



STRATEGY BRIEF

# STRONG FAMILIES

## How does **high-quality legal representation for parents** support better outcomes?

Quality legal representation in court is an essential safeguard to ensure that pertinent information is conveyed to the court, all parties' legal rights are well protected, and the wishes and needs of all parties are effectively voiced. In turn, this helps judges make the best, most informed decisions possible in every case.

However, parents facing the potential loss of their children in dependency courts across the country are not afforded the same universal right to counsel as defendants in criminal proceedings. Access to representation for parents involved with the child welfare system who cannot afford to hire a private attorney varies from state to state — and the quality of that representation, when provided, varies even more.

In December 2018, the Children's Bureau [revised its Child Welfare Policy Manual](#) to permit Title IV-E agencies to claim administrative costs for attorneys to provide legal representation for children and their parents. This [policy change](#) makes new entitlement funding available to support all jurisdictions in offering parents legal representation in dependency hearings, and/or improving the quality of that representation in accordance with best practice.



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According to the Children’s Bureau, this change is intended to help ensure that reasonable efforts are made to prevent removal, that parents and youth are engaged in case plans, and that timely efforts are made to finalize permanency plans for children. [Research in multiple states](#) further highlights the importance of quality legal representation for parents, suggesting that it has the potential to support:

- More timely [permanency](#) (including reunification, adoption, and guardianship).
- Increased parental engagement and perceptions of fairness.
- More individualized case plans and better access to services.
- More frequent and timely family visitation.
- Better judicial decision-making.
- Cost savings for child welfare agencies due to reduced time in foster care.<sup>1</sup>

## High-quality representation

Due to the unique and complex nature of dependency cases, **interdisciplinary representation** is considered to be the best way to deliver high-quality representation. Teams commonly include attorneys, social workers, and [parent mentors/advocates](#), but also may include professionals with expertise in substance abuse treatment or other legal matters affecting families, such as domestic violence, education, delinquency, employment, or housing concerns.

## CORNERSTONE ADVOCACY

Developed by the Center for Family Representation in New York City, [Cornerstone Advocacy](#) is an approach that can be used by any parent’s attorney to support family reunification. It involves intensive advocacy during the first 60 days of a case in four areas:

- **Visiting arrangements** for children and their parents that are as frequent and long as possible, and closely mimic family life.
- **Placements** that support a child’s connection to family and other important relationships.
- **Services** that address a parent’s and child’s strengths and needs.
- **Conferences and meetings** that provide opportunities for parents and older youth to meaningfully participate in their case planning.

Other characteristics of effective representation include the following:

- **Attorneys as unfailing advocates for their clients.** Positive outcomes can sometimes be achieved through mediation or other non-adversarial means, and lawyers must also be prepared to use all available legal tools — including motions and appeals — to protect and advocate for parents’ rights. Parents are naturally more likely to engage and open up

Parents’ attorneys are the best friends child welfare agencies don’t know they have.

— MARTIN GUGGENHEIM  
CO-DIRECTOR, FAMILY DEFENSE CLINIC, NEW YORK CITY

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to representatives who they perceive to be fully dedicated to their goals.

- **Legal advocacy beyond the courtroom.** In foster care cases, what happens outside the courtroom is often more important than what occurs in court. It is especially critical for parents to be supported at child welfare agency meetings. Effective representation helps shape effective service plans by more accurately identifying the needs of families and ensuring that services are tailored to them.

These tenets of effective attorney practice are supported by the following system characteristics:

- **Attorney support and accountability.** The American Bar Association [Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases](#) cover hiring, training, and supervising parent attorneys, in addition to encouraging courts to establish uniform standards and hold attorneys accountable for compliance.
- **Specialized attorney training.** In addition to being experts in family law, parents' representatives must be well informed about the [impact of trauma](#) on parents' behavior and decision-making, as well as [systemic bias](#) and the ways that racial, social, and cultural differences may impact the attorney/client relationship.
- **Representation early in the case.** In some jurisdictions, representation may be appointed as late as the first permanency hearing or, in rare cases, the hearing to terminate parental rights. To

be most effective, parent representatives must be available to their clients at the very first hearing, if not before.

- **Reasonable caseloads and compensation.** Although the numbers will vary by jurisdiction, the American Bar Association [Indicators of Success for Parent Representation](#) recommend maximum caseloads that provide adequate capacity to handle all cases through appeal, if necessary, and rates that are sufficient to support an attorney's practice while adhering to this cap.<sup>2</sup>

## Jurisdictional examples

**Washington state** was the first jurisdiction to provide access to multidisciplinary representation for all indigent parents in dependency cases statewide.<sup>3</sup> The program began in 2000 with a pilot in two counties, which followed an [audit by the state Office of Public Defense](#) that found the previous system of county-funded representation resulted in vast inconsistencies across the state, significantly lower spending on parent representation than agency representation, and fundamental quality concerns, including a high continuance rate due to the size of caseloads carried by parents' attorneys.

Based on successful [evaluations of the pilot](#), which showed increased quality and significant savings outpacing costs of the program overall, the state Legislature gradually expanded authorization to additional counties until the Parents Representation Program (PRP) went statewide in July 2018. For the

You don't need to wait for a statewide effort — or to be an institutional provider — to take a step toward the highest level of effective legal representation. As a sole practitioner, having a parent mentor on the team goes a long way toward achieving an interdisciplinary focus.”

