



Making the Legal System Work for Children and Parents

Implementing FJI System Attributes

Attribute 4: Timing of Appointment

This guide is one in a series providing guidance on implementing the six system attributes in the [FJI Attributes of High-Quality Legal Representation](#). View the other [implementation guides](#).

Attribute 4: Timing of Appointment

- Ensure attorneys are appointed and have the opportunity to have a meaningful meeting with the client before any court appearance regarding any allegations of abuse or neglect, the attorney/client relationship, and the child welfare legal system process. The meeting should be held at the earliest to occur of: (1) the emergency removal of a child from his or her home; (2) an application for an order of removal, prior to the filing of a petition alleging abuse or neglect; or (3) the filing of a petition alleging abuse or neglect.

Meeting This Attribute

Know the benefits of appointing counsel early.

Appointing counsel at the start of a child welfare case is necessary to provide effective legal representation in child welfare proceedings. Appointing counsel at case inception has the following benefits:

- improves case planning, expedites permanency, and results in cost savings;¹
- provides children and parents an opportunity to have an advocate, and the benefit of legal counsel, from the outset of the case when critical decisions are made;
- gives attorneys opportunities to prevent unnecessary removal and placement of children by crafting customized solutions that address their clients' needs and child welfare agency concerns;
- allows attorneys to more effectively contest and prevent unnecessary child removals,

identify relatives willing to serve as respite care providers, advocate for safety plans and resources, and expedite reunification or other permanency goals.²

Appoint attorneys at case inception.

To ensure attorneys provide effective representation, FJI recommends attorneys be appointed before, but at a minimum not later than, the initial appearance. Many jurisdictions provide for attorney appointment on the day of the first court hearing. If this is the case, FJI recommends the court make those appointments in the morning and schedule hearings for the afternoon to allow a more meaningful opportunity for the attorney and client to meet and discuss the allegations and case.

Ensure attorneys are appointed early enough to meet clients before the initial hearing.

Allowing time for a meaningful meeting before the initial court hearing gives attorneys a better opportunity to provide more effective representation at

the initial hearing. For example, it lets attorneys:

- read through the allegations and meet with the client to explain the allegations,
- understand the client’s position and add context to the allegations,
- review discovery (if applicable),
- counsel the client about available legal options,
- make recommendations based on the client’s goals, and
- talk the client (parent or child) about family members or kin who could care for the child in the event of a removal.

Appointment at case inception allows the attorney to help the client *meaningfully participate* in the initial court proceeding, which can set the tone for the child welfare proceedings. In addition to decisions at the initial court proceeding about whether a child will be removed (or continue in out-of-home care), the court often makes decisions about parent-child visitation, the child’s placement, the child’s school, and whether and what evaluations the parents and/or child/ren will need, to name a few. These decisions have far-reaching implications for the trajectory of the court case and the family’s life.

Require attorney-client meetings before the initial hearing in attorney contracts.

Meetings before the initial hearing may occur at the courthouse on the day of the hearing or preferably, if appointed early enough, at an outside location. Implementing this requirement can occur formally by revising contracts with attorneys and/or attorney law offices to require attorneys who accept appointments before the initial court hearing to meet with their client before the hearing, unless the client is unavailable.

Identify administrative avenues for timely appointment of counsel.

Establishing a local court rule requiring the appointment of counsel for parents and children as soon as a child is removed, or court action is sought, may be an avenue to pursue. The child welfare agency may be a potential ally because earlier appointment of attorneys to represent parents and children may help them safely divert families from foster care, or otherwise achieve reunification and/or permanency more quickly.³

Support pre-petition legal work by attorneys.

Some jurisdictions have piloted programs in which parents are represented by attorneys before the child welfare agency removes a child from the home or files a petition seeking removal or court oversight. Attorneys are often referred “pre-petition” cases by the child welfare agency.

Pre-petition/pre-removal involvement of parents’ attorneys helps keep families intact and prevents unnecessary removals of children into foster care. Issues these actions address include: housing, educational advocacy, and protection orders. Some of the most impactful decisions are made about the family before a court case is ever filed. When parents have access to an attorney before a petition is filed, the attorney can provide confidential legal advice and negotiate with the agency to achieve better outcomes for children and families.

Over the past few years, the Children’s Bureau has addressed the importance of prevention, calling on legal and judicial communities to work with the child welfare system to prevent children from coming into foster care unless absolutely necessary.⁴ In December 2018, the Children’s Bureau revised its policy manual to include reimbursement for IV-E administrative costs for child and parent legal representation.⁵ Given this recent federal policy update to IV-E funding, jurisdictions may find creative and impactful methods to increase attorney involvement before a court filing and removal of children, in some cases. FJI recommends jurisdictions consider creating systems of representation that promote attorney involvement pre-removal when appropriate.

Examples of Good Practice Children’s Law Center of the District of Columbia

Children’s Law Center in the District of Columbia is a children’s law office appointed by the D.C. Superior Court to represent children in abuse and neglect court proceedings.

