



STRATEGY BRIEF

STRONG FAMILIES

How can pre-petition legal representation help strengthen families and keep them together?

Too often, children enter or linger in foster care because their parents are struggling with poverty-related issues, including [substandard housing](#), or because they lack the resources for legal counsel to resolve civil or criminal matters, such as custody or protection orders, that could facilitate child safety. These [poverty-induced issues do not equal neglect](#) or warrant separating children from their families.

Providing legal representation before a dependency petition is filed is one way to help stabilize families and enable children to remain with them. Pre-petition or preventive legal representation programs offer parents legal and social work advocacy to address matters including custody and divorce, orders of protection, [safe and affordable housing](#), public benefits, guardianship, special education, and other issues that help prevent child maltreatment and extended stays in foster care.

“The opportunity for lawyers to play a role in keeping children with their families is enormous and still largely untapped in the child welfare community,” says Vivek Sankaran, a clinical professor at the University of Michigan Law School and founder of the Detroit Center for Family Advocacy. “Lawyers need to join



the evolving conversation around how to invest more resources up front to keep children safely at home.”

While few formal studies on pre-petition programs currently exist, evaluations of a collection of pilot programs show promise, including **nearly 100% prevention of foster care entries and cost savings of 2-to-1** when compared with the cost of foster care placement.¹ When removal cannot be avoided, research suggests that [high-quality post-petition legal representation for parents](#) can [increase parent engagement and move children to permanency more quickly](#).

Common elements of pre-petition legal services

In lieu of a standardized model, common elements of preventive legal services programs include:²

- **Referrals from the child protection agency.** Many of the programs offering pre-petition legal support receive referrals directly from the local or state child protection agency. Caseworkers in these agencies refer families that, without legal assistance for ancillary issues, would likely be subject to dependency proceedings. In some cases, families can also self-refer or be referred by other sources (such as the courts or community-based agencies).
- **Multidisciplinary staffing model.** Many programs employ an [interdisciplinary approach](#) involving a

social worker and/or parent partner for additional support, if needed. Their utilization may depend on the commonality of cases. For example, a social worker may add tremendous value when access to affordable housing is a concern but may be less used in programs where a majority of cases involve the need for custody orders.

- **Range of legal expertise.** Program leaders agree that a holistic advocacy approach is important to help families remain safely together in the short term and avoid repeat involvement with the child welfare agency. Access to legal expertise in a variety of areas (such as housing, education, and immigration) is useful to effectively serve families with complex circumstances. Some programs are housed within legal aid organizations, which have the advantage of ready access to attorneys with expertise in many poverty-related issues.
- **Multiple funding sources.** Pre-petition legal representation programs are funded through a variety of sources, including both state and private funding. Some are able to take advantage of cost savings realized by child welfare agencies through the prevention of foster care. A December 2018 Children’s Bureau policy change may allow child welfare agencies to fund a portion of pre-petition legal advocacy [using federal Title IV-E funds](#). In order to do so, the children served must fit the state’s definition of “candidates for foster care,” and the state will need to match the federal funds.

I have not seen any examples of families where children need to be removed for poverty-related issues. We need to move upstream and be a source of support to strengthen the family. Poverty-related issues are not dangerous or risk-inducing, and are not a reason to remove a child from their parents.

— JEY RAJARAMAN,
CHIEF COUNSEL, FAMILY REPRESENTATION PROJECT, LEGAL SERVICES OF NEW JERSEY

Lessons learned

Pre-petition legal representation programs offer a range of implementation considerations and lessons learned:

- **Engage local stakeholders and partners.** The [Center for Children & Youth Justice](#) in King County, Washington, spent more than a year in conversation with local stakeholders to design and develop its Family Advocacy Center project. The project involves a partnership among the Center, the Northwest Justice Project (a legal-aid firm), and [Parents for Parents](#) (a respected peer advocacy group in Washington state). “It is important to think strategically in advance about what it would take to bring this to scale,” says Gina Cumbo, the Center’s director of programs. “Look at existing structures and capacities that you could encourage to work together better, without re-creating the wheel.”
- **Do homework and start small.** Michael Figgins, executive director of the Oklahoma Legal Aid Society, urges new programs to begin with baseline knowledge on the number of children in foster care in their jurisdiction, how long they remain in care, and how much foster care costs the county or state. Then, start with a pilot in just one or two areas, but expect rapid growth. “Once they get a taste of it, they’ll want more,” he says.
- **Nurture a relationship with the local child protection agency.** Ongoing outreach and relationship building may be necessary to

keep referrals flowing, especially in child welfare jurisdictions where staff turnover is frequent. At Iowa Legal Aid, the team did not have an established relationship with the child protection agency. “Fortunately, we were able to hire a caseworker who had been with child protection for more than a decade,” says Michelle Jungers, managing attorney. “She knows all of the workers there. That has really helped.”

