Project Impacts

Impacts of Shriver Custody Pilot Project Generally

When asked about the impacts of the Shriver project, court staff members' responses echoed those of the legal aid services staff. Court staff felt that, in general, judges preferred to have attorneys on both sides of a case, because their familiarity with the rules of the legal process makes the case proceed more smoothly. One interviewee explained, "When you have people who aren't attorneys and they are thrown into this process not knowing the rules, it's like being thrown into a basketball game and not knowing the rules and not knowing where to shoot the ball. You're scoring points for the other team." Further, when the attorneys are involved, they can help explain to their clients what the rules are and what is transpiring with the case; they can also help manage the emotional tone of the situation and assist in alleviating anxiety. "It's just educating people," said one respondent. Another interviewee felt Shriver services reduced the number of cases that needed to be heard by the court by increasing the likelihood of pre-

hearing settlements. Finally, interviewees thought that if litigants felt empowered in the decision process for their children, they would be less likely to return to court.

IMPACT ON PARTIES

Court staff described that Shriver representation provided support and information to parents, ensured their full and active participation in their custody cases, and supported fairer judgments and more efficient proceedings, which benefited the families and the court.

One respondent stated that having a Shriver attorney "gives [litigants] an opportunity to participate fully in the proceedings and voice their opinions." Because of their expertise, attorneys are able to ensure their client's side is adequately represented by making appropriate requests, such as for a trial, or by understanding the confines of the legal process. For example, if a parent wants to present information to the judge, but the opposing party's counsel objects, an attorney will understand how to handle this, whereas a self-represented litigant would not. Overall, having an attorney enables parents to more fully participate in their proceedings and to more thoroughly present their side of the case, which improves the information available to the judge on which to base a decision. One interviewee commented, "I think [Shriver] results in a much fairer process and there is a lot more information that's communicated in court."

Interviewees acknowledged that custody cases are complex, involve many actions, and that it takes a good deal of time to follow the rules of evidence. Court staff explained that, for self-represented litigants, custody proceedings are often "…difficult, because they don't understand the rules of civil procedure, evidence, and the Family Code." This lack of knowledge can cause errors and inefficiencies that slow the proceedings and frustrate parents. "Sometimes it's as basic as not getting the other parties served properly, so they come back to court on multiple occasions. It's a very frustrating process for [litigants]." Having an attorney on both sides largely remedies these types of hiccups.

Court staff felt that having more efficient proceedings benefited the children. One interviewee noted that "the sooner a case is resolved, the better it is for the family and the kids—and it's not still in the court." Another respondent explained that "custody issues are not something that just goes away. It's something that deeply affects the litigants and children." Especially in highly contentious cases, stakeholders felt that the sooner the parties collaborated and came to a resolution, the more beneficial it was for the children.

IMPACT ON THE COURT

The overall impact on the court is a positive one, in the court staff's view, because having representation makes the courtroom run more efficiently and fairly. One respondent also expressed that the court clerks and staff are grateful for the resources and to have a place to refer low-income, self-represented litigants for assistance.

Self-represented litigants can often inadvertently prolong their pleadings because they do not know what they are doing. Court staff interviewees explained that there are, by design, long periods between different points in a custody case. For example, when temporary orders are given, the court generally provides a 3-month period before holding a review hearing to determine whether the orders are appropriate. Self-represented litigants who are unfamiliar with the process may not understand that some of these delays are standard and purposeful.

Consequently, they may return to court unnecessarily. When parents have counsel, rather than returning to court to file for an emergency order or modification right away, they can consult their attorney, who has the skills to analyze the situation and direct the client on the most appropriate course of action. This yields more informed litigants and more efficient courts.

An interviewee at one court thought the court culture had not necessarily been impacted by the Shriver project, because that court already encouraged mediation and settlement before the Shriver project started. However, this interviewee described a shift in the manner and rate at which settlements occurred. In particular, this respondent reported that, with Shriver counsel involved, parties were more often collaborating in less formal settings to reach an agreement, as opposed to using the rules of evidence in a courtroom to try to convey a convincing story that could take a long time to tell, followed by the judge's decision.

ADDITIONAL NEEDS NOTED BY PROJECT STAFF

When asked about unmet needs, court staff responses were aligned with those of legal aid services agency staff. Specifically, court staff felt that families' needs for legal services were broader than just child custody and visitation, and that families would benefit from having assistance from attorneys on other aspects of their family law cases. One respondent lamented, "Shriver attorneys are only permitted to represent the custody and visitation portion of the cases. However, the opposing party has an attorney for the remainder of the case." This respondent felt that positive outcomes realized by having representation for the custody/visitation portion of the case could be extended to other pressing family law matters.

Shriver Custody Pilot Projects

Cost Study

Shriver client "Ophelia."
Ophelia is a 33-year-old Nigerian woman who was granted asylum in 2013 due to the extreme domestic violence she faced from her husband in Nigeria. The parties had been married in 2005, and the husband physically and emotionally abused Ophelia for 8 years, leading to hospitalizations, miscarriages, and post-traumatic stress disorder. In 2016, her husband was able to find out where Ophelia and her two children were living, and filed to have the "abducted" children returned to Nigeria immediately. The Shriver project helped Ophelia to secure sole legal and physical custody of her children while successfully defeating the father's motion to have the case moved to the Nigerian court system. The initial hearing regarding the father's motion to quash Ophelia's Summons/Petition (for the California case) involved extensive briefing regarding issues of international jurisdiction and competing venues. After successful argument regarding the California court's rightful jurisdiction over custody (and the marriage itself), Ophelia obtained the custody orders she sought, and the father's access to the children was restricted. Currently, the father has no visitation. The attorneys for the Shriver project successfully argued that therapy for the children should begin and proceed for a time until the therapist decides the children are ready to re-establish contact with their father. If and when that time comes, the first contact would be in a supervised setting, most likely handled by a specialist in reunification therapy specified by the Shriver project staff who would be willing to work with the family on a sliding scale. The Shriver project attorney was also able to find pro bono counsel to handle Ophelia's dissolution proceedings and any other non-custodial issues not covered by the Project.

Cost Study

Cost analysis is used to determine the **investment** that has been made in a particular program or service and whether the program has had an economic **impact** on the communities, systems, and agencies involved directly or indirectly with the services provided and the populations served. In other words, what did the program cost and did the program result in cost savings due to the services provided? The purpose of this cost analysis is to establish the costs and savings related to providing legal aid services and court-based services to low-income parents in contentious child custody cases. Unlike some other studies, funds used to provide legal services were counted as costs (rather than as benefits to the state or staff who were employed), while savings constituted any reduction in taxpayer costs attributable to the outcomes associated with attorney representation or court-based services. Information was gathered to ascertain whether Shriver service led to any difference in short-term outcomes associated with court efficiency or longer term outcomes related to broader system costs.

The cost study estimates the **annual costs** and savings related to Shriver service provision. The reader may extrapolate longer term costs and savings as appropriate. Cost analyses focused on the fiscal year spanning 10/1/2013 to 9/30/2014 (FY 2014). This year was chosen because Shriver services at all three projects were fully operational during this time.

Methodology and Analytic Approach

The cost study seeks to address the following three questions:

Cost Topic #1: What were the estimated costs of the Shriver custody pilot projects?

This question was addressed by reviewing the invoices submitted to the Judicial Council (JC) as part of project implementation by the legal aid services agencies (legal aid services program costs) and the Superior Courts (court-based services program costs). This information was used to calculate an estimate of the cost per case served by each entity.

Analytic Approach: Program costs for Shriver services were estimated separately for each of the three pilot projects. Estimates were derived using the available information sources to reflect the cost for 1 year. Two estimates of per case costs were calculated and both are presented.

- *Total Program Costs*. Total program costs were calculated as the total amount invoiced to the JC for FY 2014[59] and are delineated for different levels of Shriver-funded staff.
- *Per Case Costs*. Estimates of the cost per case were derived two ways: (a) dividing the total invoiced amount for FY 2014 by the number of cases served in FY 2014, recorded in the program services database, and (b) multiplying the average[60] number of attorney hours per case, from the program services database, by the loaded attorney rates.[61]

[59] The total amount invoiced was compared to the total contracted amount in the project proposal. These amounts were the same in nearly every case; differences are noted in the text when found.
[60] Calculations were conducted using mean and median values.
[61] The loaded rate included non-attorney staff time and other agency costs. This rate was established in the contract between legal aid services agencies and the Judicial Council and is lower than a typical hourly rate.

- *Per Case Program Costs by Level of Service.* Estimates of the costs per case by level of service (representation vs. unbundled services) were derived two ways: (a) dividing the FY 2014 invoiced amount by the number of cases served in FY 2014, as reported in the program services database, adjusted to account for the level of effort (i.e., relative number of attorney hours) for each level of service (see Appendix C for detailed calculations); and (b) multiplying the average[62] number of attorney hours for each service level in the program services database by the loaded attorney rates.

[Note about estimated costs per case. Across projects, there was a range between the two calculations of per case cost. The second estimate, based on the program services database information, is based on the hours spent by the staff attorneys working on cases. The first estimate, based on invoiced amounts, also includes costs associated with supervising attorneys (who did not log hours in the program services database) and time spent by staff attorneys doing other background and supportive work.]

Cost Topic #2: Does the provision of Shriver services improve court efficiency? Do these efficiencies result in cost savings for the court?

Analyses examined the costs (e.g., amount of staff time spent on tasks, staff salaries) associated with various court activities (e.g., hearings, trials) involved in processing a custody pleading and compared the frequency of these activities between cases that received Shriver services and those that did not. This analysis was possible for one project (San Diego) that had comparative study groups of sufficient size and time estimates for court staff for case activities. The intent was to understand whether the provision of Shriver services resulted in increased efficiencies in case processing or other areas of court functioning (including requests to modify existing custody orders), and thereby potential cost savings to the court.

Sometimes cost benefits can be understood in terms of o*pportunity resources*. The concept of opportunity cost from the economic literature suggests that system resources are available to be used in other contexts if they are not spent on a particular transaction. The term *opportunity resource* describes the resources that become available for different uses. For instance, if legal services available to clients increase the number of custody pleadings that end in pre-trial settlement, thus reducing the number of trials, an opportunity resource is afforded to the court in the form of clerk and judge time available for other cases.

Analytic Approach: These cost analyses compared the two groups of cases from San Diego analyzed in the outcome study (see earlier Case Outcomes Study section): (a) cases in which one party received representation by a Shriver attorney and (b) comparison cases that did not receive Shriver services. Indicators of court efficiency, such as relative rates of settlements and hearings, were calculated for the groups and the associated costs were estimated.

Cost Topic #3: Are Shriver services related to potential cost savings beyond the court? What costs to the system may be avoided or reduced as a result of Shriver services?

Information was gathered to explore potential savings to the broader system or in the longer term. In most cases, these possible savings could not be verified empirically because the data were unavailable, primarily because the longer term outcomes had not yet occurred (e.g., the

[62] Calculations were conducted using mean and median values.

impact of parental separation and conflict on longer term health outcomes for children). Therefore, this question is addressed through a review of the literature.

INFORMATION AND DATA SOURCES

Information used to develop cost estimates was gathered from the Judicial Council, the legal aid services agencies, Superior Court staff, and online resources. Data sources included:

- The Judicial Council provided program invoices for the fiscal year spanning 10/1/2013 to 9/30/2014 (FY 2014) for both legal aid services agencies and for Superior Courts.
- Superior Court staff in San Diego County provided staff titles and related tasks for custody cases. Salaries, benefits, indirect support rates, and jurisdictional overhead rates used to calculate the cost per hour for each staff person were located via online budget resources.
- Superior Court staff in San Diego County provided time estimates for court activities related to custody case processing.

Additional data were used to calculate the frequencies of various indicators for the three projects and for the two comparative study groups. These included:

- For all three pilot projects, the program services database provided the number of cases that received legal aid services in FY 2014, total number of attorney hours, and average number of hours per case.
- For the San Diego pilot project, court case file review data provided characteristics and outcomes for cases that received Shriver representation and for comparison cases that did not receive Shriver service.

Cost Topic #1: What Were the Estimated Costs of the Shriver Custody Pilot Projects?

COSTS FOR SERVICES AT THE LOS ANGELES CUSTODY PILOT PROJECT IN FY 2014

Legal aid services program costs

Total Program Cost. Los Angeles Center for Law and Justice's (LACLJ's) contract with the Judicial Council (JC) allocated $818,665 for the Shriver pilot project in FY 2014. The total amount invoiced was $792,874 (see Table C48). Of this, $43,343 was spent on contract services to clients (e.g., language interpretation services), $9,554 on contract services to programs, and the remaining $739,977 was spent on direct legal aid services to clients. This amount includes costs for casework by staff attorneys and oversight by supervising attorneys, at both LACLJ and its agency partner, the Levitt & Quinn Family Law Center (L&Q). According to the program services database, during FY 2014, LACLJ and L&Q attorneys worked a total of 3,642 hours on Shriver custody cases.

Table C48. Legal Aid Services Program Cost Estimates in FY 2014 – Los Angeles

Invoice Components	Amount
Contract services to clients	$43,343
Contract services to programs	$9,554
Direct services to clients[a,b]	$739,977
Los Angeles Pilot Project invoice total (LACLJ)	**$792,874**
Los Angeles Pilot Project Allocation	**$818,665**

[a]Direct services costs included estimated costs for attorney time listed on project invoices. For Los Angeles, this included one part-time supervising attorney and three full-time staff attorneys.
[b]Direct services provided by partner agencies included staff attorney hours from Levitt & Quinn.

Overall Per Case Cost. As shown in Table C49 (bottom row), the average amount spent per case by legal aid services agencies at the Los Angeles pilot project was between $1,528 and $5,324. The total invoiced amount ($739,977) for legal aid services divided by the number of cases (139) yielded an average of $5,324 spent per case. When the cost per case was calculated by multiplying the mean number of attorney hours per case by the loaded attorney hourly rate, this yielded an estimated per case cost of $3,337. When this calculation was done using the median number of attorney hours per case, it yielded an estimated per case cost of $1,528.

Per Case Cost by Level of Service. Table C49 (first and second rows) shows the average cost per case taking into account the level of service provided. The average amount spent per representation case was between $3,438 and $9,143 and the average amount spent per unbundled services case was between $446 and $1,219. When the total amount invoiced for legal aid services ($739,977) was divided by the number of cases at each service level, it yielded an average cost of $9,143 per representation case and $1,219 per unbundled services case. For representation cases, when the cost per case was calculated by multiplying the mean number of attorney hours by the loaded attorney hourly rate, this yielded an estimated per case cost of $5,731; when this calculation was done using the median number of attorney hours per case, it yielded an estimated per case cost of $3,438. For unbundled services cases, when the cost per

case was calculated using the mean number of attorney hours, this yielded an estimated per case cost of $764; when this calculation was done with the median number of attorney hours, the cost per case was $446.

Note on the calculations for cost per case: Estimates derived from the invoiced amount (left side of the table) included hours worked by supervising attorneys and hours spent by staff attorneys doing background and supportive work, in addition to their direct case work. Estimates derived from the program services database (right side of the table) pertain only to time spent by staff attorneys working on cases.

Table C49. Average Estimated Cost to Provide Legal Aid Services per Case in FY 2014 – Los Angeles

Invoice			Program Services Data and Contracted Hourly Rate					
Level of Service	Number of Cases[a]	Average Cost per Case[b]	Average Hours per Case[c]		x	Atty Hourly Rate[d]	=	Average Cost per Case
Reprstn.	72	$9,143	Mean	45.0		$127.35		$5,731
			Median	27.0		$127.35		$3,438
Unbundled svcs.	67	$1,219	Mean	6.0		$127.35		$764
			Median	3.5		$127.35		$446
All cases	139	$5,324	Mean	26.2		$127.35		$3,337
			Median	12.0		$127.35		$1,528

[a] Number of cases opened in FY 2014, receiving each service, as recorded in the program services database.
[b] See Table CA39 in Custody Appendix C for full calculations.
[c] Mean and median number of attorney hours spent on cases opened in FY 2014, by service level, as recorded in program services database.
[d] Loaded hourly rate established in contract with Judicial Council.

Court-based services costs

The Los Angeles Superior Court (LASC) was allocated $99,985 to provide services for custody cases. The total invoiced amount was $6,213. The number of litigants served by the court-based services was unavailable, thus a cost per case could not be determined.

Table C50. Estimated Costs for Court-Based Services in FY 2014 – Los Angeles

Allocation[a]	LASC invoice total[b]	Total # served[c]	Services provided
$99,985	$6,213	*Unknown*	Parenting class

[a] Amount in contract for court-based services for FY 2014.
[b] Amount invoiced by the Superior Court for custody services provided in FY 2014.
[c] Court-based services in Los Angeles did not track the number of cases served.

COSTS FOR SERVICES AT THE SAN DIEGO CUSTODY PILOT PROJECT IN FY 2014

Legal aid services program costs

Total Program Cost. Legal Aid Society of San Diego (LASSD) operated two Shriver pilot projects, one for housing and one for child custody.[63] LASSD's contract with the Judicial Council (JC) involved a lump sum allocation for both projects, totaling $2,213,521 for FY 2014, and the total amount invoiced for this time period was $2,040,530 (see Table C51). Of this, $1,624,217 was invoiced for the housing pilot project and $416,313 was invoiced for the custody pilot project (see Table C51).

Of the $416,313 invoiced for the custody project, $1,862 was spent on contract services to programs and $414,451 on direct legal aid services to clients provided by San Diego Volunteer Lawyer Program (SDVLP). This amount includes costs for casework by staff attorneys and oversight by supervising attorneys and the agency chief executive officer. The program services database shows that in FY 2014, SDVLP attorneys worked a total of 1,662 hours on Shriver custody cases.

Table C51. Legal Aid Services Program Cost Estimates in FY 2014 – San Diego

Invoice Components	Amount
Contract services to programs	$1,862
Direct services to clients[a]	$414,451
Custody invoice total (SDVLP)	**$416,313**
Housing invoice total (LASSD)	$1,624,217
San Diego Pilot Project invoice total (Housing and Custody)	$2,040,530
San Diego Pilot Project Allocation	**$2,213,521**

[a]Direct services costs included estimated costs for attorney time listed on project invoices. For San Diego, this included one full-time CEO, one full-time supervising attorney, and three full-time staff attorneys.

Overall Per Case Cost. As shown in Table C52 (bottom row), the average amount spent per case by the legal aid services agency in San Diego was between $341 and $2,800. The total invoiced amount for SDVLP legal aid services ($414,451) divided by the number of cases served (148) yielded an overall average of $2,800 spent per case. When the cost per case was calculated by multiplying the mean number of attorney hours per case by the loaded attorney hourly rate, this yielded an estimated per case cost of $1,276. When this calculation was done using the median number of attorney hours per case, it yielded an estimated per case cost of $341.

Per Case Cost by Level of Service. Table C52 (first and second rows) shows the average cost per case taking into account the level of service provided. The average amount spent per representation case was between $2,274 and $7,418 and the average amount spent per unbundled services case was between $341 and $718. When the total amount invoiced by SDVLP for direct client services ($414,451) was divided by the number of cases at each service level, it

[63] Although LASSD was the entity contracted for the housing and custody pilot projects, San Diego Volunteer Lawyer Program (SDVLP) provided the legal services for the custody project.

yielded an average cost of $7,418 per representation case and $718 per unbundled services case. For representation cases, when the cost per case was calculated by multiplying the mean number of attorney hours by the loaded attorney hourly rate, this yielded an estimated per case cost of $3,525; when this calculation was done using the median number of attorney hours per case, it yielded an estimated per case cost of $2,274. For unbundled services cases, when the cost per case was calculated using the mean or median (values were equal) number of attorney hours, this yielded an estimated per case cost of $341.

Note on the calculations for cost per case: Estimates derived from the invoiced amount (left side of the table) included hours worked by supervising attorneys and hours spent by staff attorneys doing background and supportive work, in addition to their direct case work. Estimates derived from the program services database (right side of the table) pertain only to time spent by staff attorneys working on cases.

Table C52. Average Estimated Cost to Provide Legal Aid Services per Case in FY 2014 – San Diego

Invoice			Program Services Data and Contracted Hourly Rate				
Level of Service	Number of Cases[a]	Average Cost per Case[b]	Average Hours per Case[c]		x Atty Hourly Rate[d]	=	Average Cost per Case
Reprstn.	46	$7,418	Mean	31.0	$113.72		$3,525
			Median	20.0	$113.72		$2,274
Unbundled svcs.	102	$718	Mean	3.0	$113.72		$341
			Median	3.0	$113.72		$341
All cases	148	$2,800	Mean	11.2	$113.72		$1,276
			Median	3.0	$113.72		$341

[a] Number of cases opened in FY 2014 receiving each service, as recorded in the program services database.
[b] See Table CA40 in Custody Appendix C for full calculations.
[c] Mean and median number of attorney hours spent on cases opened in FY 2014, by service level, as recorded in program services database.
[d] Loaded hourly rate established in contract with Judicial Council.

Court-based services costs

The San Diego Superior Court (SDSC) was allocated $302,952 to provide services for both housing and custody cases at the court (See Table C53). The total invoiced amount for custody services was $14,057 for clerk staff time. The number of litigants served by the clerk was unavailable, thus a cost per case could not be determined. (Note: Shriver settlement conferences, conducted by a judge at the court, were considered a Shriver service, but were not directly invoiced.)

Table C53. Estimated Costs for Court-Based Services in FY 2014 – San Diego

Allocation[a]	SDSC Invoice[b] Total	Total # Served[c]	Services Provided
$302,952	$14,057	*Unknown*	Clerk staff time

[a] Amount in contract for court-based services for both housing and custody projects, FY 2014.
[b] Amount invoiced by the Superior Court for custody services provided in FY 2014.
[c] Court-based services in San Diego did not track the number of cases served.

COSTS FOR SERVICES AT THE SAN FRANCISCO CUSTODY PILOT PROJECT IN FY 2014

Legal aid services program costs

Total Program Cost. The Justice & Diversity Center of the Bar Association of San Francisco's (JDC's) contract with the Judicial Council (JC) allocated $386,982 for custody case services in FY 2014. The total amount invoiced for this time period was $368,382. Of this, $73,871 was spent on contract services to programs, $141,365 was spent on a JDC attorney staffed at the court-based self-help center, and $153,146 was spent on direct legal aid services to clients (see Table C54). This amount includes costs for casework by staff attorneys and oversight by a supervising attorney. According to the program services database, during FY 2014, JDC attorneys worked a total of 1,343 hours on Shriver custody cases (not including the self-help attorney's time).

Table C54. Legal Aid Services Program Cost Estimates in FY 2014 – San Francisco

Invoice Components	Amount
Contract services to programs	$73,871
Court-based self-help attorney[a]	$141,365
Direct services to clients[b]	$153,146
San Francisco Pilot Project invoice total (JDC)	**$368,382**
San Francisco Pilot Project Allocation	**$386,982**

[a] The invoiced amount for the court-based self-help attorney is not included in the average estimated cost to provide legal services (Table C81).
[b]Direct services costs included estimated costs for attorney time listed on project invoices. For San Francisco, this included one full-time staff attorney and five to 10 hours/week of a second staff attorney and a supervising attorney.

Overall Per Case Cost. As shown in Table C55 (bottom row), the average amount spent per case by the legal aid services agency was between $2,046 and $3,258. The total amount invoiced by JDC ($153,146) divided by the number of cases served (47) yielded an overall average of $3,258 spent per case. When the cost per case was calculated by multiplying the mean number of attorney hours per case by the loaded attorney hourly rate, this yielded an estimated per case cost of $2,537. When this calculation was done using the median number of attorney hours per case, it yielded an estimated per case cost of $2,046.

Per Case Cost by Level of Service. Table C55 (first and second rows) shows the average cost per case taking into account the level of service provided. The average amount spent per representation case was between $2,046 and $3,371 and the average amount spent per unbundled services case was between $573 and $737. When the total invoiced amount ($153,146) for legal aid services was divided by the number of cases at each service level, it yielded an average cost of $3,371 per representation case and $737 per unbundled services case. For representation cases, when the cost per case was calculated by multiplying the mean number of attorney hours by the loaded attorney hourly rate, this yielded an estimated per case cost of $2,619; when this calculation was done using the median number of attorney hours per case, it yielded an estimated per case cost of $2,046. For unbundled services cases, when

the cost per case was calculated using the mean or median (values were equal) number of attorney hours, this yielded an estimated per case cost of $573.

Note on the calculations for cost per case: Estimates derived from the invoiced amount (left side of the table) included hours worked by supervising attorneys and hours spent by staff attorneys doing background and supportive work, in addition to their direct case work. Estimates derived from the program services database (right side of the table) pertain only to time spent by staff attorney working on cases.

Table C55. Average Estimated Cost to Provide Legal Aid Services per Case in FY 2014 – San Francisco

Invoice			Program Services Data and Contracted Hourly Rate					
Level of Service	Number of Cases[a]	Average Cost per Case[b]	Average Hours per Case[c]		x	Atty Hourly Rate[d]	=	Average Cost per Case
Reprstn.	45	$3,371	Mean	32.0		$81.84		$2,619
			Median	25.0		$81.84		$2,046
Unbundled svcs.	2	$737	Mean	7.0		$81.84		$573
			Median	7.0		$81.84		$573
All cases	47	$3,258	Mean	31.0		$81.84		$2,537
			Median	25.0		$81.84		$2,046

[a] Number of cases opened in FY 2014, receiving each service, as recorded in the program services database.
[b] See Table CA41 in Custody Appendix C for full calculations.
[c] Mean and median number of attorney hours spent on cases opened in FY 2014, by service level, as recorded in program services database.
[d] Loaded hourly rate established in contract with Judicial Council.

Court-based services costs

The San Francisco Superior Court was not contracted to provide services for custody cases. However, the legal aid services agency (JDC) used Shriver funds to staff an attorney in the self-help center at the courthouse to provide assistance to litigants in custody matters and to refer eligible parties for Shriver legal aid services from JDC (see Table C56).

Table C56. Estimated Costs for Court-Based Services in FY 2014 – San Francisco

	Allocation[a]	Invoice Total[b]	Total # Served[c]	Services Provided
Superior Court	$0 [b]	$0	N/A	N/A
JDC	$386,982 [a]	$141,365	455	Self-help attorney

[a] The amount in contract for court-based services for FY 2014. The Superior Court was not allocated money for services, but the Justice & Diversity Center used a portion of its funding to provide a court-based self-help attorney.
[b] Amount invoiced for custody services provided in FY 2014.
[c] Number of parties assisted by self-help attorney, as reported by JDC staff.

Cost Topic #2: Does the Provision of Shriver Services Improve Court Efficiency?

Court efficiency is conceptualized as either reduced court activities (e.g., fewer trials) or reduced time spent by staff on an activity (e.g., quicker processing of cases). These efficiencies result in savings that can be financial (i.e., money saved) or opportunity resources (i.e., staff time conserved and then available for other tasks). Court efficiency cost analyses were possible for one site: the San Diego pilot project. This single site met the following criteria: (a) a case selection process was implemented that yielded sufficient sample sizes of Shriver and non-Shriver comparison cases; (b) a round of court case file reviews was done, which provided data for comparison; and (c) court staff participated in interviews during which they provided information about the time and resources needed for each court activity.

Average Cost to Process a Typical Custody Pleading (RFO)

San Diego Superior Court staff (judges and clerks) described the steps involved in processing a pleading that would be typical among cases eligible for Shriver services (e.g., sole custody at issue, imbalanced representation, contentiousness). These included, for example, meeting with the Family Law Facilitator's Office (FLF), sessions with Family Court Services (FCS), clerks processing the paperwork, fee waiver processing, and different types of hearings. For each activity, court staff estimated the amount of time spent preparing and conducting the activity by the relevant staff members (including the FCS counselor, family law facilitator, clerks/judicial assistants, court reporter, bailiff/deputy, and judge). Salaries, benefits, indirect support rates, and jurisdictional overhead rates for each position were located online[64] (for FY 2014) and used to calculate hourly rates, which were multiplied by the time spent for each activity. (Tables CA42 through CA51 in Custody Appendix C display the calculations used to estimate the cost for each activity.) These include:

1. Family law facilitator session: $61
2. Family court services: $326
3. Paperwork and calendaring: $21
4. Fee waiver processing: $7
5. Shriver settlement conference: $401
6. Regular hearing: $259
7. Review hearing: $239
8. Long cause hearing: $508
9. Ex parte hearing: $106
10. Trial: $1,002

[64] Retrieved from http://publicpay.ca.gov/Reports/PositionDetail.aspx?employeeid=15199249

Table C57 displays the calculations used to estimate the costs to process a typical child custody pleading with and without Shriver services. Case file review data were used to estimate the frequency of each activity for each group. For example, on average, Shriver cases had 1.2 regular hearings and comparison cases had 2.1 regular hearings. Some activities—such as FCS mediation sessions, paperwork, and calendaring time—applied equally to all cases. Together, these figures were used to estimate the average costs of a typical custody pleading.

Analysis of the case file review data identified five activities for which the frequency rate differed between cases that received Shriver services (all received Shriver representation and 85% participated in a Shriver settlement conference) and comparison cases (cases with a mix of representation status, including no attorneys, attorneys on both sides, and attorneys on one side). These rates were used to calculate an "average" cost across cases:

- *Shriver settlement conferences* were provided only for Shriver cases, and 85% of these cases participated. This resulted in an investment cost of $341 per case on average.
- *Regular hearings*. Pleadings that received Shriver services had an average of 1.2 regular hearings, whereas cases without Shriver services had an average of 2.1 hearings. The average cost of a regular hearing was estimated at $259. The reduction in the number of hearings among Shriver cases resulted in a cost savings of approximately $233 per case.
- *Review hearings*. Pleadings with Shriver services had an average of 0.5 review hearings, while cases without Shriver services had an average of 0.2 review hearings. The average cost of a review hearing was estimated to be $239. The increase in review hearings among Shriver cases resulted in an investment cost of approximately $72 per case.
- *Long cause hearings.* Pleadings with Shriver services had an average of 0.2 long cause hearings, and cases without Shriver services had an average of 0.01. The estimated cost for a long cause hearing was $508. The increase in long cause hearings among Shriver cases resulted in an investment cost of approximately $97 per case.
- *Trials.* On average, pleadings with Shriver services had 0.06 trials, compared with 0.02 trials among cases without Shriver services. The estimated cost of a trial was $1,002. The increase in trials among Shriver cases resulted in an investment cost of approximately $40 per case.

Overall, the average cost to process a typical (Shriver-eligible) custody pleading without Shriver services was estimated to be $1,053. The overall average cost of a pleading that received Shriver services was estimated to be $1,369. This difference suggests an average investment cost of $316 per case.

Table C57. An Estimate of the Cost to Process a Custody Pleading

Court Activity	Activity[a] Rate and Related Cost: Without Shriver Services		Activity[a] Rate and Related Cost: With Shriver Services		Savings and Improvements
Family law facilitator	Assists with preparing the petition, RFOs, and responsive declarations	1.0 x $61 = **$61**	Assists with preparing the petition, RFOs, and responsive declarations	1.0 x $61 = **$61**	No intended or realized change.
Family Court Services	Child Custody Recommending Counseling session, information gathering, and reporting. One FCS appointment per 12-month period.	1.0 x $455 = $**326**	Child Custody Recommending Counseling session, information gathering, and reporting. One FCS appointment per 12 month period.	1.0 x $326 = $**326**	No intended or realized change.
Paperwork and calendaring	Processing of paperwork (scanning, copying, forwarding) and setting hearing dates	1.0 x $21 = $**21**	Processing of paperwork (scanning, copying, forwarding) and setting hearing dates	1.0 x $21 = $**21**	No intended or realized change.
Fee waiver request	Paperwork, judge review, and hearing	1.0 x $7 = **$7**	Paperwork, judge review, and hearing	1.0 x $7 = **$7**	No intended or realized change.
Shriver settlement conference	None	**$0**	Judge, Shriver atty, clerks, and families work to resolve the custody matters	0.85 x $401 = **$341**	Shriver settlement conferences conducted by a judge, costs (-)$341 per case.
Regular hearing(s)	Standard hearing attended by litigants, judge, courtroom reporter, and deputy. Average of 2.1 per case.	2.1 x $259 = **$544**	Standard hearing attended by litigants, judge, courtroom reporter, and deputy. Average of 1.2 per case.	1.2 x $259 = **$311**	Fewer hearings for Shriver pleadings, due to Shriver representation, yields savings of $233 per pleading.
Review hearing(s)	Follow-up hearing attended by litigants, judge,	0.2 x $239 = **$48**	Follow-up hearing attended by litigants, judge,	0.5 x $239 = **$120**	More review hearings for Shriver pleadings, costs (-)$72 per case.

Court Activity	Activity[a] Rate and Related Cost: Without Shriver Services		With Shriver Services		Savings and Improvements
	courtroom reporter, and deputy. Average of 0.2 per case.		courtroom reporter, and deputy. Average of 0.5 per case.		
Long cause hearing(s)	Extended dedicated time hearing attended by litigants, judge, courtroom reporter, and deputy. Average of 0.01 per case.	0.01 x $508 = **$5**	Extended dedicated time hearing attended by litigants, judge, courtroom reporter, and deputy. Average of 0.2 per case.	0.2 x $508 = **$102**	More long cause hearings for Shriver pleadings, costs (-)$97 per case
Ex parte hearing(s)	Emergency hearing. Average of 0.2 per case.	0.2 x $106 = **$21**	Emergency hearing. Average of 0.2 per case.	0.2 x $106 = **$21**	No intended or realized change.
Trial	Average of .02 per case	.02 x $1,002 = **$20**	Average of .06 per case	.06 x $1,002 = **$60**	Slightly more trials for Shriver pleadings, costs (-)$40 per case
Average total cost[c]		**$1,053**		**$1,369**	**-$316**

Note. Data source: Court case file review data, staff time (judge, clerk) estimates, and online budget information.
[a] Tables in Custody Appendix C show time spent and salaries used to develop the cost for each activity. Estimates for time spent were provided by Superior Court staff. Estimates are based on the mid-point of ranges provided by staff for the number of minutes for each activity. Figures may not add exactly, due to rounding to the nearest dollar.

Estimated biennial savings based on court efficiencies

The legislation did not necessarily intend to increase the efficiency of a single pleading, and the addition of services such as judge-facilitated Shriver settlement conferences could be reasonably expected to increase the court costs in the short term. However, the legislation did intend to increase the durability of custody orders, which may increase family stability and decrease court involvement over time. From this perspective, court efficiency as a result of Shriver services is conceptualized as reduced court activities over time—specifically, fewer subsequent RFOs filed to modify existing custody orders.

Recall findings presented earlier in the Case Outcomes section based on case file review data regarding the number of subsequent custody-related RFOs filed within 2 years of the study relevant pleading resolution (Table C33): 11% of cases with Shriver representation filed a subsequent custody-related RFO within 2 years, versus 32% of comparison cases. Given that the average cost to process a typical (non-Shriver) RFO was estimated at $1,053 (Table C57), the

reduction in the number of subsequent filings among Shriver cases would result in a savings of approximately $221 per custody case for a 2-year period (see Table C58).

The savings of $221 per case is based on whether a parent filed one subsequent custody-related RFO within 2 years. However, it is possible that parents could file more than one RFO for modification during this time period. To more accurately estimate the potential savings to the court, the per case figure was multiplied by the *total number of* subsequent custody-related RFOS within 2 years for each group, as found in the court case files for the Case Outcomes study. As shown in Table C58, within 2 years, Shriver representation cases filed a total of eight subsequent RFOs and comparison cases filed a total of 32 RFOs. The reduction in subsequent RFOs would amount to a savings over 2 years of approximately $25,272 for every 53 cases that received Shriver services.

