

Fund Legal Representation to Keep Families Together and Prevent Unnecessary Entries in Foster Care

Testimony to the House Appropriations Subcommittee on Articles I, IV & V in Support of Funding Request from Texas Indigent Defense Commission

In 2023, the Legislature passed SB 2120 to expand and improve legal representation for families in Child Protective Services (CPS) cases, but without funding, the law won't help families. To achieve the Legislature's goal, this session legislators should fully fund the Texas Indigent Defense Commission (TIDC) \$47.6 million request to ensure early legal intervention, prevent unnecessary removals to keep kids with their families, and avoid putting more children in the state's costly and troubled foster care system.

In Many Cases, Parents Are Stuck Without a Lawyer When the State Goes to Court to Remove their Children

More than 140,000 Texas families faced Child Protective Investigations last year.¹ These cases **move fast**. Investigations are generally over in 45 days or less. Within 14 days of the state removing a child from their family, a court hearing can decide whether the child returns home or remains separated from their parents for months or years. **This hearing could be the difference between having dinner together that night or parents missing milestones like their child taking their first step, scoring the winning goal at their first soccer game, or walking across the stage at their high school graduation.**



Yet in over a third of cases, parents lack legal representation at this pivotal moment, while CPS and children have attorneys.² The state should only remove kids from their families for real safety threats — not because parents are outmatched by government lawyers.

Without legal counsel, parents struggle to advocate for their rights, understand the system, or access needed services. The U.S. Department of Justice confirms that early legal representation prevents unnecessary removals, limits family trauma, and ensures children receive timely support.³ When removals happen simply because the state has more legal resources, families suffer and legislative goals are undermined.

Recognizing this Challenge, Lawmakers Passed SB 2120 in 2023

The bill, which passed on a vote of 138-0 in the House and 29-1 in the Senate, created the Family Protection Representation program to improve access to quality legal representation for parents and children when required by law after the state removes a child from their family. The program can also connect families to attorneys earlier in CPS investigations—before removal happens—giving parents a chance to resolve concerns and avoid family separation. Legal support during the investigation may extend to broader legal services than just CPS court appearances, such as securing housing, obtaining protective orders, resolving custody disputes, or negotiating with CPS to prevent unnecessary removals.⁴

To Achieve the Goal for SB 2120, Legislators Must Provide Funding Requested by TIDC to Cover the Costs of Legal Representation

Attorney shortages and funding constraints prevent most counties from providing legal counsel to parents earlier than required.

McLennan County's Parent Advocacy Pilot Program showed that early legal representation prevents unnecessary removals:

- **Of 51 families in the pilot, 40 were at risk of having their children removed. Nearly all (n=39, 98%) avoided removal.**⁵
- Parents in the program had legal guidance at the first sign of CPS involvement, allowing them to address concerns before the situation escalated to removal.⁶
- One stakeholder in the pilot highlighted that each avoided CPS case saved the county \$20,000 or more in legal costs.⁷

Other states, including Iowa and Oklahoma, have successfully used early legal support to keep children safely at home, reducing foster care placements and strengthening families.⁸

TIDC's Request Can Also Provide an Attorney to Families After Removal

Texas law guarantees that children and indigent parents in CPS cases have legal representation **after CPS removes a child from their families**.⁹ But without state funding, counties are left to cover the full cost, resulting in **attorney shortages, heavy caseloads, and inconsistent quality services**. Low pay makes it hard to attract and retain skilled attorneys. These challenges are most acute in rural areas. In 2023:

- **51% of Texas counties** reported a decline in attorneys handling CPS cases.¹⁰
- **1 in 4 counties** had six or fewer attorneys available for CPS cases, forcing some to carry unmanageable caseloads and face conflicts of interest.¹¹

We Urge the Legislature to Fund TIDC Exceptional Item #3

This funding gives SB 2120 teeth by helping counties address workforce shortages, improve the quality of legal services, and connect families to legal support earlier to avoid the state breaking up families through further CPS intervention.

Endnotes

1. Department of Family and Protective Services (FY 2024). CPI Completed Investigations: Activity. https://www.dfps.texas.gov/About_DFPS/Data_Book/Child_Protective_Investigations/Investigations/Activity.asp.
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3. Wiig, J. K., Widom, C. S., & Tuell, J. A. (2003). *Understanding child maltreatment and juvenile delinquency: From research to effective program, practice, and systemic solutions* (NCJ 223570). U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. <https://www.ojp.gov/pdffiles1/ojdp/223570.pdf>
4. Grigg Green, T. (2024, May 23). *Pre-petition litigation in Texas* [PowerPoint presentation]. Child Protection Roundtable Meeting. (on file with author).
5. Barton Child Law & Policy Center. (2024). *Parent advocacy program report*. Retrieved from https://bartoncenter.net/wp-content/uploads/2024/07/Revised-Parent-Advocacy-Program-Report_REVISIED-FINAL.pdf
6. *Ibid.*
7. *Ibid.*
8. Casey Family Programs. (2024). *Preventative legal support: An essential tool to strengthen families and keep children safe*. Retrieved from <https://www.casey.org/media/24.07-QFF-SF-Preventative-legal-support.pdf>
9. *Supra* note 2.
10. Texas Indigent Defense Commission. (2024). Legislative Appropriations Request for Fiscal Years 2026 and 2027. Submitted to the Office of the Governor, Budget Division, and the Legislative Budget Board, August 16, 2024. https://www.tidc.texas.gov/media/2lmd5v3j/tidc-2026-7_lar-final.pdf.
11. *Ibid.*