

# Civil Legal Services: A Background Report

Prepared for the  
*Law and Justice Interim Committee*

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## The SJR 6 Policy Question

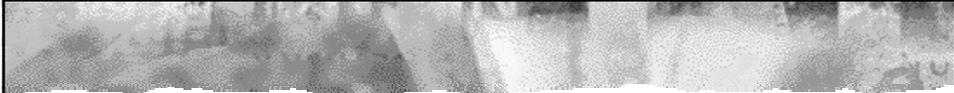
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- What role should the State of Montana play in providing “*civil*” legal services to “*low*” and “*moderate*” income Montanans?
  - Need to define the “*terms*”
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# Overview

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- Part I: Historical perspective
  - Part II: Current services
  - Part III: Needs
  - Part IV: Questions to answer today
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## Part I

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### Historical Perspective

## 1870s: Immigrant Aid Societies

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- Aid Societies were formed to assist poor immigrants obtain basic necessities
    - Food
    - Clothing
    - Shelter
    - Employment
    - Health Care
    - Security
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## “Legal” Aid Societies

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- Legal means needed to ensure equal treatment, redress grievances
  - LEGAL Aid Societies spin off from aid societies – NYC first, others follow
  - Funded by community leaders – merchants, craftsmen, lawyers
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## A National Alliance

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- In 1911, 15 legal aid societies formed the National Alliance of Legal Aid Societies
  - Later became National Legal Aid and Defender's Association (NLADA)
    - Oldest non-profit membership organization for legal services
    - Key resource for public defenders and civil legal aid providers
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## Society's obligation

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- 1919: *Justice and the Poor*, by Reginald Heber Smith (counsel for Boston Legal Aid Society)
  - Argued that equal access to justice was the foundation of American democracy, society's obligation
  - Called upon legal professionals to practice *pro bono publico*
  - Smith now hailed as "Father of Legal Aid"
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## Bar Associations Answer

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- 1920's: ABA formed Committee on Legal Aid
    - Became SCLAID (Standing Committee on Legal Aid and Indigent Defendants)
    - ABA urged every bar association to create a similar committee
  - Local bar associations did create similar "access to justice committees" and promoted *pro bono* programs
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## Early Delivery Models

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- By mid-1950's, some type of legal aid program existed in nearly every major urban center
  - Various delivery methods
    - Legal aid societies employed paid staff
    - Bar associations promoted *bro bono* programs
    - Law schools and student provided support services
    - City and county social programs included legal aid
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## Early '60s: War on Poverty

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- In 1964, President Johnson declared War on Poverty
  - Jean and Edgar Cahn wrote “War on Poverty: A Civilian Perspective” – Neighborhood Law Office
  - Federal funding becomes available for first time through Office of Economic Opportunity (OEO)
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## Individual Aid to Social Service

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- Legal aid to individuals not enough – need for social impact
  - Edgar Cahn hired by first OEO director
  - OEO favored services through staffed offices
  - “Aid” no longer “charity”, but social “service”
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## Services to Social Reform

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- “Impact litigation” key objective
  - Class action lawsuits
    - Filed by OEO-funded providers, ACLU, NAACP
  - Required significant social reforms
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## Court decisions

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- Housing and property laws
  - Rights to social security, AFDC, other benefits
  - Fair labor and employment laws
  - Simplification of court procedures
  - Protections for women subject to domestic violence
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## Meanwhile...

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- Policy questions and tensions emerge
  - Paid attorneys vs. *pro bono* programs
  - Should the OEO be funding “activists”?
  - Federal vs. local control
  - Public or private obligation?
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## 1970s: Alternative debated

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- Judicare model
    - Similar to Medicare
    - Private attorneys paid fee-for-services
  - OEO director opposed Judicare
    - Too costly
    - Would not have advocacy component
    - Quality control issue
  - Judicare limited to rural demonstration projects
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## Elimination of OEO Debated

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- President Nixon's advisory council recommended independent entity
  - ABA and NLADA decided to support
  - Idea received bipartisan Congressional support
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## Legal Services Corporation

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- Nixon vetoed initial LSC Act in 1971:
    - More presidential appointment authority
    - Less emphasis on advocacy
    - More control for local programs
  - In 1973, Nixon Administration proposed new bill
  - Compromises and amendments, but LSC Act was passed and signed by Nixon in 1974
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## LSC Structure

