

# Preventive Legal Advocacy: Reimagining Family Representation Pre-Dependency and Post-Reunification

Zero to Three – National Call  
Virtual Webinar  
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# Safe Babies Partnership

Emile Cook and ITCP National Resource Center's State Innovation Specialist Erinn Havig worked closely to offer this webinar to state teams and their partners as they engage in the critical work of preventative legal advocacy.

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**Safe Babies**  
A Program of ZERO TO THREE™

# Session Agenda

- Level setting
- PLA overview
- Program design
- Policy Topics
- National Highlights
- Opportunities



**The greatest  
benefit of preventive  
legal advocacy is its  
capacity to help stabilize  
families and prevent removals.**

# Preventive Legal Advocacy (PLA)



Services that support families and promote the social determinants of health by addressing upstream civil legal issues that, left unresolved, can result in unnecessary child welfare system entanglement



# Pre-Petition Representation

Legal services provided to families after they have come to the attention of CPS but before anything has been filed in family court

The goal of pre-petition representation is to prevent the unnecessary and traumatic separation of children from their families, particularly where poverty-related issues are conflated with neglect.



**“Every system  
is perfectly designed  
to get the results it gets.”**

**-W. Edwards Deming**

# Let's consider our results . . .



**1/3** of all children will be subjected to a CPS investigation by age 18.



**50%** of black children will be subjected to a CPS investigation by age 18.



**83%** of all CPS investigations are unsubstantiated.



# By the numbers (AFCAR 2021)



**600k** children pass through the foster care system each year



**60k** children awaiting adoption at any given time in the US



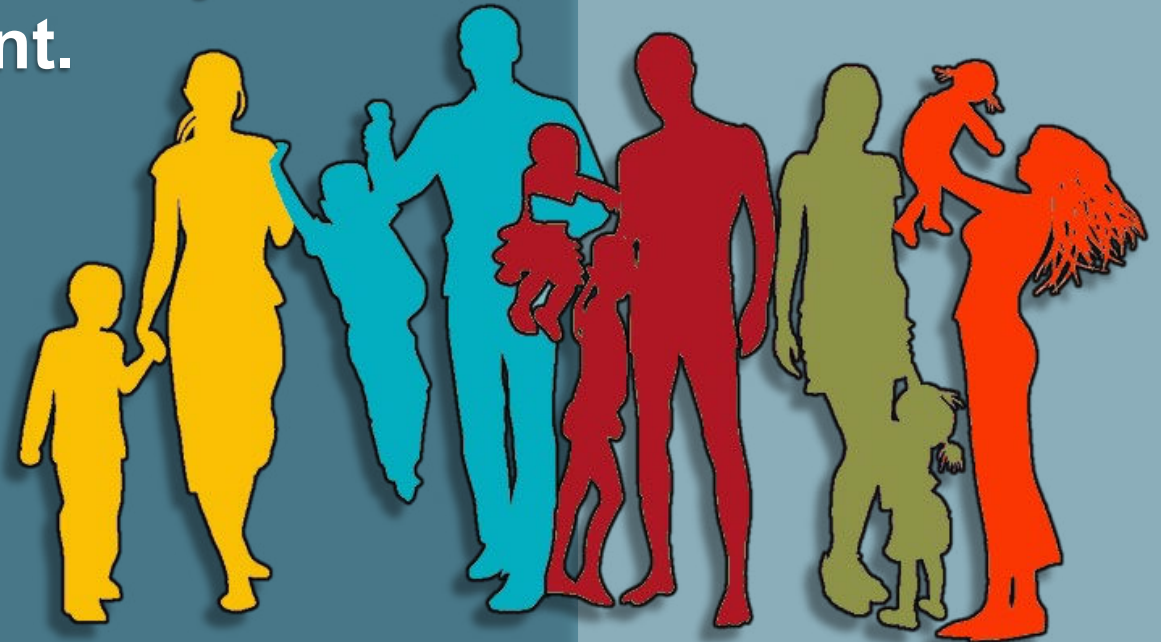
**64%** of all foster care entries nationally were for Neglect

# Preventive legal advocacy is a response to system harms.

Nationally, the child welfare field consistently conflates poverty with neglect.

As a result, too many families are subjected unnecessary system involvement.

Research and data tells us that these contacts with CPS and the system at large are inherently traumatic experiences for our families.



# Social Determinants of Health

Destabilizing factors that are not often otherwise addressed prior to removal are the work of preventive legal advocacy.



## Early Legal Advocacy as a Transformative Tool

state involvement as  
a protective factor



**acknowledges state  
involvement as  
a harm to be avoided**

Implicit (and explicit) bias  
stacks the deck



**avoids the playing field  
altogether**

focused on  
reunification / permanency



**focused on preventing  
system involvement**



### Civil Legal Issue:

Mom has 2 children at home, 1 with severe autism and has recently given birth to her 3<sup>rd</sup> child. Mom and baby test positive for THC at birth.

PP

PP team steps in and works with mom at hospital to prepare safety plan, immediately connects mom with resources.



### CPS Investigation is initiated

CPS Investigator finds home in poor condition, ongoing school disruptions, landlord threatening eviction. Mom unable to maintain employment.

PP

PP team joins mom for initial mtg and explains safety plan to investigator-- helps to reframe narrative explain difficulties mom has been facing.



