



STRATEGY BRIEF

SAFE STRONG SUPPORTIVE

September 2024

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

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

—Vivek Sankaran, Clinical Professor, University of Michigan Law School

Providing [legal representation before a dependency petition is filed](#) is an effective upstream intervention to help stabilize families and enable children to remain safely at home. Too often, children enter or linger in foster care due to family issues that do not necessarily warrant separation, such as [substandard housing](#), [substance use disorder](#), or not having access to legal counsel to resolve civil or criminal matters such as custody or protection orders. [Pre-petition or preventive legal advocacy representation programs](#) provide parents with legal and social work advocacy to address issues such as custody and divorce, orders of protection, [safe and affordable housing](#), public benefits, immigration, [guardianship](#), and special education. This support can help prevent both child maltreatment and extended stays in foster care, ultimately resulting in system cost savings.¹

While more research on pre-petition programs is needed, existing evaluations show promise, with some programs demonstrating **nearly 100% prevention of foster care entries**.^{2,3} In the second year of Ohio’s Parent Representation Pilot Program, for example, [92% of pre-petition cases did not progress to a formal filing](#). When removal cannot be avoided, [high-quality post-petition legal representation](#) for parents can increase parent engagement and move children to permanency more quickly.⁴

Common elements of pre-petition legal services

Effective pre-petition legal services programs include upstream referrals, multidisciplinary teams, effective community collaborations, and multiple sources of funding.

Upstream referrals

Many programs offering pre-petition legal support receive referrals directly from the local or state child protection agency. Other referrals may come from hospitals, courts, community-based agencies, schools, and individuals themselves. Community-based referral sources can increase the likelihood that legal support is provided early and that families trust the process and support offered. Roger DeLeon Jr., a father in California with lived experience in the child welfare system, cautioned that “given the trauma and the fear, if the agency is making the referral, families may be hesitant to engage.”

Multidisciplinary teams

[Multidisciplinary teams](#) — including an attorney, social worker, and parent partner with lived experience — collaborate to help families remain safely together and avoid repeat involvement with the child welfare system. Some programs are housed within legal aid organizations, which have ready access to attorneys with expertise in the issues families face. A social worker can help assess needs and link families to services. Parent partners who have similar lived experience can connect with families on a personal level often not possible for social workers or attorneys. Since multidisciplinary teams work under the supervision of the attorney, attorney-client confidentiality generally extends to all team members.

Community partnerships

Many families accessing pre-petition legal services have unmet needs that include and extend beyond legal concerns. Providing access and referring families to community resources in a variety of areas (such as housing, education, substance use disorder treatment, and immigration services) helps support and stabilize families. Schools, hospitals, [family resource centers](#), social service providers, and [faith-based organizations](#) are all potential community partners.

Multiple funding sources

Pre-petition legal representation programs may be funded through a variety of sources, including federal, state, and private. Recognizing the importance of [accessible, high-quality legal representation](#) in keeping children safe with their families, the Administration for Children and Families issued a 2021 [information memorandum](#) highlighting the value of preventive legal services. Effective July 2024, a new [federal law](#) codified the use of Title IV-E funds for legal representation, including pre-petition legal aid to support families with a child at serious risk of removal from the home. The new law also expands the option for legal representation to kinship caregivers, tribes, and custodians of American Indian children. As of December 2022, [32 states and four tribes](#) had entered into agreements to claim Title IV-E funds for legal representation in child welfare cases.

Jurisdictional examples

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. Founded by Vivek Sankaran, who wrote a [seminal piece on preventive legal advocacy](#), the center achieved its legal objectives in more than 98% of its preventive cases in its first three years, and none of the children served in those cases entered foster care. Although it closed in 2016 due to a lack of funding, the center paved the way for the development of other pre-petition legal advocacy programs.

