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## Fiscal Returns on Improved Representation of Children in Dependency Court: The State of the Evidence

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# FISCAL RETURNS ON IMPROVED REPRESENTATION OF CHILDREN IN DEPENDENCY COURT: THE STATE OF THE EVIDENCE

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## I. INTRODUCTION

Compelling normative arguments alone may justify the embrace of the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (Model Act) recently adopted by the American Bar Association.<sup>1</sup> However, policy makers and court administrators will look beyond the potential to improve procedural justice in considering whether to adopt the new standards and devote limited state resources to provide funding for representation under the Model Act. They will examine the potential

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1. See generally Donald N. Duquette, *Child Representation in America: Progress Report from the National Quality Improvement Center*, 46 FAM. L.Q. (forthcoming 2012) (manuscript) (on file with *Nova Law Review*).

of improving actual case outcomes and the overall fiscal impact such representation will yield.

This article explores the evidence that the new standards may yield benefits that outweigh the fiscal costs of implementing the Model Act, and those of competing models of representation. It first examines the few extant studies that shed light on whether the new standards might achieve the stated aims of the child welfare system—especially with regard to timely permanency—better than competing models of representation. One particular study, which evaluated the outcomes and fiscal impact of legal representation akin to that of the Model Act, is examined in greater depth. While research so far is promising that enhanced representation yields fiscal returns, the evidence remains very limited. In the final section, the authors provide suggestions for future study to develop our understanding of the broader impact of the Model Act on case outcomes, which in turn affects the bottom line of agencies, courts, and broader society.

## II. CAPTURING OUTCOMES

Key to understanding the changes brought on by the new standards is an identification of the important, measurable outcomes expected in dependency cases. Commentators have long emphasized the importance of finding stable, permanent homes for children and that achieving resolution of dependency cases must be done quickly to limit the duration of disruption of children's lives.<sup>2</sup> Consequently, child welfare and juvenile court professionals have heretofore focused on two primary outcomes: the achievement of permanence for children and the disposition of cases in a timely manner.<sup>3</sup>

Economic evaluation of reforms aimed at achieving these objectives, however, is rare, and recent commentators have emphasized the need to expand such research.<sup>4</sup> The outcomes of timeliness and permanence are relatively easy to calculate. With improvements in information technology that permit tracking of cases, researchers in recent decades have engaged in increasingly sophisticated analyses of service use and duration.<sup>5</sup> The fiscal impact of achieving permanence is also clear: Once children are reunited with their families of origin, adopted, or placed in permanent guardianship,

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2. See generally JOSEPH GOLDSTEIN ET AL., *BEFORE THE BEST INTERESTS OF THE CHILD* (1979); JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* (1973).

3. See FLA. STAT. § 39.001(1)(h), .621(1)–(2) (2011).

4. See Jeremy D. Goldhaber-Fiebert et al., *Economic Evaluation Research in the Context of Child Welfare Policy: A Structured Literature Review and Recommendations*, 35 *CHILD ABUSE & NEGLECT* 722, 736–37 (2011).

5. See *id.* at 723–25, 735–38.

their cases are essentially closed. While some cases may continue to receive limited financial subsidies from dedicated revenue streams, court personnel, case managers, and child welfare service providers end their involvement. To the extent that permanence can be achieved quickly, the benefits of permanence are realized earlier and thus, reduce the overall fiscal impact of the case.

Of course, achieving permanence and timeliness does not represent the universe of benefits that may attach to enhanced legal representation or improved child welfare outcomes. We address other benefits, how a study might measure them, and the challenges involved in capturing and monetizing their value in the final section of this article.

### III. IMPROVING CHILD WELFARE OUTCOMES THROUGH COURT-BASED REFORM

Since the inception of the juvenile court, it has played an integral role in supervising child welfare cases. Although there is often tension between child welfare professionals and juvenile court personnel,<sup>6</sup> legislative reforms have often targeted court practice in an effort to improve child welfare case outcomes.<sup>7</sup> The Adoption Assistance and Child Welfare Act of 1980 made explicit the court's role in overseeing all cases involving maltreated children.<sup>8</sup> Courts identify which cases are subject to the jurisdiction of child welfare agency intervention and monitor the progress of these cases.<sup>9</sup> The federal State Court Improvement Program provides resources to dependency courts with an aim of improving how courts supervise child welfare cases.<sup>10</sup> The Adoption and Safe Families Act of 1997 mandated dependency case timelines that emphasized the termination of parental rights—and adoption—if reunification could not be achieved quickly.<sup>11</sup>

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6. Bruce A. Boyer, *Jurisdictional Conflicts Between Juvenile Courts and Child Welfare Agencies: The Uneasy Relationship Between Institutional Co-Parents*, 54 MD. L. REV. 377, 379 (1995).