### CPS Report is Substantiated for Neglect

Investigator substantiates neglect stemming from substance use, older child's unmet needs and condition of home.

PLA

PP refers family to education law attny, continues to counsel mom through investigation & assists mom in addressing all safety risks.



### Removal Order Signed & Children in Care

Agency seeks removal. Mom appears for the preliminary hearing, and for the first time, mom is assigned legal counsel.

PP

PP Attny prepares a defense prior to shelter care hrg. & removal order is denied based on lack of reasonable efforts and imminent threat of harm.



# Common Preventive Legal Advocacy Program Models

## Community-Partnered Programs

Independent programs with contract or full-time attorneys working in a multidisciplinary model to provide holistic advocacy to clients referred by community partners and/or the agency

## Family Civil Legal Aid Programs

Existing legal aid and legal services offices addressing family civil legal needs via multidisciplinary teams where those offices don't usually represent parents in child welfare proceedings or where those services have historically been siloed.

## Medical-Legal Partnerships (MLPs)

Programs partnered with hospitals or in-home nursing programs that refer pregnant or parenting families for partnered legal services. Some of these programs focus on substance exposed newborns while others may have a broader intake criteria.

## Child Welfare Law-School Clinics

PLA Programs administered through Law Schools and Social Work Clinics, typically utilizing students to provide direct representation under the supervision of a clinic supervisor. May focus on pre-pet services or other civil matters

## Pre-Petition Extension Programs

Pilots for pre-pet appointment of traditional counsel (often IV-E Eligible), generally providing multidisciplinary representation during the Child Protective Services investigation and referring out for any other needed civil legal services.

# Legal Issues Commonly Addressed

## General Civil

- ☒ Housing
- ☒ Public Benefits
- ☐ Education Issues
- ☐ Immigration
- ☐ Record Expungement

## Domestic

- ☐ Divorce
- ☐ Custody
- ☒ Legitimation
- ☐ Protective Orders
- ☐ Guardianships

## Pre-Petition

- ☒ Know Your Rights Advocacy
- ☐ Warmlines
- ☒ CPS Investigations
- ☐ Pre-Petition Rep
- ☐ Registry Appeals

# Different Models of Agency Engagement

## Agency Lead

- Agency funded
- Single referral source
- Screen outs
- Family members

## Partnered

- Outside funding
- Some program design input
- Specific referral criteria
- Safety planning integration

## Limited/None

- Pre-petition focus
- Community referrals
- Early legal defense
- Safety planning

# Agency Collaboration – Program Examples

## Legal Services of New Jersey

- Services offered through Family Representation Project
- Receives referrals directly from county-level DCP&P
- Provides multidisciplinary support
- 75% of referrals directly related to poverty
- 400 referrals from across the state, no removals

## Family Legal Advocacy Supports Clinic

- Legal clinic within the University of Wisc. Law School
- Receives referrals directly from county-level DCP&P
- Agency funded pilot providing multidisciplinary support via law and social work students
- Referrals for custody, restraining orders, divorce, guardianship, housing, employment and more

## Family Support & Advocacy Center

- Program through Children's Law Center of California
- Works with community and Agency referred clients who have a history of child welfare system involvement as children
- Direct multidisciplinary systems navigation assistance and supports linkage for variety of legal issues

## Family Preservation Project

- 5 site statewide pilot project in MA through MLRI & Legal Services, created with CIP support & targets racial disparity
- DCF refers families to FPP (not sole referral source)
- DCF considers FPP to be “an important addition to the Department's referral resources”

# Cornerstones of Preventive Legal Advocacy

## Upstream Referrals

Families are referred for services before there is a removal

## Effective Community Partnerships

Rapid response & warm handoffs for any needed services



## Interdisciplinary Legal Teams

Attorney  
Social Worker  
Parent Partner (LE)

