6

Civil [Justice] Engineering

Leveraging the Tools of Community, Research, and Fiscal Impact to Build Bridges to Justice

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Civil access-to-justice reform pursued through a financially focused, stakeholder-informed approach can drive transformational change. We present a framework and set of techniques, which together we dub "civil justice engineering," for developing effective, scalable policy and procedure for the expansion of civil access to justice informed by qualitative and quantitative data, financial analysis, program evaluation, and stakeholder engagement.

Our framework has been shaped by our work at Stout Risius Ross, LLC (Stout), a global, advisory firm specializing in corporate finance, accounting and transaction advisory, valuation, financial disputes, claims, and investigations. We serve a range of clients, from public corporations to privately held companies in numerous industries. Stout's Transformative Change Consulting practice is a recognized leader in the civil legal aid community and has completed projects involving:

- Strategy consulting for issues relating to access to justice;
- Organizing/facilitating stakeholder listening sessions and focus groups;
- Managing transformative change projects and workflows;
- Operational consulting related to data systems and processes, organizational culture, and employee relations;
- Economic impact assessments and research for civil legal services initiatives;
- Nonprofit budget development, review, and recommendations;
- Cost–benefit and impact analyses for nonprofit initiatives and activities;
- Data-driven program evaluation and implementation; and
- Dispute consulting and damages analyses for low-income individuals and nonprofit organizations.

Stout has provided consulting services to more than forty jurisdictions across the country related to programs assisting people experiencing civil legal issues. In each of these jurisdictions, Stout seeks to understand the local civil justice system, how residents interact with it, and the spectrum of information, assistance, and civil legal

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resources available for residents – ranging from online legal information, guided interviews and forms, supervised nonlawyers, mediation, community dispute resolution centers, advice and counsel, extensive legal services, and other forms of assistance.

Stout is currently retained as the Independent Evaluator for eviction right to counsel (or access to counsel) programs in Cleveland, Connecticut, Maryland, and Milwaukee. It has conducted eviction right to counsel fiscal return on investment or cost analyses and independent expert reports for advocates, coalitions, bar associations, or government agencies in Baltimore, Broward County, Chattanooga, Delaware, Detroit, Los Angeles County and City, Miami-Dade County, Newark, New York City, New York (outside of New York City), Pennsylvania, Philadelphia, and South Carolina. Many of these engagements have contributed to landmark legislation being passed.

Following the release of Stout's reports in Baltimore, New York City, Philadelphia, Delaware, and Detroit, eviction right to counsel legislation was enacted. In these engagements, Stout worked closely with funders/potential funders, legal services organizations, rental property owners, academics studying housing and eviction, government agencies and the continuum of care, nonprofits serving low-income residents, community organizers, and impacted residents.

Core to our approach is the idea that creating opportunity for change is as much about the analyses and engagement method as it is about the quantitative evaluation of a particular result. By engaging a broad range of local stakeholders, collecting and integrating quantitative and qualitative information, and seeking regular feedback as analyses are developed, civil justice engineering can be used to develop cost–benefit analyses and evaluation techniques that form the basis for collaboration and consensus, both prerequisites for meaningful and durable reforms that expand access to civil justice.

This chapter introduces the civil justice engineering framework and shows how it can further a wide range of access to civil justice initiatives, such as civil right to counsel, court efforts to assist self-represented litigants, an expanded role for nonlawyers or limited-license legal practitioners, effective utilization of brief services and advice programs, and justice initiatives to address racial inequity.

6.1 SITUATING CIVIL JUSTICE ENGINEERING

6.1.1 *Policy-Based Access-to-Justice Reform in the United States: A Brief Overview*

The United States has faced significant challenges in enacting broad, policy-based access to civil justice reform. These challenges arise from a confluence of institutional, political, fiscal, and cultural factors that can impede the development of comprehensive, sustainable reforms. In our experience, obstacles to scalable, sustainable, transformative policy reform have included but are not limited to:

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- A propensity for the development of reactive interventions intended to respond to crises rather than a systemic assessment of causes;
- A failure to appreciate the costs of responding to crises when individuals attempt to navigate civil justice issues unassisted;
- An overemphasis on doctrinaire approaches to systemic challenges that require complex solutions;
- A lack of appreciation for the diverse demographic and socioeconomic backgrounds of those seeking assistance in civil justice matters;
- Political divisiveness and entrenched advocacy that impede achieving consensus on broad, scalable, sustainable policy reform;
- Prioritizing short-term results in lieu of investing in long-term, preventative policy change;
- Paralysis arising from the perceived daunting scale of systemic challenges;
- Anxiety and fear arising from the uncertainties of reform; and
- Failure to implement incremental, iterative policy change, instead searching for an immediate, universal solution.

In our experience, the judicial branch specifically can also experience unique obstacles to developing broad reform designed to sustainably improve civil access to justice, such as:

- Concern and frustration stemming from previous attempts to share data with various stakeholders, often related to misuse and misinterpretation of court data;
- Concerns surrounding data quality and data integrity that may reflect poorly on the court or its staff and may compromise any analysis of the data; and
- Apprehension that access-to-justice reforms might slow down case processing and disrupt court operations.

These barriers to change can be overcome. We have observed transformative change when there is an emphasis on incremental progress, acknowledging that no singular policy can comprehensively address all aspects of complex social and justice issues.

6.1.2 *An Introductory Example: The Eviction Right to Counsel Movement in the United States*

One recent example of sustained, scaled, transformative change in civil access to justice in the United States has come from the eviction right to counsel movement, particularly over the last ten years.

In 2015, eviction defendants across America lacked the right to legal representation even after decades of advocacy by tenant organizers, advocates, and other stakeholders. In 2017, New York City passed historic eviction right to counsel

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legislation.[1] This legislation offered full, extended representation for *all* eligible tenants (individuals with an annual gross household income not over 200 percent of the federal poverty level).[2]

The reform's impact was profound, made evident through New York City's Office of Civil Justice report in 2021, which found that 84 percent of represented tenants were able to stay in their homes.[3] Additionally, during implementation, areas with an eviction-focused right to counsel experienced a reduction in eviction filings of over 30 percent.[4]

The New York City eviction right to counsel legislation sparked a movement that has resulted in legislation being passed in seventeen cities, four states, and one county, where tenants now have a right to counsel or are guaranteed access to counsel for eviction proceedings.[5] The initial results in those jurisdictions demonstrate the impact of this significant expansion of access to civil justice. Based on available data from several jurisdictions, when clients are seeking to avoid an eviction judgment, 76 percent to 79 percent of clients receiving extensive services[6] have been successful in that aim.[7] Of those clients seeking to stay in their homes, 70 percent to 79 percent of clients receiving extensive services have been successful.[8] Of those clients seeking to secure time to find other housing, 42 percent to 88 percent of clients receiving extensive services have been successful.[9]

This expansion in access to civil justice has emerged in jurisdictions with strong tenant organizing movements as well as those with little or no organizing around tenant rights. Change has occurred in the largest of cities as well as smaller cities across various regions (East Coast, West Coast, Midwest, and Mountain Regions). So too has it occurred in places with significant social safety net responses to housing instability and homelessness, as well as in places with a lack of such supportive services.[10]

[1] Kriston Kapps, *New York City Guarantees a Lawyer to Every Resident Facing Eviction*, Bloomberg (Aug. 14, 2017, 7:00 AM), https://www.bloomberg.com/news/articles/2017-08-14/new-york-ensures-right-to-counsel-for-all-eviction-cases?embedded-checkout=true (last accessed Feb. 14, 2025).

[2] N.Y.C. Admin. Code tit. 26, §§ 26-1301–26-1306.