7. *See id.* at 387.

8. Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 675(5)(B) (2006 & Supp. IV 2010); Boyer, *supra* note 6, at 388 n.24.

9. Mark Hardin, *Role of the Legal and Judicial System for Children, Youth, and Families in Foster Care*, in CHILD WELFARE FOR THE TWENTY-FIRST CENTURY 687, 687 (Gerald P. Mallon & Peg McCartt Hess eds., 2005).

10. *See* Paul E. Knepper & Shannon M. Barton, *The Effect of Courtroom Dynamics on Child Maltreatment Proceedings*, 71 SOC. SERV. REV. 288, 289 (1997).

11. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, § 101, 111 Stat. 2115, 2116 (codified as amended at 42 U.S.C. § 1305 (2006)).

Given the value placed on the speedy resolution of cases, one might expect that enhanced legal representation would necessarily reduce delay and lead to quicker resolution of cases. However, zealous advocacy may require additional legal motions and activity that may act to prolong a dependency case. Moreover, there may be strategic reasons to slow the pace of a case; speedier cases—while serving the developmental needs of children—may reduce the opportunities of parents to demonstrate that they are fit to be reunified.<sup>12</sup> Indeed, research in other civil court contexts reveals that enhanced legal representation does not lead inexorably to speedier proceedings, even when timeliness is a primary concern.<sup>13</sup>

The past two decades have yielded a small number of studies that have examined how different models of representing children's interests might be effective in improving case outcomes.<sup>14</sup> Evaluations of Court Appointed Special Advocates, which assigns trained lay volunteers to advocate for the "best interests" of children, have demonstrated some promising results.<sup>15</sup> Several other studies have examined guardian ad litem models for children.<sup>16</sup> Most, however, rely on descriptive, non-experimental methods that often identify some evidence of improved outcomes, but without the benefit of

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12. Mark E. Courtney et al., Discussion Paper, *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care*, 1 PARTNERS FOR OUR CHILDREN 1, 1–3 (2011). One recent study, however, found improved timely permanence from a program that provided enhanced legal representation to parents; the Parent Representation Program in Washington State was associated with an 11% increase in the speed of reunification, a 102% increase in the speed of establishing guardianship, and an 83% increase in the speed of adoption. *Id.* at 4.

13. D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, SOC. SCI. ELECTRONIC PUB. (forthcoming) (manuscript at 1–2), available at <http://ssrn.com/abstract=1948286> (reviewing recent methodologically impressive studies while examining enhanced legal representation programs in housing and unemployment hearings, and finding that such representation was associated with prolonged cases).

14. For a catalog of studies, along with commentary on the nature of the studies, visit the website of the Quality Improvement Center on the Representation of Children in the Child Welfare System (a project based at the University of Michigan Law School, funded by the U.S. Children's Bureau). *Identified Child Representation Evaluations*, QIC-CHILDREP, <http://improvechildrep.org/childrep2010/evaluationsofchildrepresentation.aspx> (last visited Feb. 26, 2012). Only two other studies, neither focusing on representation, have examined specific efforts to improve timely permanence. ANDREW W. ZINN & JACK SLOWRIVER, CHAPIN HALL CTR. FOR CHILDREN AT THE UNIV. OF CHL., EXPEDITING PERMANENCY: LEGAL REPRESENTATION FOR FOSTER CHILDREN IN PALM BEACH COUNTY 3 (2008) [hereinafter PALM BEACH STUDY], available at [http://www.chapinhall.org/sites/default/files/old\\_reports/428.pdf](http://www.chapinhall.org/sites/default/files/old_reports/428.pdf).

15. QIC-CHILDREP, NEEDS ASSESSMENT REVIEW OF EXISTING EVALUATIONS 2, 10 (2010), available at <http://www.improvechildrep.org/Portals/0/QIC%20Child%20Rep%20Existing%20Evaluations.pdf>.

16. *Id.* at 4.

adequate comparison groups that would give confidence that the reforms—and no other factors—occasioned the improvements identified.<sup>17</sup>

Only one study has examined the effect of a program featuring client-centered children's representation akin to the Model Act.<sup>18</sup> Chapin Hall's study of the Foster Children's Project of Palm Beach County, Florida (Palm Beach Study) calculated the effect of the program in improving the proportion of cases that achieve permanency in a timely fashion.<sup>19</sup> In the next section, we examine the Foster Children's Project (FCP) and the Palm Beach Study in greater depth, drawing on the experience of co-author, John Walsh, the supervising attorney of the program.

