

# Using Legal Aid to Keep Families Together and Prevent Child Welfare Involvement

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*“Paul,” a single father from Michigan, was trying to gain custody of his three-year-old son who was at risk of entering foster care because of his mother’s substance use disorder. The court system was difficult to navigate, and he could not afford filing fees and needed assistance applying for a waiver. Lawyers at the Detroit Center for Family Advocacy helped Paul file for a fee waiver, file for custody, and stabilize his housing, which he was also at risk of losing. After gaining custody of his son, the legal team also helped him set up childcare and join a support group.*

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With passage of the Family First Prevention Services Act (Family First) in February 2018, the federal government made clear we must move upstream to resolve issues that destabilize families in order to *prevent* those families from entering or remaining in foster care. Inability to resolve complex legal issues related to or exacerbated by poverty — such as eviction, domestic violence, barriers to employment, family law problems, and lack of access to public benefits or health care — too often masquerades as “failure to act” among parents charged with neglect. Abundant research shows that civil legal interventions can prevent common problems of poverty from escalating to child welfare involvement. Collaborations among lawyers and child welfare system professionals can better leverage resources in ways that proactively address families’ underlying legal problems and help parents like Paul keep his son with him and out of foster care.

## ***Possible Legal Interventions for Particular Types of Neglect***

State and local child welfare agencies only rarely incorporate legal help as an essential tool for keeping children with their families and improving their path to permanency. Yet partnerships are on the rise given a small but growing body of research that shows when children are removed from the home, legal representation can improve the rate of reunification,<sup>1</sup> double the speed to a child’s adoption or legal guardianship,<sup>2</sup> and result in better outcomes for children and families as well as substantial savings for government coffers.<sup>3</sup> However, collaborations to ensure legal representation for the purpose of preventing a child from entering foster

1 Elizabeth Thornton & Betsy Gwin (2012), *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, available at <https://www.jstor.org/stable/23240377?seq=1>

2 Mark E. Courtney & Jennifer L. Hook (2012), *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care*, available at [https://partnersforourchildren.org/sites/default/files/2011\\_evaluation...impact\\_of\\_enhanced\\_parental\\_legal\\_representation...discussion\\_paper.pdf](https://partnersforourchildren.org/sites/default/files/2011_evaluation...impact_of_enhanced_parental_legal_representation...discussion_paper.pdf)

3 Steve M. Wood et al. (2016), *Legal Representation in the Juvenile Dependency System: Travis County, Texas’ Parent Representation Pilot Project*, available at <https://onlinelibrary.wiley.com/doi/full/10.1111/fcre.12218>

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care in the first instance are rarer still.<sup>4</sup> Ideally, the Family First emphasis on prevention and the U.S. Department of Health & Human Services Children’s Bureau’s (Children’s Bureau) recent allowance of reimbursement for legal representation will change that, making such practice the new norm for child welfare programs nationally.

In December 2018, the Children’s Bureau revised its Child Welfare Policy Manual to allow Title IV-E state agencies to seek partial reimbursement for legal representation “for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child’s removal from the home.”<sup>5</sup> This revision was intended, in part, to help ensure that reasonable efforts are made to prevent removal.<sup>6</sup>

According to the most recent Adoption and Foster Care Analysis and Reporting System (AFCARS) report, the top circumstance associated with children’s removal from the home is neglect (62 percent).<sup>7</sup> Neglect generally refers to the inability of a parent or caregiver to meet a child’s basic needs, putting them at risk of harm. The Children’s Bureau further differentiates between types of neglect, including physical, medical, inadequate supervision, emotional neglect, and educational neglect.<sup>8</sup>

Although not specifically in the child welfare context, advocates for including legal representation as an essential prevention tool alongside other supportive services can point to an expansive collection of studies that show that some legal problems — which could otherwise progress to meet the Children’s Bureau’s definition of neglect — can be prevented with legal aid. The table below illustrates possible civil legal interventions that can address some types of neglect that can lead to removal and includes citations to studies that demonstrate how civil legal help makes a difference.

