

*Third Edition*

# A CHILD'S RIGHT TO COUNSEL

A National Report Card On Legal Representation For Abused & Neglected Children





The Children's Advocacy Institute (CAI) was founded in 1989 as part of the Center for Public Interest Law at the University of San Diego (USD) School of Law. CAI's mission is to improve the health, safety, development, and well-being of children. CAI advocates in the legislature to make the law, in the courts to interpret the law, before administrative agencies to implement the law, and before the public to educate Californians on the status of children.

CAI strives to educate policymakers about the needs of children – about their needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury. CAI's goal is to ensure that children's interests are represented effectively whenever and wherever government makes policy and budget decisions.

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First Star was founded in 1999 as a national 501(c)(3) public charity by Peter Samuelson, Managing Director of the Media Institute for Social Change at the University of Southern California who also founded the Starlight Foundation, the Starbright World online network, and EDAR (Everyone Deserves a Roof), and Sherry A. Quirk, Partner at Schiff Hardin, LLP and past President and Founder of One Voice/American Coalition for Abuse Awareness. Concerned that children who were abused and neglected were in no position to advocate for themselves, Mr. Samuelson and Ms. Quirk established First Star with the goal of improving life for these children. We are expert-driven, non-partisan and collaborative in all our efforts. We are a leading national advocate for children's rights.

Our mission is to improve the lives of America's abused and neglected children by strengthening their rights, illuminating systemic failures and igniting necessary reforms. We pursue our mission through research, public engagement, policy advocacy, education, litigation, and direct services.

We work towards a day when all systems entrusted with the protection of neglected and abused children do so excellently, using every available resource of skill, caring and science. We work in coalition and in partnership with others to pursue our goals. We reinvent no wheels. We work in areas where there is a strong likelihood of successful impact, and track and report on the results of our work. We continuously explore new and creative methods and opportunities to fulfill our mission. We believe that child maltreatment is not a partisan issue and work to engage people across the political spectrum to support our work. The leading experts in the field inform the content and quality of our programs

**First Star is proud to be a pro-bono client of Schiff Hardin, LLP.**

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**Third Edition: A Child's Right to Counsel**  
**A National Report Card on Legal Representation for Abused & Neglected Children**

**Introduction**

This Report Card presents a survey of whether and how each state's laws mandate effective legal representation for maltreated children. Our survey and grades reflect state statutes or statewide rules. Where available, other information about a state's practices (which may deviate from the laws) is provided in "sidebar notes," but this information does not impact a state's overall grade.

First Star and the Children's Advocacy Institute (CAI) maintain that children in abuse and neglect cases have a basic right to effective counsel — a right that has increasingly been recognized through both statute and case law.<sup>1</sup> First Star and CAI seek to ensure that abused and neglected children have effective legal representation by competent lawyers specially trained and able to counsel and advocate on behalf of these children. We maintain that these children are best served by client-directed advocates who are obligated to really listen to them, and who can advise and speak for them without conflict. Toward that end, state laws should not only encompass representation, but the child's legal status as a party who can be heard from directly, and who is owed the same professional duties by counsel as any other (adult) client.

Providing these children with effective legal representation is critical. The statistics on how abused and neglected children fare under the current systems and processes established for their benefit are horrifying. First Star and CAI maintain that effective legal counsel can help child by child to ensure that these processes pay attention to the children they are designed to benefit. The need to provide competent legal representation is all the more compelling when considered in the context of the state of the nation's abused and neglected children, the nature of the legal proceedings involved, and the increasing recognition of the basic rights of children to be heard in these proceedings.

**The State of the Nation's Abused and Neglected Children**

In 2010, 695,000 children were determined to have been abused or neglected.<sup>2</sup> These children suffered neglect (78.3%), physical abuse (17.6%), sexual abuse (9.2%), and death (an estimated 1,560 child deaths per year are attributable to maltreatment).<sup>3</sup> These children ranged in age from babies to teenagers, but one-third of the victims were age 3 or younger.<sup>4</sup> During federal fiscal year 2010, 254,375 of these children entered foster care, and as of the end of that year there were 408,425 children in the foster care system.<sup>5</sup>

Sadly, the children who survived familial maltreatment and entered foster care often have not fared well, and the legal processes that are aimed at their protection often wreak further havoc on their lives.

The statistics on former foster children are chilling:<sup>6</sup>

- 27% experience homelessness within a year after aging out of foster care
- 47% report being unemployed one year after aging out
- 45.4% report living on food stamps 2-3 years after aging out.

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<sup>1</sup> See the appendix for a more complete discussion of the history and context of the Report Card and current issues on the landscape.

<sup>2</sup> Admin. on Children, Youth and Families (ACYF), U.S. Dep't of Health and Human Services, *Child Maltreatment 2010*, at ix (2011), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm10/cm10.pdf>; also see ACYF, *Trends in Foster Care and Adoption – FY 2002-FY 2010*, available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/trends\\_june2011.pdf](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends_june2011.pdf).

<sup>3</sup> *Child Maltreatment 2010*, *supra* note 2, at ix-x.

<sup>4</sup> *Id.* at 23.

<sup>5</sup> ACYF, *Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2010 data* (October 1, 2009 through September 30, 2010), available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report18.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm).

<sup>6</sup> See First Star, *Child Abuse and Neglect Stats Fact Sheet*, available at [http://www.firststar.org/library/national-statistics.aspx#\\_edn11](http://www.firststar.org/library/national-statistics.aspx#_edn11).

- 44.6% (male) and 16.4% (female) former foster children are incarcerated after aging out
- 3% have a bachelor degree

In short, these abused and neglected children are “rescued” by a system that largely allows them to “age out” of care under-educated, unemployed, impoverished and homeless.<sup>7</sup>

We have to do better by these children.

For those unmoved by the sheer moral imperative of these numbers, we note that the cost to society is staggering. It is very expensive to place a child in out-of-home care and effective counsel can reduce this cost. According to a new report released by the Centers for Disease Control and Prevention, the total lifetime estimated financial costs associated with just one year of confirmed cases of child maltreatment is approximately \$124 billion.<sup>8</sup> Although data is limited on the issue, research indicates that children who have adequate legal representation achieve permanency more quickly and the cost to society is, therefore, reduced.<sup>9</sup>

### **The Dependency Court is a Legal Process Requiring Effective Legal Counsel for the Child**

The process in which many abused and neglected children find themselves is first and foremost, a legal one. Once a report of child maltreatment is deemed founded, dependency courts in each state and the District of Columbia make a determination as to whether the child is abused or neglected and whether to remove the child from his or her home. The conclusion of this trial often ushers in an extended series of legal hearings that determine and oversee the child’s placement(s) and services. Requests are made through motions, decisions are made by judges in courtrooms and an understanding of the legal process is essential for anyone advocating for any party, including the child. This period of hearings can last years, and a number of related legal proceedings can also ensue, including those related to termination of parental rights, adoption, custody, or criminal cases.

Notably, the court in dependency proceedings operates beyond its usual role as an arbiter between contending litigants. In these cases, the court formally steps in to function as the legal parent. But its parental role is played out not in a home as an individual who can monitor and supervise the child on a daily basis, but through intermittent court proceedings. And, while courts in these proceedings are typically the most “active” courts in the United States, they remain ultimately dependent on the information presented to them. Hearing from a child who wants to participate in his or her court case and who has had effective counsel to understand the legal issues involved, the impact of different decisions, and the scope of possibilities is imperative to sound decision-making by a court when it is acting as parent (or what is referred to as *parens patriae*). The child is the person who knows best what has been taking place in his family, and in a system that is not functioning well, may be the only person who can convey that critical information to the court.

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<sup>7</sup> The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) gives states the option of extending foster care until age 21. First Star and the Children’s Advocacy Institute commend states that have already implemented this option.

<sup>8</sup> See Centers for Disease Control and Prevention, *Cost of Child Abuse and Neglect Rival Other Major Public Health Problems* (2012), available at <http://www.cdc.gov/violenceprevention/childmaltreatment/EconomicCost.html>.

<sup>9</sup> A.E.Zinn & J. Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* (2008), available at [http://www.chapinhall.org/sites/default/files/old\\_reports/428.pdf](http://www.chapinhall.org/sites/default/files/old_reports/428.pdf).

## **Third Edition: A Child's Right to Counsel — A National Report Card on Legal Representation for Abused & Neglected Children**

### **Call to Action**

We highlight and applaud the American Bar Association in adopting its Model Act,<sup>10</sup> as well as those states with superlative laws on the right to counsel for abused and neglected children in civil child protection proceedings. Massachusetts, Connecticut and Oklahoma have laws well worth examination as do the many other states receiving “A’s” under this report.<sup>11</sup> We are heartened that the number of states with “A’s” has grown since the publication of this report’s second edition three years ago.

Much, much more needs to be done, however. Our analysis shows that despite the moral imperative and sound fiscal basis for children to have competent representation in legal processes that are supposed to take care of them when their families have failed them, a number of states continue to have laws that do not require effective legal representation for these children. The statistics on how foster children fare under the current systems demonstrates the need for effective legal counsel, specially trained to advocate for these children with respect to their placement, medical, psychological and educational needs.

First Star and the Children’s Advocacy Institute suggest these next steps.

#### **A. State Action based on the Report Card’s Best Practices and Building on the Passage of the ABA Model Act.**

##### **1. The Model Act on the Legal Representation of Children in Abuse, Neglect and Dependency**

**Actions** was adopted by the American Bar Association’s House of Delegates on August 8, 2011. This “A+” model law embodies the best practices analyzed in this Report Card for the representation of children. Advocates in states with poor grades can develop legislation to implement this model law in their home states. Specifically, we encourage the enactment of statutes that:

- Assure that children in abuse and neglect cases are represented by independent, competent attorneys.
- Require specialized, multi-disciplinary training of children’s attorneys. (Legal training, specific to abuse and neglect proceedings AND specialized, multi-disciplinary training so the lawyer understands how to work with children and can effectively counsel them.)
- Assure that a child is a party to the proceedings and can be heard from directly (if the child so desires after being counseled by a competent, trained attorney).
- Require reasonable caseload limits for attorneys representing children so as to encourage effective, competent representation.

**2. Collaboration with Other States.** Each state approaches the issue of counsel for maltreated children differently, with many states, such as Oklahoma, Massachusetts and Connecticut implementing all or many of the best practices. We encourage advocates to work with and learn from these states. The laws and rules of these jurisdictions may be ripe for adaptation to your state.

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<sup>10</sup> The ABA Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Cases, adopted by ABA House of Delegates on August 8, 2011.

<sup>11</sup> As noted previously, this Report Card does not address implementation; the grades reflect an examination of state statutes, rules, and caselaw.

**3. Compliance and Enforcement of State Law.** Many states have good laws on the books, but reportedly are failing to comply with own law in practice. We urge advocates to promote compliance with the law and raise the issue through public education, media and, if necessary, litigation.

**4. Assistance to State Court Improvement Projects.** Constructive changes continue to be made under these projects – particularly in the area of multi-disciplinary training, and advocates can make positive change by assisting in the work of these programs. Advocates can evaluate whether making these changes into law is advisable. Laws may be harder to attain; but once passed, they are harder to change.

**5. Representation in Other Proceedings.** Too often abused and neglected children are also subject to additional and separate legal proceedings related to custody, education, and a host of other issues. As with dependency cases, sound judicial decision-making and the importance to these children of the issues decided require legal representation.

**6. Adequate Compensation for Children’s Attorneys.** Without adequate compensation, children’s attorneys are forced to either carry caseloads that don’t permit adequate representation or supplement their practice with other work that, again, restricts their ability to fully focus on each of their child clients. We encourage work within each state to fully compensate children’s attorneys for this detailed and difficult work.

## **B. Federal Action**

CAPTA<sup>12</sup> is the operative federal legislation that addresses a number of children’s issues including the representation of abused and neglected children in dependency court.

While reauthorization of CAPTA is not scheduled again for several years, worthwhile amendments to CAPTA would require that an independent, competent, and zealous attorney, trained in the multi-disciplinary aspects of dependency practice, and with a reasonable caseload be appointed to represent the interests of all children in all stages of child abuse and neglect proceedings in a client-directed manner, and that all children be treated as parties to these proceedings with all the rights appurtenant thereto.

CAPTA currently includes a basic requirement for independent, but not necessarily legal, representation of abused and neglected children. Because we are concerned that even this modest “representation” requirement is not being universally implemented, we encourage advocates to ask their federal legislators to ensure that the federal government monitor and enforce compliance with the current representation requirements of CAPTA and to collect data on the effectiveness of this representation requirement.

During the reauthorization process of CAPTA in 2010, First Star, the Children’s Advocacy Institute, and a wide swath of organizations within the National Child Abuse Coalition unsuccessfully sought four significant changes in CAPTA’s requirement that a court-appointed lawyer, guardian ad litem, or court appointed special advocate be appointed in court for every child in a child protective (dependency) case. Amendments were sought to enhance child legal representation in these proceedings in several ways. However, none were included in the final Act, principally due to bill sponsors’ concerns about state and local costs of implementation.

Those changes, had they been accepted would have required that:

- 1) Every child involved in a court case be appointed an attorney;
- 2) This appointed attorney be designated “legal counsel” for the child, with the representation fully in accordance with the ABA Model Rules of Professional Conduct; for clarity on this point, language about the child’s

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<sup>12</sup> The Child Abuse Prevention and Treatment Act (CAPTA) was originally enacted in 1974 (P.L. 93-247) and has been amended and reauthorized a number of times, most recently on December 20, 2010 by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

representative having to “make recommendations concerning the best interests of the child” would have been removed, with a substitution requiring the representative to “advocate in court on behalf of the child;”

- 3) The appointed attorney have “adequate time and resources” to properly handle each case, defined both as not having an “excessive” caseload and receiving “reasonable and appropriate compensation;” and
- 4) This attorney appointment continue as long as the court maintains jurisdiction over the case, including all periods of foster care or other residential placement, as well as the process of the child’s transition to adult independence (in effect, to assure that each youth has an attorney until 21, if necessary).

We view the last provision as particularly important in light of two facts: a) the 2008 *Fostering Connections Act* provision of federal financial support for youth ages 18, 19, and 20 presumes dependency court cases will stay open to monitor compliance of child welfare agency responsibilities as well as for holding periodic status hearings mandated by federal law; and b) CAPTA has age 18 as the cut-off for all of its protections.

Finally, although the CAPTA requirements reflect Congressional intent about the performance of the child welfare system, CAPTA funding to individual states is very small – making up only a sliver of state child welfare budgets. Therefore, a requirement for appointed independent legal counsel to court-involved children should be part of the requirements for IV-B and IV-E funding to the states. These are the primary sources for federal expenditures of child welfare monies to the states. This change would give states incentive to comply with this important statute.



## Summary of Report Card Criteria and Findings

The grading criteria and methodology have remained substantially the same between the second edition of the Report Card in 2009 and this one. Our criteria are as follows:

1. Does state law mandate that attorneys be appointed for children in dependency proceedings? (Maximum Points: 40)
2. When an attorney is appointed for a child in a dependency proceeding, does state law define the duration of the appointment? (Maximum Points: 10)
3. To what extent will a child receive client-directed representation? (Maximum Points: 20)
4. To what extent does state law require specialized education and/or training requirements for child's counsel? Is such education or training required to include multidisciplinary elements? If no such education or training is required for child's counsel, to what extent is it required for a child's GAL? (Maximum Points: 10)
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party? (Maximum Points: 10)
6. Do the Rules of Professional Conduct (or the state's equivalent thereof) regarding immunity from liability and confidentiality apply to attorneys representing children in dependency proceedings? (Maximum Points: 10)

**Extra Credit:** Does state law address caseload standards for children's counsel in dependency proceedings? (Maximum Extra Credit Points: 5)

## Summary of Report Card Findings

The Third Edition of *A Child's Right to Counsel* demonstrates that some states are continuing to progress towards best practices in their laws pertaining to the right to counsel for abused and neglected children. Other states have excellent practices, not codified in state law, that provide counsel for children. First Star and CAI continue to believe that the best way to ensure consistent, enforceable and accountable legal representation for abused and neglected children is to enact state laws requiring counsel. We continue to encourage states to incorporate good practices into law.

Unfortunately, in this edition, as in the last, we continued to receive information that some states have strong right to counsel laws that are not followed in practice. We urge stakeholders in those states to use all advocacy and legal remedies available to enforce the law and ensure that abused and neglected children receive the representation to which they are legally entitled. First Star and the Children's Advocacy Institute are looking at how implementation issues can be considered and reflected in future report cards.

### Statistical Highlights of the Third Edition

- 15 States earned an A or A+
- 11 States earned a B
- 9 States earned a C
- 6 States earned a D
- 10 States earned an F

#### The Good News

61% of states require the appointment of attorneys for abused or neglected children.

#### The Bad News

More than 39% of states do not require that all abused and neglected children have legal representation

Only 24% of states require multidisciplinary training or education for child's counsel

Only 31% of states currently mandate the appointment of client-directed representation for the child

First Star and the Children's Advocacy Institute applaud all of the A states: Connecticut (A+), Iowa, Kansas, Louisiana, Maryland, Massachusetts (A+), Mississippi, Missouri, New Mexico, New York, Ohio, Oklahoma (A+), Texas, Vermont and West Virginia.

More than one-half of the 51 jurisdictions surveyed earned a grade of A or B. We are proud to be able to award such high grades to states that recognize the importance of this issue. We hope that the practice in these states is to properly implement these strong laws, and where such is not the case, we call on advocates to pursue all available remedies to enforce each state's mandates. First Star and CAI are considering how to reflect or address issues of concern regarding a state's actual practices into future editions of this Report Card assessing state laws.

Unfortunately, one-third of the 51 jurisdictions surveyed scored a D or an F. These states have a long way to go toward enacting laws that ensure children of the right to appropriate legal representation in dependency proceedings. The deficiencies in their statutes are reflected in the numbers regarding particular criteria:

## Definitions

For the purposes of this Report Card, we are using the following definitions for these and other relevant terms:<sup>13</sup>

- Attorney – a person who is a member of Bar of the jurisdiction in which they practice and is able to utilize his or her law skills to fully and effectively advocate for his or her child client.
- Best Interest of the Child – across the board, it is the role of the judge to make a final decision based on what is in the best interest of the child. In order to do this, he or she must consider the positions and arguments of the state social services attorney who brought the case, the parent or other custodian alleged to have abused or neglected the child and who is represented by an attorney, and as we are advocating for here, the child victim, whose position should be presented through an attorney and considered by the judge in making this best interest determination.
- Best Interest Attorney – an attorney who owes a duty of loyalty to their child client, but is bound to make recommendations to the court based on his or her determination of what is in the child’s best interest, even when that is not the child’s expressed position. (Authority in at least one jurisdiction, Colorado, declares that the child’s best interest, and not the child, is actually the client of the best interest attorney.) This model of representation does not comport with the rules established by the American Bar Association’s Rules of Professional Conduct for other clients.
- Client-Directed Representation –representation where the attorney’s duty of loyalty is to the child and where he/she must advocate for the client’s expressed preferences and positions.
- Dependency Action - the legal proceedings governing the adjudication of child abuse and neglect cases. These cases may involve trials to determine whether the child was abused or neglected, removals of the child from their home into foster care, extensions of foster placement, terminations of parental rights, and other related proceedings until the child has achieved permanency or aged out of care.
- Guardian ad Litem – an individual appointed by the court to represent a child in court proceedings. The GAL may or may not be an attorney and may advocate for the child’s best interests, or their wishes, or both.
- Multidisciplinary Training – training which includes both information regarding the juvenile court system and laws and also ancillary disciplines such as child development, child psychology, education issues, etc.

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<sup>13</sup> States often use the same or similar terms, but define them differently. Our definitions do not hold for each and every state. For example, jurisdictions use different terms to mean “client-directed” or to define the legal proceedings governing the adjudication of child abuse and neglect cases.

## Grading Methodology and Criteria

This Third Edition of the Right to Counsel Report Card largely maintains the grading methodology and criteria developed and utilized in the Second Edition.

For the Third Edition, we started with the grade sheets from the Second Edition of the Report Card and in 2011, First Star began the initial update by reviewing commercial databases and state websites and circulated updated information to states for review (without grades). Draft grade sheets were developed based on this feedback. In 2012, First Star and the Children's Advocacy Institute further updated the information, searching a commercial legal database along with state legislative websites regarding the relevant statutes and rules on which the states' grades were based. Where statutes and rules were vague or confusing, case law, local administrative documents, and court orders were also consulted for clarification. The draft grade sheets (including grades) were revised and sent directly to several officials and practitioners in every state. The final grade sheets contained in this Report Card are based on this research and any feedback received from the state reviewers. To the best of our knowledge, the laws that were analyzed are current as of March 1, 2012.

The grading criteria are largely the same as in the Second Edition. In response to feedback, we did make certain clarifications regarding criterion 3 and the point allocations given. We also slightly reframed criterion 4 to clarify its focus, but did not alter any point allocations from the Second Edition. Variations in grades between this Third Edition and the Second Edition may be due to changes in state law, minor changes in the grading criteria or continued efforts to more uniformly apply the grading criteria based on the research and information received. Just as we hope that states are continually striving to improve their laws pertaining to a child's right to counsel, First Star and the Children's Advocacy Institute are continually striving to produce the most relevant and useful grading tool and analysis.

### The Criteria:

#### ***1. Does state law mandate that attorneys be appointed for children in dependency proceedings? (40 points possible)***

This criterion addresses the most important aspect of a child's right to counsel in dependency proceedings. These proceedings are legal proceedings and, as in all legal proceedings, an attorney is the appropriate representative to best utilize the tools that will guide the decisions made by the judge. To assure zealous advocacy – a key component of an attorney's role - this attorney must be independent and not represent the interests of any other party (such as the State or a parent) simultaneously. Points are deducted based on deviation from a mandate that all children receive an independent attorney to represent their interests. Five points are deducted if a state has the stringent standard requiring that a child would not benefit from the appointment of an attorney. Ten points are deducted if there is any other restriction on the appointment of an independent attorney that we deemed "minor." An example of a minor restriction is legal counsel not being required for any child under age 7.<sup>14</sup> Twenty points are deducted from the maximum amount that can be awarded if there is a "major" restriction to the mandatory appointment of an independent attorney for children. An example of a major restriction is counsel not being required for children under an age higher than a certain age, for example, the age of 7 or 10. Finally, a state loses 25 points in this category if the appointment of an independent attorney to represent the interests of the child happens only on a discretionary basis. While this discretion may be used generously in a given jurisdiction, it is not legally enforceable and thus, does not warrant a large point total in this Report Card. No points are awarded to states that do not provide independent attorneys to represent children in dependency proceedings.

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<sup>14</sup> Age seven is viewed by some advocates as the appropriate separation between the need for a client-directed attorney and a best interests attorney (see, e.g., Donald Duquette's article, *Special Issue on Legal Representation of Children: Responses to the Conference: Two Distinct Roles/Bright Line Test* (Spring, 2006) 6 Nev. L.J. 1240). See also research of John Anzelc, Melissa Cohen & Sarah Taylor, an interdisciplinary student group from the University of Michigan Law School who participated in the semester-long Lance J. Johnson Children in the Law Workshop and studied the capacity of children to participate in decisions affecting their welfare and provided to the American Bar Association Children's Rights Litigation Committee in a Memo dated April 24th, 2009, and titled, *Comment on the Committee's Model Act Governing Representation of Children in Abuse and Neglect Proceedings* (a child begins to have greater decision-making ability due to their increased problem-solving abilities and their greater understanding of the importance of a broader social sphere at approximately age seven).

**2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment? (10 points possible)**

The appointment of an attorney to advocate for a child loses importance if that attorney is only present at some of the hearings – it is imperative for the attorney to be an advocate for the child at each and every hearing before the dependency court and to advocate for the child before a higher court when an appeal of the lower court’s decision is appropriate. This criterion only grades the duration of the attorney’s appointment. If state law provides for the appointment of lay guardians ad litem and the appointment of attorneys, only the duration of the attorney’s appointment was considered. States receive 10 points when the appointment of attorneys last throughout the entire juvenile court process and through any appeals that may be taken. A state loses 2 points in this category if state law only expressly guarantees counsel for a child on appeal when the child is the appellant. Because the appellate portion of a case is just as crucial to the life of a dependent child as the decisions made by the lower court, a state loses half of the possible points in this category if appointment of attorneys only lasts through the juvenile court process and does not extend to representation on appeal. No points are awarded to states that do not address continuity of counsel in their laws.

**3. To what extent will a child receive client-directed representation? (20 points possible)**

This criterion is the second most important aspect of a child’s representation and, thus, states could receive a total of 20 points for requiring client-directed advocacy. Our revised criterion and point allocation reflect the variety of ways that states are responding to calls to hear the child’s voice: from never requiring the child’s wishes to be expressed, to mere articulation of the child’s expressed wishes, to client-directed counsel advising and assisting the child to develop and articulate informed views.

Buried in these approaches is a mix of the considerations that support hearing from children, including: (1) the need for basic information – the child is in the best position to know what has taken place, whether services, education, counseling, etc. have occurred and whether he or she has had contact with others (relatives, etc.) who might be possible placements or other types of support; (2) the need to make decisions that will work best for particular child – hearing from the child is critical to an assessment that takes this into account; (3) helping to ensure that the child is informed when other adults and the court weigh in with him or her – court proceedings are not natural events, ensuring that a child really understands what he or she is weighing in on will help with sound decision-making by the court. The revised point allocation and criterion reflect the primary importance of assuring the child’s wishes are advocated for while providing some points for states that at least assure that a child’s wishes are articulated to the court.

**4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Is such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL? (10 points possible)**

An advocate is only as good as the training that advocate has received. States could receive a total of 10 points for requiring specialized multidisciplinary training for attorneys representing children. If an advocate is not trained to work in the complex world of dependency law, it is unreasonable to believe that children are receiving highest quality representation. While many jurisdictions offer training and may even expect those representing children in dependency proceedings to be trained, this criterion only grades the extent to which these requirements are found in state law. Many states’ Court Improvement Programs have done outstanding work in the area of training for children’s attorneys. This Report does not reflect this work to the extent it is not codified into law or otherwise enforceable and uniform throughout the state. Further, a key part of these training programs must be multidisciplinary including training in the various disciplines that touch the life of a child in dependency court. States requiring specialized training, including expressed multidisciplinary elements for children’s attorneys receive 10 points. If multidisciplinary aspects of the training are only impliedly required, the state loses 1 point. If there are neither expressed nor implied multidisciplinary elements of the training required for children’s attorneys in dependency proceedings, states lose 2 points. States that only require specialized training for guardians ad litem (who may or may not be attorneys) but not for other attorneys appointed to represent children in dependency proceedings lose 4 points. States encouraging but not requiring

specialized training for children's attorneys lose 7 points. No points are awarded to states that do not require or encourage specialized education and/or training for either attorneys representing children or GALs.

***5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party? (10 points possible)***

As the individual who is the subject to dependency proceedings, a child should always be considered a party to the proceedings. It is our position that when a child is considered a party to the proceedings, all the rights of parties are assumed to be held by the child. If state law expressly gives a child the legal status of a party and there is no language in state law limiting a child's rights, states receive 10 points for this criterion. However, if a child is expressly given the legal status of a party but any specific right is withheld (such as the right to be present at proceedings), a state loses 5 points. On the other hand, if a child is not expressly given the legal status of a party but is provided with one or more of the rights of a party, a state loses 5 points. While this grading system may "reward" some states that only provide one of many rights, it was adopted as the best method to account for all of the nuanced differences across the 50 states and the District of Columbia. No points are awarded to states that do not give legal party status or any of the rights of a party to a child in dependency proceedings.

***6. Do the Rules of Professional Conduct (or the state's equivalent thereto) regarding immunity from liability and confidentiality apply to attorneys representing children in dependency proceedings? (10 points possible)***

A child should be represented by an attorney who treats that child as he or she would any other client. A child's relationship with his or her attorney is hindered when the child cannot trust the attorney to keep confidences. Furthermore, there is no reason for an attorney representing children to have any less immunity from liability than that same attorney representing adult clients. States applying their Rules of Professional Conduct to children's counsel receive 10 points. If the state provides a minor exception, such as immunity for ordinary negligence, to this requirement, the state loses 4 points. If the state provides a major exception, such as blanket immunity, to this requirement, the state loses 6 points. No points are awarded to states that do not apply the Rules of Professional Conduct to children's attorneys.

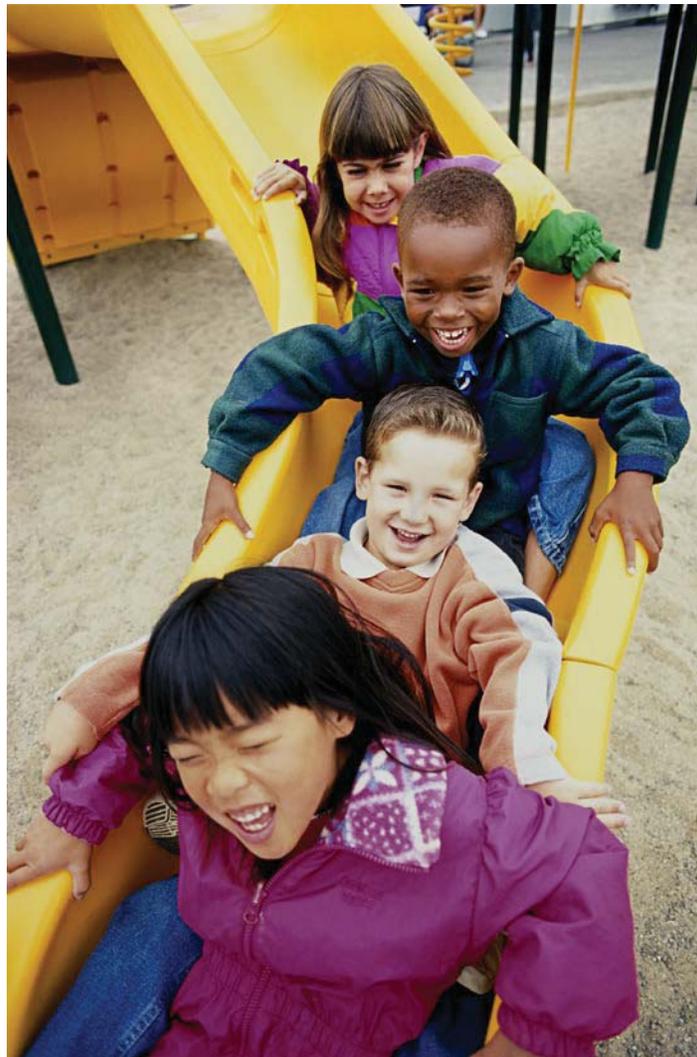
***Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings? (5 extra credit points possible)***

We have again included an "extra credit" grading criterion. A state can earn up to 5 extra credit points for mandating specific caseload standards for children's counsel in dependency proceedings. In order to adequately represent their clients, all attorneys must have reasonable caseloads. If a state has some statute and/or state court rule acknowledging the need for children's counsel to maintain reasonable caseload standards, but does not set specific caseload requirements, a state can receive up to 3 extra credit points. As noted in Appendix A, First Star and CAI support a caseload ceiling of 100 individual clients for a full-time attorney as recommended by both the American Bar Association and the National Association of Counsel for Children. Our extra credit question does not, however, award points based on providing a 100 case ceiling.