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- Private, non-profit corporation
    - Replaced Community Services Admin., formerly OEO
    - Took charge of national HQ, 9 regional offices
  - 11-member board
    - Appointed by the President, confirmed by Senate
    - No more than 6 from same political party
  - Funded by direct appropriations
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## LSC Activities

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- Grant funding to local legal services programs
  - Adopt model regulations (as guidelines)
  - Provide training, assistance
  - New board creates some controversy trying to change policies and practices carried from OEO
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## Late '70s: Major Expansion

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- President Carter appointed new board in 1977
    - chaired by Hillary Rodham Clinton, private attorney
    - LSC received strong political and financial support
  - LSC budget increased to \$321.3 million by 1977
  - 130 programs grew to 325
    - LSC presence in 1,450 neighborhoods
    - Staff of 2 attorneys for every 10,000 poor (theoretical “minimum access” achieved)
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## Renewed Debate

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- LSC Act had required a study of different delivery models
  - Study conducted between 1976-1980
  - Judicare models and private attorney programs
    - not as efficient
    - did meet quality and performance standards
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## 1980's: Reagan Era Changes

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- 1980s: Reagan Administration tried to eliminate LSC, replace it with:
    - student clinical programs
    - judicare system
    - social services block grants
  - 1981: LSC Act not reauthorized
    - But, rules waived, LSC funding appropriated, LSC budget reduced 25%
  - Appropriations “riders”
    - Restricted lobbying by and rule-making authority of LSC
    - Prohibited LSC-funded programs from representing certain illegal aliens
    - State and local bar associations given authority to appoint local boards
    - New procedures required for class action lawsuits
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## Private Attorney Involvement (PAI)

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- Move to gain more private attorney involvement (PAI)
  - More encouragement of *pro bono* and self-help programs
  - LSC required that 12.5% of grant be used on PAI
    - Organized *pro bono* efforts
    - Judicare and contracts
    - Clinics for private attorneys
    - Co-counseling (legal services staff attorney with private attorney)
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## Outcomes of PIA Initiative

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- Legal services reaches more rural areas
  - National standards were established
  - Specialized programs were created
    - Native Americans ,Veterans, Elderly, Disabled
  - Legal services gained respect and “buy in” from broader base and more private attorneys
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## Impact of Funding Cuts

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- Less LSC funding required more:
    - Private donations
    - Private foundation grants
    - State and local bar association funding
    - State and local government funding
    - Funding from other federal programs
      - Older Americans Act
      - Community Development Block Grants
      - Revenue Sharing programs
      - American's with Disabilities Act
      - Violence Against Women Act , etc...
  - Non-LSC funding begins exceeding LSC funding
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## Interest on Lawyer Trust Account (IOLTA)

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- Banking law changed in early 1980's –
    - allowed pooled interest/investment earnings on individual accounts
  - Florida pioneered Interest on Lawyer Trust Accounts (IOLTA)
  - Nearly all states have IOLTA -- 2<sup>nd</sup> largest single funding source nationwide
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## Late '80s to Early '90s: LSC Resurgence

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- Bush Administration maintained level funding
  - Clinton Administration increased funding, appointed new LSC Board
    - LSC Board focused on quality improvement and standards
    - Local programs expand and innovate
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## 104<sup>th</sup> Congress (1994) – “Contract with America” Era

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- LSC required to issue competitive grants
    - Rather than presumptive grants to established providers
  
  - Additional limits placed on use of LSC funding for:
    - Lobbying
    - Class action law suits
    - Other
  
  - LSC-funded programs prohibited from serving:
    - Prisoners and certain categories of aliens
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## 1995-2003: New Series of Budget Cuts

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- LSC budget reduced 30%
  
  - Fewer cases closed by LSC programs
  
  - Fewer programs: fell from a high of 325 programs to 106 by 2003
  
  - National network of support programs eliminated
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## Historical Review

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- 1870s: Legal Aid Societies
- 1919: Reginald Heber Smith's "Justice and the Poor"
  - Moral obligation of attorneys (inspired ABA pro bono programs)
- 1965: Office of Economic Opportunity: Part of "War on Poverty"
  - Impact litigation and court-ordered social reforms
- 1974: Legal Services Corporation established by Congress
- 1980s – '90s: Reagan Era and 104<sup>th</sup> Congress in 1994 cuts
- Variety of other public and private programs, funding sources