Table C58. Estimated Biennial Savings to Court from the Provision of Shriver Services (based on FY 2014 data)

Subsequent RFOs within 2 Years	Rates and Related Costs				Savings and Improvements
	Without Shriver Service (N=56)		With Shriver Services (N=53)		
Rate (%) of cases that filed a custody-related RFO within 2 years	Rate of 0.32	0.32 x $1,053 = **$337**	Rate of 0.11	0.11 x $1,053 = **$116**	Savings ($221 per case) in reduced subsequent RFOs in 2 years
Number of subsequent custody-related RFOs filed within 2 years	32 RFOs	32 RFOS x $1,053 = **$33,696**	8 RFOs	8 RFOS x $1,053 = **$8,424**	Savings overall for these 53 cases by reduced total subsequent RFOs in 2 years: **$25,272**

In summary, when Shriver services (representation and settlement conferences) are provided to parents, the resulting custody orders appear to be more durable over a 2-year period. This results in a savings of approximately $25,000 over the course of 2 years for every 50 cases served. On average, this suggests that roughly $500 is saved per case, which outweighs the investment cost of $316.

Cost Topic #3: Are Shriver Services Related to Potential Cost Savings Beyond the Court?

Additional and Often Unseen Costs of Custody Disputes

The direct impacts of custody decisions are often individually specific to families, and therefore do not lend themselves to cost research in the way that, for example, unlawful detainer cases do. However, as with unlawful detainer cases in which the tenants must relocate, child custody cases can also negatively impact children by prompting involuntary residential mobility and social network disruption (Hanson, 1999). Notably, these effects are in addition to the stress children experience as a result of the separation of their parents and any contentiousness within their parents' relationship.

By their very nature, custody cases are often characterized by conflict between the litigating parties. One study found that half of divorcing couples showed evidence of a high-conflict relationship prior to the divorce, which was twice the number of high-conflict relationships among non-divorcing couples (Hanson, 1999). High interparental conflict can lead to protracted custody disputes, which have costs for both the court system and the families involved. Moreover, researchers have contended that the adversarial nature of court hearings actually discourages cooperation between parents (Zeitler & Moore, 2008). High interparental conflict has been shown to have deleterious effects on children (Ayoub et al., 1999; Hanson, 1999; Strohschein, 2005).

The Impact of Interparental Conflict on Children

Ample research has demonstrated the potential negative impacts of divorce and marital discord on children and how these effects can persist into adulthood (Amato & Sobolewski, 2001). Exposure to interparental conflict, in addition to divorce, can be particularly harmful. In fact, acrimony between parents has been recognized as the primary cause for a child's emotional maladjustment following their parents' separation, having a stronger impact than the divorce itself (Booth & Amato, 2001; Chase-Lansdale, Cherlin, & Kiernan, 1995; Leon, 2003; Schepard, Atwood, & Schlissel, 1992). Likewise, researchers studied the guardian ad litem reports for 105 children involved in custody cases and found that increased emotional distress among children was linked to the level of conflict between their parents (Ayoub et al., 1999).

Children exposed to post-divorce interparental conflict are more likely to display psychological maladjustment (e.g., depression and anxiety), behavioral problems (e.g., aggression and conduct disorders), and poor academic performance (Amato & Sobolewski, 2004). A study by Johnston, Gonzàlez, and Campbell (1987) found that boys whose parents were involved in highly contentious divorce cases were up to 4 times more likely than national normative samples to show emotional and behavioral disturbances. Moreover, research has also demonstrated a correlation between the amount of interparental conflict and the degree of child maladjustment—specifically, Johnston et al. (1987) reported that an escalation of parental contentiousness was related to an increase in the number of maladaptive problems in children.

Longer Term Impacts of Childhood Adjustment Difficulties

Adjustment difficulties during childhood, especially those pertaining to aggression and behavioral disruption, have been related to challenges during young adulthood, including crime, substance

use, mental health issues, relationship aggression, and low educational attainment (Fergusson, Horwood, & Ridder, 2005; Fontaine et al., 2008).

Further, parental separation and divorce is considered one of several "adverse childhood experiences" (ACEs), which are currently understood by the Centers for Disease Control and other experts as critical markers of child development risk that can have deleterious consequences throughout the lifespan (Burke, Hellman, Scott, Weems, & Carrion, 2011; Felitti et al., 1998). (Several other ACEs—such as domestic violence, parental substance use, and child maltreatment—were also notably prevalent among Shriver cases.) Numerous studies have documented the association between a child's exposure to ACEs and a variety of adulthood problems in physical health (e.g., cancer, diabetes, obesity), behavioral health (e.g., alcoholism, drug use) and mental health (e.g., depression, suicide attempts), and life potential (e.g., academic achievement, lost time from work). Notably, the more ACEs a child experiences, the greater the likelihood that she will experience these adulthood troubles. The range of adulthood issues that can follow from childhood exposure to interparental conflict, divorce, and the resultant maladaptive symptoms—such as health problems, crime, or substance use—exact a cost on society and taxpayer-funded systems, as well as on individuals and families.

Given this evidence, it is unsurprising to find a wealth of research showing that custody conflicts and continual litigation can have harmful effects on children (Grych & Fincham, 1992; Johnston, 1994; Kelly, 2003; Zeitler & Moore, 2008). Zeitler and Moore (2008) explain that the typical challenges faced by children of divorced parents are aggravated when parents continually use the court system to settle custody disputes. These authors suggest that "reducing conflict and facilitating cooperation between parents during and after divorce proceedings can help to improve results for children and for society at large" (p. 2).

DIVORCE-RELATED POVERTY AND RELIANCE ON PUBLICLY FUNDED SYSTEMS

A typically unrecognized cost to society is discussed by Zastrow (2009), who calls the potential resulting financial status of a single parent, namely the mother, "divorce-related poverty." Zastrow describes that when a family is at average, or lower than average, income prior to the divorce, they are at risk for "divorce-related poverty" after the separation occurs. This degradation in household income has costs for society, as these newly poor families may become reliant on publicly funded assistance programs and subsidized housing. There are also system costs associated with custodial parents obtaining child support payments from the other parent (i.e., governmental child support petitions). According to Zastrow (2009), the development of fathers being awarded custody more often has had an unintended consequence on custodial mothers, and consequently on children:

> *Fathers often threaten a protracted custody battle. As a result, mothers who want custody of their children without a fight are routinely forced to "barter" custody in exchange for reduced child support payments. Because such payments are so low, these women and their children then qualify for financial assistance with TANF (p.185).*

Likewise, Bartfeld (2000) also noted that women and children experience a more significant resource depletion following a divorce than men do.

Summary

The costs and associated negative impacts of protracted and contentious child custody cases are many, and can have profound, deleterious consequences for children. Some of these consequences have the potential to create longer term challenges in many areas of life in ways that can be difficult to quantify financially. Such cases can increase burden on the courts, as parents rely on court orders when they are unable to negotiate independently. Across the three pilot projects, the average cost to provide full representation to a parent in a contentious custody case ranged from $2,046 to $9,143. In most cases, the average cost for this level of service fell in a slightly narrower range, between $2,500 and $5,500. The actual cost to provide full representation for any case will certainly vary according to the case characteristics and circumstances. Across the three pilot projects, the average cost to provide unbundled services to a parent in a custody case ranged from $341 to $1,219. In most cases, the average cost for this level of service fell between $400 and $750. The actual cost to provide unbundled services will depend on the type of service being provided. Each of the pilot projects provided a unique combination of limited scope services and the relative intensity of any of these services should be weighed when considering the costs. At the San Diego project, the combination of full representation by Shriver counsel and participation in a Shriver Settlement Conference led to more durable custody orders within 2 years. Using data from this project, it was estimated that the reduction of subsequent filings to modify custody orders would create savings for the court over time. Specifically, for every 50 cases served, the court would save approximately $25,000 over 2 years. This figure will vary by jurisdiction.

Shriver Custody Pilot Projects

Summary of Findings

Summary of Findings

Child custody cases are, by nature, complex, emotionally charged, and have critical implications for families and children. The unique attributes of each family, parent personalities, relationship dynamics and histories, and circumstances of children can add layers of intricacy and tension to the proceedings. When cases are contentious, as most cases served by the Shriver custody pilot projects were, the adversarial nature of the judicial process can be compounded. There are innumerable factors that can influence court decisions about custody and visitation and what is in the best interests of the child. Thus, aggregating information to represent typical custody case trajectories or standardizing "good" outcomes is a daunting task.

Data for the evaluation of the Shriver custody pilot projects was collected over the course of 5 years, from multiple sources, using various methodologies. Program service data were recorded by Shriver legal aid services staff as they worked with clients, custody litigants were interviewed about their needs and experiences with their cases, court case files were reviewed for cases that received Shriver services and those that that did not, and staff from each pilot project were interviewed about their perceptions of the program's impact. Together, these data help shed light on the impact of providing legal assistance to low-income parents in custody disputes.

WHO WAS SERVED BY THE SHRIVER CUSTODY PILOT PROJECTS?

From October 2011 through October 2015, the three custody pilot projects served 1,100 litigants involved in child custody matters. Shriver services were provided to both mothers and fathers—though most clients were female—and to both custodial and non-custodial parents. The average monthly income of Shriver clients was well below the 2014 Federal Poverty Level, and many demonstrated substantial needs in critical livelihood areas, such as income, employment, and food security. Over half of Shriver cases had intertwined issues of domestic violence, which added complexity to the custody disputes. Further, many Shriver clients encountered the added difficulties of being system-involved, never-married parents (Boggess, 2017), such as the stress of determining parentage through the court and involvement with the child support system.

The statute required Shriver projects to serve cases that stood to have particularly acute consequences for families. Specifically, Shriver services were targeted toward self-represented parents who were facing a represented opposing party in cases with sole custody of the child(ren) at issue. Legal aid services attorneys acknowledged that their primary goal was to level the playing field, ensuring both parents had adequate access to justice.

WHAT SERVICES WERE PROVIDED BY THE SHRIVER CUSTODY PILOT PROJECTS?

The three projects offered two levels of legal service: representation by a Shriver attorney (limited scope in that it covered all aspects of the child custody case, but no other family law issues) and unbundled services (help with discrete legal tasks). Across the three projects, 54% of clients received representation by an attorney and 46% received unbundled services. Over time, the pilot projects in Los Angeles and San Francisco incorporated social workers into their projects to address the serious and persistent social service needs they recognized in their clients. Families were frequently in crisis with regard to some critical areas of livelihood (e.g., food security, income, housing, healthcare), which served to inflame custody disputes and

undermined the creation of stable environments for children. While these needs were beyond the scope of an attorney, having social work staff connect clients to needed social services worked to ease emotional duress and to support sustainability of custody arrangements. In addition to the legal aid services, the San Diego custody pilot project also offered Shriver settlement conferences conducted by a judge.

WHAT WERE THE IMPACTS OF THE SHRIVER CUSTODY PILOT PROJECTS?

The story of the Shriver custody pilot projects emerged most strongly from the qualitative interview data collected from litigants and project staff. These data demonstrate that the most notable impacts of Shriver services were more nuanced than standardized quantitative measures could reliably capture. Given the wide heterogeneity of families and custody case circumstances, this is understandable.

Attorneys educated parents, developed reasonable expectations, eased tensions

Interviews with project staff (from legal aid and the court) indicated that the provision of attorneys to assist otherwise self-represented litigants in high-conflict custody cases served a few critical functions. Attorneys helped to educate parents about the legal process and to shape reasonable expectations for their case outcomes. This intervention consequently facilitated more efficient court proceedings. Judicial officers were not having to spend time managing litigants who were unknowledgeable of the process, and the court benefited from more comprehensive information about the family on which to base decisions. Parents with Shriver representation were more prepared for court proceedings, more informed about their rights and what is possible, and more willing to engage in settlement terms under the guidance of their attorneys. Shriver attorneys felt that they could ease tensions and reduce emotional turmoil that would otherwise cloud and complicate proceedings. This calming effect was thought to benefit the court, the parents, and the children.

Parents felt supported

Interviews with litigants echoed these sentiments. Parents expressed substantial gratitude for the assistance of their Shriver attorney. In particular, they felt informed about their cases, supported throughout the process, and not lost in the system. Notably, litigants' perceptions of fairness of the judicial system and procedural justice varied with their satisfaction with their case outcomes. In particular, if they were satisfied with their case outcomes, they felt the court process was fair; if they were not satisfied with their outcomes, they felt the court process was not fair. In contrast, litigants' perceptions of their Shriver attorney were overwhelmingly positive, regardless of their satisfaction with their case resolution. Even when parents were dissatisfied with their case outcomes, they expressed appreciation for their attorneys. Having an attorney's expertise and support accessible to them was important and impactful despite the actual custody orders.

Attorneys supported collaboration between parties

Shriver staff reported that parents were more willing to agree to settle when their attorneys helped them understand when terms were reasonable and to anticipate possible ramifications. By supporting successful negotiations and reducing emotional tensions between parties, Shriver attorneys were able to increase the likelihood of pre-trial settlements, which positively impacts the court and the families. This helps parents feel that they were heard and that they played an active role in their cases (rather than having the court decide for them), which contributes to a

greater sense of satisfaction with the outcome. It also reduces the burden on the court because fewer cases require hearings and trials to resolve the child custody issue. This is supported by the quantitative data culled from the court case files at the San Diego project, where 54% of Shriver cases resolved via settlement versus 30% of comparison cases.

In San Diego, the higher rate of settlements among Shriver representation cases also meant that fewer cases with a Shriver attorney were decided at hearings (40%), whereas the majority (63%) of comparison cases were resolved this way. This difference can reduce the burden on court staff and create cost savings over time.

Attorney representation and Shriver settlement conferences

The San Diego custody pilot project offered Shriver settlement conferences conducted by a judge, with attorneys present. These conferences differed from mediation, which is required for parties in child custody cases, in that mediation sessions are facilitated by a mediator and counsel is not required (and often does not) attend. At this project, the combination of representation by a Shriver attorney and participation in a Shriver settlement conference greatly increased the likelihood of settlement. In fact, 60% of settlement conferences reached full or partial agreement between parties during the conference. Among sampled custody cases at San Diego, 34% were ultimately resolved during Shriver settlement conferences, in contrast to 4% of cases resolved during typical mediation sessions.

The heightened success of Shriver settlement conferences is likely attributable to the presence of counsel. Parents may be afraid to enter into an agreement because they are uncertain about what will happen later. Having their attorney present during the meeting allows them to discuss the ramifications of different terms and to feel more confident about their options. Attorneys can help frame the issues, provide education, and ensure that the time with the settlement officer is used wisely (i.e., not spent on irrelevant issues). Also, the success of the Shriver settlement conference is also likely due in part to having a judge facilitate the discussion, which allows the pleading to be resolved, as opposed to having a mediator facilitate, after which the pleading may turn into more of an investigation, instead of resolving.

Increasing settlements and improving the durability of custody orders are important project achievements. While it is difficult to disentangle the independent contributions of legal representation and settlement conferences, preliminary data suggest that both are useful.

More durable custody orders

Findings from the San Diego custody pilot project indicate that the combination of representation by a Shriver attorney and participation in a Shriver settlement conference yields custody orders that are more sustainable over time. Within the 2 years after a study relevant pleading was resolved, only one in 10 Shriver cases had filed an RFO to modify the existing custody orders, versus one in three comparison cases.

It appears that, when appropriately supported, the improved collaboration achieved during the custody pleading can extend beyond its resolution. It is conceivable that having attorneys present during the settlement conference increased litigants' confidence entering into agreements, their ability to negotiate terms that were manageable for them, and their subsequent investment in the success of their agreements. The effects of more durable custody orders are many. For example, custody orders that remain in place for long periods of time can increase stability for children of separated parents. Further, increased durability of custody

orders can have a substantial impact on court efficiency and congestion by reducing the number of families returning to court. This can translate into cost savings, as the investment costs of Shriver services are more than recovered by the reduction in subsequent refilings.

Custody and visitation orders

Shriver pilot projects assisted custodial and non-custodial parents whose goals differed widely. For example, one client may be seeking to gain sole custody, whereas another wants to retain the current amount of parenting time in the face of an opposing party wanting sole custody. For these two cases, a "successful" outcome would look very different. Thus, the quantitative data regarding custody orders are not an easily interpretable indicator of project impact.

However, across the service data for all three projects, some themes did emerge. The courts favored joint legal custody and sole physical custody arrangements. Orders for joint legal custody were common, occurring in more than half of all cases. However, joint physical custody orders were rare, occurring in less than one quarter of all cases. This is consistent with other research that found joint physical custody uncommonly ordered among cases (Maccoby & Mnookin, 1992). Indeed, Buchanan and Jahromi (2008) argue that joint physical custody arrangements can be particularly problematic for high conflict couples, like those served by the Shriver projects. This is because joint custody necessitates more contact between parents, which creates more opportunity for conflict. In cases resolved with sole physical custody given to one parent, orders for scheduled, unsupervised visitation for the non-custodial parent were also common. Having parenting time happen according to a schedule can also relieve high-conflict couples from the burden of having to negotiate visitation in an ongoing manner. Custody case outcomes suggest that the court felt parties would benefit from some additional structure and fewer opportunities for conflict.

Data on court orders also suggested that parents were experiencing substantial needs and were seeming to rely on the court to enforce the other parent to participate in services, such as parenting classes or therapy. Overall, relative to cases without Shriver services, a greater proportion of cases with Shriver representation tended to include additional orders. This may be due to the added expertise brought to the case by the Shriver attorneys. In particular, attorneys know what can be ordered by the judge and what is reasonable to request, while self-represented litigants may not know these options exist. Further, having counsel on both sides of a case likely yields more comprehensive information about the case for the court, which could result in additional orders.

ADDITIONAL NEEDS NOTED BY PROJECTS

Shriver project staff expressed concern about the restrictive nature of the statute eligibility requirements. Specifically, mandating the combination of an income less than 200% of the Federal Poverty Level, opposing party representation, and sole custody requests made it difficult to find eligible participants. Often, if one parent is low income, then the other party is also low income and therefore not able to afford an attorney. In this situation, meeting the income requirement and the opposing party representation requirement is not possible. Additionally, staff felt that many contentious custody cases would benefit from service, but were ineligible because neither parent was explicitly asking for sole custody.

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Shriver Custody Pilot Projects Appendices

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Shriver Custody Pilot Projects

Appendix A: Detailed Service Summaries

Detailed Service Summaries for Individual Custody Pilot Projects

The following section presents data separately for each of the pilot projects. Each service summary includes information on the project context including the involved agencies and courts, the project implementation model, and detailed information on the services that were provided, to whom, and case characteristics and outcomes (when available). Material for each summary was collected over the course of 4 years (2012 to 2015), and includes information from a series of stakeholder interviews, site visits, quarterly reports, project forms, and, most centrally, data entered by the Shriver legal aid services agency staff into the program services database. A synthesis of this information resulted in a comprehensive picture of the processes and overall implementation of each of the pilot housing projects.

A note regarding “missing data”:

> Legal aid services agency staff were conscientious in their data entry and management. However, there were some variables that were missing data for several cases. Missing values were sometimes due to inadequate data entry, but in most instances, data were missing because they were unknown to the attorneys. This is specifically apparent regarding case outcome data. For cases receiving Shriver representation, attorneys had knowledge of the case progress and resolution, and therefore data were generally complete. However, for cases receiving unbundled services, attorneys often did not know about case resolution and were therefore unable to enter case outcome data. Thus, in each of the service summaries, data pertaining to the client characteristics and case characteristics at Shriver intake are provided based on all cases, whereas data pertaining to case outcomes are provided only for representation cases.
>
> The manner in which missing data are handled during analysis can impact results and subsequent interpretation. Throughout this report, wherever possible, the proportion of cases with missing data are represented in the tables in an effort to prevent overestimation and to provide the reader with as much information as possible. Throughout the service summaries, percentages are calculated of the total number of cases in the section (i.e., the number of cases with missing data is included in the denominator).

SHRIVER CUSTODY PROJECT SERVICE SUMMARY: LOS ANGELES

Service Provision

Information regarding the level of services provided, case characteristics, and outcomes were obtained from the program services database. Data from the Los Angeles Center for Law and Justice (LACLJ) and Levitt & Quinn Family Law Center (L&Q) were collected on all parties seeking services from February 2012 through November 2015. This section presents data pertaining to the legal aid services clients only; data were not available for the litigants who attended parenting classes or watched the parenting video at the court.

WHAT LEGAL AID SERVICES WERE PROVIDED?

In this report, litigants receiving limited scope representation from a project attorney are categorized as ***representation*** clients and litigants receiving all other types of legal services from a project attorney are referred to as ***unbundled services*** clients.

Between February 2012 and November 2015, the Los Angeles custody pilot project provided legal services to litigants in a total of 403 cases. Of these cases, 48% received representation and 52% received unbundled services (Table CA1). Table CA1 shows the average number of hours attorneys worked on custody cases, by the level of service. Importantly, these estimates reflect just attorney time and do not reflect time worked by other staff, such as intake coordinators or paralegals. Overall, Shriver attorneys worked an average of 25 hours per case (median = 12). Representation cases received an average of 46 hours (median = 28) and unbundled services cases received an average of 6 hours (median = 4).[65]

Table CA1. Number of Legal Aid Services Cases and Attorney Hours Provided per Case

	Level of Service		
Characteristic	**Representation**	**Unbundled Services**	**Total**
Number (%) of Litigants	194 (48%)	209 (52%)	403 (100%)
Attorney Hours Provided			
Mean (*SD*)	45.5 (66.5)	6.4 (6.8)	25.2 (50.2)
Median	28.4	4.0	12.0
Range	1.25 to 760.1	0.75 to 38.9	0.75 to 760.1
Missing N (%)	1 (<1%)	0 (0%)	1 (<1%)

Note. Data from the Shriver program services database (as of 11/12/15).

WHO RECEIVED LEGAL AID SERVICES?

Client characteristics

At intake, Shriver attorneys collected information about their clients, including demographics, household characteristics, and aspects of the custody cases. The average client age was 35 years (median = 34), 82% were female, 73% were Hispanic or Latino, 46% had some post-

[65] Eighty percent of cases required less than 60 hours of attorney time. The mean value being higher than the median value in Table CA1 is due to two outliers (approx. 200 hours) and one extreme outlier (800 hours).

secondary education, 17% had known or observable disabilities,[66] and 62% had limited English proficiency (i.e., could not effectively communicate in English without interpreter assistance). Demographic characteristics varied modestly between litigants who received representation and those who received unbundled services. Table CA2 shows the characteristics of the 403 litigants receiving Shriver legal aid services, by level of service received.

Table CA2. Demographic Characteristics of Shriver Legal Aid Services Clients

	Level of Service		
Client Level Characteristics	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Age (years)			
18 to 24	19 (10%)	27 (13%)	46 (11%)
25 to 44	157 (81%)	140 (67%)	297 (74%)
45 to 61	17 (9%)	39 (19%)	56 (14%)
62 or older	0 (0%)	2 (1%)	2 (<1%)
Unknown/not collected	1 (1%)	1 (<1%)	2 (<1%)
Gender			
Male	26 (13%)	44 (21%)	70 (17%)
Female	164 (85%)	165 (79%)	329 (82%)
Transgender	1 (1%)	0 (0%)	1 (<1%)
Unknown/not collected	3 (2%)	0 (0%)	3 (1%)
Race/Ethnicity[a]			
Black or African American	19 (11%)	44 (20%)	63 (16%)
Hispanic/Latino	153 (78%)	142 (68%)	295 (73%)
White	8 (4%)	14 (7%)	22 (5%)
Other	12 (6%)	9 (4%)	21 (5%)
Unknown/declined	2 (1%)	0 (0%)	2 (<1%)
Education			
High school degree or less	98 (50%)	115 (55%)	213 (53%)
Any post-secondary	92 (47%)	93 (45%)	185 (46%)
Unknown/not collected	5 (3%)	0 (0%)	5 (1%)
Limited English Proficiency			
Yes	128 (66%)	122 (58%)	250 (62%)
No	66 (34%)	87 (42%)	153 (38%)
Disability			
Yes	29 (15%)	41 (19%)	70 (17%)
No	163 (84%)	164 (79%)	327 (81%)
Unknown/not collected	2 (1%)	4 (2%)	6 (1%)
Total	194 (100%)	209 (100%)	403 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). [a] Litigants who identified as Hispanic/Latino and any other race/ethnicity are included in the Hispanic/Latino row.

[66] The most common type of disability or disorder was a psychiatric or emotional disability (6%, *n*=25), followed next by more than one disability/disorder, (5%, *n*=22), physical disability (2%, *n*=7), or other disability (4%, *n*=16).

Approximately half (45%) of Shriver clients received CalFresh benefits[67] and 53% received public health benefits, such as Medi-Cal.[68] The median monthly household income was $952 (mean = $1,126), which is far below the 2014 income threshold of $2,613 for a family of at least two. (The income of the opposing party was not known.) Table CA3 shows the household characteristics for litigants receiving Shriver legal services, by level of service.

Table CA3. Household Characteristics of Shriver Legal Aid Services Clients

	Level of Service		
Clients' Household Level Characteristics	**Representation**	**Unbundled Services**	**Total**
Monthly Income			
Mean (SD)	$1,182 (892)	$1,074 (752)	$1,126 (823)
Median	$995	$906	$952
Range	$0 to $4,575	$0 to $3,530	$0 to $4,575
Received CalFresh Benefits, *N* (%)			
Yes	77 (39%)	104 (50%)	181 (45%)
No	117 (61%)	105 (50%)	222 (55%)
Received Public Health Benefits, *N* (%)			
Yes	101 (52%)	113 (54%)	214 (53%)
No	93 (48%)	96 (46%)	189 (47%)
Total	194 (100%)	209 (100%)	403 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[67] The CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP; formerly "food stamps"), provides qualified, low-income households with monthly electronic benefits that can be used to buy most foods at many markets and food stores.

[68] Medi-Cal offers free or low-cost health coverage for low-income children, pregnant women, and families.

Child Characteristics

Across the 403 cases receiving Shriver legal services in Los Angeles, a total of 638 children were involved, with a typical case involving one child. The average age of a child in the case was 6 years old (median = 6), and 14% of cases involved a child with a disability. About half (57%) of children were living with the Shriver client at the time of case intake. Table CA4 shows the characteristics of the children involved in the Shriver custody cases.

Table CA4. Characteristics of Children of Shriver Legal Aid Services Clients

	Level of Service		
Child(ren)'s Characteristics	**Representation**	**Unbundled Services**	**Total**
Total Number of Children	300	338	638
Number of Children per Case			
Mean (*SD*)	1.6 (0.8)	1.6 (1.0)	1.6 (0.9)
Median	1	1	1
Range	1 to 4	1 to 6	1 to 6
Missing/unknown	2 (1%)	0 (0%)	2 (<1%)
Age of Child(ren)			
Mean (*SD*)	6.2 (4.4)	6.5 (4.5)	6.4 (4.4)
Median	6	6	6
Range	0 to 18	0 to 17	0 to 18
Missing/unknown	1 (<1%)	3 (1%)	4 (1%)
Child Has a Disability, *N* (%)			
Yes	34 (17%)	24 (12%)	58 (14%)
No	146 (75%)	148 (71%)	294 (73%)
Missing	14 (7%)	37 (18%)	51 (13%)
Living Arrangements at Intake, *N* (%)			
Lived with client most of the time	122 (63%)	109 (52%)	231 (57%)
Shared equal time or lived together	25 (13%)	23 (11%)	48 (12%)
Lived with opposing party most of the time	42 (22%)	73 (35%)	115 (29%)
Other living arrangement	1 (1%)	1 (0%)	2 (0%)
Missing/unknown	4 (2%)	3 (1%)	7 (1%)
Total	194 (100%)	208 (100%)	403 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Case characteristics

Of all cases receiving legal services, 38% were filed to obtain an initial order for custody and visitation, and 50% were filed to modify an existing custody order. Custody cases were initiated by a variety of petitions, including a petition for uniform parentage (37%), dissolution of marriage (31%), domestic violence (21%), juvenile case exit order (4%), and governmental child support (4%). At the time of Shriver intake, 22% of cases had a petition or request for orders (RFO) filed and 18% had a responsive declaration to a petition/RFO filed. Fourteen percent of

cases were currently in post-judgment and did not have an active RFO. Table CA5 displays these case characteristics, by level of legal services received.

Table CA5. Custody Case Characteristics at Intake for Shriver Legal Aid Services Clients

	Level of Service		
Custody Case Characteristics	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Purpose of case			
Obtain an initial order for custody and visitation	92 (47%)	63 (30%)	155 (38%)
Modify an existing custody order	86 (45%)	115 (55%)	201 (50%)
Enforce an existing custody order	2 (1%)	7 (3%)	9 (2%)
DVRO, TRO, Stay away order	7 (4%)	7 (3%)	14 (3%)
Other	4 (2%)	16 (8%)	20 (5%)
Missing/unknown	3 (2%)	1 (<1%)	4 (1%)
Petition that Initiated Request for Shriver Services			
Dissolution of marriage, legal separation, annulment	50 (26%)	74 (36%)	124 (31%)
Parentage	76 (39%)	73 (35%)	149 (37%)
Petition for custody and support	5 (3%)	0 (0%)	5 (1%)
Governmental child support	8 (4%)	7 (3%)	15 (4%)
Domestic violence	44 (23%)	39 (18%)	83 (21%)
Juvenile case exit order	6 (3%)	9 (4%)	15 (4%)
Other	3 (2%)	7 (3%)	10 (2%)
Missing/unknown	2 (1%)	0 (0%)	2 (<1%)
Case Status at Shriver Intake			
Post-judgment[a]	24 (12%)	33 (16%)	57 (14%)
Petition or RFO filed for custody/visitation	40 (21%)	47 (23%)	87 (22%)
Response to petition or RFO filed	33 (17%)	39 (19%)	72 (18%)
DV-related orders filed	38 (20%)	33 (15%)	71 (18%)
Other orders filed[b]	7 (4%)	8 (4%)	15 (4%)
Mediation occurred	37 (19%)	21 (10%)	58 (14%)
FCS recommendations made	0 (0%)	0 (0%)	0 (0%)
Other post-filing action[c]	14 (7%)	27 (13%)	41 (10%)
Missing/unknown	1 (1%)	1 (0%)	2 (<1%)
Total	194 (100%)	209 (100%)	403 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). [a] Includes previous orders for cases such as paternity, dissolution of marriage, legal separation, and annulments. [b] Includes temporary orders for custody/visitation and other orders not specified. [c] Includes child custody evaluation ordered/completed, action for contempt, and other events not specified.

Client role and opposing party representation

Shriver attorneys assisted both moving and responding parties in child custody matters. Clients were the moving party in 54% of cases that received representation and 68% of those that received unbundled services. Shriver legal services staff assessed whether the opposing party had legal counsel at the time of intake. As shown in Table CA6, for clients that received Shriver representation, 70% faced an opposing party with legal representation. Among clients that received unbundled services, approximately 55% faced an opposing party with legal representation.

Table CA6. Client Role and Opposing Party Representation at Intake for Legal Services Clients

	Level of Service		
Case Characteristic at Intake	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Client Role in Case			
Moving party	105 (54%)	143 (68%)	248 (62%)
Responding party	87 (45%)	62 (30%)	149 (37%)
Other	1 (1%)	4 (2%)	5 (1%)
Missing/unknown	1 (1%)	0 (0%)	1 (<1%)
Opposing Party Represented by Counsel			
Yes	138 (70%)	114 (55%)	252 (63%)
No	50 (26%)	74 (35%)	124 (31%)
Missing/unknown	6 (3%)	21 (10%)	27 (7%)
Total	194 (100%)	209 (100%)	403 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Other Contextual Factors

To understand the complexity of child custody cases, and to help elucidate possible reasons for one party obtaining sole custody, Shriver attorneys asked clients about current or previous involvement with Child Protective Services, police, domestic violence within the previous 5 years, and allegations of substance use by either party. Of note, this information was available only by report of the Shriver client. Forty-two percent (*n*=168) of cases had current or prior involvement with Child Protective Services (including those with open juvenile dependency cases). Seventy percent (*n*=282) of all cases involved allegations of domestic violence, most often against the opposing party. One third (32%; *n*=129) involved allegations of substance use, most often against the opposing party. And 42% of cases involved at least one instance of police involvement in the 3 months prior to Shriver intake. Overall, 85% of cases (*n*=341) had at least one of these factors. Table CA7 shows the numbers of cases with each of these factors, by level of service.

Table CA7. Contextual Factors for Shriver Legal Services Clients

	Level of Service		
Contextual Factor	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Involvement with Child Protective Services[a]			
Never	86 (44%)	94 (45%)	180 (45%)
Currently	20 (10%)	20 (10%)	40 (10%)
Previously	53 (27%)	47 (23%)	100 (25%)
Juvenile court case	14 (8%)	14 (6%)	28 (7%)
Missing/unknown	21 (11%)	34 (16%)	55 (13%)
Allegations of Domestic Violence[b]			
None	48 (25%)	56 (27%)	104 (26%)
Client alleged or convicted	11 (6%)	22 (11%)	33 (8%)
OP alleged or convicted	106 (54%)	97 (47%)	203 (50%)
Both client and OP alleged/convicted	21 (11%)	25 (12%)	46 (11%)
Missing/unknown	8 (5%)	9 (4%)	17 (4%)
Allegations of Substance Use			
None	124 (64%)	118 (56%)	242 (60%)
Against client	11 (6%)	22 (11%)	33 (8%)
Against opposing party	40 (21%)	44 (21%)	84 (21%)
Both parties alleged	8 (4%)	4 (2%)	12 (3%)
Missing/unknown	11 (5%)	21 (10%)	32 (8%)
Police Involvement 3 Months Prior to Shriver Intake			
Yes	89 (45%)	79 (38%)	168 (42%)
No	89 (51%)	95 (54%)	184 (52%)
Missing/unknown	16 (9%)	35 (17%)	51 (13%)
Total	194 (100%)	209 (100%)	403 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[a] The alleged perpetrator of child maltreatment (i.e., which party) was unknown.

[b]Allegations of domestic violence within 5 years prior to Shriver intake.

Case Outcomes

The remainder of this section on the Los Angeles custody pilot project reflects only Shriver cases that received representation from Shriver attorneys. Outcomes of cases receiving unbundled services were largely unknown because attorneys did not follow these cases to resolution.

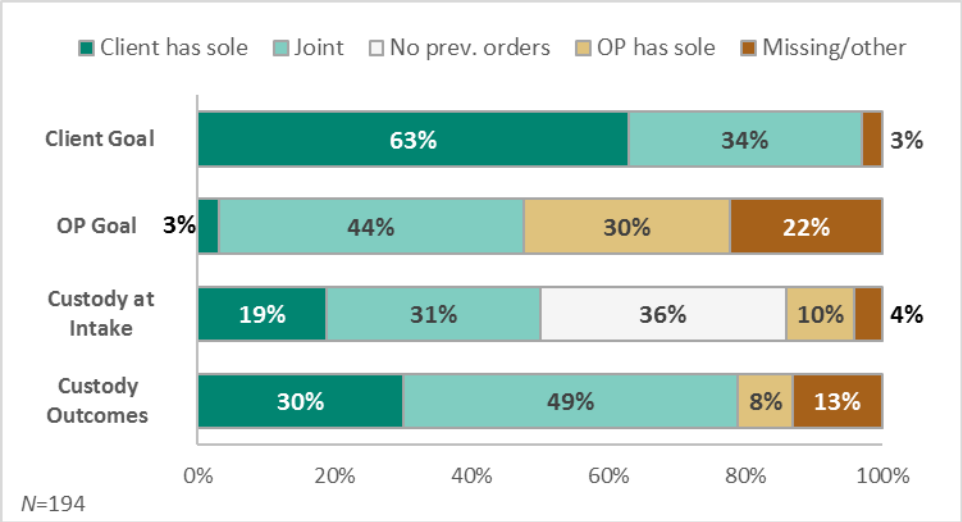
Child Custody Orders

Legal custody

At the time of intake, Shriver attorneys asked their clients about their goals for their cases, in terms of legal custody, physical custody, and visitation/timeshare orders. At intake, nearly two thirds (63%; *n*=122) of Shriver representation clients wanted sole legal custody, and one third (34%; *n*=66) wanted to share joint legal custody. Information about the opposing parties' goals were obtained by the attorney from the pleading, response, or the client. By contrast, less than one third of opposing parties (30%, *n*=59) wanted sole legal custody, and 44% (*n*=86) wanted to share joint legal custody. In 77% of cases (*n*=150), at least one party requested sole legal custody of the child(ren).

