

# RETHINKING REGULATION OF LEGAL SERVICES: Authorizing Allied Legal Professionals

## AT A GLANCE:

- **Unauthorized practice of law statutes** in many states prevent qualified non-lawyers from offering legal assistance.
- Revised restrictions on the practice of law have led to the rise of legal paraprofessional programs—known as the “**legal system’s equivalent of a nurse practitioner.**”
- **Seven states** have launched paraprofessional programs and multiple other states are considering reforms. In Ontario, Canada, where a similar program was established in 2006, there are over 10,000 paraprofessionals.
- Legal paraprofessional programs have likely **increased access to legal services** for civil litigants who cannot afford the high cost of lawyers, but such programs have struggled to attract applicants and maintain political support.

## Executive Summary

In response to the widespread shortage of legal services, states have begun loosening restrictions on who can practice law.<sup>1</sup> Such reforms allow non-lawyers who meet certain educational and training requirements to assist individuals, many of whom would otherwise go unrepresented and thus navigate a complex legal system alone, or not pursue their legal claims at all.<sup>2</sup> Known in some states as legal paraprofessionals, these non-lawyers have been called the “legal system’s equivalent of a nurse practitioner.”<sup>3</sup> Whereas Community Justice Workers are exempted from unauthorized practice of law rules, paraprofessionals are licensed to practice law.

States with paraprofessional programs have significant protections in place to ensure the non-lawyers are competent and well-versed in the relevant law. In addition to rigorous qualifications for licensure, the duties and domain of paraprofessionals are carefully circumscribed. States permit paraprofessionals to assume a limited set of responsibilities, ranging from reviewing and filing documents and providing legal advice to representing clients at depositions and settlement conferences.<sup>4</sup> Some states also allow paraprofessionals to appear in court, either by fully representing their clients or by providing them limited support during proceedings.<sup>5</sup> Paraprofessionals can only perform such tasks in certain cases—most commonly family, housing,

<sup>1</sup> GILLIAN K. HADFIELD & JAMIE HEINE, USC GOULD CENTER FOR LAW AND SOCIAL SCIENCE, LIFE IN THE LAW-THICK WORLD: THE LEGAL RESOURCE LANDSCAPE FOR ORDINARY AMERICANS 37 (2015).

<sup>2</sup> DAVID FREEMAN ENGSTROM, LUCY RICCA, GRAHAM AMBROSE & MADDIE WALSH, LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 12 (2022).

<sup>3</sup> News Release, Arizona Sup. Ct., Arizona Supreme Court Makes Generational Advance in Access to Justice (Aug. 27, 2020).

<sup>4</sup> See, e.g., ARIZ. JUD. CODE § 7-210 (2023); H.B. 1343, 2022 Reg Sess. (N.H. 2022).

<sup>5</sup> See, e.g., MINN. CT. R. 12.01 (2021).

and consumer debt disputes.<sup>6</sup> States regulate paraprofessionals as much as—or more than—lawyers, imposing clear ethical guidelines and requirements such as continuing legal education, attorney supervision, and pro bono hours.<sup>7</sup>

As of December 2023, seven states—including Arizona, Colorado, Utah, Minnesota, New Hampshire, Oregon, and Washington—and Ontario, Canada have launched paraprofessional programs.<sup>8</sup> Multiple other states—including Michigan, North Carolina, and Texas—are considering similar reforms.<sup>9</sup> The California State Bar working group on paraprofessional licensing produced a report and recommendations on advancing a pilot program in May of 2022; in September of 2022, however, ASB 2958 was signed into law and suspended the State Bar’s work in this area until 2025.<sup>10</sup>

Early reports show that paraprofessional programs may help improve access to legal services, particularly for middle class Americans who cannot afford attor-

neys but can afford paraprofessionals.<sup>11</sup> However, states have struggled with the low number of non-lawyer applicants, the cost of the programs, and political resistance from state bar associations.<sup>12</sup> State implementation of paraprofessional programs highlights the promise of non-lawyer reforms and reveals crucial lessons for their success going forward.

The sections below contain case studies from Arizona, Minnesota, Washington, and Ontario, which have implemented non-lawyer practitioner programs (at least for a time), and then summarizes some of the successes and challenges identified thus far.

## Case Studies

### ARIZONA

The high cost of legal services and limited number of lawyers contribute to a significant justice gap in Arizona, where there are an average of 2.1 lawyers per 1,000 residents—among the fewest lawyers per capita of any state in the country and roughly half the

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<sup>6</sup> INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *THE LANDSCAPE OF ALLIED LEGAL PARAPROFESSIONAL PROGRAMS IN THE UNITED STATES* 20 (2022).