We based our rating system on a 100-point scale. In computing the overall grade for each state, the state's grades for each individual section were combined into a total grade. Grades A through F were then awarded to each state according to the following standard academic grading system:

Grading Scale	
100+	A+
90 – 99	A
80 – 89	B
70 – 79	C
60 – 69	D
59 and below	F

It is important to reiterate that each grade is based solely on the language of the law, state court rule, case law, administrative order, etc. The grades are based on laws that are enforceable in each state, regardless of their form, as long as they have been duly adopted pursuant to a legally recognized procedure that includes an opportunity for public comment. *Grades do not imply any correlation between a state's law and the enforcement of, or compliance with, such law.* We believe that when a state has good law, it is up to the state itself and advocates within the state to enforce that law. Our assumption is that good law is the cornerstone of any state's commitment to the rights of its children.



**3<sup>rd</sup> Edition: *A Child's Right to Counsel*  
Grading Methodology Point Distribution**

Criteria	Details	Points
<p><b>1. Does state law mandate that attorneys be appointed for children in dependency proceedings?</b> <i>Maximum Points: 40</i></p>	<ul style="list-style-type: none"> <li>▪ Independent counsel is required for all children.....40</li> <li>▪ Independent counsel is required for all children unless the court finds that the child would not benefit from the appointment of counsel .....35</li> <li>▪ Independent counsel is required for all children with minor restrictions (e.g., counsel is not required for children under age 7) .....30</li> <li>▪ Independent counsel is required for all children with major restrictions (e.g., counsel is not required for children under an age higher than 7) .....20</li> <li>▪ Independent counsel is provided on a discretionary basis only ..... 15</li> <li>▪ No state law or court rule provides for the appointment of counsel.....0</li> </ul>	
<p><b>2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?</b> <i>Maximum Points: 10</i></p>	<ul style="list-style-type: none"> <li>▪ Appointment lasts through entire juvenile court proceedings and on appeal .....10</li> <li>▪ Appointment of counsel on appeal expressly guaranteed only when child is the appellant.....8</li> <li>▪ Appointment lasts through entire juvenile court proceedings but not on appeal..... 5</li> <li>▪ No state law defines the duration of appointment for children's counsel .....0</li> </ul>	
<p><b>3. To what extent will a child receive client-directed representation?</b> <i>Maximum Points: 20</i></p>	<ul style="list-style-type: none"> <li>▪ Child receives client-directed representation under all reasonable circumstances.....20</li> <li>▪ Child receives client-directed representation under specified circumstances ..... 15</li> <li>▪ Child will receive client-directed representation only in certain proceedings or child may receive client-directed representation on a discretionary basis, but if not, his/her expressed wishes must be articulated to the court ..... 12</li> <li>▪ Child will not receive client-directed representation but his/her expressed wishes must be articulated to the court.....6</li> <li>▪ Child may receive client-directed representation and, if not, his/her expressed wishes are not required to be articulated to the court..... 4</li> <li>▪ Law is vague regarding client-directed representation .....3</li> <li>▪ Child will receive only best interests representation .....0</li> </ul>	

<p><b>4. To what extent does state law require specialized education and/or training requirements for child’s counsel? Is such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?</b></p> <p><i>Maximum Points: 10</i></p>	<ul style="list-style-type: none"> <li>▪ Specialized education and/or training is required for child’s counsel; multidisciplinary elements are expressly required ..... 10</li> <li>▪ Specialized education and/or training is required for child’s counsel; multidisciplinary elements are impliedly required ..... 9</li> <li>▪ Specialized education and/or training is required for child’s counsel; multidisciplinary elements are neither expressly nor impliedly required ..... 8</li> <li>▪ Specialized education and/or training is required for GALs (who may be attorneys) ..... 6</li> <li>▪ Specialized education and/or training is encouraged, but not required, for child’s counsel ..... 3</li> <li>▪ No specialized education and/or training is required ..... 0</li> </ul>
<p><b>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?</b></p> <p><i>Maximum Points: 10</i></p>	<ul style="list-style-type: none"> <li>▪ Child is expressly given the legal status of party with all rights appurtenant thereto ..... 10</li> <li>▪ Child is expressly given the legal status of party, but specific rights are withheld <u>OR</u> child is not expressly given the legal status of party, but one or more of the following specific rights are expressly granted: the right to notice, the right to attend hearings, the right to participate in hearings, and/or the right to appeal ..... 5</li> <li>▪ Child is not given the legal status of party or any of the rights specified above ..... 0</li> </ul>
<p><b>6. Do the Rules of Professional Conduct (or the state’s equivalent thereto) pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?</b></p> <p><i>Maximum Points: 10</i></p>	<ul style="list-style-type: none"> <li>▪ The Rules of Professional Conduct apply to children’s counsel ..... 10</li> <li>▪ The Rules of Professional Conduct apply to children’s counsel with minor exceptions (e.g., children’s counsel are immune for ordinary negligence) ..... 6</li> <li>▪ The Rules of Professional Conduct apply to children’s counsel with major exceptions (e.g., children’s counsel have blanket immunity) ..... 4</li> <li>▪ The Rules of Professional Conduct do not apply to children’s counsel ..... 0</li> </ul>
<p><b>Extra Credit: Caseload Standards</b></p>	
<p><b>Does state law address caseload standards for children’s counsel in dependency proceedings?</b></p> <p><i>Maximum Extra Credit Points: 5</i></p>	<ul style="list-style-type: none"> <li>▪ State statute and/or state court rule requires children’s counsel to comply with specific reasonable caseload standards ..... up to 5</li> <li>▪ State statute and/or state court rule acknowledges the need for children’s counsel to maintain reasonable caseload standards, but does not set specific caseload requirements ..... up to 3</li> </ul>

## GRADES AT A GLANCE

State	Score	Grade
Alabama	73	C
Alaska	66	D
Arizona	75	C
Arkansas	82	B
California	82	B
Colorado	75	C
Connecticut	103	A+
Delaware	57	F
District of Columbia	89	B
Florida	55	F
Georgia	68	D
Hawaii	47	F
Idaho	45	F
Illinois	63	D
Indiana	49	F
Iowa	90	A
Kansas	92	A
Kentucky	68	D
Louisiana	95	A
Maine	58	F
Maryland	93	A
Massachusetts	104	A+
Michigan	82	B
Minnesota	75	C
Mississippi	96	A

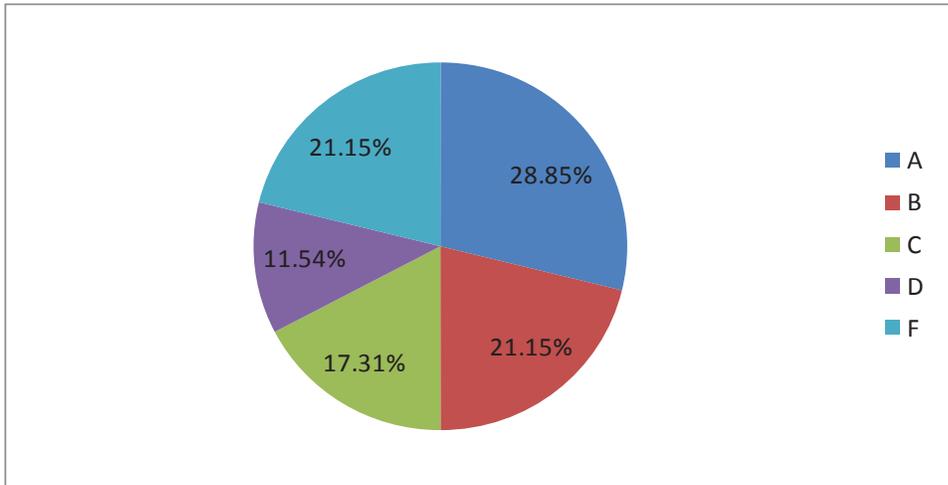
State	Score	Grade
Missouri	93	A
Montana	59	F
Nebraska	76	C
Nevada	63	D
New Hampshire	58	F
New Jersey	88	B
New Mexico	95	A
New York	98	A
North Carolina	82	B
North Dakota	58	F
Ohio	91	A
Oklahoma	100	A+
Oregon	78	C
Pennsylvania	82	B
Rhode Island	84	B
South Carolina	63	D
South Dakota	75	C
Tennessee	87	B
Texas	91	A
Utah	77	C
Vermont	90	A
Virginia	83	B
Washington	53	F
West Virginia	98	A
Wisconsin	71	C
Wyoming	83	B

State	Criterion 1	Criterion 2	Criterion 3	Criterion 4	Criterion 5	Criterion 6	Extra Credit	Final Score
Alabama	40	5	0	8	10	10	0	73
Alaska	15	10	15	6	10	10	0	66
Arizona	15	10	20	10	10	10	0	75
Arkansas	40	10	6	10	5	6	5	82
California	35	8	6	10	10	10	3	82
Colorado	40	10	6	8	5	6	0	75
Connecticut	40	10	20	10	10	10	3	103
Delaware	15	10	12	9	5	6	0	57
District of Columbia	40	10	12	9	5	10	3	89
Florida	15	0	12	8	10	10	0	55
Georgia	20	10	12	6	10	10	0	68
Hawaii	15	0	12	0	10	10	0	47
Idaho	15	5	4	6	5	10	0	45
Illinois	15	5	20	3	10	10	0	63
Indiana	15	5	3	6	10	10	0	49
Iowa	40	10	20	0	10	10	0	90
Kansas	40	10	12	10	10	10	0	92
Kentucky	40	5	3	0	10	10	0	68
Louisiana	40	10	20	10	5	10	0	95
Maine	15	10	12	6	5	10	0	58
Maryland	40	10	20	3	10	10	0	93
Massachusetts	40	10	20	9	10	10	5	104
Michigan	40	10	12	0	10	10	0	82
Minnesota	30	10	15	0	10	10	0	75
Mississippi	40	10	20	6	10	10	0	96
Missouri	40	10	15	6	10	10	2	93

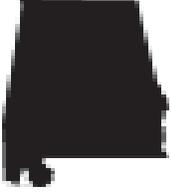
State	Criterion 1	Criterion 2	Criterion 3	Criterion 4	Criterion 5	Criterion 6	Extra Credit	Final Score
Montana	20	10	3	6	10	10	0	59
Nebraska	40	10	3	3	10	10	0	76
Nevada	15	10	12	6	10	10	0	63
New Hampshire	15	5	12	6	10	10	0	58
New Jersey	40	5	20	8	5	10	0	88
New Mexico	40	10	15	10	10	10	0	95
New York	40	10	20	8	5	10	5	98
North Carolina	40	10	6	6	10	10	0	82
North Dakota	15	5	12	6	10	10	0	58
Ohio	40	5	20	6	10	10	0	91
Oklahoma	40	10	20	10	10	10	0	100
Oregon	20	10	15	10	10	10	3	78
Pennsylvania	40	10	12	0	10	10	0	82
Rhode Island	40	10	6	8	10	10	0	84
South Carolina	15	10	12	6	10	10	0	63
South Dakota	40	10	0	10	5	10	0	75
Tennessee	40	10	20	8	5	4	0	87
Texas	40	10	20	10	5	6	0	91
Utah	40	10	6	9	5	6	1	77
Vermont	40	10	20	0	10	10	0	90
Virginia	40	10	12	10	5	6	0	83
Washington	15	5	12	6	5	10	0	53
West Virginia	40	10	20	8	10	10	0	98
Wisconsin	30	5	15	6	5	10	0	71
Wyoming	40	10	6	8	10	4	5	83

### GRADE DISTRIBUTION

	States
<b>A</b>	Connecticut (A+), Iowa, Kansas, Louisiana, Maryland, Massachusetts (A+), Mississippi, Missouri, New Mexico, New York, Ohio, Oklahoma (A+), Texas, Vermont, West Virginia
<b>B</b>	Arkansas, California, District of Columbia, Michigan, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee, Virginia, Wyoming
<b>C</b>	Alabama, Arizona, Colorado, Minnesota, Nebraska, Oregon, South Dakota, Utah, Wisconsin
<b>D</b>	Alaska, Georgia, Illinois, Kentucky, Nevada, South Carolina
<b>F</b>	Delaware, Florida, Hawaii, Idaho, Indiana, Maine, Montana, New Hampshire, North Dakota, Washington



# ALABAMA



Score: 73

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“In all dependency and termination of parental rights proceedings, the juvenile court shall appoint a guardian ad litem for a child” (Ala. Code § 12-15-304(a)). Alabama law defines the term guardian ad litem as “[a] licensed attorney appointed by a juvenile court to protect the best interests of an individual without being bound by the expressed wishes of that individual” (Ala. Code § 12-15-102(10)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

A guardian ad litem is required to “[a]ttend all juvenile court hearings scheduled by the juvenile court and file all necessary pleadings to facilitate the best interests of the child” (Ala. Code § 12-15-304(b)(4)).

Basis for Deduction: Alabama law requires the attorney GAL to attend all juvenile court proceedings scheduled by the court, but does not expressly assure the GAL’s participation on appeal.

3. To what extent will a child receive client-directed representation?

Points: 0 out of 20

The guardian ad litem is appointed “to protect the best interests of an individual without being bound by the expressed wishes of that individual” (Ala. Code § 12-15-102(10)). The primary responsibility of the child’s attorney GAL is to “protect the best interests of the child” (Ala. Code § 12-15-304(a)).

Basis for deduction: Alabama law does not provide client-directed counsel to children; each child will receive only best interest representation.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary

Points: 8 out of 10

“Before being appointed by the juvenile court, every guardian ad litem appointed in juvenile dependency or termination of parental rights cases shall receive training appropriate to their role” (Ala. Code § 12-15-304(c)).

Basis for Deduction: Although requiring attorney GALs to receive training

elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

appropriate to their role, Alabama law does not expressly or impliedly require such training to be multidisciplinary.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

A child is a party to the proceedings (Ala. Code §§ 12-15-304(a), 12-15-308(c)).

The summons must be "issued to the child, if he or she is 12 or more years of age" (Rule 13(A), Ala. R. Juv. P.).

The child has a right, as a party, to "written notice of all hearings and hearings on the merits of the petition", with specified exceptions (Rule 13(C), Ala. R. Juv. P.).

The child has a right, as a party, "to appeal a judgment or order from any juvenile court proceeding" (Ala. Code § 12-15-601).

If the juvenile court finds that it is in the best interests of the child under the jurisdiction of the juvenile court, the child may be temporarily excluded from the hearings, except as specified (Ala. Code § 12-15-129).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

"When a client's ability to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Ala. Rules of Prof. Conduct Rule 1.14(a)).

"When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian (Ala. Rules of Prof. Conduct Rule 1.14(b)).

Alabama law defines the term "child's attorney" as a licensed attorney who provides legal services for a child, or for a minor in a mental commitment proceeding, and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child or minor as is due an adult client (Ala. Code § 12-15-102).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Alabama law does not address caseload standards for attorneys representing children in dependency proceedings.

**Sidebar Notes:**

- Although Alabama law does not specifically address caseloads for attorney GALs in dependency proceedings Alabama statutes do recognize the relationship between reasonably sized caseloads and the protection of individual rights in dependency proceedings. ALA § 12-15-106 deals specifically with the caseloads of hearing officers and authorizes the appointment of one or more referee positions based on the juvenile and child support caseload in a specific circuit. We commend Alabama for its recognition of the importance of caseload standards and urge Alabama to extend caseload standards to attorneys representing children in dependency proceedings.



# ALASKA



Score: 66

Grade: D

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a child will be promoted by the appointment of an attorney to represent the child, the court may make the appointment” (AS § 47.10.050(a)). The court shall appoint counsel “for a child when the court determines that the interests of justice require the appointment of an attorney to represent the child’s expressed interests” (AK CINA Rule 12(b)(3)).

Basis for deduction: Alaska law provides that appointment of an attorney for a child in dependency proceedings is discretionary, not mandatory.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“A child or the child’s parents, guardian, or guardian ad litem, or attorney, acting on the child’s behalf, or the department may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter” (AS § 47.10.080(i)).

“The court shall inform the parties at the first hearing at which they are present of their respective rights to be represented by counsel at all stages of the proceedings” (AK CINA Rule 12(a)).

3. To what extent will a child receive client-directed representation?

Points: 15 out of 20

Basis for deduction: A child will receive client-directed representation only under specified circumstances. The court shall appoint counsel pursuant to Administrative Rule 12 “for a child when the court determines that the interests of justice require the appointment of an attorney to represent the child’s expressed interests” (AK CINA Rule 12(b)(3)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 6 out of 10

“A GAL should possess knowledge, skill, experience, training, or education that allows the GAL to conduct an independent, thorough, and impartial investigation, and to advocate effectively for the best interests of the child” (AK CINA Rule 11(c)(1)). Among other things, the GAL should have an understanding of child development from infancy through adolescence; the impact of child abuse and neglect on the child; the impact of CINA proceedings, including out-of-home placement and the restriction or termination of parental rights, on the child; unique issues related to families involved in CINA proceedings, including such issues as substance abuse, domestic violence, and disabilities; community and other resources available for placement, treatment, and other necessary services for abused or neglected children; the ethnic, cultural, and socio-economic backgrounds of the population to be served; the Indian Child Welfare Act and the prevailing social and cultural standards of the

Indian community in which the child, parent, Indian custodian, or extended family resides or with which the child, parent, Indian custodian, or extended family members maintain social and cultural ties; Alaska and applicable federal statutes, rules, and supreme court decisions relating to CINA proceedings; and the ability to research and develop special areas of knowledge as appropriate or necessary in a given case (AK CINA Rule 11(c)(2)).

Basis for Deduction: While Alaska requires GALs (who may or may not be attorneys) to complete specialized multidisciplinary education and/or training, it does not require non-GAL attorneys serving as minor's counsel to have specialized education and/or training.

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Party’ means the child,…” (AK CINA Rule 2(l)) who appears to have all rights appurtenant thereto. Although there are circumstances when a child may be excluded from a hearing, those circumstances are limited to when a child “is not of suitable age to understand or participate in the proceedings” (AK CINA Rule 3(b)), when “attendance would be detrimental to the child” (AK CINA Rule 3(b)), or when “the effect of ...testimony would psychologically harm the child” (AK CINA Rule 3(d)).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is impaired, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Alaska R. Prof. Conduct 1.14).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

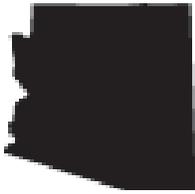
Alaska law does not address caseload standards for attorneys representing children in dependency proceedings.

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**Sidebar Note:**

- Dependency courts in Alaska are, in general, open to the public. (AS § 47.10.070(a)).

# ARIZONA



Score: 75

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile’s best interests. This guardian may be an attorney or a court appointed special advocate” (A.R.S. § 8-221(I)).

Basis for deduction: Under Arizona law, the appointment of an attorney to represent a child in dependency proceedings is discretionary, not mandatory. Although the court is required to appoint a GAL, the GAL does not have to be an attorney.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The judge of the juvenile court shall appoint an attorney for an indigent party appealing a final order of the juvenile court” (A.R.S. § 8-235(D)).

“When required by law, the presiding judge of the juvenile court shall appoint an attorney for a party to an appeal from a final order of the juvenile court. Unless the presiding judge of the juvenile court finds on motion or on its own initiative that a party who had appointed counsel before the juvenile court is currently able to employ counsel, that party may continue with appointed counsel on appeal without further authorization, subject to substitution of new appointed counsel in the discretion of the presiding judge of the juvenile court” (Ariz. R. Juv. P., Rule 103).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“The attorney should follow the wishes of the child whenever possible, but if a conflict arises in which the guardian believes that what the child wants is not in the child’s best interests, then the matter should be taken up with the court” (Arizona Ethics Opinion #86-13).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for

Points: 10 out of 10

“Attorneys and guardians ad litem shall be familiar with the substantive juvenile law. Attorneys and guardians ad litem shall stay abreast of changes and developments in relevant federal and state laws and regulations, Rules of Procedure for the Juvenile Court, court decisions and federal and state laws concerning education and advocacy for children in schools....Education and training shall be on juvenile law and related topics, such as child and adolescent development, (including infant/toddler mental health), effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental

child's counsel, to what extent is it required for a child's GAL?	incarceration, education, Indian Child Welfare Act, parent and child immigration status issues, the need for timely permanency, the effects of the trauma of parental domestic violence upon children and other issues concerning abuse and/or neglect of children" (Ariz. R. Juv. P. 40.1(J)).
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?	<p>Points: 10 out of 10</p> <p>"Reference to a party to the action means a child..." (Ariz. R. Juv. P. Rule 37(A)). "Any aggrieved party in any juvenile court proceeding under this title may appeal from a final order of the juvenile court to the court of appeals" (A.R.S. § 8-235(A)).</p> <p>"A child in foster care has the right to attend the child's court hearing and speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court shall determine that the child has been informed of and understands this right" (Ariz. R. Juv. P. Rule 41(B)).</p>
6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?	<p>Points: 10 out of 10</p> <p>"When a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Ariz. Rules of Prof'l Conduct 1.14(a)).</p> <p>"Except as provided...the physician-patient privilege, husband-wife privilege, or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is in issue nor in any judicial proceeding resulting from a report submitted pursuant to this article (Ariz. Rev. Stat. Ann. § 8-805(B)).</p>
Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?	<p>Points: 0 extra credit points</p> <p>Arizona law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**Sidebar Note:**

- According to officials with the Arizona Supreme Court, while Arizona law only mandates that a GAL be appointed for children in dependency cases, in practice, all children in Arizona are appointed an attorney through the use of Temporary Orders. First Star and CAI commend Arizona for its practice of regularly appointing counsel for children; the above grades are based on the state's statutes and regulations and do not reflect practices not embodied in statewide laws and regulations.
- In Arizona, it is typical for a child to always have an attorney appointed. For example, in Maricopa County (where Phoenix is located), the initial appointment is always a GAL but the GAL is an attorney. We encourage Arizona to adopt laws which comport to their practice of regularly appointing attorneys to represent children in dependency proceedings.

- Arizona Ethics Opinions address the ethical problems that result when prosecutors and public defenders have caseloads too high to enable them to provide adequate representation. The same is true with regard to attorneys representing children in dependency proceedings, and First Star and CAI encourage Arizona to adopt maximum caseload standards for attorneys engaged in this specific practice.



# ARKANSAS



Score: 82

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“The court shall appoint an attorney ad litem...to represent the...juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier” (A.C.A. § 9-27-316(f)(1)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

The attorney ad litem is authorized to participate in “all stages of the proceedings when necessary to protect the best interest of the juvenile” (A.C.A. § 9-27-316(f)(3)(a)).

3. To what extent will a child receive client-directed representation?

Points: 6 out of 20

Basis for deduction: Arkansas law requires the attorney ad litem to communicate, but not advocate for, the child’s expressed wishes. “An attorney ad litem shall represent the best interest of the juvenile” (A.C.A. § 9-27-316(f)(5)(A)). If the juvenile’s wishes differ from the attorney’s determination of the juvenile’s best interest, the attorney ad litem shall communicate the juvenile’s wishes to the court in addition to presenting his or her determination of the juvenile’s best interest” (A.C.A. § 9-27-316(f)(5)(B)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

“The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Supreme Court to represent the best interest of the juvenile” (ARK § 9-27-316(f)(1)).

“An attorney ad litem shall participate in 10 hours of initial legal education prior to appointment and shall participate in 4 hours of CLE each year thereafter” (AR Sup. Ct. Adm. Order No. 15 § 15 § 2(l) (2008)).

Prior to appointment, an attorney shall have initial education to include approved legal education of not less than 10 hours in the two years prior to the date an attorney qualifies as a court-appointed attorney for children or indigent parents in dependency-neglect cases. Initial training must include child development, dynamics of abuse and neglect; attorney roles and responsibilities, including ethical considerations; relevant state law, federal law, case law, and rules; family dynamics, which may include but is not limited to, the following topics:

substance abuse, domestic violence and mental health issues; and Division of Children and Family Services policies and procedures. Additional initial legal education may include, but is not limited to grief and attachment; custody and visitation; resources and services; and trial and appellate advocacy (AR Sup. Ct. Adm. Order No. 15 § (1)(b)(1)).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

While Arkansas law does not expressly provide children with party status, it does expressly provide them with some specific rights through their attorney ad litem, such as the right to be present at hearings, unless excused for good cause (the court may “[p]roceed to hear the case only if the juvenile is present or excused for good cause by the court” (A.C.A. § 9-27-325(c)(1)(A))).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 6 out of 10

“When a client’s ability to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Ark. R. of Prof. Conduct 1.14(a)).

“An attorney ad litem, functioning as an arm of the court, is afforded immunity against ordinary negligence for actions taken in furtherance of his or her appointment” (AR Sup. Ct. Adm. Order No. 15 § 2).

Basis for Deduction: The Arkansas Rules of Professional Conduct generally apply to an attorney ad litem but provides immunity for ordinary negligence.

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 5 extra credit points

“A full-time attorney shall not have more than 75 dependency-neglect cases, and a part-time attorney shall not have more than 25 dependency-neglect cases. Any deviations from this standard must be approved by the Administrative Office of the Courts which shall consider the following, including but not limited to: the number of counties and geographic area in a judicial district, the experience and expertise of the attorney ad litem, area resources, the availability of CASA volunteers, the attorney’s legal practice commitments and the proportion of the attorney’s practice dedicated to representing children in dependency-neglect cases, the availability of qualified attorneys in the geographic area, and the availability of funding. An attorney who is within 5 cases of reaching the maximum caseload shall notify the Administrative Office of the Courts and the Juvenile Division Judge” (AR Sup. Ct. Adm. Order No. 15 § 2 (n)).

#### Sidebar Notes:

- An Arkansas reviewer noted that the caseload limit in practice is helpful because others will assist when the load gets too high over a period of time. However, the reviewer noted that after the caseload limit was instituted the court increased the time required for court availability, which reduced attorney availability for interviews, visits and other non-court related obligations.

- Also noted were certain local practices (not necessarily state-wide) aimed at improving dependency court: parents receive a written guide and watch a video on the process; a DCFS/DHS supervisor always attends court hearings; some areas have instituted days for “staffings” – meetings where all parties, attorneys, children (as appropriate) and therapists come together to discuss progress and recommendations to be made at the next hearing.



# CALIFORNIA



Score: 82

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 35 out of 40

“If a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of Counsel” (Cal. Wel. & Inst. Code §317(c)).

Basis for deduction: Under California law, a court does not have to appoint an attorney for a child if the court finds that the child understands the nature of the proceedings; the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and under the circumstances of the case, the child would not gain any benefit by being represented by counsel. If the court finds that the child would not benefit from representation by counsel, the court must make a finding on the record as to each of these criteria and state the reasons for each finding. Also, if the court finds that the child would not benefit from representation by counsel, the court must appoint a Court Appointed Special Advocate volunteer for the child, to serve as the CAPTA guardian ad litem (Cal. Rules of Ct., Rule 5.660(b)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 8 out of 10

“A notice of appeal on behalf of the child must be filed by the child’s trial counsel, guardian ad litem, or the child if the child is seeking appellate relief from the trial court’s judgment or order....In any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child’s trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child’s best interests cannot be protected without the appointment of separate counsel on appeal, the child’s trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel” (Cal. Rules of Ct., Rule 5.661(b)–(c)).

Basis for deduction: Under California law, an attorney is automatically appointed when a child is the appellant; when a party other than the child is the appellant, the appointment of counsel is discretionary.

3. To what extent will a child receive client-directed representation?

Points: 6 out of 20

“The counsel for the child shall be charged in general with the representation of the child’s interests....In any case in which the child is four years of age or older, counsel shall interview the child to determine the child’s wishes and to assess the child’s well-being, and shall advise the court of the child’s wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child” (Cal. Wel. & Inst. Code §317(e)). “A primary responsibility of any counsel appointed to represent a child...shall be to advocate for the protection, safety, and

physical and emotional well-being of the child” (Cal. Wel. & Inst. Code § 317(c)).

Basis for deduction: California law provides that “[i]f the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and *shall advise* the court of the child's wishes” (Cal. Wel. & Inst. Code § 317(e)(2) (emphasis added)). This statute does not expressly require the child’s counsel to advocate for the child’s wishes, and it expressly prohibits child’s counsel from advocating “for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child” (Cal. Wel. & Inst. Code § 317(e)(2)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

“The Judicial Council shall...adopt rules of court regarding the appointment of competent counsel in dependency proceedings” (Cal. Wel. & Inst. Code § 317.6). “Competent counsel” means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings....Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. Within every three years attorneys must complete at least eight hours of continuing education related to dependency proceedings” (Cal. Rules of Ct., Rule 5.660(d)(1)–(3)).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Each minor who is the subject of a dependency proceeding is a party to that proceeding” (Cal. Wel. & Inst. Code § 317.5(b)), and has the rights appurtenant thereto.

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child’s ability to communicate verbally, to contact social workers and other professionals associated with the client’s case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship” (Cal. Rules of Ct., Rule 5.660(d)(4)).

Extra Credit: Does state law address caseload standards for

Points: 3 extra credit points

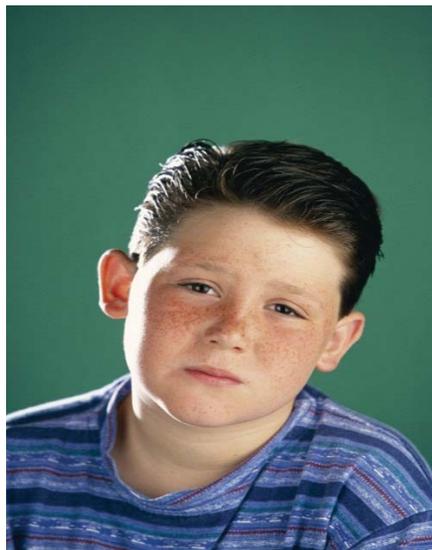
attorneys in dependency proceedings?

“The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards...” (Cal. Wel. & Inst. Code § 317(c)). “The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet [specified] requirements” (Cal. Rules of Ct., Rule 5.660(d)(6)).

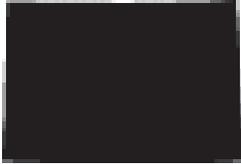
Although California law provides generally that caseloads must allow an attorney to perform the duties specified and to otherwise adequately counsel and represent their child clients, no specific caseload standards have been adopted into statute or court rule to date. Although in October 2007 the Judicial Council adopted the following caseload standard: “Maximum number of clients per FTE dependency attorney: 188–200,” that standard has not yet been amended into a rule of court.

#### Sidebar Notes:

- While California receives three extra credit points for having a statute that acknowledges the need for children’s counsel to maintain reasonable caseload standards, the reality in the state is that many children’s attorneys practice with excessive caseloads. Several children in Sacramento County brought suit in federal court to challenge their attorneys’ high caseloads in the case of *E.T., K.R., C.B., & G.S. v. Cantil-Sakanye*. The Ninth Circuit Court of Appeals found that the foster youth do not have the right to challenge their attorneys’ caseloads in federal court.
- Some advocates in California note that California’s statutory structure causes a difficult competition between the lawyer’s duty of loyalty and zealous advocacy for the client and the requirement that California attorneys not advocate for the return of a child if, to the best of the attorney’s knowledge, return would conflict with the protection and safety of the child. Advocates who favor the “attorney -- client directed” model are concerned that “protection of the child” may be too vague and allow attorneys to substitute their own view of “best interests” in lieu of a child’s considered preferences. Those advocates contend that although a court may well -- after considering all of the evidence -- decide contrary to those preferences, a mature child’s views are entitled to be heard as part of the process determining his or her future parents and care.



