

Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases

ABA Center on Children and the Law National Council of Juvenile and Family Court Judges

Quick Overview

This alert highlights:

- ✓ the reasons for providing legal advocacy early in a child welfare case before court involvement,
- ✓ roles legal advocates play when appointed before court involvement in a case,
- ✓ benefits of early, precourt legal advocacy,
- ✓ how early, precourt legal advocacy supports judges' roles,
- ✓ how judges can support early legal advocacy, and
- ✓ how communities are using early, precourt legal advocacy in child welfare cases.

A window exists at the start of a child welfare case to help many families stay together and avoid entering the court system. Several jurisdictions support legal advocacy during this stage to counsel and support parents during child welfare investigations and help them address legal issues that threaten their child's safety in the home. The practice aligns with the U.S. Children's Bureau's focus on preventing children from entering foster care when possible.¹ The American Bar Association, National Council of Juvenile and Family Court Judges, and the Family Justice Initiative all support early legal advocacy before a child is removed from the home or the agency files an abuse and neglect petition in court.²

Why provide legal advocacy early in a child welfare case before court involvement?

Legal advocates may represent families, typically parents, in the early stages of a child welfare case before a child is removed from the home and often before an abuse or neglect petition is filed. A form of preventative legal advocacy, early legal advocacy aims to keep the family together, keep children in the home, and prevent the need for foster care.³ Jurisdictions that use this approach may refer to it as "prepetition attorney representation," "preremoval attorney representation," or "early family defense" because the goal is to avoid an abuse and neglect petition and separation of the child from the family.

What roles do legal advocates play at this early stage of the case?

Legal advocates' early, precourt advocacy roles can include:

- **Helping families address legal issues or barriers that affect a child's safety in the home**, such as filing a restraining or a protective order, applying for public benefits, assisting with affordable housing and expungement of criminal records, negotiating a lease, or filing for guardianship.
- **Providing counsel and advice during child welfare investigations**, including informing parents of their rights, negotiating child safety plans, and identifying relative and other safe placement options.

Key Resources

Family Justice Initiative. [Implementing FJI System Attributes, Attribute 4: Timing of Appointment](#), 2020.

“[Iowa Law to Test the Benefit of Early Legal Help in Child Welfare Cases](#)” *Chronicle for Social Change*, July 1, 2020. (Citing [Iowa SB 2182](#), June 17, 2020.)

Amy Miller. [Pre-Petition Representation Portfolio](#), August 2016.

Sankaran, Vivek. “[Using Preventative Legal Advocacy to Keep Children from Entering Foster Care](#),” *William Mitchell Law Review* 40, 2014, 1036.

Bech, Trina et al. *The Importance of Early Attorney Involvement in Child Welfare Cases Representation of Parents in Pre-Petition Proceedings* (presentation at Second National ABA Parents’ Attorney Conference, July 13-14, 2011).

Fassler and Gethaiga. [Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies](#). American Bar Association, *Child Law Practice*, April 2011.

- **Advocating for services that will help keep the child in the home**, such as counseling, respite care, and medical care to address the child’s or parent’s health needs.

What are the benefits of early legal advocacy?

Benefits of having legal advocates before court involvement include:

- Helps keep families intact and prevents the trauma of unnecessary child and family separation.
- Promotes positive family outcomes.
- Protects due process rights of parents and children during the early stages of the case.
- Reduces overrepresentation of families of color in the child welfare system by reducing child welfare removals for low-risk families by putting preventative services in place.⁴
- Saves foster care, child welfare system, and court costs.
- Avoids adversarial legal proceedings.

How does early, precourt legal advocacy support my judicial role?

- **Reduces the number of cases that come to court.** Early legal advocacy promotes family stability and can avoid the filing of an abuse and neglect petition and a child’s removal, ultimately reducing the number of cases that enter your court.
- **Ensures cases that come to court require judicial intervention.** Cases that do come to court will likely have unresolved or complex issues requiring judicial attention.
- **Streamlines the legal issues the court must resolve.** Early legal advocacy to resolve legal issues and barriers affecting the child’s safety narrows the issues the court needs to address.
- **Establishes the attorney-client relationship before court involvement.** Building an attorney-client relationship before court involvement improves the attorney’s in-court advocacy and representation of the client because the attorney knows and has developed a relationship with the client and the issues in the case.