<sup>7</sup> *Id.* at 80.

<sup>8</sup> See, e.g., OREGON STATE BAR, *PARAPROFESSIONAL LICENSING IMPLEMENTATION COMMITTEE: FINAL REPORT* (2022); Order Implementing Legal Paraprofessional Project, ADM19-8002 (Minn. S. Ct. 2020); Arizona Sup. Ct., *supra* note 3, at 1; H.B. 1343, 2022 Reg Sess. (N.H. 2022); In the Matter of the Adoption of New APR 28—Limited Practice Rules for Limited License Legal Technicians, No. 25700-A-1005 (Wash. S. Ct. 2012); COLO. CT. R. 207.1 (2023); UTAH CODE JUD. ADMIN 14-802 (2023).

<sup>9</sup> See, e.g., *Accessible Legal Services Initiative*, N.C. JUSTICE FOR ALL PROJECT, <https://www.ncjafp.org/2023-legislative-proposal-to-ncga>; Creation of the Justice For All Commission, ADM File No. 2020-32 (Mich. S. Ct. 2021); TEX. ACCESS TO LEGAL SERVS. WORKING GRP., *REPORT AND RECOMMENDATIONS* (2023); Hon. Elizabeth A. Bozzuto, Patrick T. Clendenen, Hon Ndidi N. Moses & Kyle LaBuff, *Task Force Final Report*, 32 CONN. LAW. 20, 21-23 (2022); AD HOC LICENSED LEGAL TECHNICIANS WORKGROUP, *INNOVATION TO ADDRESS THE ACCESS TO JUSTICE GAP* (2019); REGUL. INNOVATION WORKING GRP. OF THE COMM’N TO REIMAGINE THE FUTURE OF NEW YORK’S COURTS, *REPORT AND RECOMMENDATIONS OF THE WORKING GROUP ON REGULATORY INNOVATION* (2020).

<sup>10</sup> CALIFORNIA STATE BAR, *CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP: REPORT AND RECOMMENDATIONS* (2021); CALIFORNIA STATE BAR, *OPEN SESSION AGENDA ITEM: PROPOSED AMENDMENTS TO FINAL CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP RECOMMENDATIONS AND RULES* (2022).

<sup>11</sup> See, e.g., THOMAS M. CLARKE & REBECCA L. SANDEFUR, AM. BAR FOUND. & NAT’L CTR FOR STATE COURTS, *PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM* 15 (2017); STANDING COMM. FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, *INTERIM REPORT AND RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT* 6 (2023).

<sup>12</sup> JASON SOLOMON & NOELLE SMITH, *THE SURPRISING SUCCESS OF WASHINGTON STATE’S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM* 2 (2021).

national average.<sup>13</sup> In response to this access crisis, in 2018 the Arizona Supreme Court established the Task Force on Delivery of Legal Services to consider whether non-lawyers should be allowed to provide legal services.<sup>14</sup> After careful and diligent study, the Task Force recommended the development of a “tier of nonlawyer legal service providers.”<sup>15</sup> In 2020, the Court voted unanimously in favor of the proposal, modifying the rules regulating the practice of law and allowing qualifying non-lawyers in Arizona to provide limited legal services.<sup>16</sup> In a public opinion survey conducted by the Court, 80.3 percent of responding members of the public supported the reform.<sup>17</sup>

To qualify to be a legal paraprofessional (LP), non-lawyers can pursue an experiential track, which requires that they have completed seven years of full-time substantive law-related experience within the decade preceding the application, or an educational track, which requires they have a combination of a degree from an accredited institution and specialized coursework.<sup>18</sup> Applicants must also pass examinations,

which were specially designed by a human resource management firm to evaluate paraprofessional candidates, in each area of law they seek to practice.<sup>19</sup> Possible practice areas include family law, juvenile court, state administrative law, and criminal law matters where incarceration is not at risk.<sup>20</sup> Once licensed, LPs can assist with tasks including preparing and signing legal documents, providing specific advice, and appearing before a court on behalf of a party.<sup>21</sup> As of July 2023, there were 43 licensed paraprofessionals in Arizona.<sup>22</sup> There have been two reported complaints against paraprofessionals since the program began.<sup>23</sup>

## MINNESOTA

In 2020, the Minnesota Supreme Court authorized the Legal Paraprofessional Pilot Project, permitting non-lawyers to provide legal services under the supervision of licensed attorneys.<sup>24</sup> Applicants for the Pilot Project must meet certain education and work experience requirements and enter into agreements with licensed attorneys who will supervise their legal services.<sup>25</sup> Once certified, paraprofessionals are

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<sup>13</sup> AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 20-21 (2023).