## Holistic Representation

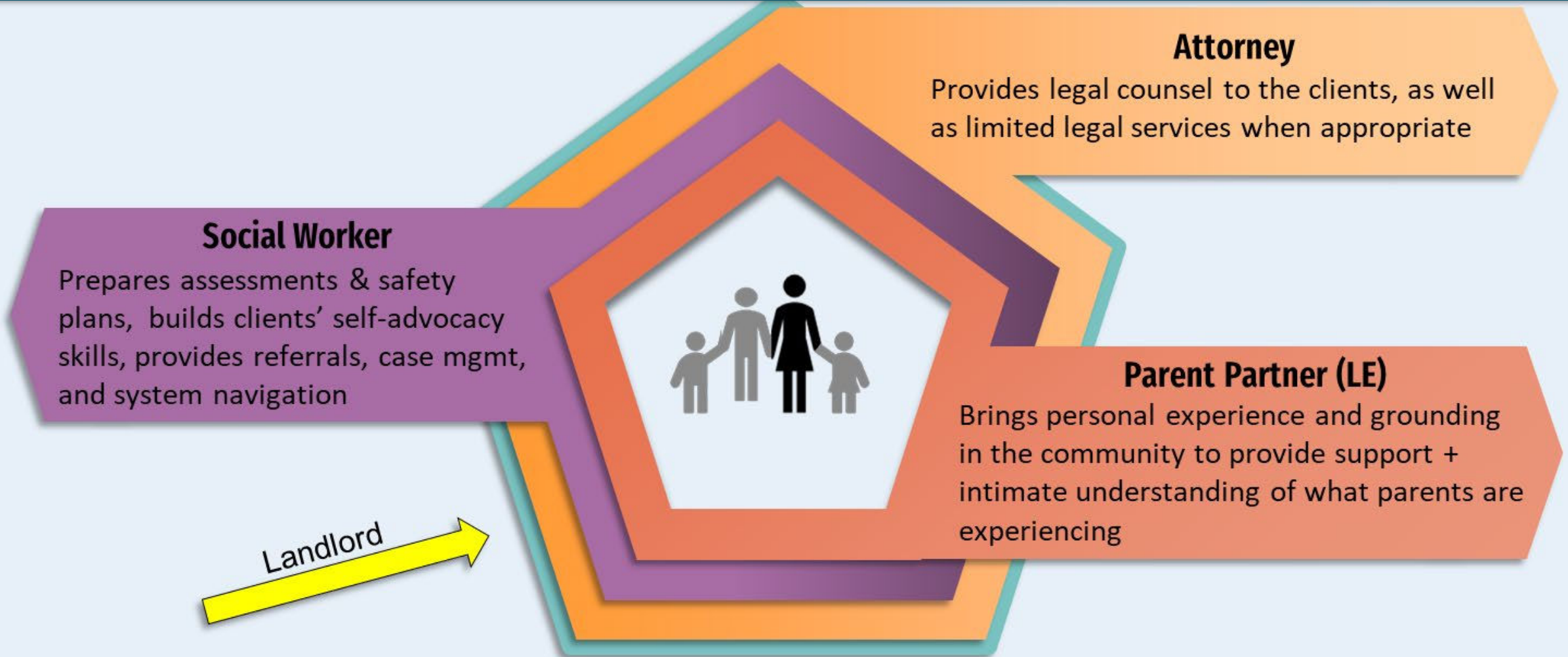
Teams examine the full scope of family need with a prevention focus



# Upstream Referrals: Common Referral Sources



# Interdisciplinary Legal Teams



Entire team works under the supervision of the attorney, generally allowing attorney-client confidentiality to extend to the rest of the team.

# Targeted interdisciplinary support



Providing short term support designed not to increase system dependence, but instead promote client's own system navigation skills



# Targeted interdisciplinary support



Assisting clients with their goals, teaching self-advocacy skills, modeling effective communication, and coaching them through the process of achieving family stability



# Targeted interdisciplinary support

Addressing immediate needs  
by reducing stressors and  
helping to increase client's  
opportunities & capacity to  
manage their own lives





# Targeted interdisciplinary support



Working to identify natural supports, align community-based providers and encourage growth and strengthening of circles of support



# Holistic Legal Advocacy

## Housing Need

Mom may request help securing safe, stable housing for her family.

## Counseling & Therapeutic Services

Mom may desire therapeutic services for her children.