# COLORADO



Score: 75

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“Upon the filing of a petition under section 19-3-502 that alleges abuse or neglect of a minor child, the court shall appoint a guardian ad litem” (C.R.S. § 19-3-203(3)). A guardian ad litem, “if appointed to represent a person in a dependency and neglect proceeding..., shall be an attorney-at-law licensed to practice in Colorado” (C.R.S. § 19-1-103(59)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

The guardian ad litem “shall...appeal matters to the court of appeals or the supreme court, and participate further in the proceedings to the degree necessary to adequately represent the child” (C.R.S. § 19-3-203(3)).

3. To what extent will a child receive client-directed representation?

Points: 6 out of 20

“The guardian ad litem shall be charged in general with the representation of the child’s interests” (C.R.S. § 19-3-203(3)). However, the GAL is required to inform the court of the child’s position, when ascertainable based on the child’s developmental level, regarding the disposition of the matters addressed (Supreme Court of Colorado, Chief Justice Directive 04-06 (Rev. December 2011)).

Basis for deduction: Although a child will not receive client-directed representation, the child’s position must generally be communicated to the court.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 8 out of 10

“Attorneys appointed as GALs, attorney child and family investigators or Child’s Representatives shall possess the knowledge, expertise and training necessary to perform the court appointment” (Colorado Chief Justice Directive 04-06(V)(A)(1)). “In addition, GALs, attorney child and family investigators and Child’s Representatives shall obtain 10 hours of the required continuing legal education courses or any other modified training requirements established by subsequent Chief Justice Directive practice standards, rule or statute, which are relevant to the appointment and that enhance the attorney’s knowledge of the issues in best interest representation. These requirements should be met prior to attorney’s first appointment and per legal education reporting period. The attorney shall provide the OCR with proof of

	<p>compliance with this requirement with his/her application to provide attorney services or contract renewal for the OCR” (Colorado Chief Justice Directive 04-06(V)(A)(2)).</p> <p>Basis for Deduction: Although requiring attorney GALs to receive training necessary to perform the court appointment, Colorado law does not expressly or impliedly require such training to be multidisciplinary.</p>
<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 5 out of 10</p> <p>Colorado law provides children with some rights, such as the right to have their caretakers “provide prior notice to the child of all hearings and reviews held regarding the child” (C.R.S. § 19-3-502(7)).</p> <p>Basis for deduction: Colorado law provides party status to the child’s GAL, but not expressly to the child (“[t]he guardian ad litem for the child shall have the right to participate in all proceedings as a party” (C.R.S. § 19-1-111(3))).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 6 out of 10</p> <p>“All attorneys appointed as a GALs...shall be subject to all of the rules and standards of the legal profession” (Supreme Court of Colorado, Chief Justice Directive 04-06 (Rev. December 2011)). However, “an attorney’s obligation not to reveal confidential information provided by the child does not apply if the information must be revealed to ensure the child’s best interests” (Supreme Court of Colorado, Chief Justice Directive 04-06 (Rev. December 2011) (see Sidebar Notes below for more information).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>No Colorado law regarding caseload standards for attorneys representing children in dependency proceedings was identified.</p>

**Sidebar Notes:**

- In *People v. Gabriesheski* (2011) 262 P.3d 653; 2011 Colo. LEXIS 806, the Colorado Supreme Court discussed the extent to which an attorney-client relationship exists with regard to the guardian ad litem and child for whom his/her appointment is statutorily dictated in all dependency and neglect proceedings. In addition to finding that “the statutes are silent as to the existence of an attorney-client relationship,” the majority also found that the applicable Chief Justice Directive (CJD) 04-06 does not “purport to designate an attorney-client relationship between a guardian ad litem in dependency and neglect proceedings and the child who is the subject of those proceedings.” The majority concluded that “[i]n the absence of some clearer expression of legislative intent to do so, we are unwilling to impute to the statutory guardian ad litem-child relationship the legislatively-imposed, evidentiary consequences of an attorney-client relationship.” In so ruling, the majority determined that because a child who is the subject of a dependency and neglect proceeding is not the client of a court-appointed guardian ad litem, neither the statutory attorney-client privilege nor ethical rules governing an attorney’s obligations of confidentiality to a client strictly apply to communications by the child.
- In a dissenting opinion joined by Chief Justice Bender, Justice Martinez opined that “Colorado’s statutory scheme is not silent, but instead uses language evoking a hybrid role for a guardian ad litem; and...because guardians ad litem are required to be attorneys, and are explicitly required to comply with the rules of

professional conduct, a standard that eschews attorney-client privilege and the duty of confidentiality is at odds with well-established principles.” Justice Martinez noted that “I recognize that there may be times where it would be in the best interests of a child to reveal information to the court, but the child does not consent to disclosure. In my view, the guardian ad litem in a dependency and neglect proceeding is bound by the attorney-client privilege and the duty of confidentiality, but the guardian ad litem, acting in the child’s best interests, decides whether to invoke the privilege on behalf of the child. In this way, both the child’s legal rights and best interests are represented by an attorney. In determining whether to reveal a communication without the child’s consent, the guardian ad litem should, as a good parent would, speak with the child first and consider the child’s wishes. Additionally, the guardian ad litem should take into account the age and maturity of the child in making its determination. While a guardian ad litem for a younger child will likely make most or all of the decisions, a guardian for an older mature child might function more like an attorney for an adult, allowing the child to play a larger role in the decision-making. I would hold that the attorney-client privilege does apply to confidential communications made between a guardian ad litem and a child in a dependency and neglect proceeding, and that the responsibility to decide whether to assert the privilege on behalf of the child is placed with the guardian ad litem.”

- In December 2011, Colorado Chief Justice Bender signed a revised version of CJD 04-06 to address some of the issues raised in *Gabriesbeski*. As amended, the Directive continues to provide that “[a]ll attorneys appointed as GALs or Child’s Representatives shall be subject to all of the rules and standards of the legal profession.” However, the Directive now also provides that “[t]he unique statutory responsibilities of a GAL and a Child’s Representative do not set forth a traditional attorney-client relationship between the appointed attorney and the child; instead, the ‘client’ of a GAL or a Child’s Representative is the best interests of the child. The ethical obligations of the GAL or Child’s Representative, under the Colorado Rules of Professional Conduct, flow from this unique definition of ‘client.’ Because of this unique relationship, an attorney’s obligation not to reveal confidential information provided by the child does not apply if the information must be revealed to ensure the child’s best interests. A determination by the GAL or Child’s Representative of a child’s best interests must include consultation with the child in a developmentally appropriate manner and consideration of the child’s position regarding the disposition of the matter before the court. A GAL or Child’s Representative must also explain to the child the limitations on confidentiality.” According to Linda Weirnerman, Executive Director of the Office of the Child’s Representative (OCR), “the revised directive makes clear that GALs/CLRs are prevented by the Rules of Professional Conduct from disclosing confidential information when such disclosure is not in the best interests of the child. It is the OCR’s expectation that its attorneys litigate against disclosure of any information when such disclosure does not serve the best interests of a child.
- The revised Directive also explicitly requires the attorney GAL to provide the court with “a statement of the child’s position, when ascertainable based on the child’s developmental level, regarding the disposition of the matters addressed at the hearing. If a child informs the GAL that s/he does not want the GAL to report his or her position to the court at a specific hearing, the GAL may proceed without directly stating such position.” According to OCR Executive Director Linda Weirnerman, “[t]he OCR believes the revisions requiring consultation with the youth/child in a developmentally appropriate manner and providing the court with a statement of the child/youth’s position will significantly enhance GAL practice. Children/youth in dependency and neglect and other proceedings deserve to have a voice in the significant decisions being made about their lives. While GALs in Colorado are tasked with the unique responsibility of best interest legal representation, the GAL in Colorado is the conduit for the child/youth’s voice and must consider the child/youth’s position in making a best interest determination. While many GALs already incorporate such consultation in their practice and the OCR has trained all GALs on youth voice and empowerment, the revised directive now sets forth these requirements an official expectation of GALs in Colorado. The OCR will enforce these requirements through its contracting and oversight procedures.”
- Colorado’s Office of the Child’s Representative, the state agency charged with improving the representation for Colorado’s children, requires all of its contracted attorneys to attend 10 hours of specified training each year. This training is typically multidisciplinary in nature and, as of January 2010, has included a webinar component for distance learning. We commend Colorado for these efforts and urge Colorado to adopt these standards into law.

# CONNECTICUT



Score: 103

Grade: A+

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“A child shall be represented by counsel...who shall be appointed by the court to represent the child and to act as guardian ad litem for the child” (Conn. Gen. Stat. § 46b-129a(2)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The child or youth...shall be represented by counsel in each and every phase of any and all proceedings in child protection matters, including appeals” (2009 Connecticut Practice Book § 32a-1(b)). “In family and juvenile matters and other matters involving minor children, counsel for the minor child and/or counsel for the guardian ad litem shall, within ten days of the filing of the appellee’s brief, file either: (1) a brief, (2) a statement adopting the brief of either the appellant or an appellee, or (3) a detailed statement that the factual or legal issues on appeal do not implicate the child’s interests” (2009 Connecticut Practice Book § 67-13).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“The primary role of any counsel for the child, including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child’s wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law” (Conn. Gen. Stat. § 46b-129(a)(2)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

“The Chief Child Protection Attorney...shall...[e]stablish training... standards for the representation of children....The training standards for attorneys required by this subdivision shall be designed to ensure proficiency in the procedural and substantive law related to such matters and to establish a minimum level of proficiency in relevant subject areas, including, but not limited to, family violence, child development, behavioral health, educational disabilities and cultural competence” (Conn. Gen. Stat. § 46b-123d(a)(3)). All new contract attorneys are required to participate in three days of pre-service training, presented by the Center for Children’s Advocacy and various state experts in the child welfare field and any contract attorney renewing an annual contract with the Chief Child

Protection Agency must attend a minimum of two in-service trainings and two bi-monthly trainings offered through the Center for Children's Advocacy each year (The Second Annual Report of the Chief Child Protection Attorney, Commission on Child Protection (January 2009) at 23).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

Connecticut law recognizes children as parties to dependency proceedings (see, *e.g.*, 2011 Conn. Practice Book § 32a-1 *et seq.*). Connecticut law also provides children with several explicit rights, such as the right to notice “[t]he court shall provide notice to the child or youth, and the parent or guardian of such child or youth of the time and place of the court hearing on any such motion not less than fourteen days prior to such hearing” (Conn. Gen. Stat. § 46b-129(k)(1)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct” (Conn. Gen. Stat. § 46b-129a(2)).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 3 extra credit points

“The Chief Child Protection Attorney...shall...[e]stablish...caseload standards for the representation of children” (Conn. Gen. Stat. § 46b-123d(a)(3)). According to the Commission on Child Protection (COCP), “[n]ew attorneys, unless they had prior experience practicing in juvenile matters, are only permitted 25 cases during their first year....Since taking over in July of 2006 the COCP has reduced the number of attorneys who have been appointed clients in excess of 150 from 53 attorneys to only 8 attorneys. The number of attorneys with client assignments in excess of 100 has been reduced from 73 to 31 attorneys” (The Second Annual Report of the Chief Child protection Attorney, Commission on Child Protection (January 2009) at 26).

#### Sidebar Notes:

- While C.G.S. § 46b-129a requires that the attorney act primarily as a client-directed advocate, some child advocates in Connecticut believe that the hybrid role of attorney/GAL and the provision requiring a separate GAL be requested if the attorney's opinion of the child's best interest conflicts with the child's position, is inconsistent with the Rules of Professional Conduct and diminishes the adequacy of the legal representation provided to children.

# DELAWARE



Score: 57

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“In the event that the Family Court Judge determines...that an attorney guardian ad item should be appointed, the Family Court Judge shall sign an order appointing an attorney guardian ad litem” (29 Del. C. § 9007A(b)(1)). When a petition is filed to place a child in State custody, “the Court shall appoint an attorney authorized to practice law in this State or a Court-Appointed Special Advocate to represent the best interests of the child” (13 Del. C. § 2504(f)).

Basis for deduction: Under Delaware law, the appointment of an attorney for a child in a dependency proceeding is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“[T]he attorney guardian ad litem shall...[p]articipate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals” (29 Del. C. § 9007A(c)(6)). “The appointment shall last until the attorney guardian ad litem is released from responsibility by order of the Court, or until the attorney guardian ad litem’s commitment to the Court ends” (29 Del. C. § 9007A(b)(2)).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

“While attorney GALs are directed to ascertain the wishes of the child and make the child’s wishes known to the Court” (29 Del. C. § 9007A(c)(14)), “the scope of the representation of the child is the child’s best interests” (29 Del. C. § 9007A(c)). The court, in its discretion, “may also appoint an attorney to represent the child’s wishes” (13 Del. C. § 2504(f)).

Basis for deduction: A child may receive client-directed representation on a discretionary basis; if not, his/her wishes will be articulated to the court.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no

Points: 9 out of 10

“[T]he attorney guardian ad litem shall...[b]e trained by the Office of the Child Advocate or a course approved by the Office prior to representing any child before the Court. The attorney guardian ad litem shall be required to participate in ongoing training regarding child welfare” (29 Del. C. § 9007A(c)).

<p>such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?</p>	<p>Basis for Deduction: Although the term “child welfare” implies a range of multidisciplinary elements, the Delaware statute does not expressly require multidisciplinary training or education.</p>
<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 5 out of 10</p> <p>“The attorney guardian ad litem shall be a party to any child welfare proceeding in which the child is the subject, and shall possess all the procedural and substantive rights of a party” (29 Del. AC. § 9007A(b)(3)).</p> <p>Basis for deduction: Although Delaware law expressly grants party status to the attorney guardian ad litem, it does not expressly grant party status to the child. However, the child does have some rights through his/her attorney GAL, such as the right to appeal (29 Del. AC. § 9007A(b)(3); 13 Del. C. § 732(3)).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 6 out of 10</p> <p>“The attorney guardian ad litem shall have the duty of confidentiality to the child unless disclosure is necessary to protect the child’s best interests” (29 Del. C. § 9007A). “No attorney, director, investigator, social worker or other person employed or contracted by or volunteering for the Office of Child Advocate shall be subject to suit directly, derivatively or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any act or omission performed during or in connection with the discharge of his or her duties with the Office within the scope of his or her employment or appointment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in bad faith” (29 Del. C. § 9008A).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>While there is no Delaware law regarding caseload standards for attorneys representing children in dependency proceedings, Delaware attorneys do actually carry very low caseloads. Please see sidebar note below.</p>

**Sidebar Notes:**

- Delaware’s Office of the Child Advocate’s caseload standard of 35 children per attorney enables the volunteers and paid attorneys to become involved in every aspect of the child’s life. This report reflects state laws and not practices; therefore Delaware has not received any extra credit points despite their extraordinary efforts. We encourage Delaware to develop statutory caseload standards which reflect their outstanding work and which will protect the caseload standards in place should Delaware see an increase in the filing of child abuse and neglect petitions.
- In practice in Delaware, the child’s expressed wishes are an integral part of the best interest determination. And when a GAL’s assessment of the child’s best wishes conflict with the child’s stated wishes, the attorney is required to make the child’s wishes known to the Court. If the Court then concludes that a conflict exists, the practice of the Court is to appoint an attorney to advocate for the child’s expressed wishes. We commend this practice, but encourage Delaware to adopt this practice into law.

# DISTRICT OF COLUMBIA



Score: 89

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points 40 out of 40

“The Superior Court shall in every case involving a neglected child which results in a judicial proceeding, including the termination of the parent and child relationship..., appoint a guardian ad litem who is an attorney to represent the child in the proceedings” (DC Code §16-2304(b)(5)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“Appointed counsel shall represent the person throughout the proceedings unless the appointment is terminated by order of the Court before the proceedings are concluded. In cases in which an appeal is available as of right, appointed trial counsel shall advise the person of his or her right to appeal and to counsel on appeal. If requested to do so by the person, counsel shall file a timely notice of appeal and shall continue to represent the person until relieved by the Court of Appeals” (DC Fam. Ct. Admin. Order 04-05).

“Trial counsel must protect his or her client’s interests by responding in a thorough and timely manner to any post-trial motions, notice of appeal and order for transcript filed by any adverse party. This obligation remains in effect until appellate counsel has been appointed for his or her client” (Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 (Feb. 28, 2003), at § F-1).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

“The guardian ad litem shall in general be charged with the representation of the child’s best interest” (DC Code § 16-2304(b)(5)). “If there is a conflict between the guardian ad litem and the child regarding the child’s best interests, and the conflict cannot be reconciled, the Court may appoint an attorney to advocate for the child” (DC Fam. Ct. Admin. Order 04-05). “If the guardian ad litem’s assessment of the child’s best interests conflict with the views of the child, the guardian ad litem shall notify the court and an attorney may be appointed to serve as the child’s counsel” (Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 (Feb. 28, 2003), at § A-6)).

Basis for deduction: A child may receive client-directed counsel on a discretionary basis but if not, his/her wishes must be articulated to the court.

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4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

Points: 9 out of 10

"Counsel shall only accept an appointment or otherwise appear in child abuse and neglect proceedings if they are knowledgeable of substantive and procedural child abuse and neglect laws and have participated in the required training programs....Prior to an initial appointment all counsel must receive certification of training that includes classroom instruction as well as courtroom observation.... Each year, all counsel on the CCAN eligibility list must attend 16 hours of continuing formal CCAN training on abuse and neglect-related topics to continue to represent parties in child abuse and neglect proceedings" (Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 (Feb. 28, 2003), at § A-1).

Basis for Deduction: Although the term "abuse and neglect-related topics" implies a range of multidisciplinary elements, District of Columbia law does not expressly require multidisciplinary training or education.

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

"Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child" (D.C. Code § 16-2356).

Basis for deduction: While District of Columbia law expressly states that children are parties to proceedings for the termination of the parent and child relationship, it omits children from the list of individuals upon whom the summons and petition must be served in neglect proceedings (D.C. Code § 16-2357).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

"When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a typical client-lawyer relationship with the client" (D.C. Bar Appx. A, Rule 1.14).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 3 extra credit points

"Counsel should maintain a manageable caseload to adequately represent clients and avoid numerous scheduling conflicts" (Superior Court of the District of Columbia Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 (Feb. 28, 2003), at A-4 and D-1).

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# FLORIDA



Score: 55

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding...” (Fla. Stat. § 39.822(1)). “Guardian ad litem’...includes the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law” (Fla. Stat. § 39.820(1)). “At any stage of the proceedings, any party may request or the court may consider whether an attorney ad litem is necessary to represent any child alleged to be dependent” (Fla. R. Juv. P., Rule 8.217(a)).

Basis for deduction: Florida law provides that appointment of an attorney for a child in dependency proceedings is discretionary, not mandatory.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 0 out of 10

Basis for Deduction: Florida law does not define the duration of appointment.

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

If an attorney ad litem is appointed for a child, such appointment is for the representation of the child’s legal interests, as opposed to the child’s best interests (Fla. Stat. § 39.4085). “The Legislature... establishes the following goals for children in shelter or foster care...[t]o have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests” (Fla. Stat. § 39.4085).

The GAL must file a written report including a statement of the wishes of the child, among other things (Fla. Stat. § 39.807(2)(b)(1)).

Basis for deduction: A child may receive client-directed representation on a discretionary basis, but if not, his/her wishes must be articulated to the court.

4. To what extent are specialized education and/or training requirements for the child’s

Points: 8 out of 10

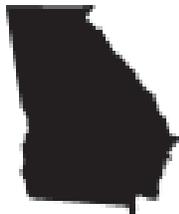
“Any attorney ad litem...appointed shall have special training in the dynamics of child

<p>counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?</p>	<p>sexual abuse" (Fla. Stat. § 39.0139(4)).</p> <p>Basis for Deduction: Florida law requires an attorney ad litem to have specialized training in child sexual abuse but does not require multidisciplinary training or education.</p>
<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 10 out of 10</p> <p>The terms "party" and "parties" shall include...the child..." (Fla. R. Juv. P. 8.210(a)). Although Florida law authorizes the court to exclude a child from a hearing, it is only upon finding "that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child" (Fla. R. Juv. P., Rule 8.255(b)).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>"When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Fla. Bar Reg. R. 4-1.14).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Florida law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**Sidebar Note:**

- The Florida Bar Foundation provides funding for many legal service providers to represent children. This is partially funded through a license plate issued by the state of Florida. This funding has now expanded to 20 programs representing children as part of the Children's Legal Services program.
- In February 2010, the Florida Legislature considered Senate Bill 1860 (Altman), regarding legal representation for children. Among other things, the measure would have given each child in a dependency proceeding the right to attend and have representation and fully participate in all court hearings and to be informed of these rights; requested that the Supreme Court adopt rules on attorney . . . standards of practice in dependency proceedings; and provided that a child who has his or her own attorney may not be denied the right to be represented by that attorney at all stages of all proceedings. The measure would have clarified the intent of the legislature that a child who meets specified criteria be appointed an attorney. These criteria included a child who has not been permanently placed and has been continuously in out-of-home care as measured from initial entry into shelter care (a) for more than two years and the department has not filed a petition for termination of parental rights; or (b) for more than 18 months and parental rights have been terminated, or a child who has sufficient intelligence, understanding, and experience and disagrees with or conflicts with the guardian ad litem's interpretation of his or her best interests. Further, the bill would have authorized the court to appoint an attorney for the child at any point in any proceeding. On April 30, 2010, this measure died in the Senate Committee on Children, Families, and Elder Affairs.

# GEORGIA



Score: 68

Grade: D

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 20 out of 40

“Except as otherwise provided..., a party is entitled to representation by legal counsel at all stages of any proceedings alleging...deprivation and if, as an indigent person, a party is unable to employ counsel, he or she is entitled to have the court provide counsel for him or her....Counsel must be provided for a child not represented by the child’s parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them” (O.C.G.A. § 15-11-6(b)). “[T]he court shall appoint an attorney to represent the child as the child’s counsel and may appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child’s counsel” (O.C.G.A. § 15-11-98(a)).

Basis for deduction: Although Georgia’s statutes entitle a child to legal representation at all stages of the proceedings, separate counsel is only specifically required for proceedings terminating parental rights. Georgia case law has established that in all other proceedings, when children are placed in the custody of the Department of Human Resources and the Department is represented by counsel, such representation “also constitute[s] representation by counsel on behalf of the children”. (*Williams v. Department of Human Resources*, (1979) 150 Ga. App. 610, 611.) Thus, independent counsel is required for children with major restrictions.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“Except as otherwise provided,...a party is entitled to representation by legal counsel at all stages of any proceedings” (O.C.G.A. § 15-11-6(b)).

“In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as the child’s counsel” (O.C.G.A. § 15-11-98).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

“In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as the child’s counsel” (O.C.G.A. § 15-11-98(a)).

In 2010, the State Bar of Georgia issued a Formal Advisory Opinion stating that when there is a conflict between what the child wants and the attorney’s considered opinion of the child’s best interests, the attorney must withdraw from his or her role as guardian ad litem (State Bar of Georgia, Formal Advisory Opinion No. 10-2 (Oct.

14, 2010)).

Basis for deduction: A child will receive client-directed representation only in certain proceedings.

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4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

Points: 6 out of 10

"In deprivation cases, a person appointed as a child's guardian ad litem must have received before the appointment training appropriate to the role that is administered or approved by the Office of the Child Advocate and may be an attorney or court appointed special advocate, or both" (O.G.C.A. § 15-11-9(b)).

Basis for Deduction: Although Georgia requires specialized multidisciplinary training for attorney GALs appointed in deprivation cases, it does not expressly require such training for attorneys appointed pursuant to O.C.G.A. § 15-11-98(a).

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

"The court...shall appoint a guardian ad litem for a child who is a party to the proceeding" (O.C.G.A. § 15-11-9(b)). "A party other than the child may waive service of summons by written stipulation or by voluntary appearance at the hearing" (O.C.G.A. § 15-11-39).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

"When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of age, mental or medical disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Ga. R. & Regs. St. Bar Rule 1.14(a)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Point: 0 extra credit points

Georgia law does not provide statewide caseload standards for attorneys representing children in dependency proceedings (however, *see* Sidebar Note below regarding the practice in DeKalb County).

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## Sidebar Notes:

- According to an official with the DeKalb County Child Advocacy Center (DCCAC), DeKalb County has heightened practice standards for child representation as a result of the county's adherence to consent decree entered in *Kenny A. v. Perdue et. al.*, No. 1:02-cv-1686-MHS (N.D. Ga. May 16, 2006) (Order for Final Approval of Consent Decrees). DCCAC was actually established in response to the concerns about the previous deficits in child representation in the county. A standing order of the DeKalb County Juvenile Court provides that an attorney from the DCCAC shall be appointed to represent all children in deprivation (dependency) matters who enter foster care in DeKalb County.
- DCCAC attorneys serve in the dual capacity as both attorney and GAL for child-clients. However, in the event that a DCCAC attorney has a conflict of interest, he or she remains on as a client-directed attorney and asks the court to appoint a separate guardian for the child to represent the child's best interest. The court may appoint an attorney GAL or a Court Appointed Special Advocate (CASA) to represent the child's best interest. Once assigned, a court-appointed attorney GAL or CASA will represent the child for the duration of the case. DCCAC attorneys represent child-clients until the case is closed.
- On January 9, 2012, the Georgia Supreme Court approved State Bar Formal Advisory Opinion 10-2 (Case No. S11U0730). This opinion is now binding law upon all members of the State Bar of Georgia. The opinion provides that there is no inherent conflict that prevents an attorney from serving in the dual role of both attorney for the child and GAL for the child.
- The DeKalb County Child Advocacy Center requires child advocate attorneys to take a minimum of eight child-welfare related continuing legal education (CLE) credit hours each year. Also, the DCCAC sponsors monthly in-service trainings that focus on issues unique to the child welfare practice. In addition to monthly in-service trainings, DCCAC hosts CLE trainings for attorneys who are on the approved list to receive court-appointed cases to represent parents or children in deprivation (dependency) proceedings before the DeKalb County Juvenile Court.
- Although Georgia law appears to provide that the child is a party to dependency proceedings, the Georgia Court of Appeals recently held that an unemancipated minor in a deprivation proceeding had no right to appeal a matter without a GAL or next friend, *In the Interest of W.H.L.* (2012) (2012 Ga.App. LEXIS 140). If this decision stands, future editions of this report will reevaluate the score with regard to Criterion 5.
- Pursuant to the practice standards agreed upon in the *Kenny A.* consent decree, DeKalb County requires DCCAC attorneys to maintain caseloads of no more than 130 cases. The DeKalb County Child Advocacy Center's practice, however, is to limit child advocate attorney caseloads to a maximum of 100 cases per attorney, whenever possible.
- While Georgia statute O.C.G.A. § 15-11-9(b) implies that a child is a party and the Georgia appellate case of *McBurrough v. Department of Human Resources* ((1979) 257 S.E.2d 35) acknowledges that children are parties at least entitled to counsel and notice, in practice Georgia's juvenile courts have not uniformly recognized the child's status as a party. We encourage advocates in Georgia to push their juvenile courts to uphold the law of Georgia.
- Although Georgia has no statewide caseload standards for dependency attorneys, the Atlanta counties of Fulton and DeKalb operate under a Settlement Agreement that prescribes maximum caseloads. In 2002 advocates from these counties worked with the national advocacy group, Children's Rights, to file *In re Kenny A.*, a class action alleging, *inter alia*, that children in Georgia's foster care system are denied adequate legal representation due to the high caseloads of the attorneys assigned to represent them. In February 2005 the U.S. District Court for the Northern District of Georgia found that abused and neglected children have a constitutional right to adequate legal representation at every major stage of their life in state custody. (*In re Kenny A.* (N.D. Ga. 2005) 356 F. Supp. 2d 1353. We commend the work of all the advocates who worked on the *Kenny A.* case and encourage Georgia to use the Settlement Agreements as a template for statewide caseload standards.

# HAWAII



Score: 47  
Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points 15 out of 40

“The court shall appoint a guardian ad litem for a child to serve throughout the pendency of child protective proceedings” (HRS § 587A-16(a)).  
The term guardian ad litem “means any person who is appointed by the court...to protect and promote the needs and interests of a child or a party, including a court-appointed special advocate” (HRS § 587A-4).

Basis for deduction: Although appointment of a GAL is mandatory in Hawaii, there is no requirement that the GAL be an attorney. Appointment of an attorney for children in dependency proceedings is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 0 out of 10

Hawaii law provides that an attorney appointed to serve as a child’s legal advocate extends only “during such proceedings as the court deems to be in the best interests of the child” (HRS § 587A-16(c)(6)).

Basis for deduction: Hawaii law does not ensure a child’s representation by an attorney during all proceedings before the juvenile court or on appeal.

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

“If the child’s opinions and requests differ from those being advocated by the guardian ad litem, the court shall evaluate and determine whether it is in the child’s best interests to appoint an attorney to serve as the child’s legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child” (HRS § 587A-16(c)(6)).

Basis for deduction: A child may receive client-directed representation, but if not, his/her opinions and requests will be articulated to the court.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state

Points: 0 out of 10

Basis for deduction: Hawaii law does not specify any training requirements for attorneys representing children in dependency proceedings.

law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Party’ means...a child who is subject to a proceeding under this chapter” (HRS § 587A-4).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (HI R. of Prof. Conduct 1.14(a)).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Hawaii law does not address caseload standards for attorneys representing children in dependency proceedings.



# IDAHO



Score: 45

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 of 40

“In any proceeding under this chapter the court shall appoint a guardian ad litem for the child or children to serve at each stage of the proceeding and in appropriate cases shall appoint counsel to represent the guardian, and in appropriate cases, may appoint separate counsel for the child” (Idaho Code § 16-1614(1)).

Basis for deduction: Under Idaho law, the appointment of an attorney to represent a child in dependency proceedings is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

Basis for deduction: Idaho law does not expressly extend the appointment of children’s counsel to include appeals.

3. To what extent will a child receive client-directed representation?

Points: 4 out of 20

“For a child under the age of twelve (12) years the attorney will have the powers and duties of a guardian ad litem. For a child twelve (12) years of age or older, the court may order that the counsel act with or without the powers and duties of a guardian ad litem” (Idaho Code § 16-1614(2)).

Basis for deduction: Under Idaho law, the appointment of client-directed counsel for children in dependency proceedings (even for those aged 12 or older) is discretionary.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel,

Points: 6 out of 10

Basis for Deduction: Although Id. R. Juv. Rule 35 requires GALs to complete specialized multidisciplinary training it does not require non-GAL attorneys to complete such training.

to what extent is it required for a child's GAL?

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

Basis for deduction: Idaho law gives party rights to the guardian ad litem, but not to the child (Idaho Code §16-1634(1)). However, the GAL's party status assures that the child will receive some rights, such as notice.

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

"When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (ID R. of Prof. Conduct 1.14(a)).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Idaho law does not address caseload standards for attorneys representing children in dependency proceedings.



# ILLINOIS



Score: 63

Grade: D

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“No hearing on any petition or motion...may be commenced unless the minor who is the subject of the proceeding is represented by counsel. Notwithstanding the preceding sentence, if a guardian ad litem has been appointed for the minor...and the guardian ad litem is a licensed attorney..., or in the event that a court appointed special advocate has been appointed as guardian ad litem and counsel has been appointed to represent the court appointed special advocate, the court may not require the appointment of counsel to represent the minor unless the court finds that the minor’s interests are in conflict with what the guardian ad litem determines to be in the best interest of the minor” (705 ILCS 405/1-5).

Basis for deduction: Under Illinois law, the appointment of an attorney to represent a child in dependency proceedings is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

“Counsel appointed for the minor and any indigent party shall appear at all stages of the trial court proceeding, and such appointment shall continue through the permanency hearings and termination of parental rights proceedings subject to withdrawal or substitution pursuant to Supreme Court Rules or the Code of Civil Procedure” (705 ILCS 405/1-5).

