

SUMMARY

In 2020, 737 newborns were removed from their parents' custody in Washington State.¹ Removal from the home and subsequent involvement in the foster care system can be a traumatic experience for a child of any age. However, separation is particularly devastating for babies. Equipped with this knowledge and the understanding that low-income and historically marginalized families are disproportionately represented in the child welfare system, FIRST Legal Clinic is reimagining practices for newborn removal. FIRST Legal Clinic believes that child welfare efforts should be redirected to focus on proactive measures and dependency prevention services. This upstream prevention model aligns with the family preservation efforts addressed in the Family First Prevention Services Act.² FIRST Legal Clinic is confident that committing to broad prevention services by providing parents access to high quality legal representation prior to the filing of a dependency petition will not only strengthen families but also prevent child maltreatment and unnecessary removals.

BACKGROUND

There are over 400,000 children in foster care in the United States, with more children entering the system each year than exiting.³ Approximately 250,000 children leave foster care each year after spending an average of twenty months in the system.⁴ Out of all of the children who enter the foster care system, only half return to their parents.⁵ Families with incomes below the poverty line are twenty-two times more likely to be involved with child protective services than families whose incomes are even only slightly above the poverty line.⁶ The child protection system is almost exclusively composed of children from low income families, and disproportionately includes children of color.⁷

In the United States, families of color are disproportionately represented in the

child welfare system and are more likely to experience negative outcomes compared to White families. In 2018, Black children made up 13.71 percent of the country's total population, yet 22.75 percent of children in foster care.⁸ American Indian/Alaska Native children made up less than 1 percent of the total population, yet 2.6 percent of children in foster care.⁹ This is opposed to White children, who made up 53 percent of the total population, yet accounted for only 49 percent of children in foster care.¹⁰

In Washington State, American Indian and Black children are overrepresented at all points in the foster care system when compared to White children. In October 2020, White children were represented in out-of-home care at a rate of 4.8 children per 1,000.¹¹ This is

compared to American Indian/Alaska Native children at 10.2, Black children at 9.4, and Multiracial children at 10.6.¹² Ultimately, Black children are nearly twice as likely as White children to end up in foster care after an initial dependency case is opened, and Indigenous children are approximately three times as likely as White children to end up in foster care.¹³

Low-income families are disproportionately represented in the child protection system because of the stress associated with poverty and limited support; their increased interactions with government services; and barriers in accessing adequate housing, food, and health care.¹⁴ Parents struggling with substance abuse are much more likely to have their parental rights terminated than parents without such challenges.¹⁵ Up to 79 percent of parents involved with the child welfare system struggle with substance abuse; addressing parental substance abuse is a critical intervention for this population.¹⁶

Removing a child from their home has a detrimental, traumatic effect on a child's quality of life and overall development.¹⁷ Children in foster care have worse outcomes during and following their placement in foster care.¹⁸ Children in foster care are more likely to experience psychopathology and require psychotropic medication than children who are not in foster care.¹⁹ Children in foster care also have significantly more behavioral problems, are at a greater risk of abuse or neglect, have higher teen birth rates, greater rates of homelessness, and lower

career earning potential.²⁰

When newborns are removed from their parents' care, even short separations less than a week deprive families of the critical mother-infant bonding that is necessary to form a securely attached relationship.²¹ Babies' caregivers are extensions to the babies' own regulatory systems;²² babies are innately predisposed to developing an attachment to their caregivers, which is crucial to promote the babies' mental health.²³ Placing a baby in foster care disrupts their primary attachment relationship by providing them with multiple transitions in caregiving.²⁴ These disruptions and transitions have significant, detrimental long-term outcomes, such as difficulty managing emotions, regulating behavior, developing healthy relationships, vulnerability to stress, and psychopathology.²⁵

The American Academy of Pediatrics (AAP) has found success in keeping newborns with their mother utilizing the Eat, Sleep, Console (ESC) approach as an alternative to morphine administration in treating newborns with Neonatal Abstinence Syndrome.²⁶ ESC is a mother-centered approach that reduces the need for newborn drug treatment and the length of hospital stays.²⁷ By keeping mothers and babies together, Yale-New Haven Children's Hospital has decreased the use of morphine treatment in drug addicted newborns from 98 percent to 14 percent, and the average length of stay has dropped from 22.4 days to 5.9 days.²⁸ The AAP advocates for keeping mothers and infants together to promote positive



medical outcomes for babies experiencing Neonatal Abstinence Syndrome.²⁹

Intervention with a parent near birth is critical in achieving lasting outcomes for families. Parents' brains are also uniquely open to substantive changes in behavior, thinking, motivation, and patterns during the first weeks and months of an infant's life.³⁰ Keeping a baby together with their parents improves long-term outcomes for the entire family.

