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## A People-Centered Approach to Designing and Evaluating Community Justice Worker Programs in the United States

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# A PEOPLE-CENTERED APPROACH TO DESIGNING AND EVALUATING COMMUNITY JUSTICE WORKER PROGRAMS IN THE UNITED STATES

*Matthew Burnett\* & Rebecca L. Sandefur\*\**

*Around the country, jurisdictions are exploring new routes to expand access to justice by empowering community justice workers to provide legal services. Though such activities are often regarded as new, some have existed for decades — people without law licenses have long been authorized to provide representation in immigration matters, Tribal courts, and for those incarcerated in prisons and jails, as well as before a wide range of state and federal administrative agencies and other fora.*

*Recent efforts are seeking to expand community justice work, both by enlarging the labor force of justice workers and by empowering them to provide more useful and impactful legal assistance. For example, in November 2022, the Alaska Supreme Court approved a waiver of unauthorized practice of law restrictions that will allow Alaska Legal Services Corporation (ALSC), the largest civil legal aid provider in the state, to train and supervise community justice workers who live throughout Alaska's many rural and remote communities, including many where no attorneys live or even visit. Delaware's legislature took action on a key inequality in landlord-tenant law: in the past, landlords were permitted to employ non-lawyers for representation, but tenants were required to represent themselves or find an attorney. Delaware corrected this by permitting registered agents to appear in court on both sides of an eviction*

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*case. And for nearly four years, the Utah Supreme Court has been operating the world's first legal services regulatory sandbox, a regulatory space where traditional rules restricting legal advice and advocacy to lawyers can be relaxed in an environment where consumer protection is monitored in real time.*

*This paper reviews established community justice worker models that have been serving low-income and excluded communities in the United States for more than 50 years, including accredited immigration representatives, Tribal lay advocates, and jailhouse lawyers and emerging justice worker models advanced in Alaska, Arizona, Delaware, and Utah in the last five years. These real-world activities offer opportunities for learning about what factors make justice work not only effective at resolving people's justice problems or encouraging their engagement with law, but also what makes justice worker programs sustainable over the long term and scalable to meet the enormous volume of Americans' unmet legal needs. To encourage that learning, we offer a people-centered and evidence-based framework for designing and evaluating community justice worker models that focus on program effectiveness, scalability, and sustainability.*

Introduction: The Access to Justice Crisis In The United States ...	1511
I. A History of Justice Work in the United States.....	1512
II. Established Community Justice Worker Models.....	1515
A. Accredited Immigration Representatives.....	1516
B. Tribal Lay Advocates.....	1518
C. Jailhouse Lawyers.....	1520
III. New and Emerging Community Justice Worker Models.....	1521
A. Utah Regulatory Sandbox.....	1521
B. Alaska Community Justice Workers .....	1523
C. Delaware Qualified Tenant Advocates.....	1525
D. Arizona Domestic Violence Legal Advocate Initiative..	1526
IV. A Framework for Community Justice Worker Program Design And Evaluation .....	1527
A. Designing Community Justice Worker Programs for Effectiveness, Scalability, and Sustainability .....	1529
1. Designing for Effectiveness .....	1529
2. Designing for Scalability.....	1530
i. Barriers to Entry.....	1531
ii. Barriers to Replication .....	1533
iii. Barriers to Learning .....	1533
iv. Barriers to Funding .....	1534
3. Designing for Sustainability.....	1536
i. Diversity of Resource Streams.....	1537

ii. Ease of Recruitment and Likelihood of Retention ..... 1538

iii. Community Engagement ..... 1539

iv. Political Support ..... 1540

B. Evaluating Community Justice Worker Programs for Effectiveness, Scalability, and Sustainability ..... 1541

1. Measuring Effectiveness ..... 1542

2. Measuring Scalability ..... 1544

3. Measuring Sustainability ..... 1547

Conclusion ..... 1550

**INTRODUCTION: THE ACCESS TO JUSTICE CRISIS IN THE UNITED STATES**

The United States’ crisis of access to civil justice is so well documented at this point that its facts require little rehearsal. Whichever measure of the *lack* of access to justice one chooses as a standard, the crisis has only deepened, at the same time that the number of American lawyers has grown, both in absolute terms<sup>1</sup> and relative to the size of the population.<sup>2</sup> More civil justice problems go unserved and unresolved than ever.<sup>3</sup> U.S. courts have seen rising numbers of people appearing without representation.<sup>4</sup> Civil legal aid offices routinely turn away as many eligible people as they serve for lack

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1. The population of U.S. lawyers has grown by 400% since 1970. *See Demographics, A.B.A. PROFILE OF THE LEGAL PRO.* 2023, <https://www.abalegalprofile.com/demographics.html> [<https://perma.cc/JP7E-ETFD>] (last visited Aug. 6, 2024).

2. To illustrate, the United States had one lawyer for every 695 people in 1951 and one lawyer for every 252 people in 2005. *See CLARA N. CARSON & JEEYOON PARK, AM. BAR FOUND., THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005* 2 (2012).

3. Americans experience an estimated at least 150 million new civil justice problems annually. *See* Rebecca L. Sandefur & James Teufel, *Assessing America’s Access to Civil Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 765 (2021) (drawing on a range of civil justice surveys in the U.S. context to estimate the number of new civil justice problems Americans experience each year). At least 120 million of those go unresolved. *See* THE HAGUE INST. FOR INNOVATION OF L. & THE INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA 235 (2021), <https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf> [<https://perma.cc/563J-86A5>]. The Legal Services Corporation’s 2022 study of the legal needs of the low-income population finds an increase in the proportion of the civil justice issues of the poor that receive no or inadequate service, from 86% in 2017 to 92% in 2022. *Justice Gap Research*, LEGAL SERVS. CORP., <https://www.lsc.gov/initiatives/justice-gap-research> [<https://perma.cc/37Z7-DFK6>].

4. *See, e.g.,* Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 LEWIS & CLARK L. REV. 439, 440–41 (2009).

of resources.<sup>5</sup> Traditional responses, centered on lawyers as producers and deliverers of legal services, have not met vast civil legal needs, resulting in people facing life-altering legal issues with no one to help them and communities locked out of using their own law.<sup>6</sup>

The traditional, lawyer-centric model fails for several reasons. Legal issues and needs are not uniform across a socially diverse and geographically large and varied polity; thus, it is unsurprising that a single model of training, production, and delivery does a poor job of meeting those needs. The legal services offered by lawyers are often disproportionate to the problems people face, which may require the application of only a little law, or of some law combined with other skills, such as those of social workers, health care workers, teachers, librarians, accountants, or neighbors. Lawyers can lack the cultural competency and community trust necessary to connect with different groups and are often spatially and socio-spatially distant from those who benefit from legal services. Despite the growth of America's legal profession, it has simply failed to scale to meet the country's legal needs and give people access to the laws and systems that, in a democracy, are theirs to begin with.

### I. A HISTORY OF JUSTICE WORK IN THE UNITED STATES

Though today lawyers are the principal, and in many instances the only, authorized source of legal help for people facing justice issues, this was not always the case. Current policing of the “unauthorized practice of law” restricts much legal practice, including often the giving of basic legal advice, to licensed lawyers.<sup>7</sup> These restrictions are products of the late 19th and early 20th centuries.<sup>8</sup> Before lawyers mobilized professional closure around law practice, the United States boasted a much more diverse ecosystem of justice work. This included some jurisdictions in which basically all adults could practice law. In the 19th century, several states, including Indiana, Maine, New Hampshire, and Wisconsin, explicitly permitted, variously, all “citizens,” “voters,” or “residents” to practice law.<sup>9</sup>

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5. *Justice Gap Research*, *supra* note 3.

6. See Rachel Rossi, Director, Off. for Access to Just., Keynote Remarks at the Launch of the Alaska Legal Services Corporation's Community Justice Worker Resource Center (Oct. 25, 2023), <https://www.justice.gov/opa/speech/director-rachel-rossi-office-access-justice-delivers-keynote-remarks-launch-alaska-legal> [<https://perma.cc/98VH-FQPX>].

7. Laurel S. Terry, *Putting the Legal Profession's Monopoly on the Practice of Law in a Global Context*, 82 FORDHAM L. REV. 2903, 2908 (2014).

8. Laurel A. Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, 37 QUINNIPIAC L. REV. 97, 114–19 (2018).

9. *Id.* at 105.

Into the first third of the 20th century, the justice work ecosystem included robust and effective practice by people who were not licensed attorneys but held other roles as volunteers or employees of what we would now call nonprofit organizations. Immigration and the growth of diverse American cities spurred the development of a range of organizations and philanthropies seeking to assist ordinary people in handling justice issues around livelihood, housing, and entry into and stable residence in the United States.<sup>10</sup> The roots of contemporary social work and legal aid, for example, involved extensive practice by women who were not attorneys and not formally legally trained.<sup>11</sup> In New York City in the 19th century, woman justice workers without law licenses or formal legal training not only advised working women on legal responses to their experiences of wage theft, but also drafted, signed under their own authority, and sent to employers demand letters for unpaid wages on behalf of their working woman clients.<sup>12</sup> In Chicago, as part of the Chicago Immigrants' Protective League, woman social workers "provided advice to migrants and their families and represented migrants when dealing with the Bureau of Immigration."<sup>13</sup>

The late 19th and early 20th centuries also saw the birth of the settlement house movement. Middle-class and elite women<sup>14</sup> founded and staffed community-sited "houses" that offered legal, social, health, cultural, and educational services to the residents of poor, often immigrant, neighborhoods.<sup>15</sup> Settlement house work included not only social workers providing justice services to community residents around housing and other matters, but also nurses offering legal advice in the belief that their legal

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10. Felice Batlan, *The Birth of Legal Aid: Gender Ideologies, Women, and the Bar in New York City, 1863–1910*, 28 L. & HIST. REV. 931, 938 (2010) [hereinafter Batlan, *The Birth of Legal Aid*]; Felice Batlan, *Déjà Vu and the Gendered Origins of the Practice of Immigration Law: The Immigrants' Protective League, 1907–40*, 36 L. & HIST. REV. 713, 728–30, 750–69 (2018) [hereinafter Batlan, *Déjà Vu*].

11. Batlan, *The Birth of Legal Aid*, *supra* note 10, at 938 (describing the development of legal aid among women who were not licensed lawyers and its later take-over by male-dominated law societies).

12. Batlan, *The Birth of Legal Aid*, *supra* note 10, at 946–47.

13. Batlan, *Déjà Vu*, *supra* note 10, at 716.

14. Founders of settlement houses were also often white, but this was not always the case. For example, the educator, journalist, and suffragist Ida B. Wells, one of the founders of the NAACP, co-founded the Negro Fellowship League, the first Black settlement house in Chicago. *Chicago Stories*, WWTW, <https://interactive.wttw.com/chicago-stories/ida-b-wells/ida-b-wells-and-chicago-black-settlement-house> [<https://perma.cc/P9UR-HPYN>] (last visited Aug. 6, 2024).