Basis for Deduction: Illinois law expressly guarantees counsel for children during the trial court proceeding but not on appeal.

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

The court requires the appointment of counsel to represent the minor’s interests if it finds that the minor’s interests are in conflict with what the guardian ad litem determines to be in the best interest of the minor (705 ILCS 405/1-5).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to

Points: 3 out of 10

Basis for deduction: Although Illinois does require multidisciplinary training requirements for some GALs, who may or may not be attorneys, it does not mandate such training for all GALs (705 ILCS 405/2-17).

include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

Minors "have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and...to be represented by counsel" (705 ILCS 405/1-5). Additionally, the rights of children are listed in Illinois statute 705 ILCS 405/1-5 which is titled "Rights of parties to proceedings" so children are considered parties in Illinois.

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

"The privileged character of communication between any professional person and patient or client, except privilege between attorney and client, shall not apply to proceedings subject to this Article" (705 ILCS 405/2-18).

"When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (IL R. of Prof. Conduct 1.14).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Illinois law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Notes:

- While children in Illinois are provided with an attorney when the child's wishes conflict with the guardian ad litem's determination of the child's best interests, advocates in Illinois have expressed concern that often the attorney role gets short shrift as compared to the voice of the guardian ad litem. First Star and the Children's Advocacy Institute encourage Illinois to clarify that a child's voice must always be heard in dependency proceedings.

# INDIANA



Score: 49

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“The court may appoint counsel to represent any child” in dependency proceedings (Burns Ind. Code Ann. § 31-32-4-2).

Basis for deduction: Under Indiana law, the appointment of an attorney for a child in dependency proceedings is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

Basis for deduction: Indiana law does not expressly guarantee counsel for children at the appellate stage of dependency proceedings.

3. To what extent will a child receive client-directed representation?

Points: 3 out of 20

Basis for deduction: Indiana law is vague with regard to whether an attorney appointed for a child in dependency proceedings is required to advocate for the expressed wishes of the child in a client directed manner (“[a] guardian ad litem or court appointed special advocate need not be an attorney, but the attorney representing the child may be appointed the child’s guardian ad litem or court appointed special advocate” (Burns Ind. Code Ann. § 31-32-3-3)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 6 out of 10

Under legislative changes scheduled to go into effect as of July 1, 2012, a guardian ad litem must complete training appropriate for the person’s role, including training in the identification and treatment of child abuse and neglect and early childhood, child, and adolescent development (Burns Ind. Code Ann. § 31-9-2-50(b)(3), as will be amended by 2012 Ind. ALS 48).

Basis for Deduction: Although specialized multidisciplinary training is not required for a child’s counsel, it is required for attorneys and non-attorney GALs.

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

Children “are parties to the proceedings described in the juvenile law and have all rights of parties under the Indiana Rules of Trial Procedure” (Burns Ind. Code § 31-34-9-7).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (IN R. of Prof. Conduct 1.14(a)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Indiana law does not address caseload standards for attorneys representing children in dependency proceedings.

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**Sidebar Notes:**

- Indiana code provides, except in cases of gross misconduct, immunity from any civil liability that may occur as a result of that person’s performance during the time that the person is acting within the duties of the GAL (Burns Ind. Code § 31-32-3-10). This civil immunity provision applies only to individuals acting as a guardian ad litem or CASA whether or not they are attorneys. If an individual is appointed as an attorney for a child and not as a guardian ad litem, they are covered by the Rules of Professional Conduct and do not receive civil immunity.



# IOWA



Score: 90

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“Upon the filing of a petition, the court shall appoint counsel...for the child” (Iowa Code § 232.89(2)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The attorneys and guardians ad litem of record in the district court shall be deemed the attorneys and guardians ad litem in the appellate court unless others are retained or appointed and notice is given to the parties and the clerk of the supreme court” (Iowa R. App. P., Rule 6.109).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

The child will receive client-directed representation. “The same person may serve both as the child’s counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interest of the child as guardian ad litem” (Iowa Code § 232.89(4)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 0 out of 10

Basis for Deduction: Iowa law does not mandate specialized education and/or training for attorneys representing children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all rights

Points: 10 out of 10

Under Iowa law, the petition recognizes the child as a party to the proceedings (Iowa

<p>appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Code § 232.89(2)).</p> <p>Notice shall also be served upon the child and upon the child’s guardian ad litem, if any (Iowa Code § 232.37(2)).</p> <p>If a child is of an age appropriate to attend the hearing but the child does not attend, the court shall determine if the child was informed of the child’s right to attend the hearing (Iowa Code § 232.91(3)).</p> <p>“Any person who is entitled...to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child” (Iowa Code § 232.91(3)).</p> <p>“An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact” (Iowa Code § 232.133(1)).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (IA R. of Prof. Conduct 32:1.14).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Iowa law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

# KANSAS

Score: 92

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“Upon the filing of a petition, the court shall appoint an attorney to serve as guardian *ad litem* for a child who is the subject of proceedings under this code” (K.S.A. § 38-2205(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“A guardian ad litem appointed to represent the best interests of a child or a second attorney appointed for a child as provided in subsection (a), ...shall continue to represent the client at all subsequent hearings in proceedings under this code, including any appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue” (K.S.A. § 38-2205).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

Basis for deduction: The attorney GAL is required to articulate, but not advocate for, the child’s position when it differs from the determination of the attorney GAL with regard to the child’s best interests. “The guardian ad litem shall ... represent the best interests of the child. When the child’s position is not consistent with the determination of the guardian ad litem as to the child’s best interests, the guardian ad litem shall inform the court of the disagreement. The guardian ad litem or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney” (K.S.A. § 38-2205(a)). Thus, the child may receive client-directed representation on a discretionary basis, but if not, the child’s wishes will be articulated to the court.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s

Points: 10 out of 10

Attorneys serving as guardian ad litem are to participate in prerequisite education prior to appointment. “Areas of education should include, but are not limited to, dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and communication with children skills and information gathering and investigatory techniques; advocacy skills; child development; mental health issues; permanence and the law; community resources; professional responsibility; special education law; substance abuse issues; school law; and the code for the care of children....Upon the request of the appointing judge or designee, the guardian ad litem shall be required to provide evidence of compliance with this order” (KS Sup.

GAL?

Ct. Admin. Order 100).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Party’ means... the child” (K.S.A. § 38-2202(u)).

“The summons and a copy of the petition shall be served on: (1) The child alleged to be a child in need of care by serving the guardian ad litem appointed for the child” (K.S.A. § 38-2236(a)(1)).

“The court may not exclude the guardian ad litem, parties and interested parties” (K.S.A. § 38-2247(a)(1)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (KS R. of Prof. Conduct 1.14).

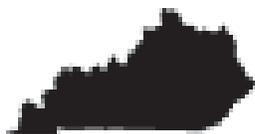
Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Kansas law does not address caseload standards for attorneys representing children in dependency proceedings.



# KENTUCKY



Score: 68

Grade: D

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“If the court determines, as a result of a temporary removal hearing, that further proceeding are required, the court shall advise the child and his parent or any other person exercising custodial control.....and shall appoint counsel for the child” (KRS § 620.100).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

Basis for Deduction: Although Kentucky law appears to provide for the child’s counsel appointment to continue through further proceedings before the Juvenile Court (KRS § 620.100), it does not expressly guarantee counsel for the child on appeal.

3. To what extent will a child receive client-directed representation?

Points: 3 out of 20

Basis for deduction: Kentucky law is vague as to the role of counsel appointed to represent children in dependency proceedings. It would appear that because Kentucky law authorizes the court to “appoint a court-appointed special advocate volunteer to represent the best interests of the child” (KRS § 620.100(1)(d)), the role of the counsel might be to represent the expressed wishes of the child; however, Kentucky law does not expressly state that this is the case.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 0 out of 10

Basis for Deduction: Although training is required for CASAs, Kentucky law does not mandate specialized training or education requirements for attorneys in dependency proceedings.

<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 10 out of 10</p> <p>Children in Kentucky appear to have the status of party (“[a]ny interested party including the ...child...may appeal from the juvenile court to the Circuit Court as a matter of right” (KRS § 620.155) with all the rights appurtenant thereto (“[i]f the court determines that further proceedings are required, the court shall advise the child... that they have... a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal” (KRS § 620.100(2)).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, age, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (KY R. of Prof. Conduct 1.14).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Kentucky law does not address caseload standards in dependency proceedings.</p>

**Sidebar Notes:**

- The Administrative Office of the Courts has been responsible for preparing attorneys to provide legal representation to abused and neglected children across Kentucky since 1999. As part of this responsibility, the Administrative Office of the Courts has created a Guardian Ad Litem Program. The goal of this program is to produce highly qualified guardians ad litem by coordinating training sessions, providing educational materials and serving as an overall resource. The current training curriculum gives attorneys an overview of Kentucky statutory and case law as well as the federal law that requires reasonable efforts to keep families together and provide children with safe and permanent homes.
- The Administrative Office of the courts publishes recommendations for Guardians Ad Litem. These recommendations include the standard that a GAL should advocate for the child’s best interests and advise the court when the child disagrees with the attorney’s assessment of the case.

# LOUISIANA



Score: 95

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“In every proceeding under this Title, the court shall appoint independent counsel for the child, or refer the child for representation by the indigent defender board. Neither the child nor anyone purporting to act on his behalf may be permitted to waive this right” (La Ch.C. Art. 607).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“Each child has a right to independent counsel at every stage of Child in Need of Care proceedings, which right begins at the continued custody hearing and continues through subsequent Certification for Adoption proceedings, including any relevant writs or appeals” (La. Sup. Ct. R. XXXIII, Part III, Subpart II, Standard 1).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“Counsel for a child should...determine the client’s desires and preferences in a developmentally appropriate and culturally sensitive manner; and....advocate for the desires and expressed preferences of the child and follow the child’s direction throughout the case in a developmentally appropriate manner” (La. Sup. Ct. Rule XXXIII, Part III, Subpart II, Standard 4).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

“Counsel providing representation in child protection proceedings should have specialized knowledge and skills essential for effective representation and should participate in multidisciplinary interaction together with other professionals involved with the child, including interdisciplinary communication, investigation, discovery, meetings, conferences, proceedings, and administrative hearings” (La. Ch.C. Art. 551).

“Effective July 1, 2005, the attorney shall have completed within the last two years a minimum of eight hours of training or education relevant to child abuse and neglect cases, and/or shall have sufficient knowledge to satisfy the court of the attorney’s qualifications. Evidence of qualifications may include proof of attendance at relevant continuing education programs or documentation of qualifications signed by a judge...Effective January 1, 2006 and thereafter, the attorney shall complete a minimum of six hours of approved continuing legal education each calendar year, and shall submit to the Supreme Court documentation of compliance no later than January 31 of the

following calendar year. The requisite education shall include relevant law and jurisprudence, child development, child abuse and neglect, and the roles, responsibilities and duties of independent counsel for children, including the Standards for Representation of Children” (La. Sup. Ct. Rule XXXIII, Part III, Subpart I, Section 3).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

Basis for deduction: Louisiana law does not expressly define the term “party” with regard to dependency proceedings. While Louisiana law does expressly give children many of the rights appurtenant to somebody with party status, such as the right “to introduce evidence, call witnesses, be heard on their own behalf, and cross-examine witnesses called by the state” (La Ch. C. Art. 662), the right to request discovery (La. Ch.C. Art. 652), the right to object to the parent’s answer (La. Ch.C. Art. 649), the right to be present at the adjudication hearing (La. Ch.C. Art. 661), and the right to counsel (La Ch.C. Art. 607), it does not include children in the list of individuals entitled to notice of any court hearing, which notice must also inform the recipient of his/her right to attend and be heard (La Ch.C. Art 623).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“An attorney serving as independent counsel for a child owes the same duties of loyalty, confidentiality, advocacy and competent representation to the child as are owed to any client” (La. Sup. Ct. R. XXXIII, Part III, Subpart II, Standard 2).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Louisiana law does not address caseload standards for children’s counsel in dependency proceedings.

#### Sidebar Note:

- Responses to our survey indicate that although Louisiana law itself does not address caseload standards, these standards are a component of contracts with, and internal rules of, entities handling representation of children, and the Task Force on Legal Representation in Child Protection Cases monitors their representation.
- One prominent Louisiana child law expert noted that Louisiana’s use of Court Appointed Special Advocates (CASA) under Louisiana Children’s Code articles 424.1-424.10. Once appointed, these CASAs are to be given notice of every hearing to ensure the child’s voice is heard. Additionally, under Louisiana Children’s Code Article 625, the Court is authorized, although not mandated, to explain the nature of the proceeding to the child.

# MAINE



Score: 58

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child” (22 M.R.S. § 4005(1)(A)). “Guardians appointed in child protection proceedings... shall be either a court-appointed special advocate or an attorney” (Me R. for Guardians Ad Litem II(I)(B)). “The guardian ad litem or the child may request the court to appoint legal counsel for the child” (22 M.R.S. § 4005(1)(F)).

Basis for deduction: Under Maine law, the appointment of an attorney to serve as the child’s GAL and the appointment of separate legal counsel for the child are discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court” (22 M.R.S. §4006).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

Basis for deduction: A child may receive client-directed counsel on a discretionary basis, but if not, Maine law expressly requires the child’s GAL, who may be an attorney, to “make the wishes of the child known to the court if the child has expressed his wishes, regardless of the recommendation of the guardian ad litem” (22 M.R.S. § 4005(1)(E)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Point: 6 out of 10

Basis for Deduction: Although Maine requires multidisciplinary training for GALs, who may be attorneys (Maine Rules for GALs, Rule II(2)(C)(ii)), it does not expressly require training for separate legal counsel who may be appointed to represent children in dependency proceedings.

<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 5 out of 10</p> <p>Basis for deduction: Although the child is given some rights through his/her GAL (service of the petition and notice of hearing pursuant to 22 MRS 4033(1)(A)), Maine law does not expressly give children party status in dependency proceedings.</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Me. Rules of Prof'l Conduct 1.14).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Maine law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**Sidebar Notes:**

- In 2010, Maine amended state law to provide that the “District Court shall consider the wishes of the child, in a manner appropriate to the age of the child, including, but not limited to, whether the child wishes to participate or be heard in court. In addition, when a child’s expressed views are inconsistent with those of the guardian ad litem, the Court shall consider whether to consult with the child directly, when the child’s age is appropriate” (22 M.R.S. § 4005(3)).
- Maine advocates note that the appointment of counsel or GAL during family court matters is a high priority and that more advocacy is needed for federal financial support of the GAL program.
- The Maine Judicial Branch is taking a look at GAL oversight and has scheduled a meeting to receive input and suggestions for the establishment of cost-effective, professional oversight of GALs in Child Protection and Family Matter proceedings in the State Courts. [http://www.courts.state.me.us/news\\_reference/news/current/gal\\_notice.html](http://www.courts.state.me.us/news_reference/news/current/gal_notice.html)

# MARYLAND



Score: 93

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“A child who is the subject of a CINA petition shall be represented by counsel” (Md. Courts and Judicial Proceedings Code Ann 3-813(d)(1).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“[A] party is entitled to the assistance of counsel at every stage of any proceeding” (Md. Courts and Judicial Proceedings Code Ann. §3-813(a)).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“The attorney should determine whether the child has considered judgment as defined....If the child has considered judgment, the attorney should so state in open court and should advocate a position consistent with the child’s wishes in the matter. If the attorney determines that the child lacks considered judgment, the attorney should so inform the court. The attorney should then advocate a position consistent with the best interests of the child” (MD Guidelines for Attys Rep CINA).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 3 out of 10

“Lawyers who seek to represent children in these proceedings are encouraged to seek training and education in such subjects as: a. the role of child’s counsel; b. assessing considered judgment; c. basic interviewing techniques; d. child development: cognitive, emotional, and mental stages; e. federal and state statutes, regulations, rules, and case law; f. overview of the court process and key personnel in child-related litigation; g. applicable guidelines and standards of representation; h. family dynamics and dysfunction, including substance abuse and mental illness; i. related issues, such as domestic violence, special education, mental health, developmental disability systems, and adult guardianships; j. social service agencies, child welfare programs, and medical, educational, and mental health resources for the child and family; and k. written materials, including related motions, court orders, pleadings, and training manuals” (MD Guidelines for Attys Rep CINA, F2).

Basis for deduction: Maryland law encourages but does not require specialized education and/or training for child’s counsel.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

Maryland law expressly gives children party status in dependency proceedings (“party means...(a) child who is the subject of a petition” (Md. Courts and Judicial Proceedings Code Ann 3-801(u)(1)(i)). “[I]n creating the statutory scheme governing the status of a child in a termination of parental rights action following a CINA action, the legislature intended to make the child a party to the proceeding” (*In Re Adoption/Guardianship No. T97036005 et al.* (2000) 358 Md. 1, 15 [746 A.2d 379, 387]).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (MD R. of Prof. Conduct 1.14).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

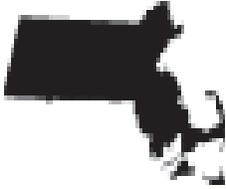
Points: 0 extra credit points

Maryland law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Notes:

- Courts are required, unless it is not in the child’s best interests, to appoint as counsel those who have contracts to do so with the state government (MD Courts and Judicial Proc. Code Ann. 3-813). The contracts set forth various requirements for the attorneys including sixteen hours of annual training and annual caseloads.
- The current contract for representation of children requires that contractors ensure that each attorney maintains an attorney client ratio of not more than 150 cases per attorney.

# MASSACHUSETTS



Score: 104

Grade: A+

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

A child in dependency proceedings “shall have and shall be informed of the right to counsel, and the court shall appoint counsel for” the child if he/she is not able to retain counsel (ALM G Lch.119, § 29).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points 10 out of 10

“Counsel shall represent the client on all appellate matters until appellate counsel files an appearance” (Massachusetts Committee for Public Counsel Services, Children and Family Law Division, *Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases*, 8.1(c)).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“If counsel reasonably determines that the child is able to make an adequately considered decision with respect to a matter in connection with the representation counsel must represent the child’s expressed preferences regarding that matter” (Massachusetts Committee for Public Counsel Services, Children and Family Law Division, *Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases*, 1.6(b)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 9 out of 10

“Accepted trial panel applicants must complete a five-day trial panel certification-training course. Thereafter, attorneys must work with a mentor assigned by the CAFL program. Once certified for the trial panel, attorneys must maintain certification through the annual completion of 8 hours approved continuing legal education on a fiscal year basis” (Massachusetts Committee for Public Counsel Services Training Requirements).

Basis for deduction: Although multidisciplinary elements are impliedly required as part of the specialized education and/or training, they are not expressly required.

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Party—any person, including a juvenile, in a civil matter in which the person has a right to counsel” (MA Sup. Jud. Ct. Rule 3:10(1)(I)).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“Counsel for a child owes the same duties of undivided loyalty, confidentiality, zealous advocacy and competent representation to the child as is due an adult client, consistent with the Massachusetts Rules of Professional Conduct” (Massachusetts Committee for Public Counsel Services, Children and Family Law Division, *Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases*, 1.1(d)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 5 extra credit points

“Counsel shall decline the assignment if...counsel is unable to afford the client prompt, diligent representation....Commentary: Counsel cannot provide prompt, diligent representation of a client if (a) counsel is unable to begin working on the case promptly or (b) counsel is unable to appear in court on an assigned date and cannot arrange a continuance that is consistent with the client’s interests. It is counsel’s responsibility to be aware of the caseload limits of the Committee for Public Counsel Services (CPCS) found in the CPCS Manual for Assigned Counsel (2003). Counsel should not accept any assignment which will cause him or her to exceed these limits” (Massachusetts Committee for Public Counsel Services, Children and Family Law Division, *Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases*, 1.2(b)).

“The committee has established the following maximum caseload limits for open Children and Family Law cases that an attorney may carry at one time. Open cases include cases that are both pre-judgment and post-judgment: Child Welfare Cases - 75” (Massachusetts Committee for Public Counsel Services Manual for Assigned Counsel (2011) at Ch. 5, No. 22).



# MICHIGAN



Score: 82

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40.

“In each case filed under this act in which judicial proceedings are necessary, the court shall appoint a lawyer-guardian ad litem to represent the child” (MCL § 722.630). In a child protection proceeding, “the court shall appoint a lawyer-guardian ad litem to represent the child. The child shall not waive the assistance of a lawyer-guardian ad litem” (MCL § 712A.17c(7)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points 10 out of 10

The duties of the lawyer-guardian ad litem include “full and active participation in all aspects of the litigation” (MCL §712A.17d(1)(b)).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

Basis for deduction: A child may receive client-directed representation but if not, the lawyer-guardian ad litem must communicate the child’s position to the court. “The lawyer-guardian ad litem’s powers and duties include...To make a determination regarding the child’s best interests and advocate for those best interests according to the lawyer-guardian ad litem’s understanding of those best interests, regardless of whether the lawyer-guardian ad litem’s determination reflects the child’s wishes. The child’s wishes are relevant to the lawyer-guardian ad litem’s determination of the child’s best interests, and the lawyer-guardian ad litem shall weigh the child’s wishes according to the child’s competence and maturity” (MCL § 712A.17d(1)(i)). “If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child’s interests as identified by the child are inconsistent with the lawyer-guardian ad litem’s determination of the child’s best interests, the lawyer-guardian ad litem shall communicate the child’s position to the court. If the court considers the appointment appropriate considering the child’s age and maturity and the nature of the inconsistency between the child’s and the lawyer-guardian ad litem’s identification of the child’s interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child’s lawyer-guardian ad litem” (MCL § 712A.17d(2)). “Attorney” means, if appointed to represent a child in a [child protection proceeding] an attorney serving as the child’s legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child’s expressed wishes as the attorney would to an adult client” (MCL §712A.13a(c)).

<p>4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?</p>	<p>Points: 0 out of 10</p> <p>Michigan law contains no statewide requirement for specialized mandatory training and/or education for attorneys representing children in dependency proceedings.</p>
<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 10 out of 10</p> <p>The term "[p]arty" includes...the child...in a protective proceeding" (MI Ct. Rule 3.921(19)(b)) and Michigan law gives children the right of notice, the right to attend and participate in hearings, and the right of appeal (<i>see, e.g.</i>, MCL 712A.19b; MCR Rule 3.921; MCR Rule 3.976(C)).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>"When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (MI R. of Prof. Conduct 1.14(a)).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Michigan law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**Sidebar Notes:**

- In practice, many Michigan attorneys are reported to follow the child's wishes based on the child's level of maturity.
- An ABA study several years ago confirmed that courts do appoint a second attorney where there is a conflict.
- In Michigan, training is handled by counties. Most, but not all, counties require training. Training is available through the state Court Administrator's Office. First Star and CAI encourage Michigan to adopt statewide training standards.

# MINNESOTA



Score: 75

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points 30 out of 40

“The child...has the right to effective assistance of counsel in connection with a proceeding in juvenile court...if the child, parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older” (Minn.Stat. §260C.163(3)(a)-(b)). The court “may appoint counsel to represent a child under age ten in any case in which the court determines that such appointment is appropriate” (Minn Juv. Prot Proc. R 25.02).

Basis for deduction: Minnesota law requires the appointment of counsel for children ten years of age or older, but makes the appointment of counsel for children under age ten discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points 10 out of 10

“Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court” (MN Juv. Prot. Proc. R. 25.01).

3. To what extent will a child receive client-directed representation?

Points: 15 out of 20

Basis for deduction: A child will receive client-directed counsel only under specified circumstances (if the child is ten years of age or older or if the court has decided to appoint counsel for a child under age ten). Under Minnesota law, when an attorney is appointed to represent a child, the role of the attorney is to represent the child’s expressed wishes, as opposed to the appointment of a guardian ad litem, who protects the child’s best interests. “Counsel for the child shall not also act as the child’s guardian ad litem” (Minn. Stat. §260C.163(3)(d)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary

Points: 0 out of 10

Basis for deduction: Minnesota law does not require specialized mandatory training and/or education for attorneys representing children in dependency proceedings.

elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“A child who is the subject of a juvenile protection matter shall have the right to intervene as a party” (Minn. R. Juv. Prot. P. 23.01 (Subd. 1)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as possible, maintain a normal client-lawyer relationship with the client” (Minn R. of Prof. Conduct 1.14).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Minnesota law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Notes:

- The Children's Justice Initiative is a collaboration between the Minnesota Judicial Branch and the Minnesota Department of Human Services. They annually provide training to all child protection system stakeholders, including attorneys.
- A reviewer asked that comments from the 2<sup>nd</sup> Edition of this Report be repeated in this Edition. In the 2<sup>nd</sup> Edition, state officials who objected to the nature of this report opined that scarce resources should be spent on seeking federal legislation and funding for all children. These officials believed that federal and Minnesota child protection laws properly require the appointment of a Guardian ad Litem to advocate for each child's best interests, not the child's expressed preference. These officials suggested that funding for legal representation for parents is a more pressing matter.

# MISSISSIPPI



Score: 96

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

In every case involving an abused or neglected child that results in a judicial proceeding, the court “shall appoint a guardian ad litem for the child” (Miss. Uniform Rules of Youth Court Practice, Rule 13(a)). In cases where the court appoints a layperson as guardian ad litem, the court shall also appoint an attorney to represent the child (Miss. Uniform Rules of Youth Court Practice, Rule 13(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“An attorney who has entered his appearance shall not be permitted to withdraw from the case until a timely appeal if any has been decided, except by leave of the court then exercising jurisdiction of the cause after notice of his intended withdrawal is served by him on the party he represents” (Miss. Code Ann. §43-21-201(5)).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

A child will receive client-directed representation. The role of the child’s attorney is to “represent the child’s preferences” (Miss. Uniform Rules of Youth Court Practice, Rule 13(f)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 6 out of 10

“[I]n order to be eligible for an appointment as a guardian ad litem, such attorney or lay person must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall be satisfactory to fulfill the requirements of this section” (Miss. Code Ann. § 43-21-121(4)).

Basis for Deduction: Although Mississippi requires GALs to have specialized multidisciplinary training and/or education it does not require a non-GAL attorney serving as the child’s counsel to have such education and/or training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?	<p>Points: 10 out of 10</p> <p>“Party’ means the child” (Miss. Uniform Rules of Youth Court Practice, Rule 4). “All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence: (a) to subpoena, confront and examine the person who prepared or furnished data for the report; and (b) to introduce evidence” (Miss. Code Ann. §43-21-203(9)). “Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child” (Miss. Code Ann. §43-21-309(2)). The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases only “with consent of the child’s counsel” (Miss. Code Ann. § 43-21-203(8)).</p>
6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?	<p>Points: 10 out of 10</p> <p>“The child’s attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct” (Miss. Code Ann. § 43-21-201(4)). “When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (MS R. of Prof. Conduct 1.14(a)).</p>
Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?	<p>Points: 0 extra credit points</p> <p>Mississippi law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**Sidebar Notes:**

- In the 2<sup>nd</sup> Edition of this report, First Star and CAI noted that Mississippi advocates had expressed concern regarding the state’s implementation of the above laws. If such implementation has not improved, we encourage advocates to pursue all available remedies to bring the state into compliance with its laws.
- Although Mississippi law requires training for attorneys appointed to represent children with respect to delinquency matters, there apparently is no comparable provision for attorneys appointed with respect to child protection proceedings.

# MISSOURI



Score: 93

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“In every case involving an abused or neglected child which results in a judicial proceeding, the judge shall appoint a guardian ad litem to appear for and represent...[a] child who is the subject of [abuse and neglect] proceedings” (§ 210.160(1) R.S.Mo.). “When appointing a guardian ad litem for a child, the court shall only appoint a lawyer licensed by the Supreme Court who has completed the training required by these standards” (Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 1.0).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points 10 out of 10

“A party is entitled to be represented by counsel in all proceedings” (Mo. Sup. Ct. R. 115.01(a)).

3. To what extent will a child receive client-directed representation?

Points: 15 out of 20

Basis for deduction: A child will receive client-directed representation under specified circumstances. “The roles of a guardian ad litem and a lawyer for the child are different and must be clearly distinguished. A lawyer guardian ad litem is not the lawyer for the child and, therefore, advocates the best interests of the child rather than merely representing the child’s preferences” (Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 3.0, Comment). However, “the court shall appoint counsel for the juvenile when necessary to assure a full and fair hearing” (Mo. Sup. Ct. R. 115.02(a)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent

Points: 6 out of 10

Basis for deduction. While multidisciplinary training is required for an attorney serving as a child’s GAL, no such training is required for an attorney serving a child’s counsel. “The court shall not appoint a lawyer to serve as guardian ad litem until the lawyer has completed eight hours of continuing legal education devoted to guardian ad litem training. Thereafter, to continue to be appointed as a guardian ad litem, a lawyer shall complete three hours of continuing legal education devoted to guardian ad litem training annually.... Guardian ad litem practice is unique and complex and, as such, requires specialized education, training, and experience. The specialized training may include the

is it required for a child's GAL?	<p>following topics: (a) Dynamics of child abuse and neglect issues; (b) Factors to consider in determining the best interests of the child, including the required permanency planning and the child's right to be with his or her family; (c) Inter-relationships between family system, legal process and the child welfare system; (d) Federal, state and local legislation and case law affecting children; (e) Cultural and ethnic diversity and gender-specific issues; (f) Family and domestic violence issues; (g) Available community resources and services; (h) Child development issues; and (i) Guardian ad litem standards" (Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 14.0).</p>
5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?	<p>Points: 10 out of 10</p> <p>“[P]arty” means the juvenile who is the subject of the proceeding” (Mo. Sup. Ct. R. 110.04(a)(20)).</p>
6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?	<p>Points: 10 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Mo. R. of Prof. Conduct 4-1.14(a)).</p>
Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?	<p>Points: 2 extra credit points</p> <p>Standards adopted by the Missouri Supreme Court provide that “[a] guardian ad litem has a duty to notify the court if the caseload reaches a level bearing upon the guardian ad litem’s ability to meet these standards or to comply with the ethical standards of the rules of professional conduct” and that “[t]he appointing court is responsible for making certain each lawyer appointed as a guardian ad litem is able to meet his or her obligations to the child. These obligations include those required under these standards and those required under the ethical and professional standards of a lawyer” (Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 2.0).</p> <p>While Missouri law does addresses caseload standards for attorneys serving as GAL, it does not address caseload standards for attorneys serving as child’s counsel in dependency proceedings.</p>

**Sidebar Note:**

- Missouri also sets forth specific obligations for a guardian ad litem concerning confidential information: “A guardian ad litem shall comply with all statutes, rules, and regulations relating to the receipt of confidential or privileged information received as guardian ad litem” (Mo. Sup. Ct. Standards with Comments for Guardians ad Litem in Missouri, Standard 7.0).

# MONTANA



Score: 59

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 20 out of 40

“[T]he court shall immediately appoint or have counsel assigned for...any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth” (Mont. Code Anno., § 41-3-425(2)(b)).  
“When appropriate, the court may appoint or have counsel assigned for...any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth” (Mont. Code Anno., § 41-3-425(3)(b)).

Basis for deduction: Under Montana law as amended in 2011, the appointment of counsel for children or youth involved in dependency proceedings is only mandatory if a GAL is not appointed for the child or youth—a major restriction on the otherwise mandatory requirement of appointment of counsel. If a GAL is appointed for a child or youth, the appointment of counsel is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition” (Mont. Code Anno., §41-3-425(1)).

3. To what extent will a child receive client-directed representation?

Points: 3 out of 20

Basis for deduction: Montana law is vague with regard to the role of counsel appointed for children in dependency proceedings.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for

Points: 6 out of 10

The guardian ad litem “must have received appropriate training that is specifically related to serving as a child’s court-appointed representative” (Mont. Code Anno., §41-3-112(2)).