## SA Treatment

Mom may be asking for help getting into substance abuse treatment

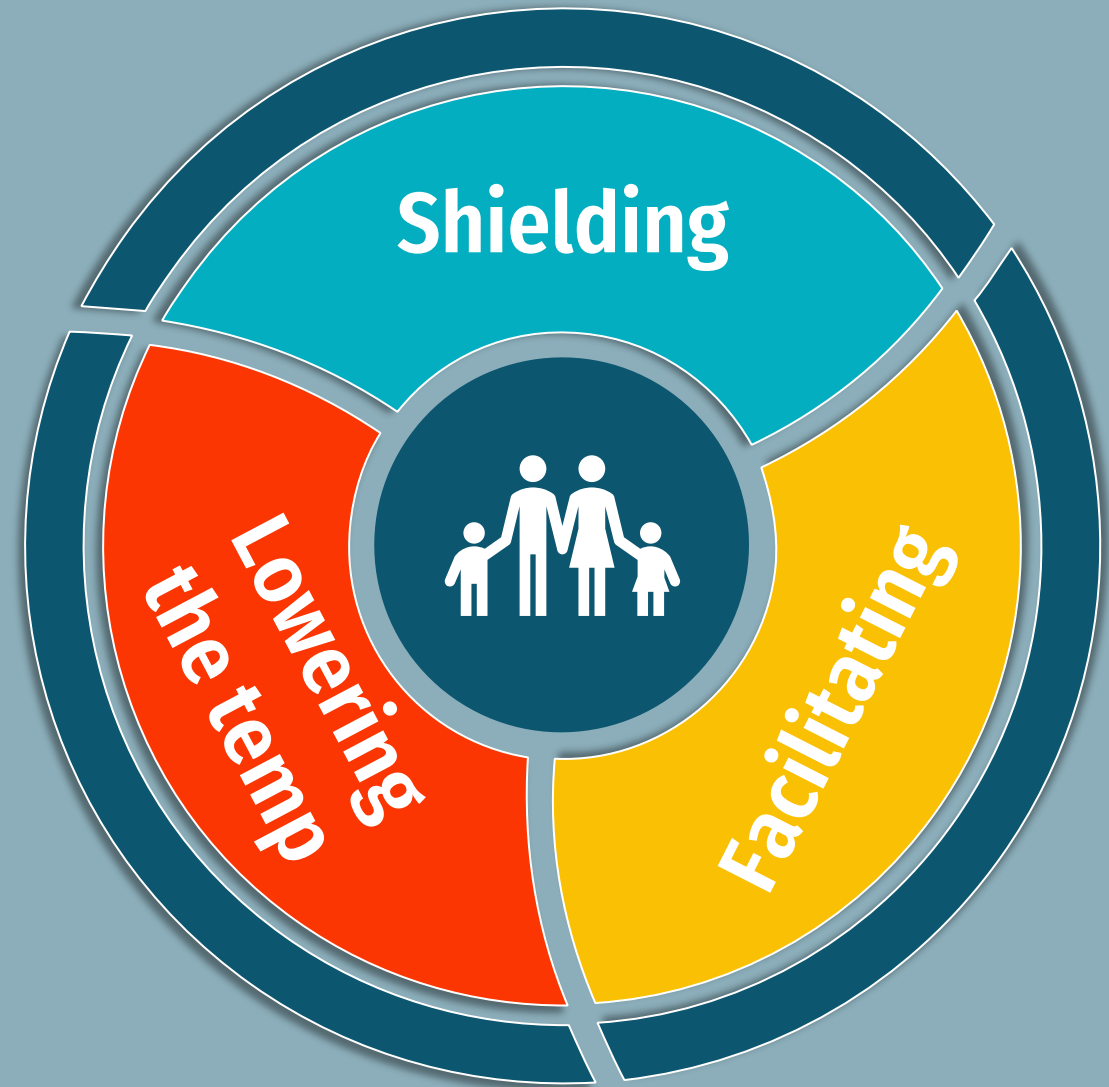
## CPS

## Investigation

Mom may need counsel to advise and support her thru the course of the CPS investigation.

# Much of the work centers on bringing people together

- **Supporting overwhelmed parents** – being the person parents can vent to and confide in
- **Calling and facilitating meetings** – bringing all the necessary people together, including natural supports
- **“Lowering the temperature”** – parents are often less anxious with an advocate in the room, allowing for more productive conversations



# Effective Community Partnerships



## Schools & Daycare Centers

Place based models + an opportunity to build community trust and confidence



## FRC's & Community Centers

Place based models + serving families where they feel safe + opportunities for outreach



## Social Service Providers

Partnering to understand the mechanisms through which services are available



## Churches & Faith Based Orgs

Resources for basic needs and community driven supports + outreach opportunities

# SUCCESS REQUIRES REMAINING ROOTED IN A VISION OF A DIFFERENT WAY

## Relationships

- Meeting clients where they are physically and emotionally
- Remaining grounded about confidentiality
- Centering client perspective and goals
- Problem solving with parents and service providers on any issues that may arise

## Community Building

- Assisting clients in building relationships with their support network
- Encouraging clients when safe to do so, or helping clients to draw on their own resources
- Connecting clients to community resources
- Building strategic partnerships

## Safety Planning

- Treating the client as an expert in their own lives
- Working with parents on on-line safety plans that meet their needs
- Presenting detailed safety plans that address safety concerns & resolve the need for court involvement





# F.I.R.S.T. CLINIC

FAMILY INTERVENTION RESPONSE TO STOP TRAUMA

Family Intervention Response to  
Stop Trauma

# FIRST Clinic is prevention focused

**FIRST Clinic Mission:** To prevent the unnecessary separation and infliction of trauma on newborns and their families through CPS removal by providing compassionate and effective legal representation and connection to community supports.

- Focusing on screened out intakes
- Goal of avoiding removal and/or court intervention



# Partnering with Medical Providers

## **Leveraging Contacts:**

- Utilizing existing relationships and connections within the community
- Finding partners with shared vision and shared goals

## **Changing Relationships:**

- Higher level of prenatal engagement prior to delivery.
- Better understanding from medical community of CPS involvement
- Increased participation and advocacy for families from medical team

## **Building a multidisciplinary team:**

Attorney/Parent Ally/Social Worker/Nurse/Housing Navigator/Drug and Alcohol Provider



# FIRST Clinic referral sources 2020-2023

What percent of referrals **from each referring source** were eligible for FIRST Clinic services?

**Note:** Excludes cases for which there was no referral date provided.

Referral Organization	FY 2020			FY 2021			FY 2022			FY 2023			Total		
	Eligible Cases (%)	Eligible Cases (#)	Total Referred (#)	Eligible Cases (%)	Eligible Cases (#)	Total Referred (#)	Eligible Cases (%)	Eligible Cases (#)	Total Referred (#)	Eligible Cases (%)	Eligible Cases (#)	Total Referred (#)	Eligible Cases (%)	Eligible Cases (#)	Total Referred (#)
Swedish CUPPS	86%	6	7	100%	22	22	98%	115	117	97%	35	36	<b>98%</b>	<b>178</b>	<b>182</b>
All Others/Unknown	71%	10	14	76%	19	25	66%	31	47	70%	19	27	<b>70%</b>	<b>79</b>	<b>113</b>
DCYF - Screen Out				50%	1	2	44%	22	50	18%	4	22	<b>36%</b>	<b>27</b>	<b>74</b>
Providence	50%	4	8	100%	10	10	100%	18	18	80%	8	10	<b>87%</b>	<b>40</b>	<b>46</b>
DCYF - Other	75%	3	4	100%	6	6	100%	15	15	100%	12	12	<b>97%</b>	<b>36</b>	<b>37</b>
START Clinic										95%	18	19	<b>95%</b>	<b>18</b>	<b>19</b>
PCAP	78%	7	9	100%	14	14	88%	14	16	100%	8	8	<b>91%</b>	<b>43</b>	<b>47</b>



# FIRST Clinic case outcomes 2020 - 2023

What percent of eligible FIRST cases, with a known filing status, **had dependencies filed**?

