

Pre-petition representation portfolio

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What is pre-petition representation?

In Oregon and across the country, child welfare professionals have turned their focus to practices which engage families outside of the courtroom. Differential response, which began implementation in 2014, is the central component of DHS' efforts to preserve families, keep children at home, and prevent the need for foster care.

In some cases, lawyers are also able to prevent a child from entering foster care. Children may unnecessarily enter foster care because their parents are unable to resolve legal issues or other barriers which affect child safety in the home.¹

Parents face child protective services investigations alone and can be expected to consent to draconian "safety plans" on their own, without counsel. By providing legal advice to parents, attorneys can help parents advocate for services they need to keep children safely in-home, inform parents about their rights and options during the DHS investigation, negotiate realistic safety plans, and identify relative resources and other options for safe placement.² And, providing parents access to counsel before the filing of court petitions protects the due process rights of parents and children.³

Pre-petition legal representation is the representation of parents prior to the filing of a juvenile court petition. Attorneys are assigned to represent parents when the child welfare agency begins its involvement with the family by assessing the risk of harm to the child(ren) in the home. Attorneys provide legal advocacy

¹ Sankaran, *Using Preventative Legal Advocacy to Keep Children from Entering Foster Care*, Wm. Mitchell L. Rev. 40, no.3 (2014).

² Bech, Briggs, Bruzzo, Green and Marra, *The Importance of Early Attorney Involvement in Child Welfare Cases*, presented at the American Bar Association Conference on Children and The Law (2011), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/ImportanceofEarlyAttorneyInvolvement.doc.

³ The Supreme Court of the United States has frequently emphasized "the importance of the family," and the "integrity of the family unit has found protection" in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment. *Stanley v. Illinois*, 405 U.S. 645 (1972).

throughout the investigation and assessment phase including attending investigative interviews and safety planning meetings.

Pre-petition representation is a national best practice. The American Bar Association Standards of practice for representation of parents in juvenile dependency cases recommends pre-petition representation.⁴ The U.S. Department of Justice recommends early appointment of counsel for both parents and children.⁵

In Oregon, the Governor’s Task Force on Dependency Representation endorsed pre-petition representation as a “promising new practice that is gaining national attention” and “worthy of further exploration.”⁶

Why focus on early involvement of counsel?

- To prevent unnecessary use of foster care.
- To address legal and non-legal barriers while maintaining the family unit.
- To promote accurate decision-making.
- To ensure proper enforcement of the law. (whether reasonable efforts were made to prevent removal, whether reasonable services could prevent the need for removal, whether removal is in the child’s best interests, efforts made to place with a relative or caregiver)
- To promote collaborative problem-solving.
- To protect the substantive rights of parents, children and the family unit.
- To allow parents—especially individuals who are relatively uneducated and/or inarticulate—to effectively present legal arguments and issues that would work in their favor.

⁴ American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* 2006), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf.

⁵ U.S. Department of Justice, ABA Center on Children and the Law, *Court Performance Measures in Child Abuse and Neglect Cases Technical Guide* (December 2008), <https://www.ncjrs.gov/pdffiles1/ojjdp/223570.pdf>.

⁶ *Oregon Task Force on Dependency Representation Report* (July 2016), https://www.oregon.gov/gov/policy/Documents/LRCD/Oregon_Dependency_Representation_TaskForce_Final_Report_072516.pdf.

Results of pre-petition representation

- Center For Family Representation of New York:
 - 50% of client's children kept out of foster care.
 - Length of foster care stay in the CFR program average 5 months, citywide average is 11.5 months.
 - Cost to keep a child in foster care is a minimum of \$30,000/year, CFR spends \$6500/family regardless of the number of children.
 - Saves \$9 million/year.⁷
- Detroit Center for Family Advocacy of Wayne County, Michigan
 - In 98% of cases with substantiated abuse or neglect findings, children were not removed from parents. (110 children served with the goal of preventing removal and not one child entered foster care).
 - The cost avoided by the Michigan child welfare system is \$1.3 million.⁸

Pre-petition representation models

- Vermont Parent Representation Center: Provides multidisciplinary social work-lawyer child protection model of pre-petition representation intended to represent and support parents at risk of experience the placement of their children into state custody and/or out-of-home care.
- Center For Family Representation of New York: Provides team based representation (lawyer, social worker and parent advocate) to parents while they are under investigation by child welfare authorities.
- Detroit Center for Family Advocacy of Wayne County, Michigan: CFA's work focuses on removing the legal barriers that either cause children to enter foster care or forces them to remain there. Often, legal remedies like obtaining a custody or personal protection order, resolving criminal warrants or getting a divorce will allow children to remain with their family and avoid placement in foster care. Similarly, CFA addresses legal barriers that can

⁷ Center for Family Representation 2014 Annual Report, <https://www.cfrny.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>.

⁸ Vloet, *Detroit Center for Family Advocacy: Review Finds High Success Rate in Keeping Kids with Families* (May 13, 2013), <http://www.law.umich.edu/newsandinfo/features/Pages/CFAstudy051313.aspx>.

prevent children from achieving a legally permanent status with a caring and committed adult. CFA's multidisciplinary team seeks to overcome these obstacles by providing families with the assistance of an attorney, a social worker and a family advocate. Nearly 90% of case referrals come directly from the Michigan Department of Human Services.

- Family Defense Center of Chicago: Provides representation in cases where DCFS is investigating abuse or neglect, participates in safety plan negotiations, and represents parents in administrative appeals of DCFS investigation findings.

Resources included

- American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* (2006), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf
- Bech, Briggs, Bruzzo, Green and Marra, *The Importance of Early Attorney Involvement in Child Welfare Cases*, presented at the American Bar Association Conference on Children and The Law (2011), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/ImportanceofEarlyAttorneyInvolvement.doc
- Center for Family Representation Pre-petition representation success story: Juan's Story, <http://www.cfrny.org/stories/juans-story/>
- The Family Defense Center, *Understanding and Responding to Department of Children and Family Services' Abuse and Neglect Investigations in Illinois* (April 2016), <http://www.familydefensecenter.net/wp-content/uploads/2016/04/Responding-to-Investigations-Manual-FINAL.pdf>, selected sections
- Fassler and Gethaiga, *Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies*, American Bar Association Child Law Practice (April 2011), http://www.americanbar.org/publications/child_law_practice/vol30/april_2011/representing_parents_during_child_welfare_investigations_precourt_adv.html

- Sankaran, *Using Preventative Legal Advocacy to Keep Children from Entering Foster Care*, Wm. Mitchell L. Rev. 40, no.3 (2014), <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1946&context=articles>.

American Bar Association

Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

Introduction

These standards promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect cases. These standards became official ABA Policy when approved by the ABA House of Delegates in 2006. The standards were written with the help of a committee of practicing parents' attorneys and child welfare professionals from different jurisdictions in the country. With their help, the standards were written with the difficulties of day-to-day practice in mind, but also with the goal of raising the quality of representation. While local adjustments may be necessary to apply these standards in practice, jurisdictions should strive to meet their fundamental principles and spirit.

The standards are divided into the following categories:

1. Summary of the Standards
2. Basic Obligations of Parents' Attorneys
3. Obligations of Attorney Manager
4. The Role of the Court

The standards include "black letter" requirements written in bold. Following the black letter standards are "actions." These actions further discuss how to fulfill the standard; implementing each standard requires the accompanying action. After the action is "commentary" or a discussion of why the standard is necessary and how it should be applied. When a standard does not need further explanation, no action or commentary appears. Several standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in these standards. The terms "parent" and "client" are used interchangeably throughout the document. These standards apply to all attorneys who represent parents in child abuse and neglect cases, whether they work for an agency or privately.

As was done in the *Standards of Practice for Attorneys Representing Child Welfare Agencies*, ABA 2004, a group of standards for attorney managers is included in these standards. These standards primarily apply to parents' attorneys who work for an agency or law firm – an institutional model of representation. Solo practitioners, or attorneys who individually receive appointments from the court, may wish to review this part of the standards, but may find some do not apply. However, some standards in this section, such as those about training and caseload, are relevant for all parents' attorneys.

As was done in the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, ABA 1996, a section of the standards concerns the Role of the Court in implementing these *Standards*. The ABA and the National Council of Juvenile and Family Court

Judges have policies concerning the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload.

has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

Commentary: Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child's life. Not only should the parent's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent's attorney's responsibility to counsel the client and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.