Iowa Legal Aid began serving pre-petition child protection cases in 2014, in collaboration with the state’s courts, public defender’s office, Department of Human Services, and Court Improvement Project. The Parent Representation Project, which receives referrals directly from the child protection agency, nonprofit providers, and juvenile court services, is publicly and privately funded. An interdisciplinary team —

including an attorney, case manager, and parent advocate — assesses and addresses family needs holistically. While the majority of cases involve family law, such as domestic violence protection orders, staff also support families with poverty-related issues such as housing and food, and income stability. Staff work with families to ensure that family needs are met with the goal of preventing initial or additional contact with the child welfare system. Cases are kept open as long as needed and the project has an open-door policy for former clients seeking aid. Since 2018, the project has helped 371 client families avoid court involvement. In 2023, the project closed 68 pre-filing cases involving 150 children. Iowa Legal Aid estimates economic gains of \$6.93 for each \$1 invested, taking into account financial benefits secured for clients and costs saving through avoiding court involvement.⁵ The Parent Representation Project now is integrated into Iowa Legal Aid's Community Schools Project, offering upstream civil legal assistance in public schools and connecting families to community resources.

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's Supreme Court. Aiming 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 (including legal guardianship), or housing issues. The program, which currently operates in 42 of Oklahoma's 77 counties, has over 200 open cases at any given time. According to Program Director Michael Figgins, most of the children that the program serves avoid foster care, and among those who do enter foster care, time away from family is significantly reduced.

Legal Services of New Jersey has represented families in child welfare dependency cases for more than 50 years. Its [Family Stability and Preservation Project](#) receives referrals from the state's Department of Children and Families' Division of Child Protection and Permanency, on behalf of families in the pre-petition stage. Since 2018, the project has assisted about 500 parents in a variety of areas, including access to public benefits, affordable housing, domestic violence, and custody. "If you leave a message, I'm going to call you back," pledges Sylvia Thomas, the project's chief attorney. "I give out my direct number. My clients need me. It's not something that can wait." The project uses a multidisciplinary model that includes attorneys, social workers, and a parent ally. The parent ally serves as a partner with an empathetic ear and a hands-on advocate who accompanies families to social service offices to help connect them to resources. In addition to providing direct supports to families, the project educates stakeholders on how families involved in the child welfare system can be better supported and advises parents on how to navigate the child welfare system successfully.

In **Santa Clara County, Calif.**, the Dependency Advocacy Center's [First Call for Families](#) program was launched in 2021. First Call for Families partners with — and is funded by — the Santa Clara County Department of Family and Children Services to promote family stability and provide support to families before a petition is filed in dependency court. First Call for Families provides Know Your Rights presentations and a warm line to connect families with resources and assist them in understanding and navigating the child welfare system. It also provides individualized prevention support to families that need more intensive services, including peer support, case management, and limited scope legal representation. In 2022-23 fiscal year, 48 of the 152 attendees of Know Your Rights presentations worked for community-based organizations, an outreach strategy designed to build community knowledge about options for parents that may prevent child maltreatment, as well as reduce the number of unwarranted maltreatment reports. During that same year, the warm line received 238 calls. First Call for Families provided 76 callers with legal advice, 54 with referrals to individualized support, and 48 with referrals to other external resources.⁶

In **Snohomish County, Wash.**, the [Family Intervention Response to Stop Trauma \(F.I.R.S.T.\) Clinic](#) is a medical-legal partnership that has been offering free, pre-petition representation to parents with substance-exposed infants since 2019. Clinic attorneys receive referrals from hospitals, community-based agencies, and word of mouth. The clinic works with two experienced [parent allies](#) who provide families with additional support and refer parents to other community-based services, including substance use disorder treatment and Nurse-Family Partnership. By helping parents develop safety plans and, when needed, alternative legal custody arrangements, the clinic has helped prevent dependency petitions in 82% of cases and has helped prevent child removals in 89% of the 1,150 cases served to date, spending less

than five hours on average of attorney time per case. Funding comes from the state Office of Public Defense and community-based child abuse prevention dollars from the state Department of Children, Youth, and Families, as well as other public and private sources. The clinic also promotes [policy and systems change](#) on both a state and national level.