## Current Situation: LSC's 2003 Annual Report

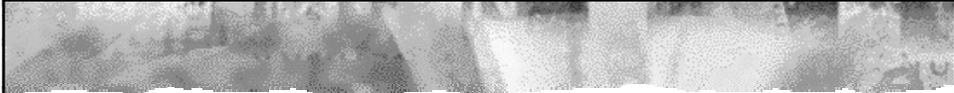
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- 4.2 million people nationally are financially eligible for LSC-funded legal services
  - \$11,638 (or less) annually for individual
  - \$23,563 (or less) annually for family of four
- LSC Budget in 2003: \$335.3 million
- 143 LSC-funded programs nationwide
- 3,700 full-time staff attorneys nationwide
  - Approximately 1 LSC attorney for every 12,216 eligible
- LSC-funded programs handle 1 million cases and 4 million "matters" annually

## Funding and planning

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- Non-LSC funding for legal services exceeds LSC funding in 32 states
  - LSC funding still largest single source of funding
  - State-level strategic planning is being emphasized
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## Part II

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### Civil Legal Services in Montana

## Four Components

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- Staff attorneys, paraprofessionals, advocates
    - various public and private programs
  - *Pro bono* work by private attorneys
  - Self-help programs and resources
  - Collaborations weave it all together:
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## Staff attorneys, advocates, paraprofessionals

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- Montana Legal Services Association (MSLA)
  - Montana Advocacy Program (MAP)
  - People's Law Center
  - Cascade County Law Clinic
  - Montana Fair Housing legal services
  - CASA/GAL programs (*see map*)
  - Domestic Violence legal service programs
  - Others .... (*see directory*)
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## Montana Legal Services Association

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- Private, non-profit founded in 1966 through local bar association efforts
    - Board of Directors, Exec. Director
    - 9 office locations
  
  - Budget
    - LSC: \$1.5 million (56%)
    - Non-LSC: \$855,529 (pg. 8 of report)
  
  - Staffing
    - 14.63 attorneys, 11 paralegals
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## MLSA Activities

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- Free legal assistance in civil cases
    - Must be at or below 125% of federal poverty
    - Wide ranges of civil matters
  
  - In-take through two “hot lines”
    - Eastern Montana
    - Western Montana
  
  - Closed 4,735 cases in 2004
    - family law is area of most frequent need
    - *see attachments*
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## Montana Advocacy Program (MAP)

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- Federal grant funding
- 8 attorneys, 8 advocates, 2 paralegals
- Three programs
  - Discrimination (ADA, employment, others)
  - Community integration (mental health)
  - Abuse and neglect
- Referrals and collaborative efforts

## *Pro Bono* and Private Attorney Involvement

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- Montana Supreme Court
  - Rule No. 6.1 *Pro Bono Publico* Service, encourages 50 hours of *Pro Bono* service per year
- State Bar
  - encourages *pro bono* work (no stats for this report)
  - supports collaborative projects
- IOLTA – Interest on Lawyer Trust Accounts
  - To Montana Justice Foundations, 90% of \$ to MLSA

## *Pro Bono* (continued – pg 2)

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- [www.MontanaProBono.net](http://www.MontanaProBono.net)
    - Collaborative product
  
    - Members are attorneys, paralegals, and law students and faculty providing services
  
    - On-line forum for providers to access and share info.
      - Library (training, model pleadings, form letters, articles, etc.)
      - *Pro bono* opportunities
      - Calendar
      - Legal news
      - Listservs
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## Self Help

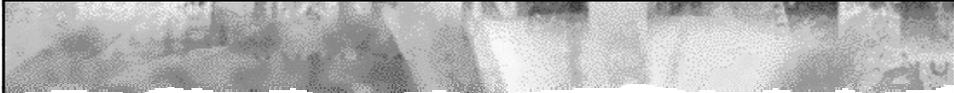
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- [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org)
    - Legal info. by case types
    - Resource directory
    - Self-help materials
    - Referral services
  
  - Eastern Montana Self-Help Law Project
    - Sponsored by Montana Legal Services Association
  
  - UM Law School, Supreme Court's Law Library
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## Committees and Commissions