15. See generally Felice Batlan, *Law and the Fabric of the Everyday: The Settlement Houses, Sociological Jurisprudence, and the Gendering of Urban Legal Culture*, 15 S. CAL. INTERDISC. L.J. 235, 239 (2006) [hereinafter Batlan, *Law and the Fabric of the Everyday*].

work was critical to their ability to support their patients' health,<sup>16</sup> a logic that underlies some community justice work today.<sup>17</sup> Settlement houses also produced and distributed publications intended to "spread and popularize legal knowledge,"<sup>18</sup> a kind of early 20th century Nolo Press.<sup>19</sup>

Legal practice by people who were not attorneys extended well beyond free services to the poor. Auto clubs, labor unions, trade associations, and homeowners' associations, among others, provided direct legal services to their members.<sup>20</sup> Many of these services were provided by lawyers employed explicitly for that purpose, in what we would now term the corporate practice of law.<sup>21</sup> But some services were provided by justice workers who were not lawyers, such as the civil claims department of Washington D.C.'s Motor Club who was staffed by people who were not licensed attorneys.<sup>22</sup>

It was the organized bar's concerted efforts that turned this diverse ecosystem into today's near-monoculture. As early as the mid-1800s, lawyers began to defend the practice of law from other groups of workers.<sup>23</sup> Then, as now, "[a]lthough the profession justified these actions in the name of consumer protection, it offered no evidence that lawyers performed the restricted tasks better than others."<sup>24</sup> Part of this work of closure reflected attempts to keep women, Jews, and new groups of immigrants, such as those from Southern and Eastern Europe, out of the practice of law;<sup>25</sup> part of it reflected attempts at market control in the economic hardships of the Great Depression.<sup>26</sup> The result of lawyers' successful capture of legal work is today's "monolithic, money-seeking, and monopolistic guild that fails to meet even the basic justice needs of everyday Americans."<sup>27</sup> That monolith

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16. *Id.* at 253–54.

17. *See infra* Section III.D (describing Alaska Community Justice Workers).

18. *See* Batlan, *Law and the Fabric of the Everyday*, *supra* note 15, at 255.

19. *See About Us*, NOLO, <https://www.nolo.com/about/about.html#our-mission> [<https://perma.cc/4K6W-9BDL>] (last visited Aug. 20, 2024).

20. *See* Nora Freeman Engstrom & James Stone, *Auto Clubs and the Lost Origins of the Access-to-Justice Crisis*, 134 *YALE L.J.* (forthcoming 2024) (manuscript at 35) (on file with authors).

21. The "corporate practice of law" is a contemporary term. When businesses that do not operate as legal services organizations deliver legal services directly to clients, this is occasionally termed the "corporate practice of law." Rigertas, *supra* note 8, at 103; *see, e.g.*, Batlan, *Law and the Fabric of the Everyday*, *supra* note 15, at 253–54.

22. *See* Engstrom & Stone, *supra* note 20, (manuscript at 26).

23. *See* Rigertas, *supra* note 8, at 110–11.

24. RICHARD L. ABEL, *AMERICAN LAWYERS* 229 (1989).

25. *See id.* at 85–87, 227.

26. *See id.*; Engstrom & Stone, *supra* note 20, at 5, 70.

27. Rebecca L. Sandefur & Matthew Burnett, *Justice Futures: Access to Justice and the Future of Justice Work*, in *RETHINKING THE LAWYER'S MONOPOLY: ACCESS TO JUSTICE AND*

actively prevents the emergence of “a multiplicity of approaches to meeting people’s justice needs where they are, through a variety of different kinds of service models.”<sup>28</sup>

## II. ESTABLISHED COMMUNITY JUSTICE WORKER MODELS

This Article focuses on nonlawyer community justice workers who are authorized to provide legal advice or representation despite prevailing restrictions on the unauthorized practice of law (UPL) that prohibit — and often criminalize — advice and representation by people without a law license. It does not focus on “legal navigators” who work under programs designed specifically to operate within UPL restrictions,<sup>29</sup> nor does it focus on emerging licensed paraprofessional programs.<sup>30</sup> There is limited evidence that simply providing generalized legal information or procedural guidance, i.e. “navigation,” alone is adequate to help people to resolve their justice problems. A study of three different navigator programs in the Brooklyn Housing Courts found that the most effective navigator model went far beyond informational assistance to include accompaniment throughout the life of an eviction case and out-of-court work connecting clients with benefits and services that would enable them to demonstrate that they could reliably pay rent.<sup>31</sup> At the same time, emerging licensed paraprofessional models have been slow to gain momentum.<sup>32</sup> Where these

THE FUTURE OF LEGAL SERVICES (David Engstrom & Nora Freeman Engstrom eds.) (forthcoming June 2024) (manuscript at 6) (on file with authors) [hereinafter Sandefur & Burnett, *Justice Futures*].

28. *Id.*

29. See, e.g., Margaret Hagan et al., *Community Navigators: The Role of Community Navigators to Reduce Poverty and Expand Access to Justice* 14 (Legal Link, Working Paper, Apr. 2022), <https://legallink.org/wp-content/uploads/2022/04/Community-Navigators-Legal-Link-Working-Paper.pdf> [<https://perma.cc/LFY7-4UES>]; MARY McCLYMONT, GEO. L. CTR., NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 5 (2019), <https://www.law.georgetown.edu/tech-institute/wp-content/uploads/sites/42/2023/06/Nonlawyer-Navigators-in-State-Courts.pdf> [<https://perma.cc/RF28-2KXH>].

30. For an overview of emerging licensed paraprofessional programs, see MICHAEL HOULBERG & NATALIE ANNE KNOWLTON, ALLIED LEGAL PROFESSIONALS: A NATIONAL FRAMEWORK FOR PROGRAM GROWTH 11 (2023), [https://iaals.du.edu/sites/default/files/documents/publications/alp\\_national\\_framework.pdf](https://iaals.du.edu/sites/default/files/documents/publications/alp_national_framework.pdf) [<https://perma.cc/QX3k-4AL3>].

31. See REBECCA L. SANDEFUR & THOMAS M. CLARKE, ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECTS (2016), [https://www.srln.org/system/files/attachments/new\\_york\\_city\\_court\\_navigators\\_report\\_final\\_with\\_final\\_links\\_december\\_2016.pdf](https://www.srln.org/system/files/attachments/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf) [<https://perma.cc/YLU3-W364>].

32. See Matthew Burnett & Rebecca L. Sandefur, *Designing Just Solutions at Scale: Lawyerless Legal Servs. and Evidence-Based Regulation*, 19 REVISTA DIREITO PUBLICO 104, 105 (2022).



programs do exist, they have produced few licensed paraprofessionals that serve low-income communities.

At both the state and federal levels, authorized individuals without law licenses routinely represent people before administrative agencies and other fora.<sup>33</sup> We examine three existing models that allow individuals without a law license to practice law in community settings: accredited immigration representatives, tribal lay advocates, and jailhouse lawyers. We selected these programs because they are well established and focus on serving low-income and otherwise excluded communities, while also operating under diverse authorizing mechanisms, community engagement, and capacitation models.<sup>34</sup> These models have also enjoyed varying degrees of political support.<sup>35</sup> The Article will later look to these programs for insights about how to better design and evaluate new and emerging community justice worker programs. These examples are, of course, meant to be illustrative rather than exhaustive.

### A. Accredited Immigration Representatives

For more than 60 years, the federal government has permitted trained lay advocates to represent clients in immigration matters.<sup>36</sup> Community justice workers in the immigration context, called accredited representatives, work or volunteer for a recognized nonprofit organization and are permitted to represent individuals in both affirmative immigration filings before the U.S. Citizenship and Immigration Services (USCIS) as partially accredited representatives, and in complex immigration court matters and before the Board of Immigration Appeals (BIA) as fully accredited representatives.<sup>37</sup>

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33. For additional examples, see AM. BAR ASS'N, NON-LAWYER ACTIVITY IN LAW RELATED SITUATIONS (1995), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/client\\_pro\\_migrated/Non\\_Lawyer\\_Activity.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/client_pro_migrated/Non_Lawyer_Activity.pdf) [<https://perma.cc/5VQ9-A4GX>]; see also LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES (2023), <https://www.justice.gov/d9/2023-12/2023%20Legal%20Aid%20Interagency%20Roundtable%20Report-508.pdf> [<https://perma.cc/JK43-4HPW>].

34. See *infra* pp. 7–15.

35. See *infra* pp. 7–15, 26–27.

36. See *Recognition and Accreditation Program Frequently Asked Questions*, EXEC. OFF. FOR IMMIGR. REV., <https://icor.eoir.justice.gov/en/faq/> [<https://perma.cc/7VWG-JPQT>] (last visited Aug. 20, 2024). For an in-depth overview of the Recognition and Accreditation Program and a discussion of opportunities for accredited representatives to increase legal representation among immigrants, see Michele R. Pistone, *The Crisis Of Unrepresented Immigrants: Vastly Increasing The Number of Accredited Representatives Offers the Best Hope for Resolving It*, 92 FORDHAM L. REV. 893, 909–17 (2023).

37. See 8 U.S.C.A. § 1362.

The Recognition and Accreditation (R&A) Program is overseen by the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR), which houses the Office of Legal Access Programs (OLAP).<sup>38</sup>

As its name suggests, the R&A Program has two elements: recognition, which applies to organizations, and accreditation, which applies to individuals.<sup>39</sup> In order to be eligible for recognition, an organization must show that it is, or has an application pending to be, a federally tax-exempt, nonprofit, religious, charitable, or social service organization; that it serves primarily low-income individuals; that it has at least one staff person or volunteer ready to become an accredited representative; that it can provide access to adequate “knowledge, information, and experience in immigration law and procedure”; and that it will designate an authorized officer.<sup>40</sup>

In order to become an accredited representative, an individual must be an employee of or volunteer at a recognized organization; they cannot operate independently and cannot be an attorney.<sup>41</sup> Accredited representatives must also show that they have good character and fitness, that they have not pleaded guilty to or been found guilty of a serious crime, and that they are not lawyers facing disciplinary proceedings or who have been disbarred.<sup>42</sup> Finally, accredited representatives are required to have “broad knowledge and adequate experience in immigration law and procedure.”<sup>43</sup> Initial applicants for partial accreditation are required to submit a current resume with qualifications including their education and immigration law experience, a list of trainings in immigration law and procedure, which must include a formal training course on immigration law and procedure, and at least two letters of recommendation.<sup>44</sup> Applications for full accreditation, which authorizes accredited representatives to practice in immigration court and before the BIA without attorney supervision, requires additional evidence of experience and training, including court observation, shadowing, sample briefs and motions, demonstrated examples of case assistance, advance training, mock trial practice, and additional letters of support from individuals familiar with their work, among other activities.<sup>45</sup>

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38. See *Office of Legal Access Programs*, EXEC. OFF. FOR IMMIGR. REV. (Oct. 13, 2023), <https://www.justice.gov/eoir/office-of-legal-access-programs> [https://perma.cc/3JVH-Y7L6].

39. See *id.*

40. 8 C.F.R. § 1292.11 (2019).

41. 8 C.F.R. § 1292.12 (2019).

42. *Id.*

43. *Id.*

44. *Id.*

45. See *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 36 (answering the question “[w]hat additional documentation must an organization submit when applying for full accreditation of a proposed representative?”).