- **Don’t underestimate the value of parent partners.** Their credibility, earned by personally navigating the system and successfully reuniting with their own children, can be particularly useful when having difficult conversations about parents’ present situations and reality-testing their expectations for the future. “Our parent allies were able to engage clients on a level that none of our other providers could,” Cumbo says.
- **Allow time to listen, build rapport, and help families stabilize.** Jey Rajaraman, chief counsel of Legal Services of New Jersey’s Family Representation Project, emphasizes the importance of taking adequate time to ensure that families are truly stabilized. She says, “In prevention cases, you have breathing room, because ASFA (the federal Adoption and Safe Families Act) does not apply. So you can take your time to assess and understand the situation, and make sure the family feels safe.” Like New Jersey, Iowa Legal Aid leaves cases open as long as necessary to ensure all issues that put the family at risk have been addressed. In addition, past clients are welcome to call at any time with follow-up questions.

Social workers have been very receptive to the program. We are making their jobs easier by knocking down barriers and obstacles so that families don’t get broken up or can be reunified more quickly.

— MICHAEL FIGGINS,
EXECUTIVE DIRECTOR, OKLAHOMA LEGAL AID SOCIETY

Families that are sent to us are a bit skeptical. They can feel like it's another hoop to jump through. It's important to build rapport — you are our client, we're advocating for you.

— JEY RAJARAMAN,
CHIEF COUNSEL, FAMILY REPRESENTATION PROJECT, LEGAL SERVICES OF NEW JERSEY

Jurisdictional examples

One of the earliest pre-petition legal programs, the **Detroit Center for Family Advocacy**, operated from 2009 to 2016 as a project of the University of Michigan Law School's Child Advocacy Law Clinic.³ Funded through a public/private partnership, the Center served both prevention and permanency cases with a staff of three attorneys, a social worker, a parent advocate, and a legal assistant. Most of the Center's cases were referred by the local child protection agency, but also accepted referrals from other sources. Common legal issues addressed included landlord-tenant disputes, domestic violence, special education, custody/guardianship, power of attorney, and interstate placements. The staff social worker also assisted families with issues such as housing, public benefits, child care, moving expenses, medical insurance, and educational needs. In the first three years of the program, **the Center achieved its legal objectives in more than 98% of its preventive cases, and none of the children served in those cases entered foster care.**

Influenced by the early success in Detroit, King County's [Center for Children & Youth Justice](#) developed a pre- and post-petition multidisciplinary service model known as the [Family Advocacy Center project](#). The model was designed in conversation with a broad group of local stakeholders, including public defenders, the child protection agency, law schools, and parent allies. The Family Advocacy Center partnered with two

of the eight child welfare agency offices in the county, selected based on their stable staffing and the range of supports and programming they offered. The vast majority of cases involved custody orders. The Center contracted with the Northwest Justice Project for legal-aid services and [Parents for Parents](#) for parent ally services, in addition to supporting a full-time social worker. The Center's three-year pilot ended July 2019. **Legal objectives were met in 95% of preventive cases, and a conservative estimate of costs avoided by Family Advocacy Center services was 2-to-1 compared to foster care placement.**²

[Legal Services of New Jersey](#) has represented families in child welfare dependency cases for more than 50 years. In August 2018, the agency began receiving direct referrals from caseworkers at the Department of Children and Families' Division of Child Protection and Permanency on behalf of families needing legal assistance and advice in the pre-petition stage. Issues vary by case, but some of the most common concerns for families include access to public benefits, affordable housing, and special education. The program uses a multidisciplinary model and calls on the expertise of other legal services attorneys to provide strengths-based and holistic support of family needs. In the program's first six months, the child welfare agency referred more than 40 parents for assistance. During that time, **no removals occurred for Legal Services of New Jersey clients.**

How can pre-petition legal representation help strengthen families and keep them together?

