

Strengthen Legal Representation for Texas Families in CPS Cases

Testimony to the Legislative Budget Board on the Texas Indigent Defense Commission

Texas should fully fund TIDC's Exceptional Item #2 to support the Family Protection Program and add a budget rider to prioritize grants for counties that provide legal representation to families earlier in CPS investigations. This investment would strengthen the CPS attorney workforce, help families address legal issues and find safe alternatives to removal before cases reach court, and let Texas better leverage federal funds. Together, these steps would strengthen due process and help ensure children enter foster care only when necessary to keep them safe.

Most families do not have a lawyer during CPS investigations

Texas has made progress keeping children safely with their families and ensuring due process for parents facing foster care proceedings. But legal representation has not kept pace. Although TIDC may support counsel for children and indigent parents in CPS cases, it has never received funding for that purpose.

Because counties cover nearly the full cost of court-appointed CPS representation, limited local funding has become a statewide capacity problem. The problem is getting worse: in 2023, half of Texas counties reported fewer CPS attorneys than they had in 2022; by 2025, one-third had 6 or fewer attorneys accepting appointments.¹ ² A February 2026 survey published by the Supreme Court of Texas Children's Commission found that about two-thirds of legal professionals said fewer than 10 attorneys in their communities had the knowledge and capacity to help during a CPS investigation.³

Parents generally receive appointed counsel only after a CPS case reaches court, when the investigation has ended, CPS may be seeking removal, and key decisions have already been made.

The need for earlier assistance is clear. In the February survey, 3 out of 4 legal professionals reported a need for legal representation during a CPS investigation for children and families in their communities. Yet only 1 in 5 said representation during CPS investigations was available in their communities.⁴

Legal representation during a CPS investigation helps families understand the CPS process and their rights, address legal problems that contribute to safety concerns, and identify safe alternatives to removal before court involvement.

Texas has already seen the promise of this approach. A preventive legal advocacy pilot in Waco provided multidisciplinary legal help during CPS investigations, and 39 of the 40 participating at-risk families avoided removal. Despite these results, the pilot ended because it lacked sustainable funding.⁵

Texas should protect due process, preserve families when children can safely remain at home, and ensure access to counsel in these high-stakes CPS cases.

There is broad support for increasing access to lawyers for families in CPS cases

The 2026 Republican Party of Texas Platform calls for CPS reforms that prioritize family preservation, prevent wrongful removals, and protect constitutional rights and due process.⁶ Additionally, the 2026–2028 Texas Democratic Party Platform calls for funding legal counsel for indigent Texans in criminal and civil proceedings.⁷

Texas Chief Justice Jimmy Blacklock emphasized both principles in his 2025 State of the Judiciary address, saying the state's coercive power to separate children from parents should always be a last resort, describing CPS litigation as “adversarial litigation of the highest stakes imaginable,” and urging the Legislature: “We need to do more to ensure that desperate parents in these cases have vigorous representation.”⁸

Our funding recommendations

Recommendation 1: Support Exceptional Item #2 to fund the Family Protection Representation Program

Exceptional Item #2, providing \$128 million for Family Protection Representation at TIDC, would be a much-needed state investment to support parents facing the possibility that their child may enter foster care. We strongly support the request.

This funding could support legal representation for families during a CPS investigation and after the court gets involved. It can also support legal representation for youth throughout their time in foster care.

State investment would also help Texas leverage federal resources. Federal policy developed during President Trump’s first term allows reimbursement of eligible legal representation expenses for children and parents in foster care or at risk of entering it. Because Texas must spend qualifying state or local dollars to draw down those funds, stronger state investment could stretch each dollar further.

Recommendation 2: Add a budget rider to prioritize earlier legal representation in CPS cases

We also recommend a rider prioritizing grants to counties that offer parents legal help before a CPS case reaches court:

Parental Representation. Out of amounts appropriated above in Strategy D.11, TIDC shall make grants to counties in accordance with all uses authorized by Government Code, Chapter 79.037, for Family Protective Services and shall prioritize funding grants to counties that include pre-petition legal representation or early appointment of counsel to a parent during a Department of Family and Protective Services investigation of a parent.

Exceptional Item #2 can build attorney capacity, and a rider can help direct that capacity toward the stage when legal assistance is most likely to prevent unnecessary court and foster care involvement. The rider gives counties flexibility to design legal representation models that fit their local courts, attorney workforce, and community needs.

We look forward to working with you to make sure more Texas children can stay safely with their families and out of foster care.

Endnotes

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