As of August 2023, there were approximately 850 recognized organizations and 2,290 accredited representatives providing immigration legal services in the US.<sup>46</sup> Supporting these advocates is a robust and well-coordinated network of national nonprofit organizations that provide training and technical assistance, including helping new organizations and advocates with their applications to the EOIR Recognition and Accreditation Program.<sup>47</sup> These technical assistance organizations have developed a standardized 40-hour immigration training to satisfy the formal training requirement, which is available both in-person and online.<sup>48</sup> The VIISTA Program, offered by Villanova University, offers an online certificate program for both partial and full accreditation.<sup>49</sup>

### B. Tribal Lay Advocates

Tribal lay advocates work across hundreds of Tribal courts in the United States, including as many as 300 trial courts and over 150 appellate courts.<sup>50</sup> Advocates are required to meet the requirements of the Tribal code under which they practice, and may handle both civil and criminal matters in Tribal courts.<sup>51</sup> Tribal lay advocates are typically members of the same Tribe in which they practice, which facilitates trust with communities, and also means that these advocates share cultural knowledge and language with their clients.<sup>52</sup>

Lay advocates are authorized to practice Tribal law and represent individuals in Tribal courts because Tribes have sovereign authority and

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46. See *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 36 (answering the question “[w]hat is the Recognition and Accreditation Program?”).

47. See, e.g., CATH. LEGAL IMMIGR. NETWORK, <https://www.cliniclegal.org/> [<https://perma.cc/Q2NA-Y3HS>] (last visited Aug. 21, 2024) (providing extensive training and technical assistance to accredited representatives); IMMIGR. LEGAL RES. CTR., <https://www.ilrc.org/> [<https://perma.cc/W2JQ-VSBY>] (last visited Aug. 21, 2024) (providing extensive training and technical assistance to accredited representatives).

48. See, e.g., IMMIGR. LEGAL RES. CTR., *supra* note 47.

49. See VIISTA — Villanova Interdisciplinary Immigration Studies Training for Advocates, VILL. UNIV., <https://www.villanova.edu/university/professional-studies/academics/professional-education/viista.html> [<https://perma.cc/EF6Q-Q5WD>] (last visited Aug. 21, 2024).

50. Judith M. Stinson et al., *Trusting Tribal Courts: More Lawyers Is Not Always the Answer*, 14 L.J. FOR SOC. JUST. ARIZ. ST. U. 130, 131 (2021).

51. See *id.* at 131–32.

52. *Id.* at 154.

autonomy to regulate who can practice before their courts.<sup>53</sup> Tribal lay advocacy is, however, not well documented<sup>54</sup>:

[T]here is no current scholarship as to when Tribal lay advocates began to proliferate in Tribal courts, how their roles within the Tribal judiciary have materialized in reflection of and beyond the Tribal code, how they have influenced other Tribal legal bodies, or how they impact litigants within Tribal courts.<sup>55</sup>

A lack of understanding and even outright distrust of Tribal courts and Tribal lay advocates and judges exacerbates this lack of recognition and scholarly attention.<sup>56</sup>

The regulatory authority to establish who can practice law in Tribal courts is set by Tribal councils<sup>57</sup> and varies widely across Tribal codes.<sup>58</sup> Requirements can include simply applying, taking an oath stating that one is familiar with Tribal law, having good moral character, and passing Tribal bar exams, which themselves vary considerably in scope and complexity.<sup>59</sup>

Formal training programs also take different forms. Some are localized, such as Montana Legal Services Association's Tribal Advocacy Incubator Project,<sup>60</sup> which is focused on divorce and custody, landlord-tenant disputes, wills and probate, real estate, and land issues. Others are national, such as the National Tribal Trial College's Certificate in Tribal Court Legal Advocacy, which partners with the DOJ Office on Violence Against Women to offer a 200-hour online course and a 40-hour in-person trial skills training and focuses primarily on divorce and custody, domestic violence protection orders, and victim rights.<sup>61</sup>

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53. Lauren van Schilfgaarde, *The Statutory Influence of Tribal Lay Advocates*, in *RETHINKING THE LAWYER'S MONOPOLY: ACCESS TO JUST. AND THE FUTURE OF LEGAL SERVS.* (David Engstrom & Nora Freeman Engstrom eds.) (forthcoming 2024) (manuscript at 3) (on file with authors).

54. *Id.* at 4, 6.

55. *Id.* at 6.

56. *See generally* Stinson et al., *supra* note 50.

57. Frank Pommersheim, *The Contextual Legitimacy of Adjudication in Tribal Courts and the Role of the Tribal Bar as an Interpretive Community: An Essay*, 18 N.M. L. Rev. 49, 56 (1988).

58. *See* van Schilfgaarde, *supra* note 53, at 6–7.

59. *See* van Schilfgaarde, *supra* note 53, at 9–10.

60. *See Tribal Advocacy Incubator Project*, MONT. LEGAL SERVS., <https://mtlsa.org/tribal-advocate-incubator-project/> [<https://perma.cc/6JH6-TUF2>] (last visited Aug. 14, 2024).

61. *See* NAT'L TRIBAL TRIAL COLL., UNIV. WIS.-MADISON, <https://nttc.extension.wisc.edu/> [<https://perma.cc/EJ7R-25Z4>] (last visited Aug. 14, 2024).

### C. Jailhouse Lawyers

Jailhouse lawyers are among the most politically and institutionally repressed models of authorized justice work in the United States. The ability for jailhouse lawyers to provide legal assistance was established in *Johnson v. Avery*, a 1969 Supreme Court case that struck down a Tennessee prison rule that barred people who are incarcerated from assisting others with their legal issues absent a reasonable alternative.<sup>62</sup> In *Bounds v. Smith*, the Court held that the fundamental constitutional right of access to the courts requires that incarcerated individuals have adequate law libraries or access to legal assistance by people trained in the law.<sup>63</sup>

Two subsequent Supreme Court cases have eroded these protections. In *Lewis v. Casey*, the Court ruled that, while an incarcerated individual has a right to access the courts, substandard law libraries or other types of legal assistance are not per se unconstitutional — the deficiencies in those resources must actually inhibit the individual’s ability to pursue a claim.<sup>64</sup> In *Shaw v. Murphy*, the Court held that incarcerated individuals do not have a special First Amendment right to provide legal assistance to fellow inmates when doing so would violate prison regulations so long as the regulations are “reasonably related to legitimate penological interests.”<sup>65</sup>

Despite facing overwhelming challenges, including access to legal resources, institutional barriers, and retaliation, jailhouse lawyers play a critical role in promoting access to justice and highlighting systemic injustices within the prison system.<sup>66</sup> In addition to general legal resources, two prominent manuals are published and updated regularly to support jailhouse lawyers and self-represented inmates in understanding their rights and navigating legal procedures. The Jailhouse Lawyers Manual (JLM),<sup>67</sup> published by the Columbia Human Rights Law Review, is now in its 12th edition (2020), and the Jailhouse Lawyers Handbook (JLH),<sup>68</sup> published by the Center for Constitutional Rights and the National Lawyers Guild, is now

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62. 393 U.S. 483, 490 (1969).

63. 430 U.S. 817, 828 (1977).

64. 518 U.S. 343, 349, 351 (1996).

65. 532 U.S. 223, 224–25 (2001).

66. See generally Jhody Polk & Tyler Walton, *Legal Empowerment Is Abolition: A Response to the Symposium on Critical Legal Empowerment*, 98 N.Y.U. L. REV. ONLINE 282 (2023).

67. See generally A JAILHOUSE LAWYER’S MANUAL (12th ed. 2020), <https://jlm.law.columbia.edu/a-jailhouse-lawyers-manual-12th-edition/> [<https://perma.cc/ZT9K-BFR9>].

68. See generally THE JAILHOUSE LAWYER’S HANDBOOK: HOW TO BRING A FEDERAL LAWSUIT TO CHALLENGE VIOLATIONS OF YOUR RIGHTS IN PRISON (Rachel Meeropol et al. eds., 6th ed. 2021).

in its 6th edition (2021). Both manuals are made available in prisons and jails across the country.<sup>69</sup>

Several organizations support jailhouse lawyers, both inside and outside prisons and jails. The Jailhouse Lawyers Initiative, housed at NYU School of Law’s Bernstein Institute for Human Rights, supports a national network of current and former jailhouse lawyers, provides legal education and empowerment trainings for incarcerated people, and advocates on behalf of jailhouse lawyers as “essential members of the legal ecosystem.”<sup>70</sup> Jailhouse Lawyers Speak is a prisoner-led organization that advocates for prisoners’ human rights and dignity, including “better conditions within US prisons and legal educational opportunities for US prisoners” through legal resources and trainings.<sup>71</sup> A variety of state and local organizations also serve jailhouse lawyers and incarcerated individuals, including legal and social services providers<sup>72</sup> and law libraries.<sup>73</sup> Despite the severe restrictions on access to legal assistance and resources for people who are incarcerated, these programs and resources provide hope.

### III. NEW AND EMERGING COMMUNITY JUSTICE WORKER MODELS

#### A. Utah Regulatory Sandbox

In 2020, the Utah Supreme Court launched the first, and currently the only, legal services regulatory sandbox in the United States.<sup>74</sup> The Utah Sandbox allows both non- and for-profit organizations “to seek waivers of existing blanket UPL prohibitions in favor of assessing applicants’ risk of

69. See *id.* at 2; *About the JLM, A JAILHOUSE LAWYER’S MANUAL*, <https://jlm.law.columbia.edu/about-jlm/> [<https://perma.cc/3W6T-V6BF>] (last visited Aug. 14, 2024).

70. *The Jailhouse Lawyer Initiative*, N.Y.U. SCH. LAW, [https://www.law.nyu.edu/centers/bernstein-institute/legal\\_empowerment/jailhouse\\_lawyers](https://www.law.nyu.edu/centers/bernstein-institute/legal_empowerment/jailhouse_lawyers) [<https://perma.cc/2NR4-Y2PB>] (last visited Aug. 14, 2024).

71. JAILHOUSE LAWS. SPEAK, <https://www.jailouselawyerspeak.com/> [<https://perma.cc/8EBP-BYD7>] (last visited Aug. 14, 2024).

72. See AM. C.L. UNION, 2012 PRISONERS’ ASSISTANCE DIRECTORY (8th ed. 2012), [https://www.hivlawandpolicy.org/sites/default/files/2012\\_prisoners\\_assistance\\_directory.pdf](https://www.hivlawandpolicy.org/sites/default/files/2012_prisoners_assistance_directory.pdf) [<https://perma.cc/CLM7-3X5K>].

73. See *List of Law Libraries Serving Prisoners*, AM. ASS’N L. LIBRS., <https://www.aallnet.org/srsis/resources-publications/assistance-for-prisoners/list-law-libraries-serving-prisoners/> [<https://perma.cc/2CGN-8TT8>] (last visited Aug. 14, 2024).

74. See *Utah Regulatory Sandbox Project*, STATE JUST. INST., <https://www.sji.gov/utah-regulatory-sandbox-project/> [<https://perma.cc/XD9M-4ZWM>] (last visited Aug. 17, 2024); *Our History*, UTAH OFF. LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/our-history/> [<https://perma.cc/5W84-ZAH5>] (last visited Aug. 21, 2024).

harming consumers and monitoring the impact of admitted entities' work on consumers."<sup>75</sup> These potential harms include:

- (1) "achiev[ing] an inaccurate or inappropriate legal result,
- (2) fail[ing] to exercise legal rights through ignorance or bad advice, and
- (3) purchas[ing] an unnecessary or inappropriate legal service."<sup>76</sup>

The risk that an organization's practice will expose consumers to these harms is assessed when they apply to the Utah Sandbox, at which point they are "classified on a scale from low to high risk to consumers."<sup>77</sup> This risk assessment affects both the frequency and scope of the data that organizations are required to submit to the regulator.

