

## ARTICLE

# Legal Aid and Pro Bono Programs Can Keep Children Out of Foster Care

Sheila Winkelman Pont and Linda Rio

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## Summary

- The focus on prevention in the child welfare system aims to keep children out of foster care and avoid the negative consequences of separation and the trauma of child welfare proceedings.
- Pro Bono Network helps attorneys provide pro bono services they could not otherwise provide without support, including training, backup, office space, translators, and malpractice insurance.
- Legal aid and pro bono lawyers play a crucial role in stabilizing households, providing economic stability, securing housing, and more, preventing issues that may lead to child welfare agency involvement and foster care placement.

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In child welfare system analysis and reform, there has been a recent focus on prevention —keeping children out of the child welfare system in the first place. Doing so has a myriad of benefits, including avoiding the harms youth often face in foster care, keeping families from the trauma of separation as well as from the trauma of child welfare proceedings, and lessening the over-burdened and under-resourced juvenile court systems in many states.

This prevention work is taking many forms. On a national level, important work is being done by child welfare advocates, judges, and social workers to bring resources to families before child welfare proceedings begin, to support and strengthen families in a way that

prevents the removal of children from their homes. This has resulted in [promising programs](#) at the state level in many jurisdictions to bring attorneys into the process during child welfare investigations and before removal petitions are filed.

This is all excellent, admirable, and effective work, and should continue and be supported. But even for those agencies and attorneys who do not represent children or parents and who are not directly involved in state child welfare systems, there are ways to think about how your work can prevent children from entering foster care.

“More than [480,000 children were impacted by neglect in 2020](#), and it was a primary or contributing factor for [64% of children entering foster care](#) the same year,” according to an article published by the National Conference of State Legislatures. Jill Yordy, “[Poverty and Child Neglect: How Did We Get It Wrong?](#),” Feb. 21, 2023. In Illinois, and similarly in most states, neglect is defined as follows:

not receiving the proper or necessary nourishment or medically indicated treatment . . . including adequate food, clothing and shelter; or [being] subjected to an environment which is injurious . . . to the child’s health, physical well-being, or welfare . . . or . . . abandoned by his or her parents or other person responsible for the child’s welfare without a proper plan of care.

### [325 Ill. Comp. Stat. 5/3, Abused and Neglected Child Reporting Act.](#)

Underlying factors contributing to the system’s removal of children for alleged neglect are loss of housing, unsafe housing, inadequate income and resources (including because of un- or under-employment), lack of child care, and the presence of violence in the home. Sometimes these factors come into play because our systems often confuse poverty with neglect, or they are the consequences of systemic racism. Jerry Milner & David Kelly, “[The Need for Justice in Child Welfare](#),” 99 *Child Welfare*, Dec. 2021.

Legal aid and pro bono lawyers can represent parents and other caregivers in ways that stabilize households, provide economic stability, remove abusive members, and provide housing, before issues even arise that bring state child welfare agencies into the family’s life. Nat’l Legal Aid & Defender Ass’n, Fact Sheet, [Civil Legal Aid Helps Children in Foster Care and Their Parents](#) (last updated Apr. 2020). A presentation by the National Legal Aid and Defender Association discussed the stages at which legal representation can help children and families before and during child welfare proceedings, and put “Civil Legal as Primary Prevention” as the first stage of intervention. [News You Can Use: Title IV-E Child Welfare Funding for Legal Representation Updates](#), slide 12 (Sept. 22, 2020).

We share here the example of our pro bono agency, Pro Bono Network, working with our legal aid partner agencies, to show how civil legal aid can strengthen and stabilize families, hopefully resulting in fewer children entering foster care.

## The Mission and Work of Pro Bono Network

[Pro Bono Network](#) (PBN), based in the Chicago area, helps attorneys provide pro bono services they would not be able to provide without support, including training, backup, office space, translators, and malpractice insurance. We partner with legal aid agencies in Illinois to design projects that allow them to serve more clients and take identified areas off their plates so that they can focus on other work. Our clients are all low income, and our services include representation for orders of protection, eviction, expungement, immigration status, guardianship, end-of-life documents, divorce, and the needs of incarcerated persons.

During the last 12 years, PBN partnered with more than 20 community organizations and legal aid agencies. Our services are fully volunteer-provided. We have recruited and supported more than 450 volunteer attorneys and 30 translators who have contributed 29,000 volunteer hours—totaling over \$7.25 million in free legal services—to help 5,000 clients.