How can I support early, precourt legal advocacy?

If early, precourt legal advocacy occurs in your jurisdiction:

- ✓ Learn how attorneys are representing clients at the investigation stage of a child welfare case as part of their duties.
- ✓ Encourage using early legal advocacy in appropriate cases.
- ✓ Become familiar with procedures, expectations, and guidelines in place for early legal advocacy appointments.

Markisha's Story

When referred to Legal Services, Markisha was 25 years old, a single mother, eight months pregnant, and homeless after being removed from a domestic violence shelter. Although she had a mild intellectual disability, she lost her emergency assistance funding when she was kicked out of a domestic violence shelter for breaking a rule. She started living with her grandfather at a senior residence but had to leave when the residence discovered her presence and threatened to remove her grandfather.

Several LSNJ attorneys and social workers went to work for Markisha. Collaborating with child welfare agency workers, LSNJ staff prepared and counseled her for fair hearings, emergency funding applications, and other housing options. With LSNJ's help, Markisha found safe and stable housing and connected with community supports.

Story provided by Jey Rajaraman, director, Legal Services of New Jersey.

- ✓ Talk with advocates who take early appointments, and legal representation programs that support early precourt legal advocacy, about their experiences, challenges, and successes.
- ✓ When precourt advocacy was provided in a case that enters your court, request details of that advocacy.

If early, precourt legal advocacy is not occurring in your jurisdiction:

- ✓ **Explore how early precourt legal advocacy could work.** Review existing models for ideas of successful approaches. Contact staff at those programs for more information.
- ✓ **Join court, legal representation, and child welfare professionals in your community** to discuss feasibility, guidelines, and procedures for getting started. Think about which other community partners to bring to the table, including legal aid/legal services offices and law schools.
- ✓ **Learn about funding options** to pay for precourt legal advocacy and associated cost-savings. Early legal advocacy programs tend to rely on several funding sources, including:
 - federal funding under Title IV-E of and Title IV-B the Social Security Act,
 - state funding,
 - private foundation grants,
 - court improvement program funding,
 - contracts with child welfare agencies or legal aid offices, and
 - donations.

Demonstrating cost savings to courts and the child welfare system can also benefit early appointment programs.

- ✓ **Support implementation efforts.** Judges' buy-in and support can be critical to funding and securing broader support of this model. Support implementation by:
 - attending stakeholder meetings,
 - asking advocates who take these appointments about their advocacy roles, challenges, and successes, and
 - providing input and feedback.
- ✓ **Support evaluation and sustainability of early, precourt legal advocacy programs.** Evaluating and measuring the impact of early legal advocacy programs identifies areas for improvement, reveals results and impact, and helps secure long-term funding.

Early legal advocacy during the child welfare investigation before a petition is filed or a child is removed helps avoid court involvement in some cases. It helps reduce trauma for children and keeps families together by addressing issues that often lead to court filings on the front end. For judges in jurisdictions using this approach, that means fewer cases on the docket and cases with more targeted or complex legal issues requiring judicial attention. It can also lead to higher-quality legal representation as attorneys know their clients and the case issues when the court intervenes.

California

Children’s Law Center of California (CLC)

In January 2020, CLC started the Pritzker Pre-Filing Project, an early precourt legal advocacy project that serves expecting and parenting youth with whom CLC has a relationship through a dependency case. The project receives referrals from child welfare agencies who are investigating child abuse calls, or directly from clients who have been contacted by the agency. Project attorneys and case managers counsel clients about prevention upon learning they are pregnant. They arrange conferences with the agency to ensure clients have resources and supports during their pregnancies and after the birth of their children. They address issues that are known to trigger a petition filing (e.g., chronic AWOLing, drug use, child trafficking and exploitation, mental health, and domestic violence). They also focus on placement stability and stress to their clients the importance of maintaining a stable placement. Case managers attend child welfare agency investigations to support and de-escalate the client if needed. Youth who are unable to break patterns of behavior that will trigger a filing are counseled to make a plan with a relative or friend who is willing to care for the baby temporarily without the agency’s intervention.

