

Position Statement

2021

Parent Representation in Child Protection Proceedings Task Force

Proposal

Issue:

Since July of 2008, there has not been a statewide process to appoint qualified attorneys to represent parents/guardians in child protection court (CHIPS) proceedings. There is no statewide funding or practices regarding parent attorney involvement, and there is variability from county to county in who receives attorneys, when the attorneys are appointed, whether there are expectations established in contract or bench order, or how parent attorneys are compensated. This variability reflects the myriad difficulties in securing parent attorneys statewide in a timely manner for CHIPS cases, yet research supports that high-quality parent representation early and consistently in the court process reduces the duration of out-of-home placement.

HF 312 currently proposes an expansion of court-appointed counsel for all eligible parents, guardians, and custodians in all child protection proceedings where a child is at risk of imminent removal or has been removed from the child's home. This would mean appointing counsel for the very first hearing and all hearings thereafter for each parent, guardian, or custodian prior to the first hearing on the petition and at all stages of the proceedings. It seeks \$520,000 in fiscal year 2022 and \$520,000 in fiscal year 2023 to the commissioner of human services for costs, distributed to counties that do not currently provide court-appointed such counsel at emergency protective care hearings. It may also include funding to assist with implementation and statewide data collection addressing the presence of court-appointed counsel for those qualifying at each emergency protective hearing, total annual court-appointed parent representation expenditures for each county, and additional demographic information that would assist counties in obtaining title IV-E reimbursement.

Implementation Strategy:

MACSSA must represent counties' experiences accessing parent representation and on funding options to dispel misconceptions and bring attention to the barriers, especially:

- Availability of attorneys statewide when a single case may require a number of attorneys to represent all of the parents,
- Overlapping court schedules for the few available attorneys serving multiple counties,
- Challenges to achieve timely appointment beginning at the very first hearing,
- Adequate funding to implement this system,
- Centralization of the administrative process to claim IV-E funding where applicable, and
- Means of ensuring that attorney compensation is not provided or seen as provided from a county's child protection budget given the agency's status as another party in the case.

Scheduling approaches that predictably would result in less frequent hearings must be rejected due to the negative impact on children, nullifying benefits of early representation. A mandate without adequate planning, workforce development, and funding should be opposed as being likely to perpetuate the current variability in representation as counties continue to do what they can with the resources available. Instead, MACSSA should support an appropriately resourced, centralized approach to parent representation that only moves forward with a new, consistent, statewide approach when adequate resources to do so are provided.

Systemic Priority Alignment (check all that apply and explain why)

Equity Service Integration Fiscal Framework

Comments: Equity: Funded, consistent access to skilled parent attorneys for all parents/guardians who are party to a CHIPS proceeding

promotes greater equity in CHIPS hearings and decisions. This is especially important in an area of work in which African Americans and American Indians are overrepresented, and in which people in poverty are the dominant portion of families. Complexity in scheduling attorneys and access to attorneys can be a barrier to timely hearings, negatively impacting families in child welfare as children in placement wait through court delays to reunify or have a new permanent family. Regarding Fiscal Framework: Providing parent attorneys early and consistently in all CHIPS cases is costly and cannot rely on counties even with federal Title IV-E reimbursement available for a portion of the cost in court cases involving IV-E eligible children: careful consideration is needed to identify a consistent and adequate funding stream.

Operational Priority Alignment (check all that apply and explain why)

- Behavioral Health Case Management Child Well Being Community Based Settings & Services
- Health Care Housing & Transportation Modernization Self Sufficiency

Comments: Studies support that high-quality—and especially high-quality, multidisciplinary—counsel reduces the number of days in out of home placement for children, which in turn has implications for long-term outcomes for children in juvenile justice involvement, employment, pregnancy/parenting during adolescence, homelessness, and public assistance participation. If not well-implemented with adequate support, however, it could have the opposite impact of delaying hearings and thus delaying timely decisions for reunification or other permanent family decisions for children, prolonging their time in foster care.

