



TEXAS JUDICIAL COUNCIL

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MEMORANDUM

TO: Texas Judicial Council

FROM: Hon. Jennifer Caughey, Chair, Family Representation Committee

Cc: Megan LaVoie, Executive Director, Texas Judicial Council

RE: Family Representation Committee Memorandum

DATE: September 11, 2026

In January 2026, Chief Justice Blacklock charged the Family Representation Committee with studying the representation of parents and children in child welfare cases and make recommendations regarding:

- Funding;
- Quality of representation; and
- Methods for providing representation.

Members of the Committee are:

Hon. Jennifer Caughey, Chair
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Hon. Emily Miskel
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The Texas Judicial Council's Family Representation Committee met on April 14 and June 29, 2026.

Statewide Appellate Managed Assigned Counsel Program

Recommendation 1: The Legislature should establish and fund a statewide appellate Managed Assigned Counsel program to improve the quality of appellate legal representation in child welfare cases.

Termination of parental rights is one of the most serious consequences courts can render and is often referred to as the death penalty of civil cases. When a government entity files a case against a parent that seeks termination of a parent-child relationship, the family involved faces the possibility of permanent family separation, forever cutting the bonds between the parent and child. The parent-child relationship is so fundamental to Texans that Texans amended the Texas Constitution in 2025 as follows: "to enshrine truths that are deeply rooted in this nation's history and traditions, the people of Texas hereby affirm that a parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing."¹

The severity of these cases demands that families involved have access to quality counsel. No parent or child should lose their bond to each other solely because they did not have access to competent legal counsel. Texas law recognizes this. In a suit filed by a governmental entity requesting termination of the parent-child relationship, the Family Code affords a child and an indigent parent an attorney.² Despite this, Texas currently faces quality and quantity concerns with representation in these cases.

The need for quality counsel extends beyond the trial courts and into appellate level advocacy, where parents face the last attempt available to preserve their parental rights. The Committee elected to focus on the appellate level, where a solution is much simpler (and less expensive) than at the trial court level, given the nature of appeals (which generally involve two appellate briefs and, at times, an appellate argument). The appellate-level solution the Committee proposes will both solve the serious representation problem occurring at the appellate level and also offer opportunities to improve trial level representation across the state.

The current system for delivering court-appointed counsel to indigent parents and children in appeals of termination cases is provided through a decentralized county-based model. Each county is required to recruit, retain, and pay attorneys who are qualified and willing to accept these court-appointments for appeals. Many counties struggle to find qualified attorneys who are willing and able to accept these appointments. The quality of work produced by court-appointed appellate counsel in child welfare cases is inconsistent.

¹ Texas Constitution Art. 1 Sec. 37 <https://statutes.capitol.texas.gov/docviewer?docName=CN.1.37.htm>

² Texas Family Code 107.012, 107.013(a)(1), 161.003

In their biennial Family Protection Representation Plan submitted to the Texas Indigent Defense Commission (TIDC) in 2025, over 60% of the counties in the state reported access to three or fewer attorneys available to accept court-appointed appeals in child welfare cases, with eight counties reporting zero attorneys, 59 counties reporting one attorney, 46 counties reporting two attorneys, and 48 counties reporting three attorneys. Additionally, pay throughout the state is inconsistent, with some counties paying hourly rates and some paying flat rates. Flat rates for appeals are as low as \$1,200 per appeal. Hourly rates for appeals are as low as \$50.00 per hour. To put the compensation in perspective, according to the 2025 Texas Workforce Commission Annual Wage Data, this is 41% lower than the average Texas attorney and 54% lower than an experienced attorney.³

The creation of a statewide appellate Managed Assigned Counsel (MAC) program funded by the state providing appellate counsel in child welfare cases will address both the capacity and quality issues that currently exist in the system. A statewide program will allow qualified attorneys to handle appeals in multiple regions. At the appellate level, significant work is often able to be done remotely (brief writing need not occur in a specific place), and this proposal would ensure a qualified appellate attorney (from somewhere in the state) is available to handle appeals of this sort, across all of Texas. It will allow an appellant with serious appellate issues to obtain qualified counsel, even if the appellant lives in a county without such counsel.