4. Actively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.

Action: The goal of representing a parent in the prepetition phase of the case is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the child welfare agency (i.e., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing). The parent's attorney should acknowledge that the parent may be justifiably angry that the agency is involved with the client's family, and help the client develop strategies so the client does not express that anger toward the caseworker in ways that may undermine the client's goals. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. There are times that an attorney's presence in a conference can shut down discussion, and the attorney should weigh that issue when deciding whether to attend. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

Commentary: A few jurisdictions permit parents' attorneys to begin their representation before the child welfare agency files a petition with the court. When the agency becomes involved with the families, it can refer parents to attorneys so that parents will have the benefit of counsel throughout the life of the case. During the prepetition phase, the parent's attorney has the opportunity to work with the parent and help the parent fully understand the issues and the parent's chances of retaining custody of the child. The parent's attorney also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition. During this phase, the attorney should work intensively with the parent to explore all appropriate services.

5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.³

Second National Parents' Attorney Conference

The Importance of Early Attorney Involvement in Child Welfare Cases

Representation of Parents in Pre-Petition Proceedings

Trine Bech, Vermont Parent Representation Center
Mark Briggs, Solo Practitioner, El Paso, Texas
Elizabeth Bruzzo, Staff Attorney, Southwest Virginia Legal Aid Society
Tracy E. Green, Detroit Center for Family Advocacy
Christie Marra, Virginia Poverty Law Center

July 13-14, 2011

Washington, DC

In recent years, child welfare professionals have turned more and more to practices that attempt to engage families outside of the courtroom. Spurred in part by the drastic number of youth in the foster care system in the middle of the last decade, and new outcomes research showing that children allowed to remain at home with their parents, EVEN IF PARENTS PROVIDE “MARGINAL CARE”, have better life outcomes than children placed in foster care¹ local departments of social services throughout the country have turned to family engagement meetings, informal placement with relatives and other extrajudicial approaches to allegations of abuse and neglect. While such approaches can benefit parents involved in the child welfare system, they also highlight the inadequacy and relative ineffectiveness of waiting to provide counsel for these primarily indigent parents until they face a removal petition.

The relatively recent national emphasis on alternatives to court removals may well have grown out of the perceived failures of the present system to help children and families². According to the US Administration for Children and Families, the average number of children in foster care each year between 2002 and 2006 was over 500,000.³ Even more disturbing, many of these youth spent years waiting to be adopted after their legal ties to their parents were severed.⁴ Far too many aged out of care,⁵ suffering poor outcomes in employment, health, housing, education and other areas. For example, these youth earn 50% less on average than their peers and are four and a half times less likely to have a college degree.⁶

Most likely in response to these sobering statistics, more and more child welfare agencies across the country are attempting to find alternatives to foster care for children deemed to be at risk of abuse or neglect. Many of these alternatives are explored through the use of family engagement meetings before any petition is filed in court. Virginia for example, reduced its foster care population by 27 per cent between April 2006 and April 2011⁷. The Virginia Department of Social Services attributes this largely to what they called their Child Welfare Transformation, a shift to a practice model that relies heavily on working with families BEFORE children are removed through the use of family partnership meetings and other pre-petition processes.⁸ But the reductions in foster care do not necessarily mean that 27 per cent

¹ Doyle, Joseph Jr., “Child Protection and Child Outcomes: Measuring the Effects of Foster Care,” American Economic Review, December 2007, p. 1583

² Id.

³ US Department of Health and Human Services, Administration for Children and Families, “Trends in Foster Care and Adoption”, FY 2002-FY 2009, www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm

⁴ Id.

⁵ In 2005, 8% of ALL youth exiting foster care aged out with no permanent family connection. Id.

⁶ Courtney, M., Dworsky, A., Lee, J., & Raap, M. (2009) *Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 23 and 24*. Chicago. Chapin Hall at the University of Chicago.

⁷ Virginia’s foster care population went from 7984 to 5818 during that time. Source: Virginia Department of Social Services.

⁸ Virginia Family Engagement Model, <http://vafamilyconnections.com>

more children are remaining with their birth parents. While specific data is not yet available, anecdotal data indicate that much of the reductions occurred because youth were placed “voluntarily” by parents in informal kinship arrangements. Parents often make or affirm decisions to place their children in the care of relatives at family engagement meetings.

While there is nothing in the family engagement model to prevent a parent from being represented by an attorney at a family partnership or other type of pre-petition meeting, extremely few parents involved in the child welfare system have the financial means to employ counsel to accompany them to these meetings⁹. And while almost every state guarantees an indigent parent the right to counsel before a court can terminate his or her parental rights, and many appoint counsel for indigent parents as soon as the initial petition alleging abuse or neglect has been filed,¹⁰ none have a mechanism for evaluating indigence and appointing counsel before a petition is filed in court. Thus, the vast majority of parents are left to navigate the often dangerous, though well-intentioned, family engagement meetings on their own. This is particularly treacherous because parents are often encouraged to share information and cooperate with child protective service workers because they believe it is the only way for them to keep their children. In some jurisdictions, like Vermont, parents often agree to a minor guardianship of their children by relatives as an alternative to a state child protection petition, believing that it is a safer way to keep their children. They often do not understand the long term legal consequences of such “voluntary” actions.

While the wide spread use of pre-petition meetings highlights the need to find a way to provide counsel for indigent parents before a petition is filed, it by no means created this need. For decades, parents have had to face child protective services investigations and their consequences on their own. Many states expressly direct child protective services workers to interview parents and other family members during the course of investigating a complaint of child abuse or neglect.¹¹ Child welfare workers are free to use the information obtained from a parent during the investigation of a complaint or a family engagement meeting in any way they deem necessary, including during a subsequent court hearing to remove a child from that parent’s care. Furthermore, both family engagement meetings and interviews with parents conducted as part of an investigation can lead to the creation of “safety plans”, which parents

⁹ See Symposium: Violence in the Family: Child Abuse Realities: Over-Reporting and Poverty, 8 *Va. J. Soc. Pol’y & L.* 165 Fall 2000 at page 8.

¹⁰ See Appendix A for a complete chart of state statues regarding appointment of counsel for indigent parents in abuse/neglect and termination of parental rights proceedings.

¹¹ See, e.g., Va. Code 63.2-1505(B); “Children’s Protective Services Investigation Process”, <http://www.michigan.gov>

are expected to sign without the benefit of counsel. Parents may face court petitions solely because they failed to comply with the terms of a safety plan.¹²

Providing parents with realistic access to counsel BEFORE the filing of court petitions alleging abuse or neglect can go a long way toward protecting the rights of parents and preventing unnecessary foster care and other out-of-home placements. A number of innovative programs in different states are focusing resources on representing parents at the critical, pre-petition stages. By providing advice and counsel, the attorneys in these programs can help parents advocate for the services they need to keep their children safely in their homes; inform parents about their rights and options regarding voluntary placements with relatives; advise parents of the consequences of sharing information during CPS interviews and family engagement meetings; and advocate on behalf of parents against third parties who create unsafe environments, such as abusive domestic partners or unscrupulous landlords.

The following are presently providing pre-petition legal assistance to parents: The Detroit Center for Family Advocacy (DCFA); Mark Briggs, a solo practitioner in El Paso, Texas; Southwest Virginia Legal Aid Society (SVLAS); and the Vermont Parent Representation Center (VPRC). Each takes a slightly different approach to this important work.

The three non-profits (DCFA, SVLAS, and VPRC) all receive referrals from the child welfare agencies of cases in which petitions for removal have not yet been filed. However, each receives slightly different types of cases. DCFA takes referrals only once a child protective services complaint has been substantiated at a particular level or category. DCFA's cases include those involving low to moderate risk, where child protective services must refer the family to DCFA or other prevention services, but usually closes its case immediately afterward. However, DCFA also serves families with high or intensive risk, where child protective services must refer the family for mandatory services and open a case for monitoring.¹³

VPRC, on the other hand, takes only those cases that have been referred and opened for family services and cases involving minor guardianships where the state protection agency has an open case. SVLAS, like VPRC, operates in a state that has a dual track system, one for investigations leading to formal findings and another for assessments in which services are provided but no finding is ever made. But unlike VPRC, it accepts referrals of both cases that go through the investigation track and those that go through the assessment track. All three programs provide holistic legal services to parents, representing parents at family engagement

¹² See "Discovering the Undiscoverable in Child Protective Proceedings: Safety Planning Conferences and the Abuse of Right to Counsel," *10 UC Davis J. Juv. L. & Pol'y* 429 (Summer 2006)

¹³ Michigan employs a five-category system for categorizing child abuse and neglect, with Category I resulting in the filing of a petition. DCFA serves families whose cases fall within Categories III or II, where child abuse and neglect has been substantiated by a preponderance of the evidence.

and other service planning meetings with child welfare as well as providing legal assistance in other cases that impact family stability and child safety, such as those involving landlord-tenant, probate and family law.