The project has successfully prevented filings in cases involving domestic violence by counseling clients and helping them obtain restraining orders once a referral was triggered. It has also successfully prevented filings in general neglect cases by showing the child welfare agency that CLC is a source of support for clients by attending Child and Family Team meetings, ensuring clients use mental health resources, and helping stabilize placements.⁵

Iowa

Iowa Legal Aid

Four Iowa counties are participating in a pilot program that provides early representation to child welfare-involved parents before an abuse or neglect petition is filed. The child welfare agency or service providers refer to Iowa Legal Aid clients who would benefit from legal services aimed at keeping them out of juvenile court and reducing the chances of foster care placement. The program assists clients with legal matters such as guardianship, custody, protective orders, landlord/tenant disputes, and appeals of denials of public benefits. 2018 data showed the program closed 62 prepetition cases, helping 112 children avoid court involvement and saving an estimated \$6000 per child abuse and neglect case (\$372,000 total saved costs by avoiding juvenile court).⁶

A new Iowa law, effective July 1, 2020, establishes a four-year pilot program in six of Iowa’s 99 counties that gives the state’s Public Defender Office authority to appoint a lawyer with experience in child welfare for indigent clients during the child welfare investigation phase. The law aims to use and study new ways to help families involved in the child welfare system have positive outcomes, reduce trauma for children, and save families and communities money.⁷

New Jersey

Legal Services of New Jersey (LSNJ)

In 2018, LSNJ began receiving referrals from child welfare agency caseworkers to provide legal assistance to parents before the filing of a removal petition. Cases that are referred have raised child safety concerns that are rooted in poverty not parenting and are ones the agency is unable to resolve with in-house services. Seventy-five percent of referrals relate directly to a lack of access to basic living needs, housing, and financial resources. Most cases have overlapping concerns. A client with housing instability is likely to have been denied financial resources and may be facing immigration deportation or need advice accessing education resources, enforcing a child support order, establishing custody, or getting a divorce. Cases with compound issues are identified and referred as necessary.

LSNJ’s Family Representation Project assesses each case and helps clients identify concerns and goals in reaching desired outcomes before referring the case to its legal advocates, social workers, and parent mentors to provide advice and support. Attorneys provide civil legal assistance, including assistance with public benefits and access to affordable housing, child support and custody issues, immigration issues, and school-related issues. This early attorney involvement has kept cases from entering court. In the two years that LSNJ has been engaged in this referral process, there have been no children removed. In 2019, it successfully avoided removals in 80 cases. By July 2020, it successfully avoided 200 placements.⁸

New York

Bronx Defenders

Bronx Defenders is a public defender nonprofit organization that provides holistic legal representation to low-income people in the Bronx. The family defense practice provides attorneys and social work advocates to parents who are being investigated by the Administration for Children’s Services (ACS) with the goal of avoiding family separation and a filing against the family in court.

Attorneys and advocates advise parents of their rights, accompany them to meetings and conferences with ACS, refer them to community-based services, and work with parents to identify family supports. The early defense representation of families at the first sign of an ACS investigation has proven to keep families together, as well as to avoid traumatic and unnecessary removals of children, invasive family surveillance, and further court involvement.⁹

Center for Family Representation (CFR)

CFR's Community Advocacy Program (CAP) provides interdisciplinary teams to advocate for parents during child welfare investigations. Parents who are referred must be currently under investigation by children's services in New York City and want help navigating the process. Once referred, an interdisciplinary team including a social worker and a parent mentor is assigned to the parent to assist in the investigation. Attorneys are available to consult with the interdisciplinary teams but are only appointed if a petition is filed. All team members also work on CFR's general family defense teams so apply legal knowledge from that work in their precourt advocacy.

This work is led by CFR's social work staff because CFR believes the ability to work directly with caseworkers results in the best advocacy for clients during the investigation stage. The interdisciplinary teams explain the investigation process; advocate for services; address allegations creatively; and identify resources that help families address the child welfare agency's concerns. This advocacy has resulted in successfully diverting court filings and diverting foster care placements in cases in which a petition was filed. Data from July 2019 – June 2020 showed filings were avoided in 20% of child welfare investigation cases, and 13% of clients avoided removal of a child.¹⁰

Oklahoma Legal Aid Services of Oklahoma (LASO)

