

# **CHIPS PUBLIC DEFENDER WORKGROUP**

## **FINAL REPORT**

**Prepared Pursuant to:  
2005 Minn. Laws Chap. 136, Art. 1, sec. 2, subd. 2**

**State Court Administrator's Office  
135 MN Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd  
Saint Paul, MN 55155  
(651) 296-2474  
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# CHIPS PUBLIC DEFENDER WORKGROUP FINAL REPORT EXECUTIVE SUMMARY

## INTRODUCTION

The 2005 Legislature, in response to a request of the Board of Public Defense to limit the number of public defenders appointed to represent parents, legal guardians, Indian custodians, and children in child protection matters, asked the State Court Administrator to convene a workgroup<sup>1</sup> to study and make recommendations on the appropriate assignment and use of limited public defender resources and ways to minimize CHIPS proceedings through early intervention initiative such as family group conferencing, mediation, and other innovative strategies. Minn. Laws 2005, Chapter 136, Article 1, section 2, subd. 2. The following recommendations are in response to that request.

## RECOMMENDATIONS

### **Recommendations on the Appropriate Assignment and Use of Limited Public Defender Resources**

- 1. In order to achieve appropriate assignment and use of limited public defender resources to represent children, parents, Indian custodians and legal guardians in child protection, permanency, and termination of parental rights matters, the Workgroup recommends that the Legislature immediately increase Public Defender funding.**

The Board of Public Defense estimates that the cost of such representation will be \$9 million for FY 07 (and a similar amount for each year thereafter) to provide the following essential services:

- i. Public Defenders will represent children over 10 and parents<sup>2</sup> during pre-petition processes, upon request;

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<sup>1</sup> The CHIPS Public Defender Workgroup was comprised of a multidisciplinary group including judges, public defenders, county attorneys, private attorneys, county social services representatives, guardians ad litem, the Department of Human Services, and the Board of Public Defense. A roster can be found at Appendix A.

<sup>2</sup> "Parent" as used in this document includes any adult physical custodian whose behavior is alleged to have caused the child to be in need of services or protection of the court.

- ii. Public Defenders will represent children over 10 and parents from the point of filing of any petition through the post-trial motion period, and will represent Indian children, parents and Indian custodians as required by the Indian Child Welfare Act (ICWA) and the Minnesota Indian Family Preservation Act;<sup>3</sup>
- iii. Public Defenders will continue active participation in Children's Justice Initiative efforts; and
- iv. The State Public Defender will represent eligible parents in appeals.

If the Legislature fails to provide sufficient resources, the Workgroup acknowledges that public defender participation in child protection, permanency and termination of parental rights cases will be required to be restricted, and in that event recommends that scarce public defender resources be allocated as follows, with the caveat that such limitations on publicly-funded representation is wholly unacceptable under any standards:

- i. In ICWA cases, the court will continue to follow federal requirements and appoint public defenders to fulfill the representation requirements of ICWA.
- ii. In every non-ICWA case there will be one public defender available who shall be assigned to represent the indigent custodial parent(s). If two parents with equal custodial rights have a conflict, a second public defender shall be available for appointment so that each such parent is represented.
- iii. If the custodial parent does not qualify for representation at public expense, the available public defender may, in the court's discretion, be appointed to represent any qualified party in the case or the child(ren), but in no event shall more than one public defender be appointed.
- iv. In cases where the behavior at issue is child prostitution, delinquency under 10, runaway or truancy, a public defender must be appointed to represent the child, and no additional public defenders shall be appointed.

**2. The Workgroup recommends that the Legislature amend current statutes relating to representation of children, parents, Indian custodians and legal guardians in child protection, permanency, and termination of parental rights matters to reflect the action taken by the Legislature in response to this report.**

**a. Either to:**

- i. **reflect representation to be provided if sufficient funds are provided; or, if funds are not provided,**
- ii. **clarify representation in ICWA and non-ICWA child protection, permanency, and termination of parental rights cases.**

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<sup>3</sup> See 25 U.S.C. 1912(b) (providing that in any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding, and the court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child).