Solo practitioners desiring to do pre-petition work are challenged both by the limits placed upon them by parents' limited financial resources and by the lack of a formal referral collaboration with child welfare agencies. Targeted advertising and word – of - mouth can be excellent means of directing parents to solo practitioners engaged in pre-petition practice, as can community education about the importance of having legal counsel throughout the child protective services administrative process.

Regardless of how or when they become involved, attorneys who represent child welfare involved parents before removal petitions are filed have far greater opportunities to positively impact families by furnishing critical advice and assistance that can keep families together. Because many of these programs are new, no formal evaluation of their effectiveness has been done. Preliminary data, however, shows that having legal counsel pre-petition is an effective way of preventing unnecessary foster care placements.

Pre-petition representation success story

Juan's story

Source: Center for Family Representation of New York
(<http://www.cfrny.org/stories/juans-story/>)

Juan and Elena had been dating for a short time when she became pregnant. Although Juan was prepared to raise the child with Elena, after a few months of living together he realized that she had mental health problems. As the birth of their child approached, Juan had second thoughts about living with Elena, but he was still determined support his child.

When his son Jason was born, Juan visited with Elena and the baby at the hospital several times. One night after he left, Elena had a severe mental breakdown and began loudly fighting with her hospital roommate and the roommate's boyfriend. Due to concerns about the baby's safety, the nurse on duty removed him from the room and wrote a report about the incident.

The next day, a hospital social worker reviewed the nurse's notes—but the notes did not specify that the "boyfriend" mentioned was the boyfriend of the roommate. As a result, the social worker believed that Elena had gotten into a fight with her own boyfriend, Juan. Because of Elena's erratic behavior and Jason's removal, the social worker called the City's Administration for Children's Services (ACS). When Juan returned to the hospital, ACS informed him that he and Elena were being charged with neglect. Although he denied any involvement in the incident, he had to leave his son in the hospital while he went to Family Court to meet his CFR team of a lawyer and a social worker.

Because ACS had not investigated the nurse's report, they incorrectly believed Juan was at fault and wanted to place Jason in foster care. CFR was able to convince the judge to allow him to take Jason to his brother's home, where his family could help him out. CFR also helped Juan secure an order of protection against Elena to further ensure his child's safety. Although Juan agreed to do whatever services ACS asked of him, he continued to insist that he had nothing to do with Elena's fight and was being wrongfully charged.

The CFR team was able to track down the nurse who had written the report—she confirmed that Juan had not been present during the fight but had acted as a model father when he had visited several times. CFR presented this new information to the court and was soon able to get the charges against Juan dropped and his case withdrawn completely.

Today, Juan has full custody of Jason. Elena got the help she needed and is now stable, so Juan takes his son for supervised visits with her on a regular basis. Due to CFR's thorough investigation, Juan and Jason are able to live together safely and permanently.



**UNDERSTANDING AND RESPONDING TO DEPARTMENT OF
CHILDREN AND FAMILY SERVICES' ABUSE AND NEGLECT
INVESTIGATIONS IN ILLINOIS**

A Basic Guide for Illinois Parents and Other Caregivers

April 2016

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UNDERSTANDING AND RESPONDING TO DEPARTMENT OF CHILDREN AND FAMILY SERVICES' ABUSE AND NEGLECT INVESTIGATIONS IN ILLINOIS

A Basic Guide for Illinois Parents and Other Caregivers

PREFACE

The Purpose of this Guide.

This guide is meant to provide general information about the child abuse and neglect system in Illinois and some guidance for parents and other caregivers when they are involved in such investigations. These investigations, which are also called child protection investigations, are conducted by the Illinois Department of Children and Family Services (DCFS).

This guide is written with the “wrongly accused” person in mind. The Family Defense Center focuses on helping family members navigate the DCFS investigation process and exonerate them from being labeled a child abuser or child neglector when they have not harmed a child. Unfortunately, people who are targets of DCFS investigations often assume that the system will protect their rights and that justice will be done. At the same time, they may worry about how best to keep their family intact and avoid being tagged with a terrible label of “child abuser” or “child neglector.” Others may simply not know how to respond when they learn that DCFS is investigating a claim of abuse or neglect. Still others will want to use this guide to prepare for answering common questions that often come up during these investigations.

While this guide will not prevent mistakes from being made, we hope that it reduces the number of erroneous decisions by helping families and people who work with children respond to investigations.

DCFS has a legitimate interest in protecting children from abuse or neglect. But it has no interest in separating a child from loving and innocent parents, or in labeling an innocent person as guilty of an offense he or she never committed. Indeed, the Family Defense Center believes that the interests of innocent and loving parents and the interests of the child are the same. We believe in our motto, “To protect children, defend families.”

Therefore, helping families to defend themselves from a mistaken allegation of abuse or neglect *does* help children. Children need their families. Parents are generally the best advocates for children, but sometimes parents have to defend themselves first, in order to be able to protect their children.

We want to caution our readers, however, about assuming the “worst case scenario” is what DCFS is likely to do in any specific case. Just because DCFS *sometimes* removes children from parents and just because DCFS *sometimes* makes mistaken findings of abuse or neglect against innocent caregivers does not mean that DCFS always does so, or that DCFS would do so if you proceeded without regard to the information contained in this guide. Horror stories about DCFS can make parents and caregivers overly worried about what they should say to DCFS, and can have a “chilling effect” on parents who have done nothing wrong. After all, in 60-75% of all investigations, DCFS does *not* find abuse or neglect occurred. While DCFS sometimes reaches incorrect conclusions, that does not mean that good parents should worry about saying exactly the “right” thing. Finding the balance between saying too much and saying too little can be tricky, as this guide shows, and this guide is thus meant to enlighten parents’ thinking about how to approach a DCFS investigation and should not make parents fret over providing the “best” or “right” answers.

While we realize this guide may not reach everyone who needs it exactly when they need it most, we hope this guide helps to raise general awareness of the nature of these critically important investigations. Increased awareness will also help improve the quality of legal representation and advocacy available to individuals who find themselves in the position of responding to DCFS investigations. Therefore, while this guide is written for parents, it is intended for their lawyers and legal advocates too. In addition, because this guide highlights some investigative practices that may not be lawful, we hope that future challenges to some questionable practices discussed in this guide will advance justice for the wrongly accused person and further our mission of helping children by defending their families.

Warning (Disclaimer).

This guide is not intended to provide specific legal advice. Only a lawyer can give you legal advice that fits your specific case. Nor is it intended to provide information about how to respond to an investigation in another state: each state’s system, laws, policies, and practices are different. If, after reading this guide, you believe you need legal services to help you respond to a pending investigation and you reside within the direct service area for the Family Defense Center (Cook and collar counties), you may wish to proceed with

an application for services from the Family Defense Center, or seek other legal counsel. This guide is **not** a substitute for the direct legal representation a lawyer can potentially provide. The authors of this guide and the Family Defense Center expressly disclaim liability arising from the use of information contained herein. No attorney/client relationship is created as a result of this guide's posting and distribution.

Introduction to this Guide.

Whether you are facing a child abuse or neglect investigation pending in the Illinois Department of Children and Family Services ("DCFS"), you are trying to help someone who is in the middle of such an investigation, or you are simply trying to understand how child abuse or neglect investigations operate in Illinois, this guide may be a useful starting point.