An analysis of these reports is published in a monthly Activity Report that includes information about the activities and an assessment of evidence regarding the three consumer harms. As of December 2023, a total of 51 providers were authorized,<sup>78</sup> with nearly 70,000 services provided to approximately 24,000 individual consumers.<sup>79</sup> The Utah Office of Legal Services Innovation, which manages the Sandbox, has received fewer than ten complaints related to the three harms during this same period, all of which have been investigated and resolved satisfactorily from the perspective of both the affected consumer and the regulator.<sup>80</sup>

While uptake among nonprofit providers has been limited compared to for-profit entities, there are several community-based organizations that have used the Utah Sandbox to allow community justice workers to provide otherwise prohibited legal advice and representation. The Timpanogos Legal Center, a nonprofit that provides legal assistance to survivors of domestic violence, launched a Certified Advocate Partner Program that allows trained community justice workers to provide legal advice related to protective orders.<sup>81</sup> The program currently supports 15 advocates actively

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75. Sandefur & Burnett, *Justice Futures*, *supra* note 27, at 10.

76. Sandefur & Burnett, *Justice Futures*, *supra* note 27, at 10 (internal quotations omitted).

77. Sandefur & Burnett, *Justice Futures*, *supra* note 27, at 10.

78. UTAH OFF. OF LEGAL SERVS. INNOVATION, ACTIVITY REPORT: DECEMBER 2023 1 (2023), <https://utahinnovationoffice.org/wp-content/uploads/2024/02/December-Activity-Report.pdf> [<https://perma.cc/UC7H-W487>]. The discrepancy between number of entities authorized and number reporting data likely reflects several components, including entities which have withdrawn or been terminated and entities which have been authorized but have not yet launched their sandbox services.

79. *Id.* at 4.

80. *See id.* at 7–8.

81. *See* Amended Order for Authorization to Practice Law, *In re* Application of Timpanogos Legal Ctr.'s Certified Advoc. Partners Program (Utah 2022), <https://utahinnovationoffice.org/wp-content/uploads/2024/02/TLC-Auth-Order-8.22.pdf> [<https://perma.cc/2UYA-YLCK>].

providing legal services.<sup>82</sup> A particularly innovative aspect of this program is that it embeds community justice workers within municipal and county law enforcement and government agencies.<sup>83</sup> Between June 2021 and June 2024, advocates assisted over 350 clients and provided over 840 services, including 225 protective orders.<sup>84</sup> Moreover, 77% of clients served through the program lived in rural areas of Utah, a testament to the potential for spatially embedded community justice workers to help bridge the rural justice gap.<sup>85</sup> Other examples include Holy Cross Ministries, where community justice workers help low-income Utahans address their medical debt,<sup>86</sup> and Rasa Legal, a Public Benefit Corporation, which has developed a technology-enabled service that allows people to get their criminal records expunged at a much lower cost than traditional lawyer services.<sup>87</sup>

### B. Alaska Community Justice Workers

In 2022, the Alaska Supreme Court was the first in the country to authorize a broad waiver of UPL restrictions for a nonprofit provider, the Alaska Legal Services Corporation (ALSC), to train and supervise Community Justice Workers (CJWs) to offer limited scope advice and representation.<sup>88</sup> The waiver allows ALSC to expand the services provided under its CJW program, which it launched in 2019 in partnership with the Alaska Native Tribal Health Consortium (ANTHC) and the Alaska Pacific University (APU).<sup>89</sup>

Under Alaska Bar Rule 43.5, a CJW is eligible to provide limited scope advice and representation if they: 1) successfully complete the required substantive law and ethics training provided by the ALSC; 2) practice

82. See *Certified Advocate Partners Program*, TIMPANOGOS LEGAL CTR., <https://www.timplegal.org/legal-services/certified-advocate-partners-program> [https://perma.cc/Z3YL-JXTU] (last visited Aug. 21, 2024).

83. See *id.*

84. See *id.*

85. See *id.*

86. See UTAH OFF. LEGAL SERVS. INNOVATION, AMENDED SANDBOX AUTHORIZATION PACKET: HOLY CROSS MINISTRIES 1 (2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/09/Amended-Auth-Packet-Holy-Cross-8.22.pdf> [https://perma.cc/WC58-WX9Z].

87. See UTAH OFF. OF LEGAL SERVS. INNOVATION, SANDBOX AUTHORIZATION PACKET: RASA PUBLIC BENEFIT CORP. 1 (2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/11/Amended-Auth-Packet-Rasa-9.22.pdf> [https://perma.cc/PSD4-VACE].

88. See Alaska State Bar R. 43.5 (2022).

89. See N.Y.U. Ctr. on Int'l Coop., *The Native Health Partners Ensuring Justice for People in Alaska*, MEDIUM (Oct. 2, 2020), <https://medium.com/sdg16plus/how-native-health-partners-ensure-justice-for-people-in-alaska-48491c418535> [https://perma.cc/D6XE-NMT2].



exclusively under the supervision of an ALSC attorney; and 3) disclose that they are not a lawyer in writing and obtain written consent for representation from each client.<sup>90</sup> Once a CJW has completed the required trainings, ALSC's Executive Director submits their application to the Alaska State Bar Board of Governors, which then reviews their application and issues the waiver.<sup>91</sup> The ALSC must submit reports on a quarterly basis, including the number of clients served by CJWs, case outcomes, any reports of consumer harm, and the termination of any active waivers.<sup>92</sup>

As of June 2024, over 400 CJWs had either completed their training or were currently enrolled in training,<sup>93</sup> which are primarily asynchronous online e-learning modules complemented by hands-on case handling and mentoring. CJWs work in more than 40 primarily rural and remote Alaska Native communities across the State, helping their neighbors with a range of legal issues, including Supplemental Nutrition Assistance Program (SNAP) benefits, consumer debt issues, Indian Child Welfare Act (ICWA) cases, domestic violence protection orders, and wills.<sup>94</sup> Current case outcomes for clients served by CJWs have a 100% success rate.<sup>95</sup>

Several factors distinguish this program. First, it is committed to evidence-based practice. Both the program's expansion and a study of it are currently funded through a \$1 million award from the National Science Foundation's CIVIC Innovation Challenge, a research and action competition that prioritizes "community engagement, transdisciplinary research, and real-world pilots that center communities and their priorities."<sup>96</sup> Second, it is committed to sustainability — both for the program and for CJWs themselves. While the ALSC now has CJWs on staff that serve as peer supports to ensure consistent services, the majority of CJWs are volunteers or staff at tribal and community-based organizations, distributing both the costs and impact of justice work to partner

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90. Alaska State Bar R. 14.5, *supra* note 88.

91. Alaska State Bar R. 14.5, *supra* note 88.

92. Alaska State Bar R. 14.5, *supra* note 88.

93. See Rebecca L. Sandefur & Lucy Ricca, *Outside the Box: How States Are Increasing Access to Justice through Evidence-Based Regulation of the Practice of Law*, 108 JUDICATURE 58, 62 (2024).

94. See *Community Justice Worker Project*, ALASKA LEGAL SERVS. CORP., <https://www.alsc-law.org/community-justice-worker-program/> [https://perma.cc/7QUF-B7M3] (last visited Aug. 22, 2024); *About ALSC*, ALASKA LEGAL SERVS. CORP., <https://www.alsc-law.org/about/> [https://perma.cc/U2CD-ANRM] (last visited Aug. 22, 2024).

95. See Sandefur & Ricca, *supra* note 93.

96. *Announcing Civic Stage 2 Pilot Grants*, CIVIC INNOVATION CHALLENGE (Sept. 21, 2023), <https://nscivinnovation.org/civic-2022-stage-2-awardees/#alaska> [https://perma.cc/9F6N-9VN8].

organizations.<sup>97</sup> Overall, the program has nearly doubled the ALSC’s annual budget through new grants and other revenue. To address potential burnout among frontline workers, the ALSC has created a full-time position dedicated to CJW wellbeing and community support.<sup>98</sup> Finally, CJWs reflect the cultural and linguistic diversity of Alaska’s people. Whereas Alaska Native and American Indians represent 12% of ALSC’s staff and nearly 22% of Alaskans, 30% of CJWs are indigenous.<sup>99</sup> A lack of culturally and linguistically competent legal services, in addition to low numbers of lawyers in rural communities, has fueled the rural access to justice crisis in the United States.<sup>100</sup>

### C. Delaware Qualified Tenant Advocates

In January 2022, the Delaware Supreme Court adopted Rule 57.1, allowing Qualified Tenant Advocates (QTAs) to represent low-income tenants in residential summary possession matters in the Justice of the Peace Court.<sup>101</sup> Rule 57.1 was adopted in part to address a striking asymmetry: previously, Delaware Supreme Court Rule 57 allowed landlords to be represented by both lawyers and non-lawyer agents, whereas tenants could only be self-represented or represented by lawyers,<sup>102</sup> an inequity not unique to Delaware, and a solution that could inspire similar reforms in other states. Under Rule 57.1, a QTA is required to be an employee or an independent contractor of one of three “supervising” legal aid organizations in Delaware: Community Legal Aid Society, Delaware Volunteer Legal Services, or Legal Services Corporation of Delaware.<sup>103</sup>

All QTAs must be trained by a supervising organization in landlord-tenant law, evidence, and the rules and the principles of professionalism of the Justice of the Peace Court.<sup>104</sup> QTAs are required to be supervised by an attorney in order to appear before Justice of the Peace Courts, but the

97. See *Leadership*, ALASKA LEGAL SERVS. CORP., <https://www.alsc-law.org/leadership/> [https://perma.cc/9JMM-TAA2] (last visited Aug. 22, 2024).

98. Interview with Staff, Alaska Legal Servs. Corp. (April 2024).

99. See *id.*

100. See Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 19–23 (2018); see also Michele Statz et al., “*They Had Access, but They Didn’t Get Justice*”: *Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 GEO J. ON POVERTY L. & POL’Y 321, 325 (2021).

101. See Order Adopting Rule 57.1 (Del. Sup. Ct. 2022), <https://courts.delaware.gov/forms/download.aspx?id=167228> [https://perma.cc/BWJ7-GU7H].

102. See *id.*; see also DEL. SUP. CT. R. 57(b), <https://courts.delaware.gov/help/docs/Rule57.pdf> [https://perma.cc/DM4B-WE2W].

103. See Order Adopting Rule 57.1, *supra* note 101, at 57.1(b)(1).

104. See Order Adopting Rule 57.1, *supra* note 101, at 57.1(b)(1)(i).

attorney does not have to be present at the hearing.<sup>105</sup> The QTA's competency and eligibility must be certified by an attorney at one of the supervising organizations using forms filed with the clerk of the Delaware Supreme Court.<sup>106</sup> Importantly, Rule 57.1 does not, on its face, impose educational barriers to participation, such as a high school diploma or a GED, or an associate's or bachelor's degree,<sup>107</sup> although supervising agencies could impose such educational requirements when hiring or contracting with QTAs.

