



FAMILY REPRESENTATION TASK FORCE

Report and Recommendations

July 15, 2020

EXECUTIVE SUMMARY

Senate Joint Memorial 10 created the Family Representation Task Force and directed that recommendations be brought forth for new structure and enhanced practices to improve the quality of representation for children and families in abuse and neglect proceedings. The need for better representation results from inadequate compensation, poor caseload management, and lack of monitoring and oversight resulting in hindrances to permanency and other positive outcomes for participants.

The Task Force reviewed the findings of the assessment that preceded SJM 10, conducted a review of best practices and research in other states, and developed its recommendations. A budget was drafted and an analysis of return on investment was prepared. Recommendations are as follows:

1. Create an independent agency called the Office of Family Representation and Advocacy, a structural model patterned after the Law Offices of the Public Defender. It will include an oversight Commission and budgetary independence. The enabling legislation creating the Office of Family Representation and Advocacy will be developed over the next six months in consultation with the NM Supreme Court, the NM Legislature and Legislative Council Service, and the Governor's Office.
2. Develop interdisciplinary legal team services with direct representation as the practice model. The model draws on best practices for providing high quality legal representation for participants in child abuse and neglect proceedings.
3. Create agency infrastructure to support high quality legal representation. Elements of infrastructure include organization of offices; staff and contracted personnel, caseloads, and compensation; and supports such as training, expert witnesses, quality monitoring and more.
4. Create a phased-in implementation plan. Phase one creates the Office of Family Representation and Advocacy, a start-up budget, and plans for transition; phase two results in appointment of the Commission, initial staffing, development of operational systems, and transitions from the Administrative Office of the Courts; phase three includes recruitment, staffing, and expansion of practice models and the development of regional offices.

The Office of Family Representation and Advocacy is expected to cost between \$17.1 and \$17.7 million annually. Between \$7.1 and \$7.6 million will be required in new funding. Annual benefits are estimated to range from \$4.9 million to \$11.7 million primarily derived from shorter lengths of stay in state custody. These benefits will at minimum substantially offset costs and could result in net savings for the state over time. Additional cost savings, not monetized for this report, will result from reduced court, attorney and other legal costs as well as savings in Medicaid and other public programs. Equally, if not more important, the services to be provided by the Office of Family Representation and Advocacy will result in better outcomes for children,

young people and parents in the areas of safety, permanency, and well-being.

As is well known and deeply discouraging, children overall do not fare well in New Mexico when compared to the rest of the country. The recently released 2020 Kids Count Data Book (Annie E. Casey) puts New Mexico 50th in overall child well-being; 49th in economic well-being; 50th in education; 41st in health; and 48th in family and community.

In terms of outcomes in child welfare, the picture is equally discouraging. The Adoption and Safe Families Act (1997) defined the goals of child protective services as permanency, safety, and well-being. These goals are operationalized in the federal Child and Family Services Review (CFSR) so as to better measure the outcomes of children involved in the child welfare system:

Permanency Outcomes

- Children have permanency and stability in their living arrangements.
- The continuity of family relationships and connections is preserved for children.

Safety Outcomes

- Children are, first and foremost, protected from abuse and neglect.
- Children are safely maintained in their homes whenever possible and appropriate.

Child and Family Well-Being Outcomes

- Families have enhanced capacity to provide for their children's needs.
- Children receive appropriate services to meet their educational needs.
- Children receive adequate services to meet their physical and mental health needs.

New Mexico's Child and Family Services Plan (2020-2024) includes measures for these outcomes with the most recent reporting for calendar year 2018. Regrettably, New Mexico did not meet the targets for any of these outcomes. This is clearly unacceptable. Improving the quality of representation as proposed herein will contribute, along with a myriad of innovative and data-driven strategies undertaken by the Children, Youth and Families Department, to reversing this trend.

Attempting to improve outcomes through legal services as currently provided is simply not working; child welfare advocates, scholars, and practitioners in New Mexico have tried for over 20 years. The current location of the Court Appointed Attorney (CAA) program with the Administrative Office of the Courts (AOC) hinders independent decision-making and oversight and strains resources. Currently AOC is managing almost 150 contract attorneys and just over 200 non-contract attorneys. There is inadequate funding and inadequate compensation and very little opportunity to address that within the current budget structure. There is too much attorney turnover and no good process for case transfers. There are issues of conflict because all attorney contracts are administered by the court system. There is little oversight and no quality monitoring. A new and independent agency with a practice model as described herein is needed. It's time.

SPECIAL THANKS

This report was made possible through the collective wisdom and unwavering commitment of the members of the Family Representation Task Force. These individuals diligently reviewed the research, evaluated best practices, engaged in lively and respectful debate, and ultimately came to consensus on the recommendations provided herein. It was extraordinary.

- Judge Jennifer DeLaney – Chair, Children’s Court Judge, and Chief Judge 6th Judicial District
- Carla Bachechi – Legislative Finance Committee Representative
- Georgia Berrenberg – Guardian ad Litem Representative
- Secretary Brian Blalock - Children, Youth and Families Department Cabinet Secretary
- Representative Gail Chasey – New Mexico House of Representatives and Guardian ad Litem
- Lewis Creekmore – Executive Director, New Mexico Legal Aid
- Alyssa Davis – Youth Representative
- Lindsey Fooks – Administrative Office of the Courts, Senior Attorney, Children's Court Programs
- Beth Gillia – Director, Corinne Wolfe Center for Child and Family Justice and Children’s Court Improvement Commission Member Representative
- Jessica Graham – Children, Youth and Families Department, Protective Services Division, Permanency Planning Worker
- Leslie Jones – Youth Attorney Representative
- Mimi Laver - Director Legal Representation, American Bar Association Center on Children and the Law
- Rebecca Liggett – Children, Youth and Families Department, Chief Children’s Court Attorney
- Senator Linda Lopez – New Mexico Senate
- Annamarie Luna – Children, Youth and Families Department, Protective Services Division, Family First Prevention Services Act Coordinator
- Monica Ly – Parent Representative
- Judge John Romero, Jr – Children’s Court Judge 2nd Judicial District and National Council of Juvenile and Family Court Judges Representative
- Nancy Simmons – Respondent Attorney Representative
- Deborah Varol – Law Office of the Public Defender Representative
- Judge Marie Ward – Presiding Children’s Court Judge 2nd Judicial District

Special thanks are also extended to the consultants who provided invaluable assistance:

- Kelly O'Donnell PhD, Economist; Office of Community Health & School of Public Administration, UNM
- Mary Ann Shaening, PhD, Facilitator; Director, Shaening and Associates, Inc.
- Bobbi Shearer, Legislative Liaison & Researcher; Legal Services Consultant

INTRODUCTION & BACKGROUND

Improving the quality of representation for children and parents, guardians, and custodians in child abuse and neglect legal proceedings has been a Children's Court Improvement Commission (CCIC) goal since its inception in the mid-1990's. In 2018, the CCIC asked the American Bar Association (ABA) Center on Children and the Law to assist in an assessment of the current system of providing legal representation for children and parents in child abuse and neglect legal proceedings. That assessment ultimately led to the writing of a Senate Joint Memorial (SJM 10) and the creation of the Family Representation Task Force.

Current problems with the NM system of appointing representation were identified in the assessment to include inadequate funding and compensation, inadequate oversight, poor attorney retention, and lack of diversity and cultural humility. This too often results in ineffective counsel that in turn hinders permanency and other positive outcomes for children and families. In addition, the location of the Court Appointed Attorney program in the Administrative Office of the Courts (AOC) was found to hinder independent decision-making and oversight. AOC personnel and financial resources were noted as inadequate to address issues of oversight and quality assurance, retention, and caseload management.

SJM 10 directed the Family Representation Task Force to further analyze the current system in New Mexico; determine whether an independent standalone entity is necessary for independent decision-making and oversight; review local and national best practice and related research; make recommendations for both structural and practice models for improved representation in New Mexico; and project the costs, benefits, and return on investment (ROI) for these models.

The Family Representation Task Force has now completed these tasks and respectfully submits its recommendations in this report. Overall, the Task Force recommends a new structural model by creating an independent agency (the Office of Family Representation and Advocacy) to provide quality representation and advocacy for children and parents involved in abuse and neglect and other children's court proceedings in New Mexico. The Office of Family Representation and Advocacy will have an Oversight Commission and budgetary independence. The proposed structural model is similar to the Law Offices of the Public Defender created through the Public Defender Act. The Task Force will continue to work with the NM Supreme Court to determine the best option for creating the agency.

The Task Force further recommends a practice model that incorporates direct representation for children as well as interdisciplinary legal team services for all participants in abuse and neglect proceedings. With both the structural and practice models in place, the Office of Family Representation and Advocacy (OFRA) will provide high quality legal representation and advocacy that promotes positive outcomes for families; affirms, respects, and supports the diversity of New Mexico's families; promotes due process and procedural fairness; is consistent with performance standards and legal ethics; and is in compliance with state and federal law.

Statewide implementation of the Office of Family Representation and Advocacy with practice

models as described herein is expected to cost between \$17.1 and \$17.7 million annually. The cost analysis, budget considerations, and return on investment analysis are outlined in detail in Appendix Two. After subtracting out the \$5.7 million already being spent by the Administrative Office of the Courts on these cases and \$4.3 million in projected federal matching funds, the projected annual net cost to New Mexico is between \$7.1 and \$7.6 million. As also described in more detail in Appendix Two, annual benefits are estimated to range from \$4.9 million to \$11.7 million. These benefits will at minimum substantially offset costs, and could, in addition to a variety of other benefits and outcomes, produce net savings for the state over time.

RECOMMENDATION ONE: CREATE AN INDEPENDENT AGENCY

The Family Representation Task Force recommends that an **Office of Family Representation and Advocacy** be created as an independent agency with four key components as listed below.

1. An Oversight Commission consisting of thirteen (13) members with specific positions, terms, qualifications, powers and duties
2. Budgetary independence: The Office of Family Representation and Advocacy shall develop and submit budget requests directly to the Department of Finance and Administration and the Legislative Finance Committee that cannot be altered or restricted by any other agency; budgets would be set directly by the legislature.
3. Authority to advocate for legislative changes and policies that reflect best practices and effective representation, independent of any advocacy from the Governor's Office, the Supreme Court or any executive or judicial agency
4. A Director with specific qualifications, appointment, powers and duties

More detail on the parameters and core elements of the Office of Family Representation and Advocacy can be found in Appendix One.

The location and enabling legislation for the Office of Family Representation and Advocacy will be determined over the next six months in consultation with the NM Supreme Court, the NM Legislature and Council Service, and the Governor's Office. Options include:

Option One: Constitutional Amendment

Create an independent agency by Constitutional Amendment in a manner similar to the creation of the Law Offices of the Public Defender. Pursue introducing a Joint Resolution in both houses of the legislature proposing an amendment to Article 6 of the Constitution of New Mexico to add a new section that provides for the creation of an independent Office of Family Representation and Advocacy. Section 1 would establish the Office of Family Representation and Advocacy as an independent state agency with a Director as the administrative head. It would also establish the Family Representation and Advocacy Oversight Commission with independent oversight of the Office of Family Representation and Advocacy. A Family Representation and Advocacy Act would be drafted by the Legislative Council Service and generally include the parameters and core elements that have been provided in Appendix One. Section 2 would provide that the amendment proposed shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Option Two: Legislative Enactment

Create, through legislation, the Office of Family Representation and Advocacy as an independent agency in the Judiciary with oversight from the NM Supreme Court. However, the budget for the Office of Family Representation and Advocacy would not be included in the Judiciary's unified budget nor in any other existing budget. As in Option One, a Family Representation and Advocacy Act would be drafted by the Legislative Council Service and generally include the parameters and core elements that have been provided in Appendix One. The Task Force will address the Supreme Court's concerns about the appropriateness of the creation and oversight of the Office of Family Representation and Advocacy in the Supreme Court.

Option Three: Attached to an Existing Agency

Pursuant to the Executive Reorganization Act, create in the Executive Branch an independent agency through administrative attachment to a department. As provided in the Executive Reorganization Act, the Office of Family Representation and Advocacy would be attached to a department for administrative purposes only. The Office of Family Representation and Advocacy shall exercise its functions independently of the department and without approval or control of the department; submit its budgetary requests through the department; and submit reports required of it by law or by the Governor through the department. As the Executive Reorganization Act further provides, the department to which an agency is attached for administrative purposes only shall provide, if mutually agreed, the budgeting, record-keeping and related administrative and clerical assistance to the agency; and include the agency's budgetary requests, as submitted and without changes, in the departmental budget. And finally, unless otherwise provided by law, the agency shall hire its own personnel in accordance with the Personnel Act [Chapter 10, Article 9 NMSA 1978]. While this Act only applies to the Executive, there may also be possibilities of attaching to an agency within the Judiciary.