#### IV. THE FOSTER CHILDREN'S PROJECT OF PALM BEACH COUNTY

FCP is an office within the Legal Aid Society of Palm Beach County, Florida that provides attorneys for dependent children in Palm Beach County, specifically children ages zero to twelve and their siblings, placed in licensed care with the state.<sup>20</sup> The representation model is a stark contrast to the alternative. Most children in Florida dependency courts do not receive legal representation at all,<sup>21</sup> and children as a rule are unrepresented parties to their own cases.<sup>22</sup> A volunteer or staff guardian ad litem is appointed to represent the child's best interests, as determined by the appointee, with some consideration given to the child's wishes in making recommendations to the court.<sup>23</sup> In implementing FCP, this legal environment was a mixed blessing. On one hand, FCP entered a context that was unfamiliar, if not hostile, towards counsel for children. On the other hand, the program had the benefit of having a "clean slate" on which to design and implement client-based legal representation in dependency court.

FCP draws its funding from the Children's Services Council of Palm Beach County, a county taxing district, which had viewed with alarm the

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17. See D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. (forthcoming 2012) (manuscript at 22), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1708664](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708664). A thorough critique of these studies is beyond the scope of this article.

18. See, e.g., PALM BEACH STUDY, *supra* note 14.

19. *Id.* at 1.

20. *Id.* at 1, 4 n.3.

21. See FIRST STAR & CHILDREN'S ADVOCACY INST., A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED AND NEGLECTED CHILDREN 9, 47 (2d ed. 2009), available at [http://caichildlaw.org/Misc/Final\\_RTC\\_2nd\\_Edition\\_lr.pdf](http://caichildlaw.org/Misc/Final_RTC_2nd_Edition_lr.pdf).

22. See *id.*

23. PALM BEACH STUDY, *supra* note 14, at 2.

protracted stays of children in foster care in the jurisdiction.<sup>24</sup> FCP was designed with the express purpose of providing attorneys for children with the intent of affecting outcomes, especially reducing the time children spent in care through achieving more timely permanent placements.<sup>25</sup>

In creating FCP, the attorneys made two key strategic decisions that likely impact their ability to affect client outcomes. First, the Legal Aid Society identified its target client population.<sup>26</sup> Representing all the children in dependency court would have led to a caseload size of approximately 250 children per attorney, likely too high to provide effective advocacy for each client. Rather, the Legal Aid Society decided to focus on those clients most in need of intervention and whose outcomes might best be improved through representation.<sup>27</sup> After deliberation, FCP determined that children aged five and younger in the licensed care population were the most vulnerable client population.<sup>28</sup> These youngest clients had the most immediate need to have a primary caregiver and permanent home, and lacked relatives who could act as caregivers.<sup>29</sup> These children also tended to exhibit more severe abuse than those children left with parents or placed with relatives.<sup>30</sup> Second, based on the Legal Aid Society's experience with representing children in other capacities, attorneys agreed to limit the FCP caseload size to thirty-five children per attorney.<sup>31</sup>

Once operational, the FCP attorneys were charged with performing their advocacy with a focus on achieving timely permanency.<sup>32</sup> FCP attorneys were trained from the outset that their clients, while each unique and presenting multiple issues, all essentially had the same legal problem: They were "in the custody of the [S]tate [and] they need[ed] to be in the custody of a family," within the time mandated by law.<sup>33</sup> Under Florida law, the time frames in the statute "are a right of the child,"<sup>34</sup> and attorneys have the duty

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24. *See id.* at 1.

25. *See id.*

26. *Id.* at 4.

27. *Id.*; see FOSTER CHILDREN'S PROJECT, LEGAL AID SOC'Y OF PALM BEACH CNTY., available at <http://www.legalaidpbc.org/downloads/brochures/Foster-Childrens-Project.pdf>.

28. *See* PALM BEACH STUDY, *supra* note 14, at 4 n.2.

29. *See id.* at 4.

30. *See generally* FIRST STAR & CHILDREN'S ADVOCACY INST., *supra* note 21. FCP would later expand to represent zero to twelve year olds. PALM BEACH STUDY, *supra* note 14, at 4 n.2. Older clients also could be represented if they were a sibling of a client meeting eligibility criteria. *Id.* at 4 n.3.