While the Rule prohibits QTAs from receiving compensation directly from clients, they can be paid by supervising agencies, who are allowed to be compensated,<sup>108</sup> offering a potential path towards sustainability similar to the modest fees charged by many nonprofit immigration legal services providers discussed above. An additional related innovation is the recent right to representation legislation passed in Delaware.<sup>109</sup> Because QTAs are non-lawyers empowered to represent tenants, the program offers a viable alternative to right to counsel programs that are struggling to attract and retain attorneys.<sup>110</sup>

#### D. Arizona Domestic Violence Legal Advocate Initiative

In 2020, the Arizona Supreme Court issued an administrative order authorizing a Licensed Legal Advocate (LLA) Pilot Program, allowing domestic violence advocates employed by the Emerge! Center Against Domestic Abuse to provide limited scope legal advice and support to domestic violence survivors, including orders of protection and other related family law issues.<sup>111</sup> The Pilot Program initially rolled out in 2021, and in 2023, the Arizona Supreme Court approved the expansion of the program statewide to include other community-based organizations under

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105. See Order Adopting Rule 57.1, *supra* note 101, at 57.1(b)(2).

106. See Order Adopting Rule 57.1, *supra* note 101, at 57.1(b)(1)(ii).

107. See generally Order Adopting Rule 57.1, *supra* note 101, at 57.1(b).

108. See Order Adopting Rule 57.1, *supra* note 101, at 57.1(c).

109. See S.B. 1, 152nd Gen. Assemb., Reg. Sess. (Del. 2023) <https://legis.delaware.gov/BillDetail?LegislationId=129961> [<https://perma.cc/ZS7F-3L58>].

110. See, e.g., Frank Festa & Annie Iezzi, *NYC's Floundering 'Right to Counsel' Fails to Keep Pace with Eviction Cases*, CITY LIMITS (Jan. 3, 2023), <https://citylimits.org/2023/01/03/nycs-floundering-right-to-counsel-fails-to-keep-pace-with-eviction-cases/> [<https://perma.cc/MUT9-6ZER>]; Jennifer Ludden, *More Renters Facing Eviction Have a Right to a Lawyer. Finding One Can Be Hard*, NPR (July 8, 2023), <https://www.npr.org/2023/07/08/1185888943/renters-tenant-rights-eviction-lawyer-right-to-counsel-court> [<https://perma.cc/QQN3-KNV8>].

111. See Admin. Ord. No. 2020-88, *In re* Authorizing a Licensed Legal Advocate Pilot Program for Domestic Violence Cases and Related Matters (Ariz. Sup. Ct. 2020).

Administrative Order 2023-21.<sup>112</sup> The name of this program was recently changed to the Domestic Violence Legal Advocate (DVLA) Initiative in Administrative Order 2024-35, which replaces Administrative Order 2023-21.<sup>113</sup> Through this program, DVLA's receive training from a program called Innovation 4 Justice (i4J), which then nominates DVLA's for certification by the Administrative Office of the Courts.<sup>114</sup> LLAs are embedded staff in community-based organizations, are not required to be supervised by an attorney,<sup>115</sup> and cannot charge for their services.<sup>116</sup>

In order to qualify as a DVLA, an individual must be 18 years old, a citizen or legal permanent resident of the United States, and be of good moral character.<sup>117</sup> DVLA's cannot be attorneys disbarred in any state or denied admission to practice in Arizona, and must submit their fingerprints for criminal background checks.<sup>118</sup> Additionally, DVLA's must successfully complete an 8-week, self-paced training course offered by i4J, which is currently the only approved training provider, pass an examination proctored by the Administrative Office of the Courts (AOC), and demonstrate 2,000 hours of work experience as a domestic violence advocate in order to be eligible to apply for the program.<sup>119</sup> In 2023, Arizona Supreme Court Administrative Order 2023-19 authorized i4J to launch a Housing Stability Legal Advocate Pilot Program which largely parallels the requirements of the DVLA Pilot Program.<sup>120</sup>

#### **IV. A FRAMEWORK FOR COMMUNITY JUSTICE WORKER PROGRAM DESIGN AND EVALUATION**

The expansion of CJW models around the country over the last several years offers exciting new opportunities for understanding how access to justice supports individuals and communities in both meeting fundamental human needs and organizing around their rights and interests. This new knowledge can guide justice program design and practice and provide insight into what makes programs effective at achieving specific goals, sustainable for communities served and the people working in them, and scalable to meet

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112. *See* Admin. Ord. No. 2023-21, *In re* Authorizing a Licensed Legal Advocate Pilot Program for Domestic Violence Cases and Related Matters (Ariz. Sup. Ct. 2023).

113. *See* Admin. Ord. No. 2024-35, *In re* Authorizing a Licensed Legal Advocate Pilot Program for Domestic Violence Cases and Related Matters (Ariz. Sup. Ct. 2024).

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *See id.*

120. *See* Admin. Ord. No. 2023-21, *In re* Authorizing a Licensed Legal Advocate Pilot Program for Domestic Violence Cases and Related Matters (Ariz. Sup. Ct. 2023).

the vast and varied justice needs of a diverse country. Building on research on legal needs,<sup>121</sup> legal capability,<sup>122</sup> legal consciousness,<sup>123</sup> rurality and other socio-spatial dimensions of justice needs and services,<sup>124</sup> and community legal empowerment,<sup>125</sup> we offer a framework for designing and measuring the impacts of CJW models. This new approach departs from traditional approaches to legal services program design and evaluation in three important ways.

First, this approach is *people-centered*. Rather than focusing on designing programs around existing lawyer-centric and court-centric approaches, we define program impact across multiple dimensions that reflect attempts to meet people and communities where they are, with help that is likely to matter in achieving just solutions. These dimensions include the ways in which activities are targeted, timely, trustworthy, and transparent from the perspective of community members as well as the quality and accessibility of services.<sup>126</sup> Second, in addition to attention to effectiveness at solving justice problems — the typical focus of this work — we explore how community justice work changes people’s relation to the law. If the ultimate goal in a democracy is *people’s capability to engage with their own law* — or legal empowerment — we should design programs and services to actually meet that objective and evaluate their successes and failures in doing so. Finally, going beyond the usual focus on program effectiveness, we explore opportunities to design for *scalability and sustainability* as two critical elements necessary to address the overwhelming unmet justice needs of everyday people. If programs and services are not scalable nor sustainable, as is the case with many current models of civil legal services delivery, they will do little to meet the access to justice crisis.<sup>127</sup>

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121. See, e.g., OCED & OPEN SOC’Y FOUNDS., LEGAL NEEDS SURVEYS AND ACCESS TO JUSTICE 3 (2019), <https://doi.org/10.1787/g2g9a36c-en> [<https://perma.cc/TTR4-ESWS>].

122. See, e.g., Pascoe Pleasence & Nigel J. Balmer, *Justice & the Capability to Function in Society*, 148 DAEDALUS 140, 140–41 (2019).

123. See, e.g., Kathryn M. Young & Katie R. Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 UTAH L. REV. 487, 490 (2023), <https://doi.org/10.26054/0d-zv1c-rh2z> [<https://perma.cc/EL6T-9BLG>].

124. See, e.g., Pruitt et al., *supra* note 100, at 20.

125. See, e.g., Laura Goodwin & Vivek Maru, *What Do We Know about Legal Empowerment? Mapping the Evidence*, 9 HAGUE J. RULE L. 157, 169–173 (2017), <https://doi.org/10.1007/s40803-016-0047-5> [<https://perma.cc/89GL-ZHBH>].

126. See Burnett & Sandefur, *supra* note 32, at 112; Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 UNIV. OF ARK. L. REV. 721, 729 (2015); PASCOE PLEASENCE ET AL., RESHAPING LEGAL ASSISTANCE SERVICES: BUILDING ON THE EVIDENCE BASE iii (2014).

127. Burnett & Sandefur, *supra* note 32, at 113.

### A. Designing Community Justice Worker Programs for Effectiveness, Scalability, and Sustainability

Having explored both established and emerging community justice worker models, we now consider key elements of program design and evaluation. Legal services design and evaluation has historically focused almost entirely on one dimension: program effectiveness. However, addressing the magnitude of the access to civil justice crisis requires that programs and services are also able to scale and be sustainable at scale. Unlike effectiveness, which can often be explored in real time as services are delivered and received, scalability and sustainability are ultimately tests of time. Scalable programs are those that, after their initial launch and refinement, successfully grow to serve much larger numbers of people effectively than they did at the start. Sustainable programs are those that persist over time with continued or increased effectiveness.<sup>128</sup> Since our interest is in the sustainability and scalability of programs that may be relatively early in their development, a framework for assessing these qualities must look for markers or indicators of growth or sustainability, rather than those results themselves. Long-standing justice worker models, such as those considered above, provide historical track records that allow us to validate these dimensions as predictors of future growth and persistence. In the following sections, we consider effectiveness, scalability, and sustainability as goals that should inform broader design aspirations. Then, we explore them as concepts for evaluation and criteria for assessing both established and emerging community justice worker models.

#### 1. *Designing for Effectiveness*

Effectiveness is how well an activity achieves the goals of its designers, who may include co-designers, such as the communities that are served by justice work or from which justice workers hail. In this framework, effectiveness includes activities' impact both on people's legal problems and on changing people's relation to the law.

Existing research suggests that services that are effective at solving people's justice problems have several elements, some of which are means of accessibility: people must be able to connect to and engage with a service.<sup>129</sup> For example, services must come in languages people feel comfortable communicating in, at appropriate levels of literacy. Uptake is another important element of effectiveness: if people are unwilling to use it,

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128. See Rebecca L. Sandefur & Thomas Clarke, *Designing the Competition: A Future of Roles beyond Lawyers? The Case of the USA*, 67 HASTINGS L.J. 1467, 1472, 1480–81 (2016).

129. Burnett & Sandefur, *supra* note 32, at 112–13.

a service cannot be effective at resolving their justice issues or changing their relation to the law. Trustworthiness is another important metric, as it increases the chances people will actually use them. Services that are culturally responsive are also likely to be more culturally accessible, more trusted, and more likely to be used.<sup>130</sup> In order to make services accessible, service design also needs to reflect considerations of people's potential disabilities and reach across diverse socio-spatial contexts.

Other aspects of service design and delivery affect their appropriateness to the substantive problems people actually have. Effective services must be targeted, specific to the problem(s) that people actually face, to ensure that assistance offered can meet people's actual needs. Effective services must also be timely, available when people recognize they have a problem and at points in the development of problems when assistance can be impactful, which ensures that people connect with assistance when it is relevant and useful. Finally, effective services must be delivered at a level of competence sufficient to contribute to successful problem resolution.

If individual and community empowerment are goals, as we argue they should be, the experience of interacting with services must also change people's relation to the law. When an activity builds legal capability, or people's ability to understand and use the law, the people and communities served are themselves are changed, approaching justice issues in new ways that reflect greater confidence, understanding, and possibility.