[3] Andrew Scherer, *The Case against Summary Eviction Proceedings: Progress as Racism and Oppression*, 53 Seton Hall L. Rev. 1 (2022).

[4] *Id.*

[5] Nat'l Coal. for a Civil Right to Coun., *The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*, NCCRC (Nov. 2023), http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf (last accessed Feb. 14, 2025).

[6] "Extensive services" typically means that the lawyer assisting the client works with the client through the final resolution of the dispute.

[7] The data underlying these findings are on file with the authors.

[8] The data underlying these findings are on file with the authors.

[9] The data underlying these findings are on file with the authors.

[10] Nat'l Coal. for a Civil Right to Couns., *supra* note 5.

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As in New York City, the eviction right to counsel movement and reforms in other areas of civil access to justice have been a decades-long endeavor. Organizers, community-based organizations, civil legal services organizations, bar associations, courts, and countless local stakeholders continue to be the backbone of transformative change and local eviction reform in many communities.

Evaluative reports in these jurisdictions, several completed by the authors, have demonstrated the importance and impact of tenants having representation,[11] but they have also demonstrated the need for iterative implementation techniques, data collection, stakeholder engagement, and the development of a spectrum of resources to assist tenants and rental property owners navigating rental housing disputes.

In this chapter, we discuss how our work has contributed to the efforts of local stakeholders. This should not take away from the extraordinary work of so many local stakeholders who work together to pursue ecosystem change in their communities. To the contrary, as we describe, it is only from the participation, leadership, and engagement of these stakeholders that such change becomes possible. Nor should the pages that follow be taken to suggest that the only means of achieving change is through the methods we describe, or that cost or benefit analyses should be emphasized to the exclusion of equity considerations. Rather, there are many ways in which reform has been, and will be, achieved. We simply and humbly offer our experience as a contribution to, and consideration for, further efforts surrounding local reforms related to access to civil justice.

6.2 AN OVERVIEW OF THE CIVIL JUSTICE ENGINEERING FRAMEWORK: COMPLEMENTING ADVOCACY AND STAKEHOLDER ENGAGEMENT WITH FINANCIAL ANALYSIS

For many jurisdictions, the development of a comprehensive, independent cost–benefit study has informed policymakers and other stakeholders about the potential costs and savings of providing the eviction right to counsel. The development of such studies utilized an innovative combination of academic scholarship and community and stakeholder feedback with the application of quantitative and financial analysis with qualitative context.

6.2.1 *Social Return on Investment and Cost–Benefit Analysis*

A core concept in our civil justice engineering framework is social return on investment (SROI). SROI is a framework used to measure the social and economic value that may be created by an organization or initiative. It aims to assess and

[11] Stout's eviction right to counsel evaluation reports can be found at *Eviction Right to Counsel*, STOUT, https://www.stout.com/en/services/transformative-change-consulting/eviction-right-to-counsel-resources (last accessed Mar. 18, 2024).

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quantify the positive impact that an activity generates in relation to the resources invested, going beyond traditional financial measures by incorporating social outcomes into the evaluation.[12]

Closely related to but distinct from SROI is cost–benefit analysis (CBA). CBA is a method employed to assess the potential economic impact and benefits of policy reforms or programs. It involves evaluating the costs associated with implementing the policy and comparing them to the expected benefits for the entities funding the program.[13]

CBA is typically only one aspect of a larger strategy for policy reform regarding access to civil justice. In our experience, reform is not typically based solely on whether it is fiscally prudent, but fiscal impacts (both costs and potential benefits) are relevant considerations and can serve as a critical foundation for further dialogue and collaboration.

CBA is not uncontroversial in policymaking and law. Frank Ackerman and Lisa Heinzerling provide an important critique of CBA, particularly when used as the sole justification for policy reform, arguing that "human life, health, and nature cannot be described meaningfully in monetary terms; they are priceless."[14] In keeping with that critique, Richard L. Revesz and Michael L. Livermore suggest an approach to policy reform that blends the use of CBAs with a compassionate, ethical view of the issues being addressed. They write, "[b]ecause of the complex nature of governmental decisions, we have no choice but to deploy complex analytic tools in order to make the best choices possible . . . [but we] must exercise statistical compassion by recognizing what numbers of lives saved represent: living and breathing human beings, unique, with rich inner lives and an interlocking web of emotional relationships."[15]

In our civil justice work, we use CBA differently. We do not intend to justify reforms with a CBA but rather to inform the dialogue surrounding reform with quantifiable insight and feedback from local stakeholders. A CBA can allow for informed decision-making, efficient resource allocation, transparency in the decision-making process, advocacy potential, and the ability to iteratively evaluate policy impact and foster accountability. But in isolation, a CBA does not account for

[12] Laura Arrillaga-Andreessen & David Hoyt, *Case Study: An Introduction to Social Return on Investment*, Case SI-65, Stan. Grad. Sch. of Bus. (May 28, 2004), https://www.gsb.stanford.edu/faculty-research/case-studies/introduction-social-return-investment (last accessed Feb. 14, 2025).

[13] Tim Stobierski, *How to Do a Cost–Benefit Analysis & Why It's Important*, Harv. Bus. Sch. Online (Sept. 5. 2019), https://online.hbs.edu/blog/post/cost-benefit-analysis (last accessed Feb. 14, 2025).

[14] Frank Ackerman & Lisa Heinzerling, Priceless: On Knowing the Price of Everything and the Value of Nothing 8 (2004).

[15] Richard L. Revesz & Michael A. Livermore, Retaking Rationality: How Cost–Benefit Analysis Can Better Protect the Environment and Our Health 3 (2008).

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the ethical arguments for access to justice. For this reason, discussed below, we recommend that a CBA be utilized within a comprehensive and integrated local approach to access to civil justice reform.

CBAs prior to the passage of such reforms (or the evaluation of the implementation of such reforms after passage, and related potential fiscal impact) have been effective, in part, because of both the comprehensive nature of the related reports and analyses as well as the breadth of contribution from local stakeholders. It is as much about *how* such work is conducted as it is about the quantitative result. By engaging a range of local stakeholders, listening to their perspectives, leveraging and reconciling academic scholarship, collecting and integrating quantitative and qualitative information, and seeking regular feedback as analyses and observations are developed, CBAs form the basis for collaboration that can lead to issue convergence in support of expansion of access to civil justice.

6.2.2 *Leveraging Cost–Benefit Analysis Using an Integrated Approach to Access-to-Justice Reform*

Using this framework, we have assisted jurisdictions across the United States in developing estimates of the fiscal impact of reform related to access to civil justice. This approach incorporates quantitative and qualitative components and often begins well before a reform related to access to civil justice is designed or implemented. Key elements of this approach include, but are not limited to:

- Leveraging the importance of localization by learning from local stakeholders regarding their interest in a particular civil justice reform and developing an understanding of the local civil justice ecosystem;
- Assessing the circumstances parties face through engagement with stakeholders, examining their needs and the role a particular reform has in meeting certain needs and addressing certain circumstances;
- Appreciating that person-centered data is imperfect, thus centering the inquiry on the development of reasonable estimates and transparency regarding preliminary measurement techniques and the need for ongoing assessment;
- Identifying and evaluating quantitative elements for analysis of program costs and potential fiscal impact as well as other impacts;
- Integrating supplemental research and observations;
- Developing estimates of program costs;
- Using prior academic scholarship and stakeholder data, developing estimates of reasonably quantifiable fiscal impacts, and identifying qualitative assessments of other impacts that cannot currently be quantified;
- Assessing opportunities for issue convergence; and
- Identifying opportunities for continued, iterative assessment, evaluation, and refinement, as well as identification of complementary reforms.