Keeping families together has enormous potential to save resources in the child welfare system.³¹ The average annual cost of a child in foster care is \$45,000.³² Considering the average length of stay in the foster care system, the average total cost per child placed is \$79,125.³³ In Washington State, 737 babies under one month old were removed from their parents' custody in 2020.³⁴ Nearly eighty percent (79.4) of these removals were due to parental substance abuse.³⁵ 737 removals, based on this average total cost of each child who enters foster care, would cost over 58 million public dollars. Keeping families together yields positive outcomes for the children and offers enormous financial benefits to the child welfare system.

PROPOSED SOLUTION

Committing to broad, proactive prevention services will strengthen families by eliminating unnecessary child removals. Providing parents with access to high quality legal representation prior to initial contact with the child welfare system is

a critical component of such services. Collaboration with partners from various disciplines will best support family preservation efforts.³⁶ Most juvenile courts in the country only appoint lawyers to represent parents after a child has been removed from their family's home and placed in foster care.³⁷ However, several states support earlier legal representation to prevent the filing of a dependency case with a removal of children. Pre-filing legal advocacy helps parents reduce barriers and access services that would increase their ability to safely care for their children in their home.³⁸ This early intervention model has been effective in reducing child removals and decreasing the average length of stay in the foster care system for children who are removed.³⁹

In Washington's Snohomish County, an average of twelve babies per month were removed from their parents' care in 2018.⁴⁰ Eighty-nine percent of the babies who entered out-of-home care were still in care at six months, and 80 percent of them were still in care at nine months.⁴¹ The FIRST Legal Clinic, founded in 2019, engages in pre-dependency, early intervention work to prevent these removals. FIRST contracts with the Office of Public Defense to provide pre-filing legal advocacy to these families, specifically to pregnant persons and parents of newborns at risk of governmental removal. Through its removal prevention model, the Clinic aims to prevent substance-exposed newborns from being removed from their parents at birth.⁴²



To connect with parents who may be in need of their services, the Clinic builds relationships with local hospitals and other multidisciplinary providers to provide holistic services to at-risk families.⁴³ FIRST Legal Clinic attorneys, as well as the FIRST parent ally, assist and advise FIRST parents during all stages of state involvement.⁴⁴ The primary role of the attorney is to work with the child welfare agency to determine why the child may be deemed unsafe in the parents' care, advocate for the respectful treatment of parents during all proceedings, assist in safety planning, provide a safe space for a parent to speak without judgment, and ensure that all relevant policies are followed during the investigation.⁴⁵ A parent ally is a person trained as a social worker who connects with the parent through shared experiences.⁴⁶ The parent ally offers both emotional and practical support as well as concrete services and materials throughout the process.⁴⁷ With the help of both the attorney and parent ally, parents are able to achieve the best possible outcomes for their families, including reunification with older children already in foster care and prevention of removal for all of a parent's children.⁴⁸

Engaging in pre-dependency legal advocacy work with at-risk parents requires certain minimum standards of practice. The following are essential requirements for the FIRST Legal Clinic model, as identified by members of the FIRST Legal Clinic:

- An attorney to work directly with the parents;
- A social worker (or similar provider) to

support parents in accessing services, including substance use treatment;

- Connections with service providers; and
- Community partner relationships to generate and facilitate referrals to the prevention services team.

