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Dear Ms. Shipp, Ms. Berntsen, Ms. DeCesaro, and Ms. Miller:

Thank you for this opportunity to provide input regarding steps to strengthen programs under Title IV-B, Subparts 1 and 2, of the Social Security Act. The ABA has a membership over 360,000 lawyers, judges, and law students worldwide, including a broad cross-section of family law practitioners, lawyers practicing in juvenile and dependency courts, and judges. Established in 1978, the ABA Center on Children and the Law works to improve children’s lives through advances in law, justice, knowledge, practice, and public policy.

The ABA has long been committed to improving the lives of our nation’s most vulnerable children and families. Dating back to 1988, the ABA House of Delegates has approved policies that address key services and support to families involved, or at risk of becoming involved, in the child welfare system. In 2010, an ABA House of Delegates policy urged, among other things, reform of the federal child welfare financing structure to end fiscal incentives when placing children in foster care at the expense of providing services that can keep children and families safely together.

The ABA urges reauthorization of Title IV-B, Subparts 1 and 2 of the Social Security Act.

The Stephanie Tubbs Jones Child Welfare Services Program and the Promoting Safe and Stable Families (PSSF) program of Title IV-B of the Social Security Act provide vital support to states’ efforts to protect families that are experiencing or are at risk of abuse and neglect. Title IV-B is a critical resource because it helps states stabilize families by
supporting immediate preventive services while children remain at home and also funding reunification services so children can be safely returned home in a timely manner. As you know, most federal child welfare funding, through Title IV-E, is available only after a child enters foster care. We recommend reauthorization of Title IV-B, Parts 1 and 2, at a greater funding level, incorporating the recommendations below to make this program better equipped to help children and families.

Data show that removals of children and placement into foster care vary considerably by state (see the chart below). The children who remain in foster care, sometimes just for a few days, are nonetheless often traumatized by the separation from caregivers. For some of these cases, significant efforts are made to correct imminent threats. In other cases, a lack of resources contributes to decisions to remove children rather than resolve the problems at home. Anecdotal reports suggest that these patterns are supported by the imbalance of ameliorative versus preventive funding. Agencies and legal systems need to be equipped to provide support and services to keep children safe in their homes when possible.

Of the 250,335 children removed during the 2013 FFY, 25,112 children - or about 10% of all children removed - spent 30 days or less in foster care.

The ABA recommends reauthorizing Family Connections Grants.

Programs under Title IV-B that have been particularly responsive to the prevention needs of families and state agencies are the Family Connections Grants under the Stephanie

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1 Chart compiled by Christopher Church, J.D. Source data from AFCARS.
Tubbs Jones Child Welfare Services Program. The Family Connections Grants have expired, but should be reauthorized to again provide support to relatives or other kin who are caring for children outside the child welfare system in several ways, including:

1. Kinship Navigator programs that provide a lifeline for relatives caring for children who may otherwise be in the child welfare system, by connecting those relatives to benefits and services that they or the children may need;
2. Family-finding efforts that are critical to identifying relatives who may be able to care for the child rather than formal, non-relative foster parents; and
3. Family group decision-making, which can bring parents and relatives together to resolve issues before the child actually needs to be removed.

Children fare better when placed with relatives, including: increased stability, fewer placement changes, and fewer school changes; improved permanency outcomes such as being less likely to re-enter the foster care system after reunification and relative adoption or guardianship when reunification is not possible; better behavioral and mental health outcomes; increased likelihood of living with or staying connected to siblings; and greater preservation of cultural identity and community connections.²

The ABA recommends increased funding for PSSF that enhances substance abuse and mental health treatment as well as housing assistance.

Families involved in the child welfare system very often need substance abuse treatment, mental health treatment, and access to adequate housing. Poverty, substance abuse, and mental health issues are frequently interconnected.³ However, parents often have great difficulty accessing treatment services because they are not available, waiting lists are long, or treatment programs require in-patient stays that keep children away from their families. One study by the U.S. Department of Health and Human Services concluded that there is a “chronically short supply” of substance abuse treatment programs tailored

³ DEP’T OF HEALTH & HUMAN SERVS., BLENDING PERSPECTIVES AND BUILDING COMMON GROUND, A REPORT TO CONGRESS ON SUBSTANCE ABUSE AND CHILD PROTECTION 7 (1999).
to parents with children.4 Mental health services for parents are similarly scarce.5 When adequate services are not available, the only safe option for children may be foster care.6

Housing is another prevalent need of families involved in the child welfare system, since neglect, combined with housing problems, is the principal reason many children enter and stay in foster care.7 One study found at least 30% of foster children could return home if parents had access to housing.8 Parent participants at a June 14, 2011 congressional briefing on Enhancing and Celebrating Family Reunification from Foster Care identified substance abuse treatment and access to appropriate housing as the primary services that helped them reunify with their children.