This guide is organized as follows: **Section I** discusses the basics of DCFS child protection investigations, including answering many questions that come up about the steps in these investigations. **Section II** walks through one specific investigation and discusses the specific questions that were asked by an investigator and the steps she took to interview other family members. This Section contains a long discussion of the appropriateness of some of the questions and discusses approaches to answering them. **Section III** discusses the particular rights that persons who work with children have during a DCFS investigation. **Section IV** addresses the process when DCFS removes children from their parents under its power to take protective custody. **Section V** addresses safety plans and directives affecting the care and custody of children during investigations. **Section VI** discusses specific issues that come up in investigations, including interviews of children, medical testing requests, and requests for assessments and services. **Section VII** discusses remedies when investigations have violated family members' rights or otherwise been handled in an unprofessional manner. At **Appendix A** to this guide, you will find "Basic Tips for Responding to DCFS Investigations," which consolidates the recommendations of this guide into a quick reference tool. **Appendix B**, "Summary of Concerns about Safety Plans," outlines the most problematic features of DCFS "safety plans"; these issues are being actively discussed with DCFS and this section will be updated as we see improvements in policies and practices. **Appendices C-E** provide template documents that you may wish to use if they are applicable to your situation. Finally, we have also attached a collection of **Exhibits** comprised of common DCFS documents and notices applicable to the investigative process.

IN PRACTICE

Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies

by Elizabeth Fassler and Wanjiro Gethaiga

Seventeen-year-old Ana and her stepfather Roberto immigrated to the United States in early 2008. Shortly after, Ana became pregnant. When Ana was in labor, her stepfather dropped her off at a hospital and abandoned her to return to Mexico. Ana, who speaks only Spanish, and whose only nearby family members lived in an overcrowded apartment, was placed in an English-speaking foster group home for young mothers where she now lives with her son.

Several months after Ana arrived at the foster group home, the staff called in a report against her. During the investigation, an attorney and social worker met with Ana to explain the investigation process and the possible legal consequences that could arise from the investigation. During the investigation, the social worker attended conferences with Ana to work with all parties to determine the appropriate plan for Ana.

At the end of the investigation, the attorney and social worker were able to stave off a court filing so Ana and her son could remain together in the foster group home. The social worker is now working diligently with the foster group home staff to locate a Spanish-speaking foster family for Ana and her son.

This vignette is based on a case handled by the Center for Family Representation, Inc. (CFR), a nonprofit law and policy organization based in New York City. It shows how early intervention and pre-court work can secure needed supports and provide tools to families to help them stay together and avoid going to court.

Using Ana's case to illustrate, this article describes CFR's unique Community Advocacy Team approach and how the teams assist parents navigate a child welfare investigation. It also discusses the

importance of pre-court advocacy; the legal framework of an investigation; and what an attorney, social work staff member, and parent advocate can do during each investigation stage.

CFR's Community Advocacy Teams

The investigation phase of a child protective case can be stressful and confusing for parents. To support parents during a child protective case, CFR created Community Advocacy Teams (CAT). CAT aims to (1) prevent foster care whenever

possible, and (2) if foster care is unavoidable, to significantly shorten the length of foster care stays for children. CAT provides parents an attorney, social work staff member, and a parent advocate (a parent who has directly experienced the child protective and foster care systems and has successfully reunited with his/her children). Through this model, CFR has worked with families while they are under investigation by child welfare authorities before the court gets involved.

Why Precourt Advocacy is Important

In New York, when someone

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suspects child neglect or abuse and calls the state hotline, a child protective services (CPS) worker employed by children's services is supposed to investigate the parent and offer the family services. Often parents mistrust the caseworker (who has tremendous power to take their children) and so will not follow up on referrals for services.

Or, frequently parents are asked to attend meetings about their situation, but feel their voices are not heard, are too intimidated to ask questions, don't understand why they are being investigated, or simply don't know what questions to ask about the investigation, process, services, etc.

Parents may be asked to attend services that are inappropriate, not culturally sensitive, or that conflict with employment or other obligations. Parents may also be asked to produce their children for interviews with a caseworker or medical professional. This raises many questions about whether they are required to produce their children, whether CPS can speak with their children outside the parent's presence, and the consequences if a parent refuses to cooperate with these requests.

During these critical, early phases of an investigation, having a strong advocate can prevent misunderstanding and miscommunication and promote positive efforts to keep a family safe and out of the court system. Most people do not wait until they are standing before a judge to consult an attorney. In cases like Ana's, CFR has created a referral partnership with other legal services agencies and community organizations. The only requirements for the referral are that the parent is currently under investigation by children's services in New York City and wants help navigating the process.

CFR also gets referrals from partnerships with government

agencies, the New York City 311 call line, and direct calls from parents who have found CFR's information online or received CFR's phone number from former clients. Once referred, CFR assigns an interdisciplinary team to provide legal representation and advocacy. An advocate can assist the family during the investigation by:

- providing ongoing information and clear explanations regarding the social work and legal aspects of the investigation process;
- advocating for reasonable and realistic service plans that address the family's identified needs;
- thinking creatively about different ways to address the allegations; and
- identifying resources the family can use to address concerns of the child welfare agency.

Between July 2007 and November 2010, CFR represented parents in dependency cases, in addition to representing parents like Ana whose cases were not before the court. CFR's legal and social work staff successfully diverted court filings in 70% of the cases in which they met a client during the investigation. CFR also successfully diverted foster care placements in 90% of the cases in which a dependency case was filed and CFR staff had met the family during the investigation.

Legal Framework

Governing Laws

Federal and state laws generally govern what happens when child protective services (CPS) intervenes in a family's life when child abuse or neglect is suspected. These laws vary from state to state, so it is important to know your state's laws and regulations.¹ Knowing and understanding this legal framework for the investigation will make you a more effective advocate.²

The legal framework is based on laws and regulations that require child welfare agencies to exercise

reasonable efforts to prevent or eliminate the need for placing a child outside their home.³ Reasonable efforts can include holding family conferences and offering preventive services.

Reporting

In most states an investigation is prompted by a call to a central registry number/hotline that fields calls by anonymous or mandated reporters regarding alleged child abuse and neglect. The central registry is designed to "aid in investigations, treatment and prevention of child abuse cases and to maintain statistical information for staffing and funding purposes."⁴ The information received is compiled and sent to the local child protective agency's field office.

After CPS receives a report, federal law requires that it take the following investigation steps:

Safety assessment: CPS agencies conduct a safety assessment to determine the risk to the child of staying in the home. If CPS staff members feel the child cannot safely remain at home, they will remove the child immediately and a dependency case will be filed in family court against the person(s) named in the report.⁵ If the child can remain at home, the investigation will continue.

At this stage, CFR's CAT teams first get involved with a family. As stated above, either a parent calls and requests assistance or we receive a referral from one of our community-based partners. Generally this is a parent's first contact with an attorney. At this stage, an appointment is scheduled for the parent to come to CFR's office to meet with a team comprised of an attorney and a social work staff member. We prefer that a parent meet with the attorney and social work staff member together and that this meeting occur before the next investigation stage (generally a

home visit).

During the first meeting, parents are advised of their legal rights and given information on the investigative process. In addition to informing the parent of their rights, we have them sign a retainer agreement for investigation purposes only, discuss confidentiality, discuss our individual roles and how we can assist them during their investigation. Parents are given contact information in case CPS comes to their house unannounced. They then have a way to contact a team member to walk them through the visit.

Ana's case: In the vignette, after a case was called in by the group home, the CFR team met with Ana to discuss the investigation process, her rights, and how the CFR team could help her during this process. When a home visit was scheduled, Ana understood how important it was to contact CFR to inform them so they could be present during the next investigation phase.

Home visit: The local CPS agency's field office assigns a caseworker to make the initial home visit. The severity of the allegations determines how quickly a home visit is made. A severe/emergency case is usually investigated within 24 hours, and within three-to-five days for nonemergency cases.

During the home visit, the caseworker or law enforcement personnel should identify themselves, inform the person named in the report that a call has been made alleging neglect or abuse of a child, and an investigation has started. The person under investigation is under no obligation to communicate with the investigator. The investigator should explain the option not to communicate as well as the potential consequences (i.e., court intervention, removal of a child). The investigator will want to speak with all people in the home and gather information about others who have regular contact with the subject children

(friends, relatives, child care providers, school personnel, etc.) in the event they want to gather further information from collateral sources.

At this visit, the investigator may also ask about school and medical information and may ask the parent to sign releases so they can get information directly from providers.⁶ Investigators also routinely check the home for food, confirm all immunizations are current, speak to children, check children for marks and bruises and assess other safety concerns in the home. CFR's social work staff can attend this visit. Attorneys may also attend but usually the team decides to send a social work staff person.

Before the visit, the social work team member and attorney meet to discuss strategies for making the home visit successful as well as areas that may present problems. In CFR's experience, social work staff members have been extremely effective at gathering information about the investigation, supporting parents, and diverting the case from court.