At intake, 19% of Shriver clients had sole legal custody of the child and 63% wanted it. At resolution, 30% of clients were awarded sole legal custody. In contrast, at intake, 10% of opposing parties had sole legal custody and 30% wanted it. At resolution, 8% of opposing parties were awarded sole legal custody. The percentage of cases with joint legal custody increased from 31% at intake to 49% at resolution. Many of these changes are due to the 36% of cases without legal custody orders at intake. (The remaining 11% had some other outcome).[69] Figure CA1 shows this breakdown, and Table C4 (earlier) provides percentages.

Figure CA1. Legal Custody: Case Goals, Custody Status at Intake, and Custody Outcomes for Shriver Representation Clients and Opposing Parties



Note. OP = opposing party.

[69] 2% (*n*=3) of cases were missing information about the legal custody outcomes.

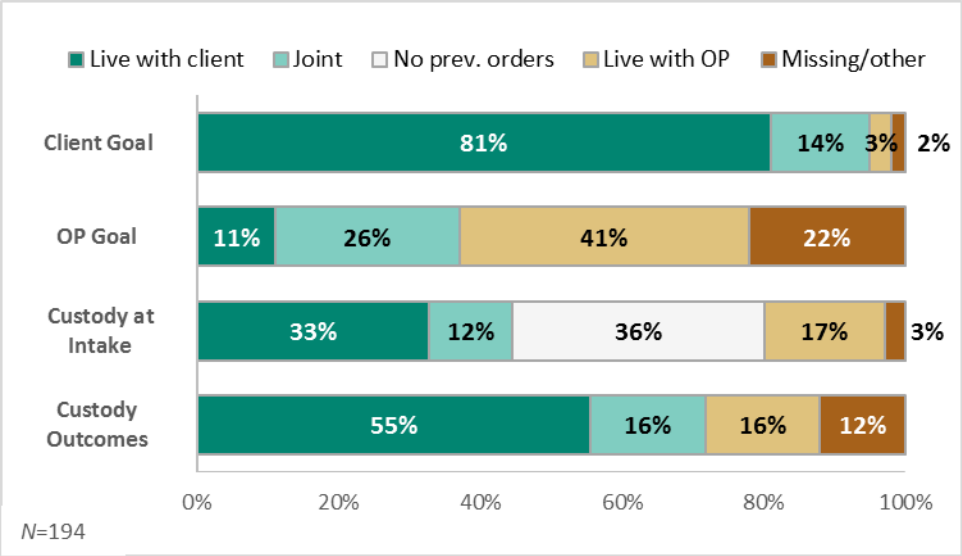
Physical custody and parenting time ("visitation")

At intake, Shriver attorney also asked clients about their goals for the physical custody of the child(ren). A substantial majority (81%; *n*=157) of Shriver representation clients wanted the child(ren) to live with them all or most of the time. By contrast, 41% (*n*=79) of opposing parties wanted the child(ren) to live with them all or most of the time. In 94% (*n*=183) of cases, at least one party requested sole physical custody of the child(ren).

Of the Shriver clients seeking sole physical custody, 3% (*n*=4) requested reasonable visitation for the opposing party, 53% (*n*=83) wanted scheduled, unsupervised visitation, 33% (*n*=52) wanted supervised visitation, 8% (*n*=13) wanted no visitation for the opposing party [1% (*n*=2) wanted some other visitation order (not specified)].[70]

At intake, 33% of Shriver clients had sole physical custody of the child and 81% wanted it. At resolution, 55% of clients were awarded sole physical custody. In contrast, at intake, 17% of opposing parties had sole physical custody and 41% wanted it. At resolution, 16% of opposing parties were awarded sole legal custody. The percentage of cases with joint physical custody was 12% at intake and 16% at resolution. Many of these changes are due to the 36% of cases without custody orders at intake.[71] Figure CA2 shows this breakdown, and Table C4 (earlier) provides specific percentages.

Figure CA2. Physical Custody: Case Goals, Custody Status at Intake, and Custody Outcomes for Shriver Representation Clients and Opposing Parties



Note. OP = opposing party.

[70] 2% (*n*=3) of cases were missing information about the client's goals for visitation orders.
[71] 12% (*n*=24) of cases were missing information about the physical custody outcomes.

Of the 138 cases in which one party was awarded sole physical custody, 65% (*n*=90) involved the non-custodial parent receiving scheduled, unsupervised visitation with the child(ren); 24% (*n*=33) receiving supervised visitation and 5% (*n*=7) receiving no visitation with the child(ren). For the 33 cases in which supervised visitation was ordered for the non-custodial parent, the primary reason pertained to concerns regarding domestic violence (42%, *n*=14), reintroduction (9%, *n*=3), or multiple reasons (12%, *n*=4).[72] Table CA9 shows the numbers of cases with each visitation outcome, split by physical custody orders. Among the 33 cases for which supervised visitation was ordered, one third of these cases (*n*=11) entailed orders for a professional provider.[73] Table CA9 provides more detail regarding supervised visitation terms.

Table CA8. Visitation Orders by Physical Custody Outcomes

	Physical Custody Outcome		
Visitation Orders	**Sole to Client** ***N* (%)**	**Sole to OP** ***N* (%)**	**Total** ***N* (%)**
Reasonable visitation	1 (1%)	1 (3%)	2 (1%)
Scheduled (unsupervised) visitation	67 (63%)	23 (72%)	90 (65%)
Supervised visitation for client	0 (0%)	6 (19%)	6 (4%)
Supervised visitation for OP	27 (25%)	0 (0%)	27 (20%)
No visitation for client	0 (0%)	0 (0%)	0 (0%)
No visitation for OP	7 (7%)	0 (0%)	7 (5%)
Other	1 (1%)	1 (3%)	2 (1%)
Missing/Unknown	3 (3%)	1 (3%)	4 (3%)
Total	106 (100%)	32 (100%)	138 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). Includes representation cases only (*n*=194).

[72] 36% (*n*=12) of cases were missing this information, or the information was unknown.
[73] Non-professional providers (12%, *n*=4), other providers (6%, *n*=2), and multiple types of providers (12%, *n*=4) were also ordered as supervised visit providers. 36% (*n*=12) were missing information about the provider type.

Table CA9. Supervised Visitation Terms for Shriver Representation Clients

	Physical Custody Outcomes				
Other Visitation Terms	**Client Has Sole Custody** *N* (%)	**OP Has Sole Custody** *N* (%)	**Joint Custody** *N* (%)	**Other or Missing** *N* (%)	**Total** *N* (%)
Supervised Visits Due To					
Domestic violence	13 (12%)	1 (3%)	1 (3%)	0 (0%)	15 (8%)
Abduction concerns	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Reintroduction	2 (2%)	1 (3%)	0 (0%)	0 (0%)	3 (2%)
Multiple reasons	3 (3%)	1 (3%)	0 (0%)	0 (0%)	4 (2%)
Not applicable	79 (75%)	26 (81%)	31 (97%)	24 (100%)	160 (82%)
Missing	9 (8%)	3 (9%)	0 (0%)	0 (0%)	12 (6%)
Supervised Visits Ordered With					
Professional provider	9 (8%)	2 (6%)	0 (0%)	0 (0%)	11 (6%)
Non-professional provider	4 (4%)	0 (0%)	0 (0%)	0 (0%)	4 (2%)
Other therapeutic provider	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Other provider	2 (2%)	0 (0%)	0 (0%)	0 (0%)	2 (1%)
Multiple types	1 (1%)	3 (9%)	0 (0%)	0 (0%)	4 (2%)
Not applicable	79 (75%)	26 (81%)	32 (100%)	24 (100%)	161 (83%)
Missing	11 (10%)	1 (3%)	0 (0%)	0 (0%)	12 (6%)
Total	106 (100%)	32 (100%)	32 (100%)	24 (100%)	194 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). Includes representation cases only (*n*=194).

Additional case outcomes

In addition to child custody orders, the court could make, or the parties agree to, additional orders. Among all Shriver representation cases, mental health therapy was ordered for the Shriver client 4% of the time and for the child(ren) 10% of the time. Orders for substance use counseling occurred in one case. Parenting classes were ordered in 7% to 9% of cases, and varied by the physical custody orders. A restraining order was granted for the client in 15% of cases—including 23% of cases in which the client was granted sole physical custody. Orders issued by a criminal court, such as protective orders and participation in batterer intervention programs involving a party in the family law case, were documented in very few cases. These additional orders are displayed in Table CA10, organized by physical custody outcome.

Table CA10. Additional Orders by Physical Custody Outcomes for Shriver Representation Clients and Opposing Parties

	Physical Custody Orders				
Other Orders in Case	**Sole to Client** *N* (%)	**Sole to OP** *N* (%)	**Joint Custody** *N* (%)	**Other or Missing** *N* (%)	**Total** *N* (%)
Treatment-related Orders					
Therapy/Mental Health Counseling					
For client	2 (2%)	3 (9%)	2 (6%)	0 (0%)	7 (4%)
For OP	7 (7%)	0 (0%)	2 (6%)	0 (0%)	9 (5%)
For child(ren)	8 (8%)	6 (19%)	4 (13%)	1 (4%)	19 (10%)
Substance Use Counseling					
For client	0 (0%)	1 (3%)	0 (0%)	0 (0%)	1 (1%)
For OP	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Parenting Classes					
For client	7 (7%)	7 (22%)	4 (13%)	0 (0%)	18 (9%)
For OP	7 (7%)	2 (6%)	4 (13%)	0 (0%)	13 (7%)
Domestic Violence-related Orders					
Restraining Order Granted					
For client	24 (23%)	1 (3%)	3 (10%)	2 (8%)	30 (15%)
For OP	1 (1%)	1 (3%)	0 (0%)	1 (4%)	3 (2%)
Criminal Protective Order Granted[a]					
For client	2 (2%)	0 (0%)	1 (3%)	0 (0%)	3 (2%)
For OP	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
52-week Batterer's Intervention Program Ordered					
For client	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
For OP	5 (5%)	0 (0%)	0 (0%)	0 (0%)	5 (3%)
Total	106 (100%)	32 (100%)	32 (100%)	24 (100%)	194 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). Representation cases only (*n*=194). [a] Criminal protective orders are most commonly issued in concurrent criminal and/or domestic violence cases, not in the custody case.

COURT EFFICIENCY & OTHER AGENCY INVOLVEMENT

Length of Shriver service provision

Across the representation cases with available data, the average length of Shriver service provision was 7.9 months (median = 6.5; range = 1 day to 799 days).[74] Cases resolving with orders for joint physical custody were usually the shortest, averaging about 7.1 months (median = 5.5) of Shriver service provision. Cases in which the opposing party was awarded sole custody lasted the longest, averaging about 9.2 months (median = 7), and cases in which the client was awarded sole physical custody fell in between, with an average of 7.7 months (median = 6).

Continuances and mediation sessions

On average, each Shriver representation case had one continuance, one mediation session, and one settlement conference, which did not vary by case outcomes—that is, the prevalence of certain custody orders did not vary according to the frequency of these events. [Note that the Los Angeles Superior Court had a mandatory settlement conference program that was a standard part of its custody case processing and that existed before, and outside of, the Shriver pilot project. These settlement conferences entailed the parties and their respective counsel meeting with a judge in chambers. Each party prepares a brief and the judge works with both parties (who can consult their counsel) to facilitate a settlement. These conferences are scheduled for cases that are on track for trial, with the goal of preventing a trial.] Table CA11 shows the average number of court events for representation clients.

Table CA11. Court Events for Representation Clients

	Court Event		
Statistic	**Continuances**	**Mediation Sessions**	**Mandatory Settlement Conferences[a]**
Mean (*SD*)	0.9 (1.1)	0.9 (0.6)	0.8 (1.1)
Median	1	1	0
Range	0 to 5	0 to 2	0 to 6
Missing, *N* (%)	24 (13%)	18 (10%)	20 (11%)

Note. Data from the Shriver program services database (as of 11/12/15). Includes representation cases only (*n*=194).
[a] Mandatory settlement conferences in the LA court are a standard part of court operations and are not part of the Shriver project.

Police Involvement

At the initial meeting, clients were asked by their attorneys how often the police had been asked to intervene in the 3 months prior to Shriver intake. Police involvement included, but was not limited to, enforcing existing custody and visitation orders or responding to instances of domestic violence. Forty-six percent of clients reported having no police involvement in the 3 months prior to Shriver intake, 44% (*n*=84) reported occasional police involvement, and 3% (*n*=5) had frequent police involvement (at least once per week).

[74] One case (<1%) was missing this information.

Toward the end of Shriver service provision (i.e., at or near the resolution of the pleading), clients were again asked about police involvement during the previous 3 months. At this point, 39% of cases (*n*=75) maintained no police involvement, 23% (*n*=44) reported a decrease in police involvement, 4% (*n*=8) reported increased police involvement, and 14% of cases (*n*=28) had the same amount of police involvement as before Shriver services.[75] Table CA12 displays the frequency of reported police involvement at Shriver intake and exit.

Table CA12. Reported Frequency of Police Involvement for Limited Representation Clients

Frequency of Police Involvement	3 Months Prior to Shriver Intake *N* (%)	3 Months Prior to Shriver Exit *N* (%)
Never	89 (46%)	125 (73%)
Less than once per month	48 (25%)	22 (13%)
1-3 times per month	36 (19%)	12 (7%)
Once per week	1 (1%)	2 (1%)
2-3 times per week	4 (2%)	5 (3%)
More than 3 times per week	0 (0%)	0 (0%)
Missing/unknown	16 (9%)	28 (14%)
Total	194 (100%)	194 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). Includes representation cases only (*n*=194).

[75] 20% of cases (*n*=39) were missing information at either intake or case closing.

SHRIVER CUSTODY PROJECT SERVICE SUMMARY: SAN DIEGO

Service Provision

Information regarding the types of services provided, case characteristics, and outcomes were obtained from the program services database. Data from the San Diego Volunteer Lawyer Program (SDVLP), the provider of legal aid services for the Shriver custody project, were collected on all parties seeking services from February 2012 through November 2015.

WHAT SERVICES WERE PROVIDED?

Legal aid services

In this report, litigants receiving limited scope representation from a Shriver legal aid services attorney are categorized as ***representation*** clients and litigants receiving all other types of legal services from an SDVLP attorney are referred to as ***unbundled services*** clients.

Between February 2012 and November 2015, the San Diego custody pilot project provided legal services to litigants in a total of 470 cases. Of these cases, 36% received representation and 64% received unbundled services (Table CA13). Shriver attorneys tracked the number of hours they spent working on each case in one-hour increments. Table CA13 shows the average number of hours attorneys worked on custody cases, by the level of service. Importantly, these estimates reflect just attorney time and do not reflect time worked by other staff, such as intake coordinators or paralegals. Overall, Shriver attorneys worked an average of 11 hours per case (median = 3). Representation cases received an average of 26 hours (median = 20) and unbundled services cases received an average of 3 hours (median = 3).[76]

Table CA13. Number of Legal Aid Services Cases and Attorney Hours Provided per Case

	Level of Service		
Characteristic	**Representation**	**Unbundled Services**	**Total**
Number (%) of Litigants	171 (36%)	299 (64%)	470 (100%)
Attorney Hours Provided			
Mean (*SD*)	25.9 (24)	3.0 (4)	11.2 (18)
Median	20.0	3.0	3.0
Range	5.0 to 250.0	0.5 to 299.0	0.5 to 250.0
Missing N (%)	4 (2%)	0 (0%)	4 (1%)

Note. Data from the Shriver program services database (as of 11/12/15).

Court-based services

As part of the Shriver San Diego custody pilot project, the San Diego Superior Court offered settlement conferences, conducted by a judge, to litigants prior to appearing in court. Between February 2012 and November 2015, a total of 129 Shriver cases participated in at least one settlement conference. Of these cases, 123 were receiving Shriver representation and six were receiving unbundled services. It is possible that other custody cases, with no parties receiving

[76] Ninety percent of cases required less than 50 hours of attorney time. The mean value being higher than the median value in Table CA13 is due to an outlying value (250 hours).

Shriver legal aid services, also participated in settlement conferences; however, information about these cases was not available.

WHO RECEIVED LEGAL AID SERVICES?

Client characteristics

At the time of Shriver intake, SDVLP staff members collected information about their clients, including demographics, household characteristics, and characteristics pertinent to the custody cases. The average age of the client was 31 years, 75% were female, 49% were Hispanic or Latino, half had at least some post-secondary education, 21% had known or observable disabilities,[77] and 8% could not effectively communicate in English without the assistance of an interpreter (limited English proficiency). Demographic characteristics varied between litigants who received representation and those who received unbundled services. Table CA14 displays the demographic characteristics of the 470 litigants served by SDVLP, by level of service.

Table CA14. Demographic Characteristics of Shriver Legal Aid Services Clients

	Level of Service		
Client Level Characteristics	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Age (years)			
18 to 24	21 (12%)	80 (27%)	101 (21%)
25 to 44	135 (79%)	199 (67%)	334 (71%)
45 to 61	15 (9%)	20 (7%)	35 (7%)
62 or older	0 (0%)	0 (0%)	0 (0%)
Unknown/not collected	0 (0%)	0 (0%)	0 (0%)
Gender			
Male	30 (18%)	88 (29%)	118 (25%)
Female	140 (82%)	211 (71%)	351 (75%)
Transgender	0 (0%)	0 (0%)	0 (0%)
Unknown/not collected	1 (1%)	0 (0%)	1 (0%)
Race/Ethnicity[a]			
Asian	14 (5%)	8 (5%)	22 (5%)
Black or African American	18 (11%)	62 (21%)	80 (17%)
Hispanic/Latino	72 (42%)	160 (54%)	232 (49%)
White	56 (33%)	39 (13%)	95 (20%)
Other	16 (9%)	15 (5%)	31 (7%)
Unknown/declined	1 (1%)	9 (3%)	10 (2%)
Education			
High school degree or less	48 (28%)	152 (51%)	200 (43%)
Any post-secondary	96 (56%)	141 (47%)	237 (50%)
Unknown/not collected	27 (16%)	6 (2%)	33 (7%)
Limited English Proficiency			

[77] Most common was a psychiatric or emotional disability (9%, *n*=41), multiple disabilities/disorders (4%, *n*=18), a substance use disorder (4% *n*=17), physical disability (2%, n=9), or other disability (2%, *n*=14).

	Level of Service		
Client Level Characteristics	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Yes	17 (10%)	21 (7%)	38 (8%)
No	154 (90%)	278 (93%)	432 (92%)
Unknown/not collected	0 (0%)	0 (0%)	0 (0%)
Disability			
Yes	58 (34%)	41 (14%)	99 (21%)
No	97 (57%)	190 (64%)	287 (61%)
Unknown/not collected	16 (9%)	68 (23%)	84 (18%)
Total	171 (100%)	299 (100%)	470 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[a] Litigants who identified as Hispanic/Latino and any other race/ethnicity are included in the Hispanic/Latino row.

More than one third of Shriver clients (37%) received CalFresh benefits,[78] and 51% received public health benefits, such as Medi-Cal.[79] The median household monthly income was $1,200 (mean = $1,302), which is far below the 2014 income threshold of $2,613 for a family of at least two. The income of the opposing parent was not known. Table CA15 details the household characteristics for Shriver clients served by SDVLP, by level of service.

Table CA15. Household Characteristics of Shriver Legal Aid Services Clients

	Level of Service		
Client's Household Level Characteristics at Shriver Intake	**Representation**	**Unbundled Services**	**Total**
Monthly Income			
Mean (SD)	$1,235 ($756)	$1,340 ($900)	$1,302 ($851)
Median	$1,194	$1,200	$1,200
Range	$0 to $3,118	$0 to $4,350	$0 to $4,350
Missing	0 (0%)	0 (0%)	0 (0%)
Received CalFresh Benefits, *N* (%)			
Yes	71 (42%)	101 (34%)	172 (37%)
No	100 (58%)	198 (66%)	298 (63%)
Received Public Health Benefits, *N* (%)			
Yes	65 (38%)	173 (58%)	238 (51%)
No	106 (62%)	126 (42%)	232 (49%)
Total	171 (100%)	299 (100%)	470 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[78] The CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP; formerly "food stamps"), provides qualified, low-income households with monthly electronic benefits that can be used to buy most foods at many markets and food stores.

[79] Medi-Cal offers free or low-cost health coverage for low-income children, pregnant women, and families.

Child characteristics

Across the 470 cases served by SDVLP, a total of 663 children were involved, with a typical case involving one child. The average age of a child in the case was 6 years old (median = 5), and 25% of cases involved a child with a disability. Most (63%) children were living with the Shriver client at the time of case intake. Table CA16 shows the characteristics of the children involved in the Shriver custody cases.

Table CA16. Characteristics of Children of Shriver Legal Aid Services Clients

	Level of Service		
Child(ren) Characteristics	**Representation**	**Unbundled Services**	**Total**
Total Number of Children	253	410	663
Number of Children per Case			
Mean (*SD*)	1.5 (0.8)	1.4 (0.7)	1.4 (0.7)
Median	1	1	1
Range	1 to 5	1 to 4	1 to 5
Missing/unknown	0 (0%)	0 (0%)	0 (0%)
Age of Child(ren)			
Mean (*SD*)	5.9 (4.1)	5.6 (4.4)	5.7 (4.3)
Median	5	5	5
Range	0 to 17	0 to 17	0 to 17
Missing/unknown	0 (0%)	0 (0%)	0 (0%)
Child Has a Disability, *N* (%)			
Yes	46 (27%)	72 (24%)	118 (25%)
No	121 (71%)	215 (72%)	336 (71%)
Missing	4 (2%)	12 (4%)	16 (3%)
Living Arrangements at Intake, *N* (%)			
Lived with client most of the time	100 (58%)	196 (66%)	296 (63%)
Shared equal time or lived together	20 (12%)	39 (13%)	59 (13%)
Lived with opposing party most of the time	50 (29%)	59 (20%)	109 (23%)
Other living arrangement	1 (1%)	4 (1%)	5 (1%)
Missing/unknown	0 (0%)	1 (<1%)	1 (<1%)
Total	171 (100%)	299 (100%)	470 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Case characteristics

Of all cases receiving Shriver legal aid services, 50% were filed to obtain an initial order for custody or visitation, and the other 50% were to modify an existing custody order. Custody cases were initiated by a variety of petitions, including petitions for dissolution of marriage, legal separation, or annulment (35%); uniform parentage (29%); custody and support (14%); and governmental child support (12%). At the time of Shriver intake, 29% of cases had petitions or requests for orders (RFOs) filed and 3% had responsive declarations to the petition/RFO filed.

Fifty percent of cases were currently in post-judgment and did not have active RFOs. Table CA17 displays these case characteristics by level of legal services received.

Table CA17. Custody Case Characteristics at Intake for Shriver Legal Aid Services Clients

	Level of Service		
Custody Case Characteristics	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Purpose of Case			
Obtain an initial order for custody/visitation	79 (46%)	154 (52%)	233 (50%)
Modify an existing custody order	92 (54%)	142 (47%)	234 (50%)
Other	0 (0%)	3 (1%)	3 (<1%)
Missing/unknown	0 (0%)	0 (0%)	0 (0%)
Petition that Initiated Custody Case			
Dissolution of marriage	76 (44%)	90 (30%)	166 (35%)
Parentage	54 (32%)	83 (28%)	137 (29%)
Petition for custody and support	9 (5%)	59 (20%)	68 (14%)
Governmental child support	22 (13%)	32 (11%)	54 (12%)
Domestic violence	6 (4%)	6 (2%)	12 (3%)
Juvenile case exit order	3 (2%)	7 (2%)	10 (2%)
Other	1 (1%)	21 (7%)	22 (5%)
Missing/unknown	0 (0%)	1 (<1%)	1 (<1%)
Case Status at Shriver Intake			
Post-judgment[a]	55 (32%)	180 (60%)	235 (50%)
Petition or RFO filed for custody/visitation	48 (28%)	88 (29%)	136 (29%)
Response to petition or RFO for custody/visitation filed	12 (7%)	0 (0%)	12 (3%)
Other orders filed[b]	29 (17%)	7 (2%)	36 (8%)
Mediation occurred	7 (4%)	1 (0%)	8 (2%)
FCS recommendations made	20 (12%)	0 (0%)	20 (4%)
Other post-filing action[c]	0 (0%)	23 (8%)	23 (5%)
Missing/unknown	0 (0%)	0 (0%)	0 (0%)
Total	171 (100%)	299 (100%)	470 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). [a] Includes previous orders for cases such as paternity, dissolution of marriage, legal separation, and annulments. [b] Includes temporary orders for custody/visitation, temporary restraining orders, and domestic violence restraining orders. [c] Includes child custody evaluation ordered/completed, action for contempt, and other events not specified.

Client role and opposing party representation

Shriver SDVLP attorneys assisted both moving and responding parties in child custody matters. Of the clients who received representation, 52% were the responding party; of the clients who received unbundled services, 60% were the moving party. Shriver legal services staff assessed whether the opposing party had legal counsel at the time of intake. As shown in Table CA18, for clients who received Shriver representation, 97% faced an opposing party with legal representation. Among clients who received unbundled services, approximately 2% faced an opposing party with legal representation.

Table CA18. Client Role and Opposing Party Representation at Intake for Legal Services Clients

	Level of Service		
Characteristics at Shriver Intake	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Client Role in Case			
Moving party	64 (37%)	179 (60%)	243 (52%)
Responding party	89 (52%)	79 (27%)	168 (36%)
Other	18 (11%)	40 (13%)	58 (12%)
Missing/unknown	0 (0%)	1 (<1%)	1 (<1%)
Opposing Party Represented by Counsel			
Yes	166 (97%)	6 (2%)	172 (37%)
No	5 (3%)	293 (98%)	298 (63%)
Missing/unknown	0 (0%)	0 (0%)	0 (0%)
Total	171 (100%)	299 (100%)	470 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Other contextual factors

To understand the complexity of custody cases, and to help elucidate possible reasons for one party obtaining sole custody, Shriver attorneys asked clients about current or previous involvement with Child Protective Services, domestic violence, the police, and allegations of substance use by either party. Of note, this information was available only by report of the Shriver client. Thirty-three percent (*n*=154) of cases had current or prior involvement with Child Protective Services (including those with open juvenile dependency cases). Nearly half (47%; n=221) of all cases had allegations of domestic violence, most often against the opposing party. Nearly half (45%; *n*=212) involved allegations of substance use, more often against the opposing party. One quarter (26%) involved at least one instance of police involvement in the 3 months prior to Shriver intake. Overall, at least one of these factors was reported for 75% of cases (*n*=354), and more often among cases that received representation (as opposed to unbundled services), suggesting that higher conflict cases were prioritized for more intensive legal services. Table CA19 shows the numbers and percentages of cases with each of these contextual factors, by level of service.

Table CA19. Contextual Factors for Shriver Legal Services Clients

	Level of Service		
Contextual Factor	**Representation** *N* (%)	**Unbundled Services** *N* (%)	**Total** *N* (%)
Involvement with Child Protective Services[a]			
Never	91 (53%)	205 (69%)	296 (63%)
Currently	53 (31%)	47 (16%)	100 (21%)
Previously	22 (13%)	20 (7%)	42 (9%)
Juvenile court case	4 (2%)	8 (2%)	12 (2%)
Missing/unknown	1 (1%)	19 (6%)	20 (4%)
Allegations of Domestic Violence[b]			
None	69 (41%)	170 (57%)	239 (51%)
Client alleged or convicted	12 (7%)	15 (5%)	27 (6%)
OP alleged or convicted	76 (45%)	93 (31%)	169 (36%)
Both client and OP alleged/convicted	12 (7%)	13 (4%)	25 (5%)
Missing/unknown	1 (1%)	8 (3%)	9 (2%)
Allegations of Substance Use			
None	88 (51%)	160 (54%)	248 (53%)
Against client	22 (13%)	6 (2%)	28 (6%)
Against opposing party	40 (23%)	101 (34%)	141 (30%)
Both parties alleged	19 (11%)	24 (8%)	43 (9%)
Missing/unknown	2 (1%)	8 (3%)	10 (2%)
Police Involvement 3 Months Prior to Shriver Intake			
Yes	53 (31%)	69 (23%)	122 (26%)
No	101 (66%)	216 (76%)	317 (72%)
Missing/unknown	17 (10%)	14 (5%)	31 (7%)
Total	171 (100%)	299 (100%)	470 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[a] The alleged perpetrator of child maltreatment (i.e., which party) was unknown.

[b] Allegations of domestic violence within 5 years prior to Shriver intake.

Case Outcomes

The remainder of this section on the San Diego custody pilot project reflects only Shriver cases that received representation from SDVLP. Outcomes of cases receiving unbundled services were largely unknown because attorneys did not follow these cases to resolution.

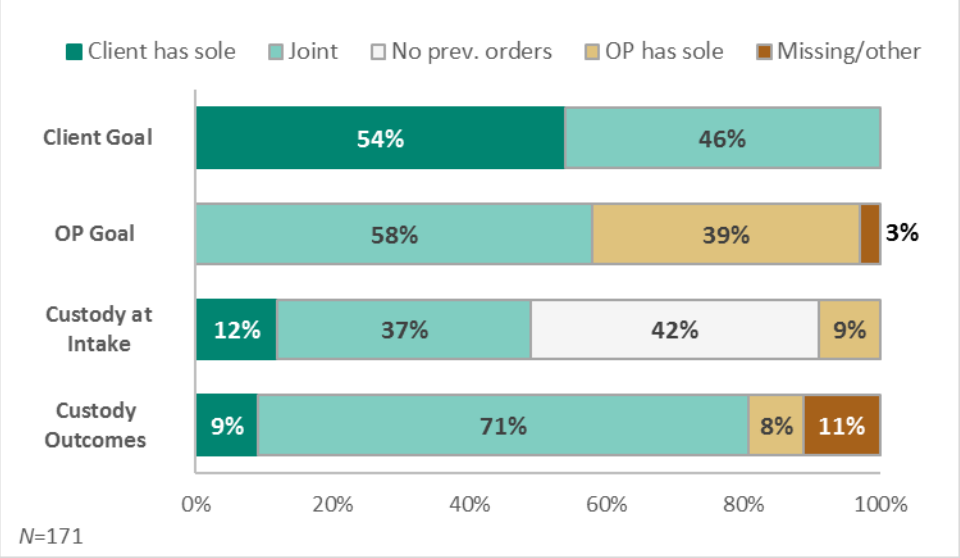
Child Custody Orders

Legal custody

At intake, Shriver attorneys asked their clients about their goals for their cases in terms of legal custody, physical custody, and visitation. Regarding legal custody, 54% (*n*=93) of representation clients wanted sole legal custody and 46% (*n*=78) wanted to share joint legal custody. Information about the opposing party goals for the case was obtained from the petition, RFO, response, or from the client. Most opposing parties (58%; *n*=99) wanted to share joint legal custody, and 39% (*n*=67) wanted sole legal custody. In 75% of cases, at least one party sought sole legal custody of the child(ren).

At intake, 12% of Shriver clients had sole legal custody of the child and 54% wanted it. At resolution, 9% of clients were awarded sole legal custody. In contrast, at intake, 9% of opposing parties had sole legal custody and 39% wanted it. At resolution, 8% of opposing parties were awarded sole legal custody. The percentage of cases with joint legal custody increased from 37% at intake to 71% at resolution. (The remaining 11% had some other outcome.) Many of these changes are due to the 42% of cases without legal custody legal orders at intake. Figure CA3 shows this breakdown, and Table C8 (earlier) provides percentages for each outcome.

Figure CA3. Legal Custody: Case Goals, Custody Status at Shriver Intake, and Custody Outcomes for Shriver Representation Clients and Opposing Parties



Note. OP = opposing party.

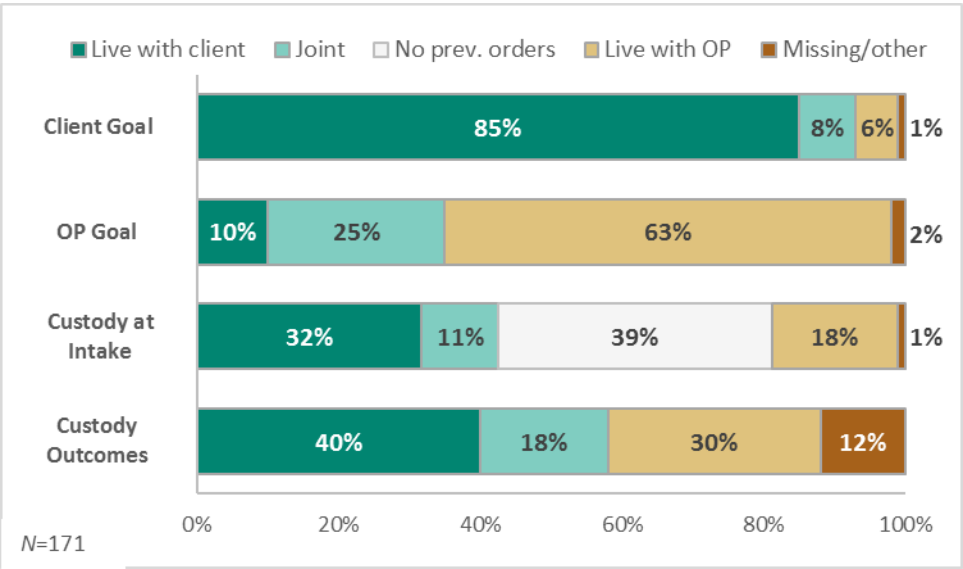
Physical custody and parenting time ("visitation")

At intake, Shriver attorneys also asked clients about their goals in terms of physical custody. Most (85%; *n*=145) Shriver representation clients wanted the child(ren) to live with them all or most of the time. Likewise, most (63%; *n*=107) of opposing parties wanted the child(ren) to live with them all or most of the time. All 171 cases involved a request for sole physical custody by at least one party.

Shriver representation clients who were seeking sole physical custody had varying requests for timeshare (visitation) for the other parent. Of these clients, 54% (*n*=78) wanted scheduled, unsupervised visitation for the opposing party, 32% (*n*=47) wanted supervised visitation, 7% (*n*=10) wanted reasonable visitation, 4% (*n*=6) wanted no visitation for the opposing party, and 3% (*n*=4) wanted some other visitation order (not specified).

At intake, 32% of Shriver clients had sole physical custody of the child and 85% wanted it. At resolution, 40% of clients were awarded sole physical custody. In contrast, at intake, 18% of opposing parties had sole physical custody and 63% wanted it. At resolution, 30% of opposing parties were awarded sole physical custody. The percentage of cases with joint physical custody was 11% at intake and 18% at resolution. Many of these changes are due to the 39% of cases without physical custody orders at intake.[80] Figure CA4 shows this breakdown, and Table C8 (earlier) provides more detail for each outcome.

Figure CA4. Physical Custody: Case Goals, Custody Status at Shriver Intake, and Custody Outcomes for Shriver Representation Clients and Opposing Parties



Note. OP = opposing party.

[80] The remaining 12% (*n*=21) of cases had some other outcome, not specified.

Of the 119 cases in which one parent was awarded sole physical custody, the majority (81%; *n*=96) involved the non-custodial parent receiving scheduled, unsupervised visitation. This underscores the conflict between the parties and the court's lack of confidence that the parties would be able to manage a reasonable schedule independently. In fact, only one case was awarded reasonable visitation. Another 11% (*n*=13) of cases involved orders for supervised visitation, and 2% (*n*=2) included no visitation. Table CA20 shows the numbers of cases with each visitation outcome by physical custody orders. Among the 13 cases in which supervised visitation was ordered, the primary reason pertained to concerns about domestic violence (23%, *n*=3), abduction (8%, *n*=1), reintroduction (8%, *n*=1), or multiple reasons (8%, *n*=1).[81] Among the 13 cases with orders for supervised visitation, roughly one third involved orders for a non-professional provider (31%, *n*=4).[82] Table CA21 provides more detailed information on the terms of supervised visitation orders.