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The remainder of this chapter will demonstrate how applying this framework can amplify and inform the work of pursuing sustainable, scaled access to civil justice initiatives. We do so by identifying and explaining nine core elements of the approach.

6.3 THE ELEMENTS OF CIVIL JUSTICE ENGINEERING

Element #1: Leveraging the importance of localization by learning from local stakeholders regarding their interest in a particular civil justice reform and developing an understanding of the local civil justice ecosystem.

In our experience, local community stakeholders are typically highly aware of injustices and systemic barriers in their community. Instead of developing recommendations based on our impressions of what should be important to the community, we are guided by feedback from local stakeholders.

For example, in Oklahoma City, Legal Aid knew there were transportation barriers to access to justice, particularly for tenants in eviction proceedings. Public transit could be unreliable, and the bus schedules did not always align with the docket calls at court. Tenants would default in eviction cases because of transportation challenges. Legal aid developed data evaluation elements to measure the frequency of transportation issues shared by clients and are planning to use that data to advocate for changes to docket call times and bus schedules.[16]

Consequently, the work of understanding program costs and potential fiscal impacts often starts at early stages of advocacy. At such stages, the comprehensive, inclusive, and intentional approach described below can inform many elements of advocacy beyond the cost of the proposed reform. It can serve to inform program design based on feedback from multiple stakeholders and can assist in developing coalition, collaboration, and opportunities for issue convergence.

Localization has been critical to propel policy reforms involving civil access to justice. While national trends or generalizable findings furnish insights, a variety of local perceptions, practices, procedures, and stakeholders often require that we uniquely consider the circumstances of each jurisdiction.

Localization also can increase local advocacy and prioritization, fostering accountability and investment within the community. With knowledge of their jurisdiction's peculiarities, local policymakers and stakeholders are better equipped to advocate for and invest in policies that effectively cater to the needs of their constituents.

Detractors may posit that localization leads to excessive temporal and resource burdens; however, in our experience the opposite has been the case. National

[16] Relevant data from intake interviews conducted by legal services organizations and related data collection are on file with the authors.

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studies often fail to resonate with local communities and policymakers, leading to tepid support, dialogue, and development. Conversely, localized efforts serve as formidable catalysts for broader movements, effectively inspiring other communities to consider similar reforms.

This work needs to be informed by the views and perspectives of many stakeholders and will be inherently imperfect in measurement techniques – measurement techniques that will be centered on the development of reasonable, reliable, credible metrics but that will necessarily rely on a constellation of imperfect data, research, and qualitative feedback. Independence is an important factor, as findings and observations of this work are not motivated by a particular advocacy position. This can be an important consideration for policymakers interested in understanding the civil justice ecosystem and potential costs and fiscal impact of certain reforms.

Our efforts are to *inform* local efforts to pursue reform in an *independent*[17] manner. We rely on local communities to identify priorities for reform, and we seek to independently advise regarding the costs of implementation and the potential fiscal impacts of those reforms.

As we begin our work, we first, and continually, seek to understand the civil justice ecosystem impacted by the proposed reform. Civil legal issues, whether perceived by the individuals involved as "legal" or not, arise locally. They arise for an individual, a household, and a business owner. They arise in a local neighborhood, local community, city, and county, and with local stakeholders, local courts, and local support services. We are mindful that while our unique experience and expertise working with stakeholders in jurisdictions around the country may inform our work and our dialogue, we must begin our work listening to local stakeholders to understand the local ecosystem – both its history and its present.

Residents, business owners (such as rental property owners or lenders), legal services organizations, community organizers and advocates, attorneys, academic institutions, the courts, policymakers, and other community stakeholders are operating in an intricate, intertwined, and interdependent ecosystem.

We observe this interdependence and interconnectedness throughout our work and uniquely in each jurisdiction. For example, if we consider the eviction ecosystem, we must learn how rental property owners (and their counsel), tenants, courts, civil legal aid organizations, emergency rental assistance administrators, community-based organizations, and other public systems (e.g., emergency shelter, foster care, public schools, healthcare, transportation, police) interact with and upon one another, at what cost (financial and otherwise) and to which party.

We appreciate that we will never fully understand each local ecosystem we work in and certainly not to the extent of the local stakeholders we work with. For this

[17] Throughout our work, our independence is meant to convey that we do not have a vested interest in the outcome nor are we motivated by a particular advocacy position.

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reason, throughout our work, we remain open to continually learning about the ecosystem and ensuring, to the extent possible, that those insights and observations are intentionally incorporated in our quantitative and qualitative work. To achieve this, we utilize an immersive stakeholder engagement technique.

Element #2: Assessing the circumstances parties face through engagement with stakeholders, examining their needs and the role a particular reform has in meeting certain needs and addressing certain circumstances.

This approach does not necessarily require us to be subject matter experts in eviction, consumer debt, immigration, guardianship, family law, or other matters of civil access to justice. Instead, we approach our work with curiosity and genuine intrigue about the local justice ecosystem and stakeholders – their history, roles, responsibilities, perceptions, experiences, challenges, current resource constraints; the fiscal impacts and constraints that change can have on them; and the overall capacity for change within a resource-constrained environment.

Intentional, inclusive stakeholder engagement creates the opportunity to continually learn about the ecosystem and to create a collaborative environment that establishes or renews connections among stakeholders. As our work progresses, the stakeholders with whom relationships have been built are continuously re-engaged to discuss emerging issues, review progress, and assess new opportunities and challenges.

Our engagement with stakeholders has included but is not limited to:

- Courts;
- Legal services providers;
- Rental property owners;
- Public housing authorities;
- Rental assistance providers;
- 2-1-1 and other community action call centers;
- Coordinated intake service organizations;
- Legal technology hosts and providers;
- Public libraries;
- Community organizers;
- Continuums of Care (CoC);
- Social benefit administrators;
- Employers;
- City, county, and state government agencies;
- Public education and higher education providers;
- Faith communities;
- Community-based organizations;
- Transportation providers;
- Hospitals and healthcare providers; and
- Homelessness service providers.

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In focus groups or interviews, participants share their perspectives and lived experiences regarding the subject matter (e.g., clients or constituents facing eviction or housing instability), potential fiscal and personal impacts, identifying common themes across lived experiences, and considering how we may be able to quantify the costs and benefits of regulatory reform.

When considering with whom to engage, inclusivity and diversity is critical. Engaging with stakeholder groups that have varying experiences, roles, power, perspectives, and perceptions informs the understanding of potential fiscal impacts.

For example, civil legal aid organizations are able to share data and experiences regarding the experiences of their clients, their interactions with the courts and counterparties; and the personnel costs of delivering services (e.g., salaries and benefits). Government and social services agencies are often able to share how they are spending public dollars to respond to certain crises experienced by community members that could be reduced if certain reforms related to access to civil justice were implemented. For example, we have engaged with emergency shelter providers and Continuums of Care[18] throughout the country. In every jurisdiction with which we have engaged, these housing social safety net providers share that a portion of people experiencing homelessness and living in shelters have likely experienced eviction in the past and that the eviction contributed to their need for emergency shelter or other services. This draws a connection between eviction and expensive publicly funded social services, and the link is reinforced by research conducted across the country.[19]

Stakeholders who may not support certain reforms should also be engaged to ensure a comprehensive understanding of potential fiscal impacts. We hear from rental property owners about the challenges they face in providing safe and stable housing, the difficulties accessing rental assistance programs as well as the courts, frustrations with the legal process, and the costs they incur from delays arising from disputes with tenants. We also hear about challenging relationships with their tenants and the rental property owner's efforts to assist in reaching resolutions prior to eviction.