## 2. *Designing for Scalability*

Effective services alone cannot address the enormous justice gap unless they can scale to serve as many people as possible over the long term. Scalability involves increasing the impact of the activity while maintaining or increasing its effectiveness, which often entails translating programs originally designed in one context or jurisdiction to operation in another. Programs that are scalable will be able to find ways to meet a range of needs. First, scaling requires securing the resources necessary to produce an effective service at scale. Most basically, this means an activity that is fundable at a larger scale and can be staffed, trained to competence, and made accessible at a larger scale. Achieving this requires potential labor forces large enough to staff the scaled activity. Second, scaling requires context-specific knowledge and other resources necessary to deploy the program with fidelity in a new context with new providers and new service populations. Finally, the ability to translate activities to new contexts and scale them up requires understanding what is necessary to achieve these goals. Access to this critically important knowledge will be enabled or

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130. Burnett & Sandefur, *supra* note 32, at 112–13.

constrained by the landscape of existing possibilities for experimentation and learning. We cannot learn about things we cannot try and cannot study.

In assessing models' potential for scaling, we focus on four dimensions, which we frame as barriers that models must overcome in order to scale. These are: 1) barriers to entry — what is required to engage in the authorized activity; 2) barriers to replication — what is required to replicate the program with fidelity to its original design and implementation; 3) barriers to learning — constraints on experimentation and producing new knowledge; and 4) barriers to funding. For each model, we characterize barriers as high, medium, or low. High barriers substantially inhibit entry, replication, learning, or funding, while low barriers offer surmountable obstacles to scaling. The scalability of any given model will be shaped by the barriers across all four dimensions.

*i. Barriers to Entry*

Barriers to entry can restrict the growth of the justice workforce by making it more difficult for organizations or workers or both to enter the justice work ecosystem. In order to scale up, justice worker models must be able to be launched, and once launched they must be able to staff up. Newly launched programs face a range of barriers, including regulatory constraints, financial and time costs of developing programs, training, and mentoring justice workers, and the financial, time, and other costs to justice workers of training and authorization. For example, the slow growth of independent licensed paralegal models both in number and workforce around the country powerfully illustrates the impact of these barriers on the capacity to scale.<sup>131</sup>

Among regulatory regimes that authorize community justice work, some will be more conducive to scaling than others. Regulatory systems that are bespoke, requiring unique, *ad hoc* authorization of each participant, will limit scaling. For example, systems that require the individual authorization of each justice worker will likely facilitate slower growth than those that use entity regulation to authorize organizations to train and assure the competence of justice workers. Similarly, systems that individually authorize entities, such as when a state Supreme Court issues a special order for each individual entity or program permitted to deploy justice workers,<sup>132</sup> will likely slow the growth of these models.

Training design can similarly facilitate or limit scaling. Training can be costly to mount and difficult to access, or it can be low-barrier and inexpensive to produce and participate in. For example, Washington State's

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131. Burnett & Sandefur, *supra* note 32, at 109–10.

132. *See, e.g., In re South Carolina NAACP Hous. Advoc. Program*, 897 S.E.2d 691 (S.C. 2024).



now-sunset Limited License Legal Technician (LLLT) program required a paralegal degree, 45 credit hours of coursework in law school, the passage of three bar exams, purchase of malpractice insurance, which is not required of Washington state attorneys, and 1,500 hours of supervised practice by a licensed attorney.<sup>133</sup> The law school training was offered at a single school, at a single time each year, with limited capacity, in a single language, and outside the standard offerings eligible for financial aid.<sup>134</sup> Thus, there were significant limitations in training capacity designed into the program from the outset that restricted access for justice workers.

Barriers to entry can also vary from low to high. Regulatory regimes that require bespoke authorization, or authorize individuals rather than entities, present higher barriers to entry than those where authorization requirements are transparent to aspirants and consistently applied and where umbrella authorizations to organizations, i.e. entity regulation, can offer authorization to many individual justice workers simultaneously. Trainings that are on-ground, synchronous, and infrequently offered erect high barriers, as do trainings that are expensive to produce and/or complete.

There exists considerable variation in barriers to entry in the landscape of both established and emerging justice worker models explored above. The Alaska Community Justice Worker Program, for example, has prioritized broad recruitment and low-barrier training, with asynchronous online trainings that were designed to last no more than ten hours, and a goal to have most community justice workers that complete the courses finish within 30 days.<sup>135</sup> The Arizona Domestic Violence Legal Advocate Initiative, on the other hand, requires a college degree, a criminal background check, and 2,000 hours of experiential learning in order to qualify for the program. Immigration representatives and tribal lay advocates fall somewhere in between these models, with more modest training requirements, flexible or no supervision requirements, and less constrained barriers to entry.<sup>136</sup>

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133. WASH. STATE CT. ADMISSION AND PRACT. RULES r. 28, reg. 9 (2024), [https://www.courts.wa.gov/court\\_rules/pdf/APR/GA\\_APR\\_28\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_28_00_00.pdf) [<https://perma.cc/958A-XBCG>].

134. See THOMAS CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 6–11 (2017).

135. NIKOLE NELSON, ALASKA LEGAL SERVICES CORPORATION: MOVING BEYOND LAWYER-BASED SOLUTIONS WITH COMMUNITY JUSTICE WORKERS 4 (2023), <https://lsc-live.app.box.com/s/4m9rcenmeu46uxvqe4d4gko0s528pu3t> [<https://perma.cc/MK5P-JWVA>].

136. See *supra* Section II.A; *infra* tbl.1 (assessing scalability across established justice worker models described above); *infra* tbl.2 (noting authors' predictions about barriers facing emerging justice worker models considered in the Article).

*ii. Barriers to Replication*

The ability to replicate a community justice worker program with fidelity to its original design and implementation is another element of scalability. A range of considerations might impact the ability to replicate a program from one jurisdiction or context to another. Federal programs, such as accredited immigration representatives, provide the same authorizing regulations and rules for every jurisdiction across the country. Similarly, many Tribal codes expressly authorize tribal lay advocates to appear before tribal courts.<sup>137</sup> Because there is considerable variation in state UPL statutes and the mechanisms for making rule changes vary across states, reforms at the state-level are necessarily more challenging to replicate with any consistency. In Alaska, which already has a very liberal UPL statute, the State Supreme Court and State Bar approved the Community Justice Worker Program relatively quickly.<sup>138</sup> In other states, changes to court rules, and in some cases, legislative rulemakings take longer.

A second significant consideration for replication is the complexity of the program being considered. Utah's Sandbox, which requires staffing to review applications, collect and analyze data, and otherwise administer the program, remains the only currently operating example of its kind in the United States.<sup>139</sup> Delaware Qualified Tenant Advocates required legislative rulemaking and revisions to court rules, and Arizona's DVLA Initiative has required multiple administrative orders from the Arizona Supreme Court as the program has evolved.<sup>140</sup>

*iii. Barriers to Learning*

Constraints on experimentation and learning limit the ability to try new things and understand what works. These barriers might be institutional, regulatory, or simply reflect whether learning was a priority for program design. An example of high institutional barriers to learning is in the context of jailhouse lawyers, where simply accessing these justice workers and observing their work is constrained by the fact that they are incarcerated. Regulatory design also matters. In the Utah Sandbox, entrants are required to regularly report on their activities, which ensures that they are not harming consumers under the program's guidelines and provides a wealth of data that can be used to better understand impact. Alaska's UPL waiver for

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137. *See infra* tbl.1, tbl.2.

138. *See Community Justice Worker Project*, ALASKA LEGAL SERVS. CORP., <https://www.alsc-law.org/community-justice-worker-program/> [https://perma.cc/C2AT-W5EC] (last visited Aug. 23, 2024).

139. *See Utah Regulatory Sandbox Project*, *supra* note 74.

140. *See See infra* tbl.1, tbl.2. (assessing barriers to replication across these programs).

Community Justice Workers likewise encourages experimentation, allowing the ALSC to try new approaches without excessive constraints on who community justice workers are, what they can do, and exactly how they are trained and supervised to provide different types of legal services.<sup>141</sup> Robust research and evaluation are also key priorities for this program. When programs are designed to be evidence-based, experimentation and learning will be key principles of program design. When programs are constrained by institutional, regulatory, and other limitations, barriers to innovation and learning will be high and they will be more difficult to scale.

*iv. Barriers to Funding*

Nearly all civil legal services programs and models face funding barriers, particularly in contexts such as the United States, where state and federal government funding for lawyer-based legal aid is inadequate to support programs of sufficient size to meet actual needs. Moreover, the traditional approach by philanthropic donors is often fragmented, project-specific, and relatively short-term rather than in the form of long-term operational support.<sup>142</sup>

Community justice worker programs live with many of these same constraints. However, three promising alternative funding models have emerged. The first allows for organizations to charge fees for services. In the immigration context, recognized organizations are allowed by statute to charge nominal fees to clients to help supplement other sources of funding.<sup>143</sup> Similarly, in Delaware, while QTAs are prohibited from receiving compensation directly from clients, supervising agencies are allowed to be compensated.<sup>144</sup> Tribal lay advocates can also charge fees to clients that they represent. Jailhouse lawyers, on the other hand, generally do not have a right to receive payment for legal assistance,<sup>145</sup> and indeed the Prisoner Litigation Reform Act (PLRA) limits even attorney fees.<sup>146</sup>

Another promising model is cross-subsidization, whereby justice workers are embedded in various community-based organizations rather than being paid by the supervising organization. This approach is permitted under Alaska's UPL waiver for the ALSC, and Arizona's Domestic Violence Legal

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141. See Sandefur & Ricca, *supra* note 93.

142. Rebecca Sandefur & Matthew Burnett, *All Together Now: Building a Shared Access to Justice Research Framework for Theoretical Insight and Actionable Intelligence*, 13 OÑATI SOCIO-LEGAL SERIES 1330, 1341 (2023).

143. 8 C.F.R. § 292.2(a)(1) (2024).

144. See Order Adopting Rule 57.1, *supra* note 101, at 57.1(c).

145. See, e.g., *Johnson v. Avery*, 393 U.S. 483, 484–85 (1969).

146. See 42 U.S.C. § 1997(e) (2013).

Advocates.<sup>147</sup> Unlike traditional legal aid models, where advocates are almost entirely funded by the legal aid provider, this model allows programs to scale without requiring substantial investments in new staff or expanded organizational infrastructure to support those staff.

A final potential funding model exists in the for-profit legal services providers working under the Utah Sandbox. The Sandbox includes a number of for-profit providers, but a minority of Sandbox entities primarily serve the needs of people in community settings or target people with low incomes.<sup>148</sup> The absence of such models may speak to their potential to be financially viable, but the Sandbox itself would permit such entrants.<sup>149</sup>

**Table 1: Scalability of Established Justice Worker Models**

	<b>Barriers to Entry</b>	<b>Barriers to Replication</b>	<b>Barriers to Learning</b>	<b>Barriers to Funding</b>
<b>Immigration Representatives</b>	Medium	Low	Low	Medium
<b>Tribal Lay Advocates</b>	Low/Medium	Low	Low	Medium
<b>Jailhouse Lawyers</b>	Low	Medium	High	High

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147. See generally *About ALSC*, *supra* note 94; Sandefur & Ricca, *supra* note 93; *Legal Advocates*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/cld/Legal-Advocates> [<https://perma.cc/S7JM-588F>] (last visited Aug. 17, 2024).

148. See DAVID FREEMAN ENGSTROM ET AL., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 40 (2022).

149. See Tables 1 and 2, *infra* pp. 34–35 (presenting our assessment of funding models across established and emerging community justice worker models).