Table CA20. Visitation Orders by Physical Custody Orders

	Physical Custody Orders		
Visitation Orders	**Sole to Client** ***N* (%)**	**Sole to OP** ***N* (%)**	**Total** ***N* (%)**
Reasonable visitation	1 (1%)	0 (0%)	1 (1%)
Scheduled (unsupervised) visitation	56 (82%)	40 (78%)	96 (81%)
Supervised visitation for client	0 (0%)	7 (14%)	7 (6%)
Supervised visitation for OP	6 (9%)	0 (0%)	6 (5%)
No visitation for client	0 (0%)	0 (0%)	0 (0%)
No visitation for OP	2 (3%)	0 (0%)	2 (2%)
Other	3 (4%)	4 (8%)	7 (6%)
Missing/Unknown	0 (0%)	0 (0%)	0 (0%)
Total	68 (100%)	51 (100%)	119 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[81] More than half (54%, *n*=7) of cases were missing this information, or the information was unknown.
[82] Professional providers (15%, *n*=2), other therapeutic providers (8%, *n*=1), other providers (15%, *n*=2), and multiple types of providers (15%, *n*=2) were also ordered as supervised visit providers. Two cases (15%) were missing information about the provider type.

Table CA21. Supervised Visitation Terms for Shriver Representation Clients

	Physical Custody Outcome				
Other Visitation Terms	**Sole to Client** *N* (%)	**Sole to OP** *N* (%)	**Joint Custody** *N* (%)	**Other or Missing** *N* (%)	**Total** *N* (%)
Supervised Visits Due To					
Domestic Violence	1 (1%)	2 (4%)	0 (0%)	0 (0%)	3 (2%)
Abduction concerns	0 (0%)	1 (2%)	0 (0%)	0 (0%)	1 (1%)
Reintroduction	1 (1%)	0 (0%)	0 (0%)	0 (0%)	1 (1%)
Multiple reasons	1 (1%)	0 (0%)	0 (0%)	0 (0%)	1 (1%)
Not applicable	62 (91%)	44 (86%)	31 (100%)	21 (100%)	158 (92%)
Missing	3 (4%)	4 (8%)	0 (0%)	0 (0%)	7 (4%)
Supervised Visits Ordered With					
Professional provider	2 (3%)	0 (0%)	0 (0%)	0 (0%)	2 (1%)
Non-professional provider	2 (3%)	2 (4%)	0 (0%)	0 (0%)	4 (2%)
Other therapeutic provider	1 (1%)	0 (0%)	0 (0%)	0 (0%)	1 (1%)
Other provider	0 (0%)	2 (4%)	0 (0%)	0 (0%)	2 (1%)
Multiple types	0 (0%)	2 (4%)	0 (0%)	0 (0%)	2 (1%)
Not applicable	62 (91%)	44 (86%)	31 (100%)	21 (100%)	158 (92%)
Missing	1 (1%)	1 (2%)	0 (0%)	0 (0%)	2 (1%)
Total	68 (100%)	51 (100%)	31 (100%)	21 (100%)	171 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Additional case outcomes

In addition to child custody orders, the court could make, or the parties agree to, other orders. Of all representation cases, the Shriver client was ordered to attend therapy 16% of the time, and therapy was ordered for children in 19% of cases. Substance use counseling was rare, occurring in just 2% of cases for both the Shriver client and opposing party. Parenting classes were ordered for approximately 20% of clients and opposing parties, and for the non-custodial parent a greater proportion of the time. Orders issued by a criminal court, such as protective orders or batterer intervention programs involving a party in the family law case, were documented in a small number of cases. Additional orders are displayed in Table CA22, by physical custody outcome.

Table CA22. Additional Orders for Representation Clients and Opposing Parties by Physical Custody Outcome

	Physical Custody Outcome				
Additional Orders in Case	Sole to Client *N* (%)	Sole to OP *N* (%)	Joint Custody *N* (%)	Other or Missing *N* (%)	Total *N* (%)
Treatment-related Orders					
Therapy/Mental Health Counseling					
For client	14 (21%)	12 (24%)	2 (6%)	0 (0%)	28 (16%)
For OP	9 (13%)	1 (2%)	3 (10%)	0 (0%)	13 (8%)
For child(ren)	13 (19%)	13 (25%)	6 (19%)	0 (0%)	32 (19%)
Substance Use Counseling					
For client	0 (0%)	3 (6%)	0 (0%)	0 (0%)	3 (2%)
For OP	3 (4%)	0 (0%)	1 (3%)	0 (0%)	4 (2%)
Parenting Classes					
For client	11 (16%)	14 (27%)	5 (16%)	0 (0%)	30 (18%)
For OP	23 (34%)	9 (18%)	5 (16%)	0 (0%)	37 (22%)
Domestic Violence-related Orders					
Restraining Order Granted					
For client	2 (3%)	0 (0%)	0 (0%)	0 (0%)	2 (1%)
For OP	1 (1%)	3 (6%)	0 (0%)	0 (0%)	4 (2%)
Criminal Protective Order Granted					
For client	0 (0%)	0 (0%)	1 (3%)	0 (0%)	1 (1%)
For OP	1 (1%)	0 (0%)	0 (0%)	0 (0%)	1 (1%)
52-week Batterer's Intervention Program Ordered					
For client	0 (0%)	1 (2%)	0 (0%)	0 (0%)	1 (1%)
For OP	1 (1%)	0 (0%)	1 (3%)	0 (0%)	2 (1%)
Total	68 (100%)	51 (100%)	31 (100%)	21 (100%)	171 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

COURT EFFICIENCY & OTHER AGENCY INVOLVEMENT

Length of Shriver service provision

Seventy two percent (*n*=123) of Shriver representation cases participated in at least one Shriver settlement conference. Across all representation cases with available data, the average length of Shriver service provision was 109 days (median = 91; range = 1 to 498 days).[83] Among cases that involved a settlement conference, the average length of service provision was 116 days (median = 98). Among those that did not involve a conference, the average length of Shriver service provision was 91 days (median = 85). Anecdotally, Shriver staff explained that the cases that do not participate in a settlement conference are often those that either (a) settle before the conference date or (b) have a near-term hearing date, which precluded the scheduling of a settlement conference. In both of these instances, the pleadings would resolve earlier.

[83] Six cases (4%) were missing this information.

Continuances and mediation sessions

Table CA23 shows the average number of court events for representation clients with and without settlement conference participation. On average, each representation case had one continuance and one mediation session. When Shriver representation was accompanied by a settlement conference, most (at least 50%) cases had one continuance (median = 1), and most (at least 50%) cases without a settlement conference had no continuances (median = 0). This discrepancy is likely due to the underlying circumstances of the two groups of cases. Anecdotally, it was explained that all Shriver representation cases were scheduled for settlement conferences, and the cases that did not receive settlement conferences were often those that did not have enough time—for example, cases that presented for Shriver service with an already-scheduled hearing in the near-term. The quick turnaround of some of these cases did not allow a settlement conference to be scheduled, which may also explain why fewer continuances were noted. The number of mediation sessions did not vary with participation in a settlement conference.

Table CA23. Court Events for Shriver Representation Clients with and without Settlement Conference Participation

	Type of Shriver Service Received		
Court Event	**Representation Only**	**Representation + Settlement Conference**	**Total**
Number of Cases	48	123	171
Continuances			
Mean (*SD*)	0.5 (0.7)	1.0 (1.3)	0.8 (1.2)
Median	0.0	1.0	1.0
Range	0 to 3	0 to 10	0 to 10
Missing, *N* (%)	1 (2%)	3 (2%)	4 (2%)
Mediation Sessions			
Mean (*SD*)	0.8 (0.4)	0.9 (0.4)	0.8 (0.4)
Median	1.0	1.0	1
Range	0 to 1	0 to 2	0 to 2
Missing, *N* (%)	1 (2%)	3 (2%)	4 (2%)

Note. Data from the Shriver program services database (as of 11/12/15). Includes representation cases only (*n*=171).

Police involvement

At the time of Shriver intake, clients were asked by their attorneys how often the police were asked to intervene in the 3 months prior to seeking Shriver services. Police involvement included, but was not limited to, enforcing existing custody and visitation orders or responding to instances of domestic violence. Most cases (approximately 60% overall) had no police involvement in the 3 months prior to seeking Shriver services, about 30% had occasional police involvement, and a handful of cases had frequent police involvement (at least once per week).

Toward the end of Shriver service provision (i.e., at or near the resolution of the pleading), clients were again asked about police involvement during the previous 3 months. At this point, 55% of cases (*n*=94) maintained no police involvement, 18% (*n*=30) reported a decrease in police involvement, 2% (*n*=4) reported increased police involvement, and 7% of cases (*n*=12) had the same amount of police involvement as before Shriver services.[84] There were no differences in police involvement between cases with and without a settlement conference. Table CA24 displays the frequency of reported police involvement at Shriver intake and exit.

Table CA24. Reported Frequency of Police Involvement Before and After Shriver Intake by Type of Shriver Service Received

	Shriver Representation Only		Shriver Representation + Settlement Conference	
Frequency of Police Involvement	**3 Months Before Shriver Intake** *N* (%)	**3 Months Before Shriver Exit** *N* (%)	**3 Months Prior to Shriver Intake** *N* (%)	**3 Months Before Shriver Exit** *N* (%)
Never	30 (63%)	38 (79%)	71 (58%)	90 (73%)
Less than once per month	12 (25%)	3 (6%)	25 (20%)	12 (10%)
1-3 times per month	2 (4%)	1 (2%)	11 (9%)	5 (4%)
Once per week	1 (2%)	1 (2%)	0 (0%)	1 (1%)
2-3 times per week	0 (0%)	0 (0%)	1 (1%)	0 (0%)
More than 3 times per week	0 (0%)	0 (0%)	1 (1%)	1 (1%)
Missing/unknown	3 (6%)	5 (10%)	14 (11%)	14 (11%)
Total	48 (100%)	48 (100%)	123 (100%)	123 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[84] 18% of cases (*n*=31) were missing information at either intake or case closing.

SHRIVER CUSTODY PROJECT SERVICE SUMMARY: SAN FRANCISCO

Service Provision

Information regarding the types of services provided, case characteristics, and outcomes were obtained from the program services database for legal aid services clients. Data from the Justice & Diversity Center of the Bar Association of San Francisco (JDC) were collected on all parties receiving services from January 2012 through November 2015. Data for court-based services clients were recorded by the Shriver self-help attorney.

WHAT COURT-BASED SERVICES WERE PROVIDED?

The San Francisco custody pilot project staffed a self-help attorney in the Self-Help Resource Center at the Superior Court. Between October 2011 and September 2015, this Shriver attorney provided assistance to 1,742 litigants involved in custody cases.

WHAT LEGAL AID SERVICES WERE PROVIDED?

Between January 2012 and November 2015, the San Francisco custody pilot project provided representation to litigants in a total of 227 cases. Attorneys tracked the number of hours they spent working on cases in 15-minute increments. Table CA25 shows the average number of hours they worked on a custody case was 23 (median = 15).[85] These estimates reflect attorney time, but not time worked by other staff, e.g., project coordinator or social service advocate.

Table CA25. Number of Legal Aid Services Cases and Attorney Hours Provided per Case

Characteristic	Representation
Number of Litigants	227
Attorney Hours Provided	
Mean (*SD*)	22.6 (24)
Median	15.0
Range	0.5 to 209.0
Missing N (%)	11 (5%)

WHO RECEIVED LEGAL AID SERVICES?

Client characteristics

At the time of Shriver intake, JDC staff members collected information about their clients, including demographics, household characteristics, and characteristics pertinent to the custody case. As shown in Table CA26, the average age of the client was 39 years (median = 37), 53% were female, 35% were Hispanic or Latino, 35% had at least some post-secondary education, 24% could not effectively communicate in English without the assistance of an interpreter (limited English proficiency), and 20% had a known or observable disability.[86]

[85] Ninety percent of cases required less than 50 hours of attorney time. The mean value is greater than the median value in Table CA25 due to one outlying value (250 hours).

[86] Most common types of disability or disorder were a psychiatric or emotional disability (7%, *n*=16), substance use disorder (7%, *n*=16), more than one disability/disorder, (3%, *n*=6), or physical disability (2%, *n*=5).

Notably, the San Francisco custody pilot project has a higher proportion of male clients than the other two Shriver custody projects. Shriver staff members believe this may be due to the general availability of legal services to domestic violence survivors residing in the San Francisco metropolitan area, relative to other areas. Specifically, other local organizations provide legal assistance to female victims of domestic violence (but not necessarily to alleged abusers). Once these women have an attorney, their male partner becomes eligible for Shriver services because he is facing a represented opposing party.

Table CA26. Demographic Characteristics of Shriver Legal Aid Services Clients

Client Level Characteristics	*N* (%)
Age (years)	
18 to 24	9 (4%)
25 to 44	162 (71%)
45 to 61	50 (22%)
62 or older	4 (2%)
Unknown/not collected	2 (1%)
Gender	
Male	107 (47%)
Female	120 (53%)
Transgender	0 (0%)
Unknown/not collected	0 (0%)
Race/Ethnicity[a]	
Asian	33 (14%)
Black or African American	40 (18%)
Hispanic/Latino	79 (35%)
White	55 (24%)
Other	9 (4%)
Unknown/declined	11 (5%)
Education	
High school degree or less	57 (25%)
Any post-secondary	80 (35%)
Unknown/not collected	90 (40%)
Limited English Proficiency	
Yes	54 (24%)
No	173 (76%)
Unknown/not collected	0 (0%)
Disability	
Yes	45 (20%)
No	114 (50%)
Unknown/not collected	68 (30%)
Total	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).
[a] Litigants who identified as Hispanic/Latino and any other race/ethnicity are included in the Hispanic/Latino row.

Thirteen percent of Shriver clients received CalFresh benefits.[87] The median monthly household income was $900 (mean = $1,107), which is far below the 2014 income threshold of $2,613 for a family of at least two. Information about the opposing party's income was not available. Table CA27 details the household characteristics for Shriver clients served by JDC.

Table CA27. Household Characteristics of Shriver Legal Aid Services Clients

Client's Household Level Characteristics	*N* (%)
Monthly Income	
Mean	$1,107
Median	$900
SD	$1,102
Range	$0 to $5,360
Missing	0 (0%)
Received CalFresh Benefits, *N* (%)	
Yes	29 (13%)
No	198 (87%)
Total	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[87] The CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP; formerly "food stamps"), provides qualified, low-income households with monthly electronic benefits that can be used to buy most foods at many markets and food stores.

Child Characteristics

Across the 227 cases served by JDC, a total of 327 children were involved, with a typical case involving one child. The average age of child(ren) in the cases was 7 years old (median = 7), and 11% of cases involved a child with a disability. Half of children were living with the opposing party at the time of case intake. Table CA28 shows the characteristics of the children involved in the Shriver custody cases.

Table CA28. Characteristics of Children of Shriver Legal Aid Services Clients

Children Characteristics	*N* (%)
Total Number of Children	327
Number of Children per Case	
Mean (*SD*)	1.4 (0.7)
Median	1
Range	1 to 6
Missing/unknown	0 (0%)
Age of Children	
Mean (*SD*)	7.2 (4.5)
Median	7
Range	0 to 19
Missing/unknown	1 (<1%)
Child Has a Disability, *N* (%)	
Yes	25 (11%)
No	127 (56%)
Missing	75 (33%)
Living Arrangements at Intake, *N* (%)	
Lived with client most of the time	50 (22%)
Shared equal time or lived together	44 (19%)
Lived with opposing party most of the time	114 (50%)
Other living arrangement	4 (2%)
Missing/unknown	15 (7%)
Total	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Case characteristics

Of all cases receiving Shriver representation, 35% were filed to obtain an initial order for custody and visitation, and 56% were to modify an existing custody order. Custody cases were initiated by a variety of petitions, including petitions for the dissolution of marriage (38%), uniform parentage (15%), custody and support (11%), domestic violence (11%), and governmental child support (10%). At the time of Shriver legal services intake, 14% of cases had a petition or request for orders (RFO) filed and another 12% had filed a responsive declaration to the petition/RFO. Forty-nine percent of cases were currently in post-judgment and did not have an active RFO. Table CA29 displays these case characteristics.

Table CA29. Custody Case Characteristics at Intake for Shriver Legal Aid Services Clients

Custody Case Characteristics	*N* (%)
Purpose of case	
Obtain an initial order for custody and visitation	79 (35%)
Modify an existing custody order	126 (56%)
Modify and enforce an existing custody order	17 (7%)
Other	3 (1%)
Missing/unknown	2 (1%)
Action that Initiated Request for Shriver Services	
Dissolution of marriage, legal separation, annulment	87 (38%)
Parentage	35 (15%)
Petition for custody and support	26 (11%)
Governmental child support	23 (10%)
Domestic violence	25 (11%)
Juvenile case exit order	1 (<1%)
Other	29 (13%)
Missing/unknown	1 (<1%)
Case Status at Shriver Intake	
Post-judgment[a]	112 (49%)
Petition or RFO filed for custody/visitation	31 (14%)
Response to petition or RFO for custody/visitation filed	28 (12%)
Other orders filed[b]	25 (11%)
Mediation occurred	17 (7%)
FCS recommendations made	2 (1%)
Other post-filing action[c]	6 (3%)
Missing/unknown	6 (3%)
Total	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15). [a] Includes previous orders for cases such as paternity, dissolution of marriage, legal separation, and annulments. [b] Includes temporary orders for custody/visitation, temporary restraining orders, and domestic violence restraining orders. [c] Includes child custody evaluation ordered/completed, action for contempt, and other events not specified.

Client role and opposing party representation

Shriver JDC attorneys assisted both moving parties (45%) and responding parties (51%) in child custody matters. Shriver legal aid services staff assessed whether the opposing party had legal counsel at the time of intake. As shown in Table CA30, 98% faced an opposing party with representation.

Table CA30. Client Role and Opposing Party Representation at Intake for Legal Services Clients

Case Characteristic at Intake	*N* (%)
Client Role in Case	
Moving party	104 (46%)
Responding party	115 (51%)
Other	8 (4%)
Missing/unknown	0 (0%)
Opposing Party Represented by Counsel	
Yes	222 (98%)
No	3 (1%)
Missing/unknown	2 (1%)
Total	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Other contextual factors

To understand the complexity of custody and visitation cases, and to help elucidate possible reasons for one party obtaining sole custody, Shriver attorneys asked clients about current or previous involvement with Child Protective Services, police, domestic violence, and allegations of substance use by either party. Importantly, this information was only available by client report. Thireen percent (*n*=29) of cases had current or prior involvement with Child Protective Services (including those with an open juvenile dependency case) and 15% of cases involved at least one instance of police involvement in the 3 months prior to Shriver intake. Just under half (46%; *n*=104) of all cases involved an allegation of domestic violence, more often against the Shriver client. And 30% (*n*=69) involved an allegation of substance use, also more often against the Shriver client. Overall, 60% of cases (*n*=137) had at least one of these factors (Table CA31).

Table CA31. Contextual Factors for Shriver Legal Aid Services Clients

Contextual Factor	Total *N* (%)
Involvement with Child Protective Services[a]	
Never	146 (65%)
Currently	7 (3%)
Previously	18 (8%)
Juvenile court case	4 (2%)
Missing/unknown	51 (23%)
Allegations of Domestic Violence[b]	
None	118 (52%)
Client alleged or convicted	58 (26%)
OP alleged or convicted	27 (12%)
Both client and OP alleged/convicted	19 (8%)
Missing/unknown	4 (2%)
Allegations of Substance Use	
None	142 (63%)
Against client	37 (16%)
Against opposing party	16 (7%)
Both parties alleged	16 (7%)
Missing/unknown	16 (7%)
Police Involvement 3 Months Prior to Shriver Intake	
Yes	35 (15%)
No	113 (76%)
Missing/unknown	79 (35%)
Total	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).
[a] The alleged perpetrator of child maltreatment (i.e., which party) was unknown. [b]Allegations of domestic violence within 5 years prior to Shriver intake.

Case Outcomes

This section presents the outcomes of the child custody cases in which one party was represented by the San Francisco Shriver custody pilot project.

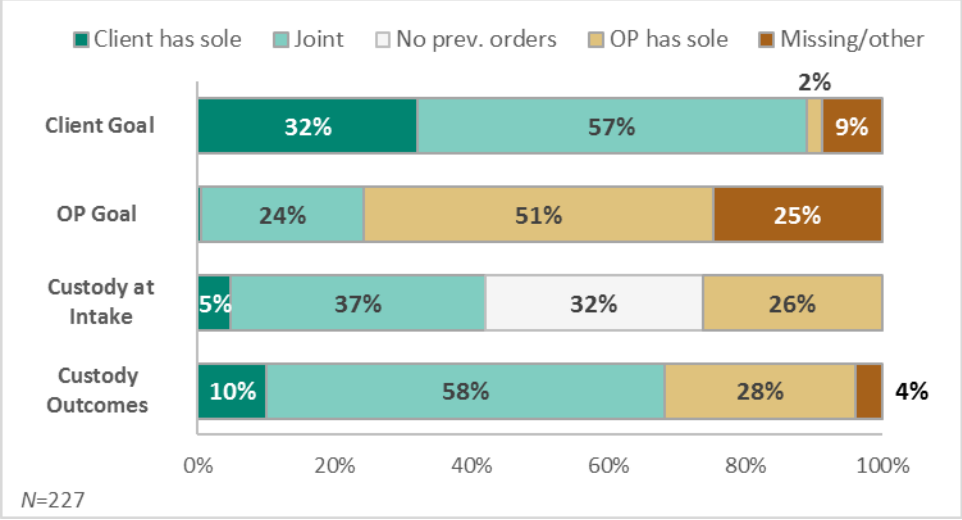
CHILD CUSTODY ORDERS

Legal custody

At intake, Shriver attorneys asked their clients about their goals were for the case, in terms of legal custody, physical custody, and visitation orders. At intake, 32% (*n*=73) of Shriver clients sought sole legal custody, and 57% (*n*=129) sought to share joint legal custody. Information about the opposing parties' goals was obtained by the attorney from the petition, RFO, response, or the client. Half of the opposing parties (51%, *n*=116) wanted sole legal custody for themselves, and 24% (*n*=54) wanted to share joint legal custody. In 67% of cases, at least one party sought sole legal custody of the child(ren).

At intake, 5% of Shriver clients had sole legal custody of the child and 32% wanted it. At resolution, 10% of clients were awarded sole legal custody. In contrast, at intake, 26% of opposing parties had sole legal custody and 51% wanted it. At resolution, 28% of opposing parties were awarded sole legal custody. The percentage of cases with joint legal custody increased from 37% at intake to 58% at resolution. (The remaining 3% had some other outcome.)[88] Many of these changes are due to the 32% of cases without legal custody orders at intake. Figure CA5 illustrates these outcomes, and Table C12 (earlier) provides specific percentages for these outcomes.

Figure CA5. Legal Custody: Case Goals, Custody Status at Shriver Intake, and Custody Outcomes for Shriver Representation Clients and Opposing Parties



Note. OP = opposing party.

Physical custody and parenting time ("visitation")

At intake, Shriver attorneys also asked clients about their goals for physical custody. Forty percent (*n*=91) of Shriver clients wanted the child(ren) to live with them all or most of the time

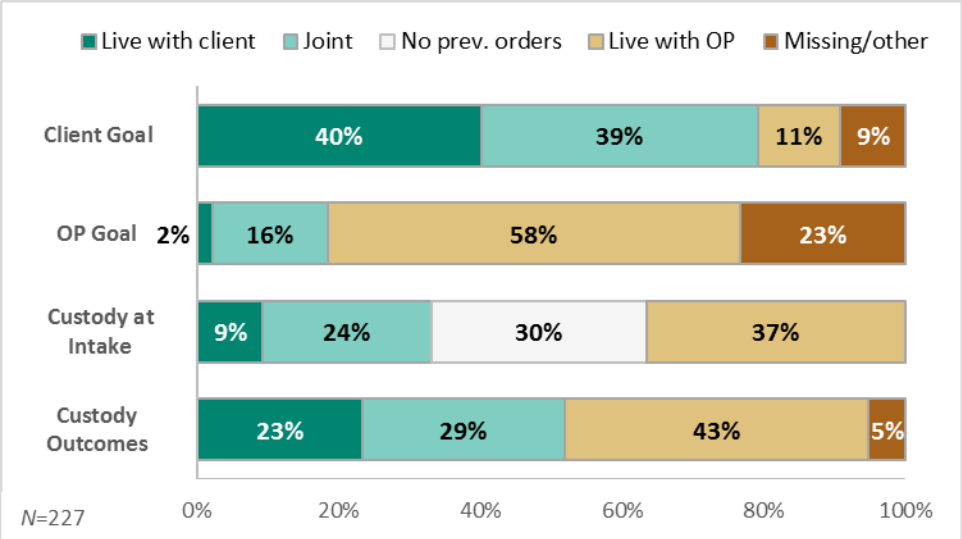
[88] One case was missing information about legal custody outcomes.

(i.e., sole physical custody). Similarly, 58% (*n*=132) of opposing parties wanted the child(ren) to live with them all or most of the time. In 64% (*n*=177) of cases, at least one party sought sole physical custody of the child(ren).

Of Shriver clients seeking sole physical custody, 13% (*n*=12) requested reasonable visitation for the opposing party, 47% (*n*=43) wanted scheduled and unsupervised visitation, 10% (*n*=9) wanted supervised visitation, 9% (*n*=8) wanted no visitation for the opposing party, and 1% (*n*=1) wanted some other visitation order (not specified).[89]

At intake, 9% of Shriver clients had sole physical custody of the child and 40% wanted it. At resolution, 23% of clients were awarded sole physical custody. In contrast, at intake, 37% of opposing parties had sole physical custody and 58% wanted it. At resolution, 43% of opposing parties were awarded sole physical custody. The percentage of cases with joint physical custody was 24% at intake and 29% at resolution. Many of these changes are due to the 30% of cases without physical custody orders at intake.[90] Figure CA6 shows this distribution, and Table C12 (earlier) provides the percentage of cases with these outcomes.

Figure CA6. Physical Custody: Case Goals, Custody Status at Shriver Intake, and Custody Outcomes for Shriver Representation Clients and Opposing Parties



Note. OP = opposing party.

[89] 14 cases were missing information about the desired visitation outcomes if the client obtained sole physical custody.

[90] The remaining 5% (*n*=12) of cases were missing information about the physical custody outcomes.

Of the 150 cases in which one party was awarded sole physical custody, 12% of cases involved both parties agreeing to reasonable visitation with the child(ren), 54% involved the non-custodial parent receiving scheduled and unsupervised visitation, 18% involved the non-custodial parent receiving supervised visitation, and 12% receiving no visitation.[91] Table CA32 shows the number of cases with each visitation outcome, by physical custody orders. For the 27 cases where supervised visitation was ordered, the primary reason pertained to concerns about domestic violence (26%, *n*=7), abduction (11%, *n*=3), reintroduction (7%, *n*=2), or multiple reasons (7%, *n*=2).[92] Among the 27 cases with orders for supervised visitation, 15% (*n*=4) entailed orders for a professional provider.[93] Table CA33 shows more information about the terms related to supervised visitation.

Table CA32. Visitation Orders for Shriver Representation Clients

	Physical Custody Outcome		
Visitation Orders	**Sole to Client** ***N* (%)**	**Sole to OP** ***N* (%)**	**Total** ***N* (%)**
Reasonable visitation	8 (15%)	10 (10%)	18 (12%)
Scheduled (unsupervised) visitation	34 (64%)	47 (48%)	81 (54%)
Supervised visitation for client	0 (0%)	22 (23%)	22 (15%)
Supervised visitation for OP	5 (9%)	0 (0%)	5 (3%)
No visitation for client	0 (0%)	12 (12%)	12 (8%)
No visitation for OP	6 (11%)	0 (0%)	6 (4%)
Other	0 (0%)	5 (5%)	5 (3%)
Missing/Unknown	0 (0%)	1 (1%)	1 (1%)
Total	53 (100%)	97 (100%)	150 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[91] In 1% of cases (*n*=1), there was some other visitation outcome, in 14% of cases (n=22) the outcome was unknown or missing.

[92] 48% of cases (*n*=13) of cases were missing this information, or the information was unknown.

[93] Non-professional providers (7%, *n*=2), other therapeutic providers (11%, *n*=3), and multiple types of providers (33%, *n*=9) were also ordered as supervised visitation providers. Nine cases (33%) were missing information about the provider type.

Table CA33. Supervised Visitation Terms for Shriver Representation Clients

	Physical Custody Outcomes				
Other Visitation Terms	**Sole to Client** *N* (%)	**Sole to OP** *N* (%)	**Joint Custody** *N* (%)	**Other or Missing** *N* (%)	**Total** *N* (%)
Supervised Visits Due To					
Domestic violence	1 (2%)	6 (6%)	0 (0%)	0 (0%)	7 (3%)
Abduction concerns	1 (2%)	2 (2%)	0 (0%)	0 (0%)	3 (1%)
Reintroduction	0 (0%)	2 (2%)	0 (0%)	0 (0%)	2 (1%)
Multiple reasons	0 (0%)	2 (2%)	0 (0%)	0 (0%)	2 (1%)
Not applicable	48 (91%)	75 (77%)	65 (100%)	12 (100%)	200 (88%)
Missing	3 (6%)	10 (10%)	0 (0%)	0 (0%)	13 (6%)
Supervised Visits Ordered With					
Professional provider	1 (2%)	3 (3%)	0 (0%)	0 (0%)	4 (2%)
Non-professional provider	0 (0%)	2 (2%)	0 (0%)	0 (0%)	2 (1%)
Other therapeutic provider	0 (0%)	3 (3%)	0 (0%)	0 (0%)	3 (1%)
Other provider	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Multiple types	1 (2%)	8 (8%)	0 (0%)	0 (0%)	9 (4%)
Not applicable	48 (91%)	75 (77%)	65 (100%)	12 (100%)	200 (88%)
Missing	3 (6%)	6 (6%)	0 (0%)	0 (0%)	9 (4%)
Total	53 (100%)	97 (100%)	65 (100%)	12 (100%)	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

Additional case outcomes

In addition to child custody orders, the court can make, or the parties agree to, other orders. Of all representation cases, participation in mental health therapy was ordered for the Shriver client 16% of the time and for the child(ren) 18% of the time. Orders for substance use counseling were rare, occurring in about 5% of all cases, and were more often ordered for the Shriver client when the opposing party was awarded sole custody. Parenting classes were ordered in approximately 15% of clients and opposing parties. Restraining orders were granted for the opposing party in 16% of cases—including 28% of cases in which sole custody was awarded to the opposing party. Protective orders were granted by the criminal court, and documented in the program database, for the opposing party in 3% of cases, and 1% of clients were ordered to participate in a 52-week batterer intervention program. These additional orders are displayed in Table CA34, organized by physical custody outcome.

Table CA34. Additional Orders by Physical Custody Outcome for Shriver Representation Clients

Additional Orders in Case	Physical Custody Order Outcomes				
	Client Has Sole Custody *N* (%)	OP Has Sole Custody *N* (%)	Joint Custody *N* (%)	Other or Missing *N* (%)	Total *N* (%)
Treatment-related Orders					
Therapy/Mental Health Counseling					
For client	3 (6%)	26 (27%)	4 (6%)	3 (25%)	36 (16%)
For OP	6 (11%)	10 (10%)	3 (5%)	3 (25%)	22 (10%)
For child(ren)	5 (9%)	22 (23%)	9 (14%)	4 (33%)	40 (18%)
Substance Use Counseling					
For client	0 (0%)	10 (10%)	1 (2%)	0 (0%)	11 (5%)
For OP	1 (2%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)
Parenting Classes					
For client	5 (9%)	17 (18%)	10 (15%)	3 (25%)	35 (15%)
For OP	6 (11%)	12 (12%)	11 (17%)	2 (17%)	31 (14%)
Domestic Violence-related Orders					
Restraining Order Granted					
For client	7 (13%)	5 (5%)	3 (5%)	1 (8%)	16 (7%)
For OP	2 (4%)	27 (28%)	4 (6%)	3 (25%)	36 (16%)
Criminal Protective Order Granted					
For client	1 (2%)	0 (0%)	0 (0%)	0 (0%)	1 (0%)
For OP	0 (0%)	7 (7%)	0 (0%)	0 (0%)	7 (3%)
52-week Batterer Intervention Program Ordered					
For client	0 (0%)	2 (2%)	1 (2%)	0 (0%)	3 (1%)
For OP	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Total	53 (100%)	97 (100%)	65 (100%)	12 (100%)	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

COURT EFFICIENCY & OTHER AGENCY INVOLVEMENT

Length of Shriver service provision

Across the cases with available data, the average length of Shriver service provision was 188 days (median = 126; range = 1 to 1,032 days).[94] Cases where the client was awarded sole physical custody were usually the shortest, with an average of 151 days (median = 56) of Shriver service provision. Cases where the opposing party was awarded sole physical custody were those that lasted the longest, averaging about 226 days (median = 160), and cases where joint physical custody were ordered fell in between these ranges at an average of 188 days (median = 126.5).

[94] Two cases (1%) were missing this information.

Continuances and mediation sessions

On average, each representation case had two continuances and one mediation session. Table CA35 shows the average number of court case events for legal services clients.

Table CA35. Court Events for Shriver Representation Clients

	Court Event	
Statistic	**Continuances**	**Mediation Sessions**
Mean (*SD*)	2.5 (3.0)	1.3 (1.3)
Median	2	1
Range	0 to 23	0 to 8
Missing, *N* (%)	14 (6%)	22 (4%)

Note. Data from the Shriver program services database (as of 11/12/15). Information about the length of the court case was not available.

Police involvement

At intake, Shriver attorneys asked their clients how often the police had been asked to intervene in the 3 months prior to seeking Shriver services. Police involvement included, but was not limited to, enforcing existing custody and visitation orders or responding to instances of domestic violence. As shown in Table CA36, 50% of cases had no police involvement in the 3 months prior to Shriver intake, 12% had occasional police involvement, and 3% had frequent police involvement (at least once per week).

Toward the end of the Shriver service provision (i.e., at or near the resolution of the pleading), clients were again asked about the frequency of police involvement during the previous 3 months. At this point, 43% of cases (*n*=98) maintained no police involvement, 7% (*n*=15) reported a decrease in police involvement, 4% (*n*=9) reported an increase, and 5% of cases (*n*=12) had the same amount of police involvement as before Shriver services.[95]

Table CA36. Reported Frequency of Police Involvement for Shriver Representation Clients

Frequency of Police Involvement	**3 Months Prior to Shriver Intake** *N* (%)	**3 Months Prior to Shriver Exit** *N* (%)
Never	113 (50%)	134 (59%)
Less than once per month	22 (10%)	13 (6%)
1-3 times per month	5 (2%)	4 (2%)
Once per week	7 (3%)	7 (3%)
2-3 times per week	1 (<1%)	4 (2%)
More than 3 times per week	0 (0%)	1 (<1%)
Missing/unknown	79 (35%)	64 (28%)
Total	227 (100%)	227 (100%)

Note. Data from the Shriver program services database (as of 11/12/15).

[95] 41% of cases (*n*=93) were missing information at either intake or case closing.