The breadth of this stakeholder engagement helps to prevent bias and demonstrates a commitment to an independent assessment of both opportunities and challenges. In addition, it often uncovers and illuminates new findings that can lead to more informed policy decisions and continued stakeholder collaboration.

[18] A continuum of care is "a concept involving an integrated system of care that guides and tracks patient over time through a comprehensive array of health services spanning all levels of intensity of care." C. Evashwick, *Creating the Continuum of Care* 7 HEALTH MATRIX 30 (1989). Stout engages with organizations that are part of the local continuum of care to learn about their perspective on the consequences of the eviction process for local residents based on their interaction with people facing housing instability and homelessness.

[19] *See, for example*, Robert Collinson et al., *Eviction and Poverty in American Cities*, 139 Q.J. OF ECON. 57 (Feb. 2024) (finding that eviction orders cause increased homelessness in New York and Chicago).

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For instance, it is not uncommon for there to be concerns among rental property owners and their lawyers regarding the impact that expanded access to lawyers for tenants may have. However, lawyers representing rental property owners also consistently indicate that they always prefer to work with a represented tenant rather than an unrepresented tenant and that when lawyers are involved on both sides it is more likely that effective outcomes for both parties can be reached, and often more expeditiously than with an unrepresented tenant, particularly in more complex cases. In some jurisdictions, rental property owners have been vocal supporters of eviction right to counsel programs, particularly when appreciating the complexity of the circumstances tenants are encountering, the ways in which lawyers for tenants are able to effectively resolve these matters, and openness to feedback and recommendations from the rental property owner community – but also seek complementary resources such as sustainable, efficient, and effective emergency rental assistance.

Further, the degree to which tenants facing eviction are experiencing substandard housing conditions is often underappreciated by policymakers but well-understood by courts, legal aid attorneys, and property owners/managers. This information asymmetry typically arises because of a previous lack of structured data collection regarding the presence of these substandard housing conditions. The importance of addressing this information asymmetry arose from initial stakeholder engagement, and its prevalence was understood after implementing revised data collection based on that feedback. As a result, we have found that 60 percent to 80 percent of eviction right to counsel clients in jurisdictions around the country report that they are experiencing at least one (and often many) defective conditions in their home.[20] Figure 6.1's data visualizations are examples of how structured data collection and analysis can inform policymakers and other stakeholders regarding complex circumstances clients can be experiencing and the impact legal representation can have when substantive legal issues are present.[21]

Moreover, in many jurisdictions with an eviction right to counsel, a minority of tenants facing eviction seek legal assistance – however, of those that do, 85 percent to 90 percent are involved in complex disputes with the rental property owner, face severe consequences, are at the lowest income levels,[22] and are likely to need social services if they are not able to achieve their housing goals.[23] This finding has

[20] Relevant data are on file with the authors.

[21] It should be noted that this is not reflective of the conditions of all rental housing but rather is a reflection of the complications that may be contributing to why people are seeking legal assistance. This serves to inform policymakers regarding the complications of the cases and vulnerabilities faced by those these programs seek to serve.

[22] The data underlying these findings are on file with the authors.

[23] The potential need for social services arising from harm, trauma, and disruption from the eviction process is well established by a wide range of studies, intake surveys, and reports conducted by those providing such services, and data collected by legal services organizations from those who are facing such circumstances.

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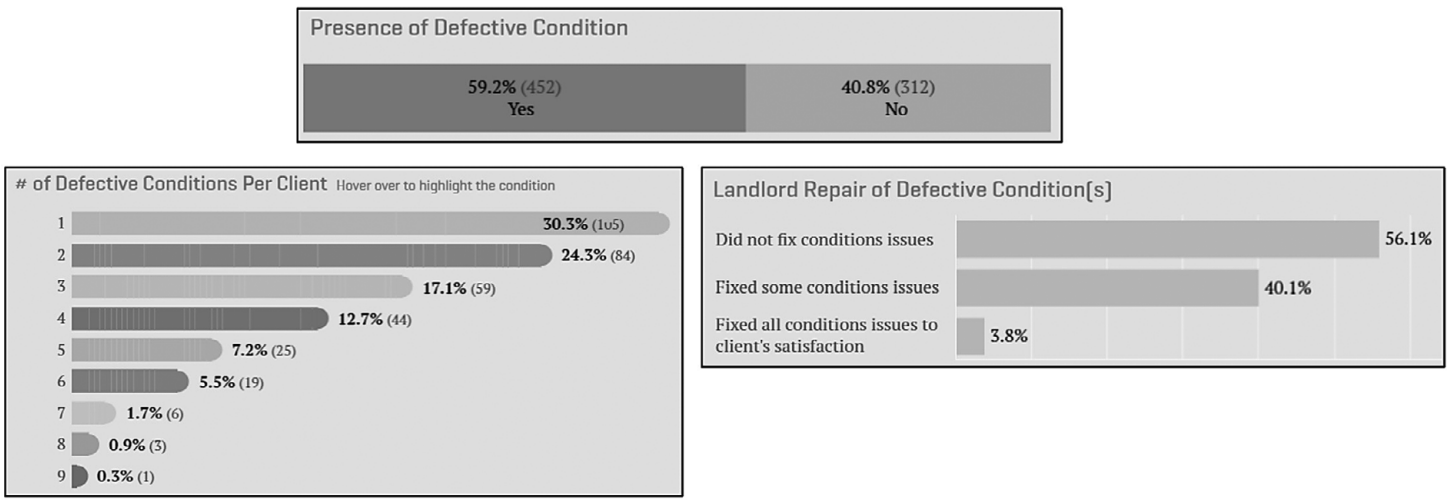


FIGURE 6.1 Exemplar visualization of defective housing conditions.

emphasized the importance of eviction right to counsel legislation to serve the most vulnerable but also has emphasized the need for additional forms of assistance and intervention to serve both rental property owners and tenants in other circumstances.

Policymakers and others often believe that the purpose of legal representation for tenants is to keep people in their homes. However, property owners, legal aid organizations, and community-based organizations often indicated that their tenants did not always want to stay in their homes. Rather, tenants sought legal assistance because their relationship with the rental property owner had often deteriorated beyond repair and the conditions of the homes were often unsafe. Based on this feedback, supplemental data was collected for clients of legal aid organizations to understand what the client's goals were. This data revealed that 30 percent to 45 percent of clients (those facing eviction who sought legal assistance) did not want to stay in their homes.[24] Figure 6.2 provides examples of visualizations showing whether the client wants to stay in their home, and the intersection of whether they want to stay and the presence of defective conditions.

Eviction right to counsel programs and legislation can be critical elements of an ecosystem ensuring justice in rental housing disputes resulting in eviction filings. As we engage stakeholders, we consistently receive feedback about how eviction right to counsel programs provide an essential foundation for housing justice but that they should also be supplemented with other interventions. Many of those interventions are preventative in nature and could decrease the need for more costly interventions downstream. These should be considered complements to or integrated components of an eviction right to counsel. Interventions include sustained emergency rental assistance, mediation, prefiling connection to other social services, relocation assistance, improvements in the substantive landlord/tenant law (such as longer notice periods and just cause eviction protections), transportation assistance, and childcare assistance for in-person court appearances.