“I come from a place where nobody talks about getting their kids back, nobody talks about CPS helping you. Nobody talks about anything other than, ‘They’re going to take your kids away.’ That’s what I knew. What I know now is that I can trust an attorney. Setting moms up from the very beginning with an attorney is a safer space.”

—Gina WasseMiller, Parent Ally, F.I.R.S.T. Clinic

In **Wisconsin**, the [Family Legal Advocacy and Supports Clinic](#) is a partnership between the state Department of Children and Families, the University of Wisconsin-Madison Law School, and the University of Wisconsin-Madison School of Social Work. A multidisciplinary legal clinic, it serves families at risk of becoming involved in the child welfare system. Social workers from four participating counties refer families to the program and law students collaborate with social work students to support families, offering legal information, direct representation, and warm handoffs to other agencies. In its first year, the clinic [received 136 referrals](#), most of which were for family law issues.

Lessons learned

Developing and implementing a pre-petition legal representation program is a significant and sometimes challenging endeavor. When implementing a new program, start small and engage local stakeholders and partners, including the local child protection agency and parent partners. Build in sufficient time to engage and help stabilize families, and develop plans for program evaluations from the start. These and other lessons learned, from those leading similar efforts, are discussed below.

Barton Child Law and Policy Center’s Preventive Legal Advocacy & Pre-Petition National Cohort

The Barton Child Law and Policy Center at the Emory University School of Law offers a [national cohort](#) for individuals and jurisdictions interested in learning more about preventive legal advocacy. As of July 2024, over 250 individuals from 145 stakeholder organizations in 42 states are involved in the cohort, which includes 56 programs providing preventive legal advocacy and pre-petition services. Cohort members are invited to monthly webinars on topics relevant to preventive legal advocacy practice and program development. The Barton Center’s website also includes [principles and components](#) of preventive legal advocacy and pre-petition representation, a [resource library](#), and [program spotlights](#).

Take time for implementation planning and piloting

It takes time, strong leadership, training, and resources to successfully implement programs. Michael Figgins, executive director of the Oklahoma Legal Aid Society, urges new programs to begin by building an understanding of the context in which the program will operate, examining indicators such as the number of children in foster care, the length of time children typically remain away from family, and the costs of foster care. Starting with a pilot in one or two areas can help programs identify and address implementation issues before expansion. Authors of the first-year evaluation report of the [Ohio Legal Representation Pilot Program](#) recommend setting aside at least six months to “ramp up” a program before engaging client families. Sylvia Thomas from Legal Services of New Jersey recommends “spending a lot of the early time talking, listening, and learning — and really getting an idea of how agencies work and how you can be supportive and also be an advocate.”

Engage the child protection agency, the courts, and other community partners

Pre-petition legal advocacy programs succeed when they have strong collaborative relationships with the many agencies that interact with families receiving services, such as the child protection agency, the court system, and community-based providers. Developing clear communication protocols and trainings to ensure child safety and effective collaboration is paramount. Ongoing outreach and relationship-building may be necessary, particularly in child welfare jurisdictions with high rates of staff turnover. “I have a good relationship with the agency’s legal department” in New Jersey, Thomas said. “I can see things from all sides. I see the struggles that exist from the agency’s side, the public defender, the courts, and clients. I try to bridge those gaps and make sure those entities can communicate in a non-adversarial way.”

Meaningfully include and engage parent partners throughout the process

[Parents with lived experience](#), working as parent partners or allies, are able to connect with families receiving pre-petition legal advocacy services in a personal way that professionals from other fields, such as social workers and attorneys, often cannot. They can help parents understand the processes and culture of the child welfare system. Their credibility, earned by personally navigating the system and successfully reuniting with their own children, can be particularly useful when having sensitive conversations about parents’ present situations and setting their expectations for the future.

