

Testimony Before the Kansas Special Committee on Foster Care Oversight
August 26, 2020

High-Quality Legal Representation for Youth, Parents and Kin

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Good afternoon Chair Concannon and members of the Committee:

My name is Allison Green and I serve as Legal Director at the National Association of Counsel for Children (NACC).¹ As you consider the needs and opportunities for improvement within Kansas' foster care system, I join you today to provide a national perspective about how other states and the federal government are grappling with similar challenges and effectively utilizing legal advocacy as a tool for change. Kansas is poised to harness many of these opportunities, which align with the state's commitment to provide strong support for families and prioritizing the well-being of young people.

If you remember nothing else from my testimony today, remember this: **high-quality legal representation makes a difference. It speeds families to permanency and saves the state money.** The evidence-based impact of high-quality lawyering at all phases of the child welfare process has received little attention in prior years. Now, a growing body of research has pointed bipartisan policymakers in a common direction – towards agency-court-legal service provider partnerships that prevent child maltreatment, protect the rights of young people, parents and kin, and build bridges between branches of government that were previously siloed.

U.S. Children's Bureau's Policy Shift

Let's begin with the U.S. Children's Bureau's leadership on this issue. For decades, child welfare agencies like Kansas' Department for Children and Families (DCF) have routinely sought up to 50% federal reimbursement in eligible cases² for "administrative costs." Historically, this funding has supported the typical costs of doing business in child welfare – ensuring adequate office space,

¹ Founded in 1977, NACC is a national non-profit organization founded dedicated to advancing the rights, well-being and opportunities for children impacted by the child welfare system. Today, NACC represents a national membership network of child welfare law professionals, including attorneys who represent children, parents, and child welfare agencies, as well as other multidisciplinary partners such as CASAs, pediatricians, and judges. For more information, visit: <https://www.naccchildlaw.org/default.aspx>

² Cases are eligible for 50% reimbursement if they meet certain household income criteria. States have discretion as to how to calculate these matches and may utilize a uniform coverage rate (also known as a Title IV-E "penetration rate") across programs. According to the non-partisan research center Child Trends, Kansas's 2016 penetration rate was 46%. For more information, visit: https://www.childtrends.org/wp-content/uploads/2018/12/Kansas_SF2016-CWFS_12.13.2018.pdf.

recruiting foster homes, conducting data collection, and, of course, paying salaries, including for attorneys representing *the agency* in dependency hearings. However, the same reimbursement mechanism could not previously be used to reimburse the costs of legal representation for children and parents. Unsurprisingly, this uneven funding structure perpetuated a lopsided legal process. State and county child welfare agencies enjoyed consistent access to advocacy resources while children and parents did not; important checks and balances on government intervention into family life simply did not function as intended, and in some places did not work at all. Although pockets of high-quality legal representation have thrived in certain (typically metropolitan) areas, overall, families walking into child welfare courts have not experienced the same reliable access to counsel.

In January 2019, the Children’s Bureau made a significant move to level the field by formally updating its policy to allow child welfare agencies to claim the same, open-ended reimbursement for legal representation for children in foster care, children who are candidates for foster care, and their parents.³ Title IV-E participating tribes are also eligible.⁴ This funding stream can be used expansively to support not only attorney work, but also proven models that include costs for investigators, peer partners, and social workers that enhance the attorney’s scope and advocacy.⁵

The momentum keeps building: in June of this year, the White House issued an “*Executive Order on Strengthening the Child Welfare System for America’s Children*” that further elevated legal representation as an integral strategy to overall foster care reform work. The Order required the Secretary of the U.S. Department of Health and Human Services (HHS) to provide guidance and conduct data collection around this new funding opportunity and to “encourage high-quality legal representation for parents and children, including pre-petition representation, in [state] efforts to prevent the removal of children from their families, safely reunify children and parents, finalize permanency, and ensure that their voices are heard and their rights are protected.”⁶ Guidance was issued by HHS shortly thereafter, on July 20, 2020.⁷

Research Supports High-Quality Legal Representation

At first blush, investing government resources in advocacy may appear counterintuitive. Why would the state want to resource the “other side” of the case? Indeed, strange bedfellows⁸ can at times make excellent policy. High-quality attorneys elevate the voices, needs and experiences of their clients. In doing so, they ensure judges have comprehensive, accurate information in front of them before making life-changing decisions. By identifying and raising system navigation challenges, they pressure test agency assumptions about their systems, they figure out where programs are not realizing their full

³ Children’s Bureau Child Welfare Policy Manual, Section 8.1B, Question #30.