Understanding who is likely to access the services and for whom the services may be particularly impactful is important. People with civil legal needs are often experiencing a variety of circumstances and may need a range of services. In eviction right to counsel jurisdictions, we observe common characteristics of eviction right to counsel clients. Our evaluations of the eviction right to counsel programs in three jurisdictions found that tenants seeking representation often do so because they need assistance with the substantive legal issues of their case or potential defenses, or there are challenges within the household exacerbating the trauma of the eviction process. Tenants seeking legal representation in eviction right to counsel jurisdictions are also likely to disproportionately identify as female and African American or black compared to the jurisdiction's overall population.[25]

[24] The data underlying these findings are on file with the authors.
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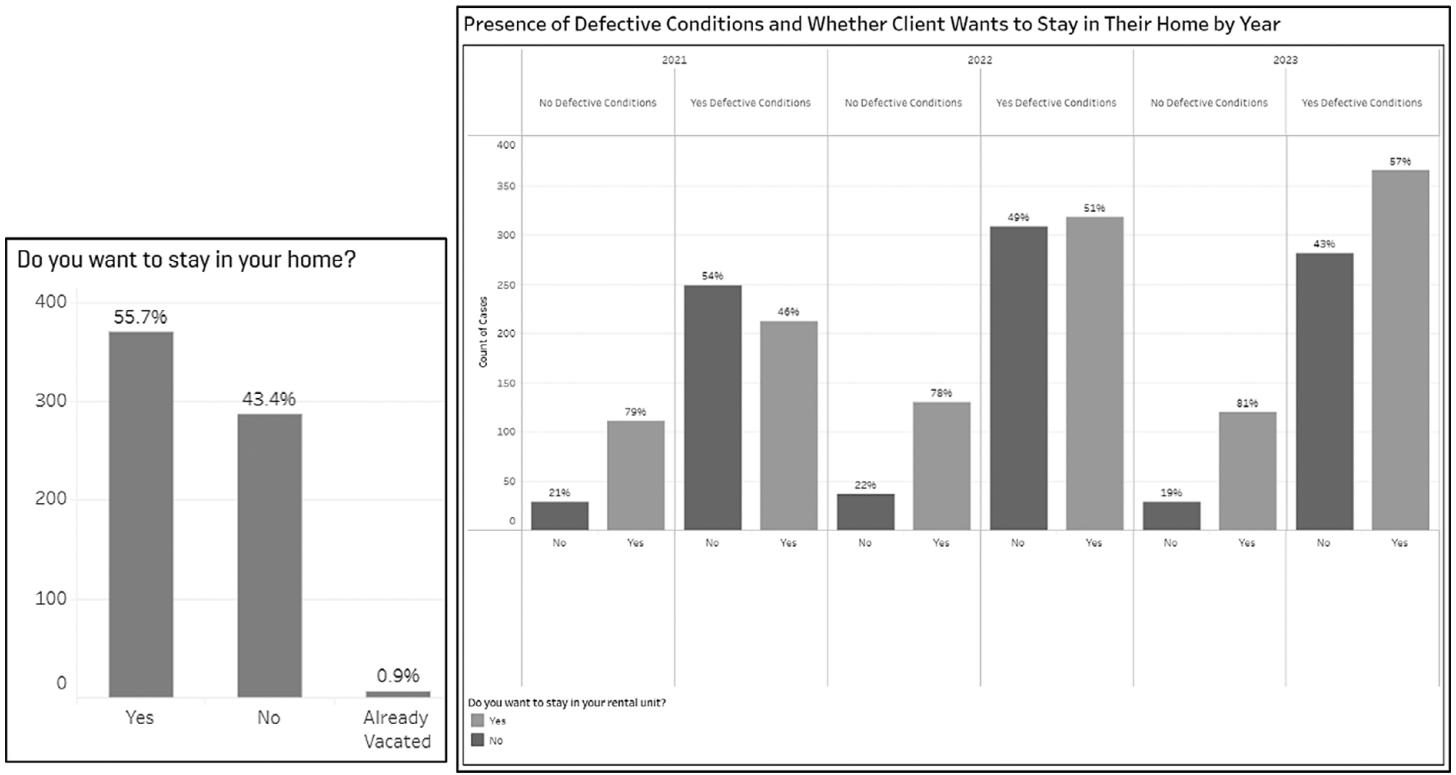
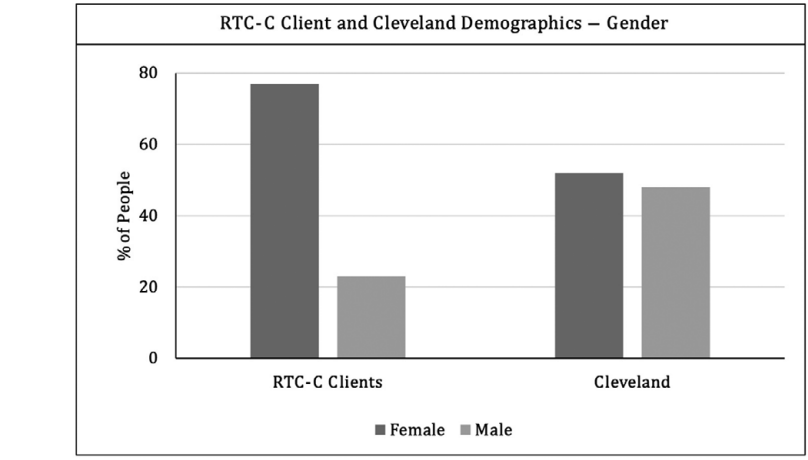


FIGURE 6.2 Exemplar visualization of client preferences regarding housing options.



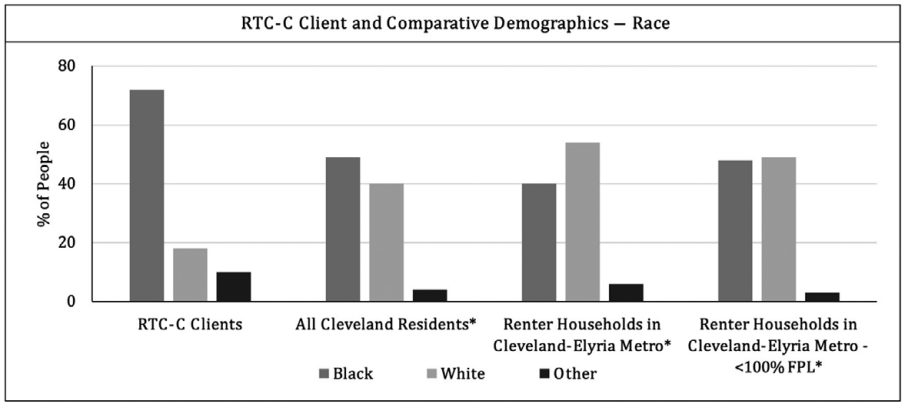


FIGURE 6.3 Comparative demographic metrics for Cleveland right to counsel clients versus Cleveland's overall population.

* All Cleveland Residents includes renters and homeowners. Renter household data is currently only available at the metro level (Cleveland-Elyria Metro), which includes five counties across northeast Ohio.

Figure 6.3 shows comparative metrics for the gender and race of eviction right to counsel clients in Cleveland relative to Cleveland's overall population.

In several right to counsel jurisdictions where we have worked, attorneys representing tenants in eviction matters told us of instances in which they were assisting a tenant where the only issue (a relatively simple one) was the nonpayment of rent. In those attorneys' opinions, the tenant would have been able to navigate the process with other forms of assistance. This does not take away from the impact and importance of an eviction right to counsel in these places but rather reinforces the importance of continued study and evaluation centered on the experiences of the parties involved and the circumstances they face.

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Segmenting potential client populations based on circumstances and case characteristics provides insights into the effectiveness and fiscal sustainability of programs, interventions, and service levels. An impactful and informative finding from case and client segmentation analysis would be, for example, that 80 percent of clients who had case or personal circumstances indicating that brief legal services (legal information, advice, assistance connecting with another social service, or assistance negotiating a settlement) would be the form of effective assistance necessary for clients to achieve the goals for their case. This is significantly more meaningful than a broader, less nuanced, and contextualized finding than, for example, that 30 percent of all clients achieved their goals through the receipt of brief services.