Shriver Custody Pilot Projects

Appendix B: Self-Sufficiency Data Tables

Self-Sufficiency Data Tables

Table CA37. Arizona Self-Sufficiency Matrix:
Number and Percent of Los Angeles Custody Clients Assessed in Domain at Shriver Intake

	ASSM Assessment Category						
ASSM Domain	**In Crisis** *N* (%)	**At Risk** *N* (%)	**Building Capacity** *N* (%)	**Stable** *N* (%)	**Empowered/ Thriving** *N* (%)	**Missing** *N* (%)	**Total** *N* (%)
Employment	56 (51%)	29 (27%)	15 (14%)	7 (6%)	2 (2%)	0 (0%)	109 (100%)
Food	10 (9%)	65 (60%)	20 (18%)	10 (9%)	4 (4%)	0 (0%)	109 (100%)
Income	37 (34%)	20 (18%)	35 (32%)	11 (10%)	6 (6%)	0 (0%)	109 (100%)
Adult education/vocational training	47 (43%)	4 (4%)	25 (23%)	17 (16%)	16 (15%)	0 (0%)	109 (100%)
Family/social relations	23 (21%)	16 (15%)	23 (21%)	29 (27%)	18 (17%)	0 (0%)	109 (100%)
Housing	10 (9%)	22 (20%)	20 (18%)	17 (16%)	40 (37%)	0 (0%)	109 (100%)
Community involvement	22 (20%)	9 (8%)	20 (18%)	47 (43%)	11 (10%)	0 (0%)	109 (100%)
Life skills	0 (0%)	18 (17%)	32 (29%)	41 (38%)	18 (17%)	0 (0%)	109 (100%)
Healthcare coverage	7 (6%)	6 (6%)	32 (29%)	34 (31%)	29 (27%)	1 (1%)	109 (100%)
Transportation	2 (2%)	17 (16%)	23 (21%)	47 (43%)	20 (18%)	0 (0%)	109 (100%)
Mental health	0 (0%)	10 (9%)	19 (17%)	33 (30%)	47 (43%)	0 (0%)	109 (100%)
Safety	2 (2%)	7 (6%)	21 (19%)	27 (25%)	52 (48%)	0 (0%)	109 (100%)
Health/disabilities	3 (3%)	3 (3%)	3 (3%)	7 (6%)	93 (85%)	0 (0%)	109 (100%)
Criminal legal issues	8 (7%)	0 (0%)	0 (0%)	1 (1%)	100 (92%)	0 (0%)	109 (100%)
Substance use	1 (1%)	0 (0%)	0 (0%)	3 (3%)	105 (96%)	0 (0%)	109 (100%)
Of those with child custody…							
Parenting skills	0 (0%)	1 (1%)	1 (1%)	36 (37%)	58 (59%)	2 (2%)	98 (100%)
Child care	10 (10%)	13 (13%)	20 (20%)	39 (40%)	14 (14%)	2 (2%)	98 (100%)
Of those with child custody and school-aged children…							
Children's education	2 (2%)	2 (2%)	0 (0%)	5 (6%)	72 (85%)	4 (5%)	85 (100%)

Table CA38. Arizona Self-Sufficiency Matrix Domains and Categories

ASSM Domain	ASSM Assessment Category				
	In Crisis	**At Risk**	**Building Capacity**	**Stable**	**Empowered/Thriving**
Employment	No job.	Temporary, part-time or seasonal; inadequate pay, no benefits.	Employed full time; inadequate pay; few or no benefits.	Employed full time with adequate pay and benefits.	Maintains permanent employment with adequate income and benefits.
Food	No food or means to prepare it. Relies to a significant degree on other sources of free or low-cost food.	Household is on food stamps.	Can meet basic food needs, but requires occasional assistance.	Can meet basic food needs without assistance.	Can choose to purchase any food household desires.
Income	No income.	Inadequate income and/or spontaneous or inappropriate spending.	Can meet basic needs with subsidy; appropriate spending.	Can meet basic needs and manage debt without assistance.	Income is sufficient, well-managed; has discretionary income and is able to save.
Adult Education/ Vocational Training	Literacy problems and/or no high school diploma/GED are serious barriers to employment.	Enrolled in literacy and/or GED program and/or has sufficient command of English to where language is not a barrier to employment.	Has high school diploma/GED.	Needs additional education/training to improve employment situation and/or to resolve literacy problems to where they are able to function effectively in society.	Has completed education/training needed to become employable. No literacy problems.
Family/Social Relations	Lack of necessary support form family or friends; abuse (DV, child) is present or there is child neglect.	Family/friends may be supportive, but lack ability or resources to help; family members do not relate well with one another; potential for abuse or neglect.	Some support from family/friends; family members acknowledge and seek to change negative behaviors; are learning to communicate and support.	Strong support from family or friends. Household members support each other's efforts.	Has healthy/expanding support network; household is stable and communication is consistently open.
Housing	Homeless or threatened with eviction.	In transitional, temporary or substandard housing; and/or current rent/mortgage payment is unaffordable (over 30% of income).	In stable housing that is safe but only marginally adequate.	Household is in safe, adequate subsidized housing.	Household is safe, adequate, unsubsidized housing.
Community Involvement	Not applicable due to crisis situation; in "survival" mode.	Socially isolated and/or no social skills and/or lacks motivation to become involved.	Lacks knowledge of ways to become involved.	Some community involvement (advisory group, support group), but has barriers such as transportation, child care issues.	Actively involved in community.

	ASSM Assessment Category				
ASSM Domain	**In Crisis**	**At Risk**	**Building Capacity**	**Stable**	**Empowered/Thriving**
Life Skills	Unable to meet basic needs such as hygiene, food, activities of daily living.	Can meet a few but not all needs of daily living without assistance.	Can meet most but not all daily living needs without assistance.	Able to meet all basic needs of daily living without assistance.	Able to provide beyond basic needs of daily living for self and family.
Healthcare Coverage	No medical coverage with immediate need.	No medical coverage and great difficulty accessing medical care when needed. Some household members may be in poor health.	Some members (e.g., children) have medical coverage.	All members can get medical care when needed, but may strain budget.	All members are covered by affordable, adequate health insurance.
Transportation	No access to transportation, public or private; may have car that is inoperable.	Transportation is available, but unreliable, unpredictable, unaffordable; may have care but no insurance, license, etc.	Transportation is available and reliable, but limited and/or inconvenient; drivers are licensed and minimally insured.	Transportation is generally accessible to meet basic travel needs.	Transportation is readily available and affordable; car is adequately insured.
Mental Health	Danger to self or others; recurring suicidal ideation; experiencing severe difficulty in day-to-day life due to psychological problems.	Recurrent mental health symptoms that may affect behavior, but not a danger to self/others; persistent problems with functioning due to mental health symptoms.	Mild symptoms may be present but are transient; only moderate difficulty in functioning due to mental health problems.	Minimal symptoms that are expectable responses to life stressors; only slight impairment in functioning.	Symptoms are absent or rare; good or superior functioning in wide range of activities; no more than everyday problems or concerns.
Safety	Home or residence is not safe; immediate level of lethality is extremely high; possible CPS involvement.	Safety is threatened/temporary protection is available; level of lethality is high.	Current level of safety is minimally adequate; ongoing safety planning is essential.	Environment is safe, however, future of such is uncertain; safety planning is important.	Environment is apparently safe and stable.
Health/Disabilities	In crisis – acute or chronic symptoms affecting housing, employment, social interactions, etc.	Vulnerable – sometimes or periodically has acute or chronic symptoms affecting housing, employment, social interactions, etc.	Safe – rarely has acute or chronic symptoms affecting housing, employment, social interactions, etc.	Building capacity – asymptomatic – condition controlled by services or medication.	Thriving – no identified disability.
Criminal Legal Issues	Current outstanding tickets or warrants.	Current charges/trial pending, noncompliance with probation/parole.	Fully compliant with probation/parole terms.	Has successfully completed probation/parole within past 12 months, no new charges filed.	No active criminal justice involvement in more than 12 months and/or no felony criminal history.

ASSM Domain	ASSM Assessment Category				
	In Crisis	**At Risk**	**Building Capacity**	**Stable**	**Empowered/Thriving**
Substance Use	Meets criteria for severe abuse/dependence; resulting problems so severe that institutional living or hospitalization may be necessary.	Meets criteria for dependence; preoccupation with use and/or obtaining drugs/alcohol; withdrawal or withdrawal avoidance behaviors evident; use results in avoidance or neglect of essential life activities.	Use within last 6 months; evidence of persistent or recurrent social, occupational, emotional or physical problems related to use (such as disruptive behavior or housing problems); problems have persisted for at least 1 month.	Client has used during last 6 months, but no evidence of persistent or recurrent social, occupational, emotional, or physical problems related to use; no evidence of recurrent dangerous use.	No drug use/alcohol abuse in last 6 months.
Parenting Skills	There are safety concerns regarding parenting skills.	Parenting skills are minimal.	Parenting skills are apparent but not adequate.	Parenting skills are adequate.	Parenting skills are well developed.
Child Care	Needs child care, but none is available/accessible and/or child is not eligible.	Child care is unreliable or unaffordable, inadequate supervision is a problem for child care that is available.	Affordable subsidized child care is available, but limited.	Reliable, affordable child care is available, no need for subsidies.	Able to select quality child care of choice.
Children's Education	One or more school-aged children not enrolled in school.	One or more school-aged children enrolled in school, but not attending classes.	Enrolled in school, but one or more children only occasionally attending classes.	Enrolled in school and attending classes most of the time.	All school-aged children enrolled and attending on a regular basis.

Note. Minnesota Housing (1996). *Arizona Self Sufficiency Matrix* [PDF]. Retrieved from www.mnhousing.gov/get/MHFA_010996
The original tool, without Arizona's revisions, can be found here: http://www.performwell.org/index.php/find-surveyassessments/outcomes/employment-a-housing/housing-and-shelter/self-sufficiency-matrix-an-assessment-and-measurement-tool-created-through-a-collaborative-partnership-of-the-human-services-community-in-snohomish-county

Shriver Custody Pilot Projects

Appendix C: Supplemental Cost Tables

Supplemental Cost Tables

Table CA39. Average Cost per Case for Legal Aid Services in FY 2014 – Invoice Calculations – Los Angeles

Level of Service	Total Invoiced Amount FY 2014	Average Atty Hours per Case	Relative Level of Effort (LOE)[a]	Number Xof Cases=	Number of LOE Units in FY 2014	Cost per Unit[b]	Average Cost per Case[c]
Representation		45.0	7.5	72	540		$1,219*7.5= **$9,143**
Unbundled Services		6.0	1.0	67	67		$1,219*1.0= **$1,219**
Total	**$739,977**			**139**	**607**	$739,977/607=$1,219	

[a] Relative level of effort (LOE) was estimated to reflect the proportional difference in resources needed to provide the two levels of service. Specifically, the average number of attorney hours for both representation (45.0 hours) and unbundled service provision (6.0 hours) was divided by 6.0, to develop a ratio. In this case, the ratio was 7.5 to 1.0. [b] LOE units were a standardized unit of measure across the levels of service. The cost per LOE unit was calculated by dividing the total amount invoiced ($739,977) by the total number of LOE units (607), yielding a cost per unit of $1,219. [c] Average cost per case was calculated by multiplying the cost per LOE unit by the number of LOE units by level of service.

Table CA40. Average Cost per Case for Legal Aid Services in FY 2014 – Invoice Calculations – San Diego

Level of Service	Total Invoiced Amount FY 2014	Average Atty Hours per Case	Relative Level of Effort (LOE)[a]	Number Xof Cases=	Number of LOE Units in FY 2014	Cost per Unit[b]	Average Cost per Case[c]
Representation		31.0	10.3	46	475		$718*10.3= **$7,418**
Unbundled Services		3.0	1.0	102	102		$718*1.0= **$718**
Total	**$414,451**			**148**	**577**	$414,451/577=$718	

[a] Relative level of effort (LOE) was estimated to reflect the proportional difference in resources needed to provide the two levels of service. Specifically, the average number of attorney hours for both representation (31.0 hours) and unbundled services provision (3.0 hours) was divided by 3.0, to develop a ratio. In this case, the ratio was 10.3 to 1.0. [b] LOE units were a standardized unit of measure across the levels of service. The cost per LOE unit was calculated by dividing the total amount invoiced ($414,451) by the total number of LOE units (577), yielding a cost per unit of $718. [c] Average cost per case was calculated by multiplying the cost per LOE unit by the number of LOE units by level of service.

Table CA41. Average Cost per Case for Legal Aid Services in FY 2014 – Invoice Calculations – San Francisco

Level of Service	Total Invoiced Amount FY 2014	Average Atty Hours per Case	Relative Level of Effort (LOE)[a]	Number Xof Cases=	Number of LOE Units in FY 2014	Cost per Unit[b]	Average Cost per Case[c]
Representation		32.0	4.6	45	206		$737*4.6= **$3,371**
Unbundled Services		7.0	1.0	2	2		$737*1.0= **$737**
Total	**$153,146**			**47**	**208**	$153,146/208=$737	

[a] Relative level of effort (LOE) was estimated to reflect the proportional difference in resources needed to provide the two levels of service. Specifically, the average number of attorney hours for both representation (32.0 hours) and unbundled services provision (7.0 hours) was divided by 7.0, to develop a ratio. In this case, the ratio was 4.6 to 1.0. [b] LOE units were a standardized unit of measure across the levels of service. The cost per LOE unit was calculated by dividing the total amount invoiced ($153,146) by the total number of LOE units (208), yielding a cost per unit of $737. [c] Average cost per case was calculated by multiplying the cost per LOE unit by the number of LOE units by level of service.

Table CA42. Average Cost of Family Law Facilitator in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Family law facilitator	$61	60 minutes	$61
Total cost per RFO			**$61**

Table CA43. Average Cost of Family Court Services in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	120 minutes	$82
FCS counselor	$61	240 minutes	$244
Total cost per RFO			**$326**

Table CA44. Average Cost of Paperwork and Calendaring in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	30 minutes	$21
Total cost per RFO			**$21**

Table CA45. Average Cost of a Fee Waiver Processing in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	10 minutes	$7
Total cost per RFO			**$7**

Table CA46. Average Cost of a Shriver Settlement Conference in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	25 minutes	$17
Calendar clerk	$45	25 minutes	$19
Court reporter	$42	20 minutes	$14
Courtroom clerk	$45	20 minutes	$15
Bailiff	$61	90 minutes	$91
Judge	$109	135 minutes	$245
Total cost per settlement conference			**$401**

Table CA47. Average Cost of a Regular Hearing in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	30 minutes	$21
Calendar clerk	$45	25 minutes	$19
Court reporter	$42	40 minutes	$28
Courtroom clerk	$45	42 minutes	$32
Bailiff	$61	40 minutes	$41
Judge	$109	65 minutes	$118
Total cost per hearing			**$259**

Table CA48. Average Cost of a Review Hearing in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	30 minutes	$21
Calendar clerk	$45	10 minutes	$8
Court reporter	$42	40 minutes	$28
Courtroom clerk	$45	42 minutes	$32
Bailiff	$61	40 minutes	$41
Judge	$109	60 minutes	$109
Total cost per hearing			**$239**

Table CA49. Average Cost of a Long Cause Hearing in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	10 minutes	$7
Calendar clerk	$45	25 minutes	$19
Courtroom clerk	$45	120 minutes	$90
Bailiff	$61	90 minutes	$92
Judge	$109	165 minutes	$300
Total cost per hearing			**$508**

Table CA50. Average Cost of an Ex Parte Hearing in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	15 minutes	$10
Calendar clerk	$45	15 minutes	$11
Courtroom clerk	$45	20 minutes	$15
Bailiff	$61	15 minutes	$15
Judge	$109	30 minutes	$55
Total cost per ex parte hearing			**$106**

Table CA51. Average Cost of a Trial in a Highly Contested Custody Proceeding in FY 2014 (San Diego)

Staff Involved	Hourly Rate	Average Time Worked	Cost
Court operations clerk	$41	7 minutes	$5
Calendar clerk	$45	7 minutes	$5
Courtroom clerk	$45	270 minutes	$203
Bailiff	$61	240 minutes	$244
Judge	$109	300 minutes	$545
Total cost per trial			**$1,002**

Implementation of Self-Help Recommendations from the Futures Commission

Background:

The Commission on the Future of California's Court System issued its final report and recommendations to the Chief Justice on April 26, 2017. Recommendation 1.2 of the report (beginning on page 29) was to Increase and Improve Assistance for Self-Represented Litigants. The key subparts of this recommendation were to create an early education program for common civil case types with self-represented litigants and to establish a statewide resource center for self-help. On May 18, 2017, the Chief Justice directed the chairs of the Judicial Council internal committees and the Administrative Director to take immediate action on a number of Futures recommendations, including self-help. The Chief directed the following action in her letter:

> ***Assistance for self-represented litigants.*** The Judicial Council's Advisory Committee on Providing Access and Fairness is directed to develop a proposal for Judicial Council consideration of the structure, content, and resource requirements for an education program to aid the growing number of self-represented litigants (SRLs) in small claims and civil cases where SRLs are most common. This proposal should include options for improving access to local court-based assistance for SRLs. Further, in consultation with local and statewide self-help providers, Judicial Council staff is directed to develop a proposal to facilitate the provision of specialized state-level resources for SRLs. The proposal should rely to the extent feasible on existing resources and technology for the coordinated deployment of information, tools, and technical assistance for courts and justice system partners in their role as self-help providers.

Update:

Implementation plans have been developed to create an educational program for self-represented litigants in civil cases as well as to develop state-level resources for SRLs. User research is being conducted to determine what information is critical for SRLs and the best way to convey that information. An interactive flowchart describing the civil litigation process and an initial on-line class are being developed. A self-help conference will be held at the Judicial Council on February 21-23, which will provide educational opportunities for court staff and judicial officers to learn more about self-help efforts throughout the country, as well as share ideas for future directions. The California Courts Self-Help website is being updated to make it mobile enabled and add new resources. The Governor's Budget includes an allocation of $19.1 million in on-going funds to support self-help centers in the courts.

Family Law: Recognition and Enforcement of Tribal Court Orders under ERISA

Annual Agenda Items:

Item 17- Serve as lead/subject matter resource for other advisory groups to avoid duplication of efforts and contribute to development of recommendations for council action. Such efforts may include providing family and juvenile law expertise and review to working groups, advisory committees, and subcommittees as needed.

Background:

As a result of comments from tribal court judges and advocates, the California Tribal Court–State Court Forum (Forum) and the Family and Juvenile Law Advisory Committee (Committee) have considered and recommend amendments to section 1736 of the California Code of Civil Procedure to address the need for domestic relations orders issued by a tribal court to comply with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) in order to effectively divide employee pension benefits plans subject to ERISA.

In 2012, the Judicial Council proposed legislation that eventually became the *Tribal Court Civil Money Judgment Act* Stats. 2014, Ch. 243 (SB 406, Evans) and added sections 1730-1741 to the California Code of Civil Procedure to clarify and simplify the process for recognition and enforcement of tribal court civil judgments consistent with the mandate set out in rule 10.60 (b) of the California Rules of Court to make recommendations concerning the recognition and enforcement of court orders that cross jurisdictional lines.

Update:

Some tribal courts in California issue domestic relations orders including divorce and dissolution decrees. For these domestic relations orders to be effective, tribal courts must be able to address division of assets, including pension benefits governed by the federal Employee Retirement Income Security Act of 1974 (ERISA). In 2011 the U.S. Department of Labor issued Guidance on when a domestic relations order issued under tribal law would be a "judgment, decree or order …made pursuant to a State domestic relations law within the meaning of federal law.[1] That guidance concluded that:

> In the Department's view, a tribal court order may constitute a "judgment, decree or order . . . made pursuant to State domestic relations law" for purposes of ERISA section 206(d)(3)(B)(ii), if it is treated or recognized as such by the law of a State that could issue a valid domestic relations order with respect to the participant and alternate payee.

[1] Available at https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2011-03a

Section 206(d)(3)(B)(ii) or ERISA is codified as 29 U.S.C. §1056(d)(3)(B)(ii).

The proposal would add to subsection (c) to section 1736 of the Code of Civil Procedure as follows:

> (c) a judgment of a tribal court entered by the superior court that otherwise complies with 29 U.S.C. §1056(d)(3)(B)(ii) as a domestic relations order as defined in §1056(d)(3)(B)(ii) is a domestic relations order made pursuant to the domestic relations laws of this state for the purposes of §1056(d)(3)(B)(ii).

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title
Proposed Legislation for Recognition of Tribal Court Orders Relating to the Division of Marital Assets

Proposed Rules, Forms, Standards, or Statutes
Amend California Code of Civil Procedure §1736

Proposed by
California Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Dennis M. Perluss, Cochair

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested
Review and submit comments by June 8, 2018

Proposed Effective Date
January 1, 2019

Contact
Ann Gilmour, 415-865-4207
ann.gilmour@jud.ca.gov

Executive Summary and Origin

As a result of comments from tribal court judges and advocates, the California Tribal Court–State Court Forum (Forum) and the Family and Juvenile Law Advisory Committee (Committee) have considered and recommend amendments to section 1736 of the California Code of Civil Procedure to address the need for domestic relations orders issued by a tribal court to comply with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) in order to effectively divide employee pension benefits plans subject to ERISA.

Background

California is home to more people of Indian ancestry than any other state in the nation. Currently there are 109 federally recognized tribes in California, second only to the number of tribes in the state of Alaska. Each tribe is sovereign, with powers of internal self-government, including the authority to develop and operate a court system. At least twenty tribal courts are currently operating in California, and several other courts are under development.

Tribal courts in California hear a variety of case types including child abuse and neglect cases; domestic violence protective orders; domestic relations (e.g., divorce and dissolution); contract disputes and other civil cases for money judgments; unlawful detainers, property disputes, nuisance abatements, and possession of tribal lands; name changes; and civil harassment protective orders.

Some tribal courts in California issue domestic relations orders including divorce and dissolution decrees. For these domestic relations orders to be effective, tribal courts must be able to address division of assets, including pension benefits governed by the federal Employee Retirement Income Security Act of 1974 (ERISA). In 2011 the U.S. Department of Labor issued Guidance on when a domestic relations order issued under tribal law would be a "judgment, decree or order …made pursuant to a State domestic relations law within the meaning of federal law.[1] That guidance concluded that:

> In the Department's view, a tribal court order may constitute a "judgment, decree or order . . . made pursuant to State domestic relations law" for purposes of ERISA section 206(d)(3)(B)(ii), if it is treated or recognized as such by the law of a State that could issue a valid domestic relations order with respect to the participant and alternate payee.

Section 206(d)(3)(B)(ii) or ERISA is codified as 29 U.S.C. §1056(d)(3)(B)(ii).

In 2012, the Judicial Council proposed legislation that eventually became the *Tribal Court Civil Money Judgment Act* Stats. 2014, Ch. 243 (SB 406, Evans) and added sections 1730-1741 to the California Code of Civil Procedure to clarify and simplify the process for recognition and enforcement of tribal court civil judgments consistent with the mandate set out in rule 10.60 (b) of the California Rules of Court to make recommendations concerning the recognition and enforcement of court orders that cross jurisdictional lines.

The Proposal

The proposal would add to subsection (c) to section 1736 of the Code of Civil Procedure as follows:

> (c) For the purposes of 29 U.S.C. §1056(d)(3)(B)(ii), a judgment of a tribal court filed with and entered by the superior court that otherwise meets the requirements of 29 U.S.C. §1056(d)(3)(B)(ii), is a domestic relations order made pursuant to the domestic relations laws of this state.

Alternatives Considered

The Forum and committee considered taking no action, but this risks inefficiencies if tribal court dissolution orders could not be fully implemented.

[1] Available at https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2011-03a

Implementation Requirements, Costs, and Operational Impacts

No implementation costs are anticipated. It is expected that proposal will improve efficiencies by ensuring that parties can effectively resolve dissolution issues in tribal court and not have to take pension issues to a different venue.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee [or other proponent] also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would __ months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed legislation – page 4.

The Code of Civil Procedure would be amended, effective January 1, 2019, to read:

SECTION 1. Subdivision (c) is added to section 1736 of the California Code of Civil Procedure as follows:

(c) For the purposes of 29 U.S.C. §1056(d)(3)(B)(ii), a judgment of a tribal court filed with and entered by the superior court that otherwise meets the requirements of 29 U.S.C. §1056(d)(3)(B)(ii), is a domestic relations order made pursuant to the domestic relations laws of this state.

U.S. Department of Labor **Employee Benefits Security Administration**
Washington, D.C. 20210

February 2, 2011

Stephen B. Waller
Miller Stratvert Law Offices
500 Marquette N.W., Suite 1100
Albuquerque, NM 87102

2011-03A
ERISA SEC.
206(d)(3)

Dear Mr. Waller:

This is in response to your letter on behalf of PNM Resources, Inc., requesting guidance regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). In particular, you ask whether a domestic relations order issued under tribal law by a Family Court of the Navajo Nation, a federally-recognized Native American tribe, would be a "judgment, decree, or order . . . made pursuant to a State domestic relations law" within the meaning of section 206(d)(3)(B)(ii) of ERISA.

You represent that PNM Resources, Inc., its affiliates and subsidiaries (collectively "PNM") sponsor and administer various employee pension benefit plans (Plans) for their employees. The Plans have formal procedures in place to determine the qualified status of domestic relations orders. Employees of PNM who participate in the Plans reside throughout the State of New Mexico. New Mexico residents include members of twenty-two federally-recognized Native American tribes. Some of PNM's employees are people who are part of the Navajo Nation.

PNM received multiple draft domestic relations orders issued by the Family Court of the Navajo Nation. The Family Court of the Navajo Nation is a "tribal court" for the peoples comprising the Navajo Nation. PNM has determined that the draft orders, other than having been issued by a tribal court, are in compliance with the procedures adopted by the PNM Plans for determining the qualified status of domestic relations orders issued pursuant to State domestic relations laws.

Section 206(d)(1) of ERISA generally requires that plan benefits may not be assigned or alienated. Section 206(d)(3)(A) of ERISA states that section 206(d)(1) applies to an assignment or alienation of benefits pursuant to a domestic relations order, unless the order is determined to be a "qualified domestic relations order" (QDRO). Section 206(d)(3)(A) further provides that pension plans must provide for the payment of benefits in accordance with the applicable requirements of any QDRO.[1]

[1] Section 514(a) of ERISA generally preempts all State laws insofar as they relate to employee benefit plans covered by Title I of ERISA. However, section 514(b)(7) states that preemption under section 514(a) does not apply to QDROs within the meaning of ERISA section 206(d)(3)(B)(i).

Section 206(d)(3)(B)(i) of ERISA defines the term QDRO for purposes of section 206(d)(3) as a domestic relations order "which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan," and which meets the requirements of section 206(d)(3)(C) and (D).

The term "domestic relations order" is defined in section 206(d)(3)(B)(ii) as "any judgment, decree, or order (including approval of a property settlement agreement) which – (I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and (II) is made pursuant to a State domestic relations law (including a community property law)."

Section 3(10) of ERISA provides that "[t]he term 'State' includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone."

Section 206(d)(3)(G) of ERISA requires the plan administrator to determine whether a domestic relations order received by the plan is qualified, and to administer distributions under such qualified orders, pursuant to reasonable procedures established by the plan. When a pension plan receives an order requiring that all or part of the benefits payable with respect to a participant be distributed to an alternate payee, the plan administrator must determine that the judgment, decree, or order is a domestic relations order within the meaning of section 206(d)(3)(B)(ii) of ERISA - i.e., that it relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of the participant, and that it is made pursuant to a State domestic relations law by a State authority with jurisdiction over such matters.

A principal purpose of ERISA section 206(d)(3) is to permit the division of marital property on divorce in accordance with the directions of the State authority with jurisdiction to achieve an appropriate disposition of property upon the dissolution of a marriage, as defined under State law. Nothing in ERISA section 206(d)(3) requires that a domestic relations order be issued by a State court. Rather, the Department has previously concluded that a division of marital property in accordance with the proper final order of any State authority recognized within the State's jurisdiction as being empowered to achieve such a division of property pursuant to State domestic relations law (including community property law) would be considered a "judgment, decree, or order" for purposes of ERISA section 206(d)(3)(B)(ii). *See also* EBSA Frequently Asked Questions About Qualified Domestic Relations Orders (available at www.dol.gov/ebsa/faqs/faq_qdro.html).

Federal law, however, does not generally treat Indian tribes as States, or as agencies or instrumentalities of States. *NLRB v. Pueblo of San Juan*, 276 F.3d 1186, 1192 (10th Cir. 2002). *See also Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 181 (2nd Cir. 1996) ("[T]ribes are not States under OSHA"). The definition of "State" at section 3(10) of ERISA does not include Indian tribes.[2] In addition, although the Indian Child Welfare Act of 1978, 25 U.S.C. §§1901 *et. seq.*, grants Indian tribes jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, no such federal statute exists with respect to the recognition of domestic relations orders of tribal courts involving divorce and the division of marital property on divorce.

We note, nonetheless, that some States have adopted laws to address tribal court jurisdictional issues relating to domestic relations orders. *E.g.,* Oregon Revised Statutes 24.115(4). In the Department's view, a tribal court order may constitute a "judgment, decree or order . . . made pursuant to State domestic relations law" for purposes of ERISA section 206(d)(3)(B)(ii), if it is treated or recognized as such by the law of a State that could issue a valid domestic relations order with respect to the participant and alternate payee.

We are unable to conclude that the instant orders, which involve individuals residing in New Mexico, are "domestic relations orders" within the meaning of ERISA section 206(d)(3)(B)(ii). Neither your submission nor our review of New Mexico law indicates that New Mexico recognizes or treats orders of the Family Court of the Navajo Nation as orders issued pursuant to New Mexico state domestic relations law.

This letter constitutes an advisory opinion under ERISA Procedure 76-1, 41 Fed. Reg. 36281 (1976). Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof, relating to the effect of advisory opinions. This letter relates solely to the application of the provisions of Title I of ERISA.

Sincerely,

Louis J. Campagna
Chief, Division of Fiduciary Interpretations
Office of Regulations and Interpretations

---

[2] Congress recently amended the definition of "governmental plan" at ERISA section 3(32) to expressly include certain plans maintained by Indian tribal governments. Pub. L. 109-280, 120 Stat. 780 (Aug. 17, 2006). Before this amendment, the term "governmental plan" was limited to plans established or maintained by the "Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

Access to Visitation Grant Program: Proposed Spending Plan for Unallocated Funds

Annual Agenda Item:

Access to Visitation Funding and Legislative Report

Provide recommendations to the council for allocation of funding pursuant to Family Code section 3204. Additionally, the committee will provide the council with the statutorily mandated legislative report on the program due every even-numbered year.

Background:

In July of 2017, the committee approved a recommendation to the Judicial Council to reallocate unused Access to Visitation Grant funds based on requests from counties currently participating in the program, as well as to fund resources and statewide technical assistance services that will benefit all courts. The committee also recommended that staff return to the committee with a proposed plan for the statewide services for the committee to review and discuss.

Update:

The attached memorandum outlines a plan to expend those funds to benefit the underlying objectives of the program.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 26, 2018

To
Family and Juvenile Law Advisory Committee

From
Shelly La Botte, Access to Visitation Grant Program Coordinator
Center for Families, Children & the Courts

Subject
Access to Visitation Grant Program: Proposed Plan for Unspent Grant Funds for the Fiscal Year 2017–18 Contract Period

Action Requested
Please review

Deadline
N/A

Contact
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This memorandum sets forth the Center for Families, Children & the Courts, Access to Visitation Grant Program's proposed plan for potential unspent Access to Visitation grant funds for the fiscal year (FY) 2017–18 contract period that began on April 1, 2017, and ends on March 31, 2018.

Background

Under the Access to Visitation Grant Program midyear-funding reallocation process for the FY 2017–18 contract period, three superior courts withdrew from the grant program. As a result, additional unspent grant funds became available for midyear reallocation to courts currently receiving Access to Visitation funds.[1] A total of $81,200 in additional grant funding was

[1] The Judicial Council approved Access to Visitation Grant Program funding allocation and distribution of approximately $755,000 to $770,000 to 11 superior courts for FY 2015–16 through FY 2017–18 contract periods.

requested from five of the nine grantee courts for the FY 2017–18 contract period through the midyear reallocation process. The remaining four eligible grantee courts declined to request any additional grant funds.

Based on the court responses to the midyear-funding reallocation questionnaire, the committee recommended and the Judicial Council approved on September 15, 2017, the reallocation and distribution of $81,200 to the five superior courts that requested additional funding for the FY 2017–18 contract period.

In addition, the committee recommended that any remaining unspent funds for the FY 2017–18 contract period be used for proposed resources and statewide technical assistance services that will benefit all courts. This included supervised visitation technical assistance, education and training to meet statutory requirements of Family Code section 3200.5 and Standard 5.20 of the California Standards of Judicial Administration, and production of visitation materials and/or brochures.

To ensure accountability regarding any unspent funds, Judicial Council program staff was to provide the advisory committee with a plan for any additional unspent funds to be used for proposed resources and statewide technical assistance services to the superior courts.

A copy of the Judicial Council report is available at:
www.courts.ca.gov/documents/famjuv-20170724-materials.pdf

Program Changes and Contract Deliverables

To strengthen program efficiency and to help ensure grantee courts spend allocated grant funds, a number of programmatic changes have been implemented for the new three-year grant cycle (FY 2018-19–FY 2020-21) beginning April 1, 2018. Some of these changes include:

1. *New Court/Subcontractor Budget Form*. The new court/subcontractor budget form is designed to reduce errors and court time spent on billing and invoicing. To ensure that courts receive their contract agreements in a timely manner, each court/subcontractor is required to submit project budget information at the beginning of January.

2. *Midyear Reallocation Process*. Grant recipients are strongly encouraged to monitor grant spending and invoicing to determine eligibility to receive additional funding through the midyear reallocation process. Invoicing and billing is to occur monthly under the contract agreement.

3. *Suspension of Work and Deficient Performance*. If a court program loses its subcontractor and cannot find a replacement in time to fully expend its grant funding allocation, the Access to Visitation Grant Program may by written notice issue a Suspend Work Order to the court. This will ensure that the funding may be reallocated within the grant cycle.

Proposed Plan for Unspent Funds (FY 2017–18 Contract Period)

The following is a proposed plan for committee review regarding the use of any additional unspent funds by grantee courts, during the remainder of the FY 2017-18 contract period, for statewide technical assistance and/or resources to benefit all courts:

1. Convene an Access to Visitation Court-Community Partnership Meeting and/or Roundtable with key stakeholders, judiciary, grant recipients, FCS Directors, Child Support Services, Family Law Facilitators, and Self-Help Center professionals to explore ways for increasing efficiency and effectiveness of the grant-funded services, highlight innovative practices, and develop strategies for increasing coordination and expansion of services statewide. The meeting/roundtable serves as the next step of the 2016 Access to Visitation Forum meeting by developing specific court-community action and implementation plans. Based on feedback from participants, Judicial Council program staff proposes convening stakeholders to assist with planning and structuring of the meeting agenda.

2. Judicial Council program staff provide trainings across the northern and southern regions on Standard 5.20 and Family Code section 3200.5 that will allow local professional providers of supervised visitation from the various court jurisdictions to meet statutory training requirements.

3. Translate the new publication: *"Answers to your Questions: A Guide for Parents on Supervised Visitation Services"* into plain language so it is easier for parents to read and understand.

4. Develop additional online parent education, videos, and/or resources on supervised visitation to be posted on the Judicial Council website.

Judicial Council program staff will present a proposed plan for committee review should any additional unspent funds by current grantee courts become available through the midyear reallocation process or at the end of each grant contract year.

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FACT SHEET

January 2018

California's Access to Visitation Grant Program

The Judicial Council is charged with administering and distributing California's share of the federal Child Access and Visitation Grant funds from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement. These grants, established under section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub.L. No. 104-193, 110 Stat. 2258), title III, section 469B of the Social Security Act, enable states to establish and administer programs that support and facilitate access and visitation by noncustodial parents' with their children. The federal allocation to each state is based on the number of single-parent households—this is a formula grant.

Purpose of the Grant Program

The purpose of the federal Child and Visitation Grant Program is to "remove barriers and increase opportunities for biological parents who are not living in the same household as their children to become actively involved in their children's lives." Federal grant funding is intended to allow states to develop programs and to provide services that support the goal of increasing noncustodial access to and visitation with their children.

Federal and State Program Goals

Under the federal statute, Child Access and Visitation Grant funds may be used to support and facilitate noncustodial parents' access to and visitation with their children by means of activities, including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pick-up), and development of guidelines for visitation and alternative custody arrangements.

The use of funds in California, however, is limited by state statute to three types of programs: supervised visitation and exchange services, education about protecting

children during family disruption, and group counseling services for parents and children.