RECOMMENDATION TWO: DEVELOP INTERDISCIPLINARY LEGAL TEAM SERVICES WITH DIRECT REPRESENTATION AS THE PRACTICE MODEL

Interdisciplinary Legal Team Services

The Family Representation Task Force recommends *Interdisciplinary Legal Team Services* as the practice model for the Office of Family Representation and Advocacy. *Interdisciplinary Legal Team Services* are widely recognized as best practice. The model provides for collaborative teams that include the attorney, a social worker/case manager, and a peer or community advocate. The Family Advocacy Program, currently housed at the NM Administrative Office of the Courts, is providing *Interdisciplinary Legal Team Services* for parents in three counties. Precedent for Interdisciplinary Legal Team Services can also be found in Colorado, Massachusetts, Oregon, and Washington as well as New York City. (See *the Attached Survey of Other States*.)

The Family Representation Task Force recommends that *Interdisciplinary Legal Team Services* be ultimately available for all participants in child abuse and neglect proceedings. To start, and until budget permits, *Interdisciplinary Legal Team Services* would be available for one party.

The OFRA Director would develop the protocol and criteria for expanding the model to provide interdisciplinary legal services to another party, or multiple parties.

Interdisciplinary Legal Team Services will:

- Advocate for placements that maximize the connections of participants to one another and their community;
- Promote maximum engagement of participants in service planning;
- Advocate for services for participants that are strengths-based and meet their needs;
- Assist participants to successfully access the services and resources they need including basic safety nets services such as income support, housing assistance, education supports, therapeutic supports, and more

Direct Representation

The Office of Family Representation and Advocacy will provide high quality legal representation and advocacy to qualified participants under the Abuse and Neglect Act; Family In Need of Court-Ordered Services Act; Fostering Connections Act (extended foster care); Children's Mental Health and Disabilities Act; the Kinship Guardianship Act; and qualified participants at risk of being involved in child abuse and neglect proceedings.

The Family Representation Task Force recommends that the practice model for providing high quality legal representation to children and parents include *Direct Representation*. *Direct Representation* is already in place for parents and youth ages 14 years and older. *Direct Representation* for children means:

“the lawyer-client relationship for the child’s lawyer is fundamentally indistinguishable from the lawyer-client relationship in any other situation and includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to provide independent advice. Client direction requires the lawyer to abide by the client’s decision about the objectives of the representation. In order for the child to have an independent voice in abuse and neglect proceedings, the lawyer shall advocate for the child’s counseled and expressed wishes. Moreover, providing the child with an independent and client-directed lawyer ensures that the child’s legal rights and interests are adequately protected.” (ABA Model Act). Attorneys for pre-verbal children should represent the legal rights as required by applicable statutes (reasonable efforts, placement, and more).

The Task Force survey of other states and public jurisdictions noted that precedent for *Direct Representation* is well established in other states and public jurisdictions. While there are variations on how *Direct Representation* is provided, precedent can be found in Arizona, Connecticut, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Mississippi, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, and West Virginia. (See *the Attached Survey of Other States*.)

RECOMMENDATION THREE: CREATE AGENCY INFRASTRUCTURE TO SUPPORT HIGH QUALITY LEGAL REPRESENTATION

The Family Representation Task Force makes the following recommendations about infrastructure for the Office of Family Representation and Advocacy. Many of the elements of this infrastructure draw from the Law Offices of the Public Defender (LOPD). These include:

- A Central Office that oversees all functions, creates standardization, provides training, secures resources and supports, monitors quality, tracks performance, and overall leads and manages all operational matters. The Central Office will be located in the Metro (Albuquerque) Region.
- A Director appointed by the Commission with duties and qualifications as described in Appendix One and ultimately in legislation.
- Five regional offices to parallel CYFD's five regions and to accommodate all judicial districts in the five regions. Regions would be geographically created: Northwest, Northeast, Southwest, Southeast, and Metro. The Metro Region would house the Central Office which would be created first. The remaining regions will be phased in over 3-5 years depending of the availability of funding.
- An attorney workforce built on a hybrid model of both staff and contracted attorneys. The criteria to determine the relative numbers of staff and contracted attorneys will be based on regional caseload as well as considerations related to conflict of interest.
- Caseload averages between 60 and 70 cases per full-time attorney, with attorneys in rural areas requiring extensive travel being at the lower end and those in urban areas at the higher end. It is anticipated that a caseload weighting system will be considered and developed as appropriate.
- Salaries and benefits for staff attorneys comparable to those in place for CYFD Children's Court Attorneys.
- A compensation plan for contract attorneys with comparable compensation.
- Travel reimbursement for staff attorneys aligned with current State employee practice and caps.
- Mileage and per diem reimbursement for contract attorneys.
- An appellate division with two staff attorneys and one contracted appellate attorney in the event of possible conflict. One of the staff attorneys would be a supervisor who would also do training, outreach, and case consultation. In addition, all attorneys for children and parents will be trained on how to develop the record (given the possibility of appeal) as well as how to prepare a Docketing Statement.
- Pre-service and in-service training under the auspices of a Director of Training to be hired when budget permits.

- Interdisciplinary legal services teams including social workers/case managers/care coordinators, peer specialists with lived experience, and other advocates with relevant experience.
- Support services including mentors, paralegals and investigators in the central office who can be deployed to regional offices as well as administrative and clerical staff.
- An expert witness fund and contracted pool of experts.

RECOMMENDATION FOUR: CREATE A PHASED-IN IMPLEMENTATION PLAN FOR THE OFFICE OF FAMILY REPRESENTATION AND ADVOCACY

The Family Representation Task Force recommends the following Implementation Plan.

Phase One – Prior to Passage of Legislation

1. Legislation creating the agency will be drafted and introduced.
2. A start-up budget for Phase Two will be drafted and an appropriation requested.
3. Representation will continue under the auspices of the AOC Court Appointed Attorney Program and the unified budget allocation.
4. Existing NM Supreme Court Standards for Guardians ad Litem, Youth Attorneys, and Respondent Attorneys will remain in place though they will be reviewed, revised and consolidated.
5. Training will continue to be provided by the Corinne Wolfe Child and Family Justice Center.
6. The Task Force in consultation with necessary stakeholders will continue to serve as an Ad Hoc Committee of the New Mexico Supreme Court for the following purposes:
 - a. To develop the practice model and proposed legislation for Direct Representation for children and young people.
 - b. To develop the practice model for Interdisciplinary Legal Team Services.
 - c. To develop the practice model for providing legal representation to children and parents in kinship guardianship proceedings.
 - d. To develop the practice model for providing legal representation to children in extended foster care including qualified youth who experienced an out-of-home placement while in the juvenile justice system.
 - e. To formalize a direct referral arrangement with Legal Aid and others to create access to ancillary legal services for persons represented by the Office of Family Representation and Advocacy.
 - f. To identify and finalize positions and funds currently in AOC to be transferred to the Office of Family Representation and Advocacy.

Phase Two – Following Passage of Legislation

1. Representation will continue under the auspices of the AOC Court Appointed Attorney Program and the unified budget allocation.

2. Existing NM Supreme Court Standards for Guardians ad Litem, Youth Attorneys, and Respondent Attorneys will remain in place though they will be reviewed, revised and consolidated.
3. Training will continue to be provided by the Corinne Wolfe Child and Family Justice Center.
4. The Oversight Commission will be appointed following passage of legislation.
5. Bylaws or a governance manual for the Commission will be written.
6. The relationship between the Oversight Commission and the Children's Court Improvement Commission will be formalized.
7. A Director will be hired.
8. Other central office core staff will be hired (Managing/Supervising Attorney, Office Manager, Administrator, and IT Specialist).
9. The Director will oversee the development of:
 - A. Organizational structures and charts with job descriptions for managing and supervising attorneys; attorneys providing GAL, YA, and RA representation; paralegals; investigators; social workers; peer mentors; and other support staff
 - B. Budget projections (including Title IV-E funds resulting from the MOA with CYFD)
 - C. Data collection/data management system (including case management, caseload weighting, time and tracking, outcome tracking) and the necessary firewalls
 - D. A recruitment program that seeks to create a pipeline by attracting law school students to internships and externships; possibly a legal clinic for children's law (abuse & neglect); and by recruiting and hiring law school students immediately prior to or during the beginning of their final year of law school. The strategy would include aspects of the Law Offices of the Public Defender "grow your own" strategy.
 - E. Shared malpractice insurance for contractors (if feasible)
 - F. A performance evaluation program for staff and contracted attorneys and other staff
 - G. A quality assurance/quality improvement program
 - H. A complaint and grievance system
 - I. Online legal research access for both staff and contracted attorneys
 - J. Development and maintenance of motions bank
 - K. Maintenance of case law updates
 - L. Access to more experienced (mentor) attorneys
 - M. Establishment of a formal listserv
10. Exploration of dedicated funding sources in addition to State General Fund – e.g., cannabis taxes, fees, etc.
11. Identification of training needs and development of curricula to be offered at no cost to attorneys
12. Development and submission of budget, and organization and strategic planning, to the Department of Finance and Administration and the Legislative Finance Council

13. Ongoing development of policies
14. Development of a Regional staffing model and telecommuting options
15. Pursuing PERA double-dipping exception and/or other benefits (legislatively created) for attorneys and staff

Phase Three – Rollout of the Office of Family Representation and Advocacy

1. Recruitment
 - Full-time positions
 - Part-time positions
 - Contractors
 - Paralegals
 - Investigators
 - Social Workers
 - Peer Mentors
 - Support Staff
 - Other
2. Open and staff regional offices
3. Expansion of Interdisciplinary legal team services to include multiple locations and service availability to more than one party per case
4. Ongoing development of policies
5. Development of pre-petition representation.

Longer-term ideas and goals

1. Provide Tribal representation (e.g., contracting with Tribes to provide representation; representing Tribes when they intervene; retaining specialized ICWA attorneys).
2. Look into more formally sharing staff and/or contract attorneys with LOPD.
3. Pursue Public Service Loan Forgiveness.
4. Build a Professional Development Fund – e.g., scholarships to national conferences and other events

Appendix One

Recommendations

Office of Family Representation and Advocacy

The Office of Family Representation and Advocacy

The Family Representation Task Force has developed a number of recommendations for the Office of Family Representation and Advocacy. These are generally modeled after the Law Offices of the Public Defender. These recommendations will become the basis for enabling legislation creating the Office of Family Representation and Advocacy (i.e., the Family Representation and Advocacy Act).

A. Family Representation and Advocacy Oversight Commission

1. Membership and Qualifications

The Office of Family Representation and Advocacy will have a Family Representation and Advocacy Oversight Commission consisting of 13 members to include:

- The Director of the University of New Mexico School of Law's Corinne Wolfe Center for Child and Family Justice, or the Director's designee;
- The Director of the Administrative Office of the Courts' Court Improvement Project, or the Director's designee;
- A Dean of Social Work: the Dean at the New Mexico State University School of Social Work will alternate terms with the Dean of New Mexico Highlands University School of Social Work
- One member with expertise in family representation appointed by the Governor;
- Five members appointed by the Chief Justice of the New Mexico Supreme Court, who shall include:
 - two individuals who either served as former children's court judges or attorneys who practiced in the child welfare system; and
 - three members to include a youth with lived experience in the legal custody of the Children, Youth, and Families Department; a parent with lived experience in having one or more children in the in the legal custody of the Children, Youth, and Families Department; and a third member who has lived experience in the child welfare system as a youth, parent, or both
- Two members appointed by the Speaker of the House of Representatives, one from each major political party, one from an urban area of the state and one from a rural area of the state
- Two members appointed by the President Pro Tempore of the Senate, one from each major political party, one from an urban area of the state and one from a rural area of the state.

Commission members will have significant experience in the representation of children, youth, parents, custodians or guardians in abuse and neglect proceedings; significant experience in the child welfare system as a parent, custodian, guardian or former foster youth; and/or demonstrated a commitment to high quality legal representation or to working with and advocating for the population served by the office of family representation and advocacy.

Current employees of the Children, Youth and Families Department; current employees of the Office of Family Representation and Advocacy; current judges, judicial officials or employees of

judges or judicial officials; and persons who currently contract with or receive funding from the Office of Family Representation and Advocacy or employees of such persons shall not be appointed to the Commission.

2. Terms

The Director of the University of New Mexico School of Law's Corinne Wolfe Center for Child and Family Justice and the Director of the Administrative Office of the Courts' Court Improvement Project shall serve as permanent members. Initial terms of members appointed by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor shall be for two years. Initial terms of members appointed by the Chief Justice of the Supreme Court and the Dean of a School of Social Work shall be for three years.