Element #3: Appreciating that person-centered data is imperfect, this should center us on the development of reasonable estimates, transparency regarding preliminary measurement techniques, and the need for ongoing assessment.

The variety of unique circumstances people face results in uncertainties regarding the potential impact of service delivery – uncertainties regarding necessary services for a given situation, the cost and longevity of those services, and the short- and long-term fiscal impact. Precise calculations and quantifications for these situations may not always be feasible. Person-centered data is often inherently imperfect, but reasonable estimates can often be developed, particularly when accompanied with transparency regarding the sources of information, limitations of such estimates, and the methods of calculation.

For example, when analyzing the potential fiscal impact of housing instability, we often attempt to estimate the cost savings or redirection of public dollars that could be recognized if fewer people were to experience homelessness (sheltered or unsheltered) because of access to legal representation. There is a significant body of academic research indicating that a portion of people who are evicted will likely experience homelessness and that a subset of the people who experience homelessness will likely enter emergency shelter or require a different housing social safety net response (e.g., rapid rehousing, transitional housing, permanent supportive housing).[26] In addition, local homelessness response providers may also publish reports or provide data

[26] *See, for example*, Howard Rolston et al., *Evaluation of the Homebase Community Prevention Program*, Abt Associates Inc. (June 6, 2013), https://static1.squarespace.com/static/572e5b621d07c088bf6663d9/t/573bd62df8508286203 2f27b/1463539246596/homebase+report.pdf (last accessed Feb. 14, 2025); NYC Indep. Budget Off., *The Rising Number of Homeless Families in NYC, 2002–2012: A Look at Why Families Were Granted Shelter, the Housing They Had Lived in and Where They Came From* (Nov. 2014), https://www.ibo.nyc.ny.us/iboreports/2014dhs_families_entering_NYC_homeless_shelters.html (last accessed Feb. 14, 2025); Coal. for the Homeless Hous./Harris Cnty., *Capacity and Gaps in the Homeless Residential and Service System, Harris and Fort Bend Counties* (2011), https://irp-cdn.multiscreensite.com/2d521d2c/files/uploaded/Capacity-and-Gaps-in-the-Homeless-Residential-and-Service-System-Harris-and-Fort-Bend-Counties.pdf (last accessed Feb. 14, 2025).

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demonstrating the intersection between eviction and shelter entry or other social service responses. We collect, review, and synthesize the data presented in academic studies, as well as local information, and compare it to data civil legal aid providers are collecting regarding where clients would go if they were evicted.

In our experience, the findings from academic studies are often consistent with the civil legal aid provider data and feedback from local social service providers. We leverage these sources of information to develop a quantitative estimate as to the percentage of people who would experience homelessness and likely require a housing social safety net response. We then seek feedback from local stakeholders to ensure the estimates we develop are consistent with their experiences. Once we have an estimate as to the percentage of people who would have likely experienced homelessness but-for legal representation, we review academic studies and local data regarding the annual cost of providing housing social safety net responses. When combined, the incremental number of people who likely avoided needing a housing social safety net response and the annual cost of the housing social safety net response can be used to develop a reasonable, quantitative estimate (informed by qualitative stakeholder feedback) of potential cost savings or opportunities for the redirection of public dollars.

Element #4: Identifying and evaluating quantitative elements for analysis of program costs and potential fiscal impact as well as other impacts.

Through stakeholder engagement, we learn about the availability of quantitative data and prior research that can contribute to analysis of implementation costs, as well as potential fiscal and other impacts.

Stakeholders can often share data they collect through the course of serving their constituents, can identify prior research or publications to inform further analysis, and can identify other stakeholders that may be able to assist in providing quantitative data elements. These same stakeholders then become essential in ensuring a reasonable interpretation and analysis of the data.

In our experience, data collected by local stakeholders often requires significant guidance to appropriately interpret. Examples of data we have received and reviewed include but are not limited to:

- Civil case filing and disposition data;
- Legal services provider de-identified case information;
- Homeless Management Information System (HMIS) data;
- 2-1-1 data;
- US Census data;
- Homelessness response data;
- Foster care entry and exit data;
- Student homelessness and enrollment data; and
- Legal services provider budget and financial data.

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This engagement and review of data can also assist in identifying opportunities for expanded data collection and analysis. For example, Figure 6.4 presents data findings that assisted policymakers in understanding the volume of annual eviction filings in Cleveland, the defendant representation rate trend, and defendant representation rates by zip code.[27] This type of visualized data assists in understanding how policy change can impact the total number of filings a jurisdiction is experiencing and identifying whether more residents are being represented through the eviction right to counsel program over time.

Element #5: Integrating supplemental research and observations.

Complex ecosystems simply cannot be defined or fully understood by quantitative data and analysis alone. Further, many stakeholders will not have or will not be able to share quantitative data or data that could be used in robust quantitative analysis. However, many stakeholders can provide a wide range of qualitative feedback, insight, or materials that can be used to provide important history, context, and support for quantitative analysis. This information is essential to demonstrate a more fulsome appreciation for the local civil justice ecosystem. In addition, it provides the ability for stakeholders to contribute to the work, further enabling the development of coalition and the potential for issue convergence. Examples of information used in qualitative assessment and observation include but are not limited to:

- Social program budgets;
- Academic or other research previously conducted about the relevant civil justice ecosystem or matter type;
- Prior program evaluations relevant to the local civil justice ecosystem;
- Articles and investigative reporting about the relevant civil justice ecosystem; and
- Feedback provided in interviews and stakeholder focus groups or listening sessions.

Locally prepared research and the feedback from local stakeholders are complemented by relevant research from other jurisdictions to provide further support for local feedback and create pathways for further engagement.

Element #6: Developing estimates of program costs.

The most prominent question we hear when working on projects related to civil access to justice reform is "What will it cost?"

As such, developing a reasonable, credible, and independent assessment of the expected costs of implementation is an essential element of our work. It is important to ensure such estimates reflect a sustainable model of service delivery consistent with the capacity necessary to provide the services, and the quality necessary to

[27] Relevant data are on file with the authors.