## A Framework for Viewing the Impact of Legal Aid and Pro Bono Work

We have always known that the work we do helps low-income people resolve legal problems and move toward a better future. But we started giving serious thought to the idea of preventing the circumstances leading to those legal problems in the first place when we attended a Racial Justice Training series for Illinois legal aid providers, put on by the [Shriver Center on Poverty Law](#). This excellent program encouraged participants to look at what was happening “upstream” from the “downstream” problems we were addressing, where civil legal aid is often intervening during a crisis and sometimes only able to provide a temporary solution.

This got us thinking about our work and how to prevent the issues we deal with from happening in the first place and talking about future projects from this perspective. We decided to increase our work in communities particularly harmed by racial injustice and to support the efforts of those living in the community with what they identified as their needs. Based on this community assessment, we developed three new projects focusing on those legal needs that were deemed most imperative—criminal record expungement, housing preservation, and general “know your rights” presentations. One of the prevailing

comments from our assessment was that members of the community were not able to access legal solutions to their issue because they were not even aware there was a legal issue to be addressed. Providing this information is an upstream way to avoid legal needs from arising in the first place or to address them as soon as possible and hopefully prevent a more serious legal issue from arising.

Similarly, we also can think about our work as a means of moving upstream to keep children out of the child welfare system. Our work is upstream when it helps create safe environments, provides stability in housing and employment, gives people documented status, supports wealth preservation, keeps kids with their families, and gives families, be they parents or other kin, more resources and support.

Through this lens, our agency has looked at the ways in which our current and future projects strengthen families to prevent the circumstances that lead to children ending up in foster care. We share some examples of those projects here.

## Eviction Prevention and Other Housing Preservation Projects

Inadequate or unsafe housing is often a ground for finding that a child has been neglected. One of the best preventive measures in keeping children out of foster care is supporting parents and other caretakers to stay in or move to safe, affordable living environments. When families are evicted or their homes are taken from them for any reason, the children are at risk of child welfare system involvement. Preventing that from happening is the focus of several PBN projects.

We have a number of volunteer projects involving stabilizing housing. Partnering with the Center for Disability and Elder Law, we work with homeowners to ensure that their homes are free from liens and other encumbrances and draft the necessary legal documents that will allow their homes to pass to their children outside of the court process. This removes the need for the inheritors to hire legal professionals in order to stay housed and supports wealth preservation. In addition, when the City of Chicago temporarily expanded the ability for people to expunge prior eviction proceedings from their record, we worked with the Law Center for Better Housing to draft court petitions, allowing the clients to clean up their housing record. Both of these projects ensure that families will be able to obtain and stay in their homes, reducing the possibility of a neglect charge being raised against them.

Most directly, our eviction prevention project involves working with tenants who have conditions issues in their apartment and who have been unable to remediate the problems on their own. Oftentimes, these conditions can make the apartment almost

uninhabitable and, if the client has minor children living in the apartment, can result in a call to child welfare services. One such case involved a woman who was raising two young children—one with a disability. There was a leak and mold issue in her apartment that was getting worse over time, and the landlord was unresponsive after many attempts to contact him. Pro Bono Network's attorney, in consultation with the client, sent a letter to the landlord, identifying what city ordinances were being violated, and the conditions were fixed. Without this pro bono intervention, this mother would have had to attempt to find a new apartment for her family, potentially becoming unhoused in the process, or would have had to stay in the unit, which was dangerous for her disabled child. Either scenario may have led to a child welfare investigation.

## U Visas and Orders of Protection

While it may not seem as obvious, immigration assistance is another area where civil legal aid can provide financial and other stability to prevent children from entering the child welfare system. Without a legal Social Security number, most undocumented people have to take unreliable and temporary work. Through our work to give these clients a path to documentation and an employment authorization document, the entire family becomes stronger. In addition, in U visa cases that stem from domestic violence, as well as in civil order of protection cases, lawyers are also helping individual parents stay away from an abusive situation and neutralizing the other parent's unfounded but common threat to report the victim parent to child welfare. Removing the perpetrator of the violence or relocating the victim parent and children to safe housing with restrictions on access to them puts the children in a safer environment where there is not the threat of abuse or witnessing abuse.