Note: Excludes 76 clients with unknown filing status.

Dependency Filed?	FY 2020		FY 2021		FY 2022		FY 2023		Total by Outcome	
	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)
Filed	28%	8	17%	11	17%	28	18%	14	18%	61
Not Filed	72%	21	83%	54	83%	139	82%	63	82%	277
<b>Total</b>	<b>100%</b>	<b>29</b>	<b>100%</b>	<b>65</b>	<b>100%</b>	<b>167</b>	<b>100%</b>	<b>77</b>	<b>100%</b>	<b>338</b>

What was the **outcome** of all eligible FIRST cases?

Reason for Case Closure?	FY 2020		FY 2021		FY 2022		FY 2023		Total by Outcome	
	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)	% of Total	Eligible Cases (#)
DCYF Case Closure	40%	12	58%	42	38%	82	34%	35	41%	171
Client Declines/ Lack of Contact			8%	6	26%	56	24%	25	21%	87
No DCYF Involvement	30%	9	10%	7	16%	35	14%	15	16%	66
Filed - Removal	20%	6	10%	7	7%	16	11%	11	10%	40
Filed - No Removal	7%	2	6%	4	5%	11	3%	3	5%	20
Guardianship	3%	1	4%	3	5%	10	6%	6	5%	20
Other/Unknown	0%	0	4%	3	2%	5	9%	9	4%	17
<b>Total</b>	<b>100%</b>	<b>30</b>	<b>100%</b>	<b>72</b>	<b>100%</b>	<b>215</b>	<b>100%</b>	<b>104</b>	<b>100%</b>	<b>421</b>

# Policy Topic: Hidden Foster Care

**Definition:** Hidden foster care refers to the informal removal of children from their homes by child welfare agencies without court involvement, typically by pressuring parents to place children with relatives or other caregivers under threat of formal foster care placement.

**Impacts on Families:** Inherent power imbalance means parents often face coerced decisions, while children too often experience placement instability and a lack of critical services typically provided in formal foster care settings.

**Lack of Oversight:** Unlike formal foster care, hidden foster care bypasses judicial oversight and legal protections, leaving families without access to attorneys, case reviews, or support services.



## **PLA & HFC**

**Risk of PLA  
programs  
becoming a  
conduit for HFC**

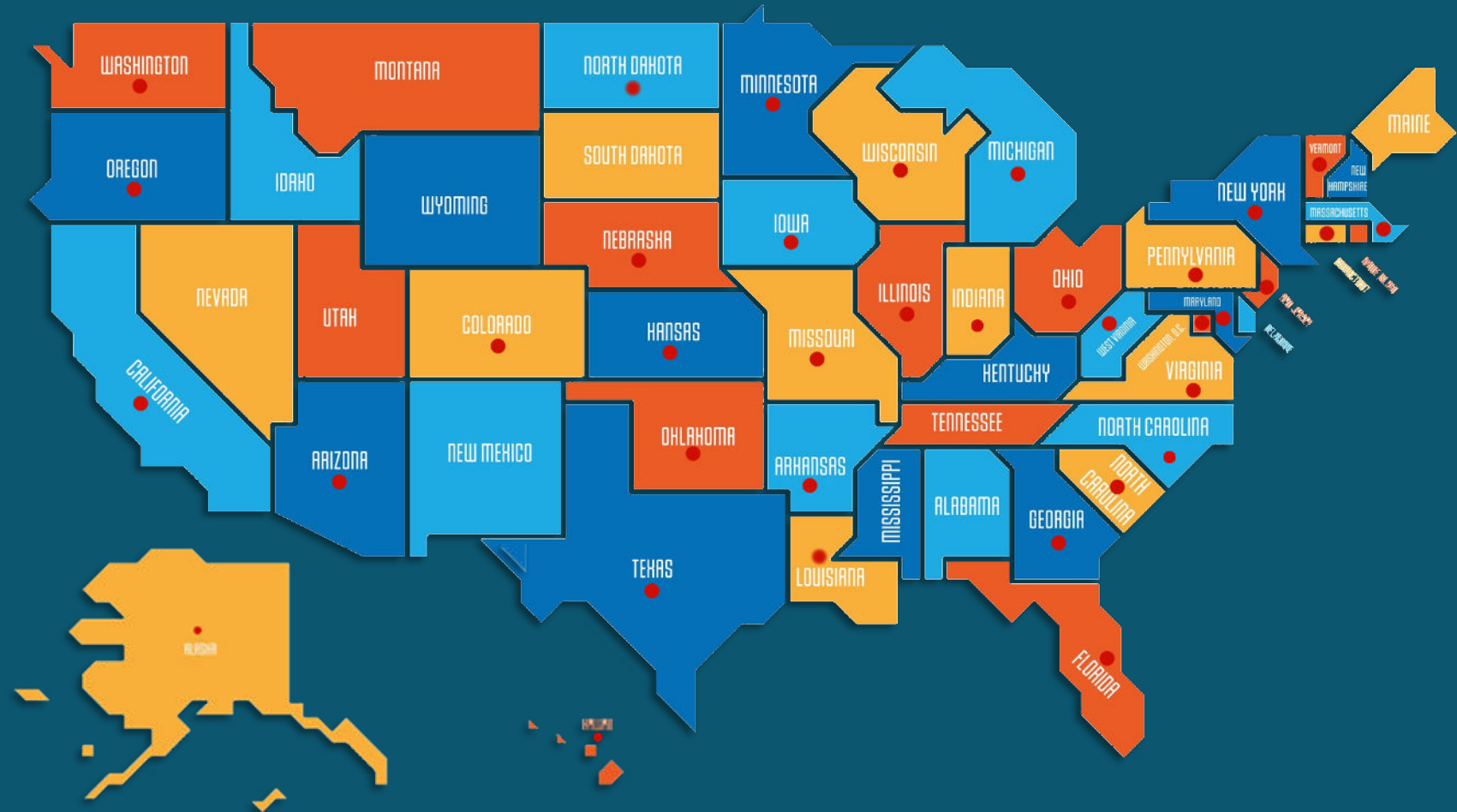
**Access to early  
high-quality legal  
rep as a protective  
factor against HFC**

