

*Second Edition*

# A CHILD'S RIGHT TO COUNSEL

A NATIONAL REPORT CARD ON  
LEGAL REPRESENTATION FOR  
ABUSED & NEGLECTED CHILDREN



Children's Advocacy Institute



## Acknowledgments

First Star and CAI are extremely grateful to the many law interns and volunteers who contributed to the research and analysis contained in this report. Special thanks to Katie Ashley; Jessica Breslin; Jamie Cohn; Shireen Husain; Meredith Kimmel; Michael Lee; Jessica Liu; Alison Lobban; Melanie McLean; Briana Monahan; Natalie Nelson; Aaron Stoessel; Elizabeth Westbrook, and other report reviewers. First Star and CAI would also like to thank the many state officials and advocates who responded to our requests for feedback and information on their state laws and practices relevant to the legal representation of abused and neglected children. These individuals are listed in Appendix B.

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## About the Authors

**First Star** is a national non-profit organization working to improve the lives of America's abused and neglected children by strengthening their rights, illuminating systemic failures, and igniting reform to correct those failures. We pursue our mission through research, public engagement, policy advocacy, and litigation. First Star works to help achieve a future in which America's abused and neglected children have won their right to be heard and protected within the systems legally entrusted with their care, and in which those systems are fully resourced, transparent and accountable to the public.

First Star's Co-Founder and President, Peter Samuelson, is a motion picture executive who founded the Starlight Children's Foundation in 1982 and the Starbright Foundation in 1990. Sherry A. Quirk, Esq., Co-Founder and Vice Chair of First Star, a partner of Schiff Hardin, LLP, is past president and founder of One Voice and the National Coalition of Abuse Awareness. Amy Harfeld, Executive Director of First Star, has over 15 years of experience in child advocacy as a Teach For America corps member, human rights worker, and litigator.

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

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 provide public education to 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.

Robert C. Fellmeth, J.D., CAI's Executive Director, is the Price Professor of Public Interest Law at the USD School of Law and founder of both CAI and the Center for Public Interest Law. Professor Fellmeth has over 30 years of experience as a public interest law litigator, teacher, and scholar.

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Published by the Children's Advocacy Institute of the University of San Diego School of Law.  
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***Second Edition: A Child's Right to Counsel***  
***A National Report Card on Legal Representation for Abused & Neglected Children***

**FOREWORD**

According to the Child Welfare Information Gateway,<sup>1</sup> over 300,000 American children entered foster care in the last fully reported year of 2006. Of the 289,000 children who exited from the system that year, only about half were reunified with their parents. The parents of 79,000 children were found to be “unfit” by clear and convincing evidence and had their parental rights terminated. Only 51,000 children were adopted. The remainder of these children stay in the foster care system, now numbering over 500,000 nationwide—most living in state-provided care or with relatives.

The fate of children who may enter and leave the child welfare system—especially those who stay—is determined by dependency courts in all fifty states. Shortly after a child is removed from his/her home, the dependency court holds a “jurisdictional” hearing and the state commonly assumes the legal role of parent. Dependency courts are unusual, and are often closed off from public view and scrutiny—allegedly to protect the children involved. Many child advocates argue that this concealment is more about protecting agencies from democratic accountability, and in fact hides systemic flaws from public scrutiny. But we need to be clear about who the parents of all of these children are—the court functions formally and legally as the parent. This is not a typical court performing a passive role as arbiter between contending litigants over money or a criminal offense. This entity has the affirmative duty to determine the fate and then manage the custody and care of another human being. Because we live in a civil democracy, it makes us all their parents—jointly and severally. How we treat these children tells us a lot about our actual “family values.”

Who are these children? The median age is ten.<sup>2</sup> Many children that age and even younger have sufficient maturity to warrant our attention and assistance regarding their thoughts and preferences. They come in all racial groupings, with whites the largest group, but with statistical over-representation of minorities. They have been emotionally, physically, and/or sexually abused or neglected. Often, they have been forgotten. But as many attorneys know, you will not find clients more thoughtful or generous than these. They are often extremely concerned about everyone else around them—their parents, their siblings, their friends, even their attorney—much more than about themselves.