Basis for Deduction: Although Montana requires GALs to have specialized multidisciplinary training it does not require non-GAL attorneys to have such training.

child's counsel, to what extent is it required for a child's GAL?

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

Montana law gives children party status in dependency proceedings (see, e.g., *In re B.P. & A.P.* (2001) 2001 MT 219 [306 M 430, 35 P3d 291]) and requires the child to receive notice of at least some hearings (see, e.g., Mont. Code Anno., § 41-3-115).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (MT R. of Prof. Cond. 1.14).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Montana law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Note:

- Responses from Montana explain that Montana does not have a family court system and judges and attorneys are generalists with different types of cases. They are not required to have training or education in child welfare specifics, and dependency cases make up a small part of their caseloads. Training and education is offered, particularly when statutes or practice changes. CFSD has started integrating an assessment program model into the courts and have been using the National Resource Centers to help in assuring children and families receive good representation in court proceedings.



# NEBRASKA



Score: 76

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points 40 out of 40

“The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel” (R.R.S. Neb. § 43-272(3)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

The attorney GAL provides representation for the child “for all proceedings” (R.R.S. Neb. §43-272(1)).

3. To what extent will a child receive client-directed representation?

Points: 3 out of 20

Basis for deduction: Nebraska law is vague with regard to the role of counsel appointed for children in dependency proceedings.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 3 out of 10

“[A]n attorney to be appointed by the courts as a guardian ad litem for a juvenile...shall have completed six (6) hours of specialized training provided by the Administrative Office of the Court....Thereafter, in order to maintain eligibility to be appointed and to serve as a guardian ad litem, an attorney shall complete three (3) hours of specialized training per year” (Neb. Ct. R. 4-401).

Basis for deduction: Although the provision quoted above appears to require attorney GALs to have specialized training, Nebraska law also provides that “if the judge determines that an attorney with the training required herein is unavailable within the county he or she may appoint an attorney without such training” (Neb. Ct. R. 4-401). Thus, specialized education and/or training is encouraged by not required.

5. Does state law expressly give the child the legal status

Points: 10 out of 10

of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

“Parties means the juvenile” (R.R.S. Neb. § 43-245(15)). “Notice of the time, date, place, and purpose of any juvenile court hearing subsequent to the initial hearing, for which a summons or notice has been served or waived, shall be given to all parties” (R.R.S. Neb. § 43-267(2)). At least in proceedings to terminate parental rights, all parties have the right to testify (R.R.S. Neb. § 43-279.01).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Neb. Ct. R. of Prof. Cond. § 3-501.14).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Nebraska law does not address caseload standards for attorneys representing children in dependency proceedings.

**Sidebar Note:**

- Amendments to the Nebraska Supreme Court’s Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings are currently pending. The amendments would include a proposal to limit caseloads to 60 juveniles.



# NEVADA



Score: 63

Grade: D

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“The court may, if it finds it appropriate, appoint an attorney to represent the child” (Nev. Rev. Stat. Ann. § 432B.420).

Basis for deduction: While Nevada law requires the appointment of a GAL, it makes the appointment of an attorney for a child discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

The child may be represented by an attorney at “all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive” (Nev. Rev. Stat. Ann. § 432B.420).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

“If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings” (Nev. Rev. Stat. Ann. § 432B.420(1)).

Basis for deduction: A child may receive client-directed representation on a discretionary basis, but if not the child’s wishes will be articulated to the court (Nev. Rev. Stat. Ann. 432.500(3)(g)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 6 out of 10

To qualify for appointment as a guardian ad litem in certain judicial districts, a special advocate must be a volunteer from the community who completes an initial 12 hours of specialized training and, annually thereafter, completes 6 hours of specialized training. The training must be approved by the court and include information regarding the dynamics of the abuse and neglect of children; factors to consider in determining the best interests of a child, including planning for the permanent placement of the child; the interrelationships between the family system, legal process and system of child welfare; skills in mediation and negotiation; federal, state and local laws affecting children; cultural, ethnic and gender-specific issues; domestic violence; resources and services available in the community for children in need of protection; child development; standards for guardians ad litem; confidentiality issues; and such other topics as the court

deems appropriate. To qualify for appointment as a guardian ad litem in other judicial districts, a special advocate must be qualified pursuant to the standards for training of the National Court Appointed Special Advocate Association or its successor (Nev. Rev. Stat. Ann. § 432B.505).

Basis for deduction: Although Nevada requires GALs to have with specialized multidisciplinary education and/or training it does not require non-GAL attorneys to have such education and/or training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

If the child is represented by an attorney, Nevada law affords children the rights of a party to the proceedings (“[i]f the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings” (Nev. Rev. Stat. Ann. §§ 432B.420(1), 128.100(1)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (NV R. of Prof. Conduct 1.14).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

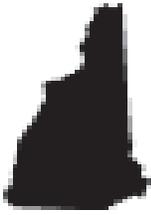
Points: 0 extra credit points

Nevada law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Notes:

- In Nevada’s largest county, Clark County, the Children’s Attorneys Project, founded in 1999, represents about one-half of all children in the child welfare system; that number continues to grow each year. Advocates note that there is a commitment among key stakeholders to secure the funding to ensure representation of every child.

# NEW HAMPSHIRE



Score: 58

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 of 40

“In cases involving a neglected or abused child under this chapter, where the child’s expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child” (RSA 169-C:10(II)(a)).

Basis for deduction: Under New Hampshire law, appointment of an attorney is discretionary and will only be considered when there is a conflict between the child’s expressed interests and the GAL’s recommendation.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

“When an attorney is appointed as counsel for a child, representation may include counsel and investigative, expert and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child” (RSA 169-C:10(II)(b)).

Basis for deduction: New Hampshire law authorizes the provision of counsel during juvenile court proceedings “as may be necessary to protect the rights of the child” but does not expressly guarantee that children will be represented by an attorney on appeal.

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

Basis for deduction: A child may receive client-directed representation on a discretionary basis, but if not the child’s wishes will be articulated to the court. “In cases involving a neglected or abused child under this chapter, where the child’s expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child” (RSA 169-C:10(II)(a)). “When an attorney is appointed as counsel for a child, representation may include counsel and investigative, expert and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child” (RSA 169-C:10(II)(b)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by

Points: 6 out of 10

Basis for deduction: Although New Hampshire law requires GALs to have with

state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

specialized education and/or training it does not require non-GAL attorneys to have such education and/or training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“‘[P]arty having an interest’ means the child” (RSA 169-C:3(XXI-a)). The child is entitled to notice (through his/her custodian) (RSA 169-C:3(XX)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (NH R. of Prof. Conduct. 1.14a).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

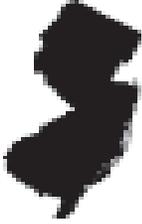
Points: 0 extra credit points

New Hampshire law does not provide caseload standards for attorneys appointed pursuant to RSA 169-C:10.

#### Sidebar Notes:

- New Hampshire’s Court Appointed Special Advocates program ensures that most children involved in dependency proceedings have an advocate by their side. While these efforts are commendable, First Star and CAI strongly encourage New Hampshire to take steps to ensuring that every child is also represented by client-directed legal counsel.

# NEW JERSEY



Score: 88

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“Any minor who is the subject of a child abuse or neglect proceeding... must be represented by a law guardian” which means an attorney regularly employed to represent minors in abuse or neglect cases (NJ Stat. §§ 9:6-8.23, 9:6-8.21).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

New Jersey law provides that “any minor who is the subject of a child abuse or neglect proceeding...must be represented by a law guardian” (NJ Stat. § 9:6-8.23).

Basis for deduction: While the appointment of a law guardian appears to extend throughout the juvenile court proceedings, New Jersey law does not expressly ensure counsel on appeal for children in dependency proceedings.

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

Any minor “must be represented by a law guardian to help protect his interests and to help him express his wishes to the court” (NJ Stat. § 9:6-8.23).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 8 out of 10

“In selecting attorneys to serve as law guardians...the Office of the Public Defender shall take into consideration the nature, complexity and other characteristics of the cases, the services to be performed, the status of the matters, the attorney’s pertinent trial and other legal experience and other relevant factors....The Office of the Public Defender shall ensure that an attorney selected ...has received training in representing clients in child abuse and neglect and termination of parental rights actions from the Office of the Public Defender or will receive such equivalent training, as soon as practicable, from other sources” (NJ Stat. § 30:4C-15.4(c)).

Basis for deduction: While New Jersey law requires law guardians to have specialized training, it does not expressly require the training to include multidisciplinary elements.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

New Jersey law provides children with the right to counsel, notice of placement review hearings, and right to contribute at proceedings (NJ Stat. §§ 9:6-8.23, 9:6-8.21; *N.J. Div. of Youth and Fam. Servs. vs. E.P.*, 196 N.J.88 (2008)). See also N.J. Stat. § 30:4C-61.2 (b)(2)(child has the right to notice and to appear at permanency hearing).

Basis for deduction: New Jersey law does not expressly give children the status of party.

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (NJ R. of Prof. Conduct 1.14a).

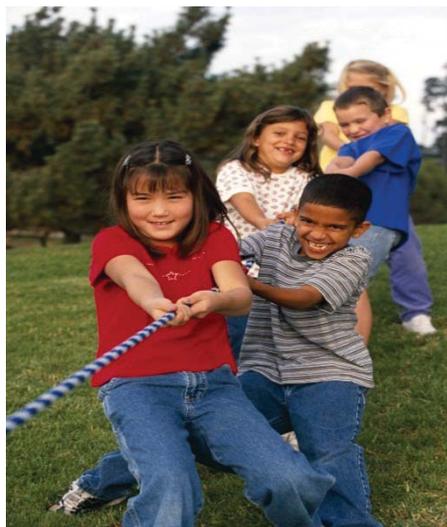
Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

New Jersey law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Note:

- Responses to our survey indicated that although New Jersey law does not assure counsel to children in dependency cases for appeals, in practice, children do have attorneys for appeals in dependency cases.
- Although New Jersey law does not expressly ensure counsel for children on appeal, the Office of Law Guardian’s Appellate Unit, provides appellate representation and continues to represent children up until their final post-termination hearing. First Star and CAI commend New Jersey for providing counsel for children on appeal, and encourage the State to codify that requirement in law.
- New Jersey has many multidisciplinary training programs in place for attorneys.



# NEW MEXICO



Score: 95

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“At the inception of an abuse and neglect proceeding, the court shall appoint a guardian ad litem for a child under fourteen years of age. If the child is fourteen years of age or older, the court shall appoint an attorney for the child. Only an attorney with appropriate experience shall be appointed as guardian ad litem of or attorney for the child” (N.M. Stat. Ann. § 32A-4-10(C)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“Unless excused by a court, an attorney appointed to represent a child shall represent the child in any subsequent appeals” (N.M. Stat. Ann. §32A-1-7.1(B)).

3. To what extent will a child receive client-directed representation?

Points: 15 out of 20

Children fourteen years of age or older will receive client-directed representation, with the attorney required to zealously represent the child (N.M. Stat. Ann. § 32A-4- 10(F)). For children under fourteen years of age, the GAL’s role is to zealously represent the child’s best interest (N.M. Stat. Ann. § 32A-4-10(F)). However, “[a]fter consultation with the child, a guardian ad litem shall convey the child’s declared position to the court at every hearing” (N.M. Stat. Ann. §32A-1-7(D)).

Basis for deduction: For children under fourteen years of age, the GAL’s role is to zealously represent the child’s best interest (N.M. Stat. Ann. § 32A-4-10(F)), not to zealously represent the child in a client-directed manner.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it

Points: 10 out of 10

A child’s attorney or guardian ad litem “shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child’s needs” (N.M. Stat. Ann. §32A-18-1). The Children’s Court Improvement Commission coordinates the annual Children’s Law Institute, a statewide multidisciplinary conference, to provide this mandated training. NM Supreme Court performance standards expect agency attorneys, parent’s attorneys, attorneys for youth, and guardians ad litem for children to participate in at least 10 hours of “relevant annual training.”

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required for a child's GAL?

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

"[T]he child alleged to be neglected or abused or in need of court ordered services" is a party to "proceedings on petitions alleging neglect or abuse or a family in need of court ordered services" (N.M. Children's Ct. Rule 10-121(B)(3)). The child is entitled to notice and service of pleadings (through his/her attorney or GAL) (N.M. Children's Ct. Rule 10-104). "Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law" (N.M. Stat. Ann. § 32A-1-17).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

"The attorney shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct" (N.M. Stat. Ann. § 32A-1-7.1(A)). "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (N.M. R. of Prof. Cond. 16-114).

Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor" (N.M. Stat. Ann. § 32A-4-33(D)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

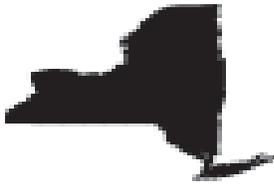
New Mexico law does not address caseload standards for attorneys representing children in dependency proceedings.

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#### Sidebar Note:

- Under New Mexico law, a child is initially appointed a GAL unless the child is 14 or over. If a GAL has been appointed for a younger child, New Mexico law provides: "When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:
  - the child requests a different attorney;
  - the guardian ad litem requests to be removed; or
  - the court determines that the appointment of a different attorney is appropriate" (N.M. Stat. Ann. §32A-1-10(E)).
- The New Mexico Children's Law Institute hosts one of the largest annual conferences for children's attorneys in the nation and has a high rate of attorneys who are certified by the National Association for Counsel for Children.

# NEW YORK



Score: 98

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points 40 out of 40

“[T]he family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor” (NY CLS Family Ct Act § 249(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“[T]he appointment shall continue without further court order or appointment where (i) the attorney on behalf of the child files a notice of appeal, or (ii) where a party to the original proceeding files a notice of appeal. The attorney for the child may be relieved of his representation upon application to the court to which the appeal is taken for termination of the appointment. Upon approval of such application the court shall appoint another attorney for the child” (NY CLS Family Ct Act § 1120(b)).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“[T]he attorney for the child must zealously advocate the child’s position” (NY CLS Standards & Admin Pol § 7.2(d)). “If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child’s best interests” (NY CLS Standards & Admin Pol § 7.2(d)(2)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 8 out of 10

“[A]ll attorneys for children, including new and veteran attorneys, [are required to] receive initial and ongoing training” (NY CLS Family Ct Act § 249-b). Such training programs must include the dynamics of domestic violence and its effect on victims and on children, and the relationship between such dynamics and the issues considered by the court, including, but not limited to, custody, visitation and child support.

Basis for deduction: Although New York law requires specialized training for children’s attorneys, only in the field of domestic violence and is not multidisciplinary in scope.

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

“All notices and reports required by law shall be provided to such law guardian” (NY CLS Family Ct Act § 1016).

Basis for deduction: New York law does not expressly give children party status in dependency proceedings.

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation” (N.Y. Ct. Rules, §7.2(b)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

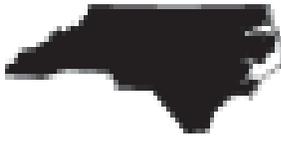
Points: 5 extra credit points

“Subject to adjustment based on the factors in subdivision (b), the number of children represented at any given time by an attorney appointed pursuant to section 249 of the Family Court Act shall not exceed 150” (NY CLS Standards & Admin Pol § 127.5).

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# NORTH CAROLINA



Score: 82

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile....In every case where a non-attorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile’s legal rights throughout the proceeding” (N.C. Gen. Stat. § 7B-601(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions...where they have been appointed....The appointment shall terminate when the permanent plan has been achieved for the juvenile and approved by the court. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court (N.C. Gen. Stat. Ann. § 7B-601). Appeal from an order may be taken by a juvenile acting through the juvenile’s guardian ad litem previously appointed under § 7B-601 (N.C. Gen. Stat. Ann. § 7B-1002(1)).

3. To what extent will a child receive client-directed representation?

Points: 6 out of 20

Per Ch. 8 of the North Carolina Court System’s GAL Attorney Manual, “[t]he phrase ad Litem means ‘for the lawsuit.’ The word guardian refers to an officer or agent of the court who is appointed to protect the interests of minors. The phrase Guardian ad Litem as a whole therefore refers to one who protects and represents the child for the purpose of the court action, which, in this case, includes all matters surrounding a petition for abuse, neglect, or dependency.” “The attorney advocate and the GAL volunteer factor any wishes expressed by the child into a determination of best interest. The GAL makes recommendations to the court based on best interest but also conveys any wishes expressed by the child to the court.”

Basis for deduction: The attorney-GAL is required to articulate but not advocate for the expressed wishes of the child.

4. To what extent are specialized education and/or training requirements for the

Points: 6 out of 10

“A volunteer must complete 30 hours of required training” which is “taught by certified

<p>child's counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?</p>	<p>and experienced GAL trainers and staff"; "[v]olunteers also receive continuing education on advocacy issues" (N.C. GAL Program Ch. 8.4 C2(4)(b)).</p> <p>Basis for deduction: Although North Carolina law requires GALs to have specialized multidisciplinary education and/or training, it does not require non-GAL attorneys to have such education and/or training.</p>
<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 10 out of 10</p> <p>"The juvenile is a party in all actions under this Subchapter" (N.C. Gen. Stat. Ann. § 7B-601).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>"When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (N.C. Prof. Cond. Rule 1.14(a)).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>North Carolina law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**Sidebar Notes:**

- The North Carolina GAL Program Guidelines for Best Practice require that each GAL court report contain a separate section entitled "child's wishes" where "the expressed wishes of the child are reported to the court and are included in a separate section of the court report. If the child is too young to articulate his/her wishes, a statement to that effect should be listed in this section." Additionally, youth represented by the GAL Program are encouraged to complete a Youth Report to articulate the youth's wishes to the court.
- The majority of GAL attorneys in North Carolina are under contract with the Administrative Office of the Courts Guardian ad Litem Program and the contracts specify that new attorneys must complete GAL attorney training offered by the GAL Program within six months of executing the contract.

# NORTH DAKOTA



Score: 58

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

A child “who is indigent and unable to employ legal counsel is entitled to counsel at public expense at . . . custodial, post-petition, and informal adjustment stages of proceedings under this chapter” (N.D. Cent. Code, § 27-20-26(1)). “If, at any time in the proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is fourteen or more years of age” (N.D. Cent. Code, § 27-20-48.4(4)).

Basis for deduction: In *Interest of BB* (2010) 2010 ND 9 [777 N.W.2d 350] the North Dakota Supreme Court held that where a minor was represented by the state through his custodian, Social Services, and where the court appointed a GAL to protect that minor’s interests, the juvenile court did not err in denying a parent’s request to appoint independent legal counsel for the minor. Thus, while North Dakota law requires the appointment of counsel for children at specific proceedings, the appointment of independent legal counsel is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

Counsel must be provided for a child “at custodial, post-petition, and informal adjustment stages of proceedings under this chapter” (N.D. Cent. Code 27-20-26(1)).

Basis for Deduction: North Dakota law requires counsel to be provided for a child for juvenile court proceedings but does not expressly assure the counsel’s participation on appeal.

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

Basis for deduction: A child will receive client-directed representation on a discretionary basis, but if not the child’s wishes must be articulated to the court. “If, at any time in the proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is 14 or more years of age” (N.D. Cent. Code, § 27-20-48.4(4)). The role of counsel appointed to represent children is to “represent the child’s wishes,” while a guardian ad litem “represents the child’s best interests” (N.D. Department of Human Services, Wraparound Case Management Policy Manual, § 641-40-10).

4. To what extent are specialized education

Points 6 out of 10

and/or training requirements for the child's counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

Basis for deduction: Although North Dakota law requires specialized education and/or training requirements for GALs (N.D.R. Juv. P. Rule 17(a)(2)-(3)), it does not require such specialized education and/or training for children's counsel.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“[P]arty means the child” (N.D. Cent. Code, § 27-20-26(3); also see N.D. R. Juv. P. 3(b)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client's capacity to make adequately considered decisions in connection with a representation is limited, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client (N.D.R. Prof. Conduct Rule 1.14a).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

North Dakota law does not address caseload standards for attorneys representing children in dependency proceedings.

# OHIO



Score: 91

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“A child [in a dependency proceeding] is entitled to representation by legal counsel at all stages of the proceedings” (Ohio Rev. Code Ann. 2151.352). “When the guardian ad litem is an attorney...the guardian may also serve as counsel to the ward providing no conflict between the roles exist” (Ohio Juv. R. 4(C)(1)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

A child is entitled to legal representation “at all stages of the proceedings under ...[C]hapter [2151] or Chapter 2152 of the Revised Code” (Ohio Rev. Code Ann. § 2151.352).

Basis for deduction: Although the appointment of counsel for children extends to all proceedings under Chapters 2151 and 2152 of the Revised Code, Ohio law does not assure children continued representation on appeal.

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

A child will receive client-directed representation. “When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child” (Ohio Juv. R. 4(A)). “If a person serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward” (Ohio Juv. R. 4(C)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 6 out of 10

“In order to serve as a guardian ad litem, an applicant shall have, at a minimum, the following training: (1) Successful completion of a pre-service training course to qualify for appointment and thereafter, successful completion of continuing education training in each succeeding calendar year to qualify for continued appointment...the pre-service course shall include training on all the following topics: (a) Human needs and child development including, but not limited to, stages of child development; (b) Communication and diversity including, but not limited to, communication skills with children and adults, interviewing skills, methods of critical questioning, use of open-ended questions, understanding the perspective of the child, sensitivity, building trust, multicultural awareness, and confidentiality; (c) Preventing child abuse and neglect

including, but not limited to, assessing risk and safety; (d) Family and child issues including, but not limited to, family dynamics, substance abuse and its effects, basic psychopathology for adults and children, domestic violence and its effects; (e) Legal framework including, but not limited to, records checks, accessing, assessing and appropriate protocol, a guardian ad litem’s role in court, local resources and service practice, report content, mediation and other types of dispute resolution” (Ohio Sup. R. 48(E)).

Basis for deduction: Although Ohio law requires provides GALs to have specialized education and/or training it does not require non-GAL attorneys to have such education and/or training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“‘Party’ means a child who is the subject of a juvenile court proceeding” (Ohio Juv. R. 2(Y)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (OH R. of Prof. Cond. 1.14(a)).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Ohio law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Notes:

- A notable Ohio advocate expressed serious concern regarding the state’s compliance with its statutes and court rules regarding the appointment of counsel for children, in both dependency and delinquency proceedings. Although noting that no empirical studies have been conducted on point, she expressed her belief that children in abuse and neglect cases are routinely denied client-directed representation. If such is the practice in Ohio, First Star and CAI urge advocates to pursue every legal remedy to bring that state into compliance with its laws regarding the appointment of counsel for children. To the extent empirical data is needed, a first step may be to develop such data.
- In addition to making the child a party, Ohio law expressly requires a number of specific actions with respect to the child including: The court shall give notice of the review hearings to every interested party, including the child. The court shall summon every interested party to appear at the review hearing and give them an opportunity to testify and to present other evidence. In any review hearing that pertains to a permanency plan for a child, the court or a citizens board appointed by the court pursuant to division (H) of this section shall consult with the child, in an age-appropriate manner, regarding the proposed permanency plan for the child. Ohio Rev..Code. § 2151.417(F).

# OKLAHOMA



Score: 100

Grade: A+

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“The court shall ensure that the child is represented by independent counsel throughout the pendency of the deprived action” (10A Ok St. § 1-4-306(A)(5)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The court shall ensure that the child is represented by independent counsel throughout the pendency of the deprived action” (10A Okl. St. § 1-4-306(A)(5)).

3. When an attorney is appointed for a child in dependency proceedings, does state law require the attorney to advocate for the expressed wishes of the child in a client-directed manner?

Points: 20 out of 20

A child will receive client-directed representation. A child’s “attorney shall represent the child and any expressed interests of the child. To the extent that a child is unable to express an interest, either because the child is preverbal, very young or for any reason is incapable of judgment and meaningful communication, the attorney shall substitute his or her judgment for that of the child and formulate and present a position which serves the best interests of the child” (10A Okl. St. § 1-4-306(A)(2)(c)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

It is the intent of the legislature that “[m]ultidisciplinary and discipline-specific training on child abuse and neglect and domestic violence be made available to professionals in Oklahoma with responsibilities affecting children, youth, and families, including but not limited to:...lawyers, public defenders” (63 Okl. St. § 1-227(b)(2)).

“Any district attorney, assistant district attorney, public defender, assistant public defender, attorney employed by or under contract with the Oklahoma Indigent Defense System, court-appointed or retained attorney, or attorney employed by or under contract with a district court whose duties include juvenile docket responsibility shall complete at least six (6) hours of education and training annually in courses relating to the topics described in paragraph 1 of subsection A of this section” (10A Okl. St. § 1-8-101(B)(1)), which are juvenile law, child abuse and neglect, foster care and out-of-home placement, domestic violence, behavioral health treatment, and other similar topics.

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

The child is “a party to the proceeding, [and] shall be given the opportunity to cross-examine witnesses and to present a case in chief if desired” (10A Okl. St. § 1-4-601(E)(2)).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (5 Okl. St. Chap. 1, Appx. 3-A, Rule 1.14(a)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Oklahoma law does not address caseload standards for attorneys representing children in dependency proceedings.

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# OREGON



Score: 78

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 20 out of 40

“Whenever requested to do so, the court shall appoint counsel to represent the child or ward” (ORS § 419B.195).

Basis for deduction: Under Oregon law, attorneys are not automatically provided for children in dependency proceedings; requiring the court to first be requested to appoint counsel is a major restriction on the child’s ability to have counsel in such proceedings.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“Unless otherwise specified by written court order, an order for appointment of counsel shall expire when the time for taking an appeal has expired” (Uniform Trial Court R. 11.020(2)).

3. To what extent will a child receive client-directed representation?

Points: 15 out of 20

Basis for deduction: A child will receive client-directed representation under specified circumstances. “When representing...children capable of considered judgment, a lawyer is bound by and should advocate for the client’s definition of his or her interests, and may not substitute counsel’s judgment for the client’s, nor ignore the client’s wishes because they are not to be perceived to be in the best interests of the child” (Specific Standards for Representation in Juvenile Dependency Cases 3.4).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

In addition to having knowledge of juvenile law, case law, standards, and procedures, Oregon requires children’s counsel to review and be familiar with a wide range of materials, including information relating to special education, disabilities, immigration, etc. (Public Defense Services Commission, *Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense*, Standard IV(7)).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Parties to proceedings in the juvenile court under O.R.S. 419B.100 and 419B.500 are...the child or the ward...The rights of the parties include, but are not limited to: (a) The right to notice of the proceeding and copies of the petitions, answer, motions, and other papers; (b) The right to appear with counsel and...to have counsel appointed as otherwise provided by law; (c) The right to call witnesses, cross examine witnesses and participate in hearings; (d) The right of appeal; and (3) The right to request a hearing” (ORS § 419B.875(1)(a)(A), (2)(a)-(d)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (ORPC 1.14(2)).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 3 extra credit points

“Attorneys appointed to represent financially eligible persons at state expense must provide competent and adequate representation to each client. Neither defender organizations nor assigned counsel shall accept workloads that, by reason of their size or complexity, interfere with providing competent and adequate representation or lead to the breach of professional obligations” (Public Defense Services Commission, *Qualifications Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense*, Standard II).



# PENNSYLVANIA



Score: 82

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“When a proceeding...has been initiated alleging that the child is a dependent child...the court shall appoint a guardian ad litem to represent the legal interests and the best interests of the child. The guardian ad litem must be an attorney at law” (42 Pa.C.S. § 6311).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child at every stage of the proceedings” (42 Pa.C.S. § 6311(b)). “Once an appearance is entered or the court assigns counsel for the child, counsel shall represent the child until the closing of the dependency case, including any proceeding upon direct appeal and permanency review” (Pa. R.J.C.P. No. 1150(B)).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

Under Pennsylvania law, when a child “is a dependent child under paragraph (1), (2), (3), (4) or (10) of the definition of ‘dependent child’ in section 6302”, the court shall appoint a GAL who shall articulate the child’s expressed wishes “to the extent that they can be ascertained and present to the court whatever evidence exists to support the child’s wishes” (42 Pa. Consol. Stat. § 6311(a), (b)(9)). When § 6311 is not applicable “a party is entitled to representation by legal counsel” who represents the child in the traditional attorney-client role (42 Pa. Consol. Stat. § 6337).

Basis for deduction: A child will receive client-directed counsel only in certain proceedings, but if not, the child’s wishes will be articulated to the court. A child will receive a GAL instead of client-directed counsel when the child “is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals;” “has been placed for care or adoption in violation of law;” “has been abandoned by his parents, guardian, or other custodian;” is without a parent, guardian, or legal custodian;” or is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511...within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child” (42 Pa. Consol. Stat. § 6337).

<p>4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?</p>	<p>Points: 0 out of 10</p> <p>Basis for deduction: Pennsylvania law does not require specialized education and/or training for children’s counsel.</p>
<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 10 out of 10</p> <p>A “party is a person who is legally entitled to participate in the proceedings” (Pa.R.J.C.P. No. 1120). “In any permanency hearing held with respect to the child, the court shall consult with the child regarding the child’s permanency plan in a manner appropriate to the child’s age and maturity” (42 Pa. Consol Stat. §6351).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Pa. RPC 1.14(a)).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Pennsylvania law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

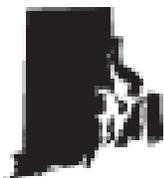
**Sidebar Notes:**

- Since the release of the 2nd Edition of this report, Pennsylvania has started to implement the pre-service training for GALs. Thus far, training has been offered about dependency proceedings, child development, the role of the GAL, grief and loss, separation trauma, visitation, safety, service provision and social work/court best practices. During the past year over 600 attorneys representing children and parents attended a two-day Core 1 training on these elements and many more. A state workgroup is currently developing a Core 2 GAL educational session which will include advanced topics. First Star and CAI commend Pennsylvania for implementing these training programs, and encourage the state to enact legislative or administrative language expressly requiring GALs to have such training.

- Pennsylvania Rules of Juvenile Court Procedure, Rule 1128(B) provides that a party may be excluded from a proceeding only for good cause shown. The Comment to Rule 1128 clarifies that “Requiring the child’s attorney to be present . . . protects the child’s interest if the proceeding is conducted in the child’s absence. However, unless good cause is shown, a child should appear in court. It is important that all children, including infants, appear in court so the court can observe the interaction between the caregiver and child and observe the child’s development and health. Ensuring a child appears in court on a regular basis is critical because the court oversees the child and is to ensure his or her care, protection, safety, and wholesome mental and physical health. However, the court may ask that the child be removed the courtroom during sensitive testimony.”



# RHODE ISLAND



Score: 84

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

Within seven days of the Department of Children Youth and Families' filing of a petition, the court must assure that an attorney (either a guardian ad litem or an attorney with the court appointed special advocate program) "has been appointed to represent the child" (R.I. Gen. Laws § 40-11-7.1(b)(3)). Dependent children "have the right to an attorney to represent [their] best interest. A guardian ad litem is an attorney appointed through the Court Appointed Special Advocate (CASA) program administered by the Court" (State of Rhode Island Office of Child Advocate, *A Guide to Legal Issues Involving Youth in Rhode Island*, Ch. 2, State Custody of a Youth Due to Dependency, Neglect and/or Abuse).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

Court-appointed guardians ad litem or CASA attorneys represent a minor throughout the course of the family court proceedings in which they are appointed; a family court appointment allows the guardian to represent her ward on appeal (*Sam M. ex rel. Elliott v. Carveri* (2010) 608 F.3d 77, 86).