Subsequent terms shall be for four years. Appointed Commission members shall not serve more than two consecutive terms. A Commission member shall serve until the member's successor has been appointed and qualified. A vacancy on the Commission shall be filled by the appointing authority for the remainder of the unexpired term.

A member may be removed by the Commission for malfeasance, misfeasance or neglect of duty. If a member's professional status changes to render the member ineligible pursuant to the initial appointment, the member shall resign immediately.

Members of the Commission are entitled to compensation pursuant to the provisions of the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

3. Meetings and Organization

The Chief Justice of the Supreme Court shall appoint an Interim Director on or before the beginning of the state fiscal year (July 1st) following passage of a Family Representation and Advocacy Act. The Interim Director will serve until the Commission appoints the actual Director. The Commission shall appoint a permanent Director by October 15th of the same state fiscal year.

The Commission shall organize and elect a Chair at its initial meeting. The Commission shall meet at least four times a year, as determined by a majority of Commission members. Meetings shall be held at the call of the Chair or the Director or at the request of four Commission members.

A majority of Commission members constitutes a quorum for the transaction of business, and an action by the Commission is not valid unless seven or more members concur.

The Commission may adopt rules and shall keep a record of its proceedings.

A Commission member may select a designee to serve in the member's stead only once per year.

4. Duties and Powers

The Commission shall exercise independent oversight of the Office of Family Representation and Advocacy to review and approve standards and provide guidance and support to the Director in providing high quality legal representation and advocacy to children and adults that

promotes positive outcomes for families; affirms, respects, and supports the diversity of New Mexico's families; promotes due process and procedural fairness; is consistent with performance standards and legal ethics; and is in compliance with state and federal law.

The Commission shall review and approve fair and consistent policies for the operation of the Office of Family Representation and Advocacy and the provision of services to the children who are, or are at risk of, being placed in the legal custody of the Children, Youth and Families Department and adults whose children are, or are at risk of, being placed in the legal custody of the Children, Youth and Families Department.

An individual member of the Commission shall not interfere with the discretion, professional judgment or advocacy of an appointed attorney, contract attorney, or staff attorney or contract employees or office employees in the representation and advocacy of a client under the Office of Family Representation and Advocacy.

B. Office of Family Representation and Advocacy Administration and Finance

The Office of Family Representation and Advocacy shall have a central office located in the metro region.

All salaries and other expenses of the Office of Family Representation and Advocacy shall be paid by warrants of the secretary of finance and administration, supported by vouchers signed by the Director or the Director's authorized representative and in accordance with budgets approved by the state budget division of the department of finance and administration.

C. Office of Family Representation and Advocacy Powers.

The Office of Family Representation and Advocacy may receive on behalf of the state any gifts, grants-in-aid, donations or bequests from any source to be used in carrying out its purposes and mission.

D. Director of the Office of Family Representation and Advocacy

1. Director appointment, qualifications, and removal

The Director shall be the administrative head of the Office of Family Representation and Advocacy. The Commission shall appoint a Director for a term of four years by approval of two-thirds of its members. The Commission may reappoint a Director for subsequent terms. A vacancy in the office of Director shall be filled by appointment by the Commission.

The Commission shall appoint as Director a person with the following qualifications:

- an attorney licensed to practice law in New Mexico or who will be so licensed within one year of appointment;
- an attorney with at least five years' experience in the field of representation of children or adults in abuse and neglect cases, as a practicing attorney, as a manager, in a supervisory or policymaking position, or possessing equivalent qualifications as determined by the Commission; and
- an attorney who has clearly demonstrated management or executive experience.

The Director may be removed by the Commission; provided, however, that no removal shall

be made without notice of hearing and an opportunity to be heard having been first given to the Director.

2. Director Duties and Powers

The Director is responsible to the Commission for the operation of the Office of Family Representation and Advocacy. It is the Director's duty to manage all operations of the office and to:

- Administer and carry out the provisions of the enabling legislation creating the Office of Family Representation and Advocacy;
- Exercise authority over and provide general supervision of employees of the Office of Family Representation and Advocacy;
- Oversee all funding including IV-E funds;
- Administer and supervise contracts for attorneys and other contracted staff to meet the requirements of the enabling legislation creating the Office of Family Representation and Advocacy; and
- Represent and advocate for the Office of Family Representation and Advocacy and its clients.

To perform the Director's duties, the Director has every power implied as necessary for that purpose, those powers expressly enumerated in enabling legislation creating the Office of Family Representation and Advocacy or other laws and full power and authority to:

- a. Set standards related to:
 - the minimum experience, training and qualifications for contract and staff attorneys in coordination with the state personnel office;
 - the minimum experience, training and qualifications for other contract and office staff in coordination with the state personnel office;
 - monitoring and evaluating, contract and staff attorneys, as well as any attorneys appointed to address conflicts of interest, and other contract and office staff;
 - ethically responsible caseload and workload levels and workload monitoring protocols for staff attorneys and contract attorneys and for other contract and office staff; and
 - the competent and efficient representation and advocacy of clients whose cases present conflicts of interest.
- b. Exercise general supervisory authority over all employees of the Office of Family Representation and Advocacy;
- c. Delegate authority to subordinates as the Director deems necessary and appropriate;
- d. Within the limitations of applicable appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the Director's duties, and enter into contracts with private attorneys and law firms as necessary to carry out the provisions of the enabling legislation creating the Office of Family Representation and Advocacy;

- e. Organize the Office of Family Representation and Advocacy into those units the Director deems necessary and appropriate to carry out the Director's duties;
- f. Develop and annually update a strategic plan with measurable goals and metrics;
- g. Conduct research and studies that will improve the operation of the Office of Family Representation and Advocacy and the administration of the enabling legislation creating the Office of Family Representation and Advocacy;
- h. Provide courses of instruction and practical training for employees of the Office of Family Representation and Advocacy that will improve the operation of the office and the administration of the enabling legislation creating the Office of Family Representation and Advocacy;
- i. Purchase or lease personal property and lease real property for the use of the Office of Family Representation and Advocacy;
- j. Maintain records and statistical data that reflect the operation and administration of the Office of Family Representation and Advocacy, including a system that allows the office to (1) collect and analyze data on outcomes for children and families; (2) maintains client confidentiality of information; (3) evaluate the effectiveness of its programs and practices; and (4) inform and guide continuous quality improvement.
- k. Submit an annual report and budget covering the operation of the Office of Family Representation and Advocacy together with appropriate recommendations to the Commission;
- l. Formulate a fee schedule for attorneys or law firms who are not employees of the Office of Family Representation and Advocacy who serve as contracted counsel under the enabling legislation creating the Office of Family Representation and Advocacy;
- m. Formulate a fee schedule for other staff who are not employees of the Office of Family Representation and Advocacy who serve clients under the enabling legislation creating the Office of Family Representation and Advocacy;
- n. Establish complaint and grievance procedures for clients of both staff and contracted attorneys and other staff;
- o. Certify contracts and expenditures for litigation expenses, including contracts and expenditures for professional and nonprofessional experts, investigators, social workers, witness fees, and attorney contracts; and
- p. Perform other duties as set forth by the Oversight Commission and consistent with federal and state law.

3. Duty of Director to establish appellate division; duty of appellate division

The Director shall establish an appellate division within the Office of Family Representation and Advocacy.

The appellate division shall assist the Director by providing representation before the Court of

Appeals and the Supreme Court in appellate proceedings involving persons represented under the enabling legislation creating the Office of Family Representation and Advocacy and under the NM Children's Code [32A-4-10 NMSA 1978]

4. Duty of Director to establish Regional Offices; appointment of Regional Managers

The Director shall establish a minimum of five regional offices to parallel Children, Youth, and Families Department's five regions and to accommodate all judicial districts in the five regions. Regions will be geographically based: one based in the northwest part of the state, one based in the northeast part of the state, one based in the southwest part of the state, one based in the southeast part of the state, and one based in the metro area. The Metro Region would house the Central Office.

The Director shall appoint a Regional Manager in each region. The Regional Manager shall administer the operation of the region and shall serve at the pleasure of the Director. Each Regional Manager shall be an attorney licensed to practice law in the highest courts of this state and a resident of this state.

Appendix Two

Budget Considerations and Projected Cost Savings

BUDGET CONSIDERATIONS

Statewide implementation of the Office of Family Representation and Advocacy with practice models as described in this report is expected to cost between \$17.1 and \$17.7 million annually. The material that follows describes those costs. After subtracting out the \$5.7 million already being spent by the Administrative Office of the Courts on these cases and \$4.3 million in projected federal matching funds, it is estimated that between \$7.1 and \$7.6 million in new funds will be needed annually once the Office of Family Representation and Advocacy is fully operational. As described in more detail below, annual benefits are estimated to range from \$4.9 million to \$11.7 million. These benefits will at minimum substantially offset costs, and could, in addition to a variety of other benefits and positive outcomes for children and families, produce net savings for the state over time.

A. BUDGET

1. Recurring Revenue

The Office of Family Representation and Advocacy will receive roughly \$5.7 million in funding currently appropriated to the Administrative Office of the Courts for court appointed attorneys. When the Office is fully funded, an additional \$4.3 million in Title IV-E matching funds can be claimed and collected.

Title IV-E Matching Funds

Most, if not all, of the new agency's expenditures will qualify for federal matching funds through Title IV-E of the Social Security Act. Title IV-E is the primary federal funding source for child welfare and is based on two factors – the Title IV-E penetration rate (percentage of children in the state's custody who qualify on the basis of household income and other factors) and the cost match. The Title IV-E penetration rate is updated quarterly by the Children, Youth and Families Department (CYFD), the designated Title IV-E agency for New Mexico. Currently the penetration rate hovers around 49 percent. Thus 49 percent of the interdisciplinary legal teams representing children and their parents, custodians or guardians in child welfare proceedings will qualify for a 50 percent federal match, as will most of the new agency's administrative costs. Training expenditures for attorneys will qualify for a 75 percent federal match.

Title IV-E matching funds are estimated by multiplying the total agency budget when fully funded (\$17.7 million) by New Mexico's 49 percent Title IV-E penetration rate and the 50 percent federal match rate:

$$\$17.7 \text{ m} * 49\% * 50\% = \$4.3 \text{ m}$$

2. Recurring Expenditure

Statewide implementation of the Office of Family Representation and Advocacy and its practice model of direct representation with interdisciplinary legal team services is expected to cost between \$17.1 and \$17.7 million annually. (All assumptions about staffing and compensation used in the budget model are provided in the Attachment to this Appendix.) The \$600,000 difference derives from the staffing model and qualifications required of interdisciplinary support

staff. For purposes of projecting expenses, the contrast is drawn between using credentialed social workers with Master of Social Work degrees to provide interdisciplinary supports (“Social Work Model”) versus a model that uses trained and certified community health workers (“Community Health Worker {CHW} Model”). Of note in contrasting these models is that fact that social workers, particularly those with Master of Social Work (MSW) degrees, are in short supply and may be prohibitively expensive. Community health workers can provide many of the same services at a lower cost to the state. The Family Representation Task Force is evaluating these options and will develop the practice model for interdisciplinary legal team services in Phase One of the implementation plan as described in the main body of this report.

Table 1 shows recurring expenditures with a Social Work Model (one lead MSW per office and interdisciplinary supports provided by persons in positions comparable to State Personnel Office classification “Operational-level Child, Family, and School Social Workers” (Social Worker-O-G1021O)).

| Table 1 | |
|--|---------------------|
| Annual Recurring Expenditures (Social Worker Model) | |
| Personnel | \$ 5,212,942 |
| Fringe Benefits | \$ 1,733,215 |
| Travel | \$247,450 |
| Equipment | \$179,348 |
| Supplies | \$138,855 |
| Consultants/Contracts* | \$9,559,022 |
| Other Costs** | \$607,711 |
| Total Direct Costs | \$17,678,544 |
| *Includes \$177,900 for experts, translators, software, and training contracts | |
| ** Appendix Table A-1 provides additional detail on Other Costs | |

Table 1(a) breaks down personnel costs (both staff and contract) by type of service in the budget depicted in Table 1.

| Table 1(a) | |
|--|---------------------|
| Personnel Costs: Contract & Staff (Social Worker Model) | |
| Inter-Disciplinary Support Services | \$4,031,200 |
| Legal Services | \$8,509,591 |
| Administrative Services | \$3,786,489 |
| Total | \$16,327,280 |

Table 2 shows recurring expenditures with a Community Health Worker Model (one lead MSW per office and interdisciplinary supports provided by trained community health workers paid \$15/hour with state benefits).

| Table 2 | |
|--|----------------------|
| Annual Recurring Expenditures (Community Health Worker Model) | |
| Personnel | \$ 5,212,942 |
| Fringe Benefits | \$ 1,733,215 |
| Travel | \$ 247,450 |
| Equipment | \$ 179,348 |
| Supplies | \$ 138,855 |
| Consultants/ Contracts* | \$ 8,968,340 |
| Other Costs** | \$607,711 |
| Total Direct Costs | \$ 17,087,861 |
| *Includes \$177,900 for experts, translators, software, and training contracts | |
| ** Appendix Table A-1 provides additional detail on Other Costs | |

Table 2(a) breaks down personnel costs (both staff and contract) by type of service in the budget depicted in Table 2.

| Table 2(a) | |
|--|---------------------|
| Personnel Costs: Contract & Staff (CHW model) | |
| Inter-Disciplinary Support Services | \$3,440,518 |
| Legal Services | \$8,509,591 |
| Administrative | \$3,786,489 |
| Total | \$15,736,597 |

As these tables show, the Community Health Worker Model would reduce the cost of inter-disciplinary supports by about \$590,682.