For five years, LASO has operated a statewide early legal advocacy project. Caseworkers make referrals to LASO in cases where the state removes or refuses to return a child to a home because a mother, in most cases, has not divorced a batterer, obtained a kinship guardianship, or made her home safe and healthy. Once referred, LASO handles the divorce or guardianship, or engages with the landlord to address health and safety-related issues. The result is the child stays with the mother or is returned to the mother.¹¹

In 2020, LASO began a multidisciplinary parent representation program in Tulsa County that replaced a contract attorney model. LASO has 10 contract attorneys, a full-time

manager, attorney supervisor, parent manager, and social workers. LASO attorneys and staff intervene upon notice as early as possible with an attorney, social worker, and parent mentors to assist parent(s) to prevent removal of children and avoid an order to show cause hearing. LASO also assists parents beyond an order to show cause, including appeals. The benefit of this early advocacy is it avoids removal of children.¹²

Washington Family Intervention Response to Stop Trauma (F.I.R.S.T) Clinic

The F.I.R.S.T. Clinic provides early, precourt legal advocacy to prevent drug-exposed infants from entering foster care while keeping them safe with their parents or family members. The project is a partnership between a local hospital, a wraparound service provider for at-risk children and parents, and parent attorneys. When the hospital becomes aware of a drug-exposed infant, it refers the infant to the child welfare agency and the F.I.R.S.T Clinic. Clients are also referred to the clinic by drug and alcohol treatment counselors and treatment facilities. Clients are eligible if they are pregnant or recently gave birth (<1 month), at risk of CPS intervention, do not have a dependency filed for their infant or filing is imminent, and would like to work with the clinic.

A clinic attorney meets with the parent before or at the same time as the child welfare agency to start assessments, referrals, and services. The attorney counsels the parent about temporary custody or guardianship and identifies relatives or kin to serve as caregivers when temporary custody is desired. When a parent needs residential treatment for a substance use disorder, the attorney may also advocate placing the infant with the parent at the facility. In addition to the attorney, the clinic team includes a resource navigator to help the parent secure housing after treatment and a parent ally to provide guidance and emotional support. Early data from the program suggests the majority of the parents working with the program can avoid a dependency filing.¹³

Many of the programs described above draw on a model created by the Detroit Center for Family Advocacy (DCFA), a forerunner among early legal advocacy programs that no longer operates. Started in 2009 by the Michigan Law School Child Advocacy Clinic, the DCFA combined legal and social work advocacy to help prevent children from entering foster care and provided families a multidisciplinary team to help address issues affecting the child's safety in the home.¹⁴

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Endnotes

1. Kelly, David & Jerry Milner. "[High-Quality Legal Representation is Critical to Creating a Better Child Welfare System.](#)" Child Law Practice Today (ABA Center on Children and the Law, July 17, 2019).
2. [ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases](#), Basic Obligations, General, 4. ("Actively represent a parent in the pre-petition phase of a case, if permitted within the jurisdiction."); [NCJFCJ Enhanced Resource Guidelines](#), II. General Issues, p. 45, ("Duties of attorneys once assigned or retained on abuse and neglect cases: Actively represent client in pre-petition phases of a case (if permitted within the jurisdiction)."; [FJI Attributes of High-Quality Legal Representation](#), System Attributes, Attribute 4: Timing of Appointment, p. 2. ("Support pre-petition legal work by attorneys.")
3. Sankaran, Vivek. "[A Critical Look at Child Protection: Using Preventative Legal Advocacy to Keep Children from Entering Foster Care.](#)" William Mitchell Law Review 40, 2014, 1036; Amy Miller. [Pre-Petition Representation Portfolio](#), August 2016.
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5. Email communication with Lucia J. Murillo, Attorney Supervisor, Children's Law Center of California, July 22 & 23, 2020.
6. Family Justice Initiative. [Implementing FJI System Attributes, Attribute 4: Timing of Appointment](#), 2020.; [Iowa Legal Aid](#). Parent Representation Project, undated.
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12. Ibid.
13. Email communication with Adam Ballout, ABC Law Group LLP, July 25 and 28, 2020; Family Justice Initiative, 2020; Wall, Tonya and Adam Ballout. "[Using Legal Services to Keep Children in Families: The F.I.R.S.T. Clinic.](#)" Children's Rights Litigation, October 3, 2019.
14. Detroit Center for Family Advocacy. [Supporting Safe and Stable Families](#), undated; Sankaran, 2014, 1036.