3. To what extent will a child receive client-directed representation?

Points 6 out of 20

"A lawyer Guardian ad litem is not the lawyer for the child and, therefore advocates the best interests of the child rather than merely representing the child's preferences." The GAL "will assure the child that the child's opinions and feelings will be made known to the Court even when not consistent with the recommendations of the [GAL] (R.I. Fam. Ct. Admin. Order 2006-02). Attorney GALs and CASA attorneys are charged with ensuring "that the best interests of the child are served" (R.I. Faml. Ct. Admin. Order 1979-13(1)(2)).

Basis for Deduction: A child will not receive client-directed representation. Attorney GALs and CASA attorneys are required to articulate, but not advocate for, the child's express wishes.

4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Are such education

Points: 8 out of 10

"No person shall be appointed as guardian ad litem without first completing the Family Court specialized training program. Thereafter, to continue to be appointed as a guardian ad litem, a person shall complete specialized training annually") R.I. Fam. Ct. Admin. Order 2006-02(III).

and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

Basis for deduction: Rhode Island law requires attorney GALs to have specialized, but not necessarily multidisciplinary, education and/or training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

Under Rhode Island law, children are considered to be parties to the legal proceedings (see, e.g., R.I. Gen. Laws § 40-11-12.2(a): the permanency plan “shall clearly set forth the goals and obligations of the department, parent(s), child and *all other parties*” (emphasis added)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (RI Supreme Court Art. V, Rule 1.14(a)).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Rhode Island law does not address caseload standards for attorneys representing children in dependency proceedings.



# SOUTH CAROLINA



Score: 63

Grade: D

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“Children must be appointed a guardian ad litem by the family court....  
The family court may appoint legal counsel for the child” (S.C. Code Ann. § 63-7-1620).

Basis for deduction: Under South Carolina law, a GAL may or may not be an attorney. The appointment of an attorney for a child is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

South Carolina provides that when legal counsel is appointed to represent a child, such appointment extends to “all child abuse and neglect proceedings” (S.C. Code Ann. § 63-7-1620).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

“The family court may appoint legal counsel for the child” (S.C. Code Ann. § 63-7-1620).

Basis for deduction: A child will receive client-directed representation the appointment of client-directed counsel for children on a discretionary basis, but if not the GAL is generally required to communicate the wishes of the child to the court pursuant to S.C. Code Ann. § 63-11-510.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 6 out of 10

“Appropriate training of the guardian ad litem includes instruction in these subjects: 1. the court process, including alternative dispute resolution and testifying 2. interviewing techniques 3. support services available to guardians ad litem 4. report drafting 5. Recordkeeping 6. investigation and assessment skills 7. attorney/guardian ad litem roles and duties including ethical issues 8. negotiation skills 9. methods for minimizing the potential stress to the child or the child’s family caused by the court process 10. cultural, ethnic, economic and social differences 11. social, emotional, physical, developmental, educational, vocational and psychological stages and needs of children 12. services and benefits available for children, i.e., school related issues; special education; health care issues; and government benefits 13. role and procedures of relevant agencies 14. relevant statutes, i.e., Child Welfare Reform and Adoption Act. The appointing judge may waive the training qualifications if a finding is made that the person being appointed is qualified due to prior experience as a guardian ad litem, or is otherwise competent. Such finding

shall be reflected in the appointment order” (SC Guidelines for Guardians for Children in Family Court (II)(B)).

Basis for deduction: Although South Carolina requires GALs to have specialized multidisciplinary education and/or training, it does not require a child’s legal counsel to have such education and/or training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Party in interest’ includes the child, the child’s attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board” (S.C. Code Ann. § 63-7-20(15)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (S.C. Rules of Professional Conduct, Rule 407, Rule 1.14).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

South Carolina law does not address caseload standards for attorneys representing children in dependency proceedings.



# SOUTH DAKOTA



Score: 75

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“[T]he court shall appoint an attorney for any child alleged to be abused or neglected” (S.D. Codified Laws § 26-8A-18).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“[T]he court shall appoint an attorney for any child alleged to be abused or neglected in any judicial proceeding” (S.D. Codified Laws § 26-8A-18).

3. To what extent will a child receive client-directed representation?

Points: 0 out of 20

“The attorney for the child shall represent the child’s best interests” (S.D. Codified Laws § 26-8A-18).

Basis for Deduction: A child will receive only best interest representation. Under South Dakota law, the child’s attorney must represent the child’s best interests, not the child’s expressed wishes.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

“An attorney appointed to represent abused or neglected children, including those appointed as Guardian ad Litem, shall certify that they have viewed and completed the A&N Attorney Training developed by the South Dakota Unified Judicial System” (UJS Presiding Judge Policy 3-PJ-05, revised and effective February 1, 2010).

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not,

Points: 5 out of 10

South Dakota law expressly gives the child some rights of a party, such as requiring the service of summons on the child and other named parties (S.D. Codified Laws § 26-7A-

does state law expressly give the child some of the rights of the party?

47) and requiring the court to advise the child of his/her constitutional and statutory rights, including the right to be represented by an attorney, at the first appearance before the court, the right to file, at the conclusion of the proceedings, a motion for a new hearing and, if the motion is denied, the right to appeal according to the rules of appellate procedure governing civil actions (S.D. Codified Laws § 26-7A-30).

Basis for deduction: Although South Dakota law expressly gives children many rights appurtenant to party status it does not expressly give children the legal status of party.

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (S.D. Codified Laws § 16-18, Rule 1.14).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

South Dakota law does not address caseload standards for attorneys representing children in dependency proceedings.

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# TENNESSEE



Score: 87

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“The court, in any proceeding under this part resulting from a report of harm or an investigation report..., shall appoint a guardian ad litem for the child who was the subject of the report” (Tenn. Code Ann. § 37-1-14(a)(1)).

“Guardian ad litem” is a lawyer appointed by the court to protect the rights and interests of a child during the pendency of a proceeding involving the child to advocate for the best interests of the child. “In a dependency, neglect, or abuse case the guardian ad litem must also ensure that the child’s concerns and preferences are effectively advocated, pursuant to Tennessee Supreme Court Rule 40” (Tenn. R. of Juv. P., R 2 (7)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The obligation of the guardian ad litem to the child is a continuing one and does not cease until the guardian ad litem is formally relieved by court order” (Tenn. Sup. Ct. R. 40(c)(3)). The “[r]ight to an attorney at all stages of the proceedings shall include the right to an attorney in an appeal” (Tenn. R. Juv. P. 36(b)).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

A “guardian ad litem must...ensure that the child’s concerns and preferences are effectively advocated, pursuant to Tennessee Supreme Court Rule 40” (Tenn. R. of Juv. P., R 2 (7)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 8 out of 10

“Any guardian ad litem appointed by the court shall receive training appropriate to that role prior to such appointment” (Tenn. Code Ann. § 37-1-149(a)(2)).

Basis for deduction: Although requiring attorney GALs to receive training appropriate to their role, Tennessee law does not expressly or impliedly require such training to be multidisciplinary.

<p>5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?</p>	<p>Points: 5 out of 10</p> <p>Under Tennessee law, children in dependency proceedings do have express rights in some cases (e.g., the summons shall be directed to the child if the child is 14 years of age or more (Tenn. Code. Ann. § 37-1-121(a)).</p> <p>Basis for Deduction: Tennessee law does not expressly give party status to children in dependency proceedings.</p>
<p>6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?</p>	<p>Points: 4 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Tenn. Sup. Ct. Rule 8, Rule 1.14(a)).</p> <p>“Any guardian ad litem or special advocate so appointed by the court shall be presumed to be acting in good faith and in so doing shall be immune from any liability that might otherwise be incurred while acting within the scope of such appointment” (Tenn. Code Ann. § 37-1-149(b)(3)).</p> <p>Basis for deduction: Although the Rules of Professional Conduct apply to counsel for children in dependency cases, there is a major exception allowing broad immunity.</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Tennessee law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**Sidebar Notes:**

- Although Tennessee law does not expressly mandate that the training required for GALs be multidisciplinary in nature, the state’s Court Improvement Program has offered an advanced level multidisciplinary training for attorneys since 2006, incorporating such professionals/layman as licensed clinical social workers, a developmental pediatrician, guidance counselor and former foster youth. The Tennessee Court Improvement Project has created a wonderful brochure aimed at children to assure they understand their right to an attorney-GAL and understand the roles and duties of the attorney-GAL.

# TEXAS



Score: 91

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem [“AAL”] to represent the interests of the child immediately after the filing, but before the full adversary hearing, to ensure adequate representation of the child” (Tex. Fam. Code § 107.012).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“[A]n order...may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court” (Tex. Fam. Code § 107.016). An attorney ad litem is entitled to “attend all legal proceedings in the suit” (Tex. Fam. Code § 107.003(3)(g)).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

The attorney ad litem for child “shall...represent the child’s expressed objectives of representation and follow the child’s expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem” (Tex. Fam. Code § 107.004(a)(2)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 10 out of 10

“An attorney ad litem must be trained in child advocacy or have experience determined by the court to be equivalent to that training” (Tex. Fam. Code § 107.003(2)). “The attorney ad litem appointed for the child shall, in a developmentally appropriate manner..., as appropriate, considering the nature of the appointment, become familiar with the American Bar Association’s standards of practice for attorneys who represent children in abuse and neglect cases, the suggested amendments to those standards adopted by the National Association of Counsel for Children, and the American Bar Association’s standards of practice for attorneys who represent children in custody cases” (Tex. Fam. Code § 107.004(a)(3)). “An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall complete at least three hours of continuing legal education relating to child advocacy...as soon as practicable after the attorney ad litem’s appointment. An attorney ad litem is not required to comply with this subsection if the court finds that the attorney ad litem has experience equivalent to the required education” (Tex. Fam. Code § 107.004(b)).

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

Texas law expressly gives children certain rights in dependency proceedings, such as the right to “attend each permanency hearing unless the court specifically excuses the child’s attendance” (Tex. Fam. Code § 263.302). Although the child is not a party, the AAL for the child is expressly authorized to participate in the litigation to the same extent as any party would, such as calling witnesses, settling the lawsuit, filing pleadings and reviewing and agreeing to or disagreeing to all orders, requesting hearings and final trials settings, and attending all legal proceedings. Texas law also expressly gives the attorney ad litem appointed for a child in dependency proceedings certain powers and duties in representing the child in court, such as requiring the AAL to confer with the child, to investigate the facts of the case, and for the child to assist (when appropriate) the attorney in formulating the child’s expressed objectives in the litigation. (Tex. Fam. Code § 107.003)

Basis for Deduction: Texas law does not expressly give party status to children in these proceedings.

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 6 out of 10

An attorney ad litem appointed to represent a child shall comply with specified provisions of the Texas Disciplinary Rules of Professional Conduct (Tex. Fam. Code § 107.003(1)(A)). “Attorney ad litem” means an attorney who provides legal services to a person including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation (Tex. Fam. Code §107.001(2)). However, an attorney ad litem “is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of...attorney ad litem” unless the action, recommendation, or opinion was made with conscious indifference or reckless disregard to the safety of another; was made in bad faith or with malice; or is grossly negligent or willfully wrongful” (Tex. Fam. Code § 107.009).

Basis for deduction: Although the Rules of Professional Conduct generally apply to attorney GALs representing children in dependency hearings, Texas law provides a minor exception allowing immunity for certain acts.

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Texas law does not address caseload standards for attorneys representing children in dependency proceedings.

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# UTAH

Score: 77

Grade: C



1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78A-6-902” (Utah Code Ann. § 78A-6-317(4)), which sets forth the duties and responsibilities of an attorney guardian ad litem.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court” (Utah Code Ann. § 78A-6-902(5)). An attorney guardian ad litem “participates in all appeals, unless excused by the court” (Utah Code Ann. § 78A-6-902(3)(f)).

3. To what extent will a child receive client-directed representation?

Points: 6 out of 20

“An attorney guardian ad litem shall represent the best interest of the minor...If the minor’s wishes differ from the attorney’s determination of the minor’s best interest, the attorney guardian ad litem shall communicate the minor’s wishes to the court in addition to presenting the attorney’s determination of the minor’s best interest (Utah Code Ann. § 78A-6-902(8)(a)-(b)). Legislative amendments that will take effect on May 8, 2012 provide that “[t]he guardian ad litem shall disclose the wishes of the child unless the child (i) instructs the guardian ad litem to not disclose the child’s wishes; or (ii) has not expressed any wishes” (Utah Code Ann. § 78A-6-902(8)(d)).

Basis for deduction: The child will not receive client-directed representation but his/her expressed wishes must be communicated to the court unless the child has instructed the GAL otherwise.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent

Points: 9 out of 10

Each attorney guardian ad litem, prior to representing any minor before the court, “be trained in...applicable statutory, regulatory, and case law; and...nationally recognized standards for an attorney guardian ad litem” (Utah Code Ann. § 78A-6-902(3)(b)).

Basis for deduction: Under Utah law, multidisciplinary elements are impliedly required as part of the specialized education and/or training, but are not expressly required.

is it required for a child's GAL?

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

A child who is the subject of a juvenile court hearing is entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative reviews, and has a right to be heard at specified hearings (Utah Code Ann. § 78A-6-317(1)).

Basis for Deduction: Utah law does not expressly provide status to children in dependency proceedings.

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 6 out of 10

“Every lawyer is responsible to observe the law and the Rules of Professional Conduct” (Utah Rules of Professional Conduct Preamble (1)).

“An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem’s duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah” (Utah Code Ann. § 78-6-902(7)).

A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless the employee acted or failed to act through fraud or willful misconduct (Utah Code Ann. § 63G-7-202(3)).

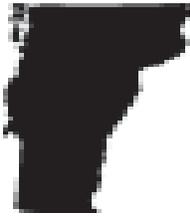
Basis for deduction: Although the Rules of Professional Conduct generally apply to attorney GALs, Utah law provides a minor exception allowing immunity in certain cases.

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 1 extra credit point

Utah law requires that the GAL Oversight Committee shall “monitor the Office’s caseload and recommend to the Judicial Council adequate staffing of GALs and staff” (Judicial Administration Rule 4-906(3)(E)).

# VERMONT



Score: 90

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“The court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings” (33 V.S.A. § 5112(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“[T]he appearance of an attorney shall be deemed to be withdrawn upon the entry of final judgment and the expiration of the time for appeal therefrom. Prior to the expiration of the time for appeal from final judgment in such an action, an attorney who has entered an appearance may withdraw only with leave of court granted” (V.R.F.P. Rule 15(f)(1)(A)).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“It is the duty of assigned counsel to represent the interests of clients to the full measure of their professional responsibility” (Vt. A.O. 32 § 2).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 0 out of 10

Vermont law does not require specialized education and/or training for attorneys representing children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all rights

Points: 10 out of 10

“Party’ includes the child with respect to whom the proceedings are brought” (33 V.S.A.

appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

§ 5102(22)(A)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“It is the duty of assigned counsel to represent the interests of clients to the full measure of their professional responsibility, without regard to the amount of compensation, if any” (Vt. A.O. 32 § 2).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Vermont law does not address caseload standards for attorneys representing children in dependency proceedings.

#### Sidebar Notes:

- Although not incorporated into statute or court rule, some specialized education and/or training is required for children’s counsel by the Office of the Defender General, which is responsible for providing representation to children who are the subject of Family Court Proceedings, and is required for GALs by the Office of the Court Administrator.



# VIRGINIA



Score: 83

Grade: B

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“Prior to the hearing by the court of any case involving a child who alleged to be abused or neglected or who is subject of an entrustment agreement or a petition seeking termination of residual parental rights...the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child” (Va. Code Ann. § 16.1-266).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

An attorney appointed as a GAL “shall represent the child...at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law” (Va. Code 16-1-268). The attorney GAL is required to “[f]ile appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case...The GAL should also ensure that the child has representation in any appeal related to the case regardless of who files the appeal. During an appeal process initiated by another party, the GAL for a child may file a brief and participate fully at oral argument. If the GAL feels he or she lacks the necessary experience or expertise to handle an appeal, the GAL should notify the court and seek to be replaced” (Virginia Judicial Council, Standards to Govern the Performance of Guardians ad Litem for Children,, Standard J, Comments).

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

Under Virginia law, the attorney guardian ad litem “shall vigorously represent the child fully protecting the child’s interest and welfare” and “shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child’s best interest and welfare” (Va. Sup. Ct. R. 8:6). “The role and responsibility of the GAL is to represent, as an attorney, the child’s best interests before the court” (Virginia Judicial Council, Standards to Govern the Performance of Guardians ad Litem for Children, Introductory Comment). However, Virginia law also provides that under specified circumstances the court may appoint an attorney to act as legal counsel for the child (Va. Code Ann. § 16.1-266(E)).

Basis for deduction: A child may receive client-directed representation, but if not the child’s wishes will be communicated to the court.

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4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

Points: 10 out of 10

An attorney GAL must complete seven hours of MCLE approved continuing legal education in the following areas in order to initially comply with these standards and be included on the list of qualified attorneys: overview of the Juvenile and Domestic Relations District Court Law; roles, responsibilities and duties of guardian ad litem representation; laws governing child abuse and neglect, foster care case review, termination of parental rights and entrustments; role of social service agencies in handling abuse and neglect cases; developmental needs of children; characteristics of abusive and neglectful families and of children who are victims; physical and medical aspects of child abuse and neglect; communication with children; children as witnesses; use of closed circuit television; and cultural awareness. Additionally, an attorney GAL must complete six hours of continuing education biennially thereafter on any topic related to the representation of children as a guardian ad litem (Virginia Judicial Council, Standards to Govern the Appointment of Guardians ad Litem Pursuant to § 16.1-266, Code of Virginia, Standards, Section B).

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

In dependency proceedings, Virginia law expressly gives children some rights, such as the right to notice of specified hearings if he or she is twelve years of age or older (Va. Code Ann. § 16.1-252), the right to be represented by an attorney GAL (Va. Code Ann. § 16.1-266(A)), and the right to participate on appeal (Virginia Judicial Council, Standards to Govern the Performance of Guardians ad Litem for Children, Standard J).

Basis for deduction: Virginia law does not expressly provide party status to children in dependency proceedings with all rights appurtenant thereto.

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 6 out of 10

"Attorneys who serve as GALs are subject to the Rules of Professional Conduct promulgated by the Virginia State Bar as they would be in any other case, except when the special duties of a GAL conflict with such rules. For example, an attorney would follow the general conflict rule (1.7) to determine if there would be a possible conflict of interest if the attorney served as GAL. But unlike the Rules for Professional Conduct as they apply to confidentiality, there may be times when attorneys serving as a GAL must, in furtherance of their role as GAL, disclose information provided by the child to the court" (Virginia Judicial Council, Standards to Govern Performance of Guardians ad Litem for Children, Standard J).

Basis for deduction: Although the Rules of Professional Conduct apply to children's counsel in dependency hearings, there are minor exceptions.

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Virginia law does not address caseload standards for attorneys representing children in dependency proceedings.

# WASHINGTON



Score: 53

Grade: F

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 15 out of 40

“If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child’s position” (Rev. Code Wash. § 13.34.100(6)(f)).

Basis for deduction: Under Washington law, the appointment of an attorney for a child in dependency proceedings, even when a child twelve or other requests the appointment of one, is discretionary.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

Basis for deduction: In those cases in which an attorney has been appointed for a child in dependency and termination proceedings, Washington law does not expressly ensure attorney representation on appeal.

3. To what extent will a child receive client-directed representation?

Points: 12 out of 20

When an attorney is appointed for a child in dependency proceedings, the role of the attorney is “to represent the child’s position” (Rev. Code Wash. § 13.34.100(6)(f)).

Basis for deduction: A child may receive client-directed counsel on a discretionary basis, but if not, the child’s wishes must be articulated to the court.

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 6 out of 10

“All guardians ad litem must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements” (Wash. Rev. Code Ann. § 13.34.102(1)).

Basis for deduction: Although Washington requires GALs to have specialized multidisciplinary education and/or training, it does not require attorneys appointed as legal counsel for children in dependency proceedings to have specialized education and/or training.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?	<p>Points: 5 out of 10</p> <p>Washington law expressly provides children in dependency proceedings with the right to service of summons “if the child is twelve or more years of age” (Wash. Rev. Code Ann. §13.34.070).</p> <p>Basis for Deduction: Washington law does not expressly provide party status to children in dependency proceedings.</p>
6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?	<p>Points: 10 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Washington State Court Rules of Professional Conduct, Rule 1.14(a)).</p>
Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?	<p>Points: 0 extra credit points</p> <p>Washington law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

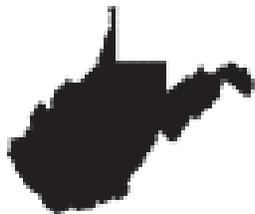
**Sidebar Notes:**

- In 2010, the Washington Legislature amended statutory law regarding the appointment of counsel for children in dependency and termination proceedings. HB 2735 (Ch. 180, Statutes of 2010) included the following legislative findings:
  - (1) The legislature recognizes that inconsistent practices in and among counties in Washington have resulted in few children being notified of their right to request legal counsel in their dependency and termination proceedings under RCW 13.34.100.
  - (2) The legislature recognizes that when children are provided attorneys in their dependency and termination proceedings, it is imperative to provide them with well-trained advocates so that their legal rights around health, safety, and well-being are protected. Attorneys, who have different skills and obligations than guardians ad litem and court-appointed special advocates, especially in forming a confidential and privileged relationship with a child, should be trained in meaningful and effective child advocacy, the child welfare system and services available to a child client, child and adolescent brain development, child and adolescent mental health, and the distinct legal rights of dependent youth, among other things. Well-trained attorneys can provide legal counsel to a child on issues such as placement options, visitation rights, educational rights, access to services while in care and services available to a child upon aging out of care. Well-trained attorneys for a child can:
    - a) Ensure the child's voice is considered in judicial proceedings;
    - b) Engage the child in his or her legal proceedings;
    - c) Explain to the child his or her legal rights;

- d) Assist the child, through the attorney's counseling role, to consider the consequences of different decisions; and
  - e) Encourage accountability, when appropriate, among the different systems that provide services to children.
- Although still making the appointment of counsel for children discretionary, and still requiring the child to request such appointment, the legislative changes do require the Department or a supervising agency and the child's GAL to notify a child of his/her right to request counsel, and to ask the child whether he/she wishes to have counsel. The court is now required to inquire whether the child has received notice of his/her right to request legal counsel, and to make an additional inquiry at the first regularly scheduled hearing after the child's 15<sup>th</sup> birthday (unless the child has already been appointed counsel).



# WEST VIRGINIA



Score: 98

Grade: A

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“In any proceeding under the provisions of this article, the child, his or her parents and his or her legally established custodian or other persons standing in loco parentis to him or her shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, the counsel will be appointed. Counsel of the child shall be appointed in the initial order” (W. Va. Code Ann. § 49-6-2(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“In any proceeding under the provisions of this article, the child, his or her or parents and his or her legally established custodian or other persons standing in loco parentis to him or her shall have the right to be represented by counsel at every stage of the proceedings” (W. Va. Code Ann. § 49-6-2(a)). The Supreme Court of Appeals of West Virginia has interpreted § 49-6-2(a) to mean that “the child should be represented at every stage of the proceeding, including appeal” (*State of West Virginia v. Scritchfield* (1981) 167 W. Va. 683 688–89 [280 S.E.2d 315]).

3. To what extent will a child receive client-directed representation?

Points: 20 out of 20

“Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia” (W. Va. Code Ann. § 49-6-2(a)).

4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?

Points: 8 out of 10

“Any attorney appointed pursuant to this section shall by the first day of July, one thousand nine hundred ninety-three, and three hours per year each year thereafter, receive a minimum of three hours of continuing legal education training on representation of children, child abuse and neglect” (W. Va. Code Ann. § 49-6-2(a)).

Basis for deduction: Although requiring attorneys representing children in dependency court to receive specialized education and/or training, West Virginia law does not expressly or impliedly require such training to be multidisciplinary.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Parties’ mean the petitioner, the respondent or respondents, and the child or children (W. Va. Child Abuse and Neglect Proc. Rule 3).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia” (W. Va. Code Ann. § 49-6-2(a)). “When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (WV Rules of Professional Conduct, Rule 1.14(a)).

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

West Virginia law does not address caseload standards for attorneys representing children in dependency proceedings.



# WISCONSIN



Score: 71

Grade: C

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 30 out of 40

“If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court...If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel” (Wis. Stat. § 48.23(1m)(b)).

“The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (3m), (10), (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel” (Wis. Stat. § 48.23(3m)).

Basis for deduction: Except for children under 12, Wisconsin law generally mandates the appointment of attorneys for children in dependency proceedings.

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 5 out of 10

Under Wisconsin law, attorneys appointed for children in contested dependency proceedings provide such representation at the “fact-finding hearing and subsequent proceedings” while attorneys appointed for children in non-contested dependency proceedings provide such representation “at the hearing at which the placement is made” (W.S.A. § 48.23(1m)(b)(2)).

Basis for deduction: Wisconsin law does not expressly ensure attorney representation on appeal.

3. To what extent will a child receive client-directed representation?

Points: 15 out of 20

“[C]ounsel means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem or court-appointed special advocate for any party in the same proceeding” (Wis. Stat. 48.23(1g)).

Basis for deduction: A child will receive client-directed representation under specified circumstances.

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4. To what extent are specialized education and/or training requirements for the child's counsel required by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

Points: 6 out of 10

"A lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 48 or 938 of the statutes unless the lawyer has attended 30 hours of guardian ad litem education approved under SCR 35.03; the lawyer has attended 6 hours of guardian ad litem education approved under SCR 35.03 during the combined current reporting period specified in SCR 31.01(7) at the time he or she accepts an appointment and the immediately preceding reporting period; or the appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor" (Wis. Sup. Ct. Rule 35.01).

Basis for deduction: Although Wisconsin requires attorneys serving as GALs to have specialized multidisciplinary education and/or training it does not provide attorneys serving as a child's legal counsel to have such education and/or training.

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 5 out of 10

Wisconsin law expressly provides rights to some children in dependency proceedings. "[A] copy of the petition...shall be given to the child if the child is 12 years of age or over" (Wis. Stat. § 48.255). Children are generally entitled to attend hearings unless the court finds it is in the best interest of the child, and if the child's counsel or guardian ad litem consents, to temporarily exclude the child from a hearing on a petition alleging that the child is in need of protection or services (Wis. Stat. § 48.299(3)). Under certain conditions, the court is required to "consult with the child, in an age-appropriate and developmentally appropriate manner, regarding the child's permanency plan and any other matters the court finds appropriate" (see, e.g., Wis. Stat. § 48.38(5m)(b)2).

Basis for deduction: Although Wisconsin law affords children some of the rights generally accorded a party it does not expressly provide party status to children in dependency proceedings.

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

"When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Wisconsin Supreme Court Rule 20:1:14(a)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 0 extra credit points

Wisconsin law does not address caseload standards for attorneys representing children in dependency hearings.

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# WYOMING

Score: 83

Grade: B



1. Does state law mandate that attorneys be appointed for children in dependency proceedings?

Points: 40 out of 40

“The court shall appoint counsel to represent any child in a court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child’s guardian ad litem unless a guardian ad litem shall be charged with representation of the child’s best interest” (Wyo. Stat. Ann. § 14-3-211(a)).

2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?

Points: 10 out of 10

“[T]he obligation of the attorney guardian ad litem to the child is a continuing one and does not cease until the attorney guardian ad litem is formally relieved by court order or the court terminates its jurisdiction over the child. This continuing obligation includes any appeals that may result from the case in which the GAL has been appointed” (Wyoming Rules and Regulations for the GAL Program, Ch. 2 § 3(b)(xiv)).

3. To what extent will a child receive client-directed representation?

Points: 6 out of 20

“The attorney or guardian ad litem shall be charged with representation of the child’s best interest” (Wyo. Stat. Ann. § 14-3-211(a)).

Rather than taking direction from the client, as is the case in traditional attorney representation of adults, the attorney guardian ad litem is charged with forming the client’s position by using his/her own judgment as to the child’s “best interests”. The attorney guardian ad litem is required to consider the child’s wishes and preferences when determining the child’s best interests, but he or she is not bound by them as in the traditional attorney-client relationship. If the attorney guardian ad litem determines that the child’s expressed preference is not in the best interests of the child, both the child’s wishes and the basis of the attorney guardian ad litem’s disagreement must be presented to the by court (Wyoming Rules and Regulations for Guardian Ad Litem Program, Ch. 2, § 2(a)).

Basis for deduction: A child will not receive client-directed representation by Wyoming law requires the attorney guardian ad litem articulate the child’s expressed preferences and wishes to the court.

4. To what extent are specialized education and/or training requirements for the child’s counsel required

Points: 8 out of 10

A lawyer shall not be qualified for an initial contract, employment, appointment or assignment for placement on the GAL Panel unless the attorney has received within the two years prior to applying for certification with the Program, ten or more live hours of child

by state law? Are such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child's counsel, to what extent is it required for a child's GAL?

related training accredited by the Wyoming State Bar, or the attorney otherwise provides evidence acceptable to the Administrator that he or she has recent training, experience, or both, which is reasonably equivalent. In order to remain on the GAL Panel and be eligible for appointments, the attorney GAL shall obtain five live hours of continuing legal education per legal education reporting year; these five live hours shall be child related training and relevant to an appointment in Juvenile Court proceedings (Wyoming Rules and Regulations for the GAL Program, Ch. 2, § 4(b)(i)(ii)).

Basis for deduction: Wyoming law does not expressly state that the education and/or training required of attorney GALs be multidisciplinary in scope.

5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“Parties’ include the child, his parents, guardian, or custodian, the state of Wyoming and any other person made a party by an order to appear, or named by the juvenile court (Wyo. Stat. Ann. § 14-3-402(a)(xiv)).

6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 4 out of 10

While attorneys in Wyoming are bound by the Rules of Professional Conduct, attorney GALs acting “in good faith” are “immune from any civil or criminal liability that might otherwise result” by reason of their actions (Wyo. Stat. Ann. § 14-3-209).

Basis for deduction: Wyoming law provides broad immunity for attorney GALs representing children in dependency proceedings.

Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 5 extra credit points

Wyoming law provides that an attorney “who contracts with, or is employed by, the Office to perform attorney guardian ad litem services on a part-time basis shall not carry more than forty 40 juvenile court cases, including juvenile delinquencies, and an attorney who contracts with, or is employed by, the Office on a full-time basis shall not carry more than 80 court cases, including juvenile delinquencies” (Guardians Ad Litem Program Ch. 2, § 6(b)).

### Sidebar Notes:

- Although Wyoming law does not expressly require that attorney GAL training be multidisciplinary in scope, the annual conference of the Office of the Public Defender’s GAL Program is multidisciplinary in nature, covering topics such as educational disabilities, developmental disabilities; mental health; substance abuse; and domestic violence.

## APPENDIX A

### History and Context of the Report Card

In April 2007, First Star published the First Edition of *A Child's Right to Counsel—A National Report Card on Legal Representation for Children*, reviewing and analyzing the laws of all 50 states and the District of Columbia with regard to their provision of attorneys to abused and neglected children in dependency cases. The report was received with critical acclaim in the media, and quickly became a standard reference tool used by legislators and advocates nationwide. The Second Edition of the Report Card was published in 2009 revealing that much had changed since the First Edition and reflecting state action toward laws reflected the best practices promoted in the Report Card. In 2009, a draft of a Model Act was under consideration by the American Bar Association, and many states were reviewing their laws regarding the representation of abused and neglected children.