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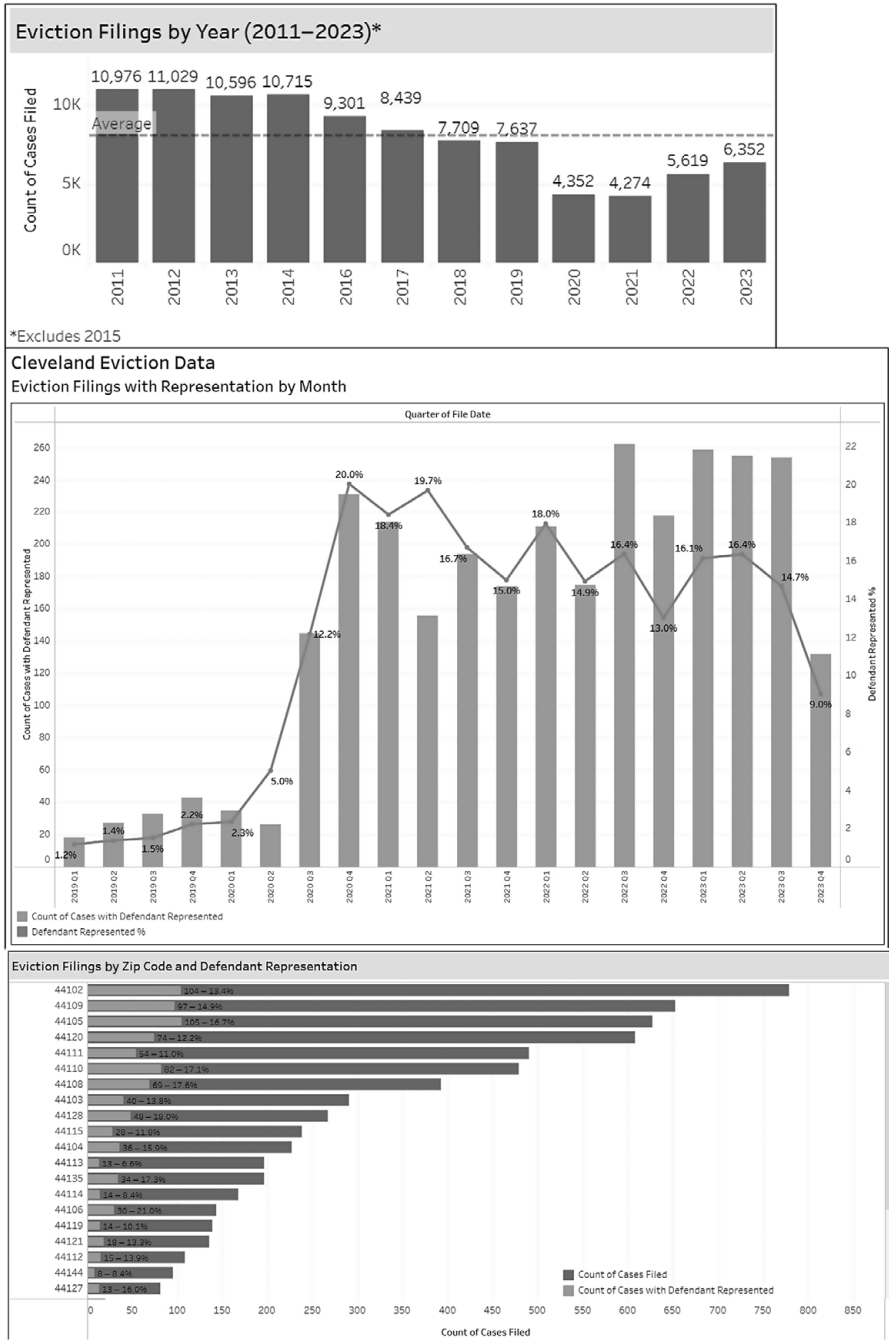


FIGURE 6.4 Eviction data visualizations.

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achieve the expected results. This often represents a paradigm shift for those providing the services in severely resource-constrained environments, where such services are necessarily extremely limited.

We have assisted jurisdictions with developing detailed program budgets for a variety of service delivery models. The budgeting exercise includes calculations for the expected number of clients served, estimated caseloads, sustainable personnel expenses (e.g., salaries and benefits for attorneys, paralegals, case managers, intake staff, navigators, and social workers), and program infrastructure (e.g., rent and utilities, office expenses, technology, furniture and equipment, licenses, and dues). The estimated implementation cost of the reform not only informs program and service delivery design but also how the reform may be implemented. Depending on the scale and scope of the reform, it may be appropriate to consider a phased-implementation timeline.

The cost of sustainable implementation provides an important foundation for the assessment of total funding needed but also provides the ability to assess how the potential fiscal and other impacts compare to the costs and availability of sustainable funding. Such measures are not fixed and static. Rather, the costs (and fiscal impacts) can vary if the program design changes. In some instances, program design can be optimized to minimize costs, maximize impact, and maintain the quality of service necessary to achieve programmatic expectations. In other instances, particularly when implementing transformative measures not previously implemented, it may be reasonable to expect cost efficiencies over time as the ecosystem adapts to a new or expanded model of service delivery.

Element #7: Using prior academic scholarship and stakeholder data, developing estimates of reasonably quantifiable fiscal impacts, and identifying qualitative assessment of other impacts not quantified.

The stakeholder engagement process will often reveal significant potential fiscal benefits to states, cities, counties, and municipalities from civil access to justice reform. This is further reinforced by a growing body of academic scholarship that has demonstrated the connections between housing instability or eviction, as well as other forms of trauma, that can give rise to social services responses.[28] Civil access-to-justice reform can have wide-ranging impacts on the lives of individuals, families, neighborhoods, and communities. In our work, we will recognize, research, and

[28] Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, Social Forces (Feb. 24, 2015), https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf (last accessed Feb. 14, 2025); Seattle Women's Comm'n. & Hous. Just. Project of the King Cnty. Bar Ass'n., *Losing Home: The Human Cost of Eviction in Seattle* (Sept. 2018), https://www.seattle.gov/documents/Departments/SeattleWomensCommission/LosingHome_9-18-18.pdf (last accessed Feb. 14, 2025); Ctr. on Urb. Poverty and Cmty. Dev., Case W. U., *The Cleveland Eviction Study: Observations in Eviction Court and the Stories of People Facing Eviction* (Oct. 2019), https://case.edu/socialwork/povertycenter/sites/default/files/2019-11/The%20Cleveland%20Eviction%20Study-10242019-fully%20accessible%28r%29.pdf (last accessed Feb. 14, 2025).

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discuss these potential impacts, but our quantitative analysis will primarily focus on the potential fiscal impacts that would accrue to the jurisdiction providing the funding for the program. In certain instances, we are mindful that fiscal benefits may accrue to the county or state (e.g., when we are analyzing the fiscal impact to a city) based on the nature of funding for certain social services.

For example, in several jurisdictions, such as Cleveland, we have observed that emergency response to homelessness (including the emergency shelter system), child welfare response, and the primary education system were all funded through the county. While policymakers in the city were interested in allocating funding for an eviction right to counsel and appreciated the holistic benefits that its residents would receive as well as importance of access to the justice system, the financial justification for it was more challenging because it was not providing the funding for social responses that would likely be most impacted.

These fiscal impacts can be considered on a continuum of confidence based on the availability of data, research, feedback, and system characteristics. In our experience, certain fiscal impacts can be reasonably and credibly calculated based on academic scholarship, publicly available data and metrics, and data that is often (or could be) collected by civil legal services organizations or other local stakeholders. Other fiscal impacts cannot be reliably or credibly measured with the data and research available, although feedback from stakeholders and individuals with lived experiences indicates the impacts clearly exist.

As an example, the fiscal impacts associated with residents who experience homelessness and the direct costs of homelessness response and emergency shelter are often more easily quantified using local data and information. However, the impact to property values for neighborhoods experiencing high rates of eviction, or the long-term impacts to health and education for children who experience eviction and persistent housing instability, can be very difficult to measure due to the lack of research and information currently available (both locally and generally on such topics).

The unquantifiable impacts stakeholders describe should also be considered and recognized. The reality of fiscal impacts that cannot be credibly converted to a monetary scale should not be viewed as a limitation. Rather, they are a pathway for continued research and data collection. We have observed firsthand the value of robust, structured data collection in jurisdictions throughout the country that are endeavoring to demonstrate the costs and benefits of regulatory reform related to access to civil justice.

Element #8: Assessing opportunities for issue convergence.

We often observe comprehensive cost–benefit analyses and potential fiscal impact quantifications contributing to the development of local issue convergence.[29]

[29] We use the term "issue convergence" to mean circumstances where stakeholders align on the need for reform and initial steps that can be taken together in pursuit of reform.

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Assessing issue convergence requires authentic engagement with a range of local community stakeholders. This engagement should also consider information requests, research, criticism, and questioning. An effective dialogue will require assessments of bias that may arise from the unique perspective and experience of stakeholders and a willingness to respectfully explore the potential for bias and how to interpret, understand, and apply the insights from stakeholder engagement. Through the course of developing this dialogue, we seek to identify common and aligned interests, experiences, and aspirations for change or innovation. We also identify areas of disagreement and concern. These are also valuable contributors to the dialogue and present opportunities to share such concerns from an independent perspective, creating a shared appreciation for the views of other stakeholders, including those who have traditionally been considered adversaries.