## **Recommendations on Ways to Reduce CHIPS Proceedings Through Early Intervention Initiatives**

- 1. The Legislature should encourage and support the development, and implementation of early intervention initiatives on a county or multi-county basis, and should not mandate any particular program at this time.**
- 2. Counties should continue to allow, encourage, and support the development and implementation of pre-petition intervention initiatives such as family group conferencing and mediation.**
- 3. Counties should continue to develop and implement strong support systems for parents involved in the child protection system. Parents should be provided information on their rights and responsibilities.**
- 4. The Children's Justice Initiative should play a lead role in the development and implementation of pre-petition strategies aimed at earlier resolution of child protection matters including such things as pre-petition screening checklists, standard petition templates, and alternative dispute resolution training.**
- 5. Minnesota Statutes 2005, section 484.76 should be amended to eliminate obstacles to the use of alternative dispute resolution in child protection matters.**
- 6. Counties and the Children's Justice Initiative should continue to explore, develop and implement post-petition alternative dispute resolution strategies such as family group conferencing, mediation and the Olmsted Parallel Protection Planning program.**

## **Other Recommendations**

- 1. The Workgroup recommends that the Legislature design, implement, and fund a separate entity, which could be under the umbrella of an existing agency such as the Board of Public Defense, Legal Services, the Children's Law Center, or the State Guardian Ad Litem system, to provide legal representation for children, parents, Indian custodians and legal guardians in child protection, permanency, and termination of parental rights matters. This entity could be expanded to provide representation in all other civil matters where courts are mandated to appoint counsel at public expense, including but not limited to such matters as contempt, paternity, civil commitment, and psychopathic personalities.**

2. **The Workgroup recommends that the Legislature fund a study aimed at examining the disparate practices between counties in terms of the number of child protection cases that are filed with the courts. The study should, at a minimum, examine county screening tools, the use of pre-petition teams, and county attorney charging practices.**

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## **CHIPS PUBLIC DEFENDER WORKGROUP FINAL REPORT**

### **Introduction**

The 2005 Legislature, in response to a request of the Board of Public Defense to limit the number of public defenders appointed to represent parents, legal guardians and children in child protection matters, asked the State Court Administrator to convene a workgroup<sup>4</sup> to study and make recommendations on the appropriate assignment and use of limited public defender resources and ways to minimize CHIPS proceedings through early intervention initiative such as family group conferencing, mediation, and other innovative strategies. Minn. Laws 2005, Chapter 136, Article 1, section 2, subd. 2. This report is in response to that request.

### **Need to address current crisis in child abuse cases created by lack of funding for well-trained, culturally competent legal representation**

Child abuse and neglect proceedings are county-initiated legal actions undertaken to address the needs of children who are alleged to be abused or neglected by their parents, Indian custodians, or legal guardians and who require protection and safe, permanent homes or children whose behavior results in the need for protection or services (e.g. truancy, prostitution, delinquents under the age of 10, children that are mentally fragile, developmentally delayed or have other special needs). The federal Child Abuse and Prevention and Treatment Act of 1974, the Adoption Assistance and Child Welfare Act of 1997, and the Adoption and Safe Families Act of 1997 mandate that child protection systems seek to protect abused and neglected children, provide services to them and to their families, and establish permanent, safe, nurturing homes for them in a timely fashion. Minnesota statutes define how child protection agencies shall provide protection for children, deliver preventative services to families so that children are not

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<sup>4</sup> The CHIPS Public Defender Workgroup was comprised of a multidisciplinary group including judges, public defenders, county attorneys, private attorneys, county social services representatives, guardians ad litem, the Department of Human Services, and the Board of Public Defense. A roster can be found at Appendix A.

unnecessarily removed from their homes and provide services to families whose children have been removed so that the family can be safely reunited.

Judges are responsible for providing oversight in child abuse and neglect proceedings. A judge must review any action taken by the child protection agency to remove a child from parental care without that parent's consent to ensure that such a removal was necessary to protect the child's welfare.<sup>5</sup> The judge must also determine whether the agency is fulfilling its legal mandates. This oversight responsibility requires the judge to make findings regarding the adequacy of services provided by the agency to the family. The judge must also ensure that the parties receive due process throughout the court proceedings.

Child abuse and neglect proceedings are complex, involving numerous parties and attorneys, multiple hearings, and unique legal issues. Each party has a right to be represented by an attorney. The child must have a guardian ad litem who is also a party. The guardian ad litem presents the child's best interests which is not the same as legal representation.<sup>6</sup> Indian tribes are parties in ICWA cases and may be represented by a lay representative and/or an attorney. Other interested persons may participate in the proceedings, including relatives, foster parents, legal guardians, stepparents, and service providers. Some of these interested persons may have attorneys representing them. The county is always represented by the county attorney. Few of the remaining parties are financially able to retain private counsel and neither the public defender program nor the counties currently have the resources to fund publicly-funded counsel.