In 2011, the ABA adopted the Model Act on the Representation of Children in Abuse, Neglect and Dependency Proceedings.<sup>1</sup> The tide seems to have turned, at least as far as official recognition of best practices for the representation of children. However, as this Report Card demonstrates, much remains to be done. Each abused and neglected child does not yet have effective legal representation in this country.

Historically, children were viewed as property, or chattel, and it was assumed that the legal interests of a child were represented by the parent or, in some circumstances, by the state. Over time, courts began to recognize that children have basic constitutional and statutory rights to be heard and represented by counsel in various contexts.

*In re Gault*<sup>2</sup> affirmed a child's constitutional right to counsel in criminal cases, recognizing that the risk of being placed into state custody (jail) jeopardizes a fundamental right that requires the assistance of client-directed counsel. Dependency proceedings also involve fundamental interests of the child, including a child's liberty interest to live with their parents or instead, to be placed elsewhere. Advocates have agreed that the rights recognized in *Gault* can and should extend beyond juvenile delinquency cases to include dependency proceedings.<sup>3</sup> The Model Act is one step toward recognizing this extension institutionally. This Report Card reflects the extent to which the individual States have implemented statutes, rules of court, or other enforceable policies.

### Seminal Federal Legislation: The Child Abuse Prevention and Treatment Act

With passage in 1974 of the Child Abuse Prevention and Treatment Act (CAPTA),<sup>4</sup> federal legislation for the first time addressed the issue of representation of abused and neglected children in dependency proceedings. There is no question that CAPTA played a major role in focusing attention on the representation of abused and neglected children and the passage of many state laws on the issue.

CAPTA initially required states to provide representation in the form of a Guardian ad Litem (GAL) for all abused and neglected children who were subject to court proceedings. In 1996, Congress reauthorized CAPTA and amended its language to state that a lawyer may be appointed as a GAL and that the GAL's role is to obtain a clear understanding of the child's situation and needs and to advocate for the best interests of the child. After the 1996 amendment, many courts were appointing individuals as GALs or attorneys for the child without ensuring that the individuals had undergone adequate training.<sup>5</sup> In 2003, Congress addressed this problem by amending CAPTA. The purpose of the 2003 amendments was to ensure higher quality representation and to bar appointment of untrained or poorly trained court-appointed representatives for children.<sup>6</sup>

CAPTA currently specifies that “in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who

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<sup>1</sup> The ABA Model Act was adopted by resolution of the ABA Board of Governors on August 8, 2011.

<sup>2</sup> *In re Gault*, (1967) 387 U.S. 1, 36-37 [87 S.Ct., 1428, 18 L.Ed.2d 527].

<sup>3</sup> LaShanda Taylor, *A Lawyer for Every Child: Client Directed Representation in Dependency Cases*, 47 FAM. CT. REV. 605, 610 (Oct. 2009).

<sup>4</sup> Child Abuse Prevention and Treatment Act, P.L. 93-247 (42 U.S.C. 5101 *et seq*; 42 U.S.C. 5116 *et seq*).

<sup>5</sup> See LaShanda Taylor *supra* note 3, at 610.

<sup>6</sup> *Id.*

has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings— (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child....”<sup>7</sup>

The 2010 reauthorization of CAPTA brought some reform, adding the above provision specifying that the adequate training include “training in early childhood, child, and adolescent development.”<sup>8</sup> A number of child advocacy groups pressed for more thorough reform of CAPTA’s representation provisions in the 2010 reauthorization. Those changes would have required that:

- (1) Every child involved in a court case be appointed an attorney;
- (2) This appointed attorney be designated “legal counsel” for the child, with their representation strictly following the Model Rules of Professional Conduct.
- (3) The appointed attorney have “adequate time and resources” to properly handle each case, defined as not having an “excessive” caseload and receiving “reasonable and appropriate compensation”;
- (4) This attorney appointment continue as long as the court maintained its jurisdiction over the case, including all periods of foster care or other residential placement, as well as the process of the child’s transition to adult independence” that would cover youth electing to remain in care after 18 through the Fostering Connections to Independence Act.<sup>9</sup>

### **Limited, but Promising Research and Data on the Benefits of Counsel for Abused and Neglected Children**

Available data indicates that providing legal representation to abused and neglected children resolves cases with children attaining permanency more quickly than when the child does not have legal representation. Unfortunately, current research on the benefits of providing counsel to children in these proceedings is quite limited.<sup>10</sup> The most widely referenced recent study was published in 2008 by the Chapin Hall Center for Children based on a study in Palm Beach County, Florida.<sup>11</sup> In this report, children with effective counsel in dependency cases were moved to permanency at about twice the rate of unrepresented children.<sup>12</sup> Shortened court cases and reduced time in foster care benefit children by hastening the time to permanency and benefit society by reducing court and foster care costs.

In October 2009, The Children’s Bureau of the U.S Department of Health and Human Services’ Administration on Children, Youth, and Families awarded a five-year, five million dollar grant to the University of Michigan Law School’s Child Advocacy Clinic. The grant establishes a National Quality Improvement Center (QIC) to generate and disseminate knowledge on the representation of children and youth in the child welfare system.<sup>13</sup>

Discussions with Professor Donald Duquette who leads the QIC, indicate that the project’s research on child representation is currently ongoing. One hundred and twenty-five lawyers in Washington and 140 lawyers in Georgia were identified as representing children in protection cases and randomly assigned to either an experimental or a control group. The experimental group is receiving 2-days of training under the QIC Best Practice Model along with follow-up coaching and training and is representing clients in accordance with this model. Chapin Hall of the University of Chicago is handling the research and data issues. Data will be collected from the lawyers, courts, and state agencies over a three-year period.

This research should reveal a great deal about what it is that well trained and adequately supported lawyers do in their representation that makes a difference to the children represented. While the Report Card and the 2011 ABA Model Act outline best practices in terms of a statutory framework for child representation, the QIC research focuses on the clinical skills and approaches necessary to fully implement that approach. Notably, Georgia is largely, but not completely, a best-interest state. Washington is a client-directed state, but children under 12 are only appointed lawyers if

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<sup>7</sup> 42 U.S.C. § 5106a(b)(2)(B)(xiii).

<sup>8</sup> See CAPTA Reauthorization Act of 2010, 42 U.S.C. §§ 5101–19 (2006 & Supp. IV 2010).

<sup>9</sup> See HOWARD DAVIDSON, A.B.A. CTR. ON CHILDREN & THE LAW, CAPTA PROPOSED AMENDMENTS REGARDING LEGAL REPRESENTATION OF CHILDREN (2010) [hereinafter DAVIDSON, CAPTA PROPOSED AMENDMENTS] (on file with Amy Harfeld of the Children’s Advocacy Institute).

<sup>10</sup> The QIC project discussed *infra* includes a description of current data addressing the representation of children. See <http://improvechildrep.org/NeedsAssessment/ReviewofExistingEvaluations.aspx>.

<sup>11</sup> A.E. Zinn & J. Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* (2008) available at [http://www.chapinhall.org/sites/default/files/old\\_reports/428.pdf](http://www.chapinhall.org/sites/default/files/old_reports/428.pdf).

<sup>12</sup> *Id.* at 14.

<sup>13</sup> Details and further information on the project can be found at [www.ImproveChildRep.org](http://www.ImproveChildRep.org).

the GAL or the court determines that independent representation by a lawyer is necessary. One hypothesis in the research being conducted is that lawyers who learn about the child enter the “child's world”, as suggested by Professor Jean Koh Peters<sup>14</sup> and will get different and better results. The training provided and assessments conducted measure how the lawyer “accommodates the child’s interests.”<sup>15</sup> Under this theory, whether a lawyer is “best interest” or client-directed, he or she needs to understand the child’s world and otherwise be an active and assertive player in order to effectively champion for his or her client.

### Issues on the Landscape

Since the First Edition of *A Child's Right to Counsel*, the topic of right to counsel for children has been a focus for state and national advocacy groups, legislators, attorneys, and policy groups. It has been addressed repeatedly in the media, with the publication of hundreds of newspaper articles discussing the first Report Card, and various radio interviews and related public discussions taking place. The Second Edition of *A Child's Right to Counsel* and the recent approval by the American Bar Association of its Model Act have further fueled interest in and promoted best practices for the representation of children.

Efforts in recent years to ensure that each abused and neglected child in America has effective counsel include the following:

#### **ABA Model Act – An “A+” Law**

Following publication of the First Edition of the Report Card, First Star was asked repeatedly by states what a good Right to Counsel statute should look like. As a result, First Star, in consultation with its Policy Advisory Council, drafted a Model Law for the Representation of Children in Dependency Court. In 2008, the American Bar Association’s Section of Litigation’s Children’s Rights Litigation Committee approached First Star to ask if it could use the Model Law as the basis to establish a new national standard of practice in this arena.<sup>16</sup> The resulting ABA Model Act Governing the Representation of Children in Dependency Proceedings was further honed by a host of organizations including First Star, the Children’s Advocacy Institute and other advocates over the next several years and was ultimately adopted by the ABA in August 2011.<sup>17</sup> It is included as Appendix B to this Report Card.

If the ABA Model Act were judged based on the grading criteria contained in this Report Card, it would earn score of 100 (98 points for Criteria #1–6 and 2 extra credit points), as set forth in the report card following the ABA Model Act in Appendix B.

The Section of Litigation’s Children’s Rights Litigation Committee, which is comprised of experienced litigators nationwide has been and continues to be active on the issue. This Committee played a pivotal role in the adoption of the ABA Model Act. The Committee’s Right To Counsel Working Group of attorneys and advocates meets regularly<sup>18</sup> and is currently working to develop materials to support state efforts to enact all or portions of the ABA Model Law.

#### **Defining Litigation**

Prior to 1967, children in delinquency court proceedings had no right to representation. In *In re Gault*, the U.S. Supreme Court held that children have a due process right to an attorney in delinquency proceedings.<sup>19</sup> *In re Gault* was a landmark case for children in delinquency proceedings, and by analogy, advocates believe it should apply to children involved in other court cases.

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<sup>14</sup> According to Jean Koh Peters, the child’s attorney “whether assigned to represent a child’s wishes or her best interests, must ground her representation in a thickly textured understanding of the child’s world and the child’s point of view.” Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, at § 2-A (3rd ed. 2007).

<sup>15</sup> For research purposes, the details of the training have not been made public, although the QIC model itself is on the website; see *supra* note 13.

<sup>16</sup> See *supra* note 13.

<sup>17</sup> As noted in the commentary to the ABA Model Act, the drafters considered the enormous contributions of others in defining standards of representation, including the ABA, the National Association of Counsel for Children (NACC), the Uniform Law Commission (ULC), participants in the Representing Children in Families UNLV Conference, the states and more than 30 children’s law centers around the country.

<sup>18</sup> The Public Justice Center, Civil Right to Counsel Project monitors civil right to representation efforts including those for children and is active in these monthly calls.

<sup>19</sup> See *supra*, note 2.

Some courts have found that children in dependency proceedings have a similar due process right to legal counsel.<sup>20</sup> For example, in February 2005, the U.S. District Court for the Northern District of Georgia found that abused and neglected children not only have a constitutional right to an attorney, but also to adequate legal representation, at every major stage of their life in state custody. Specifically, the court found that “children have fundamental liberty interests at stake in deprivation and [termination of parental rights] proceedings.” Furthermore, a child’s liberty interests continue to be at stake even after the child is placed in state custody at which point a special relationship is created that gives rise to rights to reasonably safe living conditions and services necessary to ensure protection from physical, psychological, and emotional harm.<sup>21</sup>

After this ruling, two Georgia counties (Fulton and DeKalb) entered into settlement agreements that guaranteed every child the right to effective legal representation throughout their involvement with the child welfare system. Since then, DeKalb County’s Child Advocate Attorneys each carry caseloads of no more than 90 children per attorney.

Other challenges have been made to excessive caseloads or otherwise seeking effective representation for children.

*In re M.S.R. and T.S.R.*, No. 85729-6 (Wash. Mar. 1, 2012) gave advocates a mixed decision, finding that the Washington statute providing for the discretionary appointment of counsel for children meets the dictates of due process. The court, however, also stated that:

for the purposes of *Mathews*, the child’s liberty interest in a dependency proceeding is very different from, but at least as great as, the parent’s . . . children have fundamental liberty interests at stake in termination of parental rights proceedings. These include a child’s interest in being free from unreasonable risks of harm and a right to reasonable safety; in maintaining the integrity of the family relationships, including the child’s parents, siblings, and other familiar relationships; and in not being returned to (or placed into) an abusive environment over which they have little voice or control.<sup>22</sup>

The court concluded that

Each child’s circumstances will be different. An infant who cannot yet form, articulate, or otherwise express a position on any relevant issue will not benefit as much from the attorney/client privilege or from counsel’s advocacy for the right to be heard at hearing as would a 10, 12, or 14 year old; there are, of course, many circumstances in between. Surely, under appropriate circumstances, an infant would be entitled to counsel, but we use the infant as an example to illustrate that the *Mathews* factors may weigh differently when applied to different children. Under RCW 13.34.100(6), the trial judge is permitted but not required to consider the issue of appointment of counsel. When the issue is properly raised under the statute, the trial judge, subject to review, should apply the *Mathews* factors to each child’s individual and likely unique circumstances to determine if the statute and due process requires the appointment of counsel.<sup>23</sup>

In *E.T. v. Cantil-Sakanye*, a group of foster children filed a class action in Sacramento County alleging their attorney’s high caseloads deny them effective assistance of counsel. The Ninth Circuit Court of Appeals affirmed the District Court’s decision to abstain from hearing the case finding,

the district court properly concluded that “[P]laintiff’s challenges to the juvenile dependency court system necessarily require the court to intrude upon the state’s administration of its government, and more specifically, the court system.”<sup>24</sup>

The Court further found that “[b]ecause the question is one of adequacy of representation, potential remediation might involve examination of the administration of a substantial number of individual cases” and, therefore,

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<sup>20</sup> Other legal theories and cases are noted in various academic articles. See *QIC Needs Assessment Literature Review* (2010), available at QIC website, *supra* note 13.

<sup>21</sup> *In re Kenny A.*, (N.D. Ga. 2005) 356 F. Supp. 2d 1353.

<sup>22</sup> *In re MSR and TSR*, 85729-6 (Wa. 2012) available at <http://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=857296MAJ> at p. 19.

<sup>23</sup> *Id.* at 21.

<sup>24</sup> *E.T., K.R., C.B. and G.S. v. Tani Cantil-Sakanye, et al.* 2012 U.S. App. Lexis 5147 at 7, citing *E.T. v. George*, (E.D. Cal. 2010) 681 F. Supp. 2d 1151, 1164.

concluded the relief sought “would amount to an ongoing federal audit of Sacramento County Dependency Court proceedings, requiring abstention.”<sup>25</sup>

The courts are still struggling to interpret policies that assure that all foster children have adequate counsel.

### **Academic Recognition and Symposia**

In 2009 the ABA Section of Litigation Children’s Rights Litigation Committee (CRLC) held a summit on a child’s right to counsel at Northwestern University School of Law. This summit allowed policy makers, practitioners, academics, and advocates from around the country to collaborate and develop an aggressive national strategy to promote the right to counsel for children through legislation, litigation, and public engagement.<sup>26</sup> The purpose of the summit was to strategize the next steps in the “right to counsel” movement for children, including using litigation, federal and state legislative reform, and passage of the Model Act.

In 2012 the CRLC, along with Nova Southeastern University Law Center, held the symposium, *The ABA Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings—Improving Outcomes For Children* to discuss the implementation of the ABA Model Act around the country. The Nova Law Review will be publishing a special edition containing nine papers presented at the symposium.

Legal representation of children has been addressed in several recent law review articles including one by Gerard Glynn, *The Child Abuse Prevention and Treatment Act—Promoting the Unauthorized Practice of Law*, which makes the case that the limited GAL requirement in CAPTA often results in the unauthorized practice of law.<sup>27</sup> Two others, written by Eric Pitchal and LaShanda Taylor, underscore the importance of a client-directed model with reasonable caseloads.<sup>28</sup>

### **NACC Certification**

The National Association of Counsel for Children (NACC) offers accredited certification for attorneys representing abused and neglected children. NACC has established certification in jurisdictions across the country, and qualifies attorneys as Child Welfare Law Specialists. The Certification reflects significant experience, training and understanding of issues in children’s law. NACC Certification is currently available in 32 states.

### **Caseload Standards ABA and NACC Recommendations**

Caseload limits are necessary for effective representation. An attorney representing 450 children (not an unusual number in many jurisdictions around the country) simply cannot provide appropriate advocacy on behalf of his/her clients. As this Report Card acknowledges, several jurisdictions have recognized the importance of this issue and have implemented caseload limits that ensure that children receive the attention and quality legal representation that they so deserve.

The ABA and the NACC recommend that a full-time attorney represent no more than 100 individual clients at a time.<sup>29</sup> This limit generally assumes a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group. One hundred cases averages to 20 hours per case in a 2000-hour year.

First Star and CAI endorse this caseload ceiling of 100 individual clients for a full-time attorney.

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<sup>25</sup> *Id.*, at 9.

<sup>26</sup> Letter from Cathy Krebs & Rosa Hirji, Summit Organizers, ABA, Section of Litig. Children’s Rights Litig. Comm., on Raising Our Hands: Creating a National Strategy for Children’s Right to Education and Counsel (Oct. 23, 2009), available at [http://www.dignityinschools.org/files/Childrens\\_Rights\\_Summit.pdf](http://www.dignityinschools.org/files/Childrens_Rights_Summit.pdf).

<sup>27</sup> Gerard F. Glynn, *The Child Abuse Prevention and Treatment Act—Promoting the Unauthorized Practice of Law*, 9 J.L. FAM. STUD. 53, 53–54 (2007).

<sup>28</sup> See Erik Pitchal, *Children’s Constitutional Right to Counsel in Dependency Cases*, 15 TEMP. POL. & CIV. RTS. L. REV. 663, 694–95 (2006); LaShanda Taylor, *A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 FAM. CT. REV. 605, 607–09 (2009).

<sup>29</sup> See National Association of Counsel for Children, NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001), available at [http://www.naccchildlaw.org/resource/resmgr/docs/nacc\\_standards\\_and\\_recommend.pdf](http://www.naccchildlaw.org/resource/resmgr/docs/nacc_standards_and_recommend.pdf); American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, Approved by the ABA House of Delegates, Feb. 5, 1996, available at <http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/repstandwhole.authcheckdam.pdf>. See also U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children’s Bureau.

# **APPENDIX B: ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings<sup>1</sup>**

## **SECTION 1. DEFINITIONS. In this [act]:**

**(a) “Abuse and neglect proceeding” means a court proceeding under [cite state statute] for protection of a child from abuse or neglect or a court proceeding under [cite state statute] in which termination of parental rights is at issue.<sup>2</sup> These proceedings include:**

- (1) abuse;**
- (2) neglect;**
- (3) dependency;**
- (4) child in voluntary placement in state care;**
- (5) termination of parental rights;**
- (6) permanency hearings; and**
- (7) post termination of parental rights through adoption or other permanency proceeding.**

**(b) A child is:**

- (1) an individual under the age of 18; or**
- (2) an individual under the age of 22 who remains under the jurisdiction of the juvenile court.**

**(c) “Child’s lawyer” (or “lawyer for children”) means a lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality and competent representation, to the child as is due an adult client, subject to Section 7 of this Act.<sup>3</sup>**

**(d) “Best interest advocate” means an individual, not functioning or intended to function as the child’s lawyer, appointed by the court to assist the court in determining the best interests of the child.**

**(e) “Developmental level” is a measure of the ability to communicate and understand others, taking into account such factors as age, mental capacity, level of**

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<sup>1</sup> This Model Act was drafted under the auspices of the ABA Section of Litigation Children’s Rights Litigation Committee with the assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some language from the provisions of the NCCUSL Representation of Children in Abuse, Neglect, and Custody Proceedings Act.

<sup>2</sup> NCCUSL, 2006 *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*, Sec. 2(2) [Hereinafter NCCUSL Act]

<sup>3</sup> *Id.*, Sec. 2(6); American Bar Association, *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, Part I, Sec A-1, 29 Fam. L. Q. 375 (1995). The standards were formally adopted by the ABA House of Delegates in 1996. [Hereinafter ABA Standards].

education, cultural background, and degree of language acquisition.<sup>4</sup>

*Legislative Note: States should implement a mechanism to bring children into court when they have been voluntarily placed into state care, if such procedures do not already exist. Court action should be triggered after a specific number of days in voluntary care (not fewer than 30 days, but not more than 90 days).*

*Commentary:*

Under the Act, a “child’s lawyer” is a client-directed lawyer in a traditional attorney-client relationship with the child. A “best interests advocate” does not function as the child’s lawyer and is not bound by the child’s expressed wishes in determining what to advocate, although the best interests advocate should consider those wishes.

The best interest advocate may be a lawyer or a lay person, such as a court-appointed special advocate, or CASA. The best interests advocate assists the court in determining the best interests of a child and will therefore perform many of the functions formerly attributable to guardians *ad litem*, but best interests advocates are not to function as the child’s lawyer. A lawyer appointed as a best interest advocate shall function as otherwise set forth in state law.

## **SECTION 2. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.**

**(a) This [act] applies to an abuse and neglect proceeding pending or commenced on or after [the effective date of this act].**

**(b) The child in these proceedings is a party.**

## **SECTION 3. APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING.**

**(a) The court shall appoint a child’s lawyer for each child who is the subject of a petition in an abuse and neglect proceeding. The appointment of a child’s lawyer must be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing.**

**(b) In addition to the appointment of a child’s lawyer, the court may appoint a best interest advocate to assist the court in determining the child’s best interests.**

**(c) The court may appoint one child’s lawyer to represent siblings if there is no conflict of interest as defined under the applicable rules of professional conduct.<sup>5</sup> The court may appoint additional counsel to represent individual siblings at a child’s lawyer’s request due to a conflict of interest between or among the siblings.**

**(d) The applicable rules of professional conduct and any law governing the**

<sup>4</sup> ABA Standards, Part I, Sec A-3.

<sup>5</sup> NCCUSL Act, Sec. 4(c); *see also* ABA Standards, Part I, Sec B-1

**obligations of lawyers to their clients shall apply to such appointed lawyers for children.**

**(e) The appointed child’s lawyer shall represent the child at all stages of the proceedings, unless otherwise discharged by order of court.<sup>6</sup>**

**(f) A child’s right to counsel may not be waived at any court proceeding.**

*Commentary:*

This act recognizes the right of every child to have quality legal representation and a voice in any abuse, neglect, dependency, or termination of parental rights proceeding, regardless of developmental level. Nothing in this Act precludes a child from retaining a lawyer. States should provide a lawyer to a child who has been placed into state custody through a voluntary placement arrangement. The fact that the child is in the state’s custody through the parent’s voluntary decision should not diminish the child’s entitlement to a lawyer.

A best interest advocate does not replace the appointment of a lawyer for the child. A best interest advocate serves to provide guidance to the court with respect to the child’s best interest and does not establish a lawyer-client relationship with the child. Nothing in this Act restricts a court’s ability to appoint a best interest advocate in any proceeding. Because this Act deals specifically with lawyers for children, it will not further address the role of the best interest advocate.

The child is entitled to conflict-free representation and the applicable rules of professional conduct must be applied in the same manner as they would be applied for lawyers for adults. A lawyer representing siblings should maintain the same lawyer-client relationship with respect to each child.

#### **SECTION 4. QUALIFICATIONS OF THE CHILD’S LAWYER.**

**(a) The court shall appoint as the child’s lawyer an individual who is qualified through training and experience, according to standards established by [insert reference to source of standards].**

**(b) Lawyers for children shall receive initial training and annual continuing legal education that is specific to child welfare law. Lawyers for children shall be familiar with all relevant federal, state, and local applicable laws.**

**(c) Lawyers for children shall not be appointed to new cases when their present caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer’s practice spent on abuse and neglect cases, the complexity of the case, and other relevant factors.**

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<sup>6</sup> ABA Standards, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

*Legislative Note: States that adopt training standards and standards of practice for children’s lawyers should include the bracketed portion of this section and insert a reference to the state laws, court rules, or administrative guidelines containing those standards.<sup>7</sup>*

*Jurisdictions are urged to specify a case limit at the time of passage of this Act.*

*Commentary:*

States should establish minimum training requirements for lawyers who represent children. Such training should focus on applicable law, skills needed to develop a meaningful lawyer-client relationship with child-clients, techniques to assess capacity in children, as well as the many interdisciplinary issues that arise in child welfare cases.

The lawyer needs to spend enough time on each abuse and neglect case to establish a lawyer-client relationship and zealously advocate for the client. A lawyer’s caseload must allow realistic performance of functions assigned to the lawyer under the [Act]. The amount of time and the number of children a lawyer can represent effectively will differ based on a number of factors, including type of case, the demands of the jurisdiction, whether the lawyer is affiliated with a children’s law office, whether the lawyer is assisted by investigators or other child welfare professionals, and the percent of the lawyer’s practice spent on abuse and neglect cases. States are encouraged to conduct caseload analyses to determine guidelines for lawyers representing children in abuse and neglect cases.

## **SECTION 5. ORDER OF APPOINTMENT.**

**(a) Subject to subsection (b), an order of appointment of a child’s lawyer shall be in writing and on the record, identify the lawyer who will act in that capacity, and clearly set forth the terms of the appointment, including the reasons for the appointment, rights of access as provided under Section 8, and applicable terms of compensation as provided under Section 12.**

**(b) In an order of appointment issued under subsection (a), the court may identify a private organization, law school clinical program or governmental program through which a child’s lawyer will be provided. The organization or program shall designate the lawyer who will act in that capacity and notify the parties and the court of the name of the assigned lawyer as soon as practicable.<sup>8</sup> Additionally, the organization or program shall notify the parties and the court of any changes in the individual assignment.**

## **SECTION 6. DURATION OF APPOINTMENT.**

**Unless otherwise provided by a court order, an appointment of a child’s**

<sup>7</sup> ABA Standards, Part II, Sec L-1-2.

<sup>8</sup> NCCUSL Act, Sec. 9

lawyer in an abuse and neglect proceeding continues in effect until the lawyer is discharged by court order or the case is dismissed.<sup>9</sup> The appointment includes all stages thereof, from removal from the home or initial appointment through all available appellate proceedings. With the permission of the court, the lawyer may arrange for supplemental or separate counsel to handle proceedings at an appellate stage.<sup>10</sup>

*Commentary:*

As long as the child remains in state custody, even if the state custody is long-term or permanent, the child should retain the right to counsel so that the child's lawyer can deal with the issues that may arise while the child is in custody but the case is not before the court.

## **SECTION 7. DUTIES OF CHILD'S LAWYER AND SCOPE OF REPRESENTATION.**

**(a) A child's lawyer shall participate in any proceeding concerning the child with the same rights and obligations as any other lawyer for a party to the proceeding.**

**(b) The duties of a child's lawyer include, but are not limited to:**

**(1) taking all steps reasonably necessary to represent the client in the proceeding, including but not limited to: interviewing and counseling the client, preparing a case theory and strategy, preparing for and participating in negotiations and hearings, drafting and submitting motions, memoranda and orders, and such other steps as established by the applicable standards of practice for lawyers acting on behalf of children in this jurisdiction;**

**(2) reviewing and accepting or declining, after consultation with the client, any proposed stipulation for an order affecting the child and explaining to the court the basis for any opposition;**

**(3) taking action the lawyer considers appropriate to expedite the proceeding and the resolution of contested issues;**

**(4) where appropriate, after consultation with the client, discussing the possibility of settlement or the use of alternative forms of dispute resolution and participating in such processes to the extent permitted under the law of this state;<sup>11</sup>**

**(5) meeting with the child prior to each hearing and for at least one in-person meeting every quarter;**

**(6) where appropriate and consistent with both confidentiality and the child's legal interests, consulting with the best interests advocate;**

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<sup>9</sup> *Id.*, Sec. 10(a)

<sup>10</sup> ABA Standards, Part I, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1.; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

<sup>11</sup> NCCUSL Act, Sec. 11 Alternative A.

**(7) prior to every hearing, investigating and taking necessary legal action regarding the child’s medical, mental health, social, education, and overall well-being;**

**(8) visiting the home, residence, or any prospective residence of the child, including each time the placement is changed;**

**(9) seeking court orders or taking any other necessary steps in accordance with the child’s direction to ensure that the child’s health, mental health, educational, developmental, cultural and placement needs are met; and**

**(10) representing the child in all proceedings affecting the issues before the court, including hearings on appeal or referring the child’s case to the appropriate appellate counsel as provided for by/mandated by [insert local rule/law etc.].**

*Commentary:*

The national standards mentioned in (b)(1) include the *ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*.

In order to comply with the duties outlined in this section, lawyers must have caseloads that allow realistic performance of these functions.

The child’s lawyer may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment.<sup>12</sup> Such ancillary matters include special education, school discipline hearings, mental health treatment, delinquency or criminal issues, status offender matters, guardianship, adoption, paternity, probate, immigration matters, medical care coverage, SSI eligibility, youth transitioning out of care issues, postsecondary education opportunity qualification, and tort actions for injury, as appropriate.<sup>13</sup> The lawyer should make every effort to ensure that the child is represented by legal counsel in all ancillary legal proceedings, either personally, when the lawyer is competent to do so, or through referral or collaboration. Having one lawyer represent the child across multiple proceedings is valuable because the lawyer is better able to understand and fully appreciate the various issues as they arise and how those issues may affect other proceedings.

**(c) When the child is capable of directing the representation by expressing his or her objectives, the child’s lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct. In a developmentally appropriate manner, the lawyer shall elicit the child’s wishes and advise the child as to options.**

*Commentary:*

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<sup>12</sup> ABA Standards, Part I, Section D-12.

<sup>13</sup> *Id.*

The lawyer-client relationship for the child's lawyer is fundamentally indistinguishable from the lawyer-client relationship in any other situation and includes duties of client direction,<sup>14</sup> confidentiality,<sup>15</sup> diligence,<sup>16</sup> competence,<sup>17</sup> loyalty,<sup>18</sup> communication,<sup>19</sup> and the duty to provide independent advice.<sup>20</sup> Client direction requires the lawyer to abide by the client's decision about the objectives of the representation. In order for the child to have an independent voice in abuse and neglect proceedings, the lawyer shall advocate for the child's counseled and expressed wishes.<sup>21</sup> Moreover, providing the child with an independent and client-directed lawyer ensures that the child's legal rights and interests are adequately protected.

The child's lawyer needs to explain his or her role to the client and, if applicable, explain in what strictly limited circumstances the lawyer cannot advocate for the client's expressed wishes and in what circumstances the lawyer may be required to reveal confidential information. This explanation should occur during the first meeting so the client understands the terms of the relationship.

In addition to explaining the role of the child's lawyer, the lawyer should explain the legal process to the child in a developmentally appropriate manner as required by Rule 1.4 of the ABA Model Rules of Professional Conduct or its equivalent.<sup>22</sup> This explanation can and will change based on age, cognitive ability, and emotional maturity of the child. The lawyer needs to take the time to explain thoroughly and in a way that allows and encourages the child to ask questions and that ensures the child's understanding. The lawyer should also facilitate the child's participation in the proceeding (See Section 9).

In order to determine the objectives of the representation of the child, the child's lawyer should develop a relationship with the client. The lawyer should achieve a thorough knowledge of the child's circumstances and needs. The lawyer should visit the child in the child's home, school, or other appropriate place where the child is comfortable. The lawyer should observe the child's interactions with parents, foster parents, and other caregivers. The lawyer should maintain regular and ongoing contact with the child throughout the case.