PLA programs  
are grappling  
with how best to  
protect against  
hidden foster  
care.

- ☒ Limiting representation to parents only?
- ☒ Making sure agreements are truly voluntary
- ☒ Referring non-client parents to alternate representation
- ☒ Ensuring VPAs are time limited and specifically tailored

# Early Legal Advocacy in Action

- 36 states now have active PLA/ Pre-Petition Programs
- 77 individual programs nationally
- New projects in development in California, Florida, North Carolina, Alaska and Indiana, among others.



See program map @ [placohort.org](http://placohort.org)

# National Highlights

## New Programs

- Alaska: new PLA program focusing on relative caregivers
- North Carolina: Pisgah Legal Services has received funding for state's first pilot
- Florida: Children's Board of Hillsboro County (Tampa) has now received funding
- LA County: funding has now been committed for new county-wide hub & spoke model

## Expansions

- FIRST Clinic in WA expanding to include additional counties w. added state funding
- Community Legal Aid in MA expanding staff & caseloads
- Number of programs adding additional team members and focused on growing

## Evaluations

- Number of large evaluations pending including 6 yr study of CHAMPS Clinic in SC
- Recent effort toward coordinated data gathering project that would create national PLA/Pre-Pet. Rep. data dashboard

# Early Legal Advocacy in Action

- Vermont Parent Rep Center Eval shows that in 78% of cases, children did not enter foster care. In cases in which children did enter foster care, 50% went home to their families expeditiously
- Since 2019, FIRST Clinic in Washington state has tracked more than 500 of their cases and 84% have resulted in no petition filing.
- Family Defense Team at Bronx Defenders represents parents during the pendency of CPS investigations, and they report petitions have been avoided in 68% of their pre-petition cases
- Youth Rights & Justice in Oregon now has a Family Defense Project and they've avoided petition filing in over 75% of their cases.
- A new preliminary evaluation shows that the Parent Advocacy Program pilot launched in McLennan County, TX in the winter of 2022 has successfully avoided petition filing in all 30 of its cases.
- Agency caseworkers interviewed as part of 2023 Dependency Advocacy Center Evaluation expressed support for DAC's system navigation approach

# Recent Efforts to Advance Early Legal Rep

## TEXAS § 261.307:

Family Miranda statute includes notice of right to counsel before entering into safety plan BUT . . . access still being sorted out (see also new Arizona Family Miranda Law)

## CALIFORNIA AB 670(1)(c)(1):

When agency receives a report of abuse or neglect of a child of a minor or non-minor dependent parent, agency has 36 hrs to notify attorney representing that dependent in dependency court.

## MONTANA § 41-3-301

Now requires Agency to provide parents notice of right to counsel at time of emergency removal and copy of the notice must be sent to PD's office within 24 hrs.

## WASHINGTON VPA Hotline

VPA (voluntary placement agreement) Hotline piloted by WA OPD has now been expanded statewide and provides 24/7 access to legal guidance.

## ORDER, COOK COUNTY, IL

April 2024 General Administrative Order provides for mechanism for appointment of counsel at the outset of CPS investigations.



# Some Lessons Learned

**The role of the courts:** courts are unusual grantees for parent defense teams and can struggle to navigate supervision of staff, administration, personnel, and other issues. Independence is best.