The CHIPS Public Defender Workgroup found that child protection legal representation is in crisis. Growing caseloads and a lack of resources prohibit the court from fulfilling federal and state mandates for publicly funded counsel for children, parents, Indian

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<sup>5</sup> See 42 U.S.C. §672(a)(1) (2000 and Supp. 2004).

<sup>6</sup> The federal Child Protection and Treatment Act of 1974 requires that all children who are subject of child protection matters be represented by a guardian ad litem. In Minnesota a guardian ad litem may not be the child's attorney and the majority of guardians ad litem are not attorneys. The role of the guardian ad litem is to represent the child's best interest. Attorneys speak for the child and are vigilant in protecting the child's due process and other legal rights.

custodians and legal guardians. In the short term, the Minnesota Legislature should address this crisis by providing resources to fund quality representation mandated by law.

### **Recommendations on the Appropriate Assignment and Use of Limited Public Defender Resources**

#### **Need for counsel in child abuse and neglect proceedings**

The federal Adoption and Safe Families Act of 1997<sup>7</sup> emphasizes that the overriding objective in every child protection proceeding is to timely provide a safe, stable, permanent home for each abused and neglected child. This policy is reflected in Minnesota statutes which provide that “[t]he paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interest of the child.”<sup>8</sup> The Workgroup believes, and relevant studies in the field support, the proposition that children are better-off being raised by their parents, when it is safe for them to remain in the parental home.

Both federal and state statutes mandate that, when a child has been ordered into out-of-home placement, the judge must hold a hearing to determine the permanent placement of the child within 365 days of the date the child was removed from home.<sup>9</sup> Prior to making any permanency decision, the judge must, through a series of mandated hearings, oversee the social service agency’s efforts to rehabilitate and maintain the family, and concurrently plan to provide permanent alternative care for the child victim. At each stage of the proceeding, most of which involve serious, complex and some times long-entrenched problems such as addiction, domestic abuse and mental illness, the judge must make critical decisions about the child’s best interests, the parent’s progress on the case plan which is designed to rehabilitate the parents and reunify the family, and the reasonable efforts of the county to assist the family. Abusive and neglectful parents typically have severe dysfunctions, and abused and neglected children typically have

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<sup>7</sup> 42 U.S.C. §601, et. Seq. (1997).

<sup>8</sup> Minn. Stat. § 260C.001, subd. 2.

<sup>9</sup> Adoption and Safe Families Act of 1997, 42 U.S.C. § 675(5)(c); Minn. Stat. § 260C.201, subd. 11.

acute special needs. Unrepresented parents are less able to successfully meet case plan objectives due to lack of understanding of their legal responsibilities and rights. Judges faced with unrepresented parents often lack the necessary information from and about the parents that would be useful in making the critical, expedited decisions about the child's best interests necessary at every stage of a child protection proceeding. Although legal representation of parents is essential to protect the due process rights of parents, an equally compelling reason to provide publicly-funded lawyers for indigent parents is to ensure the best outcomes for children. It is the children who suffer most from ill-informed decision making in child protection cases. The statutes, rules and procedures that must be followed in these cases are numerous, complex, and often confusing even for judges and attorneys. It is unreasonable to expect unrepresented parents to find, comprehend and implement applicable laws and statutes, especially in light of the dysfunction and emotional turmoil which often surrounds such cases.

Terminating parental rights is one of the most serious decisions that Minnesota judges are called upon to make and no child or parent should be subjected to such a critical, life-altering decision without having an effective voice in the process. Competent legal representation ensures effective participation in the process. Lack of counsel for parents increases the length of each of the numerous hearings by requiring the judge to obtain critical information directly from an already distraught parent who does not understand his or her legal responsibilities and rights. Lack of counsel for parents increases the likelihood that the case will be prolonged and that the parents will not successfully complete the case plan, thereby resulting in permanent removal of the child from the parent's care. Prolonging the process is most detrimental to the child's welfare.