So why this report? Because we do not do well by these kids. Abused and neglected children often languish in foster care indefinitely, lose touch with their families and siblings, and may never find a permanent home. Those that are never adopted often end up abandoned by the state at 18 and end up under-educated, unemployed, impoverished, and homeless.<sup>3</sup>

In the court drama that determines the futures of these children, the other parties have counsel. The Supreme Court has held that if counsel can make a difference in outcome, parents get counsel—publicly financed if necessary. After all, terminating parental rights is a major interference in the fundamental right to raise one’s children and commands a high level of due process. Hence, virtually every parent gets counsel to whom the full panoply of the American Bar Association’s Rules of Professional Conduct applies. The state gets counsel to support the agency’s position regarding the child’s removal and subsequent placements. Meanwhile, the child—whose rights to his or her parents and family unit and home and future are all being determined—has no recognized constitutional right to counsel in these proceedings. Abused and neglected children typically begin their journey with the child welfare system by leaving everything familiar to them. They leave their homes, their families, their neighborhoods, and their schools to find themselves in a system

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<sup>1</sup> Statistics from Child Welfare Information Gateway, *Foster Care Statistics* (Feb. 2009).

<sup>2</sup> *Id.*

<sup>3</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.

of changing faces, social workers, and courts who commonly serve as the parent of tens of thousands of children like them at a time. These children have rather a remarkable interest in these proceedings, which not only determine whether they will see their parents and siblings again, but where they will live, with whom, and under what conditions. Even in the criminal justice system, no court has the kind of detailed and continuing power that dependency courts have over abused and neglected children in state custody.

Maltreated children have substantial additional reasons to have counsel beyond the rationale applicable to their parents or the government. If there is one party in these proceedings warranting highest consideration for counsel, it is the child. He or she is not a reward or an object or chattel, but a person who the state may exert control over in the most profound way. The point of view of the social worker may or may not represent what the child wants. The views of the parents may or may not frame the entire issue, and will certainly not pertain to the child's fate if their rights are terminated.

One court has opined that these children have a constitutional right to counsel in juvenile dependency court, as they have long been afforded in delinquency proceedings.<sup>4</sup> Regrettably, that holding is honored in the breach for much of the nation. The purpose of this report is to outline the status of these children in terms of this seminal legal right, and in relation to a basic model of such representation. This model is straightforward. Currently, the American Bar Association is working toward a widely supported Model Act on dependency court child representation. The U.S. Department of Health and Human Services has recently awarded a major federal grant to study child representation, which will hopefully provide additional data about practices, costs and benefits. This data should pave the way for future national and state reform.

The survey we present here measures how each state performs in providing effective legal representation to maltreated children within the framework of its state law. Our survey reflects the "law on the books" but does not purport to measure policy and practices, which may allow for more responsible representation, or may avoid what applicable law requires. By looking at the stated law and adopted statewide rules, we choose a variable that is measurable between states, and one of particular import. While policies may be changed on a whim, practices encoded in statute and regulation are predictable, enforceable, and long-lived. We therefore urge the many jurisdictions that have commendable practices to encourage the codification of these in their state statutes.

While this report focuses on dependency proceedings, our hope is that reform will not stop there, but will instead extend to all legal proceedings in which an abused or neglected child's future is being determined. Children in other court proceedings such as custody, immigration, and education cases where allegations of abuse and neglect must be weighed in the court's decision also need effective counsel to protect their rights and make sure their voice is heard.

The grading criteria have been refined in consultation with national experts. They are presented in detail and as applied to each state for the reader to consider in evaluating the grades earned. Our hope is for states to closely examine their right to counsel laws to determine whether children's voices are being heard in these critical court proceedings, and how the process may be improved to facilitate fully informed and fair decisions. The stakes are high.

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<sup>4</sup> *In re Kenny A.* (N.D. Ga. 2005) 356 F. Supp. 2d 1353.

## EXECUTIVE SUMMARY

### Introduction

Abused and neglected children are among the most vulnerable citizens in our country. Indeed, these children have been betrayed and mistreated by the very people entrusted to care for and nurture them—their own parents. Many of these children suffer in silence until their plight is discovered and they are brought under the jurisdiction of a court.

