

**ORIGINAL ARTICLE**

# Increasing access to justice for families through preventive legal advocacy

Kara R. Finck

University of Pennsylvania Carey Law School,  
Philadelphia, Pennsylvania, USA

**Correspondence**

Kara R. Finck, University of Pennsylvania  
Carey Law School, Philadelphia, PA 19146,  
USA.

Email: [kfinck@law.upenn.edu](mailto:kfinck@law.upenn.edu)

**Abstract**

What is the role of preventive legal advocacy in promoting justice for families and redefining child welfare to focus on family and community-based systems which prioritize community-based support and to forego government oversight, regulation and punishment? Given the timeline for systemic reforms and the necessity of providing access to justice for families presently struggling to protect their family autonomy, preventive legal advocacy is a critical piece of reform efforts and scholarly attention. This article advocates for the expansion of existing preventive legal advocacy models and legislation codifying early access to counsel with the goal of disrupting the traditional pathways into the child welfare and family regulation system, enforcing the rights of parents and children to their family autonomy and meaningfully supporting families to thrive.

**KEYWORDS**

access to justice, child advocacy, child welfare reform, civil legal needs, family court, legal services, legislation, medical-legal partnerships, parent representation, preventive legal advocacy

**Key points for the family court community**

- Preventive legal advocacy can interrupt the traditional path of a child neglect or maltreatment report and investigation by identifying legal issues and providing civil legal support.

- Programs such as medical-legal partnerships and early family defense provide a model for addressing the unmet legal needs and underlying issues which traditionally bring families into contact with the child welfare system.

## INTRODUCTION

For decades, the child welfare system has been plagued by systemic racial disproportionality,<sup>1</sup> extensive family separation,<sup>2</sup> and a failure to improve the well-being of the children and parents impacted by the system's intervention.<sup>3</sup> Reform efforts over the years have targeted improvements in access to counsel for children and parents, a focus on community based programs to prevent family separation and increased support for kin caregivers. Federal guidance has expanded to include a focus on the expertise of youth and parents with lived experience in the child welfare system and preventive efforts that explicitly target preventing the entry of families into the child welfare system.<sup>4</sup> In recent years, legal and social work scholars have advocated for abolition arguing that the system causes more harm to the children and families that it purports to protect and can never be reformed.<sup>5</sup> Indeed, the COVID-19 pandemic demonstrated that a significant reduction in the number of removals conducted by the child welfare system did not result in an increase in harm to children.<sup>6</sup> In response, others have suggested that the system needs to expand its reach to prevent and respond to child abuse and maltreatment which can only be addressed through the current child welfare system's protective model.<sup>7</sup>

This article reflects on the role of preventive legal advocacy in promoting justice for families and revolutionizing child welfare to create a family and community-based system which prioritizes community-based support and interventions untethered to government oversight, regulation and punishment. While there is continued debate as to the most effective prescription for child welfare's persistent injustices and issues, there is little disagreement as to the need for substantial reforms to the law, regulations, and agencies currently governing the child welfare system even among those who defend the system in its current iteration. Administrative, legislative and judicial reforms play a critical role in addressing decades of unjust family separation, disproportionate representation of families of color, and family policing. However, those reforms alone have historically been insufficient to address the myriad legal needs that families face, especially considering recent efforts undoing financial supports for families and children enacted during the pandemic. Moreover, the timeline for those reforms provides little immediate relief for families presently struggling to protect their family autonomy and safety and children currently placed in the foster care system apart from their family.

<sup>1</sup>Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (2001); Nina Bernstein, *The Lost Children of Wilder: The Epic Struggle to Change Foster Care* (2001).

<sup>2</sup>Martin Guggenheim, *How Children's Lawyers Serve State Interests*, 6 NEV. L.J. 805 (2006); Martin Guggenheim, *What's Wrong with Children's Rights* HARV. UNIV. PRESS (2005); Vivek Sankaran et al., *A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1163.

<sup>3</sup>Jerry Milner & David Kelly, *The Need for Justice in Child Welfare*, 99 CHILD WELFARE 3, 1–30 (2021) (available at <https://www.cwla.org/the-need-for-justice-in-child-welfare/>).

<sup>4</sup>Children's Bureau's Capacity Building Center for States, *Creating a Vision Together: Engaging Families and Youth for Better Outcomes*, 20 CHILDREN'S BUREAU EXPRESS 4 (May 2019) (available at <https://cbexpress.acf.hhs.gov/article/2019/may/creating-a-vision-together-engaging-families-and-youth-for-better-outcomes/c13840031b92c150517620efe54bcb19>).