**Need for well-trained, culturally competent, and adequately compensated attorneys in child abuse and neglect proceedings**

The CHIPS Public Defender Workgroup spent considerable time discussing the need for well-trained and culturally competent attorneys in child abuse and neglect proceedings. Attorneys must be knowledgeable not only about the relevant law, including the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, and court rules but

also about related areas including child development, cultural competency, health, mental health and education laws.<sup>10</sup> Attorneys who are not adequately funded are not able to obtain adequate training, or devote the time necessary to be effective in these cases.

The Workgroup believes that well trained attorneys, cooperatively engaged in resolving child abuse and neglect matters with other professionals involved, will result in improved safety and permanency for children and families. Child-protection attorneys should not treat child protection cases in the usual adversarial way, but should instead, be trained to emphasize the counselor aspect of the profession. The safety, well-being and permanency of children are enhanced through a collaborative approach focused on building safe, nurturing families even as due process rights are protected.

**Quality, dedicated attorneys with manageable caseloads available to give quality representation, serve as counselors and advocates for the children and parents are critical to the child protection system.**

The CHIPS Public Defender Workgroup is also concerned with the caseloads of attorneys (and other stakeholders) involved in child protection and abuse proceedings. County attorneys, public defenders, other appointed and retained counsel, and social workers all expressed concern that heavy caseloads do not enable them to always provide prompt, full and effective counseling, and representation to each child, parent and guardian. This jeopardizes their ability to competently represent, counsel and serve children and parents. The quality of representation and interaction is closely tied to improved, timely outcomes for children.

### **The Children's Justice Initiative**

The Children's Justice Initiative (CJI), spearheaded by former Chief Justice Kathleen A. Blatz, is a collaboration between the Minnesota Supreme Court and the Minnesota Department of Human Services. The purpose of CJI is for these state agencies to work

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<sup>10</sup> The Workgroup recognizes that social workers, guardians ad litem, judges and any other professionals called upon in cases must be well trained and culturally competent.

closely with the local juvenile courts, social services departments, county attorneys, public defenders, court administrators, guardians ad litem, and other key stakeholders in each of Minnesota's 87 counties to improve the processing of child protection cases and the outcomes for abused and neglected children. The overall objective is to timely find safe, permanent homes for abused and neglected children, whether that is through reunification with parents or some other permanent placement option. When identifying and implementing improvements, the project's goal is for all stakeholders to operate "through the eyes of the child."

Each county participates in CJI through county based teams that meet on a regular basis to discuss child protection cases, and to develop and implement changes to improve case processing. The State Court Administrator's Office provides technical assistance, legal research, and consultation to the teams and to individual counties. The Office is also responsible for the development of model judicial orders that are in compliance with federal and state statutes and rules, and development and maintenance of a Judges Juvenile Protection Benchbook. Regional training opportunities are also provided.

CJI had made Minnesota a national model for dealing with child protection cases. But the lack of resources to provide adequate legal representation in child protection cases undermines the ability of CJI to fully implement its goals and objectives. In a survey of judges participating in CJI, problems with legal representation for parents and children is one of the most frequently identified obstacles to fulfilling CJI objectives.

### **Need to Clarify Use of Public Defenders in Child Abuse and Protection Matters**

Under current law the state public defense system must provide the services specified in Minn. Stat. § 611.14 and Minn. Stat. § 611.25, that is public defenders must provide trial representation to adults and juveniles in misdemeanor, gross misdemeanor and felony cases, to juveniles over 10 years of age in CHIPS cases, and appellate representation to adults and juveniles in gross misdemeanor and felony cases. In addition, Minn. Stat. § 260C.163, subd. 3 provides that except in truancy cases, the court shall appoint counsel to represent children over 10 or the parents or legal guardians in any case in which it feels that such an appointment is appropriate. ICWA also mandates publicly funded

representation for indigent parents and Indian custodians and provides for discretionary appointment of publicly-funded counsel for children. Judges have traditionally appointed public defenders to represent both children and parents/legal guardians in these cases, and the public defender program has attempted to meet the need.<sup>11</sup> As a result, the public defender program is currently the only available *state-wide* resource for attorneys trained in child protection law and procedure as well as cultural competence.

Due to lack of funding, the Board of Public Defense states that it cannot continue to provide quality representation needed in child protection cases. The Board has also stated that even when available to serve in child-protection cases, heavy caseloads and limited funds prevent those public defenders from fully complying with the best practices set forth by the Children's Justice Initiative, including participation in pre-filing and post-filing alternative dispute resolution models.