⁴ Children’s Bureau Child Welfare Policy Manual, Section 8.1B, Question #31.

⁵ Children’s Bureau Child Welfare Policy Manual, Section 8.1B, Question #32.

⁶ Exec. Order No. 13930, 85 C.F.R. 38741 (2020). Available at: <https://www.whitehouse.gov/presidential-actions/executive-order-strengthening-child-welfare-system-americas-children/>.

⁷ “Frequently Asked Questions: Independent Legal Representation.” U.S. Children’s Bureau Technical Bulletin. 20 July 2020. Available at https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/title_iv/technical_bulletin_-_faq_s_on.pdf.

⁸ Sankaran, Vivek. “Strange Bedfellows: How Child Welfare Agencies Can Benefit from Investing in Multidisciplinary Parent Representation.” P. L. Rideout and M. L. Raimon, co-authors. Center for the Study of Social Policy (2015).

potential, and raise areas where policy change is needed to comply with the law or assure safety, well-being and permanency.

Agencies, of course, are already accustomed to providing services for parents and children, such as mental health treatment. In fact, child welfare laws uniquely shape these cases as one of few legal actions in which one side is formally obligated to assist the other. This Title IV-E opportunity to enhance legal representation is a natural extension of that promise.

The policy shift aligns with basic principles of fairness and due process. After all, who among us would ever choose to face the extremely complex labyrinth of the child welfare court process alone? In a situation where stakes could barely be higher, it is only right to support families with legal professionals with specialized expertise to participate fully in the legal process. As the U.S. Children’s Bureau has said, “listening to families and youth and acting on the information they provide about what would be most helpful to keep them healthy and strong is a critical first step to correcting our course.”⁹

However, the federal government’s policy change is borne out of more than an interest in affording due process; it rests upon a strong evidence base as well. The change arrived on the heels of a compelling 2017 federal Information Memorandum¹⁰ summarizing a growing body of data showing that when young people and parents have a high-quality lawyer by their side, everybody wins. Parents seeking to reunite with their children have a fair chance with high-quality lawyers to crystallize issues and provide legal advice to understand court expectations and timelines.¹¹ Children who need permanency through other avenues, like adoption or custody, also win because high-quality attorneys ensure those outcomes occur at a markedly swifter pace.¹² Social workers and agencies seeking to avoid

⁹ “Engaging, Empowering, and Utilizing Family and Youth Voice in All Aspects of Child Welfare to Drive Case Planning and System Improvement.” Administration for Children and Families Information Memorandum. ACYF-CB-IM-19-03. 1 August 2019.

¹⁰ “High Quality Legal Representation for All Parties in Child Welfare Proceedings.” Administration for Children and Families Information Memorandum. ACYF-CB-IM-17-02. 17 January 2017. (Explaining that “[l]egal representation is also associated with increased parent and youth engagement, increased feelings of fairness in court proceedings, expedited reunification, and more detailed and specific case plans that outline responsibilities for all parties.”).

¹¹ “Reunification and Case Resolution Improvements in Office of Public Defense (OPD) Parents Representation Program Counties.” February 2010. Available at: http://www.opd.wa.gov/documents/0049-2010_PRP_Evaluation.pdf (showing that the OPD Parent Representation model yielded a 39% rate increase in reunifications and an 18.3% rate increase in resolution time; importantly, there was no corresponding increase in rates of re-filed cases after reunification had occurred). Also see Wood, Steve and Jesse R. Russell. “Effects of Parental and Attorney Involvement on Reunification in Dependency Cases. 33 Children and Youth Services Review 1730 (2011).