<sup>5</sup>Roberts, Dorothy E., "Why Abolition" (2023). All Faculty Scholarship, 2990. <https://doi.org/10.1111/fcre.12712>; Dettlaff, A. J., Weber, K., Pendleton, M., Boyd, R., Bettencourt, B., & Burton, L. (2020) It is not a broken system, it is a system that needs to be broken: the upEND movement to abolish the child welfare system. J. OF PUBLIC CHILD WELFARE, 14(5), 500–517.

<sup>6</sup>Melissa Friedman & Daniella Rohr, *Reducing Family Separations in New York City: The COVID-19 Experiment and a Call for Change*, 123 COLUMBIA L. REV. 2.

<sup>7</sup>Antonio R. Garcia et al. *The stark implications of abolishing child welfare: An alternative path towards support and safety*, CHILD AND FAM. SOC. WORK (Jan. 2024) (arguing that "the current state of the evidence supports the need for transformation but does not support abolition. Reductions in access to effective child welfare services on the assumption that any involvement with child welfare is a path to greater harm would be misguided and inconsistent with the evidence.").

Preventive legal advocacy must be a critical component of any reform efforts with the goal of improving family well-being, significantly decreasing the number of families impacted by the child welfare system, and addressing the unmet civil legal needs of families. The article begins by defining preventive legal advocacy and identifying the common concepts underlying preventive legal advocacy models. Then, the article discusses examples of programs and reform efforts which utilize preventive legal advocacy strategies to prevent entry into the system and, most importantly, to provide meaningful access to justice and stability for families in need. Ultimately, the article advocates for the expansion of existing preventive legal advocacy models and legislation codifying early access to counsel with the goal of disrupting the traditional pathways into the child welfare and family regulation system, enforcing the rights of parents and children to their family autonomy and meaningfully supporting families to thrive.

## DEFINING PREVENTIVE LEGAL ADVOCACY

Preventive legal advocacy (PLA) is defined as legal services, advocacy and individual representation aimed at intervening and interrupting legal systems before a legal case or crisis occurs. Historically, preventive legal advocacy efforts have been limited in impact due to the funding for legal representation being tied to the initiation of a petition or complaint in court. Therefore, the majority of individuals facing economic, housing and family instability would only have access—potentially—to legal advice and representation when there is a termination of benefits, eviction filing or dependency case alleging abuse and neglect.<sup>8</sup>

Nationally, PLA programs address a wide range of legal issues including lack of access to entitlements and benefits, housing stability and eviction prevention, and the social determinants of health.<sup>9</sup> Preventive legal advocacy models include representation of individuals with legal issues prior to those legal issues resulting in formal court involvement. For example, a tenant working with an attorney from a medical legal partnership would receive legal representation to avoid an eviction filing or to prevent the continuation of substandard and unhealthy housing which might impact the tenant's health. In this scenario, the preventive legal advocacy focuses on a legal strategy to prevent court involvement entirely, recognizing the significant costs attached to a court process including the stress and disruption for a family even if the eviction is ultimately averted. In many medical-legal partnerships, the formalized screening for potential legal issues at the beginning of the doctor-patient relationship is the first step in identifying whether a potential legal issue exists and if earlier intervention would resolve the issue.<sup>10</sup> The goal is to identify the potential legal issue as soon as possible to avoid the timely, stressful and financially taxing process of a court case.

Preventive legal advocacy programs can focus on preventing formal court or systems involvement by identifying potential legal issues and proposing legal and social service remedies during the decision-making phase of whether to initiate a case or denial. As an example, the family regulation system investigates parents after a report of suspected maltreatment is made to the state agency. A parent with access to a preventive legal advocacy program would be able to secure representation and legal advice during that investigation process, ultimately impacting the outcome and ideally preventing family separation and lessening the traumatic impact of the family regulation system. In this model, a parent who is struggling with financial and educational stability for a child with complex behavioral health needs would have an interdisciplinary legal team that could identify potential sources of income supports and benefits, in addition to asserting the parents' legal rights to special education services for their child. Most

<sup>8</sup>For example, a recent movement in Philadelphia to provide right to counsel in housing court matters conditions the representation on the following three scenarios: eviction proceedings, administrative proceedings that could lead to the termination of a tenancy or eviction or public housing subsidy termination proceedings. See *Philly's Right to Counsel gives tenants facing eviction free representation*, PHILA. INQUIRER, Jan. 26, 2023.

Even recent right to counsel in housing court programs require that the situation has reached the point of eviction as opposed to preventing the filing.

