

Civil Gideon Legal Services

This Act helps facilitate legal services to underserved communities. It defines and restricts how a person or organization can use the term “legal aid.” The Act directs the state Judicial Council to set up a pilot program to appoint legal representation for unrepresented low-income parties in civil matters involving critical issues such as domestic violence, child custody, and elder abuse. Program projects must be partnerships between courts and qualified legal service providers in the community. The Act directs that local advisory committees be formed to help administer program projects and to ensure those fulfill program objectives. The bill requires the Judicial Council to study the effectiveness of the program and report its findings and recommendations to the governor and legislature. It directs the Judicial Council to use fees collected from various court services to help fund the program.

Submitted as:

California

[AB 590 / Chapter 457](#)

Status: Enacted into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Promote Pro Bono Legal
2 Services and Financial Support to Nonprofit Organizations Which Provide Free Legal Services
3 in Underserved Communities.”
4

5 Section 2. [*Legislative Findings.*]

6 (a) The [Legislature] hereby finds there is an increasingly dire need for legal services for
7 poor people in this state.

8 (b) Due to insufficient funding from all sources, existing programs providing free
9 services in civil matters to indigent and disadvantaged persons, especially underserved groups
10 such as elderly, disabled, children, and non-English-speaking people, are not adequate to meet
11 existing needs.

12 (c) Equal access to justice without regard to income is a fundamental right in a
13 democratic society. It is essential to the enforcement of all other rights and responsibilities in any
14 society governed by the rule of law. It also is essential to the public’s confidence in the legal
15 system and its ability to reach just decisions.

16 (d) It is the intent of the [Legislature] to encourage the legal profession to make further
17 efforts to meet its professional responsibilities and other obligations by providing pro bono legal
18 services and financial support to nonprofit legal organizations that provide free legal services to
19 underserved communities.

20 (e) The services provided for in this Act are not intended to, and shall not, supplant legal
21 services resources from any other source. This Act does not entitle any person to receive services
22 from a particular legal services provider, nor shall this Act override the local or national
23 priorities of existing legal services programs. The services provided for in this Act are likewise
24 not intended to undermine any existing pilot programs or other efforts to simplify court
25 procedures or provide assistance to unrepresented litigants. Furthermore, nothing in this Act shall

26 be construed to prohibit the provision of full legal representation or other appropriate services
27 funded by another source.

28

29 Section 3. [*Legal Aid Organizations.*]

30 (a) For purposes of this Act, “legal aid organization” means a nonprofit organization that
31 provides civil legal services to the poor without charge.

32 (b) It is unlawful for any person or organization to use the term “legal aid,” “legal aide,”
33 or any confusingly similar name in any firm name, trade name, fictitious business name, or any
34 other designation, or on any advertisement, letterhead, business card, or sign, unless the person
35 or organization is a legal aid organization subject to fair use principles for nominative,
36 descriptive, or noncommercial use.

37 (c) Any consumer injured by a violation of this section of this Act may file a complaint
38 and seek injunctive relief, restitution, and damages in the [superior court] of any county in which
39 the defendant maintains an office, advertises, or is listed in a telephone directory.

40 (d) A person who violates this section of this Act shall be subject to an injunction against
41 further violation of this section of this Act by any legal aid organization that maintains an office
42 in any county in which the defendant maintains an office, advertises, or is listed in a telephone
43 directory. In an action under this subdivision of this section, it is not necessary to allege or prove
44 actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be
45 presumed.

46 (e) Reasonable attorney’s fees shall be awarded to the prevailing plaintiff in any action
47 under this section.

48

49 Section 4. [*Civil Legal Representation.*]

50 (a) Legal counsel shall be appointed to represent low-income parties in civil matters
51 involving critical issues affecting basic human needs in those specified courts selected by the
52 [Judicial Council] as defined under [insert citation] and as provided in this section.