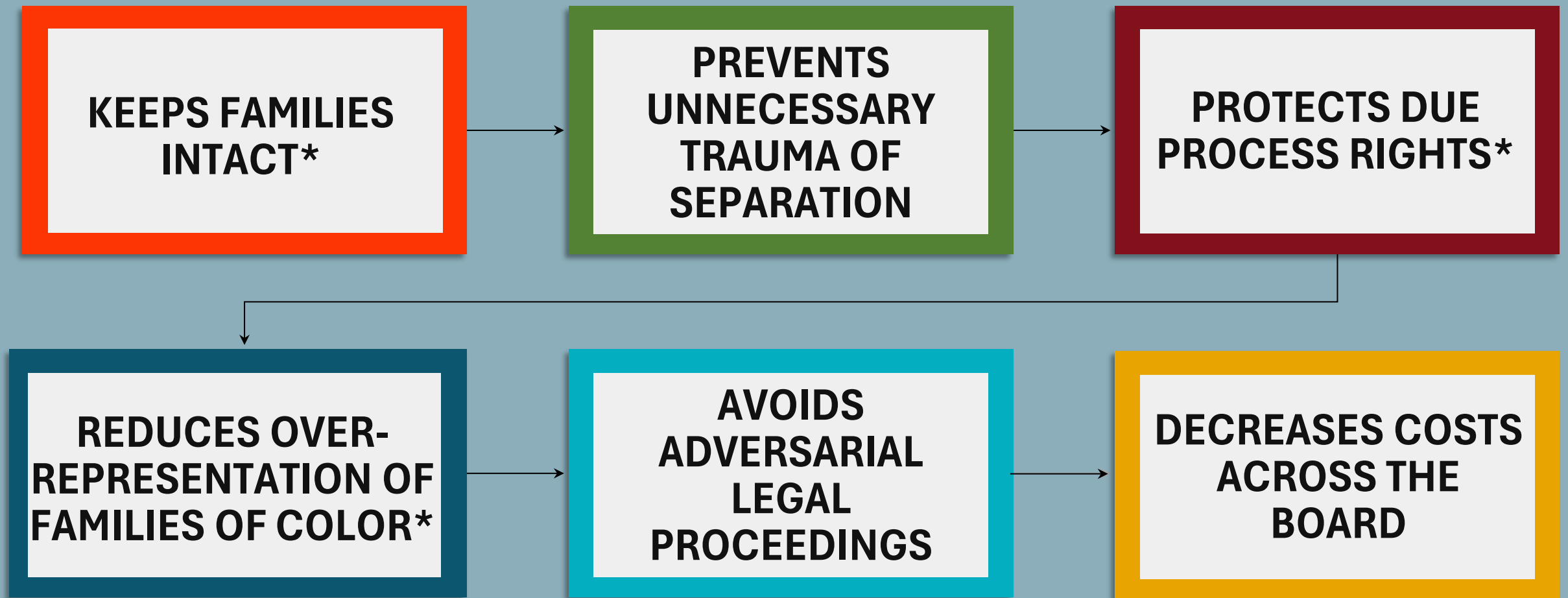
**Grant considerations:** grants should build in time to allow programs to “ramp up” before beginning intake. Team members need time to learn without the pressure to begin services.

**Team building:** team members employed by different agencies will face challenges navigating confidentiality and understanding roles of attorneys versus social work staff, etc.

**Training requirements:** attorneys used to dependency cases are often new to working with social workers and parents with lived experience. Training in team functioning is critical.

**Research & data collection:** data collection is important, time consuming and expensive. To ensure program sustainability, you need a data collection plan in place from the outset.

# Primary Benefits of PLA



**\*Requires fidelity to the model, high-quality legal rep, and a commitment to building community resilience**

# Procedural Benefits



**Ensures cases that come to court require judicial intervention**

**Limits court cases to those with unresolved or complex issues**



**Streamlines the legal issues to be resolved**

**Enables parties to flesh out the issues prior to court and facilitates judicial economy in a way that poses less risk to client's rights.**



**Establishes attorney-client relationship before court involvement**

**Improves attorney's in-court advocacy and creates opportunity for robust defense.**

# How can stakeholders support PLA?

✓ Learn about the upstream civil legal services available to families in your area

✓ Become familiar with procedures, expectations, and guidelines in place for early legal advocacy appointments

✓ Encourage judicial councils, CIPs and other stakeholders to invest resources in local pilot projects

✓ Talk with advocates who take investigation cases and learn about their experiences, challenges, and successes

✓ Assist local programs in their efforts to maintain docket data for evaluations and program analysis

# New Opportunities under Title IV-e

## Changes re. scope of reimbursable legal work:

reimbursement is no longer limited to “all stages of foster care legal proceedings.”

Opens the door to reimbursement for legal rep. in all stages of foster care AND OTHER CIVIL LEGAL PROCEEDINGS

“Other civil legal proceedings” may be covered PRE or POST petition where other requirements are met (additional requirements next slide).

## Changes re. Tribal counsel:

Tribal counsel’s fees are now reimbursable, that includes attorney and non-attorney tribal representation.

## Changes re. relative caregivers’ counsel:

Rule now provides for reimbursement of legal services provided to relative caregivers where all other requirements are met.