**Table 2: Scalability of Emerging Justice Worker Models**

	<b>Barriers to Entry</b>	<b>Barriers to Replication</b>	<b>Barriers to Learning</b>	<b>Barriers to Funding</b>
<b>Utah Sandbox</b>	Medium	High	Low	High
<b>Alaska Justice Workers</b>	Low	Low	Low	Medium
<b>Delaware Qualified Tenant Advocates</b>	Medium	Medium	Medium	Medium
<b>Arizona Domestic Violence Legal Advocates</b>	Medium/High	Medium	Medium	Medium

### 3. *Designing for Sustainability*

Sustainability is persisting in achieving an activity's goals effectively. If scalability is about the scope of impact, sustainability is about its durability and resilience. Funding strategies that are resilient to changes in the economy, government grant cycles, and the interests of philanthropic funders are critical to sustainability. Activities that rely on diverse sources of funding, such as cross-subsidization by other organizations hosting CJWs, fees for service, grants, and other sources of revenue, will be more sustainable than activities that rely on a single source. Because these activities are staffed by people, developing strategies that support the wellbeing of justice workers and their supervisors will be critical to their persistence in the activity, and thus, their sustainability. Finally, sustainability requires support from other actors in the space: the communities being served must support the activity by engaging with it, and hopefully, by advocating for and advancing it. Because these new activities enter into complex ecologies of justice and work with a range of interested constituencies, sustainable activities must also build political support, such as from the Bar, legislatures, courts, and the public.

We suggest four potential resources critical for sustainability: (1) diversity of resource streams — diverse ways in which the program or activity can be funded; (2) ease of recruitment and likelihood of retention — a large

recruitment pool of justice workers that are likely to continue; (3) community engagement — communities being served are engaged in program design and represented among the ranks of justice workers; and (4) political support — support from the bar, legislatures, courts, and the public. Each of these resources can be designed for, at least to some extent, as we illustrate below with examples from existing programs. As in our assessment of barriers, we characterize these resources as High, Medium, or Low for each justice worker model. The ability of justice worker programs to sustain themselves is conditioned by the level of each of the four types of resources.

*i. Diversity of Resource Streams*

Earlier in this article, we considered access to funding as an element of scalability, asking whether various funding models are *permitted* under the regulatory frameworks that authorize justice workers. Here we consider the actual diversity of resource streams as an element of sustainability. Again, reliance on grants and state and federal government funding has proven to be both inadequate and unpredictable. For example, in New York State, legal aid groups were recently forced to beat back a proposed \$100 million sweep of the Interest on Lawyers Account (IOLA) into the state's general fund.<sup>150</sup> The Legal Services Corporation, the largest single funder of civil legal aid, is under constant threat. New and complementary approaches are required for both sustainability and scale.

Fees for service are an important potential resource stream. Many nonprofit immigration legal programs collect modest client fees to ensure sustainability,<sup>151</sup> and some immigrant-serving organizations, such as Make the Road New York, subsidize immigration legal services through annual membership dues.<sup>152</sup> The Montana Legal Services Association (MLSA) runs the Tribal Advocacy Incubator Project, which provides start-up capital and training on tribal law, court procedures, and business skills to increase the number of tribal lay advocates serving indigenous communities in

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150. See Raga Justin, *Hochul Retreats on \$100 Million Transfer of Legal Aid Fund*, TIMES UNION (Feb. 16, 2024), <https://www.timesunion.com/state/article/hochul-walks-back-proposed-100-million-sweep-18671374.php> [https://perma.cc/Z74E-QPLH].

151. See CATH. LEGAL IMMIGR. NETWORK, PREPARING TO MANAGE AN IMMIGRATION LEGAL SERVICES PROGRAM 7, <https://www.cliniclegal.org/sites/default/files/2023-11/Preparing%20to%20Manage%20an%20Immigration%20Legal%20Services%20Program.pdf> [https://perma.cc/L8PA-5XAQ] (last visited Sept. 12, 2024).

152. See ACUMEN ACAD. & OPEN SOC'Y FOUNDS., MAKE THE ROAD: DEVELOPING A MEMBERSHIP MODEL THAT BUILDS THE POWER OF IMMIGRANT AND WORKING CLASS COMMUNITIES 3 (2019), <https://grassrootsjusticenetwork.org/wp-content/uploads/2019/10/Case-Study-Make-the-Road.pdf> [https://perma.cc/TE86-8WM6].

Montana.<sup>153</sup> Participants in the program then offer services for a fee in their communities.<sup>154</sup> Alaska Legal Services is exploring the potential for Medicaid reimbursement for justice worker legal services for health-harming legal needs, a model that is also being explored among Medical Legal Partnerships (MLPs) in other states.<sup>155</sup>

Cross-subsidy is also an important potential resource stream. As described above, Alaska Community Justice Workers and Arizona Domestic Violence Legal Advocates are staffed by outside community-based organizations, which pay for their salaries and benefits.<sup>156</sup> Each of these innovative financing models diversifies the resource streams available to individuals and organizations, making them less reliant on traditional funding sources and increasing sustainability.<sup>157</sup>

*ii. Ease of Recruitment and Likelihood of Retention*

Very little is known about the effective recruitment and retention of justice workers across these models. There are a range of reasons for this lack of knowledge: these factors have been little studied; many of the programs are new; and recruitment and retention have not historically been prioritized in program design and development. We do know that the emerging program with the highest recruitment numbers, the Alaska Community Justice Worker Program, also has the lowest barriers to entry and a 100% success rate among the hundreds of cases these workers have served so far.<sup>158</sup> The Program also prioritizes retention and wellbeing among its community justice workers, including hiring a full-time Director of Community Justice Worker Support who will “lead the design, development and implementation of support and wellbeing programs, initiatives, and policies to advance the culture of support for CJW staff and volunteers.”<sup>159</sup> The implementation of

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153. *Tribal Advocacy Incubator Project*, MONT. LEGAL SERVS. ASS’N, <https://www.mtlsa.org/tribal-advocate-incubator-project/> [https://perma.cc/5VV8-RR8R] (last visited Aug. 23, 2024).

154. *See id.*

155. *See* ALANNA WILLIAMSON ET AL., HEALTH CENTER-BASED MEDICAL-LEGAL PARTNERSHIPS: WHERE THEY ARE, HOW THEY WORK, AND HOW THEY ARE FUNDED 9 (2018), <https://medical-legalpartnership.org/wp-content/uploads/2017/12/Health-Center-based-Medical-Legal-Partnerships.pdf> [https://perma.cc/G6V2-RZ8T]; *see also* Interview with Staff, *supra* note 98.

156. *See supra* Sections III.B, III.D.

157. *See infra* tbl.3 (assessing diversity of resource streams across established justice worker models described above); *see also infra* tbl.4 (noting authors’ predictions about emerging justice worker models considered in the Article).

158. *See* Sandefur & Ricca, *supra* note 93, at 44.

159. *See Job Opportunity: Community Justice Worker Support Director*, ALASKA LEGAL SERVS. CORP. (May 28, 2024), <https://www.alsc-law.org/2024/job-opportunity-community-justice-worker-support-direct> [https://perma.cc/PWC8-MCNX].

new justice worker programs in other jurisdictions and more research on existing programs will help us to better understand recruitment and retention.<sup>160</sup>

### *iii. Community Engagement*

Community engagement has at least two dimensions. The first is whether communities are consulted and engaged in the co-design and implementation of the program, and the second is whether justice workers themselves actually represent the communities they serve. Information about whether communities most affected by the access to justice crisis — people with low incomes and people of color — are engaged with justice worker programs is not consistently available for all of the models explored. The I4J program in Arizona embraces a community-centered approach, working “with and within under-represented populations to conduct research and co-design solutions.”<sup>161</sup> The Alaska Community Justice Worker Program also prioritizes community engagement in program design and implementation, including incorporating the voices of Alaska Native elders into trainings, aligning the program with indigenous values and substance practices, and supporting community-engaged research, among other examples.<sup>162</sup>

Meaningful representation among community justice workers is also a critical dimension of effective programs. Many accredited immigration representatives are immigrants themselves, bringing critical cultural and linguistic expertise to their work. Tribal lay advocates are typically required to be members of the tribe in which they work, and jailhouse lawyers are necessarily incarcerated individuals with lived experience of control and confinement, although they represent limited pathways to continue to be engaged with communities and justice work beyond their institution.<sup>163</sup> In Alaska, approximately a third of community justice workers are Alaska Native, as compared to 12% of ALSC staff<sup>164</sup> and approximately 20% of Alaska’s general population.<sup>165</sup> People with low incomes and people of

160. See *infra* tbl.3, tbl.4 (assessing recruitment and retention across these programs).

161. INNOVATION FOR JUSTICE, <https://www.innovation4justice.org/> [https://perma.cc/N9PD-9XG8] (last visited Aug. 23, 2024).

162. See NELSON, *supra* note 135.

163. But see *The Jailhouse Lawyer Initiative*, *supra* note 70; *Paralegal Pathways Initiative*, COLUM. L. SCH., <https://change-center.law.columbia.edu/research-projects/paralegal-pathways-initiative> [https://perma.cc/325E-AMQC] (last visited Aug. 23, 2024).

164. LAAC Trainings, *Community Justice Workers Panel*, YOUTUBE, at 29:50 (Mar. 21, 2024), [https://www.youtube.com/watch?v=pDEDI\\_Ow7wk](https://www.youtube.com/watch?v=pDEDI_Ow7wk) [https://perma.cc/7B82-SPYT].

165. *Alaska’s Native Population*, 33 ALASKA ECON. TRENDS 1, 4 (2013), <https://live.laborstats.alaska.gov/trends-magazine/2013/April/alaska-s-native-population> [https://perma.cc/98EJ-QJ6N].



color also tend to be well represented among other justice worker models, although this data is not readily available for most models.<sup>166</sup>

*iv. Political Support*

A final dimension of sustainability is political support, including from the bar, legislatures, courts, and the public. Many attempts at regulatory reform in the United States are met with resistance from the bar, and sometimes legislatures.<sup>167</sup> To take a recent example, the California Closing the Justice Gap Working Group was dissolved by the State Bar Board of Trustees in September 2022 based on restrictions imposed by Assembly Bill 2958, the annual fee bill that funds the bar, which explicitly prohibits the State Bar of California from proposing any “abrogation of the restrictions on the unauthorized practice of law” until January 1, 2025.”<sup>168</sup> By contrast, in states where bar and court leadership understand the enormity of the crisis, community justice worker models have seen less pushback. For example, the Alaska State Bar Board of Governors unanimously approved Bar Rule 43.5, their UPL waiver for community justice workers.<sup>169</sup> In Texas, the Access to Legal Services Working Group recently recommended that the Supreme Court approve proposals for both licensed paraprofessionals and community justice workers,<sup>170</sup> and the Court has now issued preliminary rules for public comment.<sup>171</sup> Arizona is also considering rule changes that would allow community justice workers. These models and the stakeholders endorsing them represent a sea change in political support.

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166. See *supra* tbl.3, tbl.4 (assessing community engagement across established and emerging community justice worker models).

167. See, e.g., Bob Ambrogi, *California’s Chief Justice Faults Legislature and Lawyer Lobbying for Blocking Movement on Regulatory Reforms*, LAW SITES (July 27, 2022), <https://www.lawnext.com/2022/07/californias-chief-justice-faults-legislature-and-lawyer-lobbying-for-blocking-movement-on-regulatory-reforms.html> [https://perma.cc/LZN6-Y3CC].

