



Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care[☆]

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ABSTRACT

While the U.S. Supreme Court has expressed the opinion that providing parental counsel to indigent parents is generally a sound practice, it has ruled that parents do not have an absolute constitutional right to counsel in termination of parental rights proceedings, and not all states provide a statutory right to counsel after child protection proceedings have been initiated or in termination proceedings. What constitutes adequate representation for indigent parents involved in abuse and neglect and parental rights termination proceedings remains an open question. This study addresses gaps in knowledge about the functioning of child welfare services and juvenile courts by evaluating the impact of a program of enhanced parental legal representation on the timing of permanency outcomes for 12,104 children who entered court-supervised out-of-home care in Washington State for the first time between 2004 and 2007. The study employs methods that are methodologically superior to prior efforts to evaluate parental representation and focuses on key outcomes of the child welfare and dependency court systems. Study findings provide evidence that the availability of improved parental legal representation speeds reunification with parents, and for those children who do not reunify, it speeds achieving permanency through adoption and guardianship.

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1. Introduction

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life." United States Supreme Court, *Santosky v. Kramer*, 455 U.S. 745 (1982) "If, as our adversary system presupposes, accurate and just results are most likely to be obtained through the equal contest of opposed interests, the State's interest in the child's welfare may perhaps best be served by a hearing in which both the parent and the State acting for the child are represented by counsel, without whom the contest of interests may become unwholesomely unequal." United States Supreme Court, *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981)

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As the above references to key U.S. Supreme Court cases pertaining to the rights of parents make clear, juvenile and family courts should take great care to deal fairly with parents who face the coercive power of the state through the intervention of child welfare authorities. While the court has expressed the opinion that providing parental counsel to indigent parents is generally a sound practice, it has ruled that parents do not have an absolute constitutional right to counsel in termination of parental rights proceedings, and not all states provide a statutory right to counsel after child protection proceedings have been initiated or in termination proceedings (Sankaran, 2010). Moreover, what constitutes adequate representation for indigent parents involved in abuse and neglect and parental rights termination proceedings remains an open question, even though many if not most parents who have children removed from their care by child welfare authorities are indigent.

In 2007, the National Council of Juvenile and Family Court Judges (NCJFCJ) conducted a review of research from the prior ten years that involved juvenile dependency court processes or outcome measures in an effort to assess the state of research involving juvenile dependency courts. The NCJFCJ researchers cast a wide net in looking for relevant studies, including in their review articles published in peer-reviewed journals and gray literature such as reports from government agencies and research centers. The review came to the following conclusions:

Juvenile dependency courts play a key role in overseeing the cases of children removed from their home as a result of abuse and

neglect. Although many academic journals and publications are devoted to topics in child welfare, research focused on the role of the court in ensuring the safety, permanency and well-being of children in foster care is relatively rare. In particular, little is known about the causal relationship of juvenile court improvements and reforms to the ultimate outcomes for children in the dependency system. A review of published quantitative research related to juvenile dependency courts identified 76 studies published between 1997 and 2007. Of these, one-quarter were from academic journals and three-quarters were from non-peer reviewed publications, usually sponsored by associations or governmental agencies. The authors found much work of value to the dependency courts and other stakeholders...However, some serious deficiencies in dependency court research were also identified. (Summers, Dobbin, & Gatowski, 2008, p. 3)

The research review identified inadequate methodological rigor, limited research on outcomes of the juvenile dependency court process and child welfare system, and a dearth of research on legal representation as some of the deficiencies of the existing research literature. In particular, research on parental representation is lacking; of the five studies of parental representation reported in the NCJFCJ review, three involved a single program in one state and only two provided any data on outcomes associated with efforts to improve representation (Summers et al., 2008).

This study addresses these gaps in knowledge about the functioning of child welfare services and juvenile courts by evaluating the impact of a program of enhanced parental legal representation on the timing of permanency outcomes for children entering court-supervised out-of-home care in Washington State. It grew out of efforts to better understand how courts and child welfare authorities interact to influence the likelihood that children removed from parental care will be reunited with their parents or experience legally permanent exit from state care through adoption or guardianship. The study employs methods that are methodologically superior to prior efforts to evaluate parental representation and focuses on key outcomes of the child welfare and dependency court systems. Study findings provide evidence that the availability of improved parental legal representation speeds reunification with parents, and for those children who do not reunify, it speeds achieving permanency through adoption and guardianship.