Through PSSF, Congress recognized that substance abuse and mental health needs are two common challenges to family safety. Funding for substance abuse treatment programs in particular should remain available through PSSF, and it should remain available as a federally supported reunification service. However, both substance abuse and mental health issues can be addressed while children safely remain at home. Provision of these services can help children avoid the potential trauma of removal. Therefore, substance abuse and mental health services should be included in the definitions of both “family preservation services” and “family support services” to clarify that PSSF funding can be used for those needs without removing children, when safely possible. Programs that address families’ housing needs should also be added to the definitions of family reunification, family support, and preservation services so PSSF funds are clearly authorized for assistance to families that lack adequate housing.

The ABA recommends eliminating the time limit on reunification services.

PSSF reunification services are currently time-limited and are not available to most families after children have been out of the home for 15 months. Families recently reunified, and families for whom reunification is imminent, benefit from continued and follow-up services to maintain their children’s safety and family’s stability. Therefore, the time-limit on reunification services should be eliminated so that federally supported reunification efforts can continue among families in appropriate circumstances.

The ABA recommends funding to provide parents and children with attorneys and legal teams at pre-petition stages.

High quality legal representation for children and parents improves outcomes, reduces foster care placements, and lowers government costs. If investment is made in quality

4 Id. at 56.
5 OLIVIA GOLDEN, REFORMING CHILD WELFARE 232 (2009).
6 An estimated 50% of children in the foster care and adoptive homes in Los Angeles could have been left in their parents’ care if their parents had received appropriate services. Troy Anderson, Money Motive in Foster Care, LONG BEACH PRESS TELEGRAM, Dec. 6, 2003, at PT NEWS.
legal services, systemic functioning will improve: More families receive individualized services, fewer children suffer the trauma of unnecessary removals, children removed from home return sooner and with fewer disruptions, and taxpayer dollars are saved.

Additionally, the provision of representation during the child abuse investigation stage helps to ensure that parents have access to the services necessary to maintain a safe and stable home for the child. Nonprofits such as New York City’s Center for Family Representation (CFR) and the Detroit Center for Family Advocacy (CFA) have implemented successful preventative programs where clients are provided with a multidisciplinary team which includes an attorney, a social worker, and a parent advocate prior to a petition’s being filed.

CFR’s data since 2007 show that more than 50% of CFR clients’ children were able to avoid placement into the foster care system, and, even in those case where foster care could not be avoided, the median length of a child’s stay with the assistance of CFR was only 1.8 months. Additionally, the re-entry rate of the children of CFR clients into the foster care system was only 1%.10

CFA’s clients were most often faced with housing issues such as eviction and landlord-tenant disputes. From 2009 to 2012, CFA served 50 families during the child protection investigation, and every family’s case was closed with the child living with a permanent family outside of the child welfare system because of the implementation of these preventative services.11

An effective representation model includes support for the client from professionals in addition to the attorney, such as social workers and parent advocates. This form of representation provides necessary support for families and should be explicitly considered a prevention service. Programs to provide high quality legal representation of children, parents, and the state agency throughout the life of a child welfare case can also be supported through the Court Improvement Program (discussed below).

**The ABA recommends continued, increased funding of the Court Improvement Program.**

The Court Improvement Program (CIP) is designed to improve state courts’ performance in child abuse and neglect cases, including better compliance with the federal Adoption and Safe Families Act (ASFA). CIP provides $30 million in federal funds to state courts to improve their handling of child abuse and neglect cases and move children into permanent homes as quickly and safely as possible. CIP currently funds three grant streams annually: (1) a “basic” grant; (2) a “data” grant; and (3) a “training” grant. All fifty state court systems and a number of tribes participate in the CIP program.