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- Access to Justice Committee
    - State Bar
  
  - Equal Justice Task Force
    - Supreme Court
  
  - Commission on Self-Represented Litigants
    - Supreme Court)
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## Part III

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### Legal Needs

## Montana Legal Needs Study

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- Commissioned by State Bar in 2004
  - Conducted by Portland State University
  - Survey questions to target groups
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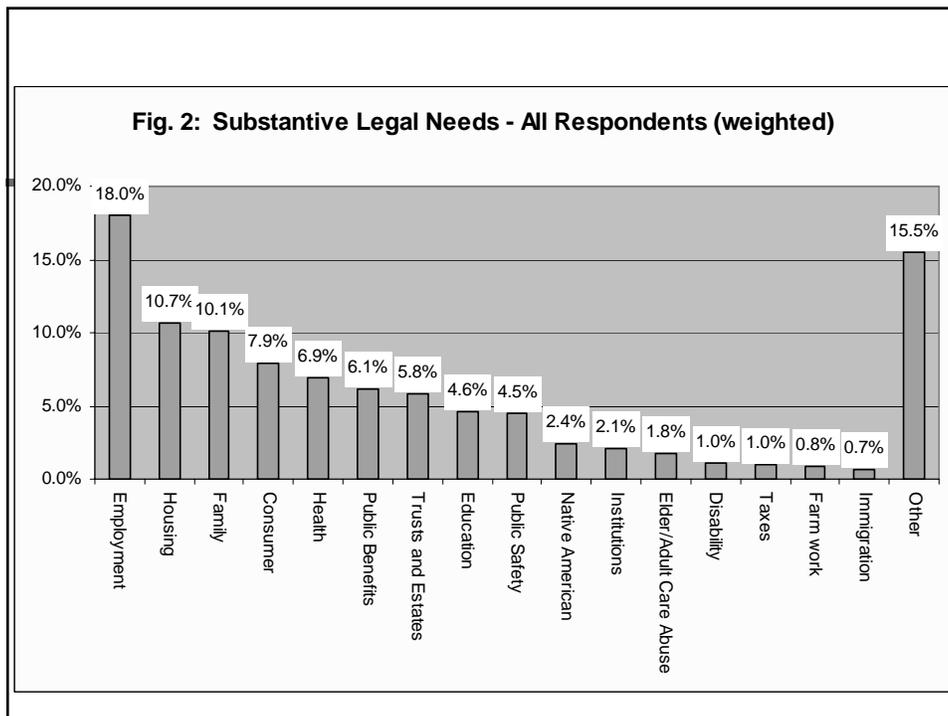
## Quantified Unmet Needs

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- 174,900 “low-income” people in Montana
  - 71,388 low-income “families”
  - 247,716 legal problems per year
    - 3.47 per “household”
  - Only 16.4% receive attorney assistance
    - 83.6% of need goes unmet (207,051 families)
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# Highlights of study findings

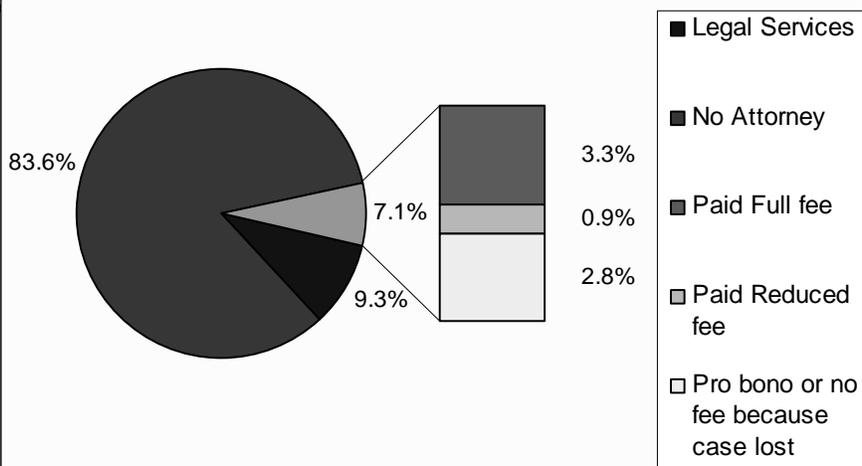
- Most common legal needs
  - Employment
  - Family
  - Housing