Over the past several years the Board has attempted to secure adequate funding to provide representation in all child protection matters. In 2003, as a result of a year long study conducted by the Board and the Chief Justice, the Board sought a budget request for state funding of public defender representation in child protection matters. The 2003 Legislature was unable to provide the funds. The Board submitted the request again in 2005 and again the Legislature was unable to provide the funds. In 2005 the Board asked the Legislature to limit representation to either the parent or the child, leaving the source of representation for the other group uncertain because there is no existing, funded source of counsel trained in child protection matters outside of the public defender's office at this time.

The Workgroup acknowledges the pressures put on the public defender system but is concerned with the inability of the courts to find other well-trained, culturally competent

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<sup>11</sup> Minn. Stat. Sec. 260C.331, subd. 3(d) currently provides that reasonable compensation for an attorney (other than a public defender) appointed by the court to serve as counsel in child protection matters is a charge upon the county in which proceedings are held, but counties have no available funding for such representation and there is no source of attorneys who are trained in child protection law (including cultural competence) outside of the public defender's office to accept such appointments. Judges, therefore, have continued to appoint public defenders to represent parties in child protection matters beyond the statutory mandate for use of public defenders.

attorneys to participate in child protection proceedings. As a result, the Workgroup makes the following recommendations to address the crisis in the child protection legal system:

### **Recommendations on the Appropriate Assignment and Use of Limited Public Defender Resources**

Based on the needs discussed above the CHIPS Public Defender Workgroup makes the following recommendations on the appropriate assignment and use of limited public defender resources:

- 1. In order to achieve appropriate assignment and use of limited public defender resources to represent children, parents, Indian custodians and legal guardians in child protection, permanency, and termination of parental rights matters, the Workgroup recommends that the Legislature immediately increase Public Defender funding.**

The Board of Public Defense estimates that the cost of such representation will be \$9 million for FY 07 (and a similar amount for each year thereafter) to provide the following essential services:

- i. Public Defenders will represent children over 10 and parents<sup>12</sup> during pre-petition processes, upon request;
- ii. Public Defenders will represent children over 10 and parents from the point of filing of any petition through the post-trial motion period, and will represent Indian children, parents and Indian custodians as required by the Indian Child Welfare Act (ICWA) and the Minnesota Indian Family Preservation Act;<sup>13</sup>
- iii. Public Defenders will continue active participation in Children's Justice Initiative efforts; and
- iv. The State Public Defender will represent eligible parents in appeals.

If the Legislature fails to provide sufficient resources, the Workgroup acknowledges that public defender participation in child protection, permanency and termination of parental rights cases will be required to be restricted, and in that event recommends that scarce public defender resources be allocated as follows, with the caveat that such limitations on publicly-funded representation is wholly unacceptable under any standards:

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<sup>12</sup> "Parent" as used in this document includes any adult physical custodian whose behavior is alleged to have caused the child to be in need of services or protection of the court.

<sup>13</sup> See 25 U.S.C. 1912(b) (providing that in any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding, and the court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child).

- i.* In ICWA cases, the court will continue to follow federal requirements and appoint public defenders to fulfill the representation requirements of ICWA.
- ii.* In every non-ICWA case there will be one public defender available who shall be assigned to represent the indigent custodial parent(s). If two parents with equal custodial rights have a conflict, a second public defender shall be available for appointment so that each such parent is represented.
- iii.* If the custodial parent does not qualify for representation at public expense, the available public defender may, in the court's discretion, be appointed to represent any qualified party in the case or the child(ren), but in no event shall more than one public defender be appointed.
- iv.* In cases where the behavior at issue is child prostitution, delinquency under 10, runaway or truancy, a public defender must be appointed to represent the child, and no additional public defenders shall be appointed.

**2. The Workgroup recommends that the Legislature amend current statutes relating to representation of children, parents, Indian custodians and legal guardians in child protection, permanency, and termination of parental rights matters to reflect the action taken by the Legislature in response to this report.**

**a. Either to:**

- i.* **reflect representation to be provided if sufficient funds are provided; or, if funds are not provided,**
- ii.* **clarify representation in ICWA and non-ICWA child protection, permanency, and termination of parental rights cases.**

## **Recommendations on Ways to Reduce CHIPS Proceedings Through Early Intervention Initiatives**

The Workgroup explored the current use of early intervention initiatives for child protection, permanency and termination of parental rights cases and whether such early interventions should be expanded to all counties in the state.