31. *Id.* at 22; Elizabeth Dewey et al., *Message from the Chairs*, 11 A.B.A. CHILDREN'S RIGHTS LITIG. COMM. 1, 3 (2009).

32. PALM BEACH STUDY, *supra* note 14, at 1.

33. FOSTER CHILDREN'S PROJECT, *supra* note 27.

34. FLA. STAT. § 39.0136(1) (2011).

of zealously protecting clients' rights under the statute.<sup>35</sup> The focus of representation is more than a mission statement for FCP; the quest for permanent homes for its clients infuses every task it undertakes.<sup>36</sup>

Negotiating the case plan with an eye on the eventual outcome of the case is a critical aspect of representation of FCP clients. Typically, the child's expressed desire is to be reunified with his or her parent or parents, a preference echoed in child welfare law.<sup>37</sup> In negotiating the case plan, the child's attorney views this document as a roadmap that identifies a path to a permanent home for his or her client. The complete case plan should be clear and identify the specific reasons for removing the child from his or her home, and the tasks required of the parents to regain custody. Such tasks should be materially related to the reasons for removal. Each task should identify service provider information, expected completion dates, and if appropriate, interim time frames. The document should leave little doubt what is expected of a parent and other parties. Attorneys should also work to exclude certain tasks that are unrelated to the reasons for removal and may impede the parent's progress toward reunification; these extraneous tasks often work against the client's desire to be returned home quickly.

Expert evaluations are essential in some FCP cases for two reasons. First, such evaluations may identify the root cause of a family's dysfunction. Without clarity, a case plan risks treating symptoms rather than the central problem or problems that led to removal. For example, if a child is neglected and failing to thrive, a parenting class may provide parents important guidance. However, if the underlying problem is maternal depression, then the behaviors that led to neglect are likely to reoccur if that depression remains untreated. Second, as the ultimate goal of the child's attorney is a permanent home for the client, regardless of what the parent decides to do or not do, it is important that parental deficits are identified early, in the event that adoption becomes the case plan's goal. Undetected and untreated underlying conditions that led to the initial abuse or neglect may prolong a case as additional sets of services are identified and provided. The child's attorney should anticipate and address any defenses that the parent could use at a trial seeking to terminate parental rights. In any case, evaluators become valuable witnesses in the event of compliance and reunification, or in the event of non-compliance and termination.

The realities of child welfare agencies often present additional challenges to effective legal representation. Inadequate staffing, high turnover,

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35. See generally PALM BEACH STUDY, *supra* note 14.

36. See *id.* at 11.

37. FLA. STAT. § 39.621(2)(a).



and conflicting agendas with agencies sometimes make it difficult to move forward with advocacy, case planning, and services. The State is sometimes reluctant to spend scarce resources on needed evaluations or particular services. Advocacy to particularize services, when tied to the individual needs of cases, may indeed incur additional costs, but also effectively avoid the costs associated with unneeded services and tasks that courts may routinely order. More importantly, thorough case planning efforts tend to make timely permanent resolutions more likely.

#### A. *Chapin Hall's Palm Beach Study*

The Children's Services Council of Palm Beach County sought to examine the impact of FCP, and contracted Chapin Hall at the University of Chicago, a policy research center, to evaluate the program.<sup>38</sup> The results of that study demonstrate that representation by attorneys from FCP was associated with positive outcomes on the length of stay of foster children, when compared to a cohort of unrepresented children.<sup>39</sup>

The study employed a quasi-experimental design, comparing those receiving FCP representation with those otherwise eligible but excluded due to conflict arising from representation by the Legal Aid Society in the past.<sup>40</sup> Researchers examined administrative data from the child welfare agency and court case records.<sup>41</sup> The key findings in brief indicate:

Children represented by FCP were found to have a significantly higher rate of exit to permanency than children not served by FCP. In the main, this difference appears to be a function of much higher rates of adoption and long-term custody among FCP children.

The higher rates of adoption and long-term custody experienced by FCP children were not found to be offset by significantly lower rates of reunification.<sup>42</sup>

Consequently, the pre-permanency costs of substitute care for children in FCP are less than those without this legal representation.<sup>43</sup> Based on these

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38. PALM BEACH STUDY, *supra* note 14, at 1.

39. *Id.* The study is discussed in brief here, and readers are encouraged to review the study itself.

40. *Id.* at 4–5.

41. *Id.* at 6.

42. *Id.* at 1.