<sup>14</sup> ARIZONA SUP. CT. TASK FORCE ON THE DELIVERY OF LEGAL SERVS., REPORT AND RECOMMENDATIONS I (2019).

<sup>15</sup> *Id.* at 39.

<sup>16</sup> News Release, Arizona Sup. Ct., *supra* note 3, at 1; *Access to Legal Services*, AZCOURTS.GOV, <https://www.azcourts.gov/accesstolegalservices> (last visited Dec. 22, 2023).

<sup>17</sup> ARIZONA SUP. CT. TASK FORCE ON THE DELIVERY OF LEGAL SERVS., STATE OF ARIZONA PUBLIC OPINION SURVEY 13 (2020).

<sup>18</sup> ARIZ. JUD. CODE § 7-210 (2023).

<sup>19</sup> BD. OF NONLAWYER LEGAL SERVS. PROVIDERS, ANNUAL REPORT TO THE ARIZONA SUPREME COURT 4 (2021).

<sup>20</sup> *Legal Paraprofessionals Questions & Answers*, AZCOURTS.GOV, <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/lp>.

<sup>21</sup> ARIZ. JUD. CODE § 7-210 (2023).

<sup>22</sup> ARIZONA JUD. BRANCH, LEGAL PARAPROFESSIONAL PROGRAM DIRECTORY (2023).

<sup>23</sup> BD. OF NONLAWYER LEGAL SERVS. PROVIDERS, ANNUAL REPORT ON THE STATUS OF THE LEGAL PARAPROFESSIONAL PROGRAM 6 (2022); BD. OF NONLAWYER LEGAL SERVS. PROVIDERS, ANNUAL REPORT ON THE STATUS OF THE LEGAL PARAPROFESSIONAL PROGRAM 6 (2023).

<sup>24</sup> Order Implementing Legal Paraprofessional Project, ADM19-8002 (Minn. S. Ct. 2020).

<sup>25</sup> *Id.*

permitted to assist clients with select housing and family matters.<sup>26</sup> As of September 2023, there were 30 licensed paraprofessionals in the state.<sup>27</sup>

An interim report by the Legal Paraprofessional Pilot Project Standing Committee found the project has started off strong, delivering quality legal services and increasing access to justice. The eight supervising attorneys who responded to the Committee’s survey reported that their legal professionals were “careful, serious, and excellent.”<sup>28</sup> Further, information gathered from the paraprofessionals showed half of their clients would have otherwise gone unrepresented.<sup>29</sup> Given the small sample size of the report (it was completed when there were only 13 certified paraprofessionals), more in-depth study is necessary.<sup>30</sup> The Pilot Project is set to end on March 31, 2024, when the Judicial Branch will conduct an evaluation and determine whether to implement it in the long-term.<sup>31</sup>

## WASHINGTON

A 2003 study in Washington State found that low-

income residents faced more than 85 percent of their legal problems without a lawyer.<sup>32</sup> Cognizant of this reality, the Washington State Supreme Court in 2012 approved the Practice of Law Board’s rule permitting the provision of legal assistance by non-lawyers after nearly a decade of proposals and revisions.<sup>33</sup> Washington became the first state to license independent legal paraprofessionals.<sup>34</sup> Limited License Legal Technicians (LLLTs) were permitted to assist clients in family law cases by conducting tasks such as preparing and reviewing legal documents, locating necessary records, and responding to direct questions in court.<sup>35</sup>

The State required applicants to qualify by education, including both an associate degree and a designated number of credits of legal coursework.<sup>36</sup> In addition, every candidate was required to complete courses in family law, pass three examinations, and complete 3,000 hours of substantive legal work supervised by an attorney.<sup>37</sup> This experiential requirement was later modified to 1,500 hours.<sup>38</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> MINN. JUD. BRANCH, ROSTER OF APPROVED LEGAL PARAPROFESSIONALS (2023).

<sup>28</sup> STANDING COMM. FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, *supra* note 11, at 6.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Legal Paraprofessional Pilot Project*, MINN. JUD. BRANCH, <https://www.mncourts.gov/Help-Topics/Legal-Paraprofessional-Pilot-Project.aspx> (last visited Dec. 22, 2023).

<sup>32</sup> CIVIL LEGAL NEEDS STUDY UPDATE COMM., CIVIL LEGAL NEEDS STUDY UPDATE 15 (2015).

<sup>33</sup> Lacy Ashworth, *Nonlawyers in the Legal Profession: Lessons from the Sunsetting of Washington’s LLLT Program*, 74 ARK. L. REV. 689, 699 (2022).