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10 *Id.* at 144.

11 *Id.* at 144-46.
Courts play an essential role in ensuring safety and permanence for abused and neglected children. For a relatively small amount of money, CIP funds have had a great impact on the child welfare system. CIP money is intended to act as a catalyst for essential judicial system reform, and most states use money from other sources to supplement CIP funds.

A National Evaluation of the Court Improvement Program published by the U.S. Department of Health and Human Services found CIP to be very successful in addressing the goals of ASFA—especially helping ensure the timeliness of permanency for children. However, court improvement gains, while impressive, have not been fully realized. Fundamental reforms are still required in child abuse and neglect litigation—in such areas as court staffing, case management, judicial selection and training, performance measurement and accountability, and especially quality legal representation.

CIP funding is currently provided through a $30 million set-aside of the Promoting Safe and Stable Families program. The ABA recommends including increased CIP funding in the PSSF baseline.

The ABA recommends amending the CIP statute to require a focus on legal representation to parties in child welfare cases and providing additional funding to achieve that goal.

Federal support for quality legal representation is greatly needed. For courts to function effectively, all parties—parents, children, and the child welfare agency—must have high quality legal representation. The National Evaluation of the Court Improvement Program identified improved representation for parties as the number one priority for state CIP reform.

Since that evaluation, the need for improved legal representation has gained increased recognition. In its most recent relevant Program Instruction, the Children’s Bureau of the U.S. Department of Health and Human Services directed state courts receiving CIP grants to implement approaches for Continuous Quality Improvement to ensure that child welfare proceedings promote high quality legal representation for parents, children and agencies, and also identified indicators of quality representation.

Similar to congressional directives to evaluate the Interstate Compact on the Placement of Children in the last CIP funding cycle, a new legislative directive could require state CIPs to improve representation for parties in the child welfare system. While allowing states to make final decisions, CIP reauthorization language could suggest appropriate actions, such as: creating and implementing standards of practice for lawyers; implementing statewide caseload standards; increasing accountability of lawyers; funding pilot projects

13 Id. at 6.
14 DEP’T OF HEALTH AND HUMAN SERVS., State Court Improvement Program Basic, Data Collection and Analysis and Training Grants, ACYF-CB-PI-12-02 (2012).
15 Relevant directives could be added to 42 U.S.C. § 629h(a).
in which social workers or parent advocates work alongside attorneys for parents or children; enlisting the assistance of law school clinics to provide assistance to lawyers; and conducting formal assessments and evaluations of the current state of representation as well as pilot legal representation projects.

States have made great strides towards improving representation. However, those efforts have been limited because of the lack of available funding. Many state CIP directors have expressed the need for additional funding targeted for representation of child welfare agencies, parents, and children. Some states cannot afford to provide counsel to indigent parents before the termination of parental rights stage. CIP funding for representation could be used to leverage additional state money for representation throughout each child welfare case. States could use these funds to set up a program administering legal services in child welfare cases—setting and enforcing caseload, compensation, and attorney evaluation standards. States that have systems of representation in place could use these funds to enhance case-related services for clients—providing peer parent partners or social workers to work as a team with attorneys (as in a model described above). Funds could also help evaluate effectiveness of enhanced representation and its impact on improved outcomes for children.

High quality parent representation has been shown to be an effective service that helps prevent the need for foster care placement for children at risk of abuse or neglect. For those children who must be placed, quality legal representation for parents reduces the length of time those children spend in foster care.\(^{16}\) For good reason, representation increasingly has been a consistent state CIP priority. With additional CIP grant money, states will be able to create new, or build upon existing, reform strategies.

**Conclusion**

The American Bar Association appreciates having this opportunity to present our views to the Subcommittee and looks forward to working with Congress on these extremely consequential issues. For further information, please contact Bruce Nicholson, Senior Legislative Counsel (202-662-1769, Bruce.Nicholson@americanbar.org); Anne Marie Lancour, Associate Director and Director of State Projects, ABA Center on Children and the Law (202-662-1756, AnneMarie.Lancour@americanbar.org); or Scott Trowbridge, Staff Attorney, ABA Center on Children and the Law (202-662-1747, Scott.Trowbridge@americanbar.org).

Sincerely,

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