53 (b) (1) The [Judicial Council] shall develop one or more model pilot projects in
54 selected courts pursuant to a competitive grant process and a request for proposals. Projects
55 authorized under this section shall provide representation of counsel for low-income persons who
56 require legal services in civil matters involving housing-related matters, domestic violence and
57 civil harassment restraining orders, probate conservatorships, guardianships of the person, elder
58 abuse, or actions by a parent to obtain sole legal or physical custody of a child, as well as
59 providing court procedures, personnel, training, and case management and administration
60 methods that reflect best practices to ensure unrepresented parties in those cases have meaningful
61 access to justice, and to gather information on the outcomes associated with providing these
62 services, to guard against the involuntary waiver of those rights or their disposition by default.
63 These pilot projects should be designed to address the substantial inequities in timely and
64 effective access to justice that often give rise to an undue risk of erroneous decision because of
65 the nature and complexity of the law and the proceeding or disparities between the parties in
66 education, sophistication, language proficiency, legal representation, access to self-help, and
67 alternative dispute resolution services. In order to ensure that the scarce funds available for the
68 program are used to serve the most critical cases and the parties least able to access the courts
69 without representation, eligibility for representation shall be limited to clients whose household
70 income falls at or below [200 percent] of the federal poverty level. Projects shall impose asset
71 limitations consistent with their existing practices in order to ensure optimal use of funds.

72 (2) (A) In light of the significant percentage of parties who are unrepresented
73 in family law matters, proposals to provide counsel in child custody cases should be considered

74 among the highest priorities for funding, particularly when one side is represented and the other
75 is not.

76 (B) Excepting projects defined under [insert citation], up to [20 percent] of
77 available funds shall be directed to projects regarding civil matters involving actions by a parent
78 to obtain sole legal or physical custody of a child.

79 (3) Each project shall be a partnership between the court, a qualified legal services
80 project as defined by [insert citation] that shall serve as the lead agency for case assessment and
81 direction, and other legal services providers in the community which are able to provide the
82 services for the project. The lead legal services agency shall be the central point of contact for
83 receipt of referrals to the project and to make determinations of eligibility based on uniform
84 criteria. The lead legal services agency shall be responsible for providing representation to the
85 clients or referring the matter to one of the organization or individual providers with whom the
86 lead legal services agency contracts to provide the service. Funds received by a qualified legal
87 services project shall not qualify as expenditures for the purposes of the distribution of funds
88 pursuant to [insert citation]. To the extent practical, the lead legal services agency shall identify
89 and make use of pro bono services in order to maximize available services efficiently and
90 economically. Recognizing that not all indigent parties can be afforded representation, even
91 when they have meritorious cases, the court partner shall, as a corollary to the services provided
92 by the lead legal services agency, be responsible for providing procedures, personnel, training,
93 and case management and administration practices that reflect best practices to ensure
94 unrepresented parties meaningful access to justice and to guard against the involuntary waiver of
95 rights, as well as to encourage fair and expeditious voluntary dispute resolution, consistent with
96 principles of judicial neutrality.

97 (4) The participating projects shall be selected by a committee appointed by the
98 [Judicial Council] with representation from key stakeholder groups, including judicial officers,
99 legal services providers, and others, as appropriate. The committee shall assess the applicants'
100 capacity for success, innovation, and efficiency, including, but not limited to, the likelihood that
101 the project would deliver quality representation in an effective manner that would meet critical
102 needs in the community and address the needs of the court with regard to access to justice and
103 calendar management, and the unique local unmet needs for representation in the community.
104 Projects approved pursuant to this section shall initially be authorized for a [three-year] period,
105 commencing [insert date], subject to renewal for a period to be determined by the [Judicial
106 Council], in consultation with the participating project in light of the project's capacity and
107 success. After the initial [three-year] period, the [Judicial Council] shall distribute any future
108 funds available as the result of the termination or nonrenewal of a project pursuant to the process
109 set forth in this subdivision. Projects shall be selected on the basis of whether, in the cases
110 proposed for service, the persons to be assisted are likely to be opposed by a party who is
111 represented by counsel. The [Judicial Council] shall also consider the following factors in
112 selecting the projects:

113 (A) The likelihood that representation in the proposed case type tends to
114 affect whether a party prevails or otherwise obtains a significantly more favorable outcome in a
115 matter in which they would otherwise frequently have judgment entered against them or suffer
116 the deprivation of the basic human need at issue.