The program will relatedly remove pressure on local courts to find attorneys who are both qualified and willing to accept these appeals. State funding to support the work will allow for pay to be standardized throughout the state, which will eliminate the problem of certain counties offering below-market compensation, and thus attorneys being less willing (or unwilling) to handle appeals in those counties.

There are other benefits of this proposal, too. A structured statewide program would offer a resource for support and training to attorneys handling this type of work across the state, which, we anticipate, would lead to improvements at the trial level in addition to at the appellate level. For instance, materials could be made available through this program that help attorneys statewide, in trials as well as appeals. Training opportunities, resources, and support could be consolidated there.

The Committee recommends the MAC be administratively attached to the Office of Court Administration. The estimated cost to operate the MAC is \$1.5 million to support the salary and benefits of a director, staff attorneys, accounting staff, and administrative support. The attorney staff would be charged with screening cases, providing specialized legal counsel, and training. Administrative staff would focus on processing and auditing vouchers submitted by attorneys.

In addition, an appropriation of \$4.2 million is believed to be sufficient to support the costs of transcripts and attorney compensation. The projection evaluated the average number of annual child welfare case appeals over the last five years, the time it takes a competent attorney to

³ Texas Workforce Commission 2025 Annual Workforce Development Area Wages
<https://texaswages.com/WDAWages>

complete an appeal, and a standardized compensation rate of \$150/hour. In FY 2024 and FY 2025 there were an average of 553 child welfare appeals filed in Texas appellate courts.

In criminal death penalty work, statewide programs have been implemented with success. The Regional Public Defender for Capital Cases provides trial level representation in criminal death penalty cases in participating counties located throughout the state. The Office of Capital and Forensic Writs is a statewide public defender office that represents individuals in state post-conviction litigation. Both programs provide access to quality counsel for individuals facing the death penalty in criminal cases. In parental rights termination cases, there is no equivalent program available to families. The creation of a statewide appellate MAC program would provide a systemic solution to a critical problem facing parental rights termination cases—a lack of access to enough high-quality appellate counsel for families involved in these cases. The MAC could also be a critical resource for trial court attorneys in this type of case, as noted above.

There is an attorney crisis in parental rights termination cases in Texas. A statewide appellate MAC program is the Committee's suggested method to help tackle this crisis. It is relatively inexpensive and would offer meaningful change.

Although the MAC is the Committee's preferred recommendation, at the very least, the Committee proposes the development of a statewide list of qualified attorneys available to handle appeals in parental rights termination cases. This list could be overseen by a single full-time employee who is charged with ensuring sufficient and well-qualified attorneys are available. A list of qualified attorneys would be an improvement from the current system and a step in the right direction. That said, it would miss important pieces of increasing attorney quality that are available through a statewide MAC program, so that remains the Committee's first choice.

Funding and Improvement of Legal Representation for Parents and Children in Child Welfare Cases

Recommendation 2: The Legislature should provide funding to TIDC to support grants to counties (to supply funding beyond what the counties already invest) to improve the quality of legal representation in parental termination cases. Recipients of grant funding should be required to implement quality improvements as a condition of the grant.

Texas statutes generally require that certain (indigent) parents and most children have access to a court-appointed attorney in cases filed by DFPS. Cases filed by DFPS against a parent are often complex and have many layers. As explained above, Texas currently has an issue with both quality and quantity of attorneys in this type of case. No family should ever be permanently separated solely because they were unable to access quality legal counsel.