Ana's case: In the vignette, Ana contacted CFR when the CPS worker scheduled a home visit. The social worker was able to attend the meeting and supported Ana. The CPS worker assigned to the case did not speak Spanish so our social worker acted as a translator. If our social worker had not been present, someone else in the home could have been asked to translate, but we have found most people do not know how to translate the child protective issues as clearly as someone who works in the field. Although this sounds like a unique case, it happens often. We have also found that parents understand the process more in their native tongue and that they listen to our social work staff members and attorneys because they take time to build a relationship and explain the details of an investigation.

Conference: The CPS team—caseworker, supervisor, manager—may call a meeting to gather more information, clarify information and/or discuss services for the family. Usually conferences are held in the CPS field office.

An attorney rarely attends conferences. In fact, in New York they are generally prohibited from attending. This is where preparation is most important for both the parent and the social work staff member of the team. A good support at this meeting can mean the difference between having a case go to court or not. During the conference, the social work staff is in contact with the attorney to inform them of decisions. If a decision is made to go to court, the attorney meets the parents at the courthouse. The parents and CFR social worker bring the documents that were prepared at the conference including any written decisions.

Ana's case: In Ana's case, the social worker attended several conferences with Ana. She was able to present documentation to the child welfare organization on the positive steps (e.g., parenting class, ESL classes) that Ana had been taking to address their and the foster group home's concerns. The social worker also helped foster a positive working relationship between Ana and the staff at the foster group home and the CPS worker. Creating a positive working relationship with all parties helped them see Ana as an individual and address her needs.

Case Closure: The CPS caseworker/team should send a closing letter stating the outcome of the investigation within 60 days from the start of the investigation.

The investigation will be closed with the case either "indicated" (some credible evidence for found) or "unfounded" (no credible evidence found).

If a case is indicated or founded but no court case is filed, the team

Preparing Your Client for a CPS Investigation

Parent clients often have many questions during a CPS investigation. Advocates can help parents prepare for the investigation and alleviate their concerns by thinking through common questions in advance.

- How is neglect defined in your state?
- What is the Child Protective Services (CPS) protocol for the length of the investigation in your state?
- Should they expect a CPS worker to do home visits school visits, etc.? If so, how often?
- Will CPS speak to other people regarding the investigation? If so, who? Babysitters? Neighbors?
- What privacy rights do parents have?
- When does CPS have the right to remove my child?
- When does CPS have to file a case in court?
- If my child is removed, what are my immediate rights?

attorney helps the parent through an administrative process where a parent can challenge the finding. This process differs in every state. In New York, it involves writing a letter to request expungement, or if that is denied then a hearing.

Ana's case: Although the team was able to stave off a family court case, Ana's case was indicated. The social worker and attorney helped Ana craft a letter to the state central registry to ask for the case to be expunged and are awaiting a reply. If denied, the team will help prepare Ana for a hearing.

Court Intervention

In many states, the legal framework allows child welfare agencies to ask the court to intervene when there is reasonable cause to believe a child's life or health may be in danger.⁷ A request for a court order gaining access to a child and a family's home is held to a higher standard than "imminent risk"⁸ and can only be made in very specific circumstances, such as when a CPS worker has been unable to gain access to a child or a home during an investigation. The inability to access the family can be for many reasons, but generally orders to gain access are sought when a family is refusing access. To protect the rights of the

family, child protective workers in some states must inform the parent or guardian that they will ask the court to intervene if the family refuses to cooperate.⁹

Legal Representation

States vary over whether a parent may have an attorney or other advocate represent them or be present for any meeting or investigative interviews during a child welfare investigation.¹⁰ Because of this ambiguity, it is important to look at your state's dependency or child welfare statute and regulations. Remember, even if you cannot attend these meetings or interviews, you can prepare your client for them.

Removal

At any point in the investigation, the investigating team can decide to file a court case and ask for the child(ren) to be removed from the home. In some states, the child welfare agency may remove a child for a specific period before asking the court to intervene.

Supporting a Family during an Investigation

During an investigation, many professionals can perform the same roles in helping a client. For

example, both an attorney and a social worker/advocate can explain the stages of an investigation to a parent. The following tips, compiled from CFR's work with precourt cases, are designed to help attorneys, social work professionals, and parent advocates think about steps each professional can take.

Practice Tips—Attorneys

■ *Research your state's child protection statutes and regulations.* This may sound basic, but you need to understand what CPS is empowered to do when investigating a family.

■ *Develop a "know your rights" checklist for parents that explains what is supposed to happen.*

■ *Learn how to explain the investigation process and keep track of frequently asked questions (see *Preparing Your Client for a CPS Investigation*).*

■ *Ask the parent about any meetings they are asked to attend.* If you can accompany the parent, find out who is convening the meeting and contact that person about coming. Be clear that you are an attorney. If you are told attorneys are not permitted, consider putting in writing (letter) that you were told this and that you have advised your client to bring another support person to the meeting (relative or community member).

■ *Determine when parents are entitled to representation.* If your state has a procedure that permits the protective service agency to seek a court order to either take children into temporary custody during an investigation OR to enter a home, learn whether parents are entitled to representation. Tell the parent to notify you if they are served with any official papers directing them to appear in court. *Even if the parent is not entitled to representation, if you*

can appear with a parent on the court date, your presence may help the court and the protective services agency be more attentive to reasonable efforts obligations owed to the family.

- *Develop a conflicts procedure for investigation clients.* Remember, even at this early stage, you cannot be sure what case may end up in court and you cannot counsel two parents or adults involved with the children.

- *Set clear boundaries* from the first discussion about confidentiality and other policies you have in your office. For instance, it is important to inform your client what types of case you are able to represent them on if the case goes to court (i.e., custody, visitation, administrative hearings regarding sealing/expunging CPS records, dependency cases).

- *Develop a referral network.* If you do not work or contract with social workers, establish connections with local community-based or social services organizations that have a track record for supporting parents. Your clients may need referrals outside of the CPS process and you want them to have quick access to these supports.

- *Be prepared to meet with the client and/or your own social work staff member to assess the likelihood of a case being filed as the investigation proceeds.* Keep track of what the agency is or is not doing so that if the case proceeds to court you have begun to develop both a theory of “reasonable efforts” and can anticipate the allegations. This early work by the attorney during the investigation can also make it more likely that if children are removed as a result of the filing of a formal neglect allegation, the attorney is prepared to proceed to an emergency hearing to get the children returned home.

- *Be prepared if a parent chooses not to cooperate.* Remember there is no requirement that a parent must cooperate with a CPS investigation. Know the legal remedies that CPS has and the legal consequences in your state if a parent refuses to allow access to the child or to their home so you can counsel your client accordingly.

Practice Tips—Social Workers and Parent Advocates

- *Inform the client about the investigation stages.* The more information the client has the more prepared he/she will be for questions that the CPS worker may ask. It helps to understand the actual (versus published) practices of the CPS agency during an investigation. Despite how you feel about investigations, it is important to know exactly how they work so you can advise parents.

- *Attend meetings with the client.* Generally social work staff, parent advocates, and other advocates may attend meetings, conferences, home visits, etc. When possible, attend as many of these meetings with clients. If you cannot attend, take time to prepare the client for the meeting, answer questions, and follow-up afterwards.

- *Learn the agenda and format of meetings* administered by the CPS agency. Look at the county Web site for information about meetings/conferences that your clients may be invited to attend. This will help you understand the process and prepare the client on what to expect during the meeting.

- *Encourage the client to organize all medical and school information* (i.e., evaluations, immunizations, report cards) for all children. Tell the client never to give original documents to the caseworker, only photocopies, and to bring any relevant documents to meetings.

- *Encourage the client to keep important numbers readily available.* For example, the number of their child’s pediatrician or health clinic, prevention agencies the family has worked with, or a relative who could support or be a resource for the child.

- *Keep an updated list of important resources for clients.* If your local child welfare agency has an ombudsman’s office or parent hotline, parents can call them directly with a complaint or question(s). For example, New York has both an Office of Advocacy and a parent hotline, Michigan has an Office of Children Ombudsman, and Arizona has a Parent Assistance Program (24-hour hotline), Family Advocate Program, and a Client Advocate’s Program.

- *If the client has a positive working relationship with any service providers,* encourage the client to ask their service providers to contact the CPS worker, attend any meetings or conferences, or send a letter about the client’s progress and compliance with services.