In certain instances, we have experienced providers of social services or legal assistance who are informed by their daily experiences but may not appreciate that those daily experiences are largely limited to serving those experiencing the most traumatic and destructive versions of certain civil legal issues or circumstances. In such circumstances, it can often be helpful to broaden the conversation and learn about the experience of system-impacted persons who experience the system differently and do not interact with certain social service or legal service programs. The engagement can then broaden the stakeholders involved and more widely inform the dialogue – with both, the opportunities for issue convergence can increase.

In other instances, for instance, rental property owners may initially oppose contemplated legislation that would expand access to legal representation for tenants. We have talked to dozens of rental property owners and their counsel across the country, and they often express concern that expanded access to legal representation may lead to expected delays in the eviction process due to the presence of a tenant's attorney. They frequently describe these expected delays as potentially contributing to increases in rental arrears and lost rental income.

Rental property owners and their counsel are often accustomed to fast-moving eviction proceedings where tenants fail to appear at the eviction hearing. If they do appear, they are unlikely to be represented, and unlikely to have the necessary specialized knowledge of landlord–tenant law to represent themselves effectively.[30] There are often similar concerns from the courts, which are also accustomed to expeditious eviction proceedings that do not require significant human or financial

[30] Kan. City Eviction Project, *Evictions in the Courts: An Analysis of 106,000 Cases from 2006–2016 in Jackson County* (Jan. 24, 2018), https://static1.squarespace.com/static/59ba0bd359cc68f015b7ff8a/t/5a68e811e4966bee3fb5d6cd/1516824594549/KC+Eviction+Project+-+Courts+Analysis.pdf (last accessed Feb. 14, 2025); Scherer, *supra* note 3, at 51; Nat'l Coal. for a Civil Right to Couns., *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention* (last modified Nov. 2024), http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf (last accessed Feb. 14, 2025).

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resources to adjudicate. Rental property owners also often expect that every tenant will seek legal assistance – regardless of the circumstances the client may be facing, the quality of housing, and the efforts by the landlord to try to provide time or assistance for the tenant.

However, our experience indicates an increased likelihood that cases can be resolved out of court and before the first hearing when both parties are represented, resulting in more efficient and effective case resolutions that has financial benefits for both parties (and the courts). Rental property owners' counsel have shared that they prefer to negotiate and interact with another attorney rather than an unrepresented tenant because it serves their interest: securing an efficient and effective case resolution that often includes emergency rental assistance to pay the rental property owner the back rent owed or creating repayment plans that tenants can reasonably adhere to, thereby increasing the likelihood of a rental property owner being paid the amount of back rent owed.

Rental property owners have also shared with us that the financial cost of identifying, screening, and securing a new tenant is significant, as is the financial cost of preparing a property for re-rental, and vacancies before a new tenant is secured. Because of those costs, their preference is generally to keep a current tenant.

In addition, the ways that tenants respond to delinquency and the receipt of an eviction notice can vary significantly. Not every tenant seeks legal representation. Data collected from eviction right to counsel jurisdictions indicates that those who do seek legal representation are often experiencing a variety of complex issues – such as substandard housing conditions, substantive disputes with the rental property owner, verbal lease agreements, and may be facing severe consequences that could arise from an involuntary displacement.[31] It is possible that many of those who are not seeking legal representation or assistance perceive their circumstances to be largely economic (not legal) and may seek nonlegal forms of assistance. This can inform both communication strategies (to assist tenants in understanding the legal issues associated with eviction cases) as well as complementary services (such as mediation and rental assistance) that may assist with effectively resolving eviction cases when tenants do not seek legal assistance.

Policymakers are also a stakeholder group with financial interest in regulatory reform related to access to civil justice and therefore can be a party to issue convergence. In certain instances, a primary factor for some policymakers when considering a reform is the economics of the reform: what are the costs and benefits, what is the expected return on investment, and is this a fiscally responsible use of taxpayer dollars? We have developed robust cost–benefit analyses of enacted and

[31] STOUT, *Cleveland Eviction Right to Counsel Annual Independent Evaluation January 1, 2022 to December 31, 2022* (Jan. 31, 2023), https://www.stout.com/en/services/transformative-change-consulting/eviction-right-to-counsel-resources (last accessed Feb. 14, 2025).

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contemplated eviction right to counsel legislation across the country to inform policymaker decision-making.

Even as issue convergence emerges as a possibility, we continue to embrace an iterative approach to the development of cost–benefit concepts, program design, and implementation considerations. Issue convergence requires continual efforts of genuine and authentic listening and engagement, and there are also often a significant number of unknowns in complex social ecosystems that require ongoing evaluation, assessment, and investigation. Iterative processes of engagement, design, development, implementation, and assessment (repeating) can ensure that an active dialogue is maintained, new insights and challenges are brought forward, and collaboration can continue to foster innovation.

Element #9: Identifying opportunities for continued, iterative assessment, evaluation, and refinement as well as identification of complementary reforms.

Reform will often involve the development and implementation of programs and services not previously provided in a jurisdiction, and certainly not recently. As such, predicting how the civil justice ecosystem will respond and adapt will not be done with perfect precision.

While reasonable estimates can be developed, it is important to acknowledge the limitations of this work and identify the additional data collection, research, and collaboration that will enable the ecosystem to continually evaluate the impact of the reform and identify the complementary services that can further enhance the ecosystem in a financially viable and sustainable manner.

Elements of iterative assessment that can be particularly valuable and impactful include but are not limited to:

- Expanded data collection, analysis, and visualization;
- Integration of data sets from additional data sources;
- Advisory councils to continue to be informed by people with lived experiences;
- Stakeholder engagement and stakeholder working groups;
- Data-informed outreach using local, trusted messengers;
- Focus groups and surveys of people with lived experiences; and
- Consideration of the development of complementary or adjacent resources, programs, policies, or legislation.

A commitment to such iterative assessment, development, and implementation techniques can foster ecosystem collaboration and enhance the likelihood of sustained commitment to innovation by local stakeholders.

6.4 CONCLUSION

The development of a comprehensive, independent cost–benefit study intended to inform policymakers and other stakeholders about the potential costs of providing

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services intended to expand civil access to justice, as well as the fiscal impact and potential costs savings that could accrue through the passage and effective implementation of such reform, can be a transformative contribution to the dialogue and support necessary to enact and sustain such reform.

However, this work is as much about *how* such analyses are conducted as it is about the quantitative result. By leveraging academic scholarship, engaging a broad range of local stakeholders, genuinely and authentically listening to their perspectives, collecting and integrating both quantitative and qualitative information, and seeking regular feedback as analyses and observations are developed, such cost–benefit analyses form the basis for collaboration and consensus that can lead to issue convergence in support of expansion of access to civil justice.

This approach can inform the work of pursuing sustainable, scaled reform related to many efforts to improve access to civil justice, such as civil right to counsel initiatives, court efforts to assist self-represented litigants, expanding the role of nonlawyers or limited-license legal practitioners, effectively utilizing brief services and advice programs, or developing justice initiatives to address racial inequity. It is also important to acknowledge that other theories of change that are more narrowly constructed may also be successful at achieving discrete change and an improvement in access to civil justice.

In our experience, reform related to access to civil justice that is pursued through a financially focused, stakeholder-informed, research-supported approach can result in significant, transformational, and groundbreaking change in civil access to justice.

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