When an abused or neglected child's case enters the courts, he or she enters a legal system that is confusing, intimidating, and overwhelming, even to many adults. The legal rights and processes that will determine his or her future are complex. It is unreasonable to expect any child to have the skills or knowledge to advocate on their own behalf in these circumstances. Even the most intelligent, informed, and assertive teenager capable of advocating for him or herself cannot subpoena or cross-examine witnesses, conduct discovery, or file motions or appeals without legal assistance.

The stakes in these cases are high for those involved, but especially for the child. He or she may be suddenly removed from everything that is familiar including home, family, school, friends, and community. He or she may be separated from siblings—in some cases, permanently. And yet, in many states across the U.S., this child goes through these momentous legal proceedings without an attorney appointed to represent his or her position and personal objectives to the judge.

It is the position of First Star and the Children's Advocacy Institute (CAI) that abused and neglected children have basic rights that must be respected. They know best what has occurred in their home, they have opinions about what should happen to them—they have a voice to be heard. Accordingly, we believe that all maltreated children have the right to competent, well-trained, client-directed attorneys with reasonable caseloads representing them throughout the court proceedings that will significantly impact their lives and futures.

### 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. Much has changed since the Report Card's First Edition was published. Many states have reviewed their laws and proposed or passed new laws that ensure better legal protections for abused and neglected children. Other states have brought court cases that highlight the importance of right to counsel for maltreated children and the harm caused to children and families when children are not well represented. Federal legislation to enshrine a nationally mandated right to counsel in these cases has been proposed and widely endorsed. The American Bar Association will consider a Model Act establishing a new national standard for attorneys representing children in abuse and neglect cases.

The tide is turning in the movement for a child's right to counsel. Traditionally, children were viewed more or less as chattel and it was assumed that the legal interests of an abused and neglected child would be represented either by the parent or by the state. Thankfully, many jurisdictions understand that too often, this is not the case and have begun to move towards recognizing that children's voices and opinions are necessary and valuable in the court proceedings that determine their best interests and ultimate futures.

It has been over forty years since *In re Gault*<sup>5</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 the very real prospect of the child being placed into state custody (foster care). Child advocates around the country agree that the rights recognized in *Gault* can and should extend beyond juvenile delinquency cases to include juvenile dependency proceedings.

Research on the benefits of providing counsel to children in these proceedings is scarce. The most widely referenced recent study was published in 2008 by the Chapin Hall Center for Children<sup>6</sup> based on a study in Palm Beach County, Florida. In this report, it was shown that children with effective counsel in dependency cases were moved to permanency at about twice the rate of unrepresented children.<sup>7</sup> Certainly this indicates that attorney representation benefited these children, and saved the state money by abbreviating the court case and the foster care stay.

Available data indicates that providing client-directed counsel to maltreated children is not only a legal and moral imperative, but that it is also economically prudent. If good legal representation results in resolving cases with children attaining permanency more quickly, the net result will be to reduce the amount of money that states spend on court costs and on foster care.

The U.S Department of Health and Human Services' Administration on Children, Youth, and Families recently awarded a five-year, five million dollar grant to the University of Michigan Law School's Child Advocacy Clinic to establish a National Quality Improvement Center (QIC) to generate and disseminate knowledge on the representation of children and youth in the child welfare system.<sup>8</sup> The QIC will work to improve the quality and quantity of competent representation for children and youth in child welfare cases so that States and Tribes achieve the best safety, permanency and well-being outcomes for these children and youth. The research conducted by this Center and the information disseminated through it will greatly add to the available data in this field.

## Summary of Report Card Criteria

The grading criteria and methodology have changed significantly between the first edition of the Report Card in 2007 and this one. Many of the changes are the result of constructive feedback following the First Edition of the Report Card. Others were made in order to better reflect the unique statutory language and the vast distinctions in law across the country. An "extra credit" section was added to recognize the importance of caseload limits and to place states on alert that this will be graded in our next report. 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 proceedings, does state law define the duration of the appointment? (Maximum Points: 10)
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? (Maximum Points: 20)

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<sup>5</sup> *In re Gault* (1967) 387 U.S. 1, 36–37 [87 S.Ct. 1428, 18 L.Ed.2d 527].

<sup>6</sup> A.E. Zinn & J. Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* (2008), available at [http://www.chapinhall.org/article\\_abstract.aspx?ar=1467](http://www.chapinhall.org/article_abstract.aspx?ar=1467).