- *If a conference or meeting is scheduled and you cannot attend,* encourage the client to invite people to the conference who will support him/her. Remind clients to bring someone who will be supportive. Someone who is adversarial may change the tone of the meeting and unwittingly put the client in a difficult position or taint the CPS team’s view of the client.

- *Ask the client what services would benefit the family most.* The client should discuss what issues they believe led to the current situation and think about services that may help avoid the situation in the future. For example, if the parent needs help getting a special education evaluation for the child, would she be open to working with someone who could help her navigate the educa-

tional system? It is important for the client to think about what he/she will agree to regarding services. The client does not have to agree to everything that is proposed. It is important for the client to have thought about why he or she may not want certain services and be able to state that clearly to the CPS team. The client needs to be viewed as cooperative, but not overwhelmed with unnecessary services.

■ *Discuss the client's strengths.*

During an investigation, the parent is constantly bombarded with his or her negative attributes. Help the client identify his/her strengths so the client can highlight them at any meetings or conferences.

Conclusion

Regardless of whether the law allows attorneys or social workers to actively participate in an investigation or meeting, you can still prepare your client on what to expect and how to best prepare. Preparing clients to work with CPS in a successful and productive way promotes positive outcomes for families. As in Ana's case, it can also help avoid a court filing and keep the family together.

Elizabeth Fassler, JD, is a litigation supervisor and *Wanjiro Gethaiga, LMSW* is a social work supervisor at the Center for Family Representation, Inc. Law interns Shana Barone, Shane Tele, and Erin Husted, helped research states' laws and regulations for this article and CFR's Development and Communications Associate, Annie Stup helped with statistical information. The authors thank Michele Cortese, deputy director and Jill Cohen, social work supervisor at CFR for the information they shared and their constant support.

This article was based on a presentation at the First National Parents' Attorneys Conference, held May 2009, by the ABA National Project to Improve Representation of Parents

Involved in the Child Welfare System. Plan to attend the second national conference this July 13-14, 2011 in Arlington, VA. Learn more at www.abanet.org/child/parentrepresentation/home.html.

Endnotes

¹ <www.childwelfare.gov/systemwide/laws_policies/statutes/resources.pdf>

² *E.g.*, in certain states a child can be removed from their parents for up to 48 hours (California, www.ccrwf.org) or up to 72 hours (Arizona, www.egov.azdext.gov) without court intervention.

³ See Adoption and Safe Families Act (ASFA) of 1997, 42 U.S.C. § 675; Title 18 New York Comp. Codes Rules and Regulations §§ 423.2, 423.4, 430.9 et seq.; <www.dss.state.la.us/>; La. Child Code Art. 612-615; 390 Neb. Admin. Code § 1-003; Ohio Rev. Code Ann. § 2151.421; 23 Pa. Cons. Stat. Ann. § 6373(b).

⁴ <www.childwelfare.gov/systemwide/laws_policies/statutes/centregall.pdf>

⁵ Through our research, we found that in all

states except Hawaii the children can be removed by the CPS agency. In Hawaii only law enforcement can remove a child from the home (www.hawaii.gov).

⁶ In our experience, most people will sign releases without reading them thoroughly or asking for them to be filled out completely. It is important for the person to read the petition/have someone read it to them, make sure it is filled out completely, and an expiration date is provided.

⁷ See N.Y. Fam. Ct. Act § 1034 and La. Child Code Art. 612-615; Mass. Ann. Laws ch. 199 § 51A-51F; 110 Mass. Regs. Code 4.20, 4.27, 4.32.

⁸ *E.g.*, in New York, the applicable standard for a court to enter an order requiring cooperation with entry to a home is probable cause. See N.Y. Fam. Ct. Act § 1034.

⁹ N.Y. Fam. Ct. Act § 1034.

¹⁰ See D.C. Code § 4-1301.09; Neb. Rev. Stat. § 28-710-728; 390 Neb. Admin. Code § 1-100 et seq. For example, in Hawaii an attorney can attend a child protective meeting, whereas in New York attorneys may not attend these meetings.

2014

Using Preventive Legal Advocacy to Keep Children from Entering Foster Care

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**USING PREVENTIVE LEGAL ADVOCACY TO KEEP
CHILDREN FROM ENTERING FOSTER CARE**

Vivek Sankaran[†]

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INTRODUCTION

Across the country, parents in child welfare cases receive inadequate legal representation.¹ Fortunately, increased attention

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1. See, e.g., WILLIAM BOWEN ET AL., CONN. VOICES FOR CHILDREN, GIVING FAMILIES A CHANCE: NECESSARY REFORMS FOR THE ADEQUATE REPRESENTATION OF CONNECTICUT'S CHILDREN AND FAMILIES IN CHILD ABUSE AND NEGLECT CASES, at ii (2007), available at <http://www.ctvoices.org/sites/default/files/welf07reformsforrep.pdf> ("The current model of representation in Connecticut . . . does not provide constitutionally-adequate legal representation

is being given to this issue by state and national advocacy organizations, including the American Bar Association and the National Association of Counsel for Children, among others.² Discussions created by these groups and policy makers have largely focused on strengthening a parent's right to counsel *after* children have been removed from their parents by the state.³

But a lawyer may be able to prevent a child from entering foster care in the first instance. Children may unnecessarily enter foster care because their parents are unable to resolve legal issues that affect their safety and well-being in their home. Take Travis P., a seven-year-old child whose six siblings and mother became homeless after their landlord illegally evicted them and kept both their security deposit and first month's rent. As a result, Travis and his family bounced between the homes of relatives. When the frequent moves caused Travis to miss school, he came to the attention of Child Protective Services (CPS), which became concerned that Travis's educational needs were being neglected. What Travis and his siblings needed more than anything else was a

for children and parents in abuse and neglect proceedings.”); MUSKIE SCH. OF PUB. SERV. & AM. BAR ASS'N, MICHIGAN CIP REASSESSMENT: HOW MICHIGAN COURTS HANDLE CHILD PROTECTION CASES, at x (2005), *available at* http://muskie.usm.maine.edu/Publications/cf/ML_CIPReassessment_Summary.pdf (“Based on interviews, the statewide jurist survey, and court observations, it is clear that many attorneys fail to independently investigate the facts of a case and to meet with clients to prepare for hearings. Many carry excessive caseloads and receive low compensation. Parents and youth reported speaking with their attorneys only immediately prior to hearings, or in some cases for the youth, not speaking with them at all.”); REPORT OF CHILDREN'S JUSTICE INITIATIVE PARENT LEGAL REPRESENTATION WORKGROUP TO MINNESOTA JUDICIAL COUNSEL 2 (2008), *available at* <http://www.leg.state.mn.us/docs/2009/other/090151.pdf> (observing that there is no statewide system to ensure qualified legal representation for parents); THE SPANGENBERG GRP., WESTERN MASSACHUSETTS CHILD WELFARE CASES: THE COURT-APPOINTED COUNSEL SYSTEM IN CRISIS 2 (2003), *available at* http://www.publiccounsel.net/practice_areas/cafl_pages/pdf/cafl_news/executive_summary.pdf (“There is a critical shortage of attorneys available to handle the ever-increasing volume of child welfare cases in the juvenile courts of Massachusetts.”).

2. See Am. Bar Ass'n Ctr. on Children & the Law, *Parent Representation*, A.B.A., http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html (last visited Mar. 7, 2014).

3. See Am. Bar Ass'n Ctr. on Children & the Law, *National Project to Improve Representation for Parents Involved in the Child Welfare System*, A.B.A., http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html (last visited Mar. 7, 2014) (follow “Project Description” hyperlink).

stable home. And to get that, their mother needed a lawyer to help her recover the security deposit from her former landlord and a social worker to help them find housing. Without this help, Travis and his siblings could have been removed from their mother and placed in foster care.

Yet these kinds of legal needs for poor families are rarely met. On average, poor families experience at least one civil legal need per year, but only a small portion of those needs are satisfied.⁴ For about every six thousand people in poverty, there exists only one legal aid lawyer.⁵ So legal aid programs are forced to reject close to a million cases each year.⁶ This lack of legal services threatens the well-being of children like Travis, who may enter foster care if legal issues are left unresolved.