Rationale/Background:

The Minnesota Board of Public Defense ceased representation of parents in Child in Need of Protection or Services (CHIPS) proceedings in July of 2008. Since that time, there has been no consistent approach to appointing qualified attorneys to represent parents in CHIPS, TPR, and other permanency cases. Minnesota Statute 260C.163, Subd. 3, provides that parents/guardians have the right to effective assistance of counsel in connection with a proceeding in juvenile court and currently requires counties to pay the expense of court-appointed legal representation for parents or guardians who are parties in hearings on CHIPS petitions if those individuals would meet the standards set for determining eligibility for a public defender in other proceedings or if the court feels that such an appointment is appropriate and if the person would be financially unable to obtain counsel. The court may appoint only one counsel at public expense for the first court hearing to represent the interests of the parents, guardians, and custodians, unless, at any time during the proceedings upon petition of a party, the court determines and makes written findings on the record that extraordinary circumstances exist that require counsel to be appointed to represent a separate interest of other parents, guardians, or custodians subject to the jurisdiction of the juvenile court. While the court can order the county to pay the attorney fees and 260C.163 establishes the cost is at county expense, the county can refuse if there is no allocation in the county budget for the expense, per Minnesota Statutes 375.1691.

In January of 2019, the federal Children's Bureau changed the Child Welfare Policy Manual on title IV-E agency claiming of IV-E administrative costs for attorneys to provide legal representation for the parents of a candidate for title IV-E foster care or a title IV-E eligible child in foster care to prepare for and participate in all stages of foster care related legal proceedings. It provides reimbursement at a rate of 50% of the administrative expenditures for this representation in proceeding if a child is IV-E eligible. Prior to this change in the Manual, this administrative claiming only applied to representation for the agency, not for IV-E eligible children or for their parents. The change predictably created interest in pursuing stronger parent representation requirements, pointing to the availability of funding to support the expansion of services.

There are several hurdles to address prior to mandating a higher standard of parent representation in CHIPS proceedings.

- First, it must be noted that the federal change applies only to IV-E eligible children's parents, and then only reimburses at a rate of about 50%. Since the Board of Public Defense ended representation of parents in 2008, this has been an unfunded mandate to counties, with resulting variability across the state in how it is achieved. The current proposal includes funding that will help cover the costs, it does not assist those counties that have attempted to pilot early representation for all qualified custodians, and it is unclear if the funding requested is adequate even for those counties yet to initiate this counsel. The proposal should be amended to cover the full cost of counsel not covered by IV-E reimbursement. The strategy for reforming parent representation should not rest on counties—parties to these proceedings—to fund.
- Next, if funding is assured, securing the workforce to provide representation is a significant challenge in many parts of Minnesota. This is compounded by having many families in CHIPS proceedings with multiple parents who require separate counsel from one another. In some regions, the few available attorneys represent families in multiple counties, further exacerbating the scheduling barriers that impact hearing timelines. There are counties where it is currently difficult to identify any additional workforce to serve as parent attorneys, much less address an earlier and more expansive approach to parent representation. Implementation strategies must accommodate the workforce realities statewide.
- Finally, there are significant administrative considerations in this approach that are not mentioned in the proposal. The goal of this proposal is to have representation available at the first and then every hearing thereafter for each qualified parent, including counsel between hearings. This approach will be a change for most counties, and while require new contracting with any identified counsel. The largest administrative burden, however, is in establishing IV-E eligibility, especially for children not in out-of-home placement, and pursuing IV-E claiming. While the proposal references collecting data related to IV-E claiming, it is silent on support to address the administratively intensive task of claiming. Consideration must be given

to creating and funding a centralized process at the Minnesota Department of Human Services for IV-E eligible children based on uniform contracts that could avoid shifting these costs to counties, or to funding the new administrative work. A mandate without adequate planning, workforce development, and funding should be opposed as being likely to perpetuate the current variability in representation as counties continue to do what they can with the resources available. Instead, MACSSA should support an appropriately resourced, centralized approach to parent representation that only moves forward with a new, consistent, statewide approach when resources to do so are identified.

Additional Information:



Submitted by: Joan Granger-Kopesky
Approved on: [insert date position was approved]