<sup>7</sup> *Id.* at 14.

<sup>8</sup> See <http://www.acf.hhs.gov/grants/open/HHS-2009-ACF-ACYF-CO-0077.html>.

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? (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 thereto) 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 Second Edition of *A Child's Right to Counsel* demonstrates that many states have made laudable progress in their laws pertaining to the right to counsel for abused and neglected children in the last few years. Some states have excellent new laws on the books, and First Star and CAI commend the hard work of all the policymakers and advocates who led these reform efforts. Some states made great strides in moving new laws forward in this arena, but were faced with overburdened legislatures and a dismal financial climate that temporarily thwarted their efforts. We encourage them to continue their fight and hope that this report assists them in their advocacy.

We found that some states had excellent practices in providing counsel, but their practices were not codified in state law. First Star and CAI firmly believe that the only way to ensure consistent, enforceable, and accountable legal representation for abused and neglected children is to enact state law to that effect. We encourage states to incorporate their good work and established practice into law.

Unfortunately, we also found several examples of the opposite—states with 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.

## Statistical Highlights of the Second Edition

- 11 States earned an A or A+
- 11 States earned a B
- 14 States earned a C
- 8 States earned a D
- 7 States earned an F
- ✓ 63% of states mandate the appointment of an attorney for the child
- ✓ 51% of states mandate that the child's attorney, when appointed, serve in a client-directed capacity for the child
- ✓ 33% of states adopted new legislation in this arena since the First Edition of *A Child's Right to Counsel* in 2007



The following 17 states (representing 33% of the jurisdictions studied) improved their state laws governing a child’s right to counsel in dependency proceedings since the First Edition of <i>A Child’s Right to Counsel</i>	
Alabama	Ohio
Arkansas	Oklahoma
California	Oregon
Connecticut	Pennsylvania
Iowa	Rhode Island
Louisiana	South Carolina
Massachusetts	Vermont
New Hampshire	Wyoming
New York	

First Star and the Children’s Advocacy Institute applaud the two states that scored 100 or above, meriting a grade of A+: Massachusetts and Connecticut. May their laws in this arena serve as a beacon to their neighbors and states around the country looking for examples to follow.

Over 40% 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 who recognize the importance of this issue and have taken the necessary steps to provide their maltreated children with effective legal representation.

Approximately 30% 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.

## Conclusion

First Star and the Children’s Advocacy Institute urge that federal and state law require all abused and neglected children to receive quality client-directed representation in dependency proceedings and eventually in all court proceedings in which they have important legal interests at stake. Tremendous progress has been made in the last few years in the fight to achieve this vision. It is our aim to build on that momentum and show all states and the federal government that it is possible and advantageous for all to adopt laws that protect abused and neglected children, give them a voice, and give them a greater chance to emerge from a very traumatic experience whole and strong.

We hope this report will serve as a useful tool in increasing public awareness of this issue and give advocates and policymakers information that can be used to advance state and federal legislative reform. It should serve as a rallying cry for advocates and lawmakers in poorly performing states, and as a source of pride for states that have enacted strong laws in this arena.

The suffering of abused and neglected children does not vary depending on what state they call home. Their ability to have their voice rightfully heard and considered as their futures are determined should also not depend on something so arbitrary as the two letter abbreviation at the end of their address.

## A CHILD'S RIGHT TO COUNSEL: ISSUES ON THE LANDSCAPE

Since the release of our First Edition of *A Child's Right to Counsel*, the topic of right to counsel for children has been a hot topic 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. Since that time, this issue has gained increasing attention and momentum, and advocacy groups from Washington, D.C. to California have been leading the fight for a child's right to counsel on many different fronts. The following is a brief summary of some of the exciting work being done to ensure that every abused and neglected child in America has the right to a client-directed attorney.