¹² See, e.g., Olebeke, Zhou, Skles & Zinn, (2016) Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System, Chapin Hall. Available at: <http://www.chapinhall.org/qicreport> (demonstrating that young people in Washington State represented under the QIC-ChildRep Model were 40% more likely to achieve permanency within the first six months of placement); See also Zinn, A. & Slowriver, J. (2008), Expediting Permanency: Legal Representation for Foster Children in Palm Beach County. Chapin Hall Center for Children at the University of Chicago available at <https://www.issuelab.org/resources/1070/1070.pdf> (showing that children represented under a zealous, high-quality attorney model exited to permanency 1.38 and 1.59 times more quickly, largely through non-reunification outcomes such as adoption).

child maltreatment and unnecessary removals win too.¹³ And of course, all these successes generate significant, accumulated financial savings for governments and their taxpayers.¹⁴¹⁵

The research is clear: investing in legal advocacy makes a positive difference for families and for overwhelmed child welfare systems. With so much data in plain view, it was pure common sense for the federal government to uplift legal advocacy as an intervention worthy of investment. But it is up to states to take them up on the offer. Like many federal policy levers, the Title IV-E reimbursement for legal expansion is an opportunity, not a mandate. States have the flexibility to opt-in and then develop local solutions based on what they know their constituents need. To date, at least 11 states have these collaborations underway¹⁶, and several others are poised to do so in the coming months. We are excited to work with Kansas in efforts to join them.

High-Quality Legal Representation in Action

This historic funding opportunity will not move the needle unless it is thoughtfully used to invest in *high-quality* legal representation activities. A bar license is not in and of itself sufficient, so any lawyer won't do. A "potted plant"¹⁷ who idly sits by, or an attorney who is not resourced with the time or expertise to properly fulfill their role won't improve child welfare outcomes. This means that child welfare agencies must be quite intentional as they approach these partnerships. Some strategies explored by other states include:

- **Ensuring Reasonable Caseloads:** Attorneys need time to do the activities that move cases forward. This means meeting with clients routinely, timely raising issues and resolving them between parties through out of court negotiations before they snowball into larger barriers, and ensuring judicial efficiency by filing motions or reports before hearings to make the best use of time in front of the judicial officer. They must, of course, be compensated for this time as well. The QIC-ChildRep study, a six-year randomized control trial funded by the federal government, recommended a caseload of 60.¹⁸
- **Building Out Multidisciplinary Models:** Multidisciplinary legal representation has been shown to be particularly effective.¹⁹ These models bolster a lawyer's work with the expertise of a social worker and an individual with lived experience. Working together, each member of the team

¹³ See, e.g., Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." Wm. Mitchell L. Rev. 40, no. 3 (2014): 1036-47 (explaining that the Detroit Center for Family Representation "achieved its legal objectives in 98.2% of prevention cases, resolving collateral legal issues in a wide range of matters including housing, custody, guardianships, public benefits, and domestic violence. Most importantly, none of the children served by the CFA entered foster care.").

¹⁴ Elizabeth Thornton & Betsy Gwin, High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings, 46 Fam. L. Q. 139 (2012), available at <https://www.jstor.org/stable/23240377>.

¹⁵ For a comprehensive summary of available research on this topic, see the Justice in Government's Projects "[Key Studies and Data about How Legal Aid Assists Children in Foster Care.](#)"

¹⁶ These include Alaska, Colorado, Iowa, Louisiana, Maryland, Michigan, Montana, Nevada, New Mexico, Washington and Wyoming.

¹⁷ For more information on the origin of this term, visit https://en.wikipedia.org/wiki/Brendan_Sullivan.

¹⁸ For more information about the QIC-ChildRep study, visit: <http://www.improvechildrep.org>.

¹⁹ Gerber, Pang, Ross, Guggenheim, Pecora, and Miller, [Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare](#), 102 Children and Youth Services Review (2019). Also see Gerber et. al, [Understanding the Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare](#), 116 Children and Youth Services Review (2020).

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addresses aspects of the case they are best suited for; lawyers can stay on track toward those long-term permanency goals that require legal solutions. A recent study showed that this model helped exit children from care 118 days faster while maintaining equal measures of sustained child safety over time. Wyoming and Montana’s state agreements expressly incorporate this multidisciplinary practice.