This article describes the beginning of a movement across the country to address this problem. Multidisciplinary legal offices are emerging that provide preventive legal and social work advocacy to families at risk of losing children to foster care. These programs are new. The oldest office was formed in 2009⁷ and only initial evaluations have occurred.⁸ But preliminary data suggests that they can have an enormous impact on preventing children from entering foster care.⁹ Not only do they keep children with their families, they also have the potential to save child welfare systems significant amounts of money by reducing the need to rely on foster care, which can be very costly.¹⁰ This article details how a family's unmet legal needs can place a child at risk of entering foster care, discusses the developing model to address this need, and explores federal funding streams that can support the model.

4. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 15–16 (2009), available at <http://www.mlac.org/pdf/Documenting-the-Justice-Gap.pdf>.

5. *Id.* at 1.

6. *Id.* at 9.

7. *See infra* Part II.

8. *See infra* Part II.

9. *See infra* Part III.

10. *See infra* Part III.

I. CHILDREN MAY ENTER FOSTER CARE BECAUSE OF UNRESOLVED LEGAL ISSUES

A parent's inability to resolve legal issues may jeopardize a child's safety and well-being in the home and may increase the likelihood of a child entering foster care. For example, a domestic violence victim may be unable to secure a personal protection order and may be forced to allow her child to have contact with his abusive father. A mother seeking inpatient drug treatment may be unable to transfer her parental authority to a relative and may be forced to leave her child with a relative who has no legal ability to address the child's needs. A father may be wrongfully denied food stamps and may be unable to provide his children with a proper meal. Each of these scenarios highlights the myriad ways in which unresolved legal issues can impact a child's safety and well-being. Each, too, highlights the possibility of CPS getting involved because a child's basic needs are not being met.

That unresolved legal issues can impact outcomes for children has been recognized by other professions, most notably the medical field. In 1993, Dr. Barry Zuckerman, chief of pediatrics at Boston Medical Center, created the first medical-legal partnership (MLP) "to improve the health and well-being of vulnerable individuals, children and families by integrating legal assistance into the medical setting."¹¹ Lawyers meet with families to identify and address those issues affecting their health and advocate to resolve them.

Dr. Zuckerman recognized that legal systems held solutions for many determinants of health, such as malnourished children who need food stamps, asthmatic kids who need landlords to provide safe housing, and vision-impaired children who need Medicaid to cover the costs of glasses.¹² Dr. Zuckerman, who grew tired of

11. Rebecca L. Huston et al., *Medical-Legal Partnerships*, 13 AM. MED. ASS'N J. ETHICS (VIRTUAL MENTOR), Aug. 2011, at 555, 557, available at <http://virtualmentor.ama-assn.org/2011/08/pdf/hlaw1-1108.pdf>; see also Anna Gorman, *Law Is Good Medicine: Medical-Legal Partnerships Can Improve the Health of People in Low-Income Neighborhoods*, L.A. TIMES, Mar. 13, 2010, at 1, available at 2010 WLNR 5282977 (discussing the benefits of medical-legal partnerships); *History*, NAT'L CENTER FOR MED.-LEGAL PARTNERSHIP, <http://www.medical-legalpartnership.org/movement/history> (last visited Mar. 7, 2014) (describing the origins and history of medical-legal partnerships).

12. *History*, *supra* note 11; see also Barry Zuckerman et al., *Why Pediatricians Need Lawyers to Keep Children Healthy*, 114 PEDIATRICS 224, 224-28 (2004)

having his ability to help children limited by the medicine he could prescribe, remarked, “The model makes so much sense We can all do what we want medically but because of these problems, if changes aren’t made, nobody is going to get better The unfortunate reality is that we need lawyers.”¹³

Since Dr. Zuckerman launched the MLP model, it has grown to meet the needs of thousands of children.¹⁴ The model has been integrated into the practice of over 275 hospitals and health care centers.¹⁵ In 2010, more than 13,000 individuals received legal assistance through MLPs and more than 10,000 health care professionals received training on the model, which has been endorsed by the American Medical Association and the American Bar Association.¹⁶ Now, support for the model is coordinated by the National Center for Medical-Legal Partnership, which is housed at the George Washington University School of Public Health and Human Services.¹⁷

Yet for children like Travis P., at risk of entering foster care, legal needs are routinely ignored. Although, in most parts of the country, juvenile courts appoint lawyers to represent parents and children in child welfare proceedings, these lawyers are appointed only *after* a child has already been removed from his parents’ home and placed in foster care.¹⁸ Additionally, these lawyers are poorly compensated, lack adequate training, and only handle legal issues directly related to the ongoing child welfare case.¹⁹ Thus, collateral issues affecting the child’s safety—such as housing, domestic violence, and custody matters that, if resolved, could prevent the child from entering foster care—are rarely addressed.

(discussing doctors’ lack of understanding of Medicaid eligibility).

13. Gorman, *supra* note 11.

14. See Huston et al., *supra* note 11, at 556; *History*, *supra* note 11.

15. *History*, *supra* note 11.

16. Huston et al., *supra* note 11, at 556; *History*, *supra* note 11.

17. *History*, *supra* note 11.

18. Vivek S. Sankaran, *Protecting a Parent’s Right to Counsel in Child Welfare Cases*, 28 CHILD L. PRAC. 97, 103–04 (2009).

19. *Id.* at 101.

II. AN EMERGING MODEL TO ADDRESS THE UNRESOLVED LEGAL NEEDS OF CHILDREN AT RISK OF ENTERING FOSTER CARE

Fortunately, a new model has emerged to provide targeted legal and social work advocacy to prevent the unnecessary entry of children into the foster care system. In 2009, the University of Michigan Law School's Child Advocacy Law Clinic created the Detroit Center for Family Advocacy (CFA), which provides legal and social work advocacy to families to prevent children from entering foster care.²⁰ Since that time, similar programs have emerged in Vermont and California; others are planned in Iowa²¹ and the District of Columbia,²² among other jurisdictions.²³

The core elements of the model are similar across programs. Child welfare agencies, courts, community-based organizations, and others refer families at risk of losing children to foster care because of unresolved legal issues. Once a case is accepted, the programs provide families with the assistance of an attorney, a social worker, and a parent advocate to help resolve legal issues—of the type detailed at the outset of the article—which affect the safety of the child in the home. Lawyers may file for a restraining order, draft a power of attorney, file for a guardianship, apply for public benefits, or help with special-education entitlements.

The social worker on the team assesses the family's strengths and weaknesses and provides case management. She works with existing community partners to help the parent or caregiver access a network of services, such as transitional housing, counseling, and substance abuse treatment, and works cooperatively with the child welfare agency caseworker to create a mutually agreeable safety plan for the parent to meet his or her child's needs.

And the parent advocate—a parent who, herself, has experienced the child welfare system—provides clients with a

20. See *Detroit Center for Family Advocacy*, U. MICH. L. SCH., <http://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/default.aspx> (last visited Mar. 7, 2014) (providing more information about the Detroit Center for Family Advocacy).

21. Email from Gail Barber, Director, Iowa's Children's Justice, to author (Jan. 25, 2013, 17:26 EST) (on file with author).

22. Email from Brenda Donald, Director, Child & Family Servs. Agency, Wash., D.C., to author (Jan. 24, 2013, 09:37 EST) (on file with author).

23. See *LAM Launches Parent Partner Support Program*, MARIN JUSTICE (Legal Aid of Marin), Fall 2012, at 1; VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org> (last visited Mar. 7, 2014).

unique perspective of how to navigate the system and helps parents stay focused and motivated in the face of adversity. Through this multidisciplinary team approach, these programs work collaboratively with child welfare agencies and others in the community to resolve legal issues and keep children in their homes.

In addition to resolving legal issues affecting the families, the multidisciplinary advocacy teams serve two other important purposes. First, they educate child welfare caseworkers about the ways in which the law can be used as a preventive tool to resolve problems that affect a child's safety. The knowledge gained by caseworkers increases the likelihood they may pursue creative strategies to keep children with their families. Second, by forming trusting relationships with their clients, the multidisciplinary advocacy teams are well suited to help parents learn how to make the changes necessary for their children to remain in their home. Many of these parents have an adversarial relationship with CPS workers due to the investigative nature of the child welfare process. Far too often, a parent's distrust towards the child welfare system makes them unwilling to engage with the system to work towards keeping children in their care. The teams, by having complete loyalty to the client, may be better suited to persuade parents to access needed services like public benefits, counseling, or substance abuse treatment that will help prevent children from being removed from their homes.