The primary goals of California's Access to Visitation Grant Program are to enable parents and children to participate in supervised visitation, education, and group counseling programs—irrespective of the parents' marital status and whether the parties are currently living separately permanently or temporarily—and to promote and encourage healthy relationships between noncustodial parents and their children while ensuring the children's health, safety, and welfare. The overarching policy goal of California's Access and Visitation Grant Program has been to ensure accessible and available grant-related services statewide, consistent with the federal goal that "increased parental access and visitation not only improve parent-child relationships and outcomes for children but also have been demonstrated to result in improve child support collections, which creates a double win for children—a more engaged parent and improved financial security." (See Public Law 113-183, section 303).

The grant program receives direction and guidance from the Judicial Council's Executive and Planning Committee, the council's Family and Juvenile Law Advisory Committee, the state Legislature, and the federal Administration for Children & Families, Office of Child Support Enforcement. The council's Family and Juvenile Law Advisory Committee provides recommendations to the council for allocation of funding for the grant program pursuant to Family Code section 3204.

Grant Funding Information

- Family courts throughout California are eligible to apply for and receive these federal Access to Visitation Grant funds. The family law divisions of the superior courts are required to administer the programs.
- Nonprofit agencies desiring to participate as the courts justice partner for the AV funded services are not allowed to apply directly to the Judicial Council for these grant funds but must do so as part of the individual superior court's Access to Visitation Grant application.
- Grant funding allocation is awarded to the superior courts through a competitive statewide request-for-proposals grant application process. Applicants are strongly encouraged to involve multiple courts and counties in their proposed programs and designate on court as the lead administering court.
- Effective fiscal year 2015–2016, the Judicial Council approved a new funding methodology regarding the administration and operation of California's Access to Visitation Grant Program. A copy of the report with the council

recommendations can be downloaded here:
http://www.courts.ca.gov/documents/jc-20140425-itemB.pdf

- The recipients of the Access to Visitation funded services are low-income separated, separating, divorced, or never parents and their children who are involved in custody and visitation proceedings under the Family Code, as well as Title IV-D child support cases.
- Supervised visitation and exchange programs funded under the grant must comply with all requirements of the Uniform Standards of Practice for Providers of Supervised Visitation, as set forth under Standard 5.20 of the California Standards of Judicial Administration and Family Code section 3200.5.

Contact:

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Additional resources:

CFCC Access to Visitation Grant Program, www.courts.ca.gov/cfcc-accesstovisitation.htm
Standard 5.20 (Uniform standards of practice for providers of supervised visitation), http://www.courts.ca.gov/cms/rules/index.cfm?title=standards&linkid=standard5_20
Family Code section 3200.5, http://codes.findlaw.com/ca/family-code/fam-sect-3200-5.html

Family Law: Expert Testimony and Hearsay Issues in Family Law after *People v. Sanchez*

Annual Agenda Item:

Education

Contribute to planning efforts in support of family and juvenile law judicial branch education.

Background:

The California Supreme Court recently issued an opinion in *People v. Sanchez*, 63 Cal.4th 665 (2016) that may have repercussions for the use of hearsay in expert testimony in family law matters. The court held that an expert witness in a case involving gang membership was using inadmissible hearsay when he related case specific outside statements of others as the basis for his opinion. There has been significant concern within the field about the possible impact of this holding on the use of hearsay by experts in family law matters, including child custody cases with evaluation reports or child custody recommending counselor reports. The committee may wish to discuss what if any steps it should take to address these concerns.

People v. Sanchez

Copy Citation

Supreme Court of California

June 30, 2016, Filed

S216681

Reporter

63 Cal. 4th 665 | 374 P.3d 320 | 204 Cal. Rptr. 3d 102 | 2016 Cal. LEXIS 4577

THE PEOPLE, Plaintiff and Respondent, v. MARCOS ARTURO SANCHEZ, Defendant and Appellant.

Subsequent History: Reported at People v. Sanchez, 2016 Cal. LEXIS 5457 (Cal., June 30, 2016)
Later proceeding at People v. Sanchez, 2016 Cal. App. LEXIS 796 (Cal. App. 4th Dist., Sept. 19, 2016)
On remand at, Decision reached on appeal by, Remanded by People v. Sanchez, 2016 Cal. App. Unpub. LEXIS 6895 (Cal. App. 4th Dist., Sept. 19, 2016)

Prior History: Superior Court of Orange County, No. 11CF2839, Steven D. Bromberg, Judge. Court of Appeal, Fourth Appellate District, Division Three, No. G047666.
People v. Sanchez, 223 Cal. App. 4th 1, 167 Cal. Rptr. 3d 9, 2014 Cal. App. LEXIS 44 (Cal. App. 4th Dist., Jan. 21, 2014)

Headnotes/Syllabus

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(8) **(8) Evidence § 81—Expert Testimony—Gangs—Offered for Truth—Case-specific Facts.**

A gang expert was reciting hearsay when he testified to case-specific facts based on out-of-court statements and asserted those facts were true because he relied upon their truth in forming his opinion.

[Erwin et al., Cal. Criminal Defense Practice (2016) ch. 83, § 83.11; 1 Witkin, Cal. Evidence (5th ed. 2012) Opinion Evidence, § 32; 1 Witkin, Cal. Evidence (5th ed. 2012) Hearsay, § 12; 3 Witkin, Cal. Evidence (5th ed. 2012) Presentation at Trial, § 23; 2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 40.]

Counsel: John L. Dodd, under appointment by the Supreme Court, for Defendant and Appellant.

Lisa M. Romo for Pacific Juvenile Defender Center as Amicus Curiae on behalf of Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette and Gerald A. Engler, Chief Assistant Attorneys General, Julie L. Garland, Assistant Attorney General, Steven T. Oetting, Deputy State Solicitor General, Peter Quon, Jr., Susan Miller and Lynne McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

Judges: Opinion by Corrigan, J., expressing the unanimous view of the court.

Opinion by: Corrigan

Opinion

CORRIGAN, J.—In *Crawford v. Washington* (2004) 541 U.S. 36 [158 L. Ed. 2d 177, 124 S. Ct. 1354] (*Crawford*), the United States Supreme Court held, with exceptions not relevant here, that the admission of testimonial hearsay against a criminal defendant violates the Sixth Amendment right to confront and cross-examine witnesses. Here we consider the degree to which the *Crawford* rule limits an expert witness from relating case-specific hearsay content in explaining the basis for his opinion. In addition, we clarify the proper application of Evidence Code sections 801 and 802, relating to the scope of expert testimony.

We hold that the case-specific statements related by the prosecution expert concerning defendant's gang membership constituted inadmissible hearsay under California law. They were recited by the expert, who presented them as true statements of fact, without the requisite independent proof. Some of those hearsay statements were also testimonial and therefore should have been excluded under *Crawford*. The error was not harmless beyond a reasonable doubt. Accordingly, we reverse the jury findings on the street gang enhancements.

I. FACTS

On October 16, 2011, two uniformed Santa Ana police officers made eye contact with defendant Marcos Arturo Sanchez, who was standing nearby. He reached into an electrical box with one hand, then ran upstairs into an apartment while holding his other hand near his waistband. When told defendant did not live in the apartment, the officers entered and apprehended him. A boy who had been in the apartment

testified the man arrested was a stranger who ran through the residence and into the bathroom. A loaded gun and a plastic baggie were found on a tarp several feet below the bathroom window. The items appeared to have been recently deposited. The downstairs neighbor, who owned the tarp, testified the items were not his and he had given no one permission to place them there. The baggie contained 14 bindles of heroin and four baggies of methamphetamine, all packaged for sale. Sanchez was charged with possession of a firearm by a felon, possession of drugs while armed with a loaded firearm, active participation in the "Delhi" street gang, and commission of a felony for the benefit of the Delhi gang. 1 He was also alleged to have been convicted of a felony for which he had served a state prison sentence. 2

Santa Ana Police Detective David Stow testified for the prosecution as a gang expert. He had been a gang suppression officer for 17 of his 24 years on the force. His experience included investigating gang-related crime; interacting with gang members, as well as their relatives; and talking to other community members who may have information about gangs and their impact on the areas where they operate. As part of his duties, Stow read reports about gang investigations; reviewed court records relating to gang prosecutions; read jail letters; and became acquainted with gang symbols, colors, and art work. He had received over 100 hours of formal training in gang recognition and subcultures, offered by various law-enforcement agencies in Southern California and around the nation. He had been involved in over 500 gang-related investigations.

As part of the department's efforts to control gang activity, officers issue what are known as "STEP notices" 3 to individuals associating with known gang members. The purpose of the notice is to both provide and gather information. The notice informs the recipient that he is associating with a known gang; that the gang engages in criminal activity; and that, if the recipient commits certain crimes with gang members, he may face increased penalties for his conduct. The issuing officer records the date and time the notice is given, along with other identifying information like descriptions and tattoos, and the identification of the recipient's associates. Officers also prepare small report forms called field identification or "FI" cards that record an officer's contact with an individual. The form contains personal information, the date and time of contact, associates, nicknames, etc. Both STEP notices and FI cards may also record statements made at the time of the interaction.

Stow testified generally about gang culture, how one joins a gang, and about the Delhi gang in particular. Gangs have defined territories or turf that they control through intimidation. They commit crimes on their turf and protect it against rivals. Nonmembers who sell drugs in the gang's territory and who do not pay a "tax" to the gang risk death or injury. The Delhi gang is named after a park in its territory and has over 50 members. Its primary activities include drug sales and illegal gun possession. Defendant was arrested in Delhi turf. Stow testified about convictions suffered by two Delhi members to establish that Delhi members engage in a pattern of criminal activity. (Pen. Code, § 186.22, subds. (e), (f).)

The questioning then turned to defendant. The prosecutor asked Stow if he was aware that defendant received a STEP notice on June 14, 2011. The prosecutor inquired, "Did the defendant indicate to the police officer in the STEP notice that the defendant for four years had kicked it with guys from Delhi?" and "did the defendant also indicate 'I got busted with two guys from Delhi?'" Stow responded, "Correct" to both. He explained that "kicking it" means "hanging out and associating" with gang members and that people often used the phrase to avoid openly admitting gang membership.

The prosecutor next asked about four other police contacts with defendant between 2007 and 2009. Stow gave the details of each, relating statements contained in police documents: (1) On August 11, 2007, defendant's cousin, a known Delhi member, was shot while defendant stood next to him. Defendant told police then that he grew up "in the Delhi neighborhood." (2) On December 30, 2007, defendant was with Mike Salinas when Salinas was shot from a passing car. Salinas, a documented Delhi member, identified the perpetrator as a rival gang member. (3) On December 4, 2009, an officer contacted defendant in the company of documented Delhi member John Gomez and completed an FI card. (4) Five days later, on December 9, 2009, defendant was arrested in a garage with Gomez and Delhi member Fabian Ramirez. Inside the garage, police found "a surveillance camera, Ziploc baggies, narcotics, and a firearm."

In preparing for trial, Stow compiled a "gang background" on defendant that included the STEP notice and defendant's statements, his contacts with police while in the company of Delhi members, and the circumstances of the present case occurring in Delhi territory. Based on this information, Stow opined that defendant was a member of the Delhi gang. The prosecutor then asked a lengthy hypothetical in which he asked Stow to assume that (1) a Delhi gang member, "who's indicated to the police he kicks it with Delhi and has been contacted in a residence where narcotics and a firearm have been found in the past," is contacted by police in Delhi territory on October 16, 2011; (2) that gang member "grabbed something, and then grabs his waistband" as he runs up the stairs into an apartment; and (3) he runs into the bathroom and police later find a loaded firearm and drugs on a tarp outside the bathroom window. Assuming those facts, Stow gave his opinion that the conduct benefitted Delhi because the gang

member was willing to risk incarceration by possessing a firearm and narcotics for sale in Delhi's turf. Stow added that this conduct also created fear in the community, redounding to Delhi's benefit.

On cross-examination, Stow admitted he had never met defendant. He was not present when defendant was given the STEP notice, or during any of defendant's other police contacts. Stow's knowledge of the two shootings, as well as the 2009 garage incident, was derived from police reports. His knowledge of the December 4, 2009, contact was based on the FI card. Stow clarified that an officer may fill out an FI card or issue a STEP notice to someone not engaged in any crime or suspicious behavior.

The jury convicted defendant as charged. [4] The Court of Appeal reversed defendant's conviction for active gang participation [5] and otherwise affirmed. We granted defendant's petition for review.

II. DISCUSSION

Defendant contends the expert's description of defendant's past contacts with police was offered for its truth and constituted testimonial hearsay. He urges its admission violated the federal confrontation clause because the declarants were not unavailable and he had not been given an earlier opportunity to cross-examine them. The Attorney General responds that the statements upon which the gang expert based his opinions were not admitted for their truth and, even if they had been, most of the statements were not testimonial.

We first address whether facts an expert relates as the basis for his opinion are properly considered to be admitted for their truth. The confrontation clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." (*Crawford*, *supra*, 541 U.S. at p. 59, fn. 9.) If the Attorney General is correct that statements offered as the basis for an opinion are not admitted for their truth, the statements are not hearsay and our inquiry is at an end. If defendant is correct, the propriety of the statements' admission in this case would turn on whether they constitute testimonial hearsay.

A. *State Evidentiary Rules for Hearsay*

Hearsay may be briefly understood as an out-of-court statement offered for the truth of its content. Evidence Code section 1200, subdivision (a) formally defines hearsay as "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." A "statement" is "oral or written verbal expression" or the "nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression." (Evid. Code, § 225.) Senate committee comments to Evidence Code section 1200 explain that a statement "offered for some purpose other than to prove the fact stated therein is not hearsay." (Sen. Com. on Judiciary com., 29B pt. 4 West's Ann. Evid. Code (2015 ed.) foll. § 1200, p. 3; see *People v. Davis* (2005) 36 Cal.4th 510, 535–536 [31 Cal. Rptr. 3d 96, 115 P.3d 417].) Thus, a hearsay statement is one in which a person makes a factual assertion out of court and the proponent seeks to rely on the statement to prove that assertion is true. Hearsay is generally inadmissible unless it falls under an exception. (Evid. Code, § 1200, subd. (b).) Nothing in our opinion today changes the basic understanding of the definition of hearsay.

Documents like letters, reports, and memoranda are often hearsay because they are prepared by a person outside the courtroom and are usually offered to prove the truth of the information they contain. Documents may also contain multiple levels of hearsay. An emergency room report, for example, may record the observations made by the writer, along with statements made by the patient. If offered for its truth, the report itself is a hearsay statement made by the person who wrote it. Statements of others, related by the report writer, are a second level of hearsay. Multiple hearsay may not be admitted unless there is an exception for each level. (*People v. Riccardi* (2012) 54 Cal.4th 758, 831 [144 Cal. Rptr. 3d 84, 281 P.3d 1] (*Riccardi*).) For example, in the case of the emergency room document, the report itself may be a business record (Evid. Code, § 1270 et seq.), while the patient's statement may qualify as a statement of the patient's existing mental or physical state (Evid. Code, § 1250, subd. (a)).

B. *State Evidentiary Rules for Expert Testimony*

While lay witnesses are allowed to testify only about matters within their personal knowledge (Evid. Code, § 702, subd. (a)), expert witnesses are given greater latitude. "A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a).) An expert may express an opinion on "a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code, § 801, subd. (a).) In addition to matters within their own personal knowledge, experts may relate information acquired through their training and experience, even though that information may have been derived from conversations with others, lectures, study of learned treatises, etc. This latitude is a matter of practicality. A physician is not required to personally replicate all medical experiments dating back to the time of Galen in order to relate generally accepted medical knowledge that will assist the jury in deciding the case at hand. An expert's testimony as to information generally accepted in the expert's area, or supported by his own experience, may usually be admitted to provide specialized context the jury will need to resolve an issue. When giving such testimony, the expert often relates relevant principles or generalized information rather than reciting specific statements made by others.

The jury is not required to accept an expert's opinion. The final resolution of the facts at issue resides with the jury alone. The jury may conclude a fact necessary to support the opinion has not been adequately proven, even though there may be some evidence in the record tending to establish it. If an essential fact is not found proven, the jury may reject the opinion as lacking foundation. Even if all the necessary facts are found proven, the jury is free to reject the expert's opinion about them as unsound, based on faulty reasoning or analysis, or based on information the jury finds unreliable. The jury may also reject an opinion because it finds the expert lacks credibility as a witness.

The hearsay rule has traditionally not barred an expert's testimony regarding his general knowledge in his field of expertise. "[T]he common law recognized that experts frequently acquired their knowledge from hearsay, and that 'to reject a professional physician or mathematician because the fact or some facts to which he testifies are known to him only upon the authority of others would be to ignore the accepted methods of professional work and to insist on … impossible standards.' Thus, the common law accepted that an expert's general knowledge often came from inadmissible evidence." (Note, *Federal Rule of Evidence 703: The Back Door and the Confrontation Clause, Ten Years Later* (2011) 80 Fordham L.Rev. 959, 965, fn. omitted, quoting 1 Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (2d ed. 1923) § 665; see Simons, Cal. Evidence Manual (2014) § 4:23, pp. 313–316.) Knowledge in a specialized area is what differentiates the expert from a lay witness, and makes his testimony uniquely valuable to the jury in explaining matters "beyond the common experience of an ordinary juror." (*People v. McDowell* (2012) 54 Cal.4th 395, 429 [143 Cal. Rptr. 3d 215, 279 P.3d 547]; see Evid. Code, § 801, subd. (a).) As such, an expert's testimony concerning his general knowledge, even if technically hearsay, has not been subject to exclusion on hearsay grounds.

By contrast, an expert has traditionally been precluded from relating *case-specific* facts about which the expert has no independent knowledge. Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried. Generally, parties try to establish the facts on which their theory of the case depends by calling witnesses with personal knowledge of those case-specific facts. An expert may then testify about more generalized information to help jurors understand the significance of those case-specific facts. An expert is also allowed to give an opinion about what those facts may mean. The expert is generally not permitted, however, to supply case-specific facts about which he has no personal knowledge. (*People v. Coleman* (1985) 38 Cal.3d 69, 92 [211 Cal. Rptr. 102, 695 P.2d 189] (*Coleman*).)

Going back to the common law, this distinction between generally accepted background information and the supplying of case-specific facts is honored by the use of hypothetical questions. "Using this technique, other witnesses supplied admissible evidence of the facts, the attorney asked the expert witness to hypothetically assume the truth of those facts, and the expert testified to an opinion based on the assumed facts. …" (Imwinkelried, *The Gordian Knot of the Treatment of Secondhand Facts Under Federal Rule of Evidence 703 Governing the Admissibility of Expert Opinions: Another Conflict Between Logic and Law* (2013) 3 U.Den. Crim. L.Rev. 1, 5, italics omitted; see Simons, Cal. Evidence Manual, *supra*, § 4:32, pp. 326–327; 2 Wigmore, Evidence (Chadbourn ed. 1978) § 672, p. 933.) An examiner may ask an expert to assume a certain set of case-specific facts for which there is independent competent evidence, then ask the expert what conclusions the expert would draw from those assumed facts. If no competent evidence of a case-specific fact has been, or will be, admitted, the expert cannot be asked to assume it. The expert is permitted to give his opinion because the significance of certain facts may not be clear to a lay juror lacking the expert's specialized knowledge and experience.

The following examples clarify these general principles and their distinctions.

(1) That 15 feet of skid marks were measured at an auto accident scene would be case-specific information. Those facts could be established, for example, through the testimony of a person who measured the marks. How automobile skid marks are left on pavement, and the fact that a given equation can be used to estimate speed based on those marks, would be background information an

expert could provide. That the car leaving those marks had been traveling at 80 miles per hour when the brakes were applied would be the proper subject of an expert opinion.

(2) That hemorrhaging in the eyes was noted during the autopsy of a suspected homicide victim would be a case-specific fact. The fact might be established, among other ways, by the testimony of the autopsy surgeon or other witnesses who saw the hemorrhaging, or by authenticated photographs depicting it. What circumstances might cause such hemorrhaging would be background information an expert could provide. The conclusion to be drawn from the presence of the hemorrhaging would be the legitimate subject for expert opinion.

(3) That an associate of the defendant had a diamond tattooed on his arm would be a case-specific fact that could be established by a witness who saw the tattoo, or by an authenticated photograph. That the diamond is a symbol adopted by a given street gang would be background information about which a gang expert could testify. The expert could also be allowed to give an opinion that the presence of a diamond tattoo shows the person belongs to the gang.

(4) That an adult party to a lawsuit suffered a serious head injury at age four would be a case-specific fact. The fact could be established, inter alia, by a witness who saw the injury sustained, by a doctor who treated it, or by diagnostic medical records. How such an injury might be caused, or its potential long-term effects, would be background information an expert might provide. That the party was still suffering from the effects of the injury and its manifestations would be the proper subject of the expert's opinion.

At common law, the treatment of an expert's testimony as to general background information and case-specific hearsay differed significantly. However, the line between the two has now become blurred. Both the common law and early California law recognized two exceptions to the general rule barring disclosure of, and reliance on, otherwise inadmissible case-specific hearsay. These exceptions covered testimony about property valuation and medical diagnoses. As to the former, "courts recognized that experts frequently derived their knowledge by both custom and necessity from sources that were technically hearsay—price lists, newspapers, information about comparable sales, or other secondary sources." (Kaye et al., The New Wigmore: Expert Evidence (2d ed. 2011) § 4.5.1, p. 154; see *In re Cliquot's Champagne* (1865) 70 U.S. 114, 141 [18 L. Ed. 116].) Likewise, physicians often relied on patients' hearsay descriptions of their symptoms to form diagnoses. (See *Barber v. Merriam* (1865) 93 Mass. 322, 324–326; see also Kaye et al., *supra*, § 4.5.1, p. 155; *People v. Wilson* (1944) 25 Cal.2d 341, 348 [153 P.2d 720]; *Betts v. Southern California Fruit Exchange* (1904) 144 Cal. 402, 408 [77 P. 993]; *People v. Shattuck* (1895) 109 Cal. 673, 678–679 [42 P. 315]; *Hammond L. Co. v. County of Los Angeles* (1930) 104 Cal.App. 235, 248 [285 P. 896].)

The justification for these exceptions was threefold: "the routine use of the same kinds of hearsay by experts in their conduct outside the court; the experts' experience, which included experience in evaluating the trustworthiness of such hearsay sources; and the desire to avoid needlessly complicating the process of proof … ." (Kaye et al., The New Wigmore: Expert Evidence, *supra*, § 4.5.1, p. 155; see 3 Wigmore, Evidence, *supra*, § 688, p. 4.)

The Legislature's enactment of the Evidence Code in 1965 generalized these common law exceptions. Evidence Code section 801, subdivision (b) provides that an expert may render an opinion "[b]ased on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, *whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates*, unless an expert is precluded by law from using such matter as a basis for his opinion." (Italics added.) Similarly, Evidence Code section 802 allows an expert to "state on direct examination the reasons for his opinion and the matter (including, in the case of an expert, his special knowledge, skill, experience, training, and education) upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion." Under this approach, the reliability of the evidence is a key inquiry in whether expert testimony may be admitted. The California Law Revision Commission comments accompanying the code noted that Evidence Code section 801, subdivision (b) "assures the reliability and trustworthiness of the information used by experts in forming their opinions." (Cal. Law Revision Com. com., reprinted at 29B pt. 3A West's Ann. Evid. Code (2009 ed.) foll. § 801, p. 26.)

Accordingly, in support of his opinion, an expert is entitled to explain to the jury the "matter" upon which he relied, even if that matter would ordinarily be inadmissible. When that matter is hearsay, there is a question as to how much substantive detail may be given by the expert and how the jury may consider the evidence in evaluating the expert's opinion. It has long been the rule that an expert may not "'under the guise of reasons [for an opinion] bring before the jury incompetent hearsay evidence.'" (*Coleman*, *supra*, 38 Cal.3d at p. 92.) Courts created a two-pronged approach to balancing "an expert's need to consider extrajudicial matters, and a jury's need for information sufficient to evaluate an expert opinion" so as not to "conflict with an accused's interest in avoiding substantive use of unreliable hearsay." (*People v. Montiel* (1993) 5 Cal.4th 877, 919 [21 Cal. Rptr. 2d 705, 855 P.2d 1277] (*Montiel*).) The *Montiel* court opined that "[m]ost often, hearsay problems will be cured by an instruction that matters admitted through an expert go only to the basis of his opinion and should not be considered for their truth. [Citation.] [¶] Sometimes a limiting instruction may not be enough. In such cases, Evidence Code

section 352 authorizes the court to exclude from an expert's testimony any hearsay matter whose irrelevance, unreliability, or potential for prejudice outweighs its proper probative value. [Citation.]" (*Ibid.*, citing *Coleman*, *supra*, 38 Cal.3d at pp. 91–93.) Thus, under this paradigm, there was no longer a need to carefully distinguish between an expert's testimony regarding background information and case-specific facts. The inquiry instead turned on whether the jury could properly follow the court's limiting instruction in light of the nature and amount of the out-of-court statements admitted. For the reasons discussed below, we conclude this paradigm is no longer tenable because an expert's testimony regarding the basis for an opinion *must* be considered for its truth by the jury.

C. Crawford, *Hearsay, and Expert Testimony*

The admission of expert testimony is governed not only by state evidence law, but also by the Sixth Amendment's confrontation clause, which provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him … ." (U.S. Const., 6th Amend.) As the United States Supreme Court observed, "this bedrock procedural guarantee applies to both federal and state prosecutions." (*Crawford*, *supra*, 541 U.S. at p. 42; see *Pointer v. Texas* (1965) 380 U.S. 400, 406 [13 L. Ed. 2d 923, 85 S. Ct. 1065].) "'The main and essential purpose of confrontation is *to secure for the opponent the opportunity of cross-examination*.'" (*Davis v. Alaska* (1974) 415 U.S. 308, 315–316 [39 L. Ed. 2d 347, 94 S. Ct. 1105].) "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." (*Id.* at p. 316.)

Under previous United States Supreme Court precedent, the admission of hearsay did not violate the right to confrontation if it bore "adequate 'indicia of reliability.' Reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness." (*Ohio v. Roberts* (1980) 448 U.S. 56, 66 [65 L. Ed. 2d 597, 100 S. Ct. 2531].) *Crawford* overturned the *Roberts* rule. *Crawford* clarified that a mere showing of hearsay reliability was insufficient to satisfy the confrontation clause. "To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. … [¶] The *Roberts* test allows a jury to hear evidence, untested by the adversary process, based on a mere judicial determination of reliability. It thus replaces the constitutionally prescribed method of assessing reliability with a wholly foreign one." (*Crawford*, *supra*, 541 U.S. at pp. 61–62.) Under *Crawford*, if an exception was not recognized at the time of the Sixth Amendment's adoption (see *Crawford*, at p. 56, fn. 6), admission of testimonial hearsay against a criminal defendant violates the confrontation clause unless (1) the declarant is unavailable to testify and (2) the defendant had a previous opportunity to cross-examine the witness or forfeited the right by his own wrongdoing. (*Id.* at pp. 62, 68; see *Giles v. California* (2008) 554 U.S. 353, 357–373 [171 L. Ed. 2d 488, 128 S. Ct. 2678].) 6

In light of our hearsay rules and *Crawford*, a court addressing the admissibility of out-of-court statements must engage in a two-step analysis. The first step is a traditional hearsay inquiry: Is the statement one made out of court; is it offered to prove the truth of the facts it asserts; and does it fall under a hearsay exception? If a hearsay statement is being offered by the prosecution in a criminal case, and the *Crawford* limitations of unavailability, as well as cross-examination or forfeiture, are not satisfied, a second analytical step is required. Admission of such a statement violates the right to confrontation if the statement is *testimonial hearsay*, as the high court defines that term.

We turn first to the general hearsay inquiry. As discussed, some courts have attempted to avoid hearsay issues by concluding that statements related by experts are not hearsay because they "go only to the basis of [the expert's] opinion and should not be considered for their truth." (*Montiel*, *supra*, 5 Cal.4th at p. 919; see *Coleman*, *supra*, 38 Cal.3d at p. 92.) If statements related by experts as bases for their opinions are not admitted for their truth, they are not hearsay. Neither the hearsay doctrine nor the confrontation clause is implicated when an out-of-court statement is not received to prove the truth of a fact it asserts. (See *Crawford*, *supra*, 541 U.S. at p. 59, fn. 9; *Tennessee v. Street* (1985) 471 U.S. 409, 413–414 [85 L. Ed. 2d 425, 105 S. Ct. 2078].)

In the context of a confrontation challenge to the admission of certain expert "basis" testimony, the high court addressed the not-for-the-truth rationale in *Williams v. Illinois* (2012) 567 U.S. 50 [183 L. Ed. 2d 89, 132 S. Ct. 2221] (*Williams*). *Williams* was a rape prosecution in which the identity of the attacker was disputed. Semen samples were collected from the rape victim and sent to a Cellmark laboratory for DNA analysis. (*Id.* at p. 59 [132 S. Ct. at p. 2229].) Cellmark produced a DNA profile purporting to be an accurate profile of the unknown semen donor. Independent of the rape investigation, a sample of Williams's DNA had been acquired and entered in the state's database. That "known" sample from Williams was tested and a profile produced. (*Ibid.*) At trial, a prosecution expert testified that she compared Williams's known profile to the Cellmark profile and, in her opinion, they matched. Williams objected that the Cellmark results, related to the factfinder by the expert, 7 constituted hearsay

because they were out-of-court statements by the report writer and were offered to prove their truth: that the profile was, indeed, an accurate profile of the man who committed the rape for which Williams was being tried.

Considering the hearsay question, a four-member plurality of the *Williams* court concluded statements in the Cellmark report were not admitted for their truth, but only to allow the judge, sitting as factfinder, to evaluate the testimony of the expert who opined that the two profiles matched. (*Williams*, *supra*, 567 U.S. at pp. 78–81 [132 S. Ct. at pp. 2240–2241] (plur. opn. of Alito, J.).) The plurality acknowledged that the prosecution expert "lacked personal knowledge that the profile produced by Cellmark was based on the vaginal swabs taken from the victim," but reasoned the expert was testifying in the manner of a hypothetical question and any linkage between the sample from the victim to the DNA profile created by Cellmark "was a mere premise of the prosecutor's question, and [the expert] simply assumed that premise to be true when she gave her answer indicating that there was a match between the two DNA profiles. There is no reason to think that the trier of fact took [the expert's] answer as substantive evidence to establish where the DNA profiles came from." (*Id*. at p. 72 [132 S. Ct. at p. 2236].)

Five justices, the four-member dissent and Justice Thomas writing separately, specifically rejected this approach. In doing so, they called into question the continuing validity of relying on a not-for-the-truth analysis in the expert witness context. Justice Thomas observed that the expert relied upon, as substantive evidence, Cellmark's representation that, in fact, the sample it tested was that taken from the victim: "[The prosecution expert] opined that petitioner's DNA profile matched the male profile derived from [the victim's] vaginal swabs. In reaching that conclusion, [the expert] relied on Cellmark's out-of-court statements that the profile it reported was in fact derived from [the victim's] swabs, rather than from some other source. *Thus, the validity of* [*the expert's*] *opinion ultimately turned on the truth of Cellmark's statements*. The plurality's assertion that Cellmark's statements were merely relayed to explain 'the assumptions on which [the expert's] opinion rest[ed],' [citation], overlooks that the value of [the expert's] testimony *depended on the truth of those very assumptions*." (*Williams*, *supra*, 567 U.S. at p. 108 [132 S. Ct. at p. 2258] (conc. opn. of Thomas, J.), italics added.) 8

The dissent also identified another hearsay problem. In addition to asserting that there was a link between the victim's sample and the Cellmark profile, the expert also asserted, as fact, that the Cellmark test was reliable: "Nothing in [the expert's] testimony indicates that she was making an assumption or considering a hypothesis. To the contrary, [the expert] affirmed, without qualification, that the Cellmark report showed a 'male DNA profile found in semen from the vaginal swabs of [the victim].' [Citation.] Had she done otherwise, this case would be different. There was nothing wrong with [the expert's] testifying that two DNA profiles—the one shown in the Cellmark report and the one derived from Williams's blood—matched each other; that was a straightforward application of [her] expertise. Similarly, [the expert] could have added that *if* the Cellmark report resulted from scientifically sound testing of [the victim's] vaginal swab, *then* it would link Williams to the assault. What [the expert] could not do was what she did: indicate that the Cellmark report *was* produced in this way by saying that [the victim's] vaginal swab contained DNA matching Williams's." (*Williams*, *supra*, 567 U.S. at p. 129 [132 S. Ct. at p. 2270] (dis. opn. of Kagan, J.), fn. omitted.)

This reasoning points out the flaw in the not-for-the-truth limitation when applied to case-specific facts. When an expert relies on hearsay to provide case-specific facts, considers the statements as true, and relates them to the jury as a reliable basis for the expert's opinion, it cannot logically be asserted that the hearsay content is not offered for its truth. In such a case, "the validity of [the expert's] opinion ultimately turn[s] on the truth" (*Williams*, *supra*, 567 U.S. at p. 108 [132 S. Ct. at p. 2258] (conc. opn. of Thomas, J.)) of the hearsay statement. If the hearsay that the expert relies on and treats as true is *not* true, an important basis for the opinion is lacking. In *Williams*, the expert's opinion that the Cellmark profile matched the defendant's known profile could not prove that Williams was the semen donor unless the Cellmark profile was, in truth, linked to the victim and was scientifically accurate. Relevant evidence is that which has a "tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) If the hearsay statements about the linkage and accuracy of the Cellmark profile were not *true*, the fact that the two profiles matched would have been irrelevant. That is, the fact that they matched could not have had a tendency in reason to prove the disputed fact of the rapist's identity.

The reasoning of a majority of justices in *Williams* calls into question the premise that expert testimony giving case-specific information does not relate hearsay. In the context of a sufficiency of the evidence claim in a gang case, *People v. Gardeley* (1996) 14 Cal.4th 605 [59 Cal. Rptr. 2d 356, 927 P.2d 713] (*Gardeley*) pointed to established law that "a witness's on-the-record recitation of sources relied on for an expert opinion does not transform inadmissible matter into 'independent proof' of any fact." (*Id.* at p. 619.) However, *Gardeley* endorsed evidentiary rules allowing a gang expert to rely upon, and testify to, "conversations with the defendants and with other Family Crip members, his personal investigations of hundreds of crimes committed by gang members, as well as information from his colleagues and various law enforcement agencies." (*Id.* at p. 620.) As generally described in *Gardeley*, some of that testimony would be based on the expert's own knowledge and investigation, thus admissible as personal knowledge. Some might be generally accepted background information, admissible under the latitude afforded experts. But some might relate case-specific hearsay, and thus be inadmissible. Courts, both

before and after *Gardeley*, have applied similar reasoning to allow gang expert testimony. *Gardeley*'s reasoning that such expert testimony is not admitted for its truth has also been cited in rejecting confrontation challenges to such testimony. (See, e.g., *People v. Sisneros* (2009) 174 Cal.App.4th 142, 153–154 [94 Cal. Rptr. 3d 98], and cases cited therein; see also *People v. Hill* (2011) 191 Cal.App.4th 1104, 1129–1131 [120 Cal. Rptr. 3d 251] [criticizing *Gardeley* but following it].) 9

We find persuasive the reasoning of a majority of justices in *Williams*. 10 When an expert is not testifying in the form of a proper hypothetical question and no other evidence of the case-specific facts presented has or will be admitted, there is no denying that such facts are being considered by the expert, and offered to the jury, as true. Indeed, the jury here was given a standard instruction that it "must decide whether information on which the expert relied was true and accurate." (CALCRIM No. 332 [Expert Witness Testimony].) Without independent competent proof of those case-specific facts, the jury simply had no basis from which to draw such a conclusion. The court also confusingly instructed the jury that the gang expert's testimony concerning "the statements by the defendant, police reports, F.I. cards, STEP notices, and speaking to other officers or gang members" should not be considered "proof that the information contained in those statements was true." Jurors cannot logically follow these conflicting instructions. They cannot decide whether the information relied on by the expert "was true and accurate" without considering whether the specific evidence identified by the instruction, and upon which the expert based his opinion, was also true. "To admit basis testimony for the nonhearsay purpose of jury evaluation of the experts is … to ignore the reality that jury evaluation of the expert requires a direct assessment of the truth of the expert's basis." (Kaye et al., The New Wigmore: Expert Evidence, *supra*, § 4.7.2, pp. 179–180; see *Williams*, *supra*, 567 U.S. at pp. 125–128 [132 S. Ct. at pp. 2268–2269] (dis. opn. of Kagan, J.).)