A few years ago, Pro Bono Network volunteer attorneys worked with an undocumented woman who came to the United States at the age of 17, escaping a complicated family life that included child sexual abuse. In Chicago, she got whatever work was available without identification, and she met and married a man and had a child. Over the course of the following few years, her husband, who was a U.S. citizen, persistently raped and assaulted her and told her that if she ever reported the abuse, she would "never see her son again." This kept her in the marriage until she was able to leave him and seek an order of protection to protect the physical and mental well-being of her young boy. The client's motivation was fear that the abuser would begin to abuse the child. This is a legitimate fear; studies indicate that 30 to 60 percent of intimate partner abusers also abuse the children in the home. Kelly Kelleher, William Gardner, Jeff Coben, Rick Barth, Jeff Edleson & Andrea Hazen, [Co-Occurring Intimate Partner Violence and Child Maltreatment: Local Policies/Practices and Relationships to Child Placement, Family Services and Residence](#) (Nat'l Inst. of Justice Mar. 2006). Working with PBN, she was able to receive a U visa and

Social Security card, which allowed her to apply for better paying jobs and provide a safe and stable home for her son.

## Expungement of Criminal Records

Poverty and inadequate income to support the children in a household is often mistaken for neglect by child welfare agencies. Removing obstacles to employment is key to financial stability for parents. One such obstacle is having a criminal record. According to Melissa Picciola, director of Pro Bono and Legal Aid Partnerships at Legal Aid Chicago, “having a criminal record expunged leads to greater stability for clients in almost all areas of their lives. It can open doors to better paying jobs, more stable housing, and educational opportunities.”

The expungement and sealing of records allow parents to obtain gainful employment that may not have been possible otherwise. In our expungement project with Legal Aid Chicago, we work to draft the oftentimes lengthy and complicated expungement and sealing petitions needed in order to enable these parents to clear their record. While these documents do not need to be completed by an attorney, their complicated nature often precludes a nonlegal professional from completing them. Because 30 to 40 percent of all jobs require a background check, and studies show that you are half as likely to receive a call-back after a job interview if you have a criminal record, our work is a direct line to parents seeking better and more secure employment, which can lead to a more stable household for their children. Lynne Mock, [The Impact of Employment Restriction Laws on Illinois' Convicted Felons](#) (Ill. Criminal Justice Information Auth. Aug. 22, 2016).

## Incarcerated Survivors Projects

When parents experience incarceration, there are numerous ways it can lead to their children ending up in the child welfare system. Without a short-term guardianship in place, the incarcerated parent may lose control in determining who cares for his or her children. Our work with Ascend Justice allows us to meet with clients (in person pre-COVID and now via Zoom) to ask about their children's placement and execute the necessary documents to provide a safe home for their children. Having the parent choose a short-term guardian not only keeps the children out of the child welfare system; even more importantly, it gives the parent the ability to choose where the children are housed, which may, in turn, also keep them away from a potential abuser if the parent is aware of unsafe people in the children's orbit. In choosing the guardian for their children, there is also a much greater chance that parents will be able to maintain contact with their kids while incarcerated, thereby maintaining the parent-child connection.



In addition to short-term guardianship, Pro Bono Network works with incarcerated survivors who have a history of drug dependence. According to Alexis Mansfield, director of the Incarcerated Survivors Project at Ascend Justice, “[a]ssisting domestic violence survivors who have a history of drug dependency out of jail get into a rehabilitation program is one of the best ways to ensure they will be able to reunite successfully with their children, in addition to potentially being released from jail more quickly.” Our volunteer attorneys write mitigation letters in support of drug treatment that, when successful, allow these parents to attend in-patient drug rehab programs. This allows them to take care of their children when they are released and prevents the children from ending up in child welfare proceedings. Just recently, we worked with a client who was a long-term drug user and was incarcerated due to a string of battery charges that stemmed from her drug addiction and homelessness. Once incarcerated, she became determined to seek intensive drug treatment, and with the support of Ascend Justice and a PBN volunteer, she was able to enter a drug treatment facility. This process is now giving her a new start and better future.

## Conclusion

Through this article, we have shown some of the ways pro bono and legal aid programs can see their civil legal aid work through the lens of keeping children out of foster care. We encourage these programs to assess how their work can do more to create stable environments for children that keep them from being involved in child welfare systems. This is one of the best examples of civil legal aid moving “upstream” so that we are not having to pull so many kids out of the water “downstream” later.

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