III. INITIAL DATA DEMONSTRATES THAT THIS MODEL CAN KEEP CHILDREN SAFE WITH THEIR FAMILIES WHILE SAVING PUBLIC DOLLARS

Although only initial evaluations of this model have been conducted, data from two sites—the CFA and the Vermont Parent Representation Center (VPRC)—show how effective it can be to keep children safe with their families while saving public dollars. During the three-year pilot period, CFA staff served fifty-five families who were caring for 110 children.²⁴ Due to funding restrictions, the CFA only served children who had already been found by the child welfare agency to have been abused or neglected. Sixty-nine percent of the children served by the CFA

24. DETROIT CTR. FOR FAMILY ADVOCACY, U. MICH. L. SCH., PROMOTING SAFE AND STABLE FAMILIES 12 (n.d.), available at http://issuu.com/michiganlawschool/docs/cfa_report.

lived with their birth parents; thirty percent resided with relatives through an arrangement made by their parents.²⁵

The CFA staff achieved its legal objectives in 98.2% of prevention cases, resolving collateral legal issues in a wide range of matters including housing, custody, guardianships, public benefits, and domestic violence.²⁶ Most importantly, none of the children served by the CFA entered foster care.²⁷

The VPRC achieved similar success. Over a two-year period, the VPRC served eighteen families who were caring for forty-three children.²⁸ Each case involved a child who faced a significant risk of being removed from his or her home.²⁹ In seventy-eight percent of cases, the VPRC prevented children from entering foster care.³⁰ In those cases in which children entered foster care, fifty percent went home to their families expeditiously.³¹

The ability of this model to prevent children from entering foster care presents a significant opportunity for child welfare systems to save scarce public dollars while achieving good outcomes for children. For example, over a three-year period, the CFA spent \$833,000 and kept 110 children, all of whom had been found by the state to be victims of child abuse or neglect, from entering foster care.³² Typically, when children enter foster care, they remain there for an average of 21.1 months.³³ The average annual cost for a child to remain in foster care is over \$45,000.³⁴ Thus, if the model prevented a quarter of the children served by the CFA from entering foster care, the cost avoided by the child welfare agency would be over \$1.3 million, providing a net savings to the system of over \$500,000 once the costs for funding the model are included.³⁵ Similarly, the VPRC estimated saving public systems a

25. *Id.*

26. *See id.*

27. *Id.*

28. *VPRC's Performance Measures*, VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org/performance> (last visited Jan. 16, 2014).

29. *Why VPRC Is Important to Vermont Families*, VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org/what-we-do> (last visited Jan. 16, 2014).

30. *VPRC's Performance Measures*, *supra* note 28.

31. *Id.*

32. DETROIT CTR. FOR FAMILY ADVOCACY, *supra* note 24, at 15.

33. *Id.*

34. *Id.*

35. *Id.*

minimum of \$250,000 over a two-year period.³⁶ Although the potential cost savings of this model needs to be more fully developed, this initial data suggests an enormous potential for the model to save child welfare systems thousands of dollars.

IV. DIVERSE FEDERAL FUNDING SOURCES EXIST TO SUPPORT THIS MODEL

Current multidisciplinary advocacy teams rely upon diverse sources of funding to support their work, most of which are short term in duration. For example, the CFA is supported by private foundation grants, individual donations, and matching funds from a statewide program aimed at keeping children in their communities.³⁷ The VPRC has relied on support from state grants, foundations, and individuals.³⁸ And the California Parent Partner Support Program was launched through a short-term grant from California's Administrative Office of the Courts through its court improvement project.

To replicate and sustain this model in other places, permanent funding streams need to be identified. Funds from a number of federal programs could support the model. However, these funds flow directly from the federal government to state agencies. Thus, advocates seeking to apply funds from these sources must persuade child welfare agencies in their state that the purpose of the multidisciplinary advocacy teams falls within the scope of these federal programs.

A. *Title IV-B*

Two programs created by Title IV-B of the Social Security Act—the Stephanie Tubbs Jones Child Welfare Services Program³⁹ and Promoting Safe and Stable Families⁴⁰—provide states with federal dollars to fund services and activities to preserve and reunify families. Both programs provide states with considerable flexibility in determining how to use these funds.⁴¹ In fiscal

36. *VPRC's Performance Measures*, *supra* note 28.

37. DETROIT CTR. FOR FAMILY ADVOCACY, *supra* note 24, at 18.

38. *Donate to VPRC*, VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org/donate> (last visited Mar. 7, 2014).

39. 42 U.S.C. §§ 621–628b (2006).

40. *Id.* §§ 629–629i.

41. KERRY DEVOOGHT & HOPE COOPER, STATE POLICY ADVOCACY & REFORM

year 2012, Title IV-B funding represented nine percent of federal funds used by states for child welfare services.⁴²

B. TANF

The Temporary Assistance for Needy Families (TANF) program, a federal block grant that, among other purposes, supports programs that prevent out-of-home placements for needy children, is another flexible federal funding stream that can be used by state child welfare agencies.⁴³ The states can use TANF funds to support any service designed to further this goal.⁴⁴ In fiscal year 2010, TANF accounted for twenty-two percent of all federal funds spent on child welfare.⁴⁵

C. Medicaid

Most children at risk of entering foster care are eligible for Medicaid, an open-ended entitlement providing access to medical care for needy children.⁴⁶ Through the program, child welfare agencies can be reimbursed for case management activities designed to help beneficiaries of the program gain access to needed medical, social, educational, or other services.⁴⁷ In fiscal year 2010, Medicaid accounted for seven percent of all federal funds spent on child welfare.⁴⁸

D. Social Services Block Grant

The Social Services Block Grant, a capped entitlement program, provides states with funding to prevent or remedy child abuse and neglect, to reduce the number of children entering

CTR., CHILD WELFARE FINANCING IN THE UNITED STATES 4 (2012), *available at* <http://childwelfaresparc.files.wordpress.com/2013/02/child-welfare-financing-in-the-united-states-final.pdf>.

42. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-170, CHILD WELFARE: STATES USE FLEXIBLE FEDERAL FUNDS, BUT STRUGGLE TO MEET SERVICE NEEDS 8 (2013), *available at* <http://www.gao.gov/assets/660/651667.pdf>.

43. DEVOOGHT & COOPER, *supra* note 41, at 11.

44. *Id.*

45. *Id.*

46. *See id.* at 13–14.

47. *See id.* at 13.

48. *Id.*

institutional care, and to help families become self-sufficient.⁴⁹ In fiscal year 2010, the Block Grant accounted for twelve percent of all federal funds spent on child welfare.⁵⁰

E. Title IV-E Waiver

Title IV-E of the Social Security Act, “an open-ended entitlement to support the costs of caring for eligible children in foster care,” represents nearly ninety percent of federal funding dedicated to child welfare.⁵¹ Funds from the program are primarily available for specific foster care and adoption expenses, but cannot be used to support services to families.⁵²

In 2011, Congress authorized the Department of Health and Human Services to waive funding restrictions tied to the program so that states with approved demonstration projects can spend those funds more flexibly.⁵³ To be granted a waiver, states must demonstrate that their projects are cost neutral to the federal government, among other requirements.⁵⁴ As of October 2012, fourteen states had waiver demonstration projects, many of which focused on innovative strategies to prevent children from entering foster care.⁵⁵ The Department of Health and Human Services can approve up to thirty projects through 2014.⁵⁶

Funds from any of these programs could be used to support the emerging multidisciplinary advocacy model. But advocates must work collaboratively with child welfare agencies to convince them to do so.

49. DEVOOGHT & COOPER, *supra* note 41, at 12; KAREN E. LYNCH, CONG. RESEARCH SERV., 94-953, SOCIAL SERVICES BLOCK GRANT 2 (2012).

50. DEVOOGHT & COOPER, *supra* note 41, at 12.

51. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 42, at 9–10.

52. *Id.* at 9.

53. *Id.* at 10–11.

54. *Id.* at 11. The Department of Health and Human Services was able to waive the fees prior to 2011. That authority “lapsed in 2006 but was renewed by Congress in 2011.” *Id.*

55. *Id.* at 20–21.

56. Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, § 201(1), 125 Stat. 369, 378 (2011).

CONCLUSION

Although the multidisciplinary advocacy model is new, it has the potential of preventing significant numbers of children from entering foster care while saving scarce public dollars. Undoubtedly, more research must be done to evaluate the effectiveness of the model. But the preliminary data demonstrates that providing families with a multidisciplinary team can help keep children safe with their families by resolving those legal issues that are destabilizing the family unit.