4 Vivek Sankaran (2014), *Using Preventative Legal Advocacy to Keep Children from Entering Foster Care*, available at <https://repository.law.umich.edu/articles/947/>

5 See Question 30 at [https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=36](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36); see also National Association of Counsel for Children (last accessed Feb. 2020), *Children’s Bureau Permits Funding for Child and Parent Legal Representation*, available at <https://www.naccchildlaw.org/page/TitleIVforLegalRepresentation>

6 See [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january-december-2018/reasonable-efforts-as-prevention/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january-december-2018/reasonable-efforts-as-prevention/); see also Casey Family Programs (2020), *How Can Pre-Petition Legal Representation Help Strengthen Families and Keep Them Together?*, available at <https://www.casey.org/preventive-legal-support/>

7 U.S. Department of Health & Human Services, Administration for Children and Families (2019), *The AFCARS Report No. 26*, available at <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>

8 Children’s Bureau (2018), *Acts of Omission: An Overview of Child Neglect*, available at <https://www.childwelfare.gov/pubPDFs/acts.pdf#page=3&view=Types%20of%20neglect>

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Type of neglect	Possible legal interventions
<b>Physical neglect</b> – Abandoning the child or refusing to accept custody; not providing for basic needs like nutrition, hygiene, or appropriate clothing	Helping families apply for or appeal erroneous denials of services and benefits like Supplemental Nutrition Assistance Program (SNAP); Home Energy Assistance; Women, Infants, and Children (WIC); Temporary Assistance for Needy Families (TANF); and Social Security Disability Insurance (SSDI) <sup>9</sup>
<b>Medical neglect</b> – Delaying or denying recommended health care for the child	Helping families apply for or appeal erroneous denials of services and benefits like Medicaid, the Children’s Health Insurance Program (CHIP), or Supplemental Security Income (SSI) <sup>10</sup>
<b>Emotional neglect</b> – Isolating the child, not providing affection or emotional support, or exposing the child to domestic violence or substance use	Helping survivors of domestic violence escape the situation by filing protection orders, securing custody or divorce, obtaining employment and housing <sup>11</sup> Helping people with substance use disorders obtain health insurance and access recovery and treatment programs <sup>12</sup>
<b>Educational neglect</b> – Failing to enroll the child in school or homeschool, ignoring special education needs, or permitting chronic absenteeism from school	Establishing guardianship rights for kinship caregivers to facilitate school enrollment <sup>13</sup> Securing accommodations for a child’s special education needs <sup>14</sup> Helping families apply for or appeal erroneous denials of disability accommodations, and services and benefits like TANF, Medicaid, or SSI to pay for school-based services <sup>15</sup>

Additional research demonstrates that other top circumstances associated with child removal identified by AFCARS can also be mitigated or prevented entirely using legal interventions. For example, in instances of parental drug use and alcohol abuse, studies show that legal aid lawyers can help clients access treatment through medical-legal partnerships or by challenging improper Medicaid treatment denials.<sup>16</sup> Similarly, by opening pathways to mental or behavioral health services, legal aid can prevent removals due to child behavioral problems and caretaker inability to cope.<sup>17</sup>

9 Although there is a lack of peer-reviewed research or other published studies or evaluations of using legal help to secure public benefits, many states have published cost/benefit or return on investment reports that document legal aid organizations’ effectiveness in helping people access benefits they qualify for. E.g., Social Return on Investment from Legal Aid Services: A Statewide Analysis Report, March 6, 2018, <https://delawareccj.org/wp-content/uploads/2018/03/Social-Return-on-Investment-of-Legal-Aid-Services-final-3.7.2018.pdf> (Delaware analysis of economic benefits secured in 2015, “\$10.32 million in public income benefit maintenance or initiation (i.e., social security, TANF, SSI, SSDI, and unemployment, SNAP, WIC, or LIHEAP)”). For more impact studies go to [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/resource\\_center\\_for\\_access\\_to\\_justice/atj-commissions/atj\\_commission\\_self-assessment\\_materials1/download?doi=10.11.890.3723&rep=rep1&type=pdf](https://www.americanbar.org/groups/legal_aid_indigent_defendants/resource_center_for_access_to_justice/atj-commissions/atj_commission_self-assessment_materials1/download?doi=10.11.890.3723&rep=rep1&type=pdf). See also James A. Teufel et al. (2009), *Process and Impact Evaluation of a Legal Assistance and Health Care Community Partnership*, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.11.890.3723&rep=rep1&type=pdf>

10 Robert Sege et al. (2015), *Medical-Legal Strategies to Improve Infant Health Care: A Randomized Trial*, available at <https://pediatrics.aappublications.org/content/early/2015/05/26/peds.2014-2955>; see also Rose-Jacobs et al. (2019), *Housing Instability Among Families With Young Children with Special Health Care Needs*, available at <https://www.ncbi.nlm.nih.gov/pubmed/31292218>

11 Jacqueline Lee & Bethany Backes (2018), *Civil Legal Aid and Domestic Violence: a Review of the Literature and Promising Directions*, available at <https://www.deepdyve.com/lp/springer-journals/civil-legal-aid-and-domestic-violence-a-review-of-the-literature-and-Z6c1KipK7q>; Carolyn Copps Hartley & Lynette M. Renner (2018), *Economic Self-Sufficiency among Women Who Experienced Intimate Partner Violence and Received Civil Legal Services*, available at <https://link.springer.com/article/10.1007%2F10896-018-9977-0>; Institute for Policy Integrity (2015), *Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence*, available at <http://policyintegrity.org/documents/SupportingSurvivors.pdf>