The child's lawyer helps to make the child's wishes and voice heard but is not merely the child's mouthpiece. As with any lawyer, a child's lawyer is both an advocate and a counselor for the client. Without unduly influencing the child, the lawyer should advise the child by providing options and information to assist the child in making decisions.

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<sup>14</sup> ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2

<sup>15</sup> M.R. 1.6

<sup>16</sup> M.R. 1.3

<sup>17</sup> M.R. 1.1

<sup>18</sup> M.R. 1.7

<sup>19</sup> M.R. 1.4

<sup>20</sup> M.R. 2.1

<sup>21</sup> ABA Standards, commentary A-1

<sup>22</sup> M.R. 1.4

The lawyer should explain the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child, other family members, and future legal proceedings.<sup>23</sup> The lawyer should investigate the relevant facts, interview persons with significant knowledge of the child's history, review relevant records, and work with others in the case.

**(d) The child's lawyer shall determine whether the child has diminished capacity pursuant to the Model Rules of Professional Conduct. {STATES MAY CONSIDER INSERTING THE FOLLOWING TWO SENTENCES:} [Under this subsection a child shall be presumed to be capable of directing representation at the age of \_\_\_\_\_. The presumption of diminished capacity is rebutted if, in the sole discretion of the lawyer, the child is deemed capable of directing representation.] In making the determination, the lawyer should consult the child and may consult other individuals or entities that can provide the child's lawyer with the information and assistance necessary to determine the child's ability to direct the representation.**

**When a child client has diminished capacity, the child's lawyer shall make a good faith effort to determine the child's needs and wishes. The lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client and fulfill the duties as outlined in Section 7(b) of this Act. During a temporary period or on a particular issue where a normal client-lawyer relationship is not reasonably possible to maintain, the child's lawyer shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination. The lawyer should take direction from the child as the child develops the capacity to direct the lawyer. The lawyer shall advise the court of the determination of capacity and any subsequent change in that determination.**

*Commentary:*

A determination of incapacity may be incremental and issue-specific, thus enabling the child's lawyer to continue to function as a client-directed lawyer as to major questions in the proceeding. Determination of diminished capacity requires ongoing re-assessment. A child may be able to direct the lawyer with respect to a particular issue at one time but not another. Similarly, a child may be able to determine some positions in the case, but not others. For guidance in assessing diminished capacity, see the commentary to Section (e). The lawyer shall advise the court of the determination of capacity and any subsequent change in that determination.

In making a substituted judgment determination, the child's lawyer may wish to seek guidance from appropriate professionals and others with knowledge of the child,

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<sup>23</sup> M.R. 2.1

including the advice of an expert. A substituted judgment determination is not the same as determining the child's best interests; determination of a child's best interests remains solely the province of the court. Rather, it involves determining what the child would decide if he or she were able to make an adequately considered decision.<sup>24</sup> A lawyer should determine the child's position based on objective facts and information, not personal beliefs. To assess the needs and interests of *this* child, the lawyer should observe the child in his or her environment, and consult with experts.<sup>25</sup>

In formulating a substituted judgment position, the child's lawyer's advocacy should be child-centered, research-informed, permanency-driven, and holistic.<sup>26</sup> The child's needs and interests, not the adults' or professionals' interests, must be the center of all advocacy. For example, lawyers representing very young children must truly *see* the world through the child's eyes and formulate their approach from that perspective, gathering information and gaining insight into the child's experiences to inform advocacy related to placement, services, treatment and permanency.<sup>27</sup> The child's lawyer should be proactive and seek out opportunities to observe and interact with the very young child client. It is also essential that lawyers for very young children have a firm working knowledge of child development and special entitlements for children under age five.<sup>28</sup>

When determining a substituted judgment position, the lawyer shall take into consideration the child's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case and the use of the least restrictive or detrimental alternatives available. The child's lawyer should seek to speed the legal process, while also maintaining the child's critical relationships.

The child's lawyer should not confuse inability to express a preference with unwillingness to express a preference. If an otherwise competent child chooses not to express a preference on a particular matter, the child's lawyer should determine if the child wishes the lawyer to take no position in the proceeding, or if the child wishes the lawyer or someone else to make the decision for him or her. In either case, the lawyer is bound to follow the client's direction. A child may be able to direct the lawyer with respect to a particular issue at one time but not at another. A child may be able to determine some positions in the case but not others.

**(e) When the child's lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer**

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<sup>24</sup> Massachusetts Committee For Public Counsel Services, *Performance Standards Governing The Representation Of Children And Parents in Child Welfare Cases*, Chapter Four: Performance Standards and Complaint Procedures 4-1, Section 1.6(c) (2004).

<sup>25</sup> Candice L. Maze, JD, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, ABA Center on Children and the Law, October, 2010.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a best interest advocate or investigator to make an independent recommendation to the court with respect to the best interests of the child.

**When taking protective action, the lawyer is impliedly authorized under Model Rule 1.6(a) to reveal information about the child, but only to the extent reasonably necessary to protect the child's interests.<sup>29</sup> Information relating to the representation of a child with diminished capacity is protected by Rule 1.6 and Rule 1.14 of the ABA Model Rules of Professional Conduct. [OR ENTER STATE RULE CITATION]**

*Commentary:*

Consistent with Rule 1.14, ABA Model Rules of Professional Conduct (2004), the child's lawyer should determine whether the child has sufficient maturity to understand and form an attorney-client relationship and whether the child is capable of making reasoned judgments and engaging in meaningful communication. It is the responsibility of the child's lawyer to determine whether the child suffers from diminished capacity. This decision shall be made after sufficient contact and regular communication with the client. Determination about capacity should be grounded in insights from child development science and should focus on the child's decision-making process rather than the child's choices themselves. Lawyers should be careful not to conclude that the child suffers diminished capacity from a client's insistence upon a course of action that the lawyer considers unwise or at variance with lawyer's view.<sup>30</sup>

When determining the child's capacity the lawyer should elicit the child's expressed wishes in a developmentally appropriate manner. The lawyer should not expect the child to convey information in the same way as an adult client. A child's age is not determinative of diminished capacity. For example, even very young children are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.<sup>31</sup>

Criteria for determining diminished capacity include the child's developmental stage, cognitive ability, emotional and mental development, ability to communicate, ability to understand consequences, consistency of the child's decisions, strength of wishes and the opinions of others, including social workers, therapists, teachers, family members or a hired expert.<sup>32</sup> To assist in the assessment, the lawyer should ask questions in developmentally appropriate language to determine whether the child understands the nature and purpose of the proceeding and the risks and benefits of a desired position.<sup>33</sup> A

<sup>29</sup> M.R. 1.14(c)

<sup>30</sup> Restatement (Third) of the Law Governing Lawyers Sec. 24 c. c (2000).

<sup>31</sup> M.R. 1.14 cmt. 1

<sup>32</sup> M.R. 1.14, cmt. 1

<sup>33</sup> Anne Graffam Walker, Ph.D. *Handbook on Questioning Children: A Linguistic Perspective* 2<sup>nd</sup> Edition

child may have the ability to make certain decisions, but not others. A child with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the child's own well-being such as sibling visits, kinship visits and school choice and should continue to direct counsel in those areas in which he or she does have capacity. The lawyer should continue to assess the child's capacity as it may change over time.

When the lawyer determines that the child has diminished capacity, the child is at risk of substantial harm, the child cannot adequately act in his or her own interest, and the use of the lawyer's counseling role is unsuccessful, the lawyer may take protective action. Substantial harm includes physical, sexual and psychological harm. Protective action includes consultation with family members, or professionals who work with the child. Lawyers may also utilize a period of reconsideration to allow for an improvement or clarification of circumstances or to allow for an improvement in the child's capacity.<sup>34</sup> This rule reminds lawyers that, among other things, they should ultimately be guided by the wishes and values of the child to the extent they can be determined.<sup>35</sup>

“Information relating to the representation is protected by Model Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to this section, the lawyer is impliedly authorized to make necessary disclosures, even when the client directs the lawyer to the contrary.”<sup>36</sup> However the lawyer should make every effort to avoid disclosures if at all possible. Where disclosures are unavoidable, the lawyer must limit the disclosures as much as possible. Prior to any consultation, the lawyer should consider the impact on the client's position, and whether the individual is a party who might use the information to further his or her own interests. “At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client.”<sup>37</sup> If any disclosure by the lawyer will have a negative impact on the client's case or the lawyer-client relationship, the lawyer must consider whether representation can continue and whether the lawyer-client relationship can be re-established. “The lawyer's position in such cases is an unavoidably difficult one.”<sup>38</sup>

A request made for the appointment of a best interest advocate to make an independent recommendation to the court with respect to the best interests of the child should be reserved for extreme cases, i.e. where the child is at risk of substantial physical harm, cannot act in his or her own interest and all protective action remedies have been exhausted. Requesting the judge to appoint a best interest advocate may undermine the relationship the lawyer has established with the child. It also potentially compromises

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<sup>34</sup> M.R. 1.14 cmt. 5

<sup>35</sup> M.R. 1.14 cmt. 5

<sup>36</sup> M.R. 1.14, cmt. 8

<sup>37</sup> M.R. 1.14, cmt. 8

<sup>38</sup> M.R. 1.14, cmt 8

confidential information the child may have revealed to the lawyer. The lawyer cannot ever become the best interest advocate, in part due to confidential information that the lawyer receives in the course of representation. Nothing in this section restricts a court from independently appointing a best interest advocate when it deems the appointment appropriate.

#### **SECTION 8. ACCESS TO CHILD AND INFORMATION RELATING TO THE CHILD.**

**(a) Subject to subsections (b) and (c), when the court appoints the child's lawyer, it shall issue an order, with notice to all parties, authorizing the child's lawyer to have access to:**

**(1) the child; and**

**(2) confidential information regarding the child, including the child's educational, medical, and mental health records, social services agency files, court records including court files involving allegations of abuse or neglect of the child, any delinquency records involving the child, and other information relevant to the issues in the proceeding, and reports that form the basis of any recommendation made to the court.**

**(b) A child's record that is privileged or confidential under law other than this [act] may be released to a child's lawyer appointed under this [act] only in accordance with that law, including any requirements in that law for notice and opportunity to object to release of records. Nothing in this act shall diminish or otherwise change the attorney-client privilege of the child, nor shall the child have any lesser rights than any other party in regard to this or any other evidentiary privilege. Information that is privileged under the lawyer-client relationship may not be disclosed except as otherwise permitted by law of this state other than this [act].**

**(c) An order issued pursuant to subsection (a) shall require that a child's lawyer maintain the confidentiality of information released pursuant to Model Rule 1.6. The court may impose any other condition or limitation on an order of access which is required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding.**

**(d) The custodian of any record regarding the child shall provide access to the record to an individual authorized access by order issued pursuant to subsection (a).**

**(e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect upon issuance.<sup>39</sup>**

#### **SECTION 9. PARTICIPATION IN PROCEEDINGS.**

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<sup>39</sup> NCCUSL Act, Sec. 15

**(a) Each child who is the subject of an abuse and neglect proceeding has the right to attend and fully participate in all hearings related to his or her case.**

**(b) Each child shall receive notice from the child welfare agency worker and the child's lawyer of his or her right to attend the court hearings.**

**(c) If the child is not present at the hearing, the court shall determine whether the child was properly notified of his or her right to attend the hearing, whether the child wished to attend the hearing, whether the child had the means (transportation) to attend, and the reasons for the non-appearance.**

**(d) If the child wished to attend and was not transported to court the matter shall be continued.**

**(e) The child's presence shall only be excused after the lawyer for the child has consulted with the child and, with informed consent, the child has waived his or her right to attend.**

**(f) A child's lawyer appointed under this [act] is entitled to:**

**(1) receive a copy of each pleading or other record filed with the court in the proceeding;**

**(2) receive notice of and attend each hearing in the proceeding [and participate and receive copies of all records in any appeal that may be filed in the proceeding];**

**(3) receive notice of and participate in any case staffing or case management conference regarding the child in an abuse and neglect proceeding; and**

**(4) receive notice of any intent to change the child's placement. In the case of an emergency change, the lawyer shall receive notice as soon as possible but no later than 48 hours following the change of placement.**

**(g) A child's lawyer appointed under this [act] may not engage in ex parte contact with the court except as authorized by the applicable rules of professional conduct, court order, or other law.**

**(h) Subject to court approval, a party may call any best interest advocate as a witness for the purpose of cross-examination regarding the advocate's report, even if the advocate is not listed as a witness by a party.**

**[(i) In a jury trial, disclosure to the jury of the contents of a best interest advocate's report is subject to this state's rules of evidence.]<sup>40</sup>**

*Commentary:*

Courts need to provide the child with notification of each hearing. The Court should enforce the child's right to attend and fully participate in all hearings related to his or her

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<sup>40</sup> NCCUSL Act, Sec. 16

abuse and neglect proceeding.<sup>41</sup> Having the child in court emphasizes for the judge and all parties that this hearing is about the child. Factors to consider regarding the child's presence at court and participation in the proceedings include: whether the child wants to attend, the child's age, the child's developmental ability, the child's emotional maturity, the purpose of the hearing and whether the child would be severely traumatized by such attendance.

Lawyers should consider the following options in determining how to provide the most meaningful experience for the child to participate: allowing the child to be present throughout the entire hearing, presenting the child's testimony in chambers adhering to all applicable rules of evidence, arranging for the child to visit the courtroom in advance, video or teleconferencing the child into the hearing, allowing the child to be present only when the child's input is required, excluding the child during harmful testimony, and presenting the child's statements in court adhering to all applicable rules of evidence.

Courts should reasonably accommodate the child to ensure the hearing is a meaningful experience for the child. The court should consider: scheduling hearing dates and times when the child is available and least likely to disrupt the child's routine, setting specific hearing times to prevent the child from having to wait, making courtroom waiting areas child friendly, and ensuring the child will be transported to and from each hearing.

The lawyer for the child plays an important role in the child's court participation. The lawyer shall ensure that the child is properly prepared for the hearing. The lawyer should meet the child in advance to let the child know what to expect at the hearing, who will be present, what their roles are, what will be discussed, and what decisions will be made. If the child would like to address the court, the lawyer should counsel with the child on what to say and how to say it. After the hearing, the lawyer should explain the judge's ruling and allow the child to ask questions about the proceeding.

Because of the wide range of roles assumed by best interest advocates in different jurisdictions, the question of whether a best interest advocate may be called as a witness should be left to the discretion of the court.

## **SECTION 10. LAWYER WORK PRODUCT AND TESTIMONY.**

**(a) Except as authorized by [insert reference to this state's rules of professional conduct] or court rule, a child's lawyer may not:**

**(1) be compelled to produce work product developed during the appointment;**

**(2) be required to disclose the source of information obtained as a result of the appointment;**

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<sup>41</sup> American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

**(3) introduce into evidence any report or analysis prepared by the child’s lawyer; or**

**(4) provide any testimony that is subject to the attorney-client privilege or any other testimony unless ordered by the court.**

*Commentary:*

Nothing in this act shall diminish or otherwise change the lawyer-work product or attorney-client privilege protection for the child, nor shall the child have any lesser rights than any other party with respect to these protections.

If a state requires lawyers to report abuse or neglect under a mandated reporting statute, the state should list that statute under this section.

#### **SECTION 11. CHILD’S RIGHT OF ACTION.**

**(a) The child’s lawyer may be liable for malpractice to the same extent as a lawyer for any other client.**

**(b) Only the child has a right of action for money damages against the child’s lawyer for inaction or action taken in the capacity of child’s lawyer.**

#### **SECTION 12. FEES AND EXPENSES IN ABUSE OR NEGLECT PROCEEDINGS.**

**(a) In an abuse or neglect proceeding, a child’s lawyer appointed pursuant to this [act] is entitled to reasonable and timely fees and expenses in an amount set by [court or state agency to be paid from (authorized public funds)].<sup>42</sup>**

**(b) To receive payment under this section, the payee shall complete and submit a written claim for payment, whether interim or final, justifying the fees and expenses charged.**

**(c) If after a hearing the court determines that a party whose conduct gave rise to a finding of abuse or neglect is able to defray all or part of the fees and expenses set pursuant to subsection (a), the court shall enter a judgment in favor of [the state, state agency, or political subdivision] against the party in an amount the court determines is reasonable.<sup>43</sup>**

#### **SECTION 13. EFFECTIVE DATE. This [act] takes effect on \_\_\_\_\_.**

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<sup>42</sup> N.C. Gen. Stat. Ann. § 7B-603.

<sup>43</sup> NCCUSL Act, Sec. 19.

# ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

**Score: 100**  
**Grade: A+**

<p>1. Does state law mandate that attorneys be appointed for children in dependency proceedings?</p>	<p>Points: 40 out of 40</p> <p>“The court shall appoint a child’s lawyer for each child who is the subject of a petition in an abuse and neglect proceeding. The appointment of a child’s lawyer must be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing” (ABA Model Act, § 3(a)).</p>
<p>2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?</p>	<p>Points: 10 out of 10</p> <p>“The appointment includes all stages thereof, from removal from the home or initial appointment through all available appellate proceedings” (ABA Model Act, § 6).</p>
<p>3. To what extent will a child receive client-directed representation?</p>	<p>Points: 20 out of 20</p> <p>“When the child is capable of directing the representation by expressing his or her objectives, the child’s lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct. In a developmentally appropriate manner, the lawyer shall elicit the child’s wishes and advise the child as to options” (ABA Model Act, § 7(c)).</p>
<p>4. To what extent are specialized education and/or training requirements for the child’s counsel required by state law? Is such education and/or training required to include multidisciplinary elements? If no such education and/or training is required for child’s counsel, to what extent is it required for a child’s GAL?</p>	<p>Points: 8 out of 10</p> <p>“The court shall appoint as the child’s lawyer an individual who is qualified through training and experience, according to standards established by [insert reference to source of standards]...Lawyers for children shall receive initial training and annual continuing legal education that is specific to child welfare law. Lawyers for children shall be familiar with all relevant federal, state, and local applicable laws” (ABA Model Act, § 4(a)-(b)).</p> <p>Basis for deduction: the ABA Model Act does not explicitly require multidisciplinary training.</p>

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5. Does state law expressly give the child the legal status of a party with all rights appurtenant thereto? If not, does state law expressly give the child some of the rights of the party?

Points: 10 out of 10

“The child in these proceedings is a party” (ABA Model Act, § 2(b)).

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6. Does state law pertaining to liability and confidentiality apply to legal counsel representing children in dependency proceedings?

Points: 10 out of 10

“Child’s lawyer’ (or ‘lawyer for children’) means a lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality and competent representation, to the child as is due an adult client, subject to Section 7 of this Act” (ABA Model Act § 1(c)). “A child’s lawyer shall participate in any proceeding concerning the child with the same rights and obligations as any other lawyer for a party to the proceeding” (ABA Model Act § 7(a)). “When the child is capable of directing the representation by expressing his or her objectives the child’s lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct” (ABA Model Act, § 7(c)).

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Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?

Points: 2 extra credit points

“Lawyers for children shall not be appointed to new cases when their present caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer’s practice spent on abuse and neglect cases, the complexity of the case, and other relevant factors” (ABA Model Act, § 4(c)).

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## Appendix C: State Contacts

The following individuals were provided with draft versions of the grade sheets for their respective states and asked for comments, feedback, and corrections. We appreciate the cooperation and assistance of all of these individuals, including when, on occasion, they forwarded the draft grade sheets to additional individuals for further review and comment. We incorporated many of the comments received into this report. First Star and the Children's Advocacy Institute are tremendously grateful to all who provided insight, explanation, and assistance. You all have contributed to the accuracy of the information contained in this Report.

State	Persons Provided Draft Grade sheets
<b>Alabama</b>	David Williams, Alabama Administrative Office of the Courts Bob Maddox, Esq., Alabama Administrative Office of the Courts Sue Ash, Alabama Department of Human Resources Linda Tilly, Voices for Alabama's Children Keith Camp
<b>Alaska</b>	Susanne DiPietro, Judicial Education Coordinator, Alaska Court System Amanda Metivier, Facing Foster Care in Alaska Christy Lawton, Child Welfare Administrator, Office of Children Services Barb Malchick
<b>Arizona</b>	Paul Bennett, UA Child Advocacy Clinic Caroline Lauth-Owens, Dependent Children's Services Robert Shelley, Court Improvement Project Coordinator, Admin. Office of the Courts Linda Johnson, Admin. for Children, Youth and Families Dana Wolfe Naimark, Arizona Children's Action Alliance Ann Haralambie, Esq.
<b>Arkansas</b>	Michael Mullane, Director and Professor of Law, Legal Clinic, Robert A. Leflar Law Center Connie Hickman Tanner, Director of Juvenile Courts, Admin. Office of the Courts Debbie Roark, Child Protective Services Manager, Div. of Children & Family Services Max Snowden, Comm. On Child Abuse, Rape & Domestic Violence, University of Arkansas for Medical Sciences Rich Huddleston, Arkansas Advocates for Children & Families Stasia Burk
<b>California</b>	Bill Patton, Associate Dean of the Clinical Program and Professor of Law, Whittier Law School Deborah Forman, Whittier Center for Children's Rights Leslie Heimov, Executive Director, Children's Law Center of Los Angeles Christopher Wu, Supervising Attorney, Judicial Council of California Greg Rose, Office of Child Abuse Prevention Joyce Dowell, Chief, Child Welfare Policy and Program Development Bureau Diane Brown, Manager, Child Policy Development and Support Robert C. Fellmeth, Esq. Mary Ault
<b>Colorado</b>	Theresa Spahn, Executive Director, Office of the Child's Representative Sarah Ehrlich, Staff Attorney and Legislative Liaison, Office of the Child's Representative Sheri Danz, Office of the Child's Representative Daniel P. Gallagher, Policy Analyst & Court Improvement Project Coordinator, State Court Administrator's Office Marvin Ventrell, Executive Director, Juvenile Law Society Shirley Mondragon, Administrator, Children Services, Dept of Human Services Chris Watney, Interim Director, Colorado Children's Campaign Maureen Farrell-Stevenson
<b>Connecticut</b>	Honorable Charles Gill, Superior Court, State of Connecticut Carolyn Signorelli, Chief Child Protection Attorney, Commission on Child Protection Karl Kemper, Dept of Children and Families Faith Vos Winkel, Assistant Child Advocate, Office of Child Advocate Jamey Bell, Executive Director, Connecticut Voices for Children Jeanne Milstein Barbara Clair
<b>Delaware</b>	Tania M. Culley, Office of the Child Advocate Guy Sapp, Court Administrator, Office of Children Services Linda Shannon, Office of Children Services Andrea Mills, Director of Special Court Services, Family Court of the State of Delaware Trish Hearn, Court Improvement Program Coordinator, Family Court of Delaware Christine M. McDermott
<b>District of Columbia</b>	Diane Weinroth, Children's Law Center Fillmore Lucas, Jr., Deputy Director of the Family Division, Clerk's Office; Superior Court of DC Wilma Brier, Branch Chief, CCAN, Family Courts of the D.C. Superior Court Virginia Monteiro, Children and Family Services Admin. Toni Smith, Director of Administration

<b>Florida</b>	Gerry Glynn, Dwayne O. Andreas School of Law Sandra (Sandy) Neidert, Senior Court Operations Consultant, Office of Court Improvement John Harper, Dept. of Children and Families Louis M. Reidenberg Linda Alexionok, Executive Director, Children's Campaign Judge Frederick Smith Juana Leon Mary Cagle, Director
<b>Georgia</b>	Kirsten Widner, Court of Georgia Committee on Justice for Children Michelle R. Barclay, Admin. Office of the Courts Melissa D. Carter, Deputy Director, Office of the Child Advocate Trenny Stovall, Child Advocacy Center Director, DeKalb County Child Advocacy Center Mindy Binderman, Policy Director, Voices for Georgia's Children Karen Worthington
<b>Hawaii</b>	Sandie Kato, Program Specialist, First Judicial Circuit Faye Kimura, Program Coordinator Rondney Hee, Court Administrator, Court Mgt. Services Branch Gibby Fukutomi, Dept of Human Services Cynthia Goss, Dept of Human Services Colin Fukunaga, Assistant Program Administrator, Department of Human Services Elisabeth Chun, Executive Director, Good Beginnings Alliance Stephen Duck Amy Tsark
<b>Idaho</b>	Debra Alsaker-Burke, Director, Court Improvement Project Hon. Bryan Murray, Idaho Supreme Court LeAnn Simmons
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<b>Indiana</b>	Mary Wolf, Clinical Professor of Law and Director of Clinical Programs, IU School of Law Angela Reid-Brown, CIP Grant Administrator, Indiana Judicial Center Leslie Dunn, Dir of GAL CASA, State Court Administration Joel Schumm, Professor, Indiana University School of Law - Indianapolis Lilia Judson, State Court Administration Anne Jordan, State Court Administration John Wood, Deputy General Counsel, Dept of Child Services James "Jim" Payne, Director, Dept of Child Services Angel Owens, Dept of Child Services
<b>Iowa</b>	Michael Sorci, Executive Director, Youth Law Center Gail Barber, Project Director, Iowa Court Improvement Project Rosemary Norlin, Dept of Human Services Charles Bruner, Child & Family Policy Center
<b>Kansas</b>	Linda Elrod, Washburn Children Dawn Spencer, Court Improvement Specialist, Kansas Supreme Court Frayna Scrinopskie, Court Improvement Specialist, Kansas Supreme Court Mark Gleeson, Family and Children Program Coordinator, Kansas Supreme Court Roberta Sue McKenna, Dept of Social & Rehabilitation Services Brian Dempsey, Deputy Director of Children and Family Services, Dept of Social & Rehabilitation Services Gary Brunk, President & CEO, Kansas Action for Children
<b>Kentucky</b>	Joshua Crabtree, Managing Attorney, Children's Law Center, Inc. Kim Tandy, Executive Director, Children's Law Center, Inc. Patrick Yewell, Admin. Office of the Courts J.R. Hopson, KY Administrative Office of the Courts Mike Grimes, Department for Community-Based Services/Division for Protection and Permanency Terry Brooks, Executive Director, Kentucky Youth Advocates Josh Crabtree

<b>Louisiana</b>	<p>Cheryl Buchert, Associate Professor, Loyola University New Orleans  Hon. Andrea Price Janzen, Judicial Court Administrator  Jan Byland, Louisiana Dept of Social Services  Mark Harris, Program Coordinator, Office of Judicial Admin.  Karen Hallstrom, Office of Judicial Admin.  Anthony J. Gagliano, Deputy Judicial Administrator, Louisiana Supreme Court  Patrice Waldrop  Candice LeBlanc, Deputy General Counsel, Dept of Social Services  Judy Watts, Agenda for Children  David Katner  Hon. Nancy Amato Konrad</p>
<b>Maine</b>	<p>Tracy Adamson, Family Division Manager, Maine Administrative Office of the Courts  Wendy Rau , Family Division Director, Admin. Office of the Courts  James Beougher, Director, Dept of Health &amp; Human Services  Virginia Marriner, Dept of Health &amp; Human Services  Dulcey Laberge, Division of Public Service Management  Vickie J Fisher, CAAN Coordinator  Elinor Goldberg, Maine Children's Alliance  Dean Crocker</p>
<b>Maryland</b>	<p>Melanie Klein, Metropolitan Maryland Office  Tracy Watkins-Tribbitt, Director, Foster Care Court Improvement Project  Althea Stewart Jones, Admin. Office of the Courts  Rhonda Lipkin, Child Welfare Advocacy Fellow, Public Justice Center  Jessica Lynne Cook Rae, Legal Aid Bureau, Inc.  Rosaline McDaniel, Dept of Human Resources  Stephen Berry, Dept of Human Resources  Daniel L. Hatcher, Assistant Professor of Law, University Baltimore School of Law  Matthew Joseph, Executive Director, Voices for Maryland's Children  Barbara Babb  Delores Edwards</p>
<b>Massachusetts</b>	<p>Jessica Budnitz, Child Advocacy Program at Harvard Law School  Andy Cohen, Committee for Public Counsel Services  Clare Dalton, NEU Domestic Violence Center  Ronald Corbett, Court Administrator, Mass. Supreme Judicial Court  Jacqueline Schelfhaudt, Assistant Court Administrator, Juvenile Court Department Administrative Office  Liz Skinner-Reilly, Dept of Children and Families  Michael Dsida, Deputy Chief Counsel, Committee for Public Counsel Services  Krista Lohr, Committee for Public Counsel Services  Virginia Peel, General Counsel, Dept of Children and Families  Jetta Bernier, Massachusetts Citizens for Children  Elizabeth Bartholet  Catherine Sinnott</p>
<b>Michigan</b>	<p>Don Duquette, Child Advocacy Law Clinic, University of Michigan Law School  Kathryne O'Grady, Director of Child Welfare Services, State Court Admin. Office  Kelly Howard, Court Improvement Program Coordinator, Child Welfare Services Division  Jenifer Pettibone, Management Analyst, Michigan State Court Administrator's Office  Dan Wright, Director, State Court Administrative Office  Jack Kresnak, Voices for Michigan's Children  Dan  Ted Forrest</p>
<b>Minnesota</b>	<p>Mark Fiddler, Esq., Fiddler Law Office  Judith Nord, Staff Attorney/ CIP Manager, Minnesota Supreme Court  Ruth Clinard, Dept of Human Services  Susan Krinkie, Social Service Consultant, Dept of Human Services  Erin Sullivan-Sutton, Dept of Human Services</p>
<b>Mississippi</b>	<p>William Charlton, Mississippi Judicial College  Jamie McBride, Director, Court Improvement Program  Lori Woodruff, Director, Dept of Human Services  Alicia Cole, Dept of Human Services  Anita Berll Muhammad</p>
<b>Missouri</b>	<p>Linda Hope, Juvenile and Adult Court Programs  Norma Rahm, Office of the State Courts Admin.  Mary Beck, Professor, University of Missouri School of Law  Gary Waint, Office of the State Courts Admin.  Kathryn Sapp, Dept of Social Services  Melody Yancey, Acting Assistant Deputy Director, Dept of Social Services  F. Scott Gee, Executive Director, Citizens for Missouri's Children  L. Anthony Loman, Ph.D.</p>
<b>Montana</b>	<p>Sherri Rafter, Montana Supreme Court  Sherry Meador, Montana Supreme Court  Janice Basso, Dept of Public Health &amp; Human Services</p>

<b>Nebraska</b>	Victoria Weisz, Ctr. on Children, Families and the Law Bob German , Legal Aid of Nebraska Patrick Carraher, Nebraska Legal Services Kathy Bigsby Moore, Voices for Children in Nebraska Shirley Pickens-White
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<b>Virginia</b>	Robert Emery, Virginia Center for Children Prof. Robert E. Shepherd, T.C. Williams School of Law Lelia Baum Hopper, Court Improvement Project John Morgan, Voices for Virginia's Children Nan McKenny Rita Katzman Robin Johnson

<b>Washington</b>	<p>Rick Coplen, Administrative Office of the Courts  Gloria Hemmen, Administrative Office of the Courts  Mike Curtis, Center for Children and Youth Justice  Barbara McPherson, Commission on Children in Foster Care  Collette McCully, Department of Social and Health Services  Paola Maranan, Washington Children's Alliance  Antoinette M. Malveaux  Astra Outley  Nicole Muller</p>
<b>West Virginia</b>	<p>John Hedges, Byrne, Hedges &amp; Lyons  Angela Saunders, Supreme Court of Appeals Administrative Office  Toby Lester, Department of Health and Human Services  Margie Hale, West Virginia Kids Court Fund</p>
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