<sup>34</sup> Katherine Long, *In Washington, There’s a Low-Cost Alternative to Hiring (or Becoming) a Lawyer*, SEATTLE TIMES (Mar. 5, 2018), <https://www.seattletimes.com/education-lab/in-washington-theres-a-low-cost-alternative-to-hiring-or-becoming-a-lawyer/>.

<sup>35</sup> In the Matter of the Adoption of New APR 28—Limited Practice Rules for Limited License Legal Technicians, No. 25700-A-1005 (Wash. S. Ct. 2012).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*; WASHINGTON STATE BAR ASS’N REGUL. SERVS. DEP’T, LLLT APPLICATION FOR LICENSING.

<sup>38</sup> Letter from Debra L. Stephens, C.J., Wash. St. S. Ct., to Stephen R. Crossland, Chair, Ltd. License Legal Technician Bd., Rajeev Majumdar, President, Wash. State Bar Ass’n & Terra Nevitt, Executive Director, Wash. St. Bar Ass’n (July 9, 2020).

A preliminary evaluation of the program conducted by the National Center on State Courts found that the LLLTs “offer[ed] an innovative way to extend affordable legal services to a potentially large segment of the public that cannot afford traditional lawyers.”<sup>39</sup> Yet the Washington Supreme Court voted to sunset the program in 2020, citing “the overall costs of sustaining the program and the small number of interested individuals.”<sup>40</sup> Studies analyzing the LLLTs have attributed this outcome to political and structural problems, discussed below. There are currently 81 active licensed LLLTs, who have been allowed to continue their work despite the program’s termination.<sup>41</sup>

## ONTARIO

In 2006, the Law Society Act tasked the Law Society of Ontario, the province’s equivalent of a bar association, with regulation of the paralegal profession.<sup>42</sup> Although there were already paralegals in Ontario prior to regulation, there was no standard of competence, raising concerns about harm to clients and undermining the reputation of those paralegals who were hard-working and knowledgeable.<sup>43</sup> A Paralegal

Standing Committee in the organization proposed a regulatory model to ensure all paralegals would be qualified.<sup>44</sup>

To become licensed, applicants are required to meet certain educational requirements and complete an examination.<sup>45</sup> Those who were already providing paralegal services prior to regulation were able to opt for a grandparenting process so long as they applied within six months of the scheme’s establishment.<sup>46</sup> They were subject to all the same application components, except for the educational requirements.<sup>47</sup>

Today, there are over 10,000 paralegals providing legal services.<sup>48</sup> They are permitted to assist on matters such as landlord/tenant disputes, small claims court issues, and traffic offenses.<sup>49</sup> An early survey of 1,000 paralegal clients revealed a high degree of satisfaction with their services, with 74 percent of clients stating that they were satisfied or very satisfied with the services they had received, 87 percent stating that they would use the paralegal service again, and 68 percent stating that the paralegal services were of

<sup>39</sup> CLARKE & SANDEFUR, *supra* note 11, at 15.

<sup>40</sup> Letter from Debra L. Stephens, C.J., Wash. St. S. Ct., to Stephen R. Crossland, Chair, Ltd. License Legal Technician Bd., Rajeev Majumdar, President, Wash. State Bar Ass’n & Terra Nevitt, Executive Director, Wash. St. Bar Ass’n (June 5, 2020).

<sup>41</sup> *Legal Directory*, WASH. ST. BAR ASS’N, <https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx?ShowSearchResults=TRUE&LicenseType=LLLT&Page=1> (last visited Dec. 22, 2023).

<sup>42</sup> *Paralegal Regulation Resources*, LAW SOC’Y OF ONTARIO, <https://lso.ca/paralegals/about-your-licence/paralegal-regulation-resources> (last visited Dec. 22, 2023).

<sup>43</sup> LAW SOC’Y OF UPPER CANADA, REPORT TO THE ATTORNEY GENERAL OF ONTARIO PURSUANT TO SECTION 63.1 OF THE LAW SOCIETY ACT 10 (2012).

<sup>44</sup> *Id.*

<sup>45</sup> *Paralegal Licensing Process*, LAW SOC’Y OF ONTARIO, <https://lso.ca/Becoming-Licensed/Paralegal-Licensing-Process#paralegal-licensing-examination-4> (last visited Dec. 22, 2023).

<sup>46</sup> LAW SOC’Y OF UPPER CANADA, *supra* note 43.

<sup>47</sup> *Id.*

<sup>48</sup> LAW SOC’Y OF ONTARIO, 2022 ANNUAL REPORT 1 (2022).