The discussion began with an education on the Department of Human Service's internal Alternative Response (AR)<sup>14</sup> system because many people involved in the child protection system point to AR as a method to reduce the need for attorneys in child protection matters. AR is an agency process that occurs before any matter is brought to the attention of a court. It is the consensus of the Workgroup that although AR is an important agency process, it has no direct impact on the need for legal representation for parties to child-protection cases in the court system. AR is not a form of "alternative dispute resolution" (ADR). The Workgroup focused on ADR models.

The Workgroup reviewed ADR programs, such as mediation and family group conferencing, also known as family case conferencing. Mediation in child protection cases is a process in which specially trained neutral professionals facilitate the resolution of child abuse and neglect issues by bringing together the family, social workers, attorneys, and others involved in the case in an attempt to discuss and resolve the case. The goal is to come up with a plan that all parties, attorneys, and social workers agree is safe and best for the children and safe for all involved parties. The judge determines which cases are appropriate for mediation.

Mediation is a valuable addition to the court's resources, giving attorneys and their clients a chance to come to a negotiated compromise in a less adversarial process than traditional court proceedings. Successful mediation eliminates the need for contested hearings, or can reduce the scope of contested hearings. Family involvement and

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<sup>14</sup> The term "alternative response" was re-named "family assessment" by the 2005 Legislature.

participation creates a greater chance of success because of the “buy-in” process. Courts using mediation note that the problem-solving approach reduces tensions among the parties, changing the environment from adversarial to collaborative. This results in better results than the adversarial process. It is also believed that the cases are concluded earlier when termination of parental rights is necessary, resulting in a better outcome for the child involved in the case. Mediation does not reduce or eliminate the need for legal representation, but if successful, can shorten the process and thereby reduce the length of time during which legal representation is required.

Family case processing is a related process. All family members are brought together for the purpose of resolving the issues facing the family. The Olmsted County Parallel Protection Program (P3) is one of the best known examples in Minnesota. The Parallel Protection Program is a post-court filing process<sup>15</sup> developed and implemented under the auspices of the Olmsted County Children’s Justice Initiative. The purposes of the program are negotiation of a settlement on admission/denial of the CHIPS petition and the development of the immediate next steps in the child protection or agency plan. The program brings families together to share information and jointly solve the problems that are causing the child’s crisis. The process also includes an option of access to family group-decision making when there is a need for more detailed decision-making. Mediation is also an option in the event of a dispute between parties. Family case planning conferences are designed to be conducted on a regular, ongoing basis in the development of informed next steps in the overall social service agency case plan. Family members, their easily accessible kin, and support system, along with invited social providers and legal advisors participate. Family group conferencing is employed when much more detailed and extensive decision making is needed and includes many more family members. Family case processing and family group conferencing do not eliminate the need for legal representation, but as in the case of mediation, may reduce the length of time during which representation is required.

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<sup>15</sup> Contrast with AR, which is an in-house, human services *pre-court filing* process.

Family case planning conferences and family group conferencing recognize and reflect the family's rights and responsibilities to care for and protect their children and the children's right to access extended family and kin in planning for their safety, well-being and permanency. It is believed that court cases that begin with family case processing may result in a less adversarial resolution at later permanency hearings when unification with the family is not possible.

The availability of the family case processing plan is limited due to the time it takes to conduct the process, the availability of participants, the legal timeframes required for court action, and dependency on communities rich in family assistance resources.

Implementation of alternative dispute resolution processes takes considerable planning and resources. Budget constraints must be identified and responses must be explored. The availability of trained neutrals must be explored. Training needs and availability of trainers must be identified. The group responsible for implementation must also address such issues as funding options, location of the program, as well as an array of process decisions such as what information will be needed on each family up front, how it will be obtained, during what phase of court proceedings will the family be referred to the program, how will the schedule of sessions be established, and how will plans, progress, or lack of progress be communicated to the court. Finally, stakeholder training, development of forms, a data management system, and an evaluation mechanism must be determined.