Ideally, a removal prevention program such as the FIRST Legal Clinic would also have access to the following resources:

- Attorneys with at least two years of child welfare experience, experience with parenting plans and non-parent custodians, and familiarity with and proximity to the jurisdictional area;
- A trusted messenger with lived experience with the child welfare system, such as a parent ally;
- Flexible funding for concrete goods or other services, such as car seats or other necessary items to safely care for a newborn; and
- Referrals for any screened-out or uninvestigated intakes or referrals of pregnant women at risk of child welfare agency involvement.
- Establishment of multiple community partners in order to generate a larger volume of referrals for parents at-risk of involvement with child protective services. Key relationships for this prevention services team would include the following:
 - state's child welfare agency;
 - drug and alcohol rehabilitation agencies (with special focus on long-term treatment providers);

- case management services;
- child advocacy nonprofit organizations;
- other legal service providers;
- medical partners;
- in-home service providers;
- parent ally programs;
- policymakers;
- and others.

As a result of the implementation of the above model, FIRST Legal Clinic envisions a future where every family in Washington, and ultimately nationally, has access to these services. The Clinic has been successful in helping reduce family separation and trauma in their community by encouraging and assisting clients in accessing necessary services and navigating the child welfare investigation process. The Clinic's goal is to utilize high quality legal representation to improve the experiences of these families with the child welfare system, prevent the separation of infants from their mother at birth, end the cycle of trauma, and work

"[The FIRST Legal Clinic] supports effective prevention services that reinforce people's efforts to overcome substance abuse. The combination of legal assistance and services orientation means more than 80 percent of parents meet their goal of providing safe and stable environments for themselves and for their families . . . we need programs like First Clinic that start from the premise that keeping families together is a crucial factor in helping children to thrive." - DCYF Secretary Ross Hunter

toward systemic improvement of the child welfare system.

FIRST Legal Clinic has been highly effective in working towards their goals. More recently, between July 2019 to November 2021, FIRST Legal Clinic collected the following data on the filing status of children in the child welfare system:

- Out of 123 clients, only 15 percent are known to have been filed on.
- Out of 82 clients where the filing status was known, only 23 percent were filed on.
- Out of 99 closed cases, 19 percent were known to have resulted in a filing.
- Out of 83 cases that were screened in and subsequently closed, 23 percent are known to have been filed on.
- Out of 83 cases that were screened in and subsequently closed, 16 percent of cases in Snohomish are known to have been filed on, and 7 percent in other WA counties are known to have been filed on.
- Out of 72 cases with a recorded outcome, 89 percent did not result in a removal.
- There were 57 screened in cases with a recorded outcome and 15 screened out cases with a recorded outcome.⁴⁹

Another ten percent of parents entered into voluntary safety plans with The Washington State Department of Children, Youth, and Families (DCYF) and were able to keep custody of their babies. While all dependency filings for babies



(under twelve months) dropped between 2018 and 2020, there was a significantly greater reduction in the FIRST Legal Clinic’s jurisdictional area: Snohomish County saw a 37 percent drop, compared to 17 percent reduction in the rest of Washington.⁵⁰

The model utilized by FIRST Legal Clinic should be implemented and funded in every jurisdiction within the United States. This model prevents children from being unnecessarily removed from their parents, reduces removal-related trauma on the family, and empowers families to utilize necessary resources and services with the support of a multidisciplinary team. Additionally, this model has enormous cost-savings potential. Implementing and funding this model across the United States would support the success and welfare of families and youth while also efficiently utilizing state resources.

STATEWIDE IMPLEMENTATION COST

DCYF reported 2,080 screened-in intakes for babies under 30 days old in the fiscal year 2021.⁵¹ 79.4 percent of infant removals in 2020 were removed for reasons related to a parent’s substance abuse.⁵² The prevention team model requires that each family is assigned one attorney and one social worker. Each full time attorney has the capacity to serve approximately two-hundred parents per year, as does each full time social worker.⁵³ 10.4 full-time employee (FTE) attorneys and 10.4 FTE social workers would be needed to adequately serve the entire state of Washington.⁵⁴ The contracted

price of each FTE attorney is a set rate of \$156,780 and each FTE social worker is \$77,000.⁵⁵ Consequently, the total salary cost for the required attorneys and social workers would be \$2,431,312. Other costs include an estimated overhead of \$150,000 and administrative costs of \$156,780.⁵⁶ **The total estimated cost of statewide implementation of the FIRST Legal Clinic model is therefore \$2,738,092 to assist pregnant persons and parents of newborns.**⁵⁷