3. Recurring Revenue and Expenditure Analysis

Comparison of revenue to expenditure at full implementation reveals a gap in recurring funding of \$7.1 million to \$7.6 million. Table 3 shows the difference between revenue and expenditure under both sets of assumptions about interdisciplinary support staffing.

| Table 3 | | |
|--|---------------------|---------------------|
| Revenue, Expenditure, and Additional Funding Needed for Full Implementation | | |
| | MSW Model | CHW Model |
| Total Expenditure | \$17,678,543 | \$17,087,861 |
| Total Revenue | \$10,031,243 | \$10,031,243 |
| AOC/CAAF | \$5,700,000 | \$5,700,000 |
| Title IV-E | \$4,331,243 | \$4,331,243 |
| Additional Revenue Needed | \$7,647,300 | \$7,056,618 |

4. Non-Recurring Expenditures

One-time expenditures associated with setting up a statewide Office of Family Representation and Advocacy total \$2.1 million and include computers, furniture, and consulting services to establish data collection protocols and internal evaluation and quality assurance capacity.

B. BENEFITS

1. Summary

A growing body of evaluative research suggests that effective representation, coupled with interdisciplinary supports, can benefit parents and children by expediting permanency. New Mexico is proposing a high quality direct representation model based on interdisciplinary legal team services for all participants in child abuse and neglect proceedings. Four aspects of the interdisciplinary legal team services are expected to generate monetizable benefits:

- a. Better legal representation – Performance standards, quality monitoring, attorney evaluations that incorporate client feedback, and ongoing training improve the quality of representation, yielding better outcomes for families, children, and the court system overall.
- b. Smaller attorney caseloads – Manageable caseloads enable attorneys to devote the time and attention necessary to provide families with the highest quality legal representation.
- c. Direct representation of children and youth – client-directed representation is considered by many experts to be the most appropriate option for all children.¹
- d. Interdisciplinary supports - Interdisciplinary support can address a wide variety of pressing family needs and help improve outcomes for families and children across a number of domains including physical health, behavioral health, educational attainment, criminal justice involvement, and protective services re-entry.

Published data from rigorous evaluations of similar efforts in other states was used to estimate the potential cost savings to New Mexico from statewide implementation of high quality family representation coupled with inter-disciplinary supports. Cost savings estimated both here and in the research literature arise primarily from shorter stays in foster care. **Based on the best data available, shortened time in care results in estimated savings from \$3.8 million to \$11.7 million annually.** It is thus reasonable to conclude that benefits will, at minimum, substantially offset the \$7.1 to \$7.6 million net cost to the state, and that such a program could actually produce net savings for the state general fund.

2. Additional Benefits

The direct foster care savings derived from shortened time in care, though significant, are just a fraction of the monetizable benefits likely to result from better legal representation with interdisciplinary legal team supports. Additional benefits are not monetized but include:

- Cost savings from more effective representation and resulting court system efficiencies: lengthy stays in foster care entail numerous hearings and thus attorney, court, and associated costs.
- Cost savings in Medicaid: in addition to the \$21,000 New Mexico spends to maintain a child in foster care for one year,^{2 3} the state Medicaid program absorbs behavioral health costs that are 8 to 11.5 times greater than the expenditures for other Medicaid eligible children.⁴
- Cost savings in public safety domains: the heightened risk of criminal justice involvement and incarceration experienced by former foster children translates into higher public safety and corrections costs.
- Cost savings in other public domains: former foster children are at increased risk of physical^{5 6} and behavioral⁷ health problems, homelessness,⁸ and unemployment in adulthood.⁹ Average earnings of former foster children are 40 percent less than people the same age who have never experienced foster care.¹⁰ Lower lifetime earnings mean that former foster children also pay less in taxes. Former foster children are more likely than their peers to utilize public benefits like Temporary Assistance to Needy Families (TANF) and SNAP (formerly Food Stamps)¹¹ and 27 percent less likely to have health insurance in adulthood. In summary, the projected benefits presented in this report should be regarded as both incomplete and under-estimates of total benefits.

3. The Research Literature

An increasing body of evaluative research suggests that effective representation coupled with inter-disciplinary supports can benefit parents and children by expediting permanency. Program evaluations from across the U.S. find correlations between interdisciplinary family representation and increased rates of reunification,¹² shortened time to permanency,¹³ lower rates of repeat maltreatment and re-entry to care,¹⁴ and a variety of intermediary factors such as earlier appointment of attorneys and increased parental presence at hearings.¹⁵

These results are impressive but generalizations must be made with caution as there is significant cross-program variation and insufficient rigorous analysis.¹⁶ Although evidence supporting the efficacy of family representation with interdisciplinary supports is indeed mounting, the majority of that evidence, though compelling, is based on pre/post program evaluations sometimes with small, potentially non-representative samples.^{17 18 19}

While the research literature on family representation does not yet include any randomized controlled trials (RCTs),^{20 21} there are several quasi-experimental studies that use statistical techniques to approximate a control group. Outcomes reported in the most rigorous subset of the research literature were used to model the potential benefits of the Office of Family Representation and Advocacy. Four studies meeting those criteria and relevant to New Mexico were identified, yielding monetizable results that were potentially generalizable to New Mexico. Studies reviewed for generalizability to New Mexico are summarized in Table 4.

Table 4

Studies Reviewed to Estimate the Impact of Interdisciplinary Family Representation on New Mexico Child Welfare Costs

| Citation | Description | Generalizable Results? |
|---|--|---|
| <p>Courtney, ME & Hook, JL. (2012). Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care. Children & Youth Serv. Rev., 34 1337 Retrieved from: https://partnersforourchildren.org/sites/default/files/2011_evaluation_impact_of_enhanced_parental_legal_representation....discussion_paper.pdf</p> | <p>This is an evaluation of the impact of Washington State of Office of Public Defense Parent Representation Program (PRP) on permanency outcomes for children in foster care. Components of enhanced parent representation include: reasonable compensation and reduced caseloads; oversight; access to experts and social workers; attorney evaluation. The authors found an 11% higher exit rate to reunification, meaning that children were spending almost a month less time in foster care. Additionally, children in counties with enhanced parent representation reached guardianship and adoption outcomes more quickly. The research design took advantage of the staggered implementation of the PRP across Washington's counties to comparing counties with and without the PRP pre and post PRP implementation to isolate effects associated with the PRP.</p> | <p>The PRP increased speed to reunification, adoption, and guardianship by 11%, 104%, and 83% respectively relative to non-PRP counties. The 11% increase in the rate of reunification translated into 27 fewer days in foster care for children in PRP counties. Reductions in time to adoption and guardianship reduced average duration in care by approximately one-year.</p> |
| <p>Washington State Office of Public Defense. (2010). Reunification and Case Resolution Improvements in Office of Public Defense (OPD) Parents Representation Program Counties. Retrieved from: http://www.opd.wa.gov/documents/0049-2010_PRP_Evaluation.pdf</p> | <p>Implementation of the Office of Public Defense Parent Representation Program (PRP) in 15 counties increased reunification rates and expedited case resolutions. Non-OPDPRP program counties showed no significant change in reunification or case resolution rates</p> <ul style="list-style-type: none"> > Of 496 pre-OPDPRP program case filings, 26.6% resulted in reunifications and 59.5% were resolved within 28-31 months. > Of 722 post-OPDPRP program case filings, 37.0% resulted in reunifications and 70.4% were resolved within 28-31 months. | <p>The PRP resulted in a 10.4 percentage point increase in reunifications (equivalent to a 39% increase in the rate of reunification) and earlier case resolutions, with a 10.6 percentage point increase in case resolutions within about 2.5 years (an 18.3% rate increase the "timely" resolution rate).</p> |

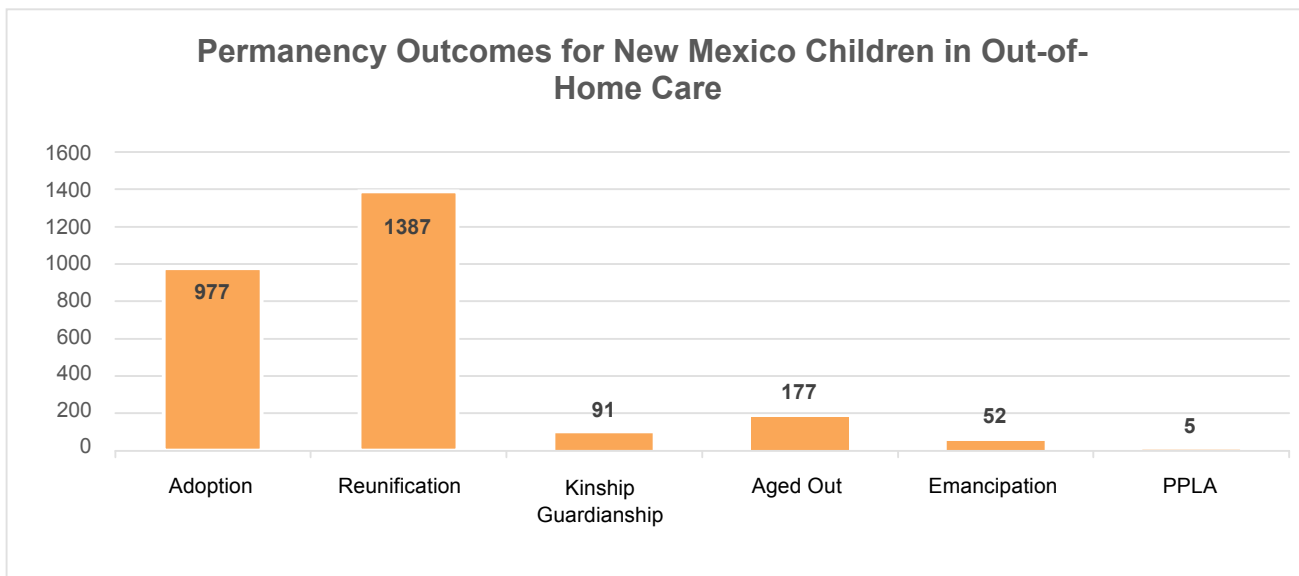
| | | |
|---|---|---|
| <p>Gerber, LA., Pang, YC., Ross, T., Guggenheim, M., Pecora, P.J., & Miller, J.(2019). Effects of an interdisciplinary approach to parental representation in child welfare.</p> <p>Children and Youth Services Review, 102 42-55. Retrieved from:</p> <p>https://www.sciencedirect.com/science/article/pii/S019074091930088X#t0005</p> | <p>The authors utilized a quasi-experimental research design to assess the impact of inter-disciplinary parental representation on child welfare outcomes in New York City. Parents who were provided interdisciplinary legal representation were statistically matched to parents assigned a standard panel attorney and child welfare outcomes were compared. This study is noteworthy for its large sample size (9,582 families and their 18,288 children) and is the first study of interdisciplinary parental representation to attempt to disaggregate effects of legal representation from those of interdisciplinary supports.</p> <p>The authors found that parental representation with inter-disciplinary supports:</p> <ul style="list-style-type: none"> > Decreased the time to overall permanency by 118 days (approx. 15%) when compared to children whose parents were represented by a standard panel attorney. > Did not prevent entry into foster care > Did not impact the likelihood of subsequent substantiated reports of maltreatment. | <p>Inter-disciplinary parental representation resulted in 118 fewer days on average in foster care during the four years following the abuse or neglect case filing. This is roughly equivalent to a 15% reduction in average duration of out-of-home care.</p> |
| <p>Steve M. Wood et al. (2016). Legal Representation in the Juvenile Dependency System: Travis County, Texas' Parent Representation Pilot Project, Fam. Court Rev, 54 277 Retrieved from: https://onlinelibrary.wiley.com/doi/full/10.1111/fcre.12218</p> | <p>Researchers at the National Council of Juvenile and Family Court Judges conducted a program evaluation for a parent representation pilot program in Travis County, Texas. The researchers found that parental representation increased the likelihood that parents would be present at hearings and that when parents were present at the hearings, the children were more likely to be returned home. For each percentage point increase in a parent's overall presence at hearings, the likelihood that the final case outcome resulted in the child being returned to the parents or having the juvenile dependency petition dismissed increased and the likelihood that the final case outcome resulted permanent management conservatorship (PMC) to the department decreased. This effect held for both pilot and control group participants. Participation in the pilot program was significantly related to permanent (return to family, dismissed, relative/guardianship) outcomes</p> | <p>Significant impacts on timeliness to full appointment and whether the case resulted in a permanent or non-permanent outcome. Pilot cases ended in a permanent outcome 72% of the time, compared to 55.7% of the time for controls.</p> |

4. Potential Benefits (Cost Savings) to New Mexico

At any given time an average of 2,600 New Mexico children are in out-of-home placements, usually foster care, as a result of their families' involvement with the child welfare system. In 2019, the State of New Mexico spent over \$104 million on child protective services.²² This amount does not include court costs, attorneys for children, youth and parents, and many of the other legal costs associated with child welfare cases that add millions more to the total state expenditure.