117 (B) The likelihood of reducing the risk of erroneous decision.

118 (C) The nature and severity of potential consequences for the
119 unrepresented party regarding the basic human need at stake if representation is not provided.

120 (D) Whether the provision of legal services may eliminate or reduce the
121 potential need for and cost of public social services regarding the basic human need at stake for
122 the client and others in the client's household.

123 (E) The unmet need for legal services in the geographic area to be served.
124 (F) The availability and effectiveness of other types of court services, such
125 as self-help.

126 (5) Each applicant shall do all of the following:

127 (A) Identify the nature of the partnership between the court, the lead legal
128 services agency, and the other agencies or other providers that would work within the project.

129 (B) Describe the referral protocols to be used, the criteria that would be
130 employed in case assessment, why those cases were selected, the manner to address conflicts
131 without violating any attorney-client privilege when adverse parties are seeking representation
132 through the project, and the means for serving potential clients who need assistance with English.

133 (C) Describe how the project would be administered, including how the
134 data collection requirements would be met without causing an undue burden on the courts,
135 clients, or the providers, the particular objectives of the project, strategies to evaluate their
136 success in meeting those objectives, and the means by which the project would serve the
137 particular needs of the community, such as by providing representation to limited-English-
138 speaking clients.

139 (6) To ensure the most effective use of the funding available, the lead legal
140 services agency shall serve as a hub for all referrals, and the point at which decisions are made
141 about which referrals will be served and by whom. Referrals shall emanate from the court, as
142 well as from the other agencies providing services through the program, and shall be directed to
143 the lead legal services agency for review. That agency, or another agency or attorney in the event
144 of conflict, shall collect the information necessary to assess whether the case should be served. In
145 performing that case assessment, the agency shall determine the relative need for representation
146 of the litigant, including all of the following:

147 (A) Case complexity.

148 (B) Whether the other party is represented.

149 (C) The adversarial nature of the proceeding.

150 (D) The availability and effectiveness of other types of services, such as
151 self-help, in light of the potential client and the nature of the case.

152 (E) Language issues.

153 (F) Disability access issues.

154 (G) Literacy issues.

155 (H) The merits of the case.

156 (I) The nature and severity of potential consequences for the potential
157 client if representation is not provided.

158 (J) Whether the provision of legal services may eliminate or reduce the
159 need for and cost of public social services for the potential client and others in the potential
160 client's household.

161 (7) If both parties to a dispute are financially eligible for representation, each
162 proposal shall ensure that representation for both sides is evaluated. In these and other cases in
163 which conflict issues arise, the lead legal services agency shall have referral protocols with other
164 agencies and providers, such as a private attorney panel, to address those conflicts.

165 (8) Each pilot project shall be responsible for keeping records on the referrals
166 accepted and those not accepted for representation, and the reasons for each, in a manner that
167 does not violate any privileged communications between the agency and the prospective client.
168 Each pilot project shall be provided with standardized data collection tools, and required to track
169 case information for each referral to allow the evaluation to measure the number of cases served,
170 the level of service required, and the outcomes for the clients in each case. In addition to this

171 information on the effect of the representation on the clients, data shall be collected regarding the
172 outcomes for the trial courts.

173 (9) A local advisory committee shall be formed for each pilot project, to include
174 representatives of the bench and court administration, the lead legal services agency, and the
175 other agencies or providers that are part of the local project team. The role of the advisory
176 committee is to facilitate the administration of the local pilot project, and to ensure that the
177 project is fulfilling its objectives. In addition, the committee shall resolve any issues that arise
178 during the course of the pilot project, including issues concerning case eligibility, and
179 recommend changes in project administration in response to implementation challenges. The
180 committee shall meet at least [monthly] for the first [six months] of the project, and no less than
181 [quarterly] for the duration of the pilot period. Each authorized pilot project shall catalog
182 changes to the program made during the [three-year] period based on its experiences with best
183 practices in serving the eligible population.