<sup>9</sup>Yael Cannon, *Medical Legal Partnership as a Model for Access to Justice*, 75 STANFORD L. REV. (2023).

<sup>10</sup>National Center for Medical Legal Partnership & The Advisory Committee, Tool: Screening for MLP legal needs in health care settings, Oct. 14, 2015 detailing the civil legal aid issues and screener questions that can be customized for the patient populations served by the medical host and "based on well-tested, consistent questions about patients' income and insurance, housing and utilities, education and employment, legal status and personal stability" (available at <https://medical-legalpartnership.org/mlp-resources/i-help-screening-tool/>)."

importantly, the preventive legal advocacy would interrupt the child welfare system's traditional response of filing a case or initiating an investigation in order to provide services.

In the particular context of the family regulation system, the explicit goal of preventive legal advocacy is to avoid formal and informal interactions with the family regulation system and ultimately to prevent family separation by addressing family stability and promoting family unity.<sup>11</sup> Therefore, the legal issues are broadly defined beyond traditional child welfare advocacy and instead focus on a range of legal issues including housing, economic stability, benefits, and access to childcare, healthcare and education. A family who might otherwise be at risk of a report to child welfare services because of what may be deemed unsuitable housing by an investigative caseworker would have access to a housing attorney to enforce their rights as a tenant prior to a housing crisis. A mother being investigated by the child welfare agency for educational neglect would be able to seek representation before a case is filed in Family Court, and potentially advocate for increased educational resources or special education services. This model is in contrast to the current system which requires a legal filing for representation to attach and a focus on parenting services as opposed to identifying legal issues such as benefits, special education rights and housing. Ultimately, preventive legal representation, particularly if utilizing a holistic model which emphasizes the importance of both legal and social service needs, focuses on avoiding involvement in court and targeting the necessary supports outside of a court case, legal mandate or implicit threat from the child welfare agency.

This model is especially critical considering the data surrounding the number of legal issues faced by low-income individuals and families and the persistent misperception of the legal nature of social problems such as unstable housing and access to benefits. Often referred to as the justice gap, research shows that individuals don't necessarily identify issues as legal issues at all or until a moment of crisis and are more often unrepresented when there is a civil legal case.<sup>12</sup> The most recent Access to Justice report found that 74% of low-income households faced at least one civil legal issue which was considered to be of significant impact to their lives in half of those respondents. When an individual seeks legal representation for those issues, research suggests that as many as one in two requests for help to legal services offices are turned away.<sup>13</sup>

The reasons provided for failing to seek legal help are illustrative in considering the role of preventive legal advocacy, particularly with regards to the family regulation system. If there is a sense that there are costs to seeking legal advice even in the face of a pending or urgent legal issue, then otherwise preventable legal issues will go unaddressed and resolution will be significantly more difficult if it has to be obtained through the court system.<sup>14</sup> Individuals cited a lack of knowledge about their legal rights and entitlements, lack of access to legal professionals and a belief that a legal professional would not be able to help with their civil legal issue, in addition to low literacy, physical or mental disability, isolation, apprehension about the courts and legal system, a sense of stigma and prior experiences with the legal system that discouraged participation.<sup>15</sup>

Social science scholars have also noted the role of transaction costs in discouraging participation and defined those costs as the modes of operation in government agencies such as intrusive policies and procedures, disrespectful interactions and multiple administrative obstacles which are raised when individuals attempt to enforce their legal rights and entitlements.<sup>16</sup> In the family regulation system, these perceived costs are decidedly higher given the nature of the state intervention and the broad authority granted to agency caseworkers prior to any required court oversight. A parent's perception of whether they can activate or enforce their legal rights is decidedly more complex when undergoing a child welfare investigation. As one scholar noted, "it must also be recognized that while CPS

<sup>11</sup>Casey Family Programs, Strategy Brief: Transforming Child Welfare Systems: What Are Community Based Multidisciplinary Preventive Legal Advocacy Programs? (Aug. 15, 2022) available at <https://www.casey.org/preventive-legal-advocacy-programs/>; Vivek Sankaran, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care*, WM. MITCHELL L. REV. 40, no. 3 (2014): 1036–47.

<sup>12</sup>Legal Services Corporation. 2022. *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans* (available at <https://justicegap.lsc.gov/the-report/>).

<sup>13</sup>*Id.*

<sup>14</sup>Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans*, 2009 (noting that respondents in the state surveys expressed the belief that enforcing and taking up the rights and benefits they were entitled to was just "too much hassle").