43. *See* PALM BEACH STUDY, *supra* note 14, at 22.

findings, the authors go on to estimate the overall fiscal impact of FCP.<sup>44</sup> They estimated the costs associated with out-of-home care by considering the average board rate, case management costs, and adoption subsidies, finding that substitute care costs of children in FCP were just an approximate eighty-four percent of those in the comparison group.<sup>45</sup> They derived the daily cost of legal representation under FCP by dividing the annual budget by 365 and the target caseload for the program.<sup>46</sup> Using three-year projections, they found that the savings associated with reduced substitute care considerably offset the costs of the FCP program.<sup>47</sup> That is, they estimated that FCP enhanced permanency in a case at the cost of about sixty-eight dollars per day, but that cost was reduced more than half by the savings realized from reduced substitute care costs.<sup>48</sup> Ultimately, they estimated that the net cost of each additional day in a permanent home was about thirty-two dollars.<sup>49</sup>

The authors of the Palm Beach Study identify several limitations in their inventory of costs and benefits.<sup>50</sup> Non-placement services and additional costs of case management associated with FCP cases were outside their calculations.<sup>51</sup> Also, due to limitations of available data, the study extends estimates of benefits to only three years into the future; additional benefits may be evident in ensuing years.<sup>52</sup> In any case, the study is an important step forward in providing guidance as to how the field might collect additional evidence regarding the effects of enhanced child representation.

#### V. NEXT STEPS IN ASSESSING THE FISCAL IMPACT OF JUVENILE REPRESENTATION REFORMS IN DEPENDENCY COURT

While timeliness and permanence are critical areas for identifying any returns on investment associated with implementing the Model Act, jurisdictions should consider expanding their measures to other outcomes in order to capture additional benefits that may emerge. In recent years, scholars have increasingly called for the child welfare system to focus more broadly on the well-being of children, a concept that includes timeliness and permanency,

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44. *Id.* at 22–25.

45. *Id.* at 22, 24.

46. *Id.* at 22. Ten attorneys had a caseload target of thirty-five each. *Id.*

47. PALM BEACH STUDY, *supra* note 14, at 24–25.

48. *Id.*

49. *Id.* at 25.

50. *Id.* at 22.

51. *Id.*

52. See PALM BEACH STUDY, *supra* note 14, at 23–24.

but also includes physical health, mental health, and education.<sup>53</sup> To the extent that the Model Act demonstrates empirical improvements in these other realms, advocates can employ research that monetizes such benefits. For example, economists have estimated the enhanced income that is associated with increases in educational attainment.<sup>54</sup> It is also conceivable that children placed in stable, permanent homes may exhibit lower levels of offending than those who do not achieve timely permanence. To the extent that improved outcomes yield measurable reductions in criminality, the monetary returns would be considerable.<sup>55</sup>

Measuring the variables that would demonstrate such benefits, however, would require careful tracking of a longitudinal sample of foster children and identifying those represented by attorneys adhering to the Model Act. While such research tends to be costly, one opportunity for such tracking of older youths is found in the nascent National Youth in Transition Database (NYTD), which is a federal mandate on state child welfare agencies.<sup>56</sup> NYTD mandates that states survey a sample of foster youth at age seventeen before they exit care and then every two years.<sup>57</sup> Local agencies may consider working with state authorities charged with implementing NYTD to identify ways to track clients in jurisdictions where the Model Act is implemented into adulthood.

In calculating the local fiscal impact, jurisdictions must endeavor to be thorough in identifying all associated costs and benefits and transparent in the assumptions on fiscal impact. Given the importance that policymakers place on the overall costs of new reforms, it is not surprising that assessments of implementation in human services increasingly address overall fis-

53. See FRED WULCZYN ET AL., *BEYOND COMMON SENSE: CHILD WELFARE, CHILD WELL-BEING, AND THE EVIDENCE FOR POLICY REFORM* 145–47, 150 (2005).

54. JENNIFER CHEESEMAN DAY & ERIC C. NEWBURGER, U.S. CENSUS BUREAU, *THE BIG PAYOFF: EDUCATIONAL ATTAINMENT AND SYNTHETIC ESTIMATES OF WORK-LIFE EARNINGS* 2–3 (2002), available at <http://www.census.gov/prod/2002pubs/p23-210.pdf>. The U.S. Census Bureau report used current population survey data to estimate, for example, that an individual with a bachelor's degree could expect to earn \$2,100,000—in 1999 dollars—which is far higher than the expected earnings—\$1,200,000—of someone with only a high school diploma. *Id.* at 3–4.