- **Benchmarking Expertise through Training:** Other jurisdictions are focusing these funds on legal providers who have committed to the training necessary to proficiently practice in dependency court. This is a niche area of law that includes federal and state level jurisprudence, statute and regulation, as well as related social science in areas such as trauma, substance use disorder, domestic violence, cultural humility and more. Training activities are reimbursable at an even higher 75% Title IV-E rate.²⁰ New Mexico’s state agreement, for example, prescribes some benchmark training standards.
- **Moving Legal Intervention Upstream:** Like social services, legal services can have as much or even more impact when they are offered early and accessibly to families. Should CPS be involved if what is really needed is for an attorney to have a conversation with a landlord that staves off eviction? Can removal be avoided for a child if an attorney can help secure a restraining or custody order that mitigates safety concerns? Will successfully appealing a denial of public benefits ensure access to food stamps and other resources that enhance child well-being and overall household stability? Unsurprisingly, the answers are yes, yes and yes.

In child welfare parlance, this work is often called “pre-petition.” Essentially, it is the tried and true civil legal aid work that has been strengthening families for decades. The evidence about pre-petition legal aid is similarly compelling. Simply put, civil legal aid keeps families together.²¹ This can be especially helpful in addressing poverty-driven, non-abuse neglect. Many of these cases fall under “non-abuse neglect” as it is described in the 2019 Report of the Child Welfare System Task Force to the Kansas Legislature (See Recommendations #5 and #13).²²

You will hear in a moment from Jeff Wright, who is launching a pre-petition advocacy program in Iowa using Title IV-E funding after the legislative proposal unanimously passed both houses of state government. His project builds on other successful pre-petition work across the country, like the Detroit Family Advocacy Center, which served 110 children who had been identified as experiencing maltreatment. They staffed the cases for legal solutions that could address the underlying child welfare concern: custody changes, domestic violence, housing, public benefits. The end result was that none of the children entered state custody.²³

²⁰ Frequently Asked Questions: Independent Legal Representation.” U.S. Children’s Bureau Technical Bulletin. 20 July 2020. Pgs. 8-9. Available at https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/title_iv/technical_bulletin_-_faq_s_on.pdf.

²¹ “Key Studies and Data About How Legal Aid Helps Keep Families Together and Out of the Child Welfare System.” The Justice in Government Project. February 2020. Available at: <https://www.american.edu/spa/jpo/toolkit/upload/foster-care-8-8-19.pdf>

²² Report of the Child Welfare System Task Force to the 2019 Kansas Legislature. Available at: http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2018CommitteeReports/child_welfare_sys_tf_cr.pdf

²³ Detroit Center for Family Advocacy, U. MICH. L. SCH., <http://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/default.aspx>.

This type of upstream legal intervention has been replicated in New Jersey, Oklahoma, Washington state and – though legally unrelated to the Family First Act – aligns perfectly with its overarching philosophy of keeping families safely together whenever safely possible. The Family First Act²⁴ does contain Kinship Navigator provisions which, once fully realized, will bolster legal assistance for kin who are seeking to support the children in their care. DCF and Kansas Legal Services have demonstrated considerable foresight by establishing an innovative, state-funded Kin-TECH program, which has already diverted over 100 children from foster care and is well-positioned to federal receive once additional evidence-based hurdles have been crossed on the federal level. In the meantime, brief legal services for kin are eligible for reimbursement under a different federal funding stream, Title IV-B, Part 2.²⁵

Child welfare cannot and should not be the responsibility of the child welfare agency alone. Integrating legal advocacy into a state’s overall approach to foster care prevention and systems improvement is no longer an “*if*” - it’s a “*how*.” With the new federal funding readily accessible, a strong body of evidence to support the work, and many other states moving forward, the timing is as ripe as ever.

Thank you for the opportunity to testify and I look forward to answering any questions.

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²⁴ Family First Prevention Services Act of 2018, Pub.L.115-123.

²⁵ Frequently Asked Questions: Independent Legal Representation.” U.S. Children’s Bureau Technical Bulletin. 20 July 2020. Pg. 2. Available at https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/title_iv/technical_bulletin_-_faq_s_on.pdf.