STATEMENT

of

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on behalf of the

AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON HUMAN RESOURCES

COMMITTEE ON WAYS AND MEANS

UNITED STATES HOUSE OF REPRESENTATIVES

for the hearing on

“Improving Programs Designed to Protect At-Risk Youth”

Washington, DC

June 16, 2011
Chairman Davis, Congressman Doggett, and members of the Subcommittee: I am Thomas M. Susman, Director of the American Bar Association Governmental Affairs Office, and I am pleased to submit this written statement on behalf of the ABA to the Subcommittee on Human Resources for its June 16, 2011 hearing on reauthorization of Title IV-B, Subparts 1 and 2, of the Social Security Act and on improvement of federal child welfare programs in general.

The ABA is the world’s largest voluntary professional organization, with a membership of hundreds of thousands of 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 supports 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. This policy calls for increases in the amount and flexibility of funding for child abuse and neglect prevention, family preservation and support, family reunification, and post-permanency supports.

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 at-risk youth. PSSF 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. Most federal child welfare funding, through Title IV-E, is available only after a child enters foster care.

In the absence of comprehensive financing reform that would increase resources prior to removal and after reunification, as the 2010 ABA policy encourages, we recommend reauthorization of PSSF at a greater funding level, incorporating the recommendations below to make this program better equipped to help children and families.

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.1 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

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1 DEP’T OF HEALTH & HUMAN SERVS., BLENDING PERSPECTIVES AND BUILDING COMMON GROUND, A REPORT TO CONGRESS ON SUBSTANCE ABUSE AND CHILD PROTECTION 7 (1999).
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 to parents with children.\(^2\) Mental health services for parents are similarly scarce.\(^3\) When adequate services are not available, the only safe option for children may be foster care.\(^4\)

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.\(^5\) One study found at least 30% of foster children could return home if parents had access to housing.\(^6\) 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. Their immediate provision 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, as well as 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.

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\(^2\) *Id.* at 56.
\(^3\) OLIVIA GOLDEN, REFORMING CHILD WELFARE 232 (2009).
\(^4\) 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.
The ABA recommends continued 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 participate in the CIP program.

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 strong positive 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.

The ABA recommends creation of an additional $10 million CIP grant stream focused on improving legal representation to parties in child welfare cases.

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.

States have made great strides towards improving representation. However, those efforts have been limited because of the lack of available funding. For example, in its 2007-2008 CIP basic grant strategic plan, Michigan identified competent representation for parents as essential to improving outcomes for Michigan’s children and families. An evaluation of Michigan’s system of indigent parent representation recommended requiring appointment of counsel before the first hearing for all parents in child welfare proceedings and evaluating the effect of improved representation on case outcomes. There was broad consensus among judges, attorneys, community stakeholders, and legislators that the recommended reforms were needed. However, funding limitations were cited as the major barrier to implementation.

Michigan is not alone. 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.

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7 The National Evaluation of the Court Improvement Program (CIP), Synthesis of 2005 Court Improvement Program Reforms and Activities, Final Report 8 (July 2007).
8 Id. at 6.
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 private social workers to work as a team with attorneys. 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. For good reason, representation has consistently been a state CIP priority. With additional CIP grant money, states will be able to create new, or build upon existing, reform strategies.

If additional funding for representation is not provided, the ABA recommends amending the CIP statute to require a focus on high 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 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.

The ABA recommends clarification that federal funds available under Title IV-E of the Social Security Act can be used to reimburse states for the cost of legal representation for parents and children.

Under IV-E, the federal government reimburses states for 50% of the administrative costs associated with their foster care programs that are “necessary for the proper and efficient administration” of the programs. Federal regulations clarify that states can seek reimbursement for “preparation for and participation in judicial determinations” as reimbursable administrative costs. In 2004, the Children’s Bureau of the Administration for Children and Families, in its Child Welfare Policy Manual, interpreted this provision to mean states can seek reimbursement for legal representation of the child welfare agency, but not for legal representation of children and parents.