55. See, e.g., Anirban Basu et al., *Social Costs of Robbery and the Cost-Effectiveness of Substance Abuse Treatment*, 17 *HEALTH ECON.* 927, 928, 942 (2008).

56. AMY DWORSKY & CHRISTINA CRAYTON, AM. PUB. HUMAN SERVS. ASS'N, *NATIONAL YOUTH IN TRANSITION DATABASE: INSTRUCTIONAL GUIDEBOOK AND ARCHITECTURAL BLUEPRINT* 3–6 (2009), available at [http://www.jimcaseyyouth.org/docs/nytd\\_summary.pdf](http://www.jimcaseyyouth.org/docs/nytd_summary.pdf).

57. See *id.* at 7. Public Law section 106–169 established the John H. Chafee Foster Care Independence Program in 1999, but the final rule for the NYTD was not issued until February 26, 2008. 42 U.S.C. § 677 (2006 & Supp. IV 2010); see DWORSKY & CRAYTON, *supra* note 56, at 1.

cal impact of changes in policy and practice. Economists have provided guidance for undertaking comprehensive cost-benefit analyses which have so far found limited application in dependency courts. In brief, the key steps involve identifying: 1) existing costs of baseline services provided; 2) the additional costs arising from new standards; and 3) the present value of future costs and benefits attached to the baseline and innovation.<sup>58</sup> In the context of reforms of representation in dependency court, costs include those of the competing practice modalities and the costs associated with services provided by the state.<sup>59</sup> The most evident benefits include any reductions in court and service costs. For a comprehensive assessment, however, costs should include not just those associated with implementation and those internal to the child welfare system and dependency court. The study, in calculating costs, also accounted for the cost savings resulting from the public aid benefits that some youth did not receive as they remained in care.<sup>60</sup> Moreover, so far studies have not attempted to monetize benefits associated with the outcome with the highest value: permanency itself. The benefit of a stable family, beyond the benefits that spring from such a positive outcome, is the justification itself for making it the primary goal for most dependency cases. The next section identifies one way that the field might be able to monetize such benefits.

#### A. *Identifying Willingness-to-Pay Estimates*

One way to more globally capture any benefits associated with the Model Act would be to directly estimate the “contingent value” of the benefits of enhanced representation under the new standards. Contingent valuation methods seek to identify how much members of broader society would be willing to pay with their own money to improve a particular outcome.<sup>61</sup> The approach has been employed extensively in the field of environmental economics and, more recently, to examine crime reduction programs.<sup>62</sup> One

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58. For an excellent explanation of this method and a discussion of possibilities in the field of child welfare, see generally STEPHANIE LEE ET AL., WASH. ST. INST. FOR PUB. POLICY, EVIDENCE-BASED PROGRAMS TO PREVENT CHILDREN FROM ENTERING AND REMAINING IN THE CHILD WELFARE SYSTEM: BENEFITS AND COSTS FOR WASHINGTON (2008), available at <http://www.wsipp.wa.gov/rptfiles/08-07-3901.pdf>.

59. See PALM BEACH STUDY, *supra* note 14, at 22.

60. *Id.* at 22.

61. Mark A. Cohen et al., *Willingness-to-Pay for Crime Control Programs*, 42 CRIMINOLOGY 89, 89 (2004).

62. *Id.* at 91; see Michael T. French et al., *Benefit-Cost Analysis of Addiction Treatment: Methodological Guidelines and Empirical Application Using the DATCAP and ASI*, 37 HEALTH SERVICES RES. 433, 435 (2002).

very recent study applied the method to examine the cost of death resulting from child maltreatment. The authors found that respondents on average were willing to pay about \$150 each to reduce the annual child maltreatment mortality rate from two to one per 100,000.<sup>63</sup> The authors note that the contingent value placed on the “saved” life—\$15,000,000—is far higher than the \$1,000,000 estimate drawn from the human capital method, which employs estimates of decedents’ lost wages.<sup>64</sup> This methodology involves using random-digit-dialing techniques in identifying respondents whom are queried on their own preferences to pay for programs.<sup>65</sup> In one study, for example, respondents were given an explanation of the research project and asked questions such as the following: “Last year, a new crime prevention program supported by your community successfully prevented one in every ten [burglaries] from occurring in your community. Would you be willing to pay [fifty dollars] per year to continue this program?”<sup>66</sup> In this particular study, crimes and payment amounts were randomized, with differing alternatives and amounts, within a specific range, queried of each respondent.<sup>67</sup>