The use of alternative dispute resolution in Minnesota courts is still in the experimental stage. Given the careful planning that must go into the implementation of a successful ADR program and given the varying resources of courts and counties throughout the state, the Workgroup declined to recommend that any one system be mandated for use in all counties in the state, or that all counties be mandated to establish an ADR program. There is a need for additional community-based experimentation to determine which programs can be successful in a particular community.

The Workgroup is also concerned that the funding issues surrounding the implementation of any early intervention initiatives must be addressed in each county before any program should be implemented. Not only is there a need to sufficiently fund the program but, there is also a need to have sufficient resources in the community available for families in crisis. Representatives of the Olmsted P3 program were adamant that the program would not work were it not for the excellent community resources available in the Rochester area.

Based on this, the Workgroup recommends that:

- 1. The Legislature should encourage and support the development, and implementation of early intervention initiatives on a county or multi-county basis, and should not mandate any particular program at this time.**
- 2. Counties should continue to allow, encourage, and support the development and implementation of pre-petition intervention initiatives such as family group conferencing and mediation.**
- 3. Counties should continue to develop and implement strong support systems for parents involved in the child protection system. Parents should be provided information on their rights and responsibilities.**
- 4. The Children's Justice Initiative should play a lead role in the development and implementation of pre-petition strategies aimed at earlier resolution of child protection matters including such things as pre-petition screening checklists, standard petition templates, and alternative dispute resolution training.**
- 5. Minnesota Statutes 2005, section 484.76 should be amended to eliminate obstacles to the use of alternative dispute resolution in child protection matters.**
- 6. Counties and the Children's Justice Initiative should continue to explore, develop and implement post-petition alternative dispute resolution strategies such as family group conferencing, mediation and the Olmsted Parallel Protection Planning program.**

### **Other Recommendations**

The CHIPS Public Defender Workgroup believes that the most effective way to provide quality and adequate legal counsel services to parents, Indian custodians, legal guardians and children in child protection matters is to create a separate entity to be responsible for providing advocacy and counsel in these cases. It is time to enhance Minnesota's ability to address the needs of abused and neglected children in a more collaborative and effective manner. The group does not, however, go as far as to recommend what that system should look like. The Workgroup was hampered by a lack of time to fully examine the options and an inability to collect and analyze quality data needed for such a decision.

There are, however, models in other states that should be examined if the Legislature chooses to design a new system. The following examples are not exhaustive and could be expanded. The Office of the Child's Representative in Colorado was created in 2000 to empower Colorado's most vulnerable children with uniform, high-quality counsel and non-legal advocacy. The Office is responsible for enhancing the legal representation of children, establishing fair rates of compensation for services, setting minimum practice and training standards, determining maximum caseloads and working collaboratively with the state guardian ad litem system.

Delaware also has established an Office of the Child Advocate which is responsible for coordination efforts on behalf of children with advocacy groups; promotion of system reform; recommendations on changes in law, procedure and policy necessary to enhance the protection of Delaware's children; and implementation and coordination of a program providing legal representation on behalf of a child.

Los Angeles County, California operates a nonprofit, public interest law corporation, funded by the Los Angeles County Superior Court, which is responsible for serving as appointed counsel for the vast majority (80%) of the 30,000 children under the jurisdiction of the Los Angeles County dependency court.

- 1. The Workgroup recommends that the Legislature design, implement, and fund a separate entity, which could be under the umbrella of an existing agency such as the Board of Public Defense, Legal Services, the Children’s Law Center, or the State Guardian Ad Litem system, to provide legal representation for children, parents, Indian custodians and legal guardians in child protection, permanency, and termination of parental rights matters. This entity could be expanded to provide representation in all other civil matters where courts are mandated to appoint counsel at public expense, including but not limited to such matters as contempt, paternity, civil commitment, and psychopathic personalities.**
- 2. The Workgroup recommends that the Legislature fund a study aimed at examining the disparate practices between counties in terms of the number of child protection cases that are filed with the courts. The study should, at a minimum, examine county screening tools, the use of pre-petition teams, and county attorney charging practices.**

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## **Conclusion**

The CHIPS Public Defender Workgroup spent several months discussing the crisis in the child protection system caused by lack of resources to provide appropriate legal representation to indigent parties, and the critical role well-trained, culturally competent, adequately compensated attorneys with realistic caseloads, not just in protecting the legal rights of children and parents in child abuse and neglect proceedings, but in counseling parents about their responsibilities in the process and facilitating better outcomes for children.