Figure 1 shows permanency outcomes for New Mexico children whose child welfare cases were closed between January 1, 2016 and December 31, 2018.²³ Just over half (52%) of children who exited during that period were reunified with their families. Thirty-six percent of exiting children were adopted and 177 children (7%) “aged out” of the child welfare system. Smaller numbers of case closures were the result of other outcomes including kinship guardianship (3%), emancipation (2%), and Planned Permanent Living Arrangements (PPLA) (<1%). The data depicted in Figure 1 were derived from the Administration of Court’s Odyssey system.

Figure 1



Source: Data extracted from Odyssey and compiled by Bobbi Shearer

Extrapolating from the generalizable results of the most rigorous research to date enables us to estimate potential cost savings from increases in the number of children reunified with their families and from shorter foster care durations for children who achieve some form of permanency through adoption, reunification, or kinship guardianship.

Reunification

A 39 percent increase in reunifications as reported by Washington State Office of Public Defense (2010) would have increased, by 541, the number of New Mexico children reunified with their families between 2016 and 2018, saving the child welfare system approximately \$11.4 million, an average of \$3.8 million annually or \$1,546 per child per year.

Time to Permanency

Table 5 shows median time to permanency by type of permanency for children in the New Mexico child welfare system between January 1, 2016 and December 31, 2018.²⁴ The median duration of out-of-home care for New Mexico foster children during this period was 726 days, or almost exactly 2 years. For children who achieved permanency (defined as reunification,

guardianship, or adoption) during that period, the median time in care was 694 days.

An 15 percent increase in the speed of permanency as reported by Gerber et al. (2019) would have reduced the median time in care for New Mexico children by an average of 104 days, saving the public sector \$5,986 per child over the three-year period. Child welfare savings would have totaled \$14.7 million over three years, or roughly \$4.9 million per year.

| Table 5 | |
|--|----------------------------------|
| Median Time to Permanency* NM 2016-18 | |
| Outcome | Median Days to Permanency |
| Reunification | 449 |
| Guardianship | 498 |
| Adoption | 1,061 |
| All Permanency Outcomes | 694 |
| All Outcomes | 726 |
| *Weighted average of median number of days from petition to legal permanent placement by judicial district. Data were extracted from Odyssey for all maltreatment cases wherein a disposition was entered for a child within the specified date range. | |
| Source: Data extracted and compiled by Bobbi Shearer | |

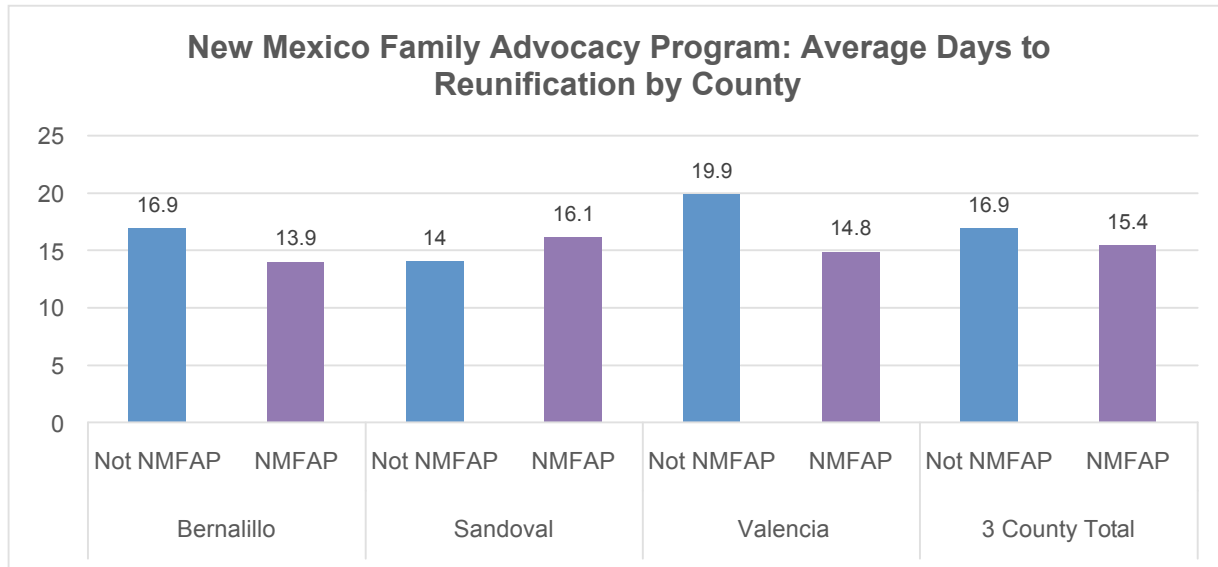
Extrapolating the increased speed to permanency reported by Courtney and Hook (2012) to New Mexico’s foster care population yields the results depicted in Table 6. As evidenced therein, if New Mexico produces results comparable to those documented by Courtney and Hook (2012), the state child welfare system would save an average of \$11.7 million annually.

| Table 6 | | | | | | |
|---|-----------------|------------|---|---|---------------------------|----------------------|
| Estimated Benefits of NM Direct Representation & Interdisciplinary Legal Team Services | | | | | | |
| | Current* | New | Reduction in duration of care (days) | Value of reduction @ \$57.53/day | Number of Children | Total Savings |
| Reunification | 449 | 404.61 | 45 | \$2,561 | 1387 | \$3,551,698 |
| Adoption | 1,061 | 520.09 | 541 | \$31,120 | 977 | \$30,404,031 |
| Guardianship | 498 | 272.28 | 226 | \$13,002 | 91 | \$1,183,215 |
| Total Savings (3 year) | | | | | | \$35,138,945 |
| Average Annual Savings | | | | | | \$11,712,982 |
| *Baseline data extracted from Administrative Office of the Courts Odyssey System | | | | | | |

Finally, it is also worth noting that a 2017 preliminary review of administrative data from the NM Family Advocacy Program (NMFAP), a grant-funded, interdisciplinary parental representation initiative implemented in judicial District 13, indicated that the program is reducing time to permanency. Time to permanency increased in the five years prior to the program’s 2013 implementation and decreased in the four years following implementation.²⁵ More recent,

unpublished data provided by the NMFAP shows that in the three counties in which the program currently operates, children from families that participated in the NMFAP had shorter average times to permanency than children from families that did not take part in the NMFAP. Figure 2 shows average time to reunification for foster children in Bernalillo, Sandoval, and Valencia counties by NMFAP participation.

Figure 2



Source: New Mexico Family Advocacy Program, Letter to SJM 10 Taskforce, May 14, 2020

In conclusion, it is important to note that the outcomes quantified in this section represent a small, readily-quantifiable portion of the potential benefits of improved quality of representation with interdisciplinary legal team services. As discussed above, better legal representation can make the court system more effective and more efficient.²⁶ Interdisciplinary support can address a wide variety of pressing family needs and therefore help improve outcomes for families and children across a number of domains including physical health, behavioral health, educational attainment, criminal justice involvement, and protective services re-entry. Avoiding or shortening the duration of foster care can lessen the toll it exacts on children. Adverse childhood experiences (ACE) have been linked to physical and behavioral health problems throughout the lifespan and even to early mortality. The ACEs experienced by a parent can impact their reproductive choices and thus how they parent their own children. The value to the public sector and society overall of improved child outcomes can therefore be multigenerational, difficult to quantify, and equally difficult to overstate.

6. Comparing Costs and Benefits

Comparing the net cost of \$7.1 to \$7.6 million to the \$4.9 million to \$11.7 million in annual benefits estimated in the previous section suggests that benefits will, at minimum, substantially offset costs, and that an Office of Family Representation and Advocacy, could, in addition to myriad other benefits, produce net savings for the state.

**Attachment to this Appendix Two
Budget Detail**

Table A-1

| “Other” Expenses Detail | | |
|----------------------------------|------------------|---|
| | Amount | Notes |
| Rent | \$354,955 | Space to accommodate all FTEs and 1/3 of contractors at any one time @ 175 sf/person; lease rates are based on commercial averages and vary by location |
| Phones | \$70,187 | \$65/phone/month/employee |
| Utilities | \$41,589 | \$1.80/month/sf |
| CLE | \$3,900 | Employed attorneys 12 credits/year @ \$25/credit |
| Client transportation vouchers | \$127,080 | 2 vouchers /case @ \$30/voucher |
| On-line professional development | \$10,000 | Training module development and delivery (Project ECHO) |
| Total | \$607,711 | |

Table A-2

| Staffing Assumptions (Contract and Employed) for Budget Analysis | | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|--------------|----------------------|
| | Albq | SFe | NW | SE | SW | Total | Notes |
| Executive Director | 1.0 | 0.0 | 0.0 | 0.0 | 0.0 | 1 | |
| Deputy Director | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 5 | |
| Clerical | 9.9 | 4.7 | 5.7 | 7.4 | 5.5 | 33 | Source: PD/DA budget |
| Financial Specialists | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 5 | |
| IT specialists | 2.0 | 1.5 | 1.5 | 1.5 | 1.5 | 8 | Source PD/DA budgets |
| Lead GAL/YA | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 5 | Leads carry .25 load |
| GAL/YA | 7.8 | 3.2 | 4.2 | 5.7 | 4.0 | 25 | Caseload=75/60 |
| Lead Respondent Attorneys | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 5 | Leads carry .25 load |
| Respondent Attorneys | 9.9 | 4.1 | 5.3 | 7.2 | 5.1 | 32 | Caseload=75/60 |
| Paralegals | 7.2 | 3.1 | 3.8 | 5.0 | 3.7 | 23 | 3 per attny |
| Lead Master Social Workers | 4.6 | 1.6 | 2.0 | 2.7 | 1.9 | 13 | Leads carry .25 load |
| Social Workers or CHWs | 18.3 | 6.3 | 8.0 | 10.8 | 7.7 | 51 | Caseload = 20 |
| Peer mentors | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | Caseload=10 |
| Investigators | 3.0 | 1.4 | 1.7 | 2.2 | 1.7 | 10 | PD/DA budgets |
| Appellate Attorneys | 2.0 | 0.0 | 0.0 | 0.0 | 0.0 | 2 | |
| Total | 69.7 | 30.0 | 36.3 | 46.5 | 35.0 | 217 | |

Table A-3

| Compensation Assumptions for Budget Analysis | | | | | |
|---|--------------------|-------------------|------------------|------------------|--------------------------------|
| | Salary/cost | Benefits** | Cost/hour | Cost/case | Source |
| *Executive Director | \$104,551 | \$30,748 | \$65 | | 8015JB Court Exec Officer 2 |
| *Deputy Director | \$94,351 | \$28,235 | \$59 | | 8010JB Court Exec Officer 1 |
| *Office manager | \$58,013 | \$19,281 | \$37 | | 9006JB Court Manager 2 |
| *Financial Specialist | \$45,259 | \$16,139 | \$30 | | 2540JB Financial Specialist |
| *IT Specialist | \$65,279 | \$21,072 | \$42 | | 9645JB IT Specialist |
| Lead GAL/YA | \$92,409 | \$27,757 | \$58 | \$8,011 | Attorney Supv LLLS40 |
| GAL/YA | \$72,853 | \$22,938 | \$46 | \$1,485 | Attorney 1 LLLA26 |
| Lead Respondent Attrnys | \$92,409 | \$27,757 | \$58 | \$8,011 | Attorney Supv LLLS40 |
| Respondent Attorneys | \$72,853 | \$22,938 | \$46 | \$1,485 | Attorney 1 |
| *Paralegals | \$34,222 | \$13,419 | \$23 | \$265 | Paralegal 9447JB |
| Lead Master Social Workers | \$57,779 | \$19,224 | \$37 | \$15,401 | Permanency Planning Supervisor |
| Master Social Workers | \$41,809 | \$15,289 | \$27 | \$2,855 | Social Worker-O-G1021O |
| Community Health Workers | \$31,200 | \$12,675 | \$21 | \$2,194 | \$15/hour + benefits |
| Appellate Attorney | \$86,240 | \$26,237 | \$54 | | Attorney 3 |
| Peer mentors | \$10,000 | N/A | N/A | \$1,000 | |
| *Investigator | \$51,000 | \$17,553 | \$33 | | 8770JB Background Investigator |
| *Clerical | \$45,259 | \$16,139 | \$30 | | 9016JB Admin Assist 2 |
| *Salary schedule for Courts. Attorney salaries are per SPO, see: https://www.spo.state.nm.us/uploads/FileLinks/1f8e336b4cce4316ac34251735e4ea39/FY20_FinalClassPayListing_Effective_10.19.2019_7.1.pdf | | | | | |

Table A-4

| **Benefits Computation | |
|---|---------|
| FICA | 8% |
| Public Employees Retirement Association | 17% |
| Health Insurance | \$4,987 |

Endnotes

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²⁴ Data extracted from Odyssey and compiled by Bobbi Shearer.