12 Legal Services Corporation (2018), *Opioid Task Force Kick-Off Meeting*, available at <https://www.ncsc.org/~media/Files/PDF/Topics/Opioids-and-the-Courts/Opioid%20Task%20Force%20Kick-Off%20Meeting%20Briefing%20Book.ashx>; see also Daniel Siegal (2019), *Urgent Care: How Attorneys Are Battling The Opioid Crisis*, available at <https://www.law360.com/articles/1171390/urgent-care-how-attorneys-are-battling-the-opioid-crisis>

13 See the American Bar Association Center on Children and the Law (2014), *State Educational and Health Care Consent Laws*, available at [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-33/june-2014/state-educational-and-health-care-consent-laws/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/june-2014/state-educational-and-health-care-consent-laws/)

14 Although there is a lack of peer-reviewed research or other published studies or evaluations of legal help to secure educational accommodations for students with disabilities, the federally-funded network of Protection & Advocacy organizations provide legal help to these students to secure the education services and supports guaranteed under the Individuals with Disabilities Education Act. See e.g., <https://www.disabilityrightsca.org/what-we-do/programs/legal-advocacy-unit-lau>

15 *Supra* notes 9 and 10.

16 See National Center for Medical Legal Partnership (2018), *The Opioid Crisis in America & the Role Medical-Legal Partnership Can Play in Recovery*, available at <https://medical-legalpartnership.org/wp-content/uploads/2018/02/MLP-and-the-Opioid-Crisis.pdf>

17 Aleah Gathings (2014), *MFY Legal Services, Inc.’s Medical Legal Partnership with Bellevue Hospital Center: Providing Legal Care to Children with Psychiatric Disabilities*, available at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1357&context=clr>

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Research also shows that effective reasonable efforts related to housing may include offering legal representation to parents at risk of eviction, or pushing landlords to redress unlawful unsanitary housing conditions to stabilize children’s health.<sup>18</sup> Similarly, though civil legal aid may not be able to prevent a parent’s incarceration, it can help people with a criminal record obtain gainful employment through expungements and record-clearing, resulting in higher employment and wages and lower rates of recidivism,<sup>19</sup> or help to reinstate a parolee’s suspended driver’s license, or modify a child support order based on a person’s actual ability to pay.<sup>20</sup>

The U.S. Department of Health & Human Services, Administration for Children and Families Children’s Bureau information memorandum ‘*High Quality Legal Representation for All Parties in Child Welfare Proceedings*’ states:

*“Both parents’ attorneys and children’s attorneys can be helpful in addressing the collateral legal issues that may leave families vulnerable, such as housing, employment, immigration, domestic violence, healthcare and public benefit issues – one or any combination of which may contribute to bringing families into contact with the child welfare system. Such efforts may help prevent children from entering foster care or help children return home sooner.” (p. 7)*

Many federal agencies have recognized the importance of legal aid in effectively and efficiently responding to problems that may eventually result in child welfare interaction. And in January 2017, the Children’s Bureau made clear its agreement in an information memorandum, saying that counsel for parents and children can help address collateral legal issues that leave families vulnerable or contribute to bringing families into contact with the child welfare system.<sup>21</sup>

### **Funding Support for Legal Aid**

The Children’s Bureau’s evidence-based policy now allowing reimbursement for eligible administrative costs of legal representation for “a candidate” for Title IV-E foster care should become a lifeline for families and child welfare professionals alike in the shared goal of preventing removal, shortening a child’s stay in foster care, and stabilizing low-income families. But Title IV-E funds are not the only option. States receive a significant influx of federal grants to implement many policies and programs, including those to enable access to health care, income security, education, employment, social services, and housing.<sup>22</sup> Many opportunities

18 Stout Risius Ross (2018), *Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants*, available at <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>; Luke Grundman & Muria Kruger (2018), *Legal Representation in Evictions – Comparative Study*, available at <https://www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf>; see also The Justice in Government Project’s research brief on how legal aid can improve housing incomes, available at <https://www.american.edu/spa/jpo/toolkit/module-1.cfm#collapse-5224691>. For supporting evidence of the positive outcomes of the medical-legal partnership model for children, see Robert Sege et al. (2015), *Medical-Legal Strategies to Improve Infant Health Care: A Randomized Trial*, available at <https://pediatrics.aappublications.org/content/early/2015/05/26/peds.2014-2955>