2. Background: the Parental Representation Program

In 1999, in response to a request from the state legislature, the Washington State Office of Public Defense (OPD) conducted a study of inequalities in attorney funding in dependency and parental rights termination cases (Washington State Office of Public Defense, 1999). The study found severe disparities between state funding for the Attorney General's Office (AGO), which initiates and processes dependency cases on behalf of the state, and funding provided by counties for legal representation of indigent parents involved in these legal proceedings; the funds provided to the AGO, not including the costs of social work services provided in support of the state's attorneys, were approximately twice those allocated for parental defense. The study also found wide variation between counties in the compensation provided to attorneys provided to indigent parents; depending on the county in which the family resided, payment for representation of parents or children's legal guardians ranged from about \$169 to \$1000 per case per year in 1998 dollars (Washington State Office of Public Defense, 1999). These disparities called into serious question whether parents in Washington were being provided adequate legal representation in processes that have significant consequences for parents and children; state and federal courts have long recognized the crucial importance of these proceedings and the necessity of providing legal representation for the

parties. In 2000, the OPD succeeded in obtaining a legislative appropriation to create a pilot Parent Representation Program (PRP) which was then established in three counties. The legislature established five program goals to enhance the quality of defense representation in dependency and termination hearings:

1. Reduce the number of continuances requested by attorneys; including those based on their unavailability;
2. Set maximum caseload requirements per full-time attorney (the OPD sets the fulltime maximum caseload at 80 open cases per attorney);
3. Enhance defense attorneys' practice standards, including reasonable time for case preparation and the delivery of adequate client advice;
4. Support the use of investigative and expert services in dependency cases; and
5. Ensure implementation of indigency screenings of parents, guardians, and legal custodians.

Since 2000, the legislature has continued to fund the program, with program expansion in 2005 and 2006 to fifteen additional counties and in 2007 to seven more. The program existed in 25 of Washington's 39 counties at the conclusion of this study.

To achieve its goals, the PRP has developed five key program components.

1. *Selection criteria for attorneys.* Program attorneys are identified by OPD through a formal Request for Proposal process. In exchange for reasonable compensation and reduced caseloads, attorneys agree to contracts that set out professional expectations and practice guidelines.
2. Contained in the practice guidelines is the requirement that program attorneys will attend *training*, both orientation or initial training and ongoing professional development. The topics covered included client communication, standards of representation, use of independent experts and social workers, remedial services and trial skills. PRP attorneys are also offered the opportunity to attend a statewide conference each year that brings together court officials, public child welfare and juvenile justice system staff, and private service providers for the purpose of hearing about best practices in child and family services.
3. Throughout the contract periods with OPD, PRP assures adherence to *program standards* through the following *oversight mechanisms*: developing a client complaint procedure and creating an expectation of reviews prior to contract renewal. The OPD declines to enter into new contracts when attorneys are evaluated as not in compliance with PRP standards.
4. In addition to the use of *expert and investigative resources* (including expert testimony), program attorneys have *access to social work staff*. Social workers are assigned to attorneys on a ratio of one social worker per four attorneys. While a social worker might have as many as 320 potential clients, in practice PRP attorneys triage cases for social work support as needed to assist parents to become active participants in their case plans. For example, PRP social workers help parents resolve conflict with other professionals, assist parents in obtaining concrete resources such as bus passes and housing, and help locate services required in parents' case plans such as substance abuse treatment.
5. *Periodic surveys of county judicial officers regarding quality and practice standards.* This is part of PRP's ongoing effort to evaluate and improve the program (e.g. providing feedback on judicial officers' perceptions of the program or more specific information regarding the reduction in continuances since the program was established).

3. Understanding the relationship between parental representation and children's exits from out-of-home care

What effects might adequate parental representation have on the timing of permanency for children entering out-of-home care? While

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