Quality legal representation of all parties in child welfare proceedings is necessary to achieve the best outcomes for children and families. Congressional direction is needed to change the current interpretation of allowable administrative costs.

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10 Relevant directives could be added to 42 U.S.C. § 629h(a).
11 45 C.F.R. § 1356.60.
12 45 C.F.R. § 1356.60.
in the *Child Welfare Policy Manual*. The ABA recommends revisions to Title IV-E that clarify states can claim representation for parents and children as reimbursable administrative costs associated with their foster care programs.

**The ABA recommends creating a new federal permanency incentive program that rewards states for increasing their rates of safe and stable parental reunifications and guardianships, as well as for adoptions.**

In 1997, ASFA made safety, permanency, and well being the primary focus of federal child welfare policy. The law set forth several clearly defined permanency goals for children – the first goal being reunification with family, followed by adoption and legal guardianship. ASFA also created an adoption incentive program that authorizes incentive funds to states if they increase the number of adoptions of children from foster care over a baseline number. The money earned by states through the adoption incentive program must be reinvested into services for children and families.

The ABA suggests creating a new federal permanency incentive program that rewards states for increasing their rates of safe and stable family reunifications and guardianships. In most child welfare cases, the goal for the family is safe reunification. However, while there has been a large increase in the number of children reaching permanence through adoption, in part because of the adoption incentive program, there has been little progress made over the last decade in improving the timeliness or safety of children reunifying with their families.\(^\text{13}\) This recommendation would align federal child welfare funding incentives with federal child welfare policy goals: when a child’s need for safety and well-being can be met in the parents’ home, reunification should be encouraged and supported. If reunification and adoption are not available to a child, legal guardianship can be an effective way to secure permanency, and it should be encouraged.

This recommendation therefore envisions an independent incentive program for these three permanency goals – reunification and guardianship, as well as adoption. Under this plan, similar to the adoption incentive program, states would receive a one-time payment for each child reunified with his family over a baseline set on historical reunification rates. This incentive payment would only be awarded for “safe and stable reunifications” – states would receive incentive payments for reunifying families, provided that children did not experience re-abuse and the reunification was sustained for a set amount of time. States would also receive a one-time payment for each child achieving permanency through guardianship over a baseline guardianship rate. Money awarded to states under this enhanced incentive program would have to be reinvested into child welfare services.

**The ABA recommends a technical change to the language of the Fostering Connections to Success and Increasing Adoptions Act clarifying that the school stability requirements for foster youth apply to initial placements and all subsequent placements in care.**

The statute uses the phrase “school in which the child is enrolled at the time of placement” to refer to, among other things, the obligation of the child welfare agency to ensure school stability for children and youth in foster care.\(^\text{14}\)

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PI-10-11 Program Instruction interpreted the usage of “school in which the child is enrolled at the time of placement” to require school stability only at a child’s initial placement in care, rather than to the child’s initial placement, as well as any subsequent placement changes. This interpretation substantially limits both the obligation and the intent of the law – to provide school stability for a child throughout his or her time in foster care. Therefore, we suggest a technical change to define “school in which the child was enrolled at the time of placement” as “the school in which the child was enrolled prior to entry into foster care or the child’s current school.” This technical change would: (1) stay true to the intent of the legislation to ensure that children in care have true school stability during their entire stay in care; (2) create common language for state and local education agencies, districts and schools, who are familiar with the terminology “school of origin” with a definition that mirrors current understanding; and (3) ensure that children in care who achieve school stability while in care are able to preserve that stability, in the same way that school stability can be preserved upon entry into care.

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, Legislative Counsel, Tel. 202-662-1769, Bruce.Nicholson@Americanbar.org, or Howard Davidson, Director, ABA Center on Children and the Law, Tel. 202-662-1740, Howard.Davidson@Americanbar.org.
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