19 J.J. Prescott & Sonja B. Starr (2019), *Expungement of Criminal Convictions: An Empirical Study*, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3353620](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3353620)

20 U.S. Department of Health & Human Services, Administration for Children & Families (June 2012), *Child Support Fact Sheet Series: Access to Justice Innovations*, available at [https://www.acf.hhs.gov/sites/default/files/ocse/access\\_to\\_justice\\_innovations.pdf](https://www.acf.hhs.gov/sites/default/files/ocse/access_to_justice_innovations.pdf)

21 See U.S. Department of Health & Human Services (2017), *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, available at <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>

22 See Module 2 of The Justice in Government Project’s Toolkit which contains information and resources related to funding civil legal aid, including a comprehensive Grants Matrix, Grant Forecasting Guide, and in-depth FAQs, available at <https://www.american.edu/spa/jpo/toolkit/module-2.cfm>. Also see <https://legalaidresources.org/>, the National Legal Aid & Defender Association’s website for federal funding resources.

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to financially support civil legal aid for families at risk of encountering the child welfare system flow from states' power to administer some of these federal funding sources.

Title IV-E state administrators have a number of federal and state administering agency colleagues serving their same population with whom to collaborate on the provision of essential legal help. Other examples of federal funds that can be used for civil legal aid to help families struggling with poverty-related problems that put them at risk of entering the child welfare system include:

- U.S. Department of Health & Human Services (HHS) clarified that legal aid is included in the range of “enabling services” that HHS-funded community health centers can provide to meet communities’ primary care needs.<sup>23</sup>
- HHS has made clear state and local TANF administrators can use funds for legal aid for low-income families that furthers TANF purposes.<sup>24</sup>
- HHS’s State Opioid Response, and Substance Abuse Prevention and Treatment/Community Mental Health Services block grants have all been used to support legal aid that facilitates prevention and treatment services, as well as for children whose parent has a substance use disorder.<sup>25</sup>
- U.S. Department of Housing and Urban Development’s Community Development Block Grant expressly allows state and local governments to use these funds for legal aid to help low-income people avoid eviction and foreclosure, and to secure employment.<sup>26</sup>
- U.S. Department of Justice’s Victims of Crime Act Victim Assistance Formula funds rule clarifies that state administrators can use funds for legal assistance for victims of child abuse and neglect and their kinship caregivers, as well as for elder abuse, domestic violence, and other crimes that may precipitate removal.<sup>27</sup>
- U.S. Department of Labor’s Workforce Innovation and Opportunity Act rule includes legal aid services among the necessary supportive services the nation’s American Job Centers should provide, including helping people with a criminal record remove obstacles to employment.<sup>28</sup>

Passage of Family First combined with the Children’s Bureau landmark allowance for legal representation reimbursement together signal transformational change for parents, children, and the child welfare professionals who serve them. They bring child welfare financing into alignment with research-informed practices to keep children in their homes whenever safe

23 See Form 5A, describing “enabling services” as including those that “support health center patient’s access to non-medical, social, educational, or other related service (e.g., child care, food banks/meals, employment and educational counseling, legal services/legal aid)” at p. 24, <https://bphc.hrsa.gov/sites/default/files/bphc/programrequirements/scope/form5aservicedescriptors.pdf>

24 See The Justice in Government Project’s *FAQs About Legal Aid and TANF*, which explains how TANF can support legal aid and how TANF furthers the goals of TANF, available at <https://www.american.edu/spa/jjpo/toolkit/grant-faqs.cfm#collapse-5364032>

25 See The Justice in Government Project’s *Grant Matrix*, which details how legal aid can be supported using the Substance Abuse Prevention and Treatment Block Grant and the Community Mental Health Services Block Grant, available at <https://www.american.edu/spa/jjpo/toolkit/module-2.cfm>

26 See Chapter 2 of HUD’s *Guide to National Objectives and Eligible Activities for State CDBG Programs* at p. 2-38, available at <https://www.hudexchange.info/onecpd/assets/File/CDBG-State-National-Objectives-Eligible-Activities-Chapter-2.pdf>

27 See <https://www.law.cornell.edu/cfr/text/28/94.121>

28 See <https://www.govinfo.gov/content/pkg/FR-2016-08-19/pdf/2016-15975.pdf>

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and possible. When a child must be removed from their home, these policies keep reunification and permanency within reach by supporting legal representation. The Children's Bureau policies and actions that elevate the importance of quality legal representation promise to move the child welfare system forward in ways not possible even a few years ago. The challenge ahead for us all is to ensure that every state takes full advantage of the IV-E legal representation reimbursement opportunity so that every family in need of legal representation actually receives it. ■

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