The Workgroup concludes that the legislature must address the current crisis in child protection cases caused by the lack of resources for adequate legal representation in child protection cases. The need for adequate funding for well-trained, culturally competent attorneys with realistic caseloads that permit them to fully participate in the collaborative resolution of these cases is immediate. The legislature can also take the leadership in designing and implementing a statewide entity whose primary mission is to provide advocacy and legal representation for families (parents and children) in child-protection cases to ensure a permanent safe and nurturing home for every Minnesota child.

**APPENDIX A**

**CHIPS Public Defender Workgroup Roster**

Hon Terri Stoneburner  
Chair  
Minnesota Court of Appeals

Hon. Herbert Lefler III  
District Court  
Fourth Judicial District

Gail Baker  
Baker Law Firm

Hon. Jon Maturi  
District Court  
Ninth Judicial District

Gail Chang Bohr  
Children's Law Center of Minnesota

Irene Opsahl  
Mid-Minnesota Legal Assistance

Judith Brumfield  
Assistant Director  
Scott County Community Services

Rose Robinson  
Leech Lake ICWA Coordinator  
Minnesota Chippewa Tribe representative

Patrick Coyne  
Director  
Dakota County Social Services

Jessica Ryan  
Attorney at Law

James Fleming  
Chief Public Defender  
Fifth Judicial District

John M. Stuart  
State Public Defender

Geoffrey Hjerleid  
Senior Assistant County Attorney  
Olmsted County

Erin Sullivan Sutton  
Director  
Division of Child Safety and Permanency  
Department of Human Services

Jo Howe  
Director (Retired)  
Ramsey County Guardian Ad Litem  
Program

Tammy Swanson  
Attorney at Law

Hon. Richard Jessen  
District Court  
Seventh Judicial District

Mark Toogood  
Manager  
State Guardian Ad Litem Program

Doug Johnson  
Washington County Attorney

William M. Ward  
Chief Public Defender  
Tenth Judicial District

## APPENDIX B

### Resource Materials

Copies of the resource materials are available from the State Court Administrator's Office, (651) 296-2474.

American Bar Association Standards Of Practice For Lawyers Who Represent Children In Abuse And Neglect Cases

U.S. Department of Health & Human Services Children's Bureau  
Factsheets/Publications:

VII. Standards For Legal Representation of Children, Parents and The Child Welfare Agency

National Association of Counsel for Children Recommendations for Representation of Children in Abuse and Neglect Cases

Guidelines for Advocates for Children in Michigan Courts

A Judge's Guide to Improving Legal Representation of Children  
(State Justice Institute & ABA Center on Children and the Law)

National Conference of Commissioners on Uniform State Laws **Draft for Discussion Only** Representation Of Children In Abuse And Neglect And Custody Proceedings Act

Duquette, Donald N., "Legal Representation for Children in Protection Proceedings: Two Distinct Lawyer Roles are Required"

Piraino, Michael S. "Lay Representation of Abused and Neglected Children, Variations on court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy"

Child abuse and neglect prevention: Protecting Minnesota's Children  
Minnesota Department of Human Services

Minnesota Alternative Response Evaluation: A review of Pilot Project Findings from 2001 – 2004

Edwards, Hon. Leonard P., "Mediation in Child Protection Cases"

Mediation in Child Protection Cases: An Evaluation of the Washington, D.C. Family Court Child Protection Mediation Program  
Technical Assistance Brief, National Council of Juvenile and Family Court Judges

Lohrbach, Suzanne and Sawyer, Robert, "Creating a Constructive Practice: Family and Professional Partnership in High-risk Child Protection Case Conferences"

Colorado Office of the Child's Representative

Plan for Furnishing Representation in Neglect Proceedings in the District of Columbia

Connecticut General Assembly File No. 691 "An Act Concerning The Quality Of Legal Representation In Child Protection Proceedings"

Children's Law Center, Los Angeles County Juvenile Dependency Court system.

Bridge, Justice Bobbe J. and Moore, Joanne, "Implementing Equal Justice for Parents in Washington: a Dual Approach"

Improving Parents' Representation in Dependency Cases: A Washington State Pilot Program Evaluation

Technical Assistance Brief, National Council of Juvenile and Family Court Judges

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