<sup>15</sup>See *id.*

<sup>16</sup>Vicki Lens & Susan Elizabeth Vorsanger, *Complaining After Claiming: Fair Hearings After Welfare Reform*, 79 SOC. L. SERV. REV. 3 (2005).

agencies seek to meet the needs of both children and parents, the nature of the intervention is inherently coercive.”<sup>17</sup> Indeed, studies have shown that social workers are often responsible for contributing to those transaction costs by failing to identify legal issues and to provide resources for legal assistance.<sup>18</sup> Low income families are more likely to be in contact with social workers and caseworkers who may identify a social need but not a legal issue or remedy beyond making a report to the child welfare agency or seeking for a child to be removed from their home.

The most prevalent civil legal issues for low-income individuals are housing, health care, income maintenance and consumer legal issues. One can envision a scenario where a housing, health care or income maintenance issue would be considered a potential basis for a report of suspected maltreatment or even evidence of abuse or neglect depending on the severity of the issue and the alleged impact on a child. A family struggling with their landlord to make repairs to a home could be investigated for unsuitable housing. A young parent who lost their job is at risk of an investigation if she is not able to pay for daycare or transportation to medical appointments. Accessing legal advocacy for those issues could provide critical support before there is a crisis in housing or income that might make the intervention of the child welfare system more likely. Furthermore, there is growing evidence that an increase in a family's income can reduce child maltreatment reports, even if the income amount is relatively small.<sup>19</sup> Preventive legal advocacy programs target civil legal needs and, in many cases, material supports that can stabilize a family without resorting to the child welfare system.

## POVERTY AND NEGLECT IN THE CHILD WELFARE SYSTEM

The child welfare system is particularly ripe for preventive legal advocacy given the overlap in the legal definitions of neglect with the conditions of poverty and the persistent prevalence of cases of neglect as opposed to physical or sexual abuse. While the state law on what constitutes neglect differs, neglect is generally defined as a failure to provide adequate care, supervision, housing, food, education and medical care to a child. A handful of states have carved out explicit exceptions to the conditions of poverty not being sufficient to prove neglect or as the basis for a termination of parental rights, but most states are silent or ambiguous on the role of poverty in determining neglect.<sup>20</sup> Research also shows that housing instability and financial concerns increase the probability of child welfare involvement,<sup>21</sup> whereas access to public benefits decreases child welfare involvement.<sup>22</sup> Preventive legal services that target civil legal needs such as housing, childcare and benefits could play a critical role in decreasing reports to child welfare agencies and entry into the child welfare system.

A child welfare investigation also presents an opportunity for preventive legal advocacy programs to identify unmet legal needs in a collaborative setting where families can receive individualized assessment and support. In child welfare practice, investigations can be far-reaching and pend for weeks, resulting in an increased level of stress, surveillance and potential for involuntary intervention in the family's life. While child welfare caseworkers perceive their role in a helping manner as opposed to mandating compliance, families are acutely aware that the child welfare caseworkers have the authority to remove a child from their care.<sup>23</sup> As one social work scholar noted, “CPS services are inherently accusatorial, as they are primarily initiated as a result of judgments about parenting efforts and

<sup>17</sup>Michael S. Wald, *Redesigning State Intervention on Behalf of “Neglected” Children*, RESEARCH ON SOCIAL WORK PRACTICE 2022 Vol. 32(5) 504–510, 504; Darcey Merritt “How Do Families Experience and Interact with CPS?”, ANNALS AAPAS 692 (2020).

<sup>18</sup>See Legal Services Corporation, *supra* note 17.

<sup>19</sup>Wald, *supra* note 18 at 505–506 (discussing a number of studies including an emergency fund for parents which was associated with a reduction in the number of service referrals and the potential impact of greater income support for parents as a means of addressing parental behaviors in impoverished families).

<sup>20</sup>Human Rights Watch, “If I Wasn’t Poor, I Wouldn’t Be Unfit”: The Family Separation Crisis in the United States at 34–37 (November 2022) (available at [https://www.hrw.org/sites/default/files/media\\_2022/11/us\\_crd1122web\\_3.pdf](https://www.hrw.org/sites/default/files/media_2022/11/us_crd1122web_3.pdf)); see also Child Welfare Information Gateway, *Separating poverty from neglect in child welfare* (2023) (available at <https://www.childwelfare.gov/pubs/bulletins-poverty/neglect>).