In the long run, statewide implementation of the FIRST Legal Clinic model in Washington has significant potential to save public dollars. By investing funds in upstream prevention efforts, the savings of collateral expenses such as foster care, case management, and court costs would offset the total estimated program cost. The FIRST Legal Clinic attorneys typically receive referrals immediately post-birth, though DCYF is supporting the Clinic to connect with parents earlier in their pregnancies. As the Clinic began this work, FIRST found that many of their clients were previously referred to the state child welfare agency multiple times but were ‘screened-out’ and therefore were not getting the necessary help. As FIRST’s partnerships with the medical community continues to grow, FIRST is receiving referrals from an increasing

“People get appointed attorneys for criminal cases all the time for things that are less impactful than your children being taken away . . . it feels too little too late to have this kind of assistance after something is filed.”

- AS, FIRST Legal Clinic client

number of medical providers that work with substance using pregnant parents. Cost savings and data on trauma reduction are anticipated through this work further upstream.

SUCCESS FROM OTHER STATES

In addition to the work done by the FIRST Legal Clinic in Washington, a small number of states have implemented their own pre-filing legal advocacy programs. The data is limited and preliminary, but encouraging that removal prevention strategies could save the child welfare system a significant amount of public dollars and increase positive outcomes for children and families.

Iowa: Iowa Legal Aid initiated a pilot program in four counties. Iowa Legal Aid received referrals from the child welfare agency for families who would benefit from legal services relating to prepetition legal issues, such as obtaining suitable housing or dealing with guardianship and custody matters. The program closed 62 cases before a petition was filed, helped 112 children avoid court involvement, and saved the state an estimated \$6000 per child (\$372,000 total in one year).⁵⁸

New Jersey: Legal Services of New Jersey receives referrals to provide resources to families before a dependency filing when the safety concerns are rooted in poverty. Attorneys provide civil legal assistance, such as access to affordable housing, immigration issues, and child support and custody issues. As of July 2020, the program had prevented 200 petitions from being filed.⁵⁹

New York: The Center for Family Representation represents families who are currently under investigation by the state child welfare system but have not yet had a dependency petition filed. Families are assigned a social worker and parent mentor. An attorney is available to consult with the team but is only appointed if and when a dependency petition is filed. This team advocates for services for the family and helps clients access resources. From July 2019-June 2020, dependency filings were avoided completely in 20 percent of child welfare cases.⁶⁰

Vermont: The Vermont Parent Representation Center (VPRC) served 18 families, including a total of 43 children, over a two year period. Each family faced a significant risk of a filing and child removal. In 78 percent of the cases, VPRC was successful in keeping the families together. The VPRC estimated a savings to the state of more than \$250,000 in two years.⁶¹

"[FIRST Legal Clinic] was the difference between using drugs or not . . . if I lost my daughter, I would have used drugs and given up . . . I am now able to maintain my sobriety and be a good mom. I couldn't have done this without FIRST. Anyone in my situation would desperately need a clinic like FIRST. The FIRST Clinic wanted to keep me with my daughter."

RW, FIRST Legal Clinic client

SUMMARY OF RECOMMENDATIONS

Provide all pregnant persons and parents of newborns at risk of state removal with (1) high-quality legal advocacy; (2) a trusted messenger with lived experience; and (3) rapid access to remedial family preservation services, all with the goals of reducing unnecessary removals, increasing positive outcomes for children and families, and more efficiently utilizing state and federal resources. This goals will be accomplished through:

1. Rapidly serving pregnant persons and parents of newborns at risk of state removal via multi-disciplinary partnerships with existing drug and alcohol treatment, mental health treatment, medication management, in-home services, parenting instruction, case management, services, and medical services.
2. Implementing policies for referrals from private and public agencies to the legal advocacy and trusted messenger networks to empower pregnant persons and parents of newborns to access assistance and remedial services as soon as possible, including before birth.
3. Providing federal funding for the development and operations of pre-dependency legal advocacy clinics nationwide consistent with the model and standards of practice developed and modeled by the FIRST Legal Clinic.

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