Although these court appointments are mandated by Texas statute, the state does not provide financial support for this work, requiring counties to shoulder this financial burden alone. Counties have varying financial abilities to cover these costs, resulting in inconsistent pay for the work throughout the state. Over the past five years, Texas counties spent an average of \$64,295,220 each year on representation for parents and children in child protection cases. Although FY25 total

statewide Texas per capita spending is \$2.17, individual per capita spending ranges from \$0.00 to \$17.25, with 132 counties reporting less than \$2.00 in per capita spending. Inconsistent spending and pay results in inconsistent quality of legal representation for parents and children in these cases.

The Public Policy Research Institute (PPRI) at Texas A&M University is conducting a research project on the economics of family protection representation. An initial cost estimate model provided by PPRI indicates that a state the size of Texas should spend at least \$124,761,600 per year for minimum parent and child representation. This estimate shows a significant gap between what the counties currently pay for this work and what should be spent. State funding is needed to fill the gap and ensure that parents and children have access to this critical legal representation. At least 28 states, including Florida and California, provide some state funds to support legal representation in child protection cases.

The Legislature granted TIDC authority to fund family protection representation during the 88th Legislative Session.⁴ Although TIDC has had funding ability since September of 2023, no dedicated state funds have been provided by the Legislature to support this work. In its Legislative Appropriations Request for the 90th Legislative Session, the TIDC board voted to seek \$128,659,386 in General Revenue for the biennium to support grants to counties and two full-time employees to administer the grant program.

Any state funding provided for family protection representation would be helpful in providing critical support to a struggling family representation system. That state funding should be offered in addition to current county spending, not as a replacement to county spending. To adequately meet the need for quality representation, counties and the state should both provide financial support for the work. The Committee recommends that the state funds (via TIDC) some formula grants to counties to support family protection representation, in addition to the amounts already spent by counties.

The Committee further recommends that any such grant funding provided to counties be tethered to quality improvement requirements. We include sample suggestions for such requirements in the attached appendix.

⁴ See SB 2120 (88th Legislature) <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB02120F.pdf>

Appendix

Possibilities for Formula Grant Requirements

Follow Statutory Requirements

- Timing for appointment of counsel for children and parents shall, at a minimum, occur according to the timelines included in the Texas Family Code. This does not prohibit a county from appointing counsel earlier than is required by the Texas Family Code.
- Require that attorneys complete at least 6 hours or more of CLE related to representing parents and children in child welfare cases both (1) initially to join the appointment list and (2) every year thereafter that the attorney is included on the list. Require that all attorneys fulfill the trauma-informed training requirement included in the Family Code. The County must keep a record of attorneys' CLE completion.
- County must pay attorneys for all statutorily required duties of appointed attorneys for parents and children, consistent with the Texas Family Code.
- County must engage in fair, neutral, and nondiscriminatory selection of counsel.
- All statutorily required Family Protection Representation reports due to TIDC must be timely submitted:
 - Family Protection Representation Indigent Defense Expenditure Report due annually on November 1; and
 - Family Protection Representation Plan due biennially in odd numbered years on November 1.
- County must require that all court-appointed attorneys complete their statutorily required attorney practice time report due annually to TIDC.

Enhance Quality of Representation

- County must pay attorneys for reasonable time and mileage to visit parent and child clients.
- County must pay attorneys within 60 days if there is no dispute over the fee, or resolve any fee disputes within 120 days of the date attorney fee voucher or invoice is submitted by the attorney.
- Minimum Hourly rate. No flat fees for parent and child representation.
- Attorneys who have been disciplined by any State Bar and/or been found by an appellate court to have engaged in ineffective assistance of counsel shall not be included on any court-appointment list.
- County must regularly seek any available Title IV-E reimbursement for legal representation for parents and children and use any reimbursement received for the improvement of the family protection representation system in the county.

Enhance Transparency

- County must have a written fee schedule specific for payment of attorneys appointed to represent parents and children in child protection cases and make the fee schedule publicly available.
- County must have clear and transparent written guidance regarding how indigence is determined in cases brought by the Texas Department of Family & Protective Services.
- Any local rules regarding legal representation in child welfare cases must be written down and made publicly available.