<sup>21</sup>Aislinn Conrad-Heibner & Elizabeth Byram, *The temporal impact of economic insecurity on child maltreatment: A Systematic Review*, TRAUMA, VIOLENCE & ABUSE 21(1), 157–158 (2020).

<sup>22</sup>Julie Y. Cai, *Economic Instability and child maltreatment risk: Evidence from state administrative data*, CHILD ABUSE & NEGLECT, 130, 105,213.

<sup>23</sup>Darcey Merritt, *How Do Families Experience and Interact with CPS?*, 692 ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 203, 209–210 (Nov. 2020).

practices made by authorities outside of family systems.”<sup>24</sup> Absent an advocate during the investigation process, families may not feel empowered to advocate for themselves and consequently “[w]hen education, healthcare, mental health and social service systems channel families to state surveillance that threatens child removal, they may distance families from the systems tasked with assisting them.”<sup>25</sup>

Furthermore, the impact of an investigation is far-reaching even if the investigation doesn't result in a removal or a case in court. Parents and caregivers may be subject to “voluntary” services as a condition of the investigation including submitting to drug testing, parenting classes or other social services. While the service plans recommended during an investigation are voluntary to the extent that it is not a court order, there is the clear implication that a failure to engage in the service plan as dictated by the agency caseworker could result in an escalation of the investigation or a finding. Scholars have previously noted the constitutional issues raised by the overly broad scope and authority granted to caseworkers during a child welfare investigation.<sup>26</sup> For example, a parent who is being investigated for drug abuse can be asked to submit to drug testing and counseling and their refusal or lack of compliance weaponized against them in the investigation as an admission of neglect. Parents who are seeking additional support for drug treatment services may be hindered in choosing the provider or modality of treatment since the agency dictates the referral and can categorize alternate providers as insufficient or evidence of noncompliance. A multi-disciplinary preventive legal advocacy program would address the parent's legal rights during the investigation alongside the social worker's individualized assessment of social service needs and treatment options in partnership with the parent.

Parents and caregivers may also be placed on a state registry for child abuse and maltreatment because of an investigation which can hinder their ability to be hired for jobs particularly in social service settings where staff work with children and families. The state registry and subsequent bar to certain employment does not distinguish between the severity of the cases or the result of the investigation in any meaningful way, instead removing economic opportunities for families who may be most in need of employment to ensure family and child stability. Ultimately though, the harm of a removal of a child from their family is so significant that any form of prevention that could lessen that outcome is crucial. Preventive legal advocacy addresses the root causes of the family's potential entry into the child welfare system by identifying underlying legal needs, providing holistic support through the provision of individually tailored and voluntary services, empowering families and holding agencies accountable.

## EXAMPLES OF PLA MODELS

Over the past decade, preventive legal advocacy models have risen nationally to include medical-legal partnerships and pre-petition representation for families. Medical-legal partnerships (MLP) in pediatric and family clinics provide a rich opportunity for engaging with families in a trusting, non-punitive environment to identify legal barriers and social supports, while changing the traditional narrative around child welfare intervention among medical professionals. Pre-petition legal advocacy programs which focus on working with families who are being investigated or at risk of being investigated by the child welfare agency have demonstrated successful results in preventing court involvement and providing individualized, targeted and voluntary services and supports to families.

The medical-legal partnership model embeds legal services in the healthcare setting to address the social determinants of health. The social determinants of health are the complex and multi-faceted social conditions including housing, income, family safety and education that impact individuals' health. In 2021, the Administration for Children and Families recognized the importance of civil legal advocacy in promoting child and family well-being and the

<sup>24</sup>Merritt, *supra* note 21, at 204–205 (noting that “every child and parent who becomes involved with CPS is subjected to varying levels of stress and trauma stemming from the inherently intrusive nature of the system.”).

<sup>25</sup>Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIO. REV. 610–638 (Aug. 2020).

<sup>26</sup>Joshua Gupta-Kagan, *Towards a Public Health Legal Structure for Child Welfare*, 92 NEB. L. REV. 897, 928–41 (2014).

myriad models of legal services and funding streams for work impacting families.<sup>27</sup> More recently, federal funding has expanded for medical-legal partnership plus models (MLP+) to expand traditional medical-legal partnership models to include social services through a social service navigator and relationships with local social service providers.<sup>28</sup> In many ways, this model reflects the trend in legal service models to incorporate social workers and peer advocates to expand the remedies and resources available to clients and to enhance the legal representation. MLP programs focusing on pregnant and parenting clients have demonstrated the benefits of preventive legal advocacy in avoiding unnecessary family separation, strengthening family supports and improving child well-being.