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ATTACHMENT

SURVEY OF OTHER STATES

The structure and practice models of the proposed Office of Family Representation and Advocacy are informed by the Task Force’s survey of other states and public jurisdictions. Overall, the Task Force recommends that we legislatively create an independent agency in the judiciary to provide quality representation and advocacy for children and parents involved in abuse and neglect proceedings in New Mexico. The Office of Family Representation and Advocacy will provide high quality legal representation and advocacy that promotes positive outcomes for families; affirms, respects, and supports the diversity of New Mexico’s families; promotes due process and procedural fairness; is consistent with performance standards and legal ethics; and is in compliance with state and federal law. Precedent for establishing an independent agency can be found in several states as discussed below.

In addition to establishing an independent agency, the Task Force is recommending practice models also well established in other states and public jurisdictions. These include:

- Direct Representation as the practice model for providing high quality legal representation to children and parents
- Interdisciplinary Legal Team Services as the delivery model
- Agency infrastructure that supports high quality legal representation – performance standards, attorney evaluations, quality monitoring and quality improvement, training, mentors, paralegals, investigators, expert witnesses, and more
- Manageable caseloads

Each of these critical elements is reviewed in detail in the material that follows. Overall, the States of primary importance are those found in the table that follows.

| State | Independent Agency | Heightened Representation | Employees/ Contractors |
|------------|--|---|---|
| Colorado | 2 agencies. Office of the Child’s Representative (OCR) and Office of Parent Respondent’s Counsel (OPRC) | Performance standards, grievance process, recruitment, role specific training, mentoring, compensation parity among parties’ counsel, access to experts, social workers, paralegals, and investigators. | Contractor attorneys, employed staff, piloting hybrid employed/ contract attorney model |
| Washington | Office of Public Defense (represents parents and children), specific Parent Representation | Standards specific to dependency and TPR representation, caseload max of 80, access to social workers and experts, increased compensation | Contractors |

| | Program (PRP) | | |
|----------|---|---|--|
| Wyoming | Specialized GAL division within Office of the State Public Defender | Enhanced practice standards, case load maximums, emphasis on children attending court, quality assurance process, multi-level attorney evaluation process, hybrid direct and best interests representation, specialized training. | Hybrid: 7 FT attorneys, and 28 contract attorneys. |
| Utah | Office of Guardian ad Litem and Court Appointed Special Advocate | Support staff, trained citizen volunteers (CASA), independent of Judicial Council and Administrative Office of the Courts. | 40 FT attorneys |
| Mass | 2 agencies. Committee for Public Counsel Services (children) and Family Law Division (Parents) | Support staff, social workers, partnership with law school (contractor preference, post-grad fellowships, job placement) | Parents: Contract attorneys Children: Hybrid |
| Oregon | Office of Public Defense Services: Parent Child Representation Program (modeled after Washington) | Specialized support services, reduced caseloads, adherence to best practices, annual report to establish benchmarks, identify trends, and initiate data-driven quality improvement principles. | |
| New York | Office of Parent Representation | Caseload study (50-60 in the interim), \$150/hour attorney compensation, interdisciplinary model | Public defenders, legal aid, attorney panels |

1. An Independent Agency

Some states have independent agencies for representing children; some have independent agencies for representing parents; and some have both. Some use only contract attorneys and some are hybrids of contract and employed attorneys. Some are run by the equivalent of the public defender and some have other independent status. The following examples are offered to illustrate precedence for an independent agency..

Colorado

Colorado actually has two independent agencies – the Colorado Office of the Child’s Representative (OCR) and the Colorado Office of Respondent Parent’s Counsel (ORPC). The OCR and ORPC are both independent agencies under the Colorado state Judicial Branch.

The Office of the Child’s Representative (OCR) is the agency within the Judicial Branch that oversees the provision of Guardians ad Litem and legal representation services for children in Colorado’s 22 judicial districts. The agency was established with an independent oversight board appointed by the judiciary in 2000 for the purpose of ensuring the provision of uniform, high-quality legal representation and non-legal advocacy to children involved in judicial proceedings in Colorado; reduce needless expenditures; and establish enhanced funding resources for these legal and advocacy services.

In 2014, Colorado convened a task force to address many of the same issues now being considered by this Family Representation Task Force. That work resulted in the establishment of the Office of Respondent Parent’s Counsel (ORPC), a stand-alone office with an appointed oversight commission in 2016. The entity uses all contract attorneys but has a pilot project in one of its most populous district utilizing full-time staff, indicating that it is moving toward a hybrid model of full-time attorneys and contract attorneys.

The Colorado ORPC vision embraces three concepts: Advocacy, Accountability, and Access. The agency strives to identify and train attorneys to be effective advocates and to be accountable for their performance, while it provides access to resources and training to aid in their representation of respondent parents.

The original ORPC task force considered the feasibility, costs, and benefits of the Office that represents parents merging into an existing agency in Colorado or being established as a stand-alone office. That Work Group also evaluated existing agency practices the ORPC could adopt under either scenario.

The Work Group analyzed the operational structures of the Colorado Public Defender’s Office, the Office of Alternate Defense Counsel, Colorado Legal Services and the Office of the Child’s Representative. The Work Group also analyzed parent representation models in a number of states, paying specific attention to the State of Washington Office of Public Defense Parent Representation Program; the Detroit Center for Family Advocacy; the North Carolina Commission on Indigent Defense Services; the Arkansas Judiciary Parent Counsel Program; the Massachusetts Children and Family Law Division of the Committee for Public Counsel Services; and the Center for Family Representation in New York.

The Colorado group considered a nearly identical set of criteria as those set out in Senate Joint Memorial 10 in NM. It identified a set of barriers to merging the Office of Parent Representation with any of the other offices, including the office that represents children in those cases. These barriers included:

- Agencies lack subject matter expertise.
- Agencies have legal and philosophical conflicts with the OPRC’s mission.
- Ethical conflicts would arise for attorneys working in a merged agency.
- A merged agency would diminish the importance of the respondent parent counsel (RPC) role.
- The operational structure of existing agencies does not accommodate independent contractors.

The Colorado Working Group concluded that “a stand-alone office focused exclusively on parent representation in dependency and neglect cases would be the structure most appropriate to carry out the legislative intent of the ORPC.” They recommended that the stand-alone office have its own governing commission, like the Public Defender, and employ a director familiar with the unique demands of representing respondent parents in dependency and neglect cases.”

They also concluded that: “A stand-alone office will resolve many of the historical challenges embodied in the current system of representation afforded to respondent parents. For example, an independent stand-alone office will eliminate the need for judicial officers to be involved in the selection and oversight of RPC and in the appointment and compensation of expert witnesses for RPC. It will also foster consistent administrative and oversight practices across the state. Finally, a standalone office will be able to address the unique challenges faced by rural judicial districts in Colorado. “

The recommendations were adopted in 2014 creating the ORPC. That initial office was staffed with 10 full-time employees overseeing contract parents’ attorneys, with an oversight commission. Much like what is being proposed for New Mexico, the Colorado ORPC was tasked with the following:

- Adopt trial and appellate practice standards
- Provide relevant, accessible, and role-specific training for all RPC and develop a mentoring program for new attorneys wishing to serve as RPC;
- Establish a compensation structure and rates that achieve parity among parties in dependency and neglect proceedings and that enable thorough and adequate preparation of cases;
- Improve RPC access to experts, investigators, social workers, and paralegals, and provide other forms of litigation support, including the establishment of a motions and brief bank, a resource library, and a listserv
- Establish a formal process by which parents and other individuals may file complaints against RPC;
- Develop strategies to ensure the recruitment and ongoing availability of qualified counsel, support services, and resources for RPC in rural districts.

Washington

The Washington State Office of Public Defense (OPD) provides legal representation to indigent parents in child welfare proceedings. The OPD is an independent agency in the Judicial Branch. The program was created following an investigative report showing that indigent parents throughout the state typically received poor legal representation in dependency and termination cases. The Parents Representation Program (PRP) provides state-funded attorneys for indigent parents, who have legally mandated rights to counsel. These attorneys are contracted by OPD, which oversees performance, limits caseloads and provides resources.

The OPD designed and implemented standards specifically for dependency and termination case representation, uniquely blending a counselor at law approach with traditional practice techniques. The standards require OPD contract attorneys to meet and communicate regularly with their parent clients throughout the case; ensure their clients have adequate access to services and visitation; prevent continuances and delays within their control; prepare cases well; and attempt to negotiate agreements and competently litigate if no agreement is reached. Reasonable caseloads are set at no more than 80 open cases per full-time attorney. The program has been favorably evaluated six times. In 2010, in consultation with the Washington State Center for Court Research, OPD published a report on the court records and court orders in 1,817 dependency cases prior to and after implementation of the Parents Representation Program. The comparison found significant differences in the rate of reunification. Cases commenced after the program was implemented achieved permanency 36.5% more often than those that

were commenced prior to representation under the program began. A 2011 study by the University of Washington, which conducted the study at DSHS's request, found that after the Parents Representation Program was instituted in various counties, cases were decided between one month and one year faster. The study concluded that the program is helpful in getting children out of foster care and into permanent homes and that it should be extended statewide. The reduction of time that children spend in care has been attributed as saving the state hundreds of thousands of dollars.

The Parents Representation Program contracts with attorneys, law firms, and public defender organizations to represent parents in all covered counties. These contractors follow the program's enhanced practice standards, which require regular client communication, diligent efforts to help parents participate in necessary services, adequate case preparation, effective negotiation with the State, access to social workers and experts, and competent litigation if a negotiated settlement isn't possible.

Although the program was implemented almost 20 years ago, it began as a pilot project in several counties, and was finally expanded into all counties in Washington State in 2019. The success of the program was a key reason for its adoption in the state of Oregon.

Wyoming

Wyoming's Office of the State Public Defender (OSPD) runs a Guardian Ad Litem Division of 7 full time attorneys and 28 contractors to cover child representation for the entire state. OSPD also provides parent representation, but only as function of regular Public Defender duties.

The Wyoming Guardians Ad Litem Program is a state-and county-funded centralized state office that trains and supervises all attorneys representing children in Juvenile Court in the state. In 2008, the program adopted rules and policy setting practice standards and addressing other related quality indicators like the presence of children and youth in court proceedings. The program set caseload maximums for all program attorneys, began specialized training for the program attorneys, instituted a quality assurance process, and developed a multi-tiered evaluation process for program attorneys. From 2008 to 2012, the program underwent an overhaul and brought many of the attorney positions in-house as full-time attorneys or state employees, drastically reducing the number of independent contract attorneys. In 2015, the program released an on-line case management system to better track compliance with standards, timeliness of proceedings, and outcomes for children and youth.

Attorney guardians ad litem in Wyoming represent children in the hybrid model of representation where they represent both what the child wants and what is in the child's best interests, unless the child in a CHINS or delinquency proceeding has a direct attorney, then the attorney GAL represents only the child's best interests. The attorneys are required to meet with the children and their caregivers, conduct an independent investigation, work cooperatively with the juvenile court team, as well as zealously advocate for their clients.