Taking the lead from the Palm Beach Study and assuming that the Model Act consistently yields improvements in overall timeliness and permanency, research could poll individuals to have them place a monetary value of having maltreated children placed in homes more quickly.<sup>68</sup> Such contingent value research would provide several advantages.<sup>69</sup> It would seek to capture *all* benefits associated with a particular program, including intangible benefits, such as the psychological stress of family separation, and thus provide better normative guidance than alternative means of calculating benefits.<sup>70</sup> Such studies are also relatively inexpensive, at least compared to longitudinal survey studies.<sup>71</sup> Such research, however, could face some challenges in the context of child welfare; the population of interest is small and

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63. Phaedra S. Corso et al., *Benefits of Preventing a Death Associated with Child Maltreatment: Evidence from Willingness-to-Pay Survey Data*, 101 AM. J. PUB. HEALTH 487, 487–88 (2011).

64. *Id.*

65. Cohen et al., *supra* note 61, at 93–95.

66. *Id.* at 94.

67. *Id.* at 93–94.

68. See PALM BEACH STUDY, *supra* note 14, at 22; Andrew Healey & Daniel Chisholm, *Willingness to Pay as a Measure of the Benefits of Mental Health Care*, 2 J. MENTAL HEALTH POLICY ECON. 55, 57 (1999). See generally MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, & DEPENDENCY PROCEEDINGS § 1 (2011) [hereinafter MODEL ACT 2011].

69. See Healey & Chisholm, *supra* note 68, at 55, 57–58.

70. *Id.* at 55.

71. See Elisabetta Ruspini, *Longitudinal Research in the Social Sciences*, 20 SOC. RES. UPDATE (2000) available at <http://sru.soc.surrey.ac.uk/SRU28.html>.

for many, foster care and permanency for children may be obscure topics. Consequently, identifying reliable estimates could be difficult.<sup>72</sup> However, if a study could establish “willingness-to-pay” or contingent value for timely permanency, then the value could be paired with the Palm Beach Study and similar research to identify more thoroughly the monetary returns of the new representation model.

#### B. *Additional Challenges in Improving Estimates of Fiscal Returns from Model Act Implementation*

Improving estimates of the benefits associated with implementing the Model Act will require more studies that employ rigorous quasi-experimental or—better yet—experimental design, the “gold standard” of evaluation involved random assignment.<sup>73</sup> Such studies are rare in examining programs seeking to improve legal representation in civil proceedings, with none so far in dependency court.<sup>74</sup> In recent years, James Greiner and colleagues have demonstrated the intriguing possibilities of such research in examining employment and housing court.<sup>75</sup> However, such studies require the randomization of cases to achieve true experimental design. Beyond logistical, informational, and administrative hurdles,<sup>76</sup> random assignment may be resisted as unfair to those in the control group, if services provided to the treatment group are perceived as superior.<sup>77</sup>

A second challenge involves capturing the broader context of the local child welfare system and dependency court when implementing the Model

72. Martin Shanahan & Ron Donato, *Counting the Cost: Estimating the Economic Benefit of Pedophile Treatment Programs*, 25 CHILD ABUSE & NEGLECT 541, 548 (2001) (speculating that child sexual abuse may be inapt for contingent valuation, given the rare and hidden nature of the offense and that child maltreatment and court outcomes likely suffer from the same limitation in this context).

73. See Greiner et al., *supra* note 13 (manuscript at 5).

74. So far, only five randomized evaluations of civil legal assistance are evident. *Id.* Greiner and colleagues identify two studies examining representation in delinquency court, two in housing court, and one in unemployment benefit proceedings. *Id.* (manuscript at 5 n.13).

75. See, e.g., *id.* (manuscript at 6, 8).

76. These hurdles may present considerable challenges. In the Palm Beach Study, for example, different data sources suggested distinct findings regarding key outcomes: While agency administrative data identified that sixty-two percent of the sample exited to permanency, court records indicated that eighty-four percent exited to permanency. PALM BEACH STUDY, *supra* note 14, at 13–14. The authors note that these data discrepancies were due in part to the distinct sampling procedures used to identify cases in the respective samples, but likely reflect distinct methods that explain the divergence. *Id.* at 6 n.6, 13–14.

77. Such a concern is discussed in the context of evaluation of CASA representation. See CALIBER ASSOCS., EVALUATION OF CASA REPRESENTATION: FINAL REPORT 4–5 (2004).