Early attorney appointment. When the Child and Family Service Agency (CFSA) files a petition for removal, the attorney for CFSA transmits the petition to the court and requests a 72-hour hearing. The filing of the petition and request for 72-hour hearing triggers

an appointment of the attorney by the court. The court then transmits the appointment order to the attorney.

Attorney-client meeting before initial court hearing. When a Children's Law Center attorney receives the appointment order, the attorney has sufficient time to meet with the client, and interview family members and other important collateral contacts such as teachers and medical professionals, before the initial removal hearing.

Early case investigation. Attorneys are expected to begin a substantive investigation into the allegations in the petition, including locating public records and interviewing witnesses as appropriate. Children's Law Center's close supervision model emphasizes that this early time period between appointment and the first hearing is a critical moment that can set the trajectory for the entire case. Supervisors and investigators are readily available to attorneys for consultation and case assistance.

Bronx Defenders

Bronx Defenders (BxD), a nonprofit public defender agency located in the South Bronx, started as a criminal defense organization. Recognizing many clients had accompanying child protection cases pending in family court, in 2004 BxD hired a legal fellow to advise and represent clients with pending cases in family court. Over the course of the last 15 years, BxD has grown to over 75 attorneys, social workers, and peer advocates representing parents in child protection cases.

Pre-petition legal advocacy. Criminal defense attorneys would often refer their clients for legal representation before the family court case had been initiated, giving the parent the benefit of counsel and advocacy during the child welfare investigation. In many cases, unnecessary family separations and filings in family court were avoided. Attorneys and advocates worked with parents to create a safety plan, identify family strengthening services that addressed the concerns of the system, and identify relatives and supports before cases escalated to court involvement.

Attorney assignments before initial hearing. In 2007, BxD became the institutional provider of legal representation for parents in child protection cases in Bronx Family Court. Most parents are assigned a lawyer from BxD at their first appearance in family

court, which is usually the day the case is first filed. Intake is conducted five days per week, and in the late morning a list is distributed (without names) that includes how many cases are on that afternoon docket and what the child welfare agency is requesting in each case.

Attorney-client meetings before the initial hearing. Attorneys have the opportunity to meet with their client before the court hearing. The time available for meetings depends on the day and number of cases that are filed. The courthouse has a dedicated space for attorney meetings, which also has a copy machine and phone. This enables the attorney to review the allegations with the parent, analyze whether to ask for a hearing, object to the removal of children, identify family resources for children, and discuss any other application to be made at intake.

Other pre-petition legal assistance. BxD continues to represent clients identified in other practices who are at risk of or are participating in a child welfare investigation. In addition, with private seed money, BxD runs a community intake program where parents who have been contacted by the Administration for Children Services about a report made about their family can seek legal advice and social work advocacy. BxD prevents a number of needless family separations and cases from being filed, saving family court resources for cases requiring litigation.

Santa Clara County Corridor

Corridor is an innovative collaboration between County Adult Probation and Dependency Advocacy Center (DAC), the nonprofit family defense advocacy organization that represents parents in Santa Clara County's child welfare court proceedings. Often families find themselves trapped between the criminal justice system and the child welfare system. Corridor empowers these families to stay together and remain rooted in communities rather than in courts.

Free legal consultation. Parents can access free legal advice and consultation regarding the child welfare system, peer support, referrals to community-based resources, and safety planning through the multidisciplinary Corridor team. The team consists of an attorney, two gender-specific mentor parents, and a social worker. This confidential, client-centered intervention can be key to a family's self-sufficiency and long-term success.

Child welfare legal assistance for parents on probation. Corridor actively works with parents on formal probation who have open child welfare cases as well as parents at risk of child welfare system involvement before a formal petition has been filed in court. For open child welfare court cases, the Corridor attorney is appointed at the initial court hearing and represents the client throughout their child welfare case. For prevention cases, Corridor relies on referrals primarily from probation officers and other community partners. To be eligible for assistance from DAC's Corridor Program, a client must be on formal adult probation with at least one child or be pregnant/expecting a child with their spouse or partner.

Iowa Pre-Petition Pilots

Four counties in Iowa—Black Hawk, Dubuque, Jackson, and Linn—are conducting pilot programs through Iowa Legal Aid regional offices providing pre-petition representation to child welfare-involved parents. The program includes an interdisciplinary team of lawyers, case managers, and parent advocates. The team works with clients to address and resolve legal issues that impact child and family stability. The goal is to prevent juvenile court intervention. The pilots began with seed money from Iowa's Court Improvement Program and have expanded to using other funding sources.⁶

Early attorney case referrals. Iowa Legal Aid receives referrals from the Department of Human Services (DHS) or contract providers of DHS when they recognize providing a family legal services may keep a child out of juvenile court and reduce the chances of foster care placement. Iowa Legal Aid attorneys noticed poor people were coming to juvenile court due mostly to their lack of access to attorneys earlier in the child welfare process -- something middle- or higher-income people had. Most of the issues they work on are family law related, such as guardianship, custody, or protective order cases. They also assist with landlord/tenant disputes and appeals of denials of public benefits.