Utah

Utah established an Office of Guardian Ad Litem and Court Appointed Special Advocate. The Office employs more than 40 full time lawyers, together with dedicated support staff and a pool of trained citizen volunteers who serve as Court Appointed Special Advocates (CASA). It is the only state located that primarily uses employee attorneys. The Office of Guardian ad Litem and Court Appointed Special

Advocate is a separate line item within the Judicial Branch budget. However it operates independent of the Judicial Council and the Administrative Office of the Courts.

Utah funds parent representation through an Indigent Defense Commission (IDC), a discretionary grant program that distributes funds to counties. The IDC reports to the State Commission on Criminal and Juvenile Justice that is responsible to the Governor's Office. However, the individual counties themselves have no statewide standards for determining things such as attorney contract pay, caseload standards, attorney recruitment, performance evaluation, and quality control.

Massachusetts

Lawyers in the Committee for Public Counsel Services' Children (CPCS) and Family Law Division (CAFL) represent both children and parents. Most CAFL lawyers are private attorneys. Others are CPCS staff members who work in partnership with CPCS staff social workers. It operates under that state's equivalent of the public defender program on a hybrid model that provides social worker support. Massachusetts is noted for setting specific standards of practices for attorneys as well as its exceptional training program for attorneys and other staff.

In 2019, The Western New England Law School began a new partnership with the Children and Family Law Program (CAFL) of the Massachusetts public counsel's office. This partnership was designed to resolve an attorney shortage in Western Massachusetts that the Chief Justice of the Supreme Judicial Court had called a constitutional crisis. Students who participate in the program are eligible for expedited placement on CAFL's private counsel panel so that they can begin practice soon after learning their bar exam results. Students may be eligible for post-graduation fellowships in the local CAFL office, or employment with local private attorneys during the period between taking the bar exam and finding out bar results.

Oregon

The Oregon Parent Child Representation Program was developed by the Office of Public Defense Services, and initially funded by the Oregon State Legislature in 2013, to enhance the quality of legal representation for parents and children in juvenile dependency and termination of parental rights cases. The program aims to ensure competent and effective legal representation throughout the life of the case by ensuring reduced attorney caseloads, the provision of specialized support services, and adherence to best practices for attorney performance. The goal of the program is to achieve positive outcomes for children and families through the reduction of the use of foster care and reduced time to permanency for children.

The Oregon program was modeled on the Washington State Parent Representation Program. In order to implement the Program, Oregon first created the program under the Office of Public Defense Services (OPDS) and initiated a pilot project in three counties. After it established the Pilot Project, it began development of an annual PCRCP report. Oregon determined that "creating an annual report is the first step toward establishing benchmarks, identifying trends, and initiating data-driven quality improvement principles to guide the growth of the PCRCP."

In its 2014-2015 PCRCP report, Oregon included the following "Notable Observation":

The PCRCP is intended to serve as a vehicle for improved legal representation. However, improving representation is a process that takes time and consistent focus. The heightened expectations of the PCRCP and the change in the way OPDS contracts for legal services in PCRCP counties have required that program attorneys make rapid practice changes.

However, a 2016 study of dependency representation in Oregon identified inconsistent state and agency representation, a lack of uniform practice, and complicated financial models as challenges to timely and effective case planning and case management, stating that “obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon’s children and families.”

Furthermore, the Oregon report found that a model of government representation that provides full representation for the agency in all hearings and out-of-court activities will ultimately eliminate the risk of unlawful practice of law by child welfare employees in the courtroom and increase outcomes for children and families in Oregon. This recommendation would eliminate “the state” as a party to dependency cases and ensure the child welfare agency is fully represented and has access to consultation with counsel.

By 2018, Oregon was experiencing significant successes in the areas served by the Pilot Project. In the first two counties where the new approach was instituted, Linn and Yamhill, data showed it benefitted both families and taxpayers: A higher share of children had been returned to their parents, and fewer children entered the foster care system in the first place. The wait time for children to get permanent homes also decreased.

Funding has not yet allowed the Program to be expanded statewide, so it is being expanded slowly into other counties. It currently serves 5 counties.

New York State

New York State has not historically had an office of parent representation and parents are represented under a patchwork of county systems utilizing public defenders, legal aid, and panels of attorneys available for appointment. New York City is the exception where there is very high quality work happening with five providers as described below.

In 2018, the judiciary created the Commission on Parental Legal Representation. The Commission’s mandate is to examine the current state of representation for indigent parents in constitutionally and statutorily mandated family-related matters, and to develop a plan to ensure the future delivery of quality, cost-effective parental representation across the state. While only directed to parent representation, their efforts and recommendations are similar to New Mexico’s. Ultimately the Commission recommended the creation of the State Office of Family Representation (February 2019). Recommendations also include a caseload study (with 50-60 cases in the interim) and rates for attorneys of \$150/hour.

2. Direct Representation

The Task Force has heretofore been provided with three documents related to Direct Representation:

- The ABA Model Act that was “drafted under the auspices of the ABA Section of Litigation Children’s Rights Litigation Committee with the assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some

language from the provisions of the NCCUSL Representation of Children in Abuse, Neglect, and Custody Proceedings Act.”

- “Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings” published by the Family Justice Initiative (FJI)
- “Until the Client Speaks: Reviving the Legal-Interest Model for Preverbal Children” by Lisa Kelly and Alicia LeVezu of the University of Washington School of Law

As described in the ABA Model Act commentary, Direct Representation means “the lawyer-client relationship for the child’s lawyer is fundamentally indistinguishable from the lawyer-client relationship in any other situation and includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to provide independent advice. Client direction requires the lawyer to abide by the client’s decision about the objectives of the representation. In order for the child to have an independent voice in abuse and neglect proceedings, the lawyer shall advocate for the child’s counseled and expressed wishes. Moreover, providing the child with an independent and client-directed lawyer ensures that the child’s legal rights and interests are adequately protected.” (ABA Model Act). As defined in the Model Act,

- A “Child’s lawyer” (or “lawyer for children”) means a lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality and competent representation, to the child as is due an adult client, subject to Section 7 of this Act.
- A “Best interest advocate” means an individual, not functioning or intended to function as the child’s lawyer, appointed by the court to assist the court in determining the best interests of the child.

The arguments for Direct Representation include the basic right of parties in these proceedings. Per the FJI document, “a well-functioning child welfare system must recognize that children and parents are parties to child welfare proceedings and are entitled to all the rights of parties, including the right to notice of the proceedings and the right to appear before the court and present arguments, evidence, and sworn testimony. As parties to child welfare proceedings, children and parents must have a right, through either statute or case law, to independent legal counsel.”

A second argument for Direct Representation revolves around the qualifications of attorneys. Per the University of Washington article, “Over the past few decades, there has been a robust discussion and debate about the appropriate role of counsel for these children: should attorneys act as attorneys and follow their client’s direction, or should attorneys serve as “guardians” for these children, relying on their own determinations as to what is best for the child to guide their advocacy?’ Throughout these years of debate and discussion, best-interest representation has been critiqued in the legal community as an improper model of attorney representation. A common argument made against this model is that it assumes an attorney is qualified to determine what is best for a child in a difficult situation. Attorneys are not formally trained or licensed experts in child welfare or infant mental health, and so expecting the attorney to be able to discern the best path forward for a particular child assumes an expertise the attorney simply does not have.”

A third concern revolves around how to provide Direct Representation to very young children. The University of Washington article makes the argument that attorneys for pre-verbal children should represent the legal rights as required by applicable statutes (reasonable efforts, placement, and many more).

A fourth resource can be found in “A Child’s Right to Counsel, Fourth Edition, A National Report Card on Legal Representation for Abused and Neglected Children” published by the Children’s Advocacy Institute, First Star, and the University of San Diego. A Child’s Right to Counsel grades each state using criteria that assess statutory mandates for attorney representation of abused and neglected children, and the extent to which that representation is client-directed, encompasses all hearings (including appeals), requires multi-disciplinary training and maintains confidentiality and liability under Professional Responsibility standards applicable to children’s counsel. Most states (34 of the 51) have statutes that require independent counsel for all children in abuse and neglect proceedings, but only 15 of those 34 require client-directed counsel under all reasonable circumstances (most often requiring both representation of the child’s wishes as well as best interests). These are Arizona, Connecticut, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Mississippi, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, and West Virginia.

3. Interdisciplinary Legal Team Services

Interdisciplinary models are beginning to emerge across the country. In some states, like Oregon, New York, Washington, and Colorado, there are pilot programs in child and/or parent representation within the broader system that work to integrate interdisciplinary practices.

Oregon’s *Parent Child Representation Program*, piloted in 5 counties, uses independent social workers in its interdisciplinary model. In the initial two PCRPs counties, there was an average foster care reduction rate of 19% in 2014 and 13% during the first six months of 2015, compared to a statewide decrease of 4.33% in 2014 and a statewide increase of 0.44% during the first six months of 2015.

The Second Judicial Department of New York is unique in that state of having as a component of the Office of Attorneys for Children, the *Support Services Program*. It implements and carries out an interdisciplinary approach to representation. The program is designed to be the central consultative authority within the Appellate Division, Second Judicial Department, for attorneys for children seeking resources and support services for their clients.

Colorado’s Office of Child’s Representative (OCR) is an example of interdisciplinary access that is not integrated into the office. OCR provides funding for attorneys to hire qualified social service professionals as necessary per case. This model does, however, depend to some extent on attorneys taking the initiative.

Under the Colorado Office of Parent Respondent Council (OPRC), funding is allocated for social workers at a rate of \$44/hr. Like New Mexico, it operates a pilot project in three judicial districts. The OPRC pilot Social Workers are routinely assigned to work with court appointed attorneys in dependency and neglect cases. The Social Workers include four master’s level clinicians who offer a wide range of expertise in evidence-based practices in mental health, substance abuse, attachment and bonding, domestic violence, parent engagement, and tailored service delivery. Each pilot Judicial District has the equivalent

of one full time social worker caseload available for assignments. The program has served approximately 165 clients.

Washington's Parent Representation Program (PRP) provides 36 social workers available to work with attorneys across the state. The PRP also runs a "Parent to Parent" peer mentorship program in which parents who have successfully gone through the legal processes are available to mentor parents who are entering for the first time. This program has proven both popular and cost effective.

Well-established models that are often cited as evidence-based or promising practices include the Detroit Center for Family Advocacy, the Center for Family Representation in New York City, and KidsVoice in Pittsburgh, Pennsylvania

The Center for Family Representation in New York

The Center for Family Representation (CFR) in New York is an example of a comprehensive parent representation model that is achieving notable outcomes. The CFR model provides every parent with an attorney, a social worker, and a parent advocate. Parent advocates are parents who themselves once faced family court prosecution, had their children removed, and were able to successfully reunify their families. Under the CFR model, every parent is surrounded by a team that works together to problem-solve, identify resources, strengths and needs and provide counsel and advice. By combining in-court litigation with out-of-court social work referrals and case-management, individualized service planning, and parent mentoring, CFR dramatically improved outcomes for families. Former clients of CFR report very high degrees of satisfaction with CFR representation, citing it as essential to their successes and communicating that they truly felt their voices were heard and needs effectively addressed.

In 2007, the New York City Mayor's Office of Criminal Justice, the office responsible for payment of legal services for indigent parents in Family Court proceedings, entered into contracts with three nonprofit organizations to provide interdisciplinary legal defense for parents in Family Court. These organizations are the Center for Family Representation, the Family Defense Practice of Brooklyn Defender Services (formerly of Legal Services New York City), and the Bronx Defenders. Those organizations are referred to collectively as interdisciplinary law offices (ILOs).

In an article published in the Children and Youth Services Review, Volume 102, July 2019, (42-55), it was reported that: "Each ILO has some distinct features, but the organizational structure of the three offices differs substantially from panel attorneys. First, unlike panel attorneys, lawyers in the ILOs specialize in child welfare cases and represent only parents in those matters. Second, each provider is a nonprofit organization—contracted for up to a certain number of cases through the New York City Mayor's Office of Criminal Justice and supplemented with each organization's private fundraising efforts. Nonprofit law offices are paid a set fee per case specified in each organization's contract, regardless of the number of hours worked. Third, the attorneys in these offices are employees of the organization and paid a salary with benefits. Fourth, the offices offer administrative support and central office locations. Fifth, the lawyers in these offices have supervising attorneys and colleagues, allowing the staff to collaborate on complex cases and to appear in court for one another when a principal lawyer is unavailable. Finally, as the phrase "interdisciplinary law office" suggests, these offices all have non-attorney professional employees on their paid staff who work with the attorneys. All providers also have the capacity to administer some other legal services in criminal, civil, and immigration cases through additional government contracts."

