



Children's Advocacy Institute



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MOST STATES FAIL TO ADEQUATELY PROTECT THE LEGAL RIGHTS OF ABUSED CHILDREN, NEW STUDY FINDS

*Second Edition State-By-State Report Card Shows Improving Grades in Some States;
Most Leave Children's Voices Muted in Legal Proceedings That Decide Their Fate*

Stronger State/Federal Laws Needed

WASHINGTON, October 15, 2009 – Most U.S. states do not adequately protect the rights of abused and neglected children, leaving our most vulnerable citizens exposed to the vagaries of the juvenile court system without adequate legal representation, according to a state-by-state study conducted by two national child advocacy organizations.

The peer-reviewed study - *A Child's Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children* – was released today on Capitol Hill by First Star and the Children's Advocacy Institute at the University of San Diego School of Law (CAI). To view the full report, visit www.firststar.org, or www.caichildlaw.org.

“The federal government reported that nearly 800,000 children were abused or neglected in 2007,” said Amy Harfeld, Executive Director of First Star. “In the current economic recession, these children are suffering more than ever – reports of child abuse have skyrocketed while resources to help them have been placed in jeopardy. Most of these children will go through court proceedings that will determine their lives and futures. Yet while the state and the allegedly abusive or neglectful parent stand in court with attorneys by their sides, the children often stand alone and silent. They are herded through the system without a strong voice to advocate on their behalf. This is a troubling double-standard.”

The report graded each state and the District of Columbia based on how well they protect the legal rights of abused and neglected children in dependency court. Twenty-nine states earned C's or lower:

- Two states earned A+'s: Connecticut and Massachusetts
- 9 states earned A's: Iowa, Louisiana, Maryland, Mississippi, New Mexico, New York, Oklahoma, Vermont, and West Virginia
- 11 states earned B's: California, Kansas, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, and Wyoming
- 14 states earned C's: Alabama, Alaska, Arkansas, Colorado, Michigan, Minnesota, Montana, Nebraska, Nevada, South Carolina, Utah, Virginia, Washington DC, and Wisconsin
- 8 states earned D's: Arizona, Georgia, Illinois, Kentucky, Missouri, New Hampshire, South Dakota, and Washington
- 7 states earned F's: Delaware, Florida, Hawaii, Idaho, Indiana, Maine, and North Dakota

“The level of legal protection these children receive should not vary depending on what state they call home,” said Robert C. Fellmeth, CAI Executive Director. “The stakes in these cases are high for all involved, but especially for the child. Yet, in many states, not only have they been betrayed and mistreated by their own parents, they have also been abandoned by the very system that is supposed to protect their rights and their lives.”

The study is the second of its kind. The first report, issued in April 2007, prompted 17 states to adopt new legislation in the right to counsel arena. In addition, advocates in many states have proposed legislative reforms, filed litigation, or launched other efforts to ensure children’s rights are protected. States with improved laws include: Alabama, Arkansas, California, Connecticut, Iowa, Louisiana, Massachusetts, New Hampshire, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont and Wyoming.

In addition, the federal government recently announced a five-year, \$5 million grant to research the benefits of providing counsel to children in these proceedings. Up to now, research has been scarce.

“The tide is turning,” said Peter Samuelson, co-founder and Chairman of First Star. “Many jurisdictions are moving beyond the old legal paradigm that treated children as chattel, and are recognizing that their opinions are valuable in court proceedings that determine their futures. But there is still a long way to go before we create uniform, nationwide legal protections for these vulnerable children.”

To build on this momentum, First Star and CAI recommend:

- An amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) that would require all abused and neglected foster children receive quality client-directed representation in dependency proceedings;
- Passage by the American Bar Association of a Model Act that would serve as a prototype for states to establish uniform standards for representing children in dependency cases;
- Implementation of a loan forgiveness program for child advocate attorneys, since compensation is prohibitively low;
- Adoption of caseload limits of 100 clients so attorneys can focus enough attention on each case;
- Support to ensure that abused and neglected children receive quality representation in all court proceedings that determine their futures.

State grades were based on a rigorous examination of state law by leading national child welfare experts, who established guiding principles and developed a 100-point grading system. Criteria included: whether state law mandates that attorneys be appointed for children in dependency proceedings; whether these attorneys represent the children in a client-directed manner; whether this representation continues throughout the case, including appeal; whether states have specialized education or training of a child’s counsel; whether the child is given the legal status of a party to the proceedings; and whether rules pertaining to confidentiality and immunity from liability apply to attorneys representing these children. Extra credit was given if states have mandatory caseload limits for children’s counsel. Officials and/or advocates from each state participated in the process and provided valuable feedback.

“We hope this Report Card will become a tool to increase public awareness of this issue, a rallying cry for advocates and lawmakers in poorly performing states, and a source of pride for states that have enacted strong laws,” said Elisa Weichel, CAI’s Administrative Director & Staff Attorney. “Tremendous progress has been made in the last two years; it is our aim to build on that momentum.”

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About First Star

First Star is a national 501(c)(3) non-profit that improves the lives of America's abused and neglected children by strengthening their rights, illuminating systemic failures, and igniting reform to correct them. We pursue our mission through research, public engagement, policy advocacy, and litigation. www.firststar.org

About The Children's Advocacy Institute

The Children's Advocacy Institute, of the University of San Diego School of Law, works to improve the health, safety, and well being of children. In addition to its academic component, CAI engages in regulatory and legislative advocacy, impact litigation and public education in order to ensure that children's interests are represented effectively whenever and wherever government makes policy and budget decisions that will impact them. www.caichildlaw.org