Results. In 2018, the project closed 62 pre-petition cases, which helped 118 children avoid court involvement. An additional 28 pre-filing cases were opened in 2018 and remained open into 2019. Iowa Legal Aid estimates that conservatively it saved \$6,000 in public funds by helping families avoid court involvement.

Technical Assistance

FJI team members are available to help implement the FJI attributes.

Visit the [Family Justice Initiative website](#) for more information.

Snohomish County Pilot

Snohomish County, Washington is conducting a pilot project that focuses on avoiding the court process through collaboration between Providence hospitals, Homeward House, and parent attorneys. This project recognizes that the earlier an attorney is involved, the more impactful the attorney can be on the trajectory of the case. The goal of this project is to prevent children from entering foster care while keeping children safe with the parents or other family members.

Focus on substance-exposed infants. The project focuses on drug-exposed infants at risk of entering foster care. When the hospital becomes aware of a drug-exposed baby, they make a simultaneous referral to the child protection agency and a parent attorney.

Pre-petition legal assistance. The parent attorney then meets with the parent before, or at the same time as, the meeting with the department. The attorney gets assessments, referrals, and services started as soon as possible. The attorney also works with the parent to identify relatives or other kin to serve as a temporary custodian or guardian when temporary custody is the preferred course of action. The parent's attorney can counsel their client about whether temporary custody or guardianship is appropriate and if so, facilitate the filing of the legal action. Additionally, if the parent needs residential treatment to address substance use disorder, the parent attorney may be able to work with the treatment facility to have the child placed with the parent while the parent receives treatment.

Legal Services of New Jersey

For over 50 years, Legal Services of New Jersey (LSNJ) and the statewide Legal Services system it leads have provided free legal aid and policy advocacy to low-income parents in child welfare cases. LSNJ seeks to promote child safety and well-being by strengthening and preserving families, principally through its Family Representation Project (FRP).

Pre-petition legal assistance. In August 2018, LSNJ began receiving direct referrals from Department of Child Protection and Permanency (DCPP) caseworkers, seeking legal assistance and advice for parents before the filing of a petition for removal. In the first six months, the Essex County DCPP offices, which have the largest child welfare caseload in the state, referred over 40 parents to LSNJ for civil legal assistance. While issues vary case by case, there are noticeable trends in access to public benefits and affordable housing. Additionally, LSNJ has assisted with educational neglect referrals largely related to school district failures to assess special education needs and issues of accessibility.

Results. In its first six months of pre-petition representation, LSNJ successfully prevented removal in every case. As of November 2019, LSNJ had successfully prevented removal in 80 cases. LSNJ credits these positive results in large part to its ability to communicate effectively with the DCPP agency and to immediately assess and work towards resolution of client needs and issues.

Endnotes

1. Elizabeth Thornton & Betsy Gwin, *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Costs Savings*, 46 FAM L.Q. 139 (Spring 2012); DON DUQUETTE ET AL., *CHILDREN'S JUSTICE: HOW TO IMPROVE LEGAL REPRESENTATION OF CHILDREN IN THE CHILD WELFARE SYSTEM* (American Bar Association, 2016).
2. Vivek Sankaran & Christopher Church. *Easy Come, Easy Go: The Plight of Children who Spend Less than Thirty Days in Foster Care*, 19 U. PA J. L. & SOC. CHANGE (2016).
3. See, e.g., Sankaran, Vivek et al., *Strange Bedfellows: How Child Welfare Agencies Can Benefit from Investing in Multidisciplinary Parent Representation* (Center for the Study of Social Policy, 2015).
4. See, e.g., David Kelly & Jerry Milner, *High-Quality Legal Representation is Critical to Creating a Better Child Welfare System*, CHILD LAW PRACTICE TODAY (ABA Center on Children and the Law, July 17, 2019) available at: https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/high-quality-legal-representation-is-critical-to-creating-a-bett/
5. U.S. Dep't of Health & Human Servs., Admin. for Children & Fam., Children's Bureau. "[8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs-Foster Care Maintenance Payments Program](#)" *Child Welfare Policy Manual*. For more information about drawing down Title IV-E funds to support high-quality legal representation, visit the Family Justice Initiative website [Federal Funding page](#).
6. The Iowa pilots are modeled on the program at the former [Detroit Center for Family Advocacy](#), which operated in Detroit, Michigan for several years. The Detroit model paired an attorney with a social worker and family advocate to remove legal barriers and safety risks that otherwise might cause a child to enter the foster care system.



The FJI unites professionals from around the country to ensure every child and every parent has high-quality legal representation when child welfare courts make life-changing decisions about their families. Through the FJI's work, child welfare lawyers, researchers, judges, social workers, policymakers, families impacted by abuse and neglect, and others are reenvisioning how to best protect children, strengthen families and support communities.