Both the panel and ILO models comply with many ABA best-practices. Notably, judges typically assign each parent an attorney at the parent's first appearance in court, often the same day or within a few days of when a neglect or abuse petition is filed. In many jurisdictions outside of New York, attorneys are not appointed until later in the court process when important decisions may have already been determined. Both the panel attorneys and the ILOs appear on every court appearance with their clients, and advocate on behalf of their clients. Both kinds of attorneys represent accomplished and highly proficient practitioners selected based on their strong qualifications to serve in their respective positions. Payment rates for both kinds of attorneys offer the ability to earn a fair wage without exceeding common caseload standards.

The most significant difference between the ILOs and the panel attorneys is the interdisciplinary case practice approach the contracted providers utilize. While both types of attorneys appear in court with their clients, the ILOs' team-based approach to representation focuses greater attention on out-of-court advocacy. With the interdisciplinary case practice model, each attorney teams with a social worker and/or a parent advocate. Parent advocates are staff members who have themselves faced proceedings in the Family Court as parents, though the role description varies by office. Some providers have additional experts on staff, as well: attorneys to represent clients in criminal, housing, and immigration court; experts who focus on troubleshooting public assistance, educational issues, and other government systems; paralegals; and investigators.

Activities foundational to the interdisciplinary approach include attending parent-agency meetings and helping to shape service plans by identifying the needs of each family and tailoring the service plan to meet those needs (Stone-Levine, 2012). The goals of the model are accomplished primarily through a focus on the early part of a case coupled with advocacy by the team on critical elements including visiting arrangements for children and their parents that are as frequent and long as possible and in natural settings; placement arrangements that support a child's connection to family; services that address a parent and child's strengths and needs; and, conferences and meetings that occur out of court and provide opportunities for parents and older youth to participate in their case planning (Cohen & Cortese, 2009).

Outcomes from the panel attorney approach versus the interdisciplinary law office (ILO) approach were also compared. The New York City study cited in the article found:

[T]he data show that ILO representation decreased the average days children in each family spent in foster care by 47 days when compared to panel representation through 48 months of petition filing. According to this child average per family analysis, while a child will spend 339 days on average in foster care when represented by ILOs, a child will spend 386 days when represented by panel attorneys—47 fewer days with ILO representation.

The researchers recalculated this measure to estimate the effect per child, by weighting the family outcomes by the number of siblings in each family. This calculation produced a difference of 55 days per child.

KidsVoice in Pittsburg, Pennsylvania

KidsVoice in Pittsburgh, Pennsylvania is recognized as a national model for multi-disciplinary and holistic approach to child advocacy and legal representation. It is a non-profit agency that advocates in court and

in the community to ensure safe and permanent homes for abused, neglected, and at-risk children. Each year, KidsVoice represents nearly 3,000 children involved in the child-welfare system in Allegheny County's Juvenile Court. Child advocacy at KidsVoice goes beyond the traditional child welfare and juvenile court arenas. The staff advocates for clients in educational, medical, mental health and Social Security matters, as well as providing representation for minor criminal citations and for expunging of delinquency records. They also assist the older clients as they pursue college or vocational training opportunities and transition to living independently. Every client is represented by both an attorney and a Child Advocacy Specialist (a social service professional with expertise in social work, mental health, education or child development). KidsVoice represents clients until they turn 25, which means the teams help with school issues, housing, social security, criminal summary offenses, expungement, and much more.

In addition to these models and services, the Family Justice Initiative cites the following jurisdictions and practices (FJI Attributes of High-Quality Legal Representation).

"The Children's Law Center of California is a nonprofit, public interest law firm that represents children involved with dependency court due to abuse, neglect, or abandonment. CLC has five law firms in Southern California and two in Northern California, including one firm that functions as a specialty unit. Each firm employs social work investigators to assist attorneys on cases, with one investigator for every two attorneys. Investigators assist with work outside of court, such as visiting the child in the home or attending transition meetings. In the specialty unit, interdisciplinary teams of specialists work on cases for dual status youth, mental health advocacy, commercial sexual exploitation of children (CSEC), special education advocacy, and non-minor dependents in extended foster care. In addition to social work investigator support and the specialty unit teams, CLC's interdisciplinary approach involves a high level of collaboration between its law firms and other legal organizations and nonprofits in California specializing in areas such as education, benefits, mental health, and adoption. This collaboration helps ensure clients' specific issues are being addressed. CLC finds interagency, interdisciplinary collaboration is even more important in smaller counties where resources and staff are limited.

"The Children's Law Center in Washington, DC (CLC) uses an interdisciplinary approach that brings together attorneys, investigators, social workers, and special education attorneys to support its child-centered advocacy on behalf of children in abuse and neglect cases. Every case has an assigned investigator who assists with client visits, background research, records requests, subpoenas, and other investigative and case assistant tasks. Social workers and special education attorneys are included on case teams as needed. Each new case receives a check-in from a social worker who provides recommendations to the attorney. For cases involving complex clinical issues that could benefit from the ongoing involvement of a social worker, the attorney can refer the case for social work brief advice, social work consultation (ongoing advice and some case tasks, though often behind-the-scenes), or social work collaboration (the full integration of the CLC social worker into the representation). The social workers add value to the team in a variety of ways, but a few include identifying inappropriate services in boilerplate plans and completing biopsychosocial assessments of potential caregivers."

4. Infrastructure

There are numerous examples of infrastructure elements that are believed to increase the quality of representation for children and parents.

Attorney Supports and Resources

Colorado is cited here because of its extensive number of attorney supports and resources.

The Colorado Office of Parent Representation (OPRC) provides access to experts, investigators, social workers, and paralegals, and provides other forms of litigation support, including the establishment of a motions and brief bank, a resource library, and a listserv. It has developed a dedicated appellate support program and provides case law updates, a motions bank, an RPC listserv, and access to the legal research tool, Westlaw, to every RPC attorney.

The staff also conducts 35 to 45 individual case consultations each week to support OPRC attorneys with case strategy and access to resources for parents. The agency conducts in-court observations of OPRCs to ensure compliance with the Supreme Court Directive.

The OPRC approves requests for experts at earlier stages of dependency cases as well as experts requested for termination hearings. For FY2017, 65% of expert approvals were for experts at the termination stage of the case, and 35% of expert approvals were for experts at earlier stages of the dependency case. In FY2018, the agency estimated that 54% of expert approvals have been for experts at the termination stage and that 46% have been for experts at earlier stages of the case. That agency believes that this change positively impacts the outcomes of cases and, ultimately, the lives of the children and families involved.

The agency aims to help its contract attorneys utilize experts who will make the greatest impact on a case, and the agency has begun a process of vetting experts who can testify to issues that are specifically related to child welfare cases. They have learned that there is a great variation in the rates charged by experts depending on sub-specialties, location, and availability. For example, an expert on a very specific topic might charge a higher hourly rate in a rural jurisdiction because of a lack of competition from other experts. The expert's fee could then be driven up by travel costs and other expenditures

On the accountability side, through a Supreme Court Directive, the office has authority to reject a contract attorney for any reason; to terminate, at will, contracts with attorneys; and has the authority to seek termination of existing court appointments for contract counsel. The office is also charged with investigation and resolution of complaints against its contract attorneys.

Compensation

Fair compensation helps to attract and retain talented attorneys in order to provide the best representation. Attorney compensation varies widely across the country and for the most part, is way too low.

Regarding employed attorneys, for example, Arkansas sits near the bottom with salaries ranging from \$37k to \$49k. Wyoming pays their staff attorneys by the hour at rates of \$27 to \$67 an hour. New York City's Center for Family Representation (CFR), which contracts with the city to provide parent representation, pays its staff attorneys around \$87,500.

Contract attorney pay varies as well. Colorado pays around \$75-80 an hour. Washington lists the average full-time contractor salary equivalent at about \$82,889, which comes to about \$81 an hour. Wyoming employs a flexible contract pay scale, paying \$100 an hour for time spent in court and between \$35 and \$60 an hour for out of court work. New York is recommending \$150/hour.

Some states pay much less. Arkansas pays their contractors \$800 per case, per year. This comes out to a maximum of \$60k for a full-time caseload. Oregon pays a rate of about \$800 per case from appointment through post-dispositional hearing, and then a review rate of about \$330 for subsequent review hearings.

Performance Evaluation

States that adhere to best practices necessarily include a robust system of performance evaluation in order to ensure clients receive the highest quality representation. Oregon, for example, contracts with attorneys for parent representation but does so in a centralized fashion through its state Office of Public Defense Services. This central authority provides oversight and evaluation through monthly reconciliation of contractor data reports with court records, holding contracted attorneys accountable.

Colorado contracts with attorneys for parent representation through its state Office of Respondent Parent Counsel (ORPC). The ORPC oversees its contractors by requiring annual verification that attorneys are meeting standards, tri-annual renewal applications to maintain ORPC eligibility, and ongoing performance assessment by ORPC administration.

Complaints and Grievances

Complaints and grievances against attorneys are most often handled internally within the representation entity. Some programs have independent systems to handle complaints against attorneys. Colorado's Office of Respondent Parent's Counsel (ORPC) is an example. Complaints against ORPC attorneys are, if it is determined that the attorney may have violated standards or rules, forwarded to Colorado's Office of Attorney Regulation Counsel (OARC), a separate entity that oversees attorney discipline. The OARC's findings determine whether discipline and/or correction are required.

Quality Assurance and Monitoring

Oregon has a robust set of quality assurance mechanisms including peer reviews of attorneys and three-day on-site investigations into quality of service. The Public Defense Services Commission (PDSC) has also started Service Delivery Reviews in several counties. The service delivery review process includes holding public meetings in various locations in the state, gathering information from judges, prosecutors, other officials and citizens, evaluating the need for changes in the structure and delivery of local public defense services and directing the Commission's management team to implement needed changes.

The Wyoming Children's Justice Project (CJP) is required to gather juvenile court data and report information on timeliness and quality measures to track and assess compliance with federally required timelines. CJP is required to implement Continuous Quality Improvement (CQI) processes that use data to identify, inform, and systematically monitor the implementation and results of programs and interventions. The program publishes an annual report containing data on time to appointment, time to permanency, and other metrics.

The Colorado ORPC uses a billing system for contract attorneys that requires them to enter substantially more information than contract attorneys currently provide in New Mexico. The data is used to track outcomes of the program and guide recommendations for improvements.

5. Manageable Caseloads

In 2015, a Pennsylvania workgroup conducted a study of caseloads and concluded:

“The combination of Time Chart data, assumptions about first versus second year, and about sibling versus no-sibling, allow for computation of reasonable caseloads for child and parent lawyers. This data has been compiled in two “Caseload Calculation” Charts, separately presenting total annual adjusted caseloads for full-time children’s and parents attorneys.

“According to these estimates (adjusting for turnover and complexity but not including TPRs and appeals), a child attorney can handle 44.74 clients at any given time (i.e., “static caseload”), however, because cases open and close throughout the year, a child attorney can handle 71.59 clients during the course of the year, assuming a 60% turnover rate (“dynamic caseload”). Similarly, based on the Time Charts, a parent attorney can handle 61.13 clients at any given time and will handle 98.13 clients during the course of the year, without additional time invested in TPRs or appeals. Thus, we conclude that the total annual adjusted caseload per full-time attorney, assuming a turnover rate of 60% close during year and including time for complexity, TPRs and appeals is or should be 66 (65.83) child clients or 87 (86.59) parent clients.”

Caseload limits found in other states include:

Arkansas: A full-time attorney shall not have more than 75 dependency-neglect cases, and a part-time attorney shall not have more than 25.

Colorado: Attorneys representing children do not represent more than 100 clients.

Georgia (DeKalb and Fulton Counties): By consent decree, dependency attorneys representing children shall represent no more than 130 clients for full time, 65 for part-time

Massachusetts: Regulations set a maximum caseload limit of 75 open cases for counsel for children and parents in dependency cases

Maryland: The caseload for a parent’s attorney ranges between 75 to 125 depending upon the location in the state.

New Jersey: Public Defender’s Office of Parental Representation cannot represent more than 75 clients; in 2017 the average attorney caseload was 67 clients.

New York: Subject to adjustment based on a number of factors, the number of children represented at any given time by a dependency attorney shall not exceed 150. This is the statewide standard, but caseload numbers vary depending on the jurisdiction. In the Bronx, experienced attorneys carry 75-85 cases. The Interim report from NYS Commission on Parental Legal Representation’s Report recommends 50-60 parent clients/attorney for Parental Legal Representation.

Washington: The caseload of a full-time public defense attorney shall not exceed 80 open juvenile dependency cases.