MLPs in the pediatric context have the added benefit of changing the traditional narrative for mandated reporters such as doctors, nurses and hospital social workers around the nexus between poverty and neglect and the limits of a child welfare agency's ability to provide support for civil legal needs. If a family reports a utility shutoff during a routine pediatric visit, the medical staff can refer the family to the MLP for legal support as opposed to making a report to the child welfare agency with the hope that services will be provided to remedy the utility issue. MLPs also provide opportunities for cross-professional training on resources and the role of preventive legal services in addressing the root causes of child welfare involvement including substandard housing, lack of access to medical and behavioral health care, and lack of access to benefits and entitlements.

Pre-petition models of preventive legal advocacy focus on providing legal services to parents and caregivers who are the subject of child welfare investigations before a case has been filed in court or a child has been removed from their family. The model emphasizes early intervention to inform parents, caregivers and children on their rights during an investigation and to advocate for families who may not have access to or information on additional supports and services separate from the child welfare system. A multi-disciplinary team identifies any unmet legal and social service needs and works collaboratively with the family to address the issue identified by the child welfare agency. In some models, parent advocates or peer support staff provide invaluable assistance to parents in navigating this process which can include attending meetings with the investigating caseworkers, negotiating safety plans and recommending voluntary services.

As one example targeting a specific population, the Family Intervention Response to Stop Trauma Clinic (FIRST) utilizes a multi-disciplinary team to provide preventive legal services to pregnant or newly parenting mothers with substance abuse issues.<sup>29</sup> Interventions range from providing legal support in the hospital upon giving birth, accessing housing programs, connecting to community-based substance abuse programs and offering other services to promote stability during pregnancy and with a newborn including baby supplies.<sup>30</sup> The program which originated as a pro bono partnership with a hospital and addiction recovery program grew to receive referrals directly from the state child welfare agency. In California, First Call for Families is a preventive legal advocacy program within a court appointed office for representing parents and children in San Jose Family Court. The interdisciplinary team of attorneys, social workers and parent mentors work to provide legal representation to avoid a filing in Family Court, prevent family separation and ensure access to resources.<sup>31</sup> The Family Representation Project of Legal Services of New Jersey also receives referrals directly from the state child welfare agency and address unmet civil legal needs including housing instability, child support, benefits denials, domestic violence, and immigration status. The project reports that most of the referrals identified by the state agency involve housing instability.<sup>32</sup> The program reported

<sup>27</sup>Administration for Children and Families, ACYF-CB-IM-21-02, Jan. 14, 2021, Subject: Civil Legal Advocacy to Promote Child and Family Well-being, Address the Social Determinants of Health, and Enhance Community Resilience (available at <https://www.acf.hhs.gov/cb/policy-guidance/im-21-02>).

<sup>28</sup>Office of Community Services, An Office of the Administration for Children and Families, Medical-Legal Partnership Plus (available at <https://www.acf.hhs.gov/ocs/programs/mlp-plus>) (providing an overview of the Medical-Legal Partnership Plus program and availability of federal funding to support these partnership programs).

<sup>29</sup>Adam Ballout and Melinda Drawing, *The F.I.R.S.T. Legal Clinic: A New Frontier of Partnerships to Stop Trauma*, ABA LITIGATION SECTION COMM. (July 14, 2022) (available at <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/first-legal-clinic-new-frontier-partnerships-stop-trauma/>).

<sup>30</sup>Amanda Robert, *Family First: A Group of Washington lawyers works to keep infants with their mothers*, ABA J., Sept. 7, 2023 (available at <https://www.abajournal.com/web/article/family-first-a-group-of-washington-lawyers-works-to-keep-infants-with-their-mothers>).

<sup>31</sup>Katie Joh et al., *Cornerstones of Interdisciplinary Prevention Advocacy* (Feb. 9, 2023), (available at <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/cornerstones-interdisciplinary-prevention-advocacy/>).