[Legal Aid Services of Oklahoma](#) was approached by the state's Department of Human Services in 2014 to provide pre-petition legal services as the result of a settlement agreement with the state Supreme Court. The purpose of the family representation contract is to eliminate legal obstacles that increase the risk of children entering or remaining in foster care. The department pays Legal Aid an hourly rate to serve referred cases, many of which involve divorce (often from an abusive partner), relative placement/guardianship, or housing issues. Originally in nine counties, the program currently operates in 42 of Oklahoma's 77 counties. Legal Aid attorneys staff the program across the state and have between 200 and 240 open cases at any given time. According to program director Michael Figgins, foster care is prevented for most of the children served by the program, and for those who do enter foster care, time in care is significantly reduced.

[Iowa Legal Aid](#) began serving pre-petition child protection cases in 2014, in collaboration with the judicial branch, state public defender's office, Department of Human Services, and the Court Improvement Project. The program, which currently operates in four counties and is funded through a combination of public and private sources, serves the needs of custodial parents through an interdisciplinary team that includes an attorney, a case manager, and a parent advocate. It receives referrals directly from the department. In the beginning, the majority of cases were family law, such as domestic violence protective orders. Recently, however, the staff are beginning to see a wider

range of poverty-related issues, such as housing instability. Regardless of the presenting concern, Legal Aid does a full needs assessment for new cases. The goal is to ensure that all needs are met so that the family does not come back into contact with the child protection system. They keep cases open as long as needed and have an "open-door policy" for former clients. In 2019, the project closed 62 pre-filing cases, helping 118 children avoid court involvement. Including financial benefits secured for clients and costs saved by avoiding court involvement, Iowa Legal Aid estimates economic gains of \$4.36 for each \$1 invested.⁴

Snohomish County's Family Intervention Response to Stop Trauma (F.I.R.S.T.) Clinic

in Washington state has been offering free, pre-petition representation to mothers with substance-exposed infants since July 2019. The project's founders at ABC Law Group began this service after learning that the state Department of Children, Youth, and Families removes an average of 12 infants from their mothers directly from the hospital each month in Snohomish County, often without first offering safety planning or services that might enable the family to stay together. F.I.R.S.T. Clinic attorneys rely on referrals from hospitals, community-based agencies, and word of mouth. They sometimes hear from clients only hours or even minutes before the agency's family team decision-making meeting that will determine whether an infant will go home with his or her parents. Currently, the Clinic's attorneys are providing these services pro bono while the

Our goal is to make sure not only that the legal need is met, but that all needs are met so that the family doesn't come back in contact with the child welfare system.

— MICHELLE JUNGERS,
MANAGING ATTORNEY, IOWA LEGAL AID

How can pre-petition legal representation help strengthen families and keep them together?

founders seek funding. Despite these challenges, F.I.R.S.T. has been able to prevent case filings and removals in most of the approximately 20 cases they initially have served by helping the parents develop safety plans and, when needed, alternative legal custody arrangements. The F.I.R.S.T. Clinic works with an experienced parent partner to provide families

with additional support and refers mothers to other community-based services, including treatment facilities and Nurse-Family Partnership. The attorneys are exploring opening a hospital-based legal clinic to enhance their ability to create safety plans with substance-using mothers before their infants are born.

- 1 University of Michigan Law School. (2014). Promoting safe and stable families: Detroit Center for Family Advocacy. Retrieved from <https://artscimedia.case.edu/wp-content/uploads/sites/35/2014/02/14194055/CFAReport.pdf>.
- 2 The content of this brief was developed from interviews with Vivek Sankaran, Clinical Professor of Law and Director of the Child Advocacy Law Clinic and the Child Welfare Appellate Clinic at University of Michigan Law School; Jey Rajaraman, Chief Counsel, Family Representation Project, Legal Services of New Jersey; Michael Figgins, Executive Director, Oklahoma Legal Aid Society; Gina Cumbo, Director of Programs, Center for Children & Youth Justice; Michelle Jungers, Managing Attorney, Iowa Legal Aid, Adam Ballout, Partner, ABC Law Group, and Neil Weiss, Attorney at Law, ABC Law Group.
- 3 The Detroit Center for Family Advocacy closed in 2016 due to lack of funding.
- 4 Iowa Legal Aid. (2019). *Parent Representation Project*.

P 800.228.3559

P 206.282.7300

F 206.282.3555

casey.org | KMResources@casey.org