Act. Other ongoing initiatives, such as programs under the State Court Improvement Program or other broad-based court reform efforts, seek to improve the same child welfare outcomes that evaluations of programs implementing the Model Act will target.<sup>78</sup> Other activities, including family group conference programs, IV-E waiver demonstrations, and family drug courts, may also affect these outcomes, as well as the expectations and duties of legal representatives of children.<sup>79</sup> Finally, the structure of representation of other parties to dependency proceedings is an important component of the court's context; improved representation of parents, for example, has been shown to achieve some of the same improvements in timely permanency found in the Palm Beach Study.<sup>80</sup> Indeed, optimal results in dependency court may be a function of the degree to which *all* parties receive adequate representation.<sup>81</sup>

Third, not all efforts to implement the Model Act will be identical, and evaluators may want to consider representation that clients receive in terms of "dosage," quantifying the legal service provided. Dosage here would be a function of two characteristics of the representation. First, the caseload of children's attorneys will dictate the time and attention each lawyer can devote to each case. Indeed, in the Palm Beach Study, the resulting improvements in timely permanency exhibited by FCP may, in large measure, be a function of the relatively low caseload of each attorney.<sup>82</sup> Second, the expected scope of representation will determine the set of responsibilities in each case, and may have important effects on outcomes. The Model Act explicitly provides latitude, for example, in the degree to which children's attorneys are expected to represent clients in ancillary matters.<sup>83</sup>

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78. Examples of national, multi-site initiatives include the Fostering Court Improvement Program and the Model Court Program of the National Council for Juvenile and Family Court Judges Initiatives. FOSTERING CT. IMPROVEMENT, <http://fosteringcourtimprovement.org/index.php> (last visited Feb. 26, 2012); NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, <http://www.ncjfcj.org/our-work/dependency-model-courts> (last visited Feb. 26, 2012). For a discussion of how contextual factors may be relevant in evaluation of civil court proceedings, see generally Greiner & Pattanayak, *supra* note 17.

79. See generally Greiner & Pattanayak, *supra* note 17. While studies that randomly assign subjects to treatment and control groups have some protection from the vagaries of different contexts, it is critical to account for these contextual factors in quasi-experimental and other non-experimental research work. See generally *id.*

80. See Courtney et al., *supra* note 12, at 3–4; see also *supra* note 12 and accompanying text.

81. See Greiner et al., *supra* note 13 (manuscript at 4–5); PALM BEACH STUDY, *supra* note 14, at 1.

82. See PALM BEACH STUDY, *supra* note 14, at 13–15, 22.

83. MODEL ACT 2011, *supra* note 68, § 7, 7(b) cmt.

Finally, the Palm Beach Study found significantly improved outcomes among clients represented by FCP.<sup>84</sup> However, what if the subsequent studies provide less impressive or ambiguous results? Such findings are not a remote possibility; one randomized evaluation of a program providing enhanced representation of claimants seeking unemployment benefits found that representation showed no discernible improvement in outcomes over *pro se* representation.<sup>85</sup> More importantly, such representation measurably delayed the proceedings, even though timeliness is—as in dependency proceedings—a primary concern.<sup>86</sup> If future research yields similarly impressive results, advocates of the Model Act may need to seek other ways to justify implementation, such as identifying improvements in due process or perhaps in elevated client satisfaction.<sup>87</sup>

## VI. CONCLUSION

Chapin Hall's Study of the Legal Aid Society of Palm Beach County Foster Children's Project provides both evidence of client benefits who are represented by attorneys acting in concordance with the Model Act, and a blueprint for future research to examine additional benefits that clients may receive. As jurisdictions begin to put the Model Act into practice, they should be sure to put in place ways to measure the outcomes of timeliness and permanence, as well as other benefits that may be associated with enhanced representation. Advances in information technology and research methodologies offer the possibility of providing justification for the Model Act on fiscal grounds. That is, while due process may dictate that an embrace of the Model Act is the right thing to do, additional research may provide more evidence that it is the fiscally prudent thing to do as well.

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84. PALM BEACH STUDY, *supra* note 14, at 14–15.

85. Greiner & Pattanayak, *supra* note 17 (manuscript at 26, 30).

86. *Id.* (manuscript at 6, 16).

87. Evaluation of the promising National Quality Improvement Center on the Representation of Children in the Child Welfare System Best Practice Model (QIC-ChildRep), discussed in Duquette *supra* note 1, will likely also further illuminate how improved representation affect outcomes of young people involved in dependency courts.