Once we recognize that the jury must consider expert basis testimony for its truth in order to evaluate the expert's opinion, hearsay and confrontation problems cannot be avoided by giving a limiting instruction that such testimony should not be considered for its truth. If an expert testifies to case-specific out-of-court statements to explain the bases for his opinion, those statements are necessarily considered by the jury for their truth, thus rendering them hearsay. Like any other hearsay evidence, it must be properly admitted through an applicable hearsay exception. 11 Alternatively, the evidence can be admitted through an appropriate witness and the expert may assume its truth in a properly worded hypothetical question in the traditional manner.

In the present case, when the gang expert testified to case-specific facts based upon out-of-court statements and asserted those facts were true because he relied upon their truth in forming his opinion, he was reciting hearsay. Ordinarily, an improper admission of hearsay would constitute statutory error under the Evidence Code. Under *Crawford*, however, if that hearsay was testimonial and *Crawford*'s exceptions did not apply, defendant should have been given the opportunity to cross-examine the declarant or the evidence should have been excluded. 12 Improper admission of such prosecution evidence would also be an error of federal constitutional magnitude.

Our decision does not call into question the propriety of an expert's testimony concerning background information regarding his knowledge and expertise and premises generally accepted in his field. Indeed, an expert's background knowledge and experience is what distinguishes him from a lay witness, and, as noted, testimony relating such background information has never been subject to exclusion as hearsay, even though offered for its truth. Thus, our decision does not affect the traditional latitude granted to experts to describe background information and knowledge in the area of his expertise. Our conclusion restores the traditional distinction between an expert's testimony regarding background information and case-specific facts.

The Attorney General relies on "practical considerations" to support a contrary conclusion. The argument misses the mark. The Attorney General urges that excluding the content of testimonial hearsay would greatly hamper experts from giving opinions about gangs. The argument sweeps too broadly. Gang experts, like all others, can rely on background information accepted in their field of expertise under the traditional latitude given by the Evidence Code. They can rely on information within their personal knowledge, and they can give an opinion based on a hypothetical including case-specific facts that are properly proven. They may also rely on nontestimonial hearsay properly admitted under a statutory hearsay exception. What they cannot do is present, as facts, the content of testimonial hearsay statements. "[T]he confrontation clause is concerned solely with hearsay statements that are testimonial, in that they are out-of-court analogs, in purpose and form, of the testimony given by witnesses at trial." (*People v. Cage* (2007) 40 Cal.4th 965, 984 [56 Cal. Rptr. 3d 789, 155 P.3d 205] (*Cage*).) Thus, only when a prosecution expert relies upon, and relates as true, a *testimonial* statement would the fact asserted as true have to be independently proven to satisfy the Sixth Amendment.

Any expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so. Because the jury must independently evaluate the probative value of an expert's testimony, Evidence Code section 802 properly allows an expert to relate generally the kind and source of the "matter" upon which his opinion rests. A jury may repose greater confidence in an expert who relies upon well-established scientific principles. It may accord less weight to the views of an expert who relies

on a single article from an obscure journal or on a lone experiment whose results cannot be replicated. There is a distinction to be made between allowing an expert to describe the type or source of the matter relied upon as opposed to presenting, as fact, case-specific hearsay that does not otherwise fall under a statutory exception.

What an expert *cannot* do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception. It may be true that merely telling the jury the expert relied on additional kinds of information that the expert only generally describes may do less to bolster the weight of the opinion. The answer to this reality is twofold. First, the argument confirms that the proffered case-specific hearsay assertions *are* being offered for their truth. The expert is essentially telling the jury, "You should accept my opinion because it is reliable in light of these *facts* on which I rely." Second, in a criminal prosecution, while *Crawford* and its progeny may complicate some heretofore accepted evidentiary rules, they do so under the compulsion of a constitutional mandate as established by binding Supreme Court precedent.

In sum, we adopt the following rule: When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. 13 If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing.

D. *Testimonial Nature of the Statements in This Case*

1. *Legal Background*

That holding brings us to the second prong of the analysis in this criminal case. If an out-of-court statement is hearsay because it is being offered for the truth of the facts it asserts, is that statement testimonial hearsay? Throughout its evolution of the C*rawford* doctrine, the high court has offered various formulations of what makes a statement testimonial but has yet to provide a definition of that term of art upon which a majority of justices agree. *Crawford* itself provided no definition other than that the term "testimonial" "applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations. These are the modern practices with closest kinship to the abuses at which the Confrontation Clause was directed." (*Crawford*, *supra*, 541 U.S. at p. 68.) *Crawford* described the historical abuses leading to the adoption of the confrontation right, including the civil law practice of "requir[ing] justices of the peace to examine suspects and witnesses in felony cases and to certify the results to the court," which "came to be used as evidence in some cases." (*Id.* at p. 44.) *Crawford* clarified that "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused." (*Id.* at p. 50.)

Crawford was prosecuted for stabbing a man who allegedly tried to rape his wife. After Crawford's arrest, both he and his wife were interviewed by police at the stationhouse. The wife did not testify but the court admitted her statements about the stabbing. *Crawford* concluded that "[s]tatements taken by police officers in the course of interrogations are … testimonial under even a narrow standard." (*Crawford*, *supra*, 541 U.S. at p. 52.) Even if the interviews were not given under oath, if officers conducting them acted like the fact-collecting justices of the peace, the content of their reports was testimonial.

As the *Crawford* doctrine evolved, the court concluded that not all statements made in response to police questioning would constitute testimonial hearsay. In *Davis v. Washington* (2006) 547 U.S. 813 [165 L. Ed. 2d 224, 126 S. Ct. 2266] (*Davis*), the first of two companion cases (No. 05-5224), a woman called 911 seeking help because her boyfriend was in the process of beating her. The caller did not testify but her hearsay statements to the dispatcher were admitted in Davis's subsequent trial. The court concluded that even though the statements were made to a police employee, and some were made in response to the dispatcher's questions, the caller's statements were not testimonial. In doing so, the high court articulated a test based on the "primary purpose" for which the statements are made. "Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the *primary purpose* of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." (*Id.* at p. 822, italics added.) The *Davis* court concluded the statements were not testimonial because "the circumstances of [the] interrogation objectively indicate its primary purpose was to enable police assistance to meet an ongoing emergency." (*Id.* at p. 828.)

The *Davis* holding was set out in contrast to its companion case, *Hammon v. Indiana* (No. 05-5705) (*Hammon*). In *Hammon*, police were sent to a home following a report of domestic violence. They were met by Mrs. Hammon, who initially reported that there had been no problem. When interviewed outside her husband's presence, she acknowledged he had attacked her. An officer had her "'fill out and sign a battery affidavit'" describing the assault. (*Davis*, *supra*, 547 U.S. at p. 820.) Mrs. Hammon declined to testify at the subsequent bench trial but the interviewing officer related her statements and "authenticate[d]" her signed affidavit. (*Ibid*.) The high court concluded the statements were testimonial hearsay. "It is entirely clear from the circumstances that the interrogation was part of an investigation into possibly criminal past conduct" and "[t]here was no emergency in progress … ." (*Id.* at p. 829.) Although acknowledging the in-the-field interview was less formal than the station house questioning in *Crawford*, the court nevertheless reasoned "[i]t was formal enough" and "[s]uch statements under official interrogation are an obvious substitute for live testimony, because they do precisely *what a witness does* on direct examination; they are inherently testimonial." (*Id*. at p. 830.)

Michigan v. Bryant (2011) 562 U.S. 344 [179 L. Ed. 2d 93, 131 S. Ct. 1143] (*Bryant*) repeated the principle that a statement is testimonial if made "with a primary purpose of creating an out-of-court substitute for trial testimony." (*Id.* at p. 358.) There, in response to a dispatch, officers came upon a badly injured shooting victim lying in a parking lot. The victim answered questions about the circumstances, location, and perpetrator of the shooting. The victim died and Bryant was charged with his murder. The parking lot statements were admitted and the high court ruled they were not testimonial. *Bryant* refined the "primary purpose" standard by emphasizing the test is objective and takes into account the perspective of both questioner and interviewee: "[T]he relevant inquiry is not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred." (*Id.* at p. 360.) In concluding the shooting victim's statements to police were nontestimonial, *Bryant* observed that the officers' questioning of the victim was objectively aimed at meeting an ongoing emergency. (*Id*. at pp. 374–376.) The victim's responses indicated the shooter's whereabouts were unknown and there was "no reason to think that the shooter would not shoot again if he arrived on the scene." (*Id*. at p. 377.) Finally, the court observed that the circumstances in which the statements were made were far from formal. The scene was chaotic; the victim was in distress; no signed statement was produced. (*Ibid*.; see *People v. Blacksher* (2011) 52 Cal.4th 769, 816–818 [130 Cal. Rptr. 3d 191, 259 P.3d 370].)

A majority in *Davis*, *Hammon*, and *Bryant* adopted the distinguishing principle of primary purpose. Testimonial statements are those made primarily to memorialize facts relating to past criminal activity, which could be used like trial testimony. Nontestimonial statements are those whose primary purpose is to deal with an ongoing emergency or some other purpose unrelated to preserving facts for later use at trial. **14** It should be noted that Justice Thomas has consistently rejected the primary purpose test. He criticized the test as being "not only disconnected from history and unnecessary to prevent abuse" but also "yield[ing] no predictable results to police officers and prosecutors attempting to comply with the law." (*Davis*, *supra*, 547 U.S. at p. 838 (conc. & dis. opn. of Thomas, J.).) He reasoned that determining the primary purpose of a statement "requires constructing a hierarchy of purpose that will rarely be present—and is not reliably discernible. It will inevitably be, quite simply, an exercise in fiction." (*Id*. at p. 839.) Instead of the primary purpose test, Justice Thomas has consistently applied a test turning solely on whether the proffered statement was sufficiently formal to resemble the disapproved civil law procedure reflected, inter alia, in the "Marian statutes" that permitted use of an ex parte examination to establish facts. (See *Crawford*, *supra*, 541 U.S. at pp. 50–53.) In *Davis*, Justice Thomas described the degree of formality required as questioning resulting from a "formalized dialogue" or the taking of statements "sufficiently formal to resemble the Marian examinations" (*Davis*, at p. 840) but not "a mere conversation between a witness or suspect and a police officer" (*id*. at p. 838). (See *Williams*, *supra*, 567 U.S. at pp. 109–113 [132 S. Ct. at pp. 2259–2261] (conc. opn. of Thomas, J.); *Bryant*, *supra*, 562 U.S. at pp. 378–379 (conc. opn. of Thomas, J.).) **15**

The high court stepped beyond the realm of police questioning and applied *Crawford* to scientific test results in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305 [174 L. Ed. 2d 314, 129 S. Ct. 2527] (*Melendez-Diaz*), and *Bullcoming v. New Mexico* (2011) 564 U.S. 647 [180 L. Ed. 2d 610, 131 S. Ct. 2705] (*Bullcoming*). In *Melendez-Diaz*, crime lab analysts prepared documents certifying that a sample of material recovered from the defendant was tested and determined to contain an illegal drug. The certificates were sworn to before a notary public, as required by state law, and admitted at trial in lieu of the analyst's testimony. (*Melendez-Diaz*, at p. 308.) The high court reasoned the certificates "are quite plainly affidavits" (*id.* at p. 310) and "are functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination'" (*id.* at pp. 310–311). The court concluded: "[U]nder our decision in *Crawford* the analysts' affidavits were testimonial statements, and the analysts were 'witnesses' for purposes of the Sixth Amendment." (*Id.* at p. 311.)

In *Bullcoming*, an analyst tested the blood sample of an alleged drunk driver. In his lab report, the analyst attested he performed the test using normal protocol and signed the report. The report was admitted into evidence through a surrogate analyst "who was familiar with the laboratory's testing procedures, but had neither participated in nor observed the test on Bullcoming's blood sample."

(*Bullcoming*, *supra*, 564 U.S. at p. 651.) *Bullcoming* rejected the argument that an opportunity to cross-examine the surrogate analyst satisfied *Crawford* and *Melendez-Diaz*. *Bullcoming* noted that the testing analyst reported several facts relating to past events and human actions rather than machine-produced data. **16** The analyst's statements were "meet for cross-examination" (*Bullcoming*, at p. 660), yet the "surrogate testimony … could not convey what [the analyst] knew or observed about the events his certification concerned, *i.e.*, the particular test and testing process [the analyst] employed. Nor could such surrogate testimony expose any lapses or lies on the certifying analyst's part" (*id.* at pp. 661–662, fn. omitted). *Bullcoming* also rejected the claim that the lab report was nontestimonial. Even though the report was not a formal affidavit, as in *Melendez-Diaz*, it was a sufficiently formal and official document "created solely for an 'evidentiary purpose,' … made in aid of a police investigation, [and so] ranks as testimonial." (*Id*. at p. 664.)

The next case in the evolution of the doctrine was *Williams*. As an alternative to its not-for-the-truth hearsay analysis, **17** the plurality modified the "primary purpose" testimonial test by reasoning the Cellmark report "was not prepared for the primary purpose of *accusing a targeted individual*." (*Williams*, *supra*, 567 U.S. at p. 83 [132 S. Ct. at p. 2243] (plur. opn. of Alito, J.), italics added.) The *Williams* plurality stated: "[T]he primary purpose of the Cellmark report, viewed objectively, was not to accuse petitioner or to create evidence for use at trial. When the [police] lab sent the sample to Cellmark, its primary purpose was to catch a dangerous rapist who was still at large, not to obtain evidence for use *against petitioner*, who was neither in custody nor under suspicion at that time. Similarly, no one at Cellmark could have possibly known that the profile that it produced would turn out to inculpate petitioner—or for that matter, anyone else whose DNA profile was in a law enforcement database. Under these circumstances, there was no 'prospect of fabrication' and no incentive to produce anything other than a scientifically sound and reliable profile." (*Id.* at pp. 115–116 [132 S. Ct. at pp. 2243–2244], italics added.)

Both Justice Thomas's concurrence and the dissent criticized the plurality's expansion of the primary purpose test. Justice Thomas objected that the plurality's "reformulated" primary purpose test "lacks any grounding in constitutional text, in history, or in logic." (*Williams*, *supra*, 567 U.S. at p. 114 [132 S. Ct. at p. 2262] (conc. opn. of Thomas, J.).) The four dissenters agreed there was "no basis in our precedents" for the new test. (*Id.* at p. 135 [132 S. Ct. at p. 2273] (dis. opn. of Kagan, J.).) Justice Thomas reasoned in part that "a declarant could become a 'witnes[s]' before the accused's identity was known." (*Id*. at 115 [132 S.Ct. at p. 2262] (conc. opn. of Thomas, J.).) Similarly, the dissent observed that "the typical problem with laboratory analyses—and the typical focus of cross-examination—has to do with careless or incompetent work, rather than with personal vendettas. And as to that predominant concern, it makes not a whit of difference whether, at the time of the laboratory test, the police already have a suspect." (*Id.* at pp. 135–136 [132 S.Ct. at p. 2274] (dis. opn. of Kagan, J.), fn. omitted.) Both the concurrence and dissent also criticized the plurality's conclusion that an emergency existed because the test was done "to catch a dangerous rapist who was still at large." (*Id.* at p. 53 [132 S.Ct. at p. 2243] (plur. opn. of Alito, J.).) The separate opinions noted the DNA testing was conducted several months after the rape. (See *id.* at p. 116 [132 S.Ct. at p. 2263] (conc. opn. of Thomas, J.); *id.* at pp. 136–137 [132 S.Ct. at p. 2274] (dis. opn. of Kagan, J.).) The dissent would have concluded the Cellmark report was testimonial under the reasoning of *Melendez-Diaz* and *Bullcoming*. (*Id.* at pp. 140–141 [132 S.Ct. at p. 2277] (dis. opn. of Kagan, J.).)

While Justice Thomas agreed with the plurality that the report was not testimonial, he did so on the narrow ground that the statement was not sufficiently formal. The report lacked "the solemnity of an affidavit or deposition, for it is neither a sworn nor a certified declaration of fact," and also did not "attest that its statements accurately reflect the DNA testing processes used or the results obtained." (*Williams*, *supra*, 567 U.S. at p. 111 [132 S. Ct. at p. 2260] (conc. opn. of Thomas, J.).) He also reasoned "it was not the product of any sort of formalized dialogue resembling custodial interrogation." (*Ibid*.)

Our court applied *Williams* in the companion cases of *People v. Lopez* (2012) 55 Cal.4th 569 [147 Cal. Rptr. 3d 559, 286 P.3d 469] (*Lopez*) and *People v. Dungo* (2012) 55 Cal.4th 608 [147 Cal. Rptr. 3d 527, 286 P.3d 442] (*Dungo*). **18** *Lopez* involved a vehicular manslaughter prosecution. A criminalist, Willey, testified that a colleague from his lab, Pena, had analyzed a sample of the defendant's blood and concluded the blood-alcohol level was 0.09 percent. Willey was familiar with the procedures Pena used and, "based on his own 'separate abilities as a criminal analyst,' he too concluded that the blood-alcohol concentration in defendant's blood sample was 0.09 percent." (*Lopez*, at p. 574.) Pena's report was admitted into evidence. (*Ibid*.)

The majority opinion concluded Pena's report was not testimonial because it was insufficiently formal. (*Lopez*, *supra*, 55 Cal.4th at pp. 582–585.) Two concurrences also received majority support. The first agreed the report was not testimonial, but also reasoned that the testimony at issue did not fall within "a fair and practical boundary for applying the confrontation clause." (*Id*. at p. 586 (conc. opn. of Werdegar, J.).) "The demands of the confrontation clause were properly satisfied in this case by calling a well-qualified expert witness to the stand, available for cross-examination, who could testify to the means by which the critical instrument-generated data was produced and could interpret those data for the jury, giving his own, independent opinion as to the level of alcohol in defendant's blood sample." (*Id*. at p. 587

(conc. opn. of Werdegar, J.).) The second concurrence characterized the chain-of-custody notations in Pena's report as nontestimonial business records whose primary purpose was to facilitate laboratory operations, not to produce facts for later use at trial. (*Id*. at pp. 587–590 (conc. opn. of Corrigan, J.).)

Dungo more directly addressed the testimony of an expert witness. That case involved a murder prosecution in which the autopsy surgeon, Dr. Bolduc, was not called as a witness. Instead, pathologist Lawrence testified, relying on Bolduc's autopsy report and photographs. Lawrence opined the victim had been strangled, basing his opinion on factual observations noted in Bolduc's autopsy report, such as the presence of hemorrhaging in the neck and eyes, the purple color of her skin, the presence of an intact hyoid bone, and the fact that the victim had bitten her tongue shortly before death. (*Dungo*, *supra*, 55 Cal.4th at p. 614.) Neither Bolduc's report nor autopsy photos were admitted into evidence. (*Id*. at p. 615.)

The *Dungo* majority concluded the objective facts contained in an autopsy report were not sufficiently formal to be testimonial. (*Dungo*, *supra*, 55 Cal.4th at p. 619 (maj. opn. of Kennard, J.).) The majority also concluded the *primary* purpose of recording such facts was not to preserve evidence for a criminal prosecution. Instead, producing evidence "was only one of several purposes." (*Id*. at p. 621.) The first concurrence, which also garnered a majority, expanded on these points. With respect to formality, Justice Werdegar reasoned, "The process of systematically examining the decedent's body and recording the resulting observations is thus one governed primarily by *medical* standards rather than by legal requirements of formality or solemnity." (*Id*. at p. 624 (conc. opn. of Werdegar, J.).) She also observed that because coroners have a statutory duty to determine cause of death regardless of whether a criminal investigation is ongoing, "the nontestimonial aspects of these anatomical observations predominate over the testimonial." (*Id*. at p. 625.) A second concurrence, which likewise garnered a majority, concluded the factual observations in the autopsy report were not testimonial under the combined tests of the plurality and Justice Thomas in *Williams*. As discussed, Justice Thomas did not join in the plurality's reasoning but rested his concurrence on his narrower formality analysis. The second concurrence in *Dungo* determined that, because the *Dungo* facts could satisfy both the analyses of the *Williams* plurality and Justice Thomas, there was sufficient high court precedent to uphold Dungo's conviction. (*Dungo*, at pp. 629–633 (conc. opn. of Chin, J.).)

The high court returned to the primary purpose test in *Ohio v. Clark* (2015) 576 U.S. ___ [192 L. Ed. 2d 306, 135 S. Ct. 2173] (*Clark*). Clark was tried for beating a three-year-old boy, L.P. The child did not testify but the state presented evidence he told a teacher that Clark had assaulted him. *Clark* concluded that "[b]ecause neither the child nor his teachers had the primary purpose of assisting in Clark's prosecution, the child's statements do not implicate the Confrontation Clause and therefore were admissible at trial." (576 U.S. at p. ___ [135 S. Ct. at p. 2177].) The court also noted as an "additional factor" the informality of the statements. (*Id.* at p. ___ [135 S.Ct. at p. 2180].) The court reasoned: "There is no indication that the primary purpose of the [teacher/child] conversation was to gather evidence for Clark's prosecution. On the contrary, it is clear that the first objective was to protect L.P. At no point did the teachers inform L.P. that his answers would be used to arrest or punish his abuser. L.P. never hinted that he intended his statements to be used by the police or prosecutors. And the conversation between L.P. and his teachers was informal and spontaneous. The teachers asked L.P. about his injuries immediately upon discovering them, in the informal setting of a preschool lunchroom and classroom, and they did so precisely as any concerned citizen would talk to a child who might be the victim of abuse. This was nothing like the formalized station-house questioning in *Crawford* or the police interrogation and battery affidavit in *Hammon*." (*Id.* at p. ___ [135 S.Ct. at p. 2181].) **19**

2. *These Police Reports Are Testimonial*

As noted, Stow testified about defendant's five prior police contacts. He learned about three of these solely through police reports: (1) on August 11, 2007, defendant was standing nearby when his cousin was shot; **20** (2) on December 30, 2007, defendant's companion, a known Delhi member, was shot; and (3) on December 9, 2009, defendant was arrested with Delhi gang members in a garage where drugs and firearms were found. These reports were not admitted into evidence and are not part of the appellate record. However, Stow's testimony reveals that these reports were compiled during police investigation of these completed crimes. Stow relied upon, and related as true, these case-specific facts from a narrative authored by an investigating officer. While less formal, these reports are somewhat similar to the battery affidavit in *Hammon*. They relate hearsay information gathered during an official investigation of a completed crime.

When the People offer statements about a completed crime, made to an investigating officer by a nontestifying witness, *Crawford* teaches those hearsay statements are generally testimonial unless they are made in the context of an ongoing emergency as in *Davis* and *Bryant*, or for some primary purpose other than preserving facts for use at trial. Further, testimonial statements do not become less so simply

because an officer summarizes a verbatim statement or compiles the descriptions of multiple witnesses. As the *Davis* court observed: "[W]e do not think it conceivable that the protections of the Confrontation Clause can readily be evaded by having a note-taking policeman *recite* the unsworn hearsay testimony of the declarant, instead of having the declarant sign a deposition. Indeed, if there is one point for which no case—English or early American, state or federal—can be cited, that is it." (*Davis*, *supra*, 547 U.S. at p. 826.) Citing *Palmer v. Hoffman* (1943) 318 U.S. 109 [87 L. Ed. 645, 63 S. Ct. 477], *Melendez-Diaz* reasoned: "There we held that an accident report provided by an employee of a railroad company did not qualify as a business record because, although kept in the regular course of the railroad's operations, it was 'calculated for use essentially in the court, not in the business.' [Citation.] The analysts' certificates *—like police reports generated by law enforcement officials*—do not qualify as business or public records for precisely the same reason." (*Melendez-Diaz*, *supra*, 557 U.S. at pp. 321–322, italics added, fn. omitted.) **21**

Similarly, in rejecting the argument that testimony by a surrogate analyst satisfied confrontation principles because the testing analyst merely recorded objective facts, *Bullcoming* presented the following scenario: "Suppose a police report recorded an objective fact [such as an] address above the front door of a house or the read-out of a radar gun. [Citation.] Could an officer other than the one who saw the number on the house or gun present the information in court—so long as that officer was equipped to testify about any technology the observing officer deployed and the police department's standard operating procedures? As our precedent makes plain, the answer is emphatically 'No.'" (*Bullcoming*, *supra*, 564 U.S. at p. 660.)

Citing the *expanded* primary purpose test of the *Williams* plurality, the Attorney General argues that the police reports regarding the two 2007 shootings were not testimonial *as to defendant* because they did not accuse him of a crime. He was merely a witness in those shootings and was "neither in custody nor under suspicion at the time." **22** The argument overlooks the fact that the expanded test created by the *Williams* plurality was expressly rejected by a majority of justices in that case. (See *Williams*, *supra*, 567 U.S. at pp. 112–117 [132 S. Ct. at pp. 2261–2263] (conc. opn. of Thomas, J.); *id.* at pp. 134–136 [132 S.Ct. at pp. 2273–2274 (dis. opn. of Kagan, J.).) As those justices reasoned, the plurality's "targeted individual" addendum has no basis in the language of the confrontation clause, its history, or post-*Crawford* jurisprudence.

3. *This STEP Notice Is Testimonial*

Detective Stow also opined that defendant was a gang member based on the retained portion of a STEP notice issued in June 2011. In the course of his testimony, Stow related the content of statements made in the STEP notice. The Attorney General argues that STEP notices are not testimonial because they are not created for the primary purpose of producing evidence for later use at trial. She notes a STEP notice may serve many purposes, including "a community outreach effort to dissuade gang members and associates from continuing to engage in gang behavior by apprising them of the potential penalties they faced if they continued to do so." Defendant counters that STEP notices are testimonial because the issuing officer signs the notice under penalty of perjury and memorializes any incriminating statements for future evidentiary use. **23**

It may be true that "[a] STEP notice informs suspected individuals that law enforcement believes they associate with a criminal street gang." (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1414, fn. 1 [125 Cal. Rptr. 3d 903].) As Stow testified, a person need not be engaged in any criminal activity to receive a STEP notice. Because the *giving* of the notice has a community policing function designed to dissuade future gang participation and criminal activity, the Attorney General argues the notice is not produced for a primary purpose of establishing past facts at a future trial.

However, the portion of the STEP notice relied upon by Stow was that part *retained* by police. That portion recorded defendant's biographical information, whom he was with, and what statements he made. It cannot be said that *defendant's* primary purpose in making the statements was to establish facts to be later used against him or his companions at trial. However, it seems clear the officer recorded the information for that purpose. If that were not the case, there would appear to be no need for the issuing officer to swear to its accuracy. It also appears that another purpose of the STEP notice is its later use to prove that the recipient had actually been made aware that he was associating with a criminal street gang and that he might receive an enhanced punishment should he commit a future crime with members of that gang.

As to formality, the notice is part of an official police form containing the officer's sworn attestation that he issued the notice on a given date and that it accurately reflected the attendant circumstances, including defendant's statements. As such, the notice seems little different from the sworn attestation by

the analyst in *Melendez-Diaz*, and more formal than the unsworn report found testimonial in *Bullcoming*. (See *Bullcoming*, *supra*, 564 U.S. at p. 652; *Melendez-Diaz*, *supra*, 557 U.S. at pp. 308–311.)

The notice appears sufficiently formal to satisfy Justice Thomas's approach as well. In his *Williams* concurrence, Justice Thomas concluded the Cellmark report was not sufficiently formal to be testimonial. He reasoned the report was "neither a sworn nor a certified declaration of fact" because it did not "attest that its statements accurately reflect the DNA testing processes used or the results obtained." (*Williams*, *supra*, 567 U.S. at p. 111 [132 S. Ct. at p. 2260] (conc. opn. of Thomas, J.).) Here the converse is true. The issuing officer made a sworn declaration under penalty of perjury that the representations in the STEP notice were true.

4. *FI Cards May Be Testimonial*

Finally, Detective Stow also related facts from an FI card reflecting a police contact with defendant on December 4, 2009, while he was in the company of a known Delhi member. The Attorney General argues the primary purpose of FI cards is to gather information for "community policing efforts" and "potential civil injunctions." Defendant contends that the particular encounter memorialized in the FI card occurred "'during the course of the investigation'" of defendant's December 9, 2009, arrest for drug possession. Because the card was "produced" during that later investigation, defendant asserts its primary purpose was evidentiary, rendering it testimonial.

As defendant suggests, Stow's testimony regarding the origins of the FI card here was confusing. On cross-examination, Stow acknowledged he did not fill out the card. Defense counsel inquired how Stow could verify the FI card was accurate if he was not there when it was produced. Stow responded: "Well, there is also a police report that supports it. That F.I. *was written during the course of the investigation of his '09 arrest*." (Italics added.)

If the card was produced in the course of an ongoing criminal investigation, it would be more akin to a police report, rendering it testimonial. Because the parties did not focus on this issue, the point was not properly clarified, leaving the circumstances surrounding the preparation of the FI card unclear. We need not decide here whether the content of this FI card was testimonial. Even assuming it was not, for the reasons discussed below, we conclude that Stow's testimony based on the police reports and STEP notice was prejudicial.

5. *Harmless Error*

As noted, improper admission of hearsay may constitute state law statutory error. Here, however, much of the hearsay was testimonial. Accordingly, defendant contends that because the confrontation violation prejudiced him with respect to the gang enhancement, the enhancement must be stricken. The Attorney General argues that any confrontation error was harmless beyond a reasonable doubt. (See *People v. Capistrano* (2014) 59 Cal.4th 830, 874 [176 Cal. Rptr. 3d 27, 331 P.3d 201]; *Lopez*, *supra*, 55 Cal.4th at p. 585; *Cage*, *supra*, 40 Cal.4th at p. 979, fn. 8.) Determining prejudice requires an examination of the elements of the gang enhancement and the gang expert's specific testimony.

The gang enhancement applies to one who commits a felony "for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." (Pen. Code, § 186.22, subd. (b)(1).) "In addition, the prosecution must prove that the gang (1) is an ongoing association of three or more persons with a common name or common identifying sign or symbol; (2) has as one of its primary activities the commission of one or more of the criminal acts enumerated in the statute; and (3) includes members who either individually or collectively have engaged in a 'pattern of criminal gang activity' by committing, attempting to commit, or soliciting two or more of the enumerated offenses (the so-called 'predicate offenses') during the statutorily defined period." (*Gardeley*, *supra*, 14 Cal.4th at p. 617, italics omitted; see *People v. Hernandez* (2004) 33 Cal.4th 1040, 1047 [16 Cal. Rptr. 3d 880, 94 P.3d 1080].)

Defendant raises no confrontation claim against Detective Stow's background testimony about general gang behavior or descriptions of the Delhi gang's conduct and its territory. This testimony was based on well-recognized sources in Stow's area of expertise. It was relevant and admissible evidence as to the Delhi gang's history and general operations.

However, Stow's case-specific testimony as to defendant's police contacts was relied on to prove defendant's intent to benefit the Delhi gang when committing the underlying crimes to which the gang

enhancement was attached. Stow recounted facts contained in the police reports and STEP notice to establish defendant's Delhi membership. While gang membership is not an element of the gang enhancement (*People v. Valdez* (2012) 55 Cal.4th 82, 132 [144 Cal. Rptr. 3d 865, 281 P.3d 924]), evidence of defendant's membership and commission of crimes in Delhi's territory bolstered the prosecution's theory that he acted with intent to benefit his gang, an element it was required to prove.

The Attorney General argues any confrontation violation was harmless because it was uncontradicted that Delhi is a street gang whose primary activities include drug sales and illegal weapons possession. This assertion may be true, but the great majority of evidence that defendant associated with Delhi and acted with intent to promote its criminal conduct was Stow's description of defendant's prior police contacts reciting facts from police reports and the STEP notice. The Attorney General observes that, when arrested for the charged offenses, defendant possessed several bindles of drugs and an illegal firearm, reflecting the same activities as the gang's. Further, Stow testified that no one could sell drugs in gang territory without paying a tax to the gang. If defendant was selling drugs in Delhi territory, he could not have done so without paying a tax, which would have shown he acted with intent to benefit the gang regardless of whether he was a member. Thus, the Attorney General urges, "Detective Stow's testimony regarding appellant's five prior contacts was mere surplusage."

These arguments are unconvincing. Excluding Stow's case-specific hearsay testimony, the facts of defendant's underlying crimes revealed that, acting alone, he possessed drugs for sale along with a weapon to facilitate that enterprise. Stow provided general and admissible evidence that if a nonmember sold drugs in a gang's territory and failed to pay a tax, that person risked gang retaliation. However, contrary to the Attorney General's claim, one cannot deduce, merely from this evidence, that when defendant possessed drugs for sale in Delhi territory, he was associated with the gang, would pay a tax, or intended to "promote, further, or assist in any criminal conduct by gang members." (Pen. Code, § 186.22, subd. (b)(1).) A drug dealer may possess drugs in saleable quantities, along with a firearm for protection, regardless of any gang affiliation, and without an intent to aid anyone but himself. The prosecution's theory of the case was that defendant acted in association with Delhi and committed the underlying offenses intending to benefit the gang. The main evidence of defendant's intent to benefit Delhi was Stow's recitation of testimonial hearsay. Under these circumstances, we cannot conclude that admission of Stow's testimony relating the case-specific statements concerning defendant's gang affiliation was harmless beyond a reasonable doubt. We therefore reverse the true findings on the street gang enhancements. 24

III. DISPOSITION

The true findings on the street gang enhancements are reversed. The judgment of conviction is otherwise affirmed and the matter remanded to the Court of Appeal for proceedings not inconsistent with this opinion.

Cantil-Sakauye, C. J., Werdegar, J., Chin, J., Liu, J., Cuéllar, J., and Kruger, J., concurred.

Footnotes

1 Penal Code former section 12021, subdivision (a)(1) (now § 29800, subd. (a)(1)), Health and Safety Code section 11370.1, subdivision (a), and Penal Code section 186.22, subdivisions (a) and (b).

2 Penal Code section 667.5, subdivision (b).

3 This acronym is a reference to the California Street Terrorism Enforcement and Prevention Act. (Pen. Code, § 186.20 et seq.)

4 Defendant admitted the allegation that he had served a prior prison term.

5 The reversal was based on *People v. Rodriguez* (2012) 55 Cal.4th 1125 [150 Cal. Rptr. 3d 533, 290 P.3d 1143], which established that the substantive offense of active gang participation required "that a person commit an underlying felony with at least one other gang member." (*Id.* at p. 1134.)

6 Because *Crawford* is based on the Sixth Amendment right to confrontation, its rule has not been extended to civil proceedings or circumstances in which hearsay is offered *by* an accused in his own defense. Neither we nor the high court has had occasion to consider the rule when a defendant offers hearsay that may work to the detriment of a codefendant.

7 *Williams* involved a bench trial. The Cellmark report itself was not admitted into evidence. The expert witness was not a Cellmark employee. (*Williams*, *supra*, 567 U.S. at pp. 63–64 [132 S. Ct. at p. 2231].)

8 Justice Thomas concurred in the judgment because he agreed that the Cellmark report was not testimonial due to its lack of sufficient formality. (*Williams*, *supra*, 567 U.S. at pp. 110–111 [132 S. Ct. at pp. 2259–2260] (conc. opn. of Thomas, J.); see discussion *post*, at p. 692.)

9 There may be times when an expert does not rely on the truth of a statement when reaching his opinion. For example, an expert may learn that a gang member falsely claimed to have committed a crime to shield an associate from guilt. The expert might conclude that conduct was an example of expected gang loyalty. In such a case the expert could relate the content of the statement and would not be reciting hearsay because the statement would not be offered to prove the speaker did the deed. There may also be times, in a wide variety of cases, when the fact that a statement was made is relevant, regardless of whether the statement was true.