<sup>32</sup>Gianna Girodano & Jey Rajamaran, *Increasing Pre-Petition Legal Advocacy to Keep Families Together*, Dec. 15, 2020 (available at <https://bartoncenter.net/wp-content/uploads/2023/10/PP-LSNJ-Increasing-Pre-Petition-Legal-Advocacy-to-Keep-Families-Together-1.pdf>).

after 4 years of implementation that not a single child had been removed from the cases referred for preventive legal advocacy.<sup>33</sup>

Law school clinics have also utilized preventive legal advocacy models, including the Family Legal Advocacy and Supports Clinic (FLASC) in Wisconsin. FLASC, which is funded by the state child welfare agency, pairs law and social work students from the University of Wisconsin to provide legal representation and advice to families who are referred to the clinic by child welfare caseworkers. The intervention is preventive because the referred families are not the subject of a family court petition, and an unmet civil legal need is identified in the course of an investigation. Finally, the intervention is entirely voluntary with the explicit training for caseworkers that “FLASC is not to be used as a coercive tool, and families should not be threatened with more formal legal action if they do not participate.”<sup>34</sup> During the first year, FLASC received over a hundred referrals for family law, guardianship and domestic violence issues and over 50 referrals for social service needs including benefits applications and housing.<sup>35</sup>

As discussed earlier, child welfare investigations are extremely fraught for families given the overarching threat to family stability and broadly defined scope of interventions that can be mandated during the investigation phase absent court oversight. Two states have enacted laws regulating notice and rights during the child welfare investigation to provide parents with clarity on their rights, notice requirements and guidelines for agency practice during the investigation. These laws present another opportunity for preventive legal advocacy programs to enforce family's rights during an investigation, empower families to advocate for themselves, and prevent entry into the family court and foster care system.

In California, focusing on the uniquely precarious position of youth in foster care who are pregnant and parenting, legislators amended the law to require the child welfare agency to notify the youth's child advocate attorney if there was a report of suspected maltreatment.<sup>36</sup> Additionally, the law requires that the agency notify the parent of their rights to seek legal representation, to refuse to speak to the agency caseworkers, to refuse entry into their home, to refuse to permit an interview with the child and to refuse to take a drug test. While the codification of these rights is important, attorneys working with youth in foster care with an investigation are integral to ensuring that the agency abides by the law without retribution to the parent. The child's attorney must also take a preventive focus in advising and representing their client during their investigation as a parent so that family autonomy is preserved whenever possible.

In Texas, parents who are the subject of a child welfare investigation must be notified by formal notice that includes a summary of the allegations, department procedures during the investigation, and a description of the circumstances which would warrant a removal of their child from the home.<sup>37</sup> The statute provides that the notice must be “brief and easily understood” in addition to being “written in a language that the person understands, or if the person is illiterate, is read to the person in a language that the person understands.”<sup>38</sup> The notice requirements support attorneys representing families during an investigation providing advocates with guidance on the allegations and potential responses and services to address the identified issues. Furthermore, it addresses the overly broad scope of most child welfare investigations where the initial report is a mere starting point for an inquiry into all elements of the parents' behavior and functioning both in the present and in the past. These legislative reforms address the traditionally broad scope of child welfare investigations and provide a foundation for preventive legal advocacy programs to advocate for families and ensure equity and accountability from agencies.

<sup>33</sup>*Id.* at 3 (noting that Legal Services of New Jersey received 200 referrals from the New Jersey Division of Child Protection and Permanency with no removals of the 300 children who were the subject of the referral).

<sup>34</sup>Cary Bloodworth, *A Law Clinic Model for Preventive Legal Advocacy*, Nov. 14, 2023 (available at <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/fall2023-a-law-clinic-model-for-preventive-legal-advocacy/>).

<sup>35</sup>*Id.* at 4.

<sup>36</sup>Cal. Assembly Bill 670 (stating that “the people of the State of California do enact as follows:...(1) When an agency receives a report pursuant to Section 11166 alleging abuse or neglect of the child of a minor parent or a nonminor dependent parent, the agency shall, within 36 hours, provide notice of the report to the attorney who represents the minor parent or nonminor dependent in dependency court.”).

<sup>37</sup>Tex. Fam. Code § 261.307 (including the provision that parents and custodial caregivers are entitled to “a verbal notification of the right to: (A) not speak with any agent of the department without legal counsel present”).

<sup>38</sup>*See id.* at 261.307 (1)(B).

While the models of preventive legal advocacy programs differ in many respects, there are several common themes that emerge in the programs targeting families impacted or potentially impacted by the child welfare system. First, the programs emphasize early legal intervention either before a report has been made to the child welfare agency, in the place of a formal investigation or during an investigation prior to filing in court. The legal issues are not isolated to whether there is a filing or removal of a child, but rather expanded to include the range of civil legal issues which are intrinsically tied to family stability. Second, the programs utilize a multidisciplinary approach understanding that preventive legal advocacy incorporates the provision of social services alongside legal remedies. Third, partnerships are critical to the success of preventive legal advocacy programs in identifying families and providing preventive legal services. Whether PLA programs are based in a pediatric medical clinic, receiving referrals from hospital labor wards or partnering with drug treatment programs serving parents, partnerships provide access to families with unmet legal needs without the implicit threat of removal and opportunities to train across professions on civil legal needs and promoting family autonomy and stability. Finally, the programs and legislation prioritize the rights of families to their family autonomy and legal representation to ensure the agency's accountability and the family's access to justice.