168. CAL. BUS. & PROF. CODE § 2958 (Cal. 2022).

169. See *Taking Community Justice Workers Nationwide*, LEGAL TALK NETWORK (Jan. 9, 2024), <https://legaltalknetwork.com/podcasts/talk-justice/2024/01/talk-justice-an-lsc-podcast-taking-community-justice-workers-nationwide/> [https://perma.cc/C2RC-F2HX] (“And with that information, we went to our board of Governors of the Bar Association and received unanimous support from the board of Governors of our bar Association.”).

170. TEX. ACCESS TO JUST. COMM’N, REPORT AND RECOMMENDATIONS OF THE TEXAS ACCESS TO LEGAL SERVICES WORKING GROUP (Dec. 5, 2023), <https://www.texasatj.org/sites/default/files/3%20-%20Final%20Report%20to%20the%20Commission%20%28FINAL%20%26%20COMPLETE%29.pdf> [https://perma.cc/K5A4-MZAD].

171. Preliminary Approval of Rules Governing Licensed Legal Paraprofessionals and Licensed Court-Access Assistants, No. 24-9050 (Tex. 2024), <https://www.txcourts.gov/media/1458990/249050.pdf> [https://perma.cc/FWC9-KQQS].

**Table 3: Sustainability of Established Justice Worker Models**

	<b>Resource Diversity</b>	<b>Recruitment &amp; Retention</b>	<b>Community Engagement</b>	<b>Political Support</b>
<b>Immigration Representatives</b>	High	Medium	High	Medium
<b>Tribal Lay Advocates</b>	Medium	Medium	High	Medium
<b>Jailhouse Lawyers</b>	Low	Low	High	Low

**Table 4: Sustainability of Emerging Justice Worker Models**

	<b>Resource Diversity</b>	<b>Recruitment &amp; Retention</b>	<b>Community Engagement</b>	<b>Political Support</b>
<b>Utah Sandbox</b>	Medium	Medium	Low/Medium	Low
<b>Alaska Justice Workers</b>	Medium	Medium	High	High
<b>Delaware Qualified Tenant Advocates</b>	Medium	Medium	Medium	Medium
<b>Arizona Domestic Violence Legal Advocates</b>	Medium	Medium	High	Medium

**B. Evaluating Community Justice Worker Programs for Effectiveness, Scalability, and Sustainability**

In the previous section, we offered a preliminary analysis of factors that support or inhibit effectiveness, scaling, and sustainability in justice worker programs. Both justice worker programs and research on them are relatively new activities in the US context, so neither well-developed research literature nor established conventions about how the impacts and potential of such activities should be measured exists. In the sections that follow, we offer approaches to measuring effectiveness, scaling, and sustainability of justice worker programs.

### 1. *Measuring Effectiveness*

Investigations of effectiveness explore the impact of an activity on the outcomes its designers intend to affect. In many justice services, these outcomes include first-order results for the individuals who receive services or engage with an activity, such as the lawful resolution of justice problems. For example, an activity may be assisting someone in applying for benefits, such as supplemental income, money to support food security, or housing subsidies; an effective activity will be successful at helping people attach to those benefits if eligible.

Outcomes of interest may also include second-order results. Some may be material outcomes directly related to the original justice issues, such as having sufficient income to meet basic needs, adequate nutrition, or housing security; others may be the psychological or educational impacts of engaging with the activity, such as greater knowledge of the government agencies that administer benefits and how to engage with them, increased confidence in oneself in these interactions, or greater trust in government or democratic process. Observers may also be interested in social outcomes, achieved at the level of a community, such as reductions in poverty rates.

Another element of effectiveness that, when present, exists at both an individual and a community level is legal empowerment. When individuals and communities are legally empowered, they have knowledge of the relevant law and the confidence to engage with that law, both to act on the issues they face and to attempt to change the law in ways that are more supportive of their or their community's interests. Here, we focus on outcomes that indicate effectiveness at achieving three goals: resolution of justice issues, individual legal empowerment, and community legal empowerment.<sup>172</sup>

**Table 5. Measuring the Effectiveness of Community Justice Work**

Outcome	Sources of Data	Research Questions
Legal outcome achieved.	Case management data. Interviews or surveys with users of the service.	Do users of community justice worker services achieve intended legal outcomes for justice issues?

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172. Table 5 lists each outcome for effectiveness, corresponding potential sources of data, and corresponding specific research questions.

		Are people assisted by justice workers more likely to achieve intended outcomes than people who are not assisted?
Individual legal empowerment.	Interviews or surveys with users of the service and providers.  Observation of behavior.	Do people assisted by justice workers express greater confidence in their ability to solve justice problems?  Knowledge of how to use law to respond to justice issues?  Knowledge that life issues have legal aspects?  After engaging with justice workers around one type of issue, do people expand their use of law to more kinds of life issues?
Community legal empowerment.	Interviews or surveys with users of the service and providers.  Observation of behavior.	Is there new collective action around justice issues targeted by the activity (e.g., to change law, or processes)?  Is there new collective action around new justice issues?

		Is there new collective action around other issues of importance to the community?
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## 2. *Measuring Scalability*

The ultimate measure of scalability is actually achieved scale, but in investigating newer activities, it is useful to look for other indicators of scalability. Scalability involves growth in a way that supports both effectiveness and sustainability. Thus, successfully scaled programs may differ in various design features from the original programs they grow from. For example, automation can be an important tool in scaling, allowing activities that were originally carried out wholly by people to be conducted more efficiently with the use of technology. Scaling can also involve transferability, transferring a model developed in one context to another. This movement can require adaptations to the new environment that are critical to successful scaling.

**Table 6. Measuring the Scalability of Community Justice Work<sup>173</sup>**

Source of Capacity to Scale	Sources of Data	Research Questions
Type, amount, and mix of funding.	Interviews or focus groups with key staff or advisors.  Review of documents.	What is the financial model for producing and delivering the service?  What are the current and projected amounts of funding from internal and external sources?

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173. Table 6 lists six distinct sources for capacity to scale, corresponding potential sources of data, and corresponding specific research questions.

		<p>What is the ratio of cash and in-kind funding of the service across time?</p> <p>What are the actual and projected cost per service at scale across time?</p>
Potential to scale staffing.	Interviews, analysis of census data on workforce composition.	<p>What is the workforce mix used to deliver the service?</p> <p>What are the sources of potential staff?</p> <p>What barriers to participation do potential staff face?</p>
Potential to scale training.	<p>Interviews with trainers, program leads, community justice workers, and potential community justice workers.</p> <p>Review of training delivery model.</p> <p>Interviews with clients and potential clients.</p>	<p>Can the training model(s) scale to serve a larger workforce?</p> <p>Who else might or does engage the CJW training modules?</p> <p>What unique barriers and opportunities do CJWs encounter in accessing modules and incorporating CJW training into their own work and advocacy?</p>

		What forms of expertise, assistance, and accreditation do potential and actual CJW clients prioritize?
Transferability.	Interviews with stakeholders in new and original jurisdictions, analysis of data on service populations (e.g., U.S. Census data on demographic characteristics, legal needs survey data on service needs).	<p>Given an identifiable new context in which to launch the activity, what is needed to launch?</p> <p>Who are the service populations in the new context?</p> <p>How do they compare to the original context?</p> <p>What are their accessibility needs (language, cultural-responsiveness, socio-spatial issues)?</p> <p>What is the status of the resources needed to be effective in the new context?</p> <p>How does the service meet the needs and wants of potential consumers of the service in the new context?</p>

Regulatory environment.	Interviews with stakeholders in new and original jurisdictions, review of regulations in new and original jurisdictions.	What do the public and regulatory bodies (bar associations and state supreme courts) expect in terms of standards, credentialing, etc. to confidently support this model?
Political support and community engagement.	Interviews with stakeholders in new and original jurisdictions.	How are community stakeholders, including consumers, and key political actors, such as the bar and judiciary, integrated into service planning, implementation, and evaluation?

### 3. *Measuring Sustainability*

There are two critical dimensions of sustainability in community justice work: the sustainability of justice worker programs and justice workers' persistence in their roles. The ultimate measures of sustainability are durability and resilience over time. Because these programs are relatively new, the framework we develop seeks indicators that the work will be sustainable.



**Table 7. Assessing the Sustainability of Community Justice Work<sup>174</sup>**

<b>Resource for Sustainability</b>	<b>Methods of Data Collection</b>	<b>Research Questions</b>
Consistent financial base for the program.	Interviews with program leaders and designers, current and potential funders.	<p>What is the funding model of the activity?</p> <p>Is it diversified?</p> <p>Are existing sources likely to persist?</p> <p>Are there alternative sources that could be cultivated?</p>
Training and support.	<p>Interviews with program staff, designers and implementers of training programs, and community justice workers.</p> <p>Review of training materials.</p>	<p>What resources do CJWs need to ensure a sustainable practice and good health, and to navigate uniquely rural and remote socio-spatial challenges (isolation, high density of acquaintances; competing professional demands, seasonality of subsistence practices, etc.)?</p>

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174. Table 7 lists resources for sustainability, corresponding potential sources of data, and corresponding specific research questions.

		<p>What supports do CJWs need to access training materials and support resources; to feel confident in advocating for substantive legal needs; to respond to, triage, and report emergent community-level justice issues; and to garner confidence from prospective clients/other stakeholders (employers, courts)?</p> <p>What supports do existing organizations need in order to employ CJWs? How can we ensure CJWs are not overburdened with competing job demands?</p>
<p>Political and community support.</p>	<p>Interviews or surveys with community leaders and members.</p>	<p>Is the activity valued by the community?</p> <p>Does the community engage with it?</p> <p>What is the level of support among diverse stakeholders (judiciary, legal</p>

		<p>profession, legislature, impacted agencies and government offices) for the activity?</p> <p>How many and what type of community organizations and leaders are involved in the program?</p>
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### CONCLUSION

This Article has offered a review of existing and emerging justice worker programs that focuses on their impacts on people: their effectiveness in resolving people's justice issues and changing their relationship to the law; their sustainability as models for providing justice services to American communities; and the capacity of these models to scale to meet the country's vast unmet legal needs. Our focus on ordinary people's experiences reflects a shift in justice practice to approaches that are *people-centered*, designed to be accessible, proportionate, and focused on the outcomes people experience when they face civil justice problems.<sup>175</sup> In democracies, justice systems are ultimately and fundamentally accountable to ordinary people; the shift to people-centered justice reflects recognition of that critical accountability.

While some justice worker programs are long standing, as this Article discusses, others are relatively new, and still more are in formation. The diverse range of existing and emergent activity presents a valuable opportunity for learning about these programs' impacts and how to enable their success at providing access to justice. We offer an approach to empirical inquiry about these programs that focuses on design features that can support effective, sustainable, and scalable justice work. The frameworks we offer for design and evaluation are necessarily preliminary, as justice work is a new area of research and many of the models do not yet have developed track records of experience and performance. These frameworks will necessarily be improved upon by future research; as

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175. See OECD, OECD FRAMEWORK AND GOOD PRACTICE PRINCIPLES FOR PEOPLE-CENTERED JUSTICE (2021), <https://doi.org/10.1787/cdc3bde7-en> [<https://perma.cc/PP7H-VC6E>].

research moves forward, so will our understanding of this justice work and its impacts on addressing the access to justice crisis.