184 (c) The [Judicial Council] shall conduct a study to demonstrate the effectiveness and
185 continued need for the pilot program established pursuant to this section and shall report its
186 findings and recommendations to the [Governor] and the [Legislature] on or before [insert date].
187 The study shall report on the percentage of funding by case type and shall include data on the
188 impact of counsel on equal access to justice and the effect on court administration and efficiency,
189 and enhanced coordination between courts and other government service providers and
190 community resources. This report shall describe the benefits of providing representation to those
191 who were previously not represented, both for the clients and the courts, as well as strategies and
192 recommendations for maximizing the benefit of that representation in the future. The report shall
193 describe and include data, if available, on the impact of the pilot program on families and
194 children. The report also shall include an assessment of the continuing unmet needs and, if
195 available, data regarding those unmet needs.

196 (d) This section shall not be construed to negate, alter, or limit any right to counsel in a
197 criminal or civil action or proceeding otherwise provided by state or federal law.

198

199 Section 5. *[Funding.]*

200 (a) To implement this Act, [insert percent] of the fees and fines collected on or after
201 [insert date] from the actions listed under subdivisions (1) through (19) of this subsection (a) of
202 this section shall be deposited by [each superior court], as soon as practicable after collection and
203 on a regular basis, into a bank account or trust fund established for that purpose by the
204 [Administrative Office of the Courts]:

205 (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of
206 sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any
207 order or judgment under [insert citation];

208 (2) Issuing an abstract of judgment under [insert citation];

209 (3) Issuing a certificate of satisfaction of judgment under [insert citation];

210 (4) Certifying a copy of any paper, record, or proceeding on file in the office of
211 the clerk of any court under [insert citation];

212 (5) Taking an affidavit, except in criminal cases or adoption proceedings under
213 [insert citation];

214 (6) Acknowledgment of any deed or other instrument, including the certificate
215 under [insert citation];

216 (7) Recording or registering any license or certificate, or issuing any certificate in
217 connection with a license, required by law, for which a charge is not otherwise prescribed under
218 [insert citation];

219 (8) Issuing any certificate for which the fee is not otherwise fixed under [insert
220 citation];
221 (9) Issuing an order of sale under [insert citation];
222 (10) Receiving and filing an abstract of judgment rendered by a judge of another
223 court and subsequent services based on it, unless the abstract of judgment is filed under [insert
224 citation];
225 (11) Filing a confession of judgment under [insert citation];
226 (12) Filing an application for renewal of judgment under [insert citation];
227 (13) Issuing a commission to take a deposition in another state or place under
228 [insert citation] or issuing a subpoena under [insert citation] to take a deposition in this state for
229 purposes of a proceeding pending in another jurisdiction;
230 (14) Filing and entering an award under the Workers' Compensation Law under
231 [insert citation];
232 (15) Filing an affidavit of publication of notice of dissolution of partnership under
233 [insert citation];
234 (16) Filing an appeal of a determination whether a dog is potentially dangerous or
235 vicious under [insert citation];
236 (17) Filing an affidavit under [insert citation] together with the issuance of one
237 certified copy of the affidavit under [insert citation];
238 (18) Filing and indexing all papers for which a charge is not elsewhere provided,
239 other than papers filed in actions or special proceedings, official bonds, or certificates of
240 appointment [insert citation]; and
241 (19) Receiving and filing an abstract of judgment rendered by a judge of another
242 court and subsequent services based on it, unless the abstract of judgment is filed under [insert
243 citation].
244 (b) The [Administrative Office of the Courts] shall enable the [Judicial Council] to use
245 money deposited into the bank account or trust fund authorized by subsection (a) of this section
246 to finance the model pilot projects and related administrative expenses referenced in section (4)
247 of this Act. The [Administrative Office of the Courts] shall disburse or otherwise make available
248 such money to the [Judicial Council] in the amounts and manner defined under [insert citation].
249 The [Judicial Council] shall award money it receives from the [Administrative Office of the
250 Courts] to implement this Act in the amounts and manner defined under [insert citation].

251
252 Section 6. [*Severability.*] [Insert severability clause.]

253
254 Section 7. [*Repealer.*] [Insert repealer clause.]

255
256 Section 8. [*Effective Date.*] [Insert effective date.]