“How do we build relationships with families over time and not just check a box? You can’t build a relationship with a checked box.”

—Churmell Mitchell, Father, Alabama

Allow time to listen, build rapport, and help families stabilize

To advance family stability, take adequate time to build relationships with parents and connect them with needed services. Sharon Rochelle, a member of the Casey Family Programs Lived Experience Advisory Board, noted that families in pre-petition legal advocacy programs are not bound by federal time frames like those farther along in the child welfare continuum. “If you are preventing a child from entering foster care, you don’t have to worry about doing a termination of parental rights because that clock doesn’t start ticking,” she said. “You have more time to work through some of the issues with the family like mental health or substance use. I love the idea that you don’t have to use the 12- and 18-month ASFA (Adoption and Safe Family Act) timelines.” Cases should remain open as long as necessary to ensure all issues that put the family at risk have been addressed. In addition, many programs welcome past clients to call at any time with follow-up questions.

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

—Michelle Jungers, Former Managing Attorney, Iowa Legal Aid

Plan for evaluation from the start

Evaluations can help programs continuously improve and help secure long-term funding. New programs should develop a plan for evaluation at the outset. Given that prevention, by definition, requires measuring things that don’t happen, evaluation of pre-petition legal advocacy programs requires creative thinking.

The Barton Child Law and Policy Center and its partners are working to advance a coordinated data collection effort that would create a national dashboard for pre-petition legal representation. “Most of the preventive legal advocacy programs across the country are relatively small pilot projects and their program data, viewed in isolation, only go so far in demonstrating the impact of early legal representation,” said Emilie Cook, senior staff attorney at the Barton Center. “If we had a system of consistent data collection

across programs and a means of compiling that data into an interactive dashboard, the data would go much further in illustrating the robust benefits of these programs.”

¹ Thornton, E., & Gwin, B. (2012). [High-quality legal representation for parents in child welfare cases results in improved outcomes for families and potential cost savings](#). *Family Law Quarterly*, 46(1), 139-154.

² University of Michigan Law School. (2014). [Promoting safe and stable families: Detroit Center for Family Advocacy](#).

³ Madden, E., George, A., & Akpan, S. (2024). [Final report on the McClennan County Parent Advocacy Program](#). Diana R. Garland School of Social Work, Baylor University.

⁴ Content of this brief was informed by consultation with members of the Knowledge Management Lived Experience Advisory Board. This team includes youth, parents, kinship caregivers, and foster parents with lived experience in the child welfare system who serve as strategic partners with Family Voices United, a collaboration between FosterClub, Generations United, the Children’s Trust Fund Alliance, and Casey Family Programs. Members who contributed to this brief include Matthew Darnell, Roger DeLeon Jr., Churmell Mitchell, and Sharon Rochelle. In addition, 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 (now Associate Director of Litigation, Children and the Law, American Bar Association); Michael Figgins, Executive Director, Oklahoma Legal Aid Society; Whitney Jacque, Senior Staff Attorney, Michelle Jungers, Former Managing Attorney, and Nick Smithberg, Executive Director, Iowa Legal Aid; Taila AyAy, Vice President and Executive Director, Adam Ballout, President and Community Outreach, Jennifer Justice, Parent Ally, Gina WasseMiller, Parent Ally, and Neil Weiss, Treasurer and Operations, F.I.R.S.T. Clinic; Emilie Taylor Cook, Preventive Legal Advocacy Fellow, Barton Child Law & Policy Center, Emory University School of Law; and Sylvia L. Thomas, Chief Attorney, Family Stability and Preservation Project, Legal Services of New Jersey.

⁵ Data provided by email correspondence with Whitney Jacque, Senior Staff Attorney, Parent Representation Project, on August 23, 2024.

⁶ Applied Survey Research. (2023). [First Call for Families 2022-23 evaluation report](#).

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