— MIMI LAVER,  
DIRECTOR, LEGAL REPRESENTATION, AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW





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two hours because a local charity already had arranged for the office to have strollers on hand.

- ILO offices sometimes represent clients who give birth while their older children are in foster care. ILOs are able to be present while their clients are interviewed in the hospital, attend child safety conferences, and begin working on cases even before the agency files for removal. In many of these cases, the ILO has been able to persuade the agency that the newborn can remain safe with the mother and should not be placed in foster care, or the ILO has been successful in challenging the agency's decision to remove the child.

Recently, New York University School of Law, Action Research Partners, and Casey Family Programs completed the [largest-ever study of parent representation in dependency court](#), tracking outcomes for 9,582 families and 18,288 children during a four-year period. The study compares outcomes for families represented by ILOs with those of similar families represented by panel attorneys. Key findings include:

- Children placed in foster care were **safely returned to their families about 43 percent more often in the first year** when their parents were represented by an ILO.
- Children's **time in foster care was reduced by nearly four months** during the study period when parents were represented by ILOs.
- Reduced time in foster care represents **up to \$40 million in potential annual savings** in foster care board rates.
- Children were **just as safe** with ILO representation. They were no more likely to experience a subsequent substantiated report of maltreatment.

A number of other jurisdictions have followed Washington and New York City's examples in recent years. **Colorado** established an [Office](#)

[of Respondent Parents' Counsel](#) in 2016 to work with the state's judicial districts to establish uniform, high-quality legal representation. Improved reunification outcomes in **Sandoval County, N.M.**, which employs multidisciplinary parent representation, has prompted the state to explore expansion of the model. In addition, **California, New Mexico, Michigan, Louisiana, Oregon, Texas, Delaware, and Mississippi** are committed to utilizing a multidisciplinary model and/or lowering attorney caseloads to improve legal representation for both parents and children.

## Resources to support implementation

States have considerable flexibility in how they implement the recent [Title IV-E policy](#) change depending on the current status of parent representation in their jurisdiction.<sup>7</sup> For example, the funds could be used to:

- Provide every parent with an attorney at or before the initial hearing, in jurisdictions where clients currently may not be provided a lawyer until their case approaches termination of parental rights.
- Hire additional attorneys, in jurisdictions where average caseloads are much higher than recommended, so that attorneys can work in a more high-quality way with clients.
- Create a workgroup to review and adapt American Bar Association model standards of practice in state-specific ways.
- Pilot or expand interdisciplinary representation by hiring social workers and/or parent mentors to support attorneys.
- Explore opportunities to provide pre-petition representation, helping families to resolve ancillary legal issues before they reach the point of removal.

A number of resources are available to support implementation of high-quality legal representation, including:

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RESOURCE	DESCRIPTION
<a href="#">Information Memorandum 17-02</a>	The Children's Bureau's overview of the importance and benefits of quality parent representation.
<a href="#">National Alliance for Parent Representation</a>	Protects the rights, dignity, and integrity of families involved in the child welfare system by pursuing justice through effective legal, legislative, and policy advocacy. The Alliance is a project of the American Bar Association Center on Children and the Law, with investments from Casey Family Programs and a national steering committee of legal experts.
<a href="#">Family Justice Initiative (FJI)</a>	Unites professionals from around the country to ensure that all children and parents have high-quality legal representation when courts make life-changing decisions about their families. The Initiative is a collaboration of the American Bar Association Center on Children and the Law, Children's Law Center of California, and the Center for Family Representation.
<a href="#">Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings</a>	FJI's description of the fundamental attributes for quality legal representation for parents and children in child welfare proceedings.
<a href="#">Research on Legal Representation Program Outcomes</a>	FJI's ongoing work to determine whether the FJI model of legal representation positively impacts outcomes for parents and children.
<a href="#">American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases</a>	Drafted with input from practicing parents' attorneys and child welfare professionals, these standards acknowledge the challenges of day-to-day practice while promoting consistent, high-quality representation.
<a href="#">Interim Report to Chief Judge DiFiore</a>	New York State's Commission on Parental Legal Representation recently released its initial findings and recommendations.

- 1 A summary of research can be found in the U.S. Department of Health and Human Services, Children's Bureau. (2017). ACYF-CB-IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings. Retrieved from <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>. Also see <https://doi.org/10.1016/j.childyouth.2019.04.022>.
- 2 Family Justice Initiative. Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings. Retrieved from <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2019/01/FJI-Attributes-Fact-Sheet.pdf>.
- 3 Information in this section is adapted from interviews with Joanne Moore (April 17), Michael Heard (April 4), Brett Ballew (April 4), and Rob Wyman (April 17).
- 4 Personal communication with Joanne Moore, June 19, 2019.
- 5 Courtney, M. E., & Hook, J. L. (2012). Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care. *Children and Youth Services Review, 34*(7), 1337-1343.
- 6 Information in this section is adapted from an interview with Susan Jacobs and Martin Guggenheim, March 28, 2019.
- 7 Information in this section is informed by an interview with Mimi Laver, American Bar Association Center on Children and the Law, April 29, 2019.

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