10 Other courts have likewise found persuasive the reasoning of a majority of justices in *Williams* that expert basis testimony is admitted for its truth. (See, e.g., *State v. Navarette* (N.M. 2013) 294 P.3d 435, 439; *Young v. U.S.* (D.C. 2013) 63 A.3d 1033, 1047, fn. 53; *Com. v. Greineder* (2013) 464 Mass. 580, 592.)

11 As noted, *ante*, multiple levels of hearsay must each fall within an applicable hearsay exception. (*Riccardi*, *supra*, 54 Cal.4th at p. 831.)

12 The People made no showing that the various declarants were unavailable, nor do they argue that defendant forfeited his confrontation rights by any wrongdoing.

13 We disapprove our prior decisions concluding that an expert's basis testimony is not offered for its truth, or that a limiting instruction, coupled with a trial court's evaluation of the potential prejudicial impact of the evidence under Evidence Code section 352, sufficiently addresses hearsay and confrontation concerns. (See, e.g., *People v. Bell* (2007) 40 Cal.4th 582, 608 [54 Cal. Rptr. 3d 453, 151 P.3d 292]; *People v. Montiel*, *supra*, 5 Cal.4th at pp. 918–919; *People v. Ainsworth* (1988) 45 Cal.3d 984, 1012 [248 Cal. Rptr. 568, 755 P.2d 1017]; *People v. Milner* (1988) 45 Cal.3d 227, 238–240 [246 Cal. Rptr. 713, 753 P.2d 669]; *Coleman*, *supra*, 38 Cal.3d at pp. 91–93.) We also disapprove *People v. Gardeley*, *supra*, 14 Cal.4th 605, to the extent it suggested an expert may properly testify regarding case-specific out-of-court statements without satisfying hearsay rules.

14 In *Bryant*, the court noted, "there may be *other* circumstances, aside from ongoing emergencies, when a statement is not procured with a primary purpose of creating an out-of-court substitute for trial testimony." (*Bryant*, *supra*, 562 U.S. at p. 358.) The existence of an ongoing emergency "is not the touchstone of the testimonial inquiry" (*id*. at p. 374) but is "simply one factor … that informs the ultimate inquiry regarding the 'primary purpose' of an interrogation" (*id*. at p. 366).

15 Justice Thomas would also exclude under the confrontation clause "technically informal statements when used to evade the formalized process." (*Davis*, *supra*, 547 U.S. at p. 838 (conc. & dis. opn. of Thomas, J.).)

16 As we have noted, "Only people can make hearsay statements; machines cannot." (*People v. Leon* (2015) 61 Cal.4th 569, 603 [189 Cal. Rptr. 3d 703, 352 P.3d 289]; see *People v. Goldsmith* (2014) 59 Cal.4th 258, 274 [172 Cal. Rptr. 3d 637, 326 P.3d 239].)

17 See discussion, *ante*, at pages 680–682.

18 We also decided a third case, *People v. Rutterschmidt* (2012) 55 Cal.4th 650 [147 Cal. Rptr. 3d 518, 286 P.3d 435], which involved a confrontation claim against a lab director's testimony about a test he did not conduct. We concluded the testimony was harmless beyond a reasonable doubt without deciding whether its admission was proper. (*Id*. at p. 661.)

19 In *Clark*, the high court discussed for the first time an issue it had "repeatedly reserved," i.e., "whether statements to persons other than law enforcement officers are subject to the Confrontation Clause." (*Clark*, *supra*, 576 U.S. at p. ___ [135 S. Ct. at p. 2181].) The court "decline[d] to adopt a categorical rule excluding them from the Sixth Amendment's reach" but noted "such statements are much less likely to be testimonial than statements to law enforcement officers." (*Ibid*.) Accordingly, whether a statement was made by or to a government investigating agent remains an important, but not dispositive, part of the analysis.

20 This report contained a second level of hearsay: the cousin's statement to the reporting officer.

21 Business records are defined as writings made in the regular course of business, at or near the time of the event, and created through sources of information and a method of preparation reflecting its trustworthiness. (Evid. Code, § 1271; see also Evid. Code, § 1280 [record by public employee].) When a record is not made to facilitate business operations but, instead, is primarily created for later use at trial, it does not qualify as a business record. (See *Lopez*, *supra*, 55 Cal.4th at pp. 587–590 (conc. opn. of Corrigan, J.).)

22 The Attorney General appears to concede that the police report regarding the December 9, 2009, incident, in which defendant was arrested in the garage, was accusatory as to him.

23 It does not appear that Stow specifically testified an officer issuing a STEP notice signs the notice or swears to its accuracy. However, the Attorney General appears to agree that the STEP notice was "sworn by the officer under penalty of perjury … ."

24 Whether the gang allegations may be retried is an issue neither raised nor briefed and we express no views on it.

Content Type:

Terms:

Narrow By: -None-

Date and Time: Jan 23, 2018 07:26:42 p.m. EST

Family Law: AB 1058 Funding Allocation Methodology and Best Practices: Next Steps

Annual Agenda Items:

AB 1058 Funding Allocation Joint Subcommittee:

To enrich recommendations to the council and avoid duplication of effort, members of the committee will continue to collaborate with members of the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and representatives from the California Department of Child Support Services to reconsider the allocation methodology developed in 1997 and make recommendations to the council for fiscal year 2019-20 allocations. In addition to approving the finalized recommendations on a funding methodology to allocate AB 1058 grant funds, the committee will examine strategies for courts to employ to manage their existing workloads within their future funding allocations to ensure that access to justice in child support matters is not compromised by the reallocation of funds.

Background:

On April 17, 2015, the Judicial Council approved the formation of a joint subcommittee—comprising representatives from the Family and Juvenile Law, Trial Court Budget, and Workload Assessment Advisory Committees and the California Department of Child Support Services—to reconsider the AB 1058 Child Support Commissioner and Family Law Facilitator Program funding allocation methodology. At the February 26, 2016 meeting, the Judicial Council determined that the funds should continue to be allocated using the historical funding allocation model for FY 2016–2017. The council instructed the joint subcommittee to continue to (1) develop a framework for a workload-based funding methodology for implementation no later than FY 2018–2019, and (2) coordinate with DCSS on its current review of funding allocations for the local child support agencies.

Subsequently, because the Trial Court Budget Advisory Committee's (TCBAC) Funding Methodology Subcommittee (FMS) is in the process of evaluating WAFM (Workload-based Funding and Allocation Methodology) and its continued impact on trial court budgets, it was decided that the any decision regarding a funding methodology for AB 1058 should be postponed for at least one additional fiscal year to allow for FMS to complete its work reviewing the WAFM funding methodology for allocating trial court funds and also to allow additional time for the AB 1058 Joint Subcommittee to gather additional information that may impact a proposed AB1058 funding methodology.

Update:

The Joint Subcommittee met most recently on Friday, January 19, 2018 and determined that it needed to set a series of meetings to identify the principles/objectives that should inform a funding allocation methodology and then work to develop a workload based approach that accomplishes those principles. In addition, the subject matter experts who have been advising the Joint Subcommittee have developed recommendations for reform that might improve the efficiency and effectiveness of the AB 1058 program.

Factors Affecting AB 1058 Program Funding

AB 1058 Funding Allocation
Joint Subcommittee Meeting
December 11, 2017

1

Factors Affecting AB 1058 Program Funding

- Federal Title IV-D Program Requirements
- Federal Regulation Service Mandates
- Contractual Requirements
- State Legislative Mandate
- Funding Challenges
- Measuring FLF Workload

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Federal Title IV-D Program Requirements

42 USC § 654:

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

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California's Title IV-D Program

- Per 42 USC § 654(3), Department of Child Support Services is the administrator of the State plan and responsible to ensure compliance with federal requirements and protecting federal funds.
- A contract for services and funding is negotiated between the Judicial Council and the Department of Child Support Services.
- A contract for services is entered into with each court (one for CSC and one for FLF) for funds and to meet program requirements consistent with state and federal law.

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Federal Requirements

- Federal regulations govern certain timeframes to ensure service levels: These include:
  - Within 90 days of locating an alleged parent, establish an order for support or complete service to commence proceedings to establish an order.
  - Establish a support order for 75% of cases within 6 months and 90% of cases within 12 months after the date of service.
  - Complete the review and adjustment process to establish or modify an order within 180 calendar days.
  - Review and adjust orders every three years.

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Contractual Requirements

- In addition to the federal regulations, court contracts include some service requirements, such as:
  - Minimum time processing standard requires all documents to be filed within 10 court days
  - Hearings must be calendared within 5 days of filing of moving papers
  - Mandatory training for court program staff
  - Accurately document time working on the program

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State Legislative Mandate

- FC 4250(a)(4): "There is a compelling state interest in creating an expedited process in the courts that is cost-effective and accessible to families, for establishing and enforcing child support orders in cases being enforced by the local child support agency."
- FC 10001(a)(4): "There is a compelling state interest in having a speedy, conflict-reducing system for resolving issues of child support, spousal support, and health insurance that is cost-effective and accessible to families that cannot afford legal representation."

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State Legislative Mandate

- FC 4251(a): "Commencing July 1, 1997, each superior court shall provide sufficient commissioners to hear Title IV-D child support cases filed by the local child support agency…."
- FC 4252(a): "The superior court shall appoint one or more subordinate judicial officers as child support commissioners to perform the duties specified in Section 4251…"

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State Legislative Mandate

- FC 10002: "Each superior court shall maintain an office of the family law facilitator. The office of the family law facilitator shall be staffed by an attorney licensed to practice law in this state who has mediation or litigation experience, or both, in the field of family law. The family law facilitator shall be appointed by the superior court."

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Funding Challenges: Flat-Funded

- The AB1058 Program has been flat-funded since 2008 but cost have increased.
- Federal Drawdown Funding - To maintain service levels, JCC negotiated with DCSS to allow participation in the federal drawdown program.
  - Intended to be short-term fix until more funds could be obtained for the program
  - Courts are required to fund 1/3 to drawdown the feds 2/3 matching funds

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Measuring FLF Workload

- The workload of FLFs is not always tied to filings.
  - Ex: FLFs may assist litigants wishing to modify support, who after meeting with the FLF determine filing for a modification is not in their interests. Nothing is filed, but the workload can be substantial.
  - Ex: Service delivery methods differ to meet the specific needs of the customers.

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AB1058 Funding Fact Sheet

The AB1058 Program is a ***service delivery*** contract between the JCC and DCSS. The program is responsible for ensuring children and families receive court-ordered financial and medical support.

Program Funding in Millions

	Base	FDD	Total
CSC	$32	$13	$45
FLF	$10.5	$4.5	$15
Total	$32.5	$17.5	**$60**

*FDD includes ⅓ match by courts

The Program has been flat funded since **2008.** When inflation is accounted for this is equivalent to **13%** funding cut to the program (According to BLS estimates).

86% of program costs are used for personnel

47 Courts have less than a full-time Commissioner

2015 ANNUAL FEDERAL SELF-ASSESSMENT COMPLIANCE REVIEW REQUIREMENTS CHART

INTAKE 	20 calendar days to open or re-open a case. (CA02)*
LOCATE 	75 calendar days to access all appropriate state, federal and local locate sources after it has been determined that the NCP is lost or assets need to be located. (CA03, CB02 & CC03)* Quarterly locate attempts must be made on each case in which the location of the NCP and/or assets is needed in order to proceed. (CA04, CB03 & CC04)*
ESTABLISHMENT 	Was a support order established during the review period? (Notwithstanding Provision) (CA01)* 90 calendar days to serve or document attempted service from the date the NCP is located. (CA05)* Latest required action was used appropriately. (CA06)*
REVIEW & ADJUSTMENT 	Was a modification of the support order issued as a result of the review and adjustment process? (Notwithstanding Provision) (CB01)* 180 calendar days to complete the review and adjustment process (including obtaining a new order) from the date it was determined that a review would be conducted (CB04)* At least once every 3 years, the "Review and Adjustment Notice" (DCSS 0282) must be sent to both the custodial party and non-custodial parent in a current non-assistance case. (CB05)* At least once every 3 years, a mandatory TANF review must be conducted for current assistance cases. (CB06)* Latest required action was used appropriately. (CB07)*
ENFORCEMENT 	A wage assignment must include both current support and arrears, if applicable, and withhold no more than 50% of the NCP's disposable earnings for both current support and medical, if applicable, or the amount indicated in the court order, whichever is less. (CC01)* Was a collection received from income withholding during the last quarter of the review period, or if income withholding was not appropriate, was a collection otherwise received during the review period? (Notwithstanding Provision) (CC02)* 2 business days to send a wage assignment if new employee information was received from the State Directory of New Hires (SDNH). (CC05)* 30 calendar days to initiate administrative action, if assets are located and the NCP's delinquency equals one month's child support (if service of process is not required), and 60 calendar days to initiate legal action, if assets are located and the NCP's delinquency equals one month's child support (if service of process is required). (CC06)* Submit every case that has an arrearage to FTB/IRS intercepts (if the social security number is known). (CC07)* Latest required action was used appropriately. (CC08)*
DISBURSEMENT 	2 business days to disburse a payment to the non-assistance CP after the date of receipt by the SDU. (CD01)*
INTERGOVERNMENTAL 	<u>INTERGOVERNMENTAL-INITIATING CASES</u> 20 calendar days to refer case to the responding state central registry. (CE01)* 30 calendar days to provide requested information to the responding state or notify them when the information will be provided. (CE02)* 20 calendar days to send request to the responding state for review/adjustment. (CE03)* 10 working days to inform the responding state of case closure. (CE04)* 10 working days to forward new information received to the responding state. (CE05)* 30 working days to provide additional or new information to the responding state regarding a controlling order determination and reconciliation of arrearages, or notify them when the information will be provided. (CE06)*

INTERGOVERNMENTAL-RESPONDING CASES

INTERGOVERNMENTAL

NOTE: Intergovernmental cases are subject to the same time frames and notice requirements as non-intergovernmental. Intergovernmental initiating cases must meet additional requirements as specified in that section of this form.

10 working days from date referral was received to date acknowledgment of referral receipt was sent the initiating state. (CE07)*

5 working days from date case status request was received, to date case status response was sent the initiating state. (CE08)*

10 working days to transfer a case to another California county and notify the initiating state when the NCP moves to another county. (CE09)*

10 working days to notify the initiating state of NCP's new location and to send case documentation the state NCP is located. (CE10)*

2 business days to disburse a payment to the intergovernmental-initiating agency after the date of receipt by the SDU in a non-assistance case. (CE11)*

10 working days to notify the initiating state of new information. (CE12)*

30 working days to provide requested information to the initiating state or notify them when the information will be provided for a controlling order of determination and reconciliation of arrearages. (CE13)*

10 working days from being informed of case closure by the initiating state, to stop the responding state income withholding order and close the case. (CE14)*

Latest required action was used appropriately. (CE15)*

MEDICAL SUPPORT

For support orders being established or modified during the review period, was medical support ordered? (CF01)*

2 business days to send the NMSN to an employer once the place of employment is identified by the State Directory of New Hires (SDNH). (CF02)*

If the medical provision was no longer enforceable, was the employer notified promptly within 10 calendar days? (CF03)*

CLOSURE

If the child support case was closed during the review period, was it closed in accordance with case closure criteria? (CG01)*

A 60 calendar days notice of intent (NOI) to close is required on all cases (exceptions permitted). (CG02)*

Time frames begin the day the information first becomes known to the Local Child Support Agency

If the information is received...	Then the time frame starts...
By Application/Referral for Services	On the day the application/referral is received
By Postal Mail	On the day the mail is received
By Telephone Call/Voicemail message	On the day the message is left on voicemail, or the day of the telephone call
In person (walk-ins)	On the day the person comes in and leaves information
From Automated Sources	On the day LCSA receives locate or asset information sufficient to take the next appropriate action

Each alpha-numeric reference, for example "CA02", is an identifier for each specific compliance requirement used to assess cases as part of the 2015 Annual Federal Self-Assessment Review. This chart is not a complete list of all statutory and regulatory timeframes and compliance requirements that pertain to case management.

Statewide Jurisdiction Proposal for 1058 Commissioners

Amend FC 4251(d)

Many of the smaller courts do not have full time commissioners and, for many, the child support commissioner is the only commissioner on staff. Commissioners cannot practice law and, therefore, it is sometimes hard for courts to locate willing commissioners. Some have doubled up functions, child support commissioner and research attorney, and others have multi-court contracts. Some are overworked, and others may have time (especially if the driving component is greatly reduced).

Even though CCMS was never implemented, many courts have similar computer case management systems. And learning others would be a training issue. With electronic filings, scanning and citrix, most court pleadings, with appropriate access, can be viewed anywhere. Why not take advantage of the technology and allow commissioners throughout the state to assist when needed?

The goal is not to eliminate current positions but to begin a transition plan that would assist all the courts. The state could hire commissioners that would be responsible to several courts with benefits and travel expenses but also with the understanding that many of the hearing would be by videoconferencing. When not needed for hearings those commissioners could review defaults, fee waivers, and other pleadings statewide. While s/he may not know the local culture, that is also a training issue. S/he could learn San Francisco's EPIC procedures or LAs default issues. They could be located regionally (I know that's a bad word) and primarily assist the courts in their region but be available to assist, as needed, anywhere in the state. These commissioners would also have the benefit of seeing how various procedures are working and could act as an advisor/consultant for best practices and efficiencies, helping the court, as a branch, provide better and more consistent services statewide.

Initial organization could be funded with unused anticipated and midyear allocations.

Proposal: Amend FC 4251(d) to allow Child Support Commissioners to have statewide jurisdiction. If that can't be accomplished, at least approve the SME proposal to allow commissioners to be physically in different counties so those courts that want to swear in additional, already sitting, commissioners to help with rulings could do so, even though less likely to volunteer with the current funding situation. At least that would open the door.

> Family Code section 4251.
>
> (a) Commencing July 1, 1997, each superior court shall provide sufficient commissioners to hear Title IV-D child support cases filed by the local child support agency. The number of child support commissioners required in each county shall be determined by the Judicial Council as prescribed by paragraph (3) of subdivision (b) of Section 4252. All actions or proceedings filed by the local child support agency in a support action or proceeding in which enforcement services are being provided pursuant to Section 17400, for an order to establish, modify, or enforce child or spousal support, including actions to establish paternity, shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to paragraph (7) of

subdivision (b) of Section 4252. All actions or proceedings filed by a party other than the local child support agency to modify or enforce a support order established by the local child support agency or for which enforcement services are being provided pursuant to Section 17400 shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to paragraph (7) of subdivision (b) of Section 4252.

(b) The commissioner shall act as a temporary judge unless an objection is made by the local child support agency or any other party. The Judicial Council shall develop a notice which shall be included on all forms and pleadings used to initiate a child support action or proceeding that advises the parties of their right to review by a superior court judge and how to exercise that right. The parties shall also be advised by the court prior to the commencement of the hearing that the matter is being heard by a commissioner who shall act as a temporary judge unless any party objects to the commissioner acting as a temporary judge. While acting as a temporary judge, the commissioner shall receive no compensation other than compensation as a commissioner.

(c) If any party objects to the commissioner acting as a temporary judge, the commissioner may hear the matter and make findings of fact and a recommended order. Within 10 court days, a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is in error. In both cases, the judge shall issue a temporary order and schedule a hearing de novo within 10 court days. Any party may waive his or her right to the review hearing at any time.

(d) The commissioner shall, where appropriate, do any of the following:

(1) Review and determine ex parte applications for orders and writs.

(2) Take testimony.

(3) Establish a record, evaluate evidence, and make recommendations or decisions.

(4) Enter judgments or orders based upon voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(5) Enter default orders and judgments pursuant to Section 4253.

(6) In actions in which paternity is at issue, order the mother, child, and alleged father to submit to genetic tests.

(e) The commissioner shall, upon application of any party, join issues concerning custody, visitation, and protective orders in the action filed by the local child support agency, subject to Section 17404. After joinder, the commissioner shall:

(1) Refer the parents for mediation of disputed custody or visitation issues pursuant to Section 3170 of the Family Code.

(2) Accept stipulated agreements concerning custody, visitation, and protective orders and enter orders pursuant to the agreements.

(3) Refer contested issues of custody, visitation, and protective orders to a judge or to another commissioner for hearing. A child support commissioner may hear contested custody, visitation, and restraining order issues only if the court has adopted procedures to segregate the costs of hearing Title IV-D child support issues from the costs of hearing other issues pursuant to applicable federal requirements.

(f) The local child support agency shall be served notice by the moving party of any proceeding under this section in which support is at issue. Any order for support that is entered without the local child support agency having received proper notice shall be voidable upon the motion of the local child support agency.

(Amended by Stats. 2000, Ch. 808, Sec. 43. Effective September 28, 2000.)

Proposals From 1058 Reallocation SME Group

It needs to be determined if any of the following should be proposed to the Council for adoption and, if so, what can be accomplished by rule of court and what needs legislative change.

1. FC 4204 provides that DCSS may notify the court when it begins or concludes providing services. The form (FL-632) is mandatory but the requirement to file is discretionary. The consensus is that it is used inconsistently. The recommendation is for the form to be required every time DCSS enters or exits a case. This also an issue in UIFSA cases under FC 17404.4. DCSS says it's a workload issue.

   Reason needed: The courts do not know if DCSS is involved in a case or not. It's not as much of an issue if DCSS files the RFO but if a litigant is filing the court needs to know whether to set the matter in the DCSS department. If the court thinks DCSS is involved, the matter gets set before the commissioner and it either needs to be transferred to the correct department, if available, continued (more work for the court and requires the litigant to come another time) or the commissioner hears the matter but cannot bill the grant for the time. If the court thinks DCSS is not involved and it is, the matter gets set in the family law department and either DCSS notifies by Responsive Declaration and the matter is reassigned or, if discovered at the time of the hearing, reassigned or continued, again extra work for the court and a disservice to the litigants.

2. FC 4009 provides that child support may go back to the date of filing if the respondent/defendant was served within 90 days of filing. If served more than 90 days after filing, the support commences upon service unless there is evidence of evasion. DCSS cases, except in San Francisco, have a high default rate. In a family law default, the court reviews the judgment and can approve, reject or set for hearing and establish a commencement date based on the evidence, e.g. not attempts to serve for months/years, timely service and request for judgment, served timely but didn't request judgment for years, etc. In DCSS cases, FC 17400 requires that the judgment match the proposed judgment, including the amount of child support and commencement date. DCSS has the information regarding service – attempts, locate efforts, etc. The proposal is to allow the DCSS Child Support courts to review cases in which the defendant was not served within 90 days of filing to determine the appropriate commencement date and, in a default matter, the petitioner, not the respondent, has the burden regarding evasion.

   Reason needed: Based on anecdotal evidence, most cases where the defendant hasn't been served within 90 days are not due to evasion but failure to locate. The court needs to be able to balance the needs of the custodial parent or county with the obligations of the non-custodial parent. Years ago, the legislature eliminated the 3 year look back but some of these cases end up with a similar result, putting the payor in a significant hole at the time of the judgment and effecting the performance measures.

3. Related to #2 above, is the issue of the amount of support specified in the petition. Currently, if DCSS locates current income information after the filing of the petition and before the judgment is entered, it needs to file and amended petition and re-serve to obtain a default judgment for the new amount. As stated above, otherwise, the judgment must match the proposed judgement served with the petition. There needs to be a simpler way to inform the court and parties of this new information so a judgment, based on the most accurate information, can be entered. This will probably require a change to FC 17400.

   Reason needed: There is no efficient way to amend the amount of support in the initial petition. This may benefit either party as the updated income information may mean a greater or lesser amount of support but, in either event, a more accurate amount of support.

4. Related to #3 above, is the issue of mandatory add-ons, mainly child care. Health insurance has a provision that it's required if available at reasonable cost which is defined as %5 of gross income or less. There is no equivalent caveat for child care. Recent case law considered notice obligations regarding child care insufficient to terminate the obligation prior to the date of filing even if child care had ended years before. Initial proposal was to change health insurance provisions since the Affordable Care Act had penalties for failure of the parent claiming the exemption to assure there was insurance. The changes in the new tax laws may have alleviated that requirement so we should watch to see the outcome and reevaluate based on the changes. (I personally still believe that health premiums should be an expense allocated between the parents but that was not one of the recommendations from the guideline study.) However, child care remains an issue. Problem is significant changes in amounts but mainly when order does or does not include child care and the opposite is true. Finally, regarding child care and uninsured medical, generally request is 50% even if child support is being set at zero due to no ability to pay. If low income, this is a common area where it places the payor significantly below the poverty level. The proposal was to have the orders say, "not enforceable unless actually incurred," and notice requirements if change in amount, but not sure either will pass muster. Also, relate amount to ability to pay.

   Reason needed: Not only to avoid windfall by one parent or the other, but would decrease motions to add or delete add-on expenses and reduce hearings regarding arrears.

5. Add the custodial parent as a party from the date of filing. Currently FC 17404(e)(1) joins the custodial parent as a party upon entry of judgment. This means that if the same parties want to obtain other orders that could be in the DCSS case such a custody and they file before the judgment is entered, a new case must be opened. Also, if genetic testing becomes an issue, the custodial parent is not a party the court can order to test. My understanding of the legislative history was that there was concern regarding personal service upon the custodial parent. A possible solution could be that the parent opening a case with DCSS, whether through Health and Human Services (aid) or directly (either the custodial or non-custodial parent) agrees, in writing, that s/he will maintain a current address with DCSS and pleadings sent to that address are deemed served. This is probably better than the current scheme where the custodial parent is joined in the judgment and has never been served. RFOs for non-support issues would still

require personal service. If not going to include upon filing need to be sure custodial parent noticed that will be joined and possible obligations – testing, maintaining health insurance, etc.

Reason needed: Courts are managing multiple cases involving the same parties. They get set in different departments, may have conflicting orders and requires significant workload by court staff to locate and manage.

6. Related to #4 above, is changing the confidentiality of UPA actions. UPA actions are to be confidential. When enacted, this was to protect children born outside of wedlock from public criticism. Recent statistics show that over 50% of children are now born to unmarried parents so the social stigma no longer exists. Anecdotal information is that different courts handle this differently. Some keep the entire file confidential and others make it available to the public after judgment is entered. DCSS cases, however are public though many, if not most, involve unmarried parties. The two parts of the family code should be consistent. Litigants shouldn't be treated differently based on whether they are on aid or whether they choose or not to have DCSS assist with child support. In addition, other cases involving the same parties cannot be consolidated with a UPA as public and confidential files cannot be consolidated. Another argument in favor of making UPA matters public is the Custody and Support Petitions are public and most of those involve unmarried parents who do not have parentage issues – generally have Voluntary Declarations of Parentage.

   Reason needed: Like #4, courts need to maintain multiple files as public matters cannot be consolidated with confidential ones.

7. Also related to above, DCSS can file their own action or file in an existing proceeding. The practice varies greatly between counties. In some counties, DCSS files a new proceeding for each later born child and some file supplemental petitions in existing cases. DCSS should be required to look for existing cases and file in those cases so long as the parties are the same. The only exception should be UPAs until they are no longer confidential. DCSS can pursue child support in dissolutions, legal separations, nullities, DVROs, Custody and Support cases, guardianships and juvenile dismissal order matters that are now under family court jurisdiction.

   Reasons needed: Like above, avoids multiple case, conflicting orders and lessens workload.

8. It was unclear where this provision is, but the commissioners must be physically present in the county in which they are issuing rulings. This is an issue for the smaller courts. So, even if video conferencing were available the commissioner could not be in Tehama County and video conference for a hearing in Plumas County. This needs to be changed.

   Reason needed: The courts need to keep up with technology and requiring a commissioner who has been hired by the neighboring court to hear DCSS matters to drive to the neighboring county when the hearing could be done with videoconferencing makes no sense when videoconferencing for hearing is allowed so long as the litigant and bench officer are physically in the same county. This can mirror the rules for traffic from Fresno or small claims in El Dorado without the in-county requirement.

9. A major issue is obligors with multiple cases in multiple counties. It becomes a never-ending circle of hearings. S/he goes to court one who makes and order. Then to court two who makes an order using the support issued by court one. Now there is court three who must include the child support already issued by courts one and two in calculating the support for number three. Whoever gets to court first gets the bigger order or the favored children tend to get greater amounts. Then s/he can go around again because now the first order is out of line since it didn't consider the later ones. This also applies to ability to pay arrears. Court one sets an arrears repay without considering the amounts owed to the children in the other courts and soon there is no incentive to pay or work. If DCSS is involved in all the cases, the arrears repay is prorated but that may not be the best result, e.g. highest arrears are owed to reimburse county A but the rest go directly to the custodial parents who need the funds to maintain housing, food, etc. Proposal is to change venue requirements for cases involving the same payor to the county in which the payor resides with the provision that the other parties who reside out of county may automatically appear via telephone (like UIFSA).

   Reason needed: Avoids multiple court appearances and allows one bench officer to hear all matters involving the same payor to make orders that are equitable for all involved. Otherwise, there are never ending hearings.

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455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title
Family law: transfer of jurisdiction

Action Requested
Review and submit comments by June 8, 2018

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 5.97

Proposed Effective Date
January 1, 2019

Proposed by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn Borack, Co-Chair
Hon. Mark Juhas, Co-Chair

Contact
Tracy Kenny, tracy.kenny@jud.ca.gov, 916-263-2838

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes the adoption of a new rule of court to implement the requirements of Assembly Bill 712 (Bloom; Stats. 2017, Ch. 316). The legislation requires the council to adopt a rule of court to establish timeframes for the transfer and receipt of jurisdiction over family law actions.

Background

In 2017 the legislature enacted AB 712 (Bloom)[1] which amended Code of Civil Procedure section 399 to enact specific rules for family law actions and proceedings. In addition to granting a court that has ordered the transfer of an action jurisdiction to make specific orders to prevent immediate harm while a transfer is pending, the legislation also required the council to adopt a rule of court by January 1, 2019, to establish timeframes for the transfer and assumption of jurisdiction in family law actions.

The Proposal

To implement the express requirement in AB 712 for the establishment of timeframes for the transfer of jurisdiction in family law matters, the committee proposes the addition of rule 5.97 to the California Rules of Court. The time limits in Rule 5.97 become effective once the statutorily required costs and fees for the transfer have been paid, or the party required to pay the fees has obtained a fee waiver. It would provide the clerk of the court in which the transfer is ordered

[1] AB 712 (Bloom; Stats. 2017, ch. 316)

with 5 court days from the date the time period for writ review has expired to transfer the pleadings and papers and send notice of the transfer, and another 20 court days from that date for the clerk in the receiving court to accept the filing and send notice of the filing date and case number. In addition, the rule includes the authority for the transferring court to exercise the specific jurisdiction to make orders to prevent immediate harm in the time period before the case has been received and filed.

Alternatives Considered

The advisory committee considered alternate timeframes but determined that given current court workload and resource constraints that it was necessary to ensure the finality of the order and a reasonable timeframe to accommodate the range of circumstances facing different courts.

Implementation Requirements, Costs, and Operational Impacts

While courts are currently required by statute to effectuate transfers promptly, there is not a set timeframe in current law. Because this proposal would implement a timeframe, courts may face some costs to institute procedures to track these transfers to ensure compliance with the rule of court.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the timeframes proposed in the rule appropriate?
- Is the treatment of fee waivers in the rule a workable solution?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed new rule of court 5.97 at page 3.
2. AB 712 (Bloom; Stats. 2017, ch. 316)

Rule 5.97. Timeframes for transferring jurisdiction

(a) Application

This rule applies to family law actions or proceedings for which a transfer of jurisdiction has been ordered under Title 4 of the Code of Civil Procedure.

(b) Payment of the fees and fee waivers

Responsibility for the payment of court costs and fees for the transfer of jurisdiction as provided in Government Code section 70618 is subject to the following provisions:

(1) If a transfer of jurisdiction is ordered in response to a motion made under Title 4 of the Code of Civil Procedure by a party, the responsibility for costs and fees is subject to Code of Civil Procedure Section 399(a). If the fees are not paid within the time specified in section 399(a), the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause. No other action on the cause may be commenced in another court before satisfaction of the court's order for fees and costs or a court-ordered waiver of such fees and costs.

(2) If a transfer of jurisdiction is ordered by the court on its own motion the court must in its order specify which party is responsible for the Government Code section 70618 fees. If that party has not paid the fees within 5 days of service of notice of the transfer order, any other party interested in the action or proceeding may pay the costs and fees and the clerk must transmit the case file. If the fees are not paid within the time period set forth in Code of Civil Procedure section 399, the court may, on a duly noticed motion by any party or on its own motion, dismiss the action without prejudice to the cause or enter such other orders as the court deems appropriate. No other action on the cause may be commenced in the original court or another court before satisfaction of the court's order for fees and costs or a court-ordered waiver of such fees and costs.

(3) If the party responsible for the fees has been granted a fee waiver by the sending court, the case file must be transmitted as if the fees and costs were paid and the fee waiver order must be transmitted with the case file in lieu of the fees and costs. If a partial fee waiver has been granted, the party responsible for the fees and costs must pay the required portion of the fees and costs before the case will be transmitted. In any case involving a fee waiver, the court receiving the case file has the authority under Government Code section 68636 to review the party's eligibility for a fee waiver based on additional information available to the court or pursuant to a hearing at final disposition of the case.

(c) Timeframe for transfer of jurisdiction

After a court orders the transfer of jurisdiction over the action or proceeding, the clerk must transmit the case file to the clerk of the court to which the action or proceeding is transferred within five court days of the date of expiration of the twenty-day time period to petition for a writ of mandate, or if a writ is filed, within five court days of the notice that the order is final, and mail notice to all parties who have appeared in the action or proceeding stating the date of the transmittal.

(d) Timeframe to assume jurisdiction over transferred matter

Within 20 court days of the date of the transmittal, the clerk of the court receiving the transferred action or proceeding must mail notice to all parties who have appeared in the action or proceeding stating the date of the filing of the case and the number assigned to the case in the court.

(e) Emergency orders while transfer is pending

Until the clerk of the receiving court sends notice of the date of filing, the transferring court retains jurisdiction over the matter to make orders designed to prevent: immediate danger or irreparable harm to a party or the children involved in the matter; or immediate loss or damage to property subject to disposition in the matter.

Juvenile & Family Law: Settled Statement Forms for Family Law

Annual Agenda Item:

Work with the Appellate Advisory Committee on the development of rules and forms regarding appellate procedures related to juvenile and family law proceedings. For 2018 this may include a family law specific form for preparing a Proposed Statement on Appeal.

Background:

Effective January 1, 2018, the Judicial Council of California amended California Rules of court, rule 8.137 to permit an appellant to use the settled statement procedure without filing a motion if the trial court proceedings were not recorded by a court reporter or the appellant received a fee waiver. [1]

The council also approved new, optional *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014)) to help litigants prepare their proposed written record of the oral proceedings, and revised *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to eliminate the requirement for an appellant to file a motion requesting to use a settled statement if the proceedings were not recorded by a court reporter or if the appellant received a fee waiver.

In its report to the Judicial Council dated July 14, 2017, the Appellate Advisory Committee noted the following potential projects for a future cycle:

- Considering developing an information sheet regarding settled statements;
- Working with the Family and Juvenile Law Advisory Committee on whether to develop a separate settled statement form for family law proceedings or to modify proposed form APP-014 to make it more workable in all unlimited civil appeals.

Since November 2017, Family and Juvenile Law Advisory Committee staff have been working to develop a new version of a settled statement form for use in family law proceedings, as well as an information sheet for the new form.

Update:

A working group of the Appellate Advisory supports circulating a joint proposal with the Family and Juvenile Law Advisory Committee in the spring 2018 cycle to revise form APP-014 and approve a new information sheet to accompany that form.

On February 1, 2018, the Appellate Advisory Committee's Rules Subcommittee will review the next iteration of the settled statement form and information sheet. Copies of the forms being discussed by the AAC will be distributed to FamJuv on February 1, 2018.

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[1] The Appellate Advisory Committee's report to the Judicial Council, dated July 14, 2017, report is found at: https://jcc.legistar.com/View.ashx?M=F&ID=5390625&GUID=6B4BE734-A3A1-443F-9855-B82D8508466C