<sup>49</sup> LAW SOC’Y OF UPPER CANADA, *supra* note 43, at 2.

good value.<sup>50</sup>

## Success & Challenges

reported few, if any, complaints filed against the

### SUCSESSES

**Low Cost.** The legal services of paraprofessionals are overall more affordable than those of lawyers. In Washington, the average cost of a legal paraprofessional was \$140 less per hour than a lawyer.<sup>51</sup> As a result, paraprofessionals may have provided legal services to those who would otherwise have gone without representation or assistance.<sup>52</sup> In research conducted as part of the Ontario government's five-year review of its paralegal program, almost half (46 percent) of survey respondents cited the lower cost of services as a reason for using a paralegal.<sup>53</sup>

**Competent and Effective.** Lawyers and clients who work with paraprofessionals report a high level of competence and knowledge.<sup>54</sup> Paraprofessionals not only enable clients to navigate the legal system but also may make court proceedings more efficient than if parties were unrepresented, ensuring that clients are prepared and limiting the introduction of irrelevant material.<sup>55</sup> Further, states with such programs have

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<sup>50</sup> *Id.* at 25.

<sup>51</sup> INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *supra* note 6, at 54.

<sup>52</sup> SOLOMON & SMITH, *supra* note 12, at 1.

<sup>53</sup> LAW SOC'Y OF UPPER CANADA, *supra* note 43, at 25, 35 (2012).

<sup>54</sup> *See, e.g.*, STANDING COMM. FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, *supra* note 11, at 6; SOLOMON & SMITH, *supra* note 12, at 13; CLARKE & SANDEFUR, *supra* note 11, at 9.

<sup>55</sup> SOLOMON & SMITH, *supra* note 12, at 14.

paraprofessionals. In Minnesota, for example, there have been no complaints since the program was established in 2021.<sup>56</sup> Meanwhile, Washington saw a total of two complaints in the seven years the program was in effect, and both were dismissed.<sup>57</sup> A representative from the Law Society of Ontario also reported that the percentage of complaints against paralegals and lawyers is the same each year.<sup>58</sup>

**Expanding Opportunities.** Legal technicians who taught courses to paraprofessionals in Washington State reported that students in such programs were more racially and socioeconomically diverse than most law school student populations.<sup>59</sup> This not only served to uplift underserved communities but also meant that non-lawyer representatives had experienced many of the problems that their clients faced.<sup>60</sup> They were therefore well positioned to connect with clients.

## CHALLENGES

**Low Licensee Numbers.** There are currently fewer than 50 licensed paraprofessionals in each of the U.S. states that have implemented and maintained paraprofessional programs.<sup>61</sup> Studies have attributed the

low numbers of applicants and licensees to the significant experiential and educational requirements imposed by paraprofessional programs and the expense of the licensure process, which can cost as much as \$15,000.<sup>62</sup>

**Lack of Lawyer Support.** Lawyers' opposition to paraprofessional programs has stood in the way of the development or success of non-lawyer legal services. An assessment of Washington State's LLLTs revealed that one of the program's most fundamental issues was political. The program was funded by the Washington State Bar Association, which had many members that were hostile to the program.<sup>63</sup>

**Limited Legal Arguments.** Given the less comprehensive training of paraprofessionals in comparison to lawyers, they are likely not as capable of making sophisticated arguments in court filings or appearances. This may harm clients whose cases are more procedurally or legally complex than the routine claims that paraprofessionals often handle. And, while, ideally paraprofessionals will be able to seek advice or assistance from lawyers when unforeseen complications emerge, it is not clear whether such advice and assistance is consistently obtained.

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<sup>56</sup> STANDING COMM. FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, *supra* note 11, at 3.

<sup>57</sup> SOLOMON & SMITH, *supra* note 12, at 9.

<sup>58</sup> INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., IAALS COMMENT RE: THE CALIFORNIA PARAPROFESSIONAL PROGRAM PROPOSAL.

<sup>59</sup> SOLOMON & SMITH, *supra* note 12, at 17-18.

<sup>60</sup> *Id.*

<sup>61</sup> See, e.g., *Licensed Paralegal Practitioners*, LICENSED LAWYER, <https://www.licensedlawyer.org/Find-a-Lawyer/Licensed-Paralegal-Practitioners> (last visited Dec. 22, 2023); STANDING COMM. FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, *supra* note 11, at 3; ARIZONA JUD. BRANCH, *supra* note 22.

<sup>62</sup> Ashworth, *supra* note 33, at 702.

<sup>63</sup> SOLOMON & SMITH, *supra* note 12, at 23-24.