## CONCLUSION

While preventive legal advocacy programs have expanded in the context of other civil legal issues such as housing and benefits, there is tremendous room for growth in programs specifically working with families at risk of being impacted by the child welfare system. Preventive legal advocacy models are ripe for addressing the overlap of the conditions of poverty, unmet civil legal needs and neglect as defined by the child welfare system. As another example, federal law requires all states to demonstrate that reasonable efforts have been made to prevent the removal of a child.<sup>39</sup> Preventive legal advocacy programs should be included as reasonable efforts given the model's ability to address unmet civil legal needs, such as providing access to childcare and healthcare, and granting income supports which could prevent the need for a removal. Federal funding should continue to be accessed to support legal representation prior to court involvement and should expand to include a range of preventive legal advocacy models working with families.

While research around these programs is growing with promising results, there continues to be a need for recognition of the model's potential in disrupting the child welfare system. Technical assistance programs for preventive legal advocacy projects are one step towards the goal of compiling resources, research and support for programs aimed at intervening earlier with families to prevent entry into the system.<sup>40</sup> Research on preventive legal advocacy programs focused on families at risk of involvement with the child welfare system should continue with a focus on the impact of preventive legal advocacy programs on preventing removals and filings in court and providing concrete supports including benefits, income, housing, childcare and medical care. Law school clinical programs for child and family advocacy should expand their focus to preventive legal advocacy models as an integral part of training the next generation of lawyers. The model's focus on multidisciplinary practice incorporating social work and medical partnerships provide a host of critical skills for law students including interprofessional collaboration, out of court advocacy, and client centered representation. Law students well-versed in preventive legal advocacy partnerships and multi-disciplinary collaboration on behalf of clients are poised to become leaders in breaking down the traditional silos which prevented families from accessing justice and empowering families to thrive outside of government surveillance and mandates.

<sup>39</sup>Jerry Milner & David Kelly, *Reasonable Efforts as Prevention*, CHILD L. PRAC. TODAY (Nov. 15, 2018) (available at [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/)).

<sup>40</sup>Emory University School of Law Barton Child Law and Policy Center (a national cohort of programs in approximately 30 states providing opportunities for programs to collaborate, receive technical assistance) compile materials and create spaces for discussion on preventive legal advocacy efforts, challenges and successes (available at <https://bartoncenter.net>).

As part of larger efforts to dismantle the child welfare system, preventive legal advocacy programs represent an opportunity to reframe interventions aimed at supporting families and promoting the safety and well-being of children. These models also provide immediate support for families enmeshed in the child welfare system and seeking access to justice to protect their family autonomy. Legislative and judicial reforms play a critical role in addressing decades of unjust family separation, disproportionate representation of families of color, and family policing. However, those reforms alone are insufficient to address the myriad legal needs that families face, especially considering recent efforts undoing financial supports for families and children. Preventive legal advocacy models disrupt the traditional pathways into the child welfare system, provide access to justice for families, and empower parents to advocate for their families.

CONFLICT OF INTEREST STATEMENT

None.

AUTHOR BIOGRAPHY



**Professor Kara R. Finck** directs the University of Pennsylvania Carey Law School's Interdisciplinary Child Advocacy Clinic, focusing on the legal needs of families and youth. Students engage in direct legal representation through innovative legal partnerships, while also working on systemic reform projects in the areas of family defense, child advocacy and immigrant children's rights as part of an interdisciplinary team of social work and law students.

Before coming to Penn Carey Law, she was the Managing Attorney of the Family Defense Practice at The Bronx Defenders, where she created a groundbreaking interdisciplinary legal practice for parents involved in the child welfare system. Her areas of specialty include child welfare, parents' rights and interdisciplinary practice focusing on law and social work collaboration including the textbook, *Social Work Practice and the Law*, co-authored with Dr. Lyn Slater, PhD (Springer Publishing, 2011). She has presented nationally and internationally on best practices in child welfare cases, innovative legal services models, the collateral consequences of child welfare involvement and interdisciplinary collaboration.

**How to cite this article:** Finck, K. R. (2024). Increasing access to justice for families through preventive legal advocacy. *Family Court Review*, 62(4), 842–851. <https://doi.org/10.1111/fcre.12829>