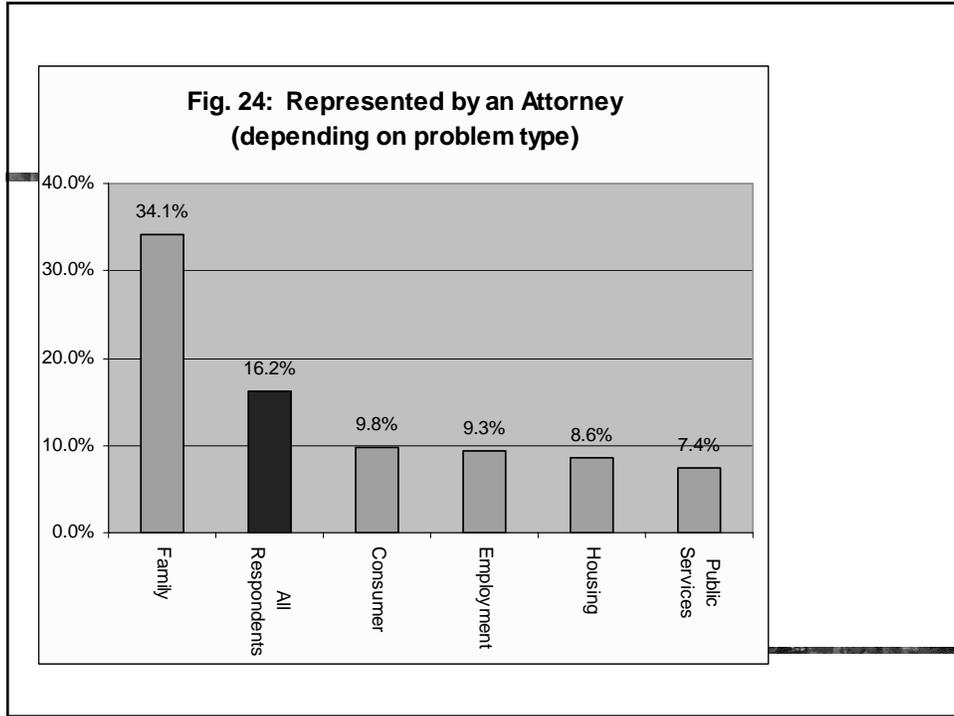


## Highlights continued

- What kind of assistance was received?
  - No attorney (83.6%)
  - MLSA assistance (9.3%)
  - Private attorney (7.1%)
    - Paid full fee (3.3%)
    - No fee (2.8%)
    - Paid reduced fee (0.9%)

**Fig. 22: Did An Attorney Help with the Legal Need?**





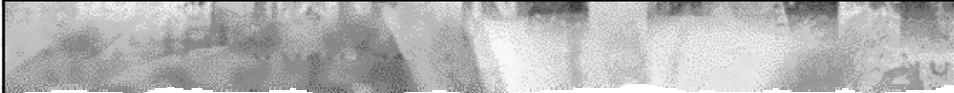
## Highlights continued

- Which population groups have most needs (above the avg.) – *Fig. 49, pg. 37*
  - Incarcerated adults
  - Domestic abuse victims/survivors
  - Homeless
  - Native Americans not on reservation
  - Native Americans on the reservation\
  - Physically disabled

## Highlights continued

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- Which geographic regions have more needs (*Fig. 60, page 43*)
    - Northwest region
    - Western region
    - South Central region
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## Part IV

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### Policy and Research Questions

## SJR 40 Policy Questions

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- What should the State of Montana's role be in providing "civil" legal services to "moderate" and "low-income" Montanans?
    - Appropriate level of public funding?
    - Needed changes in state law?
    - Better use or coordination of technology?
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## Research Questions: Further Examination of ...

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- #1: More analysis of needs?
  - #2: Examination of technology?
  - #3: Exploration of statutory changes to do "what"?
  - #4: Study state revenue sources and funding?
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## Context

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- Questions in context with service components:
    - Staff attorneys, para-professionals, advocates
    - *Pro Bono* services
    - Self-help resources
    - Collaboration and partnership
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## Bottom-Line Policy Decision

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- State role?
  - If so:
    - Support current components?
    - Add new component(s)?
  - What do YOU want to know before you answer these questions?
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