# What's it going to take?

- Coordination with State IV-e agency to establish a system for pre and post petition legal billing
- Coordination with agency to develop forms and documentation protocols necessary to establish pre-requisites for reimbursement pre-filing
- Coordination with local legal service providers to develop contracts for services and methods of tracking and submitting billing for “other civil legal proceedings”
- Expansion of existing parent/child representation billing to include tribal counsel and counsel for relative caregivers





**Georgia's Desired State Case Flow Map**

**Diagram key**

- Georgia THrive Touchpoint
- Decision Point
- Court Hearing
- Child Welfare Meeting
- Community Meeting

**Enrollment Criteria**

- Child Under 3
- One Parent Consents
- Family is Court-Involved

The flowchart illustrates the process from initial investigation to case closure. Key steps include:

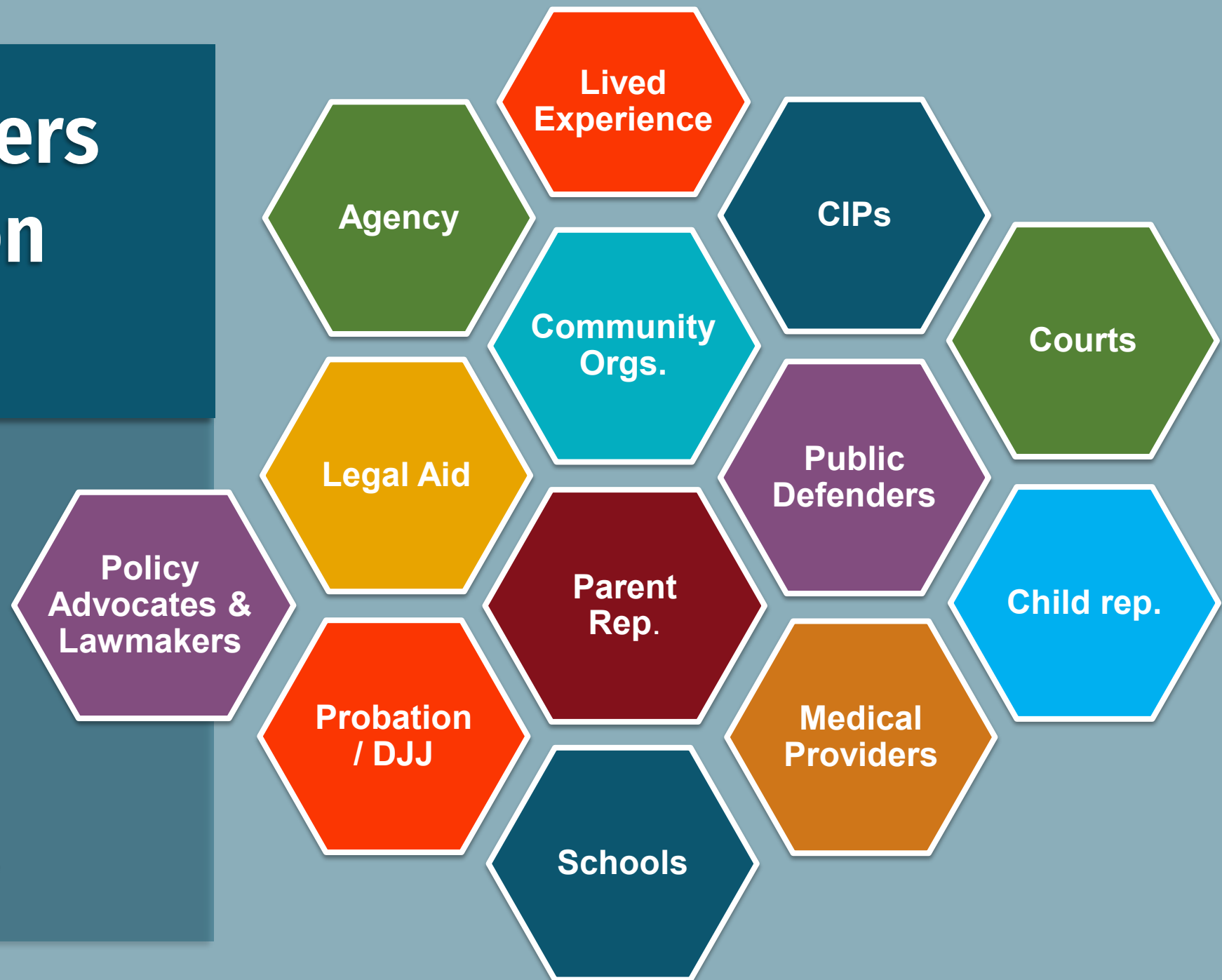
- Hotline Call & Investigation
- PreRemoval Team Call
- Removal Order
- Prelim. Prot. Hearing
- Petition
- Adjudication
- DFCS Staffing
- Disposition
- Permanent Guardianship & Case Closure
- Reunification
- TPR Petition
- Adoption Case Closure

A red 'X' marks a point of divergence in the flowchart, indicating a critical decision point or a potential area for improvement.

- **Coordinate with existing PLA programs to ensure early referrals & meaningful involvement in the pre-petition space**
- **Advocate for the provision of PLA services post-reunification to support family stability and improved outcomes**

# Key Stakeholders For Pre-Petition Rep Programs

To ensure a comprehensive approach to family well-being, various child welfare and community stakeholders should be actively involved in program development discussions.



# Interested in learning more?

- E-mail [etcook2@emory.edu](mailto:etcook2@emory.edu)
  - *Ask to be added to Cohort listserv*
  - *Let's schedule a time to chat about your program and opportunities to integrate PLA services*
- Check out the program planning worksheet [HERE](#)
- Find more program development resources at [placohort.org](http://placohort.org)

# Questions?



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