### **CAPTA**

Until 1974, when Congress passed the Child Abuse Prevention and Treatment Act<sup>9</sup> (CAPTA), children in dependency proceedings did not have any rights to legal representation. This was the first time that the issue was addressed in federal legislation. As a reaction to widespread attention to child abuse issues, CAPTA in its original form 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. Unfortunately, there were no guidelines set out as to the qualifications, training, or responsibilities of the GAL. 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 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>10</sup> In 2003, Congress addressed this problem by amending CAPTA to its current form. According to the Administration for Children and Families, 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>11</sup> The representative currently required by CAPTA does not necessarily need to be an attorney, and is not required to advocate for the wishes of the child involved. Specifically, the current relevant CAPTA provision requires:

*that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who 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>12</sup>

CAPTA is currently pending reauthorization in Congress. First Star and the Children's Advocacy Institute have worked with advocacy groups around the country to submit a proposed amendment to CAPTA, endorsed by the National Child Abuse Coalition, that would require that the child's representative be an attorney who advocates for the child in a client-directed manner.

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<sup>9</sup> Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247 (42 U.S.C. 5101 et seq; 42 U.S.C. 5116 et seq.).

<sup>10</sup> See LaShanda Taylor, *A Lawyer for Every Child: Client Directed Representation in Dependency Cases*, Fam. Ct. Rev., Vol. 47 No. 4, 605, 610 (Oct. 2009).

<sup>11</sup> *Id.*

<sup>12</sup> 42 U.S.C. § 5106a(b)(2)(A)(xiii).

## ***ABA Model Act***

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. The resulting ABA Model Act Governing the Representation of Children in Dependency Proceedings has been drafted and honed by advocates nationwide and is being reviewed for possible ABA adoption. It is included in its entirety in Appendix A to this Report Card.

If the Proposed 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 Appendix B.<sup>13</sup> A jurisdiction that adopts and implements the language and requirements of the Proposed ABA Model Act would do a nearly perfect job of requiring quality legal representation for abused and neglected children.

## ***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 the due process right to an attorney in delinquency proceedings.<sup>14</sup> While *Gault* was a landmark case, children in dependency proceedings were still without a legal right to counsel. Fortunately, after CAPTA was enacted and as attention and awareness about a child's right to counsel spread, some courts found that children in dependency proceedings have a similar due process right to legal counsel. In June 2002, the national child advocacy group Children's Rights filed *In re Kenny A.*, a class action in Georgia alleging, *inter alia*, that children in Georgia's foster care system were denied adequate legal representation in the Juvenile Courts due to the high caseloads of the attorneys assigned to represent them. In February 2005, in a landmark ruling, 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.<sup>15</sup> Specifically, the court found that "children have fundamental liberty interests at stake in deprivation and [termination of parental rights] proceedings."<sup>16</sup> 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>17</sup> In light of 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. First Star and CAI believe that this Georgia ruling should be held out as an example to be emulated in recognizing a child's right to counsel in dependency proceedings as a constitutional right.

Building on this key ruling, in July 2009, the Children's Advocacy Institute filed a federal class action in California alleging that the constitutional and statutory rights of Sacramento County's foster children are being violated by the excessively high caseloads of both their attorneys and the judges who are acting *in loco parentis*. The California case is just in its infancy but shows promise to build the national campaign for a judicially supported right to counsel for every child under dependency court jurisdiction.

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<sup>13</sup> The Proposed ABA Model Act would be enhanced by explicitly mandating that the required child welfare training for attorneys be multidisciplinary in nature and specifically setting a maximum caseload number or range.

<sup>14</sup> *In re Gault* (1967) 387 U.S. 1, 36–37 [87 S.Ct. 1428, 18 L.Ed.2d 527].

<sup>15</sup> *In re Kenny A.*, (N.D. Ga. 2005) 356 F. Supp. 2d 1353.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

In addition to these federal cases, state courts are considering a child's right to counsel. The Colorado Supreme Court is currently considering the case of *People v. Gabrieheske*<sup>18</sup> which holds that a GAL for a child in all dependency and neglect cases holds a normal client-lawyer relationship as far as reasonably possible and, thus, is precluded from divulging the child's communications in the absence of a waiver. The Supreme Court's decision in this matter is being closely watched by Colorado advocates because it could further a child's right to be heard and represented thoughtfully in dependency proceedings.

In September 2009, a Washington State Court of Appeals considered the case of *In re D.R. and A.R.*<sup>19</sup> This case presented the question of whether children are entitled to legal representation during termination of parental rights proceedings. A.R. and D.R. were in foster or kinship care for nearly four years and during that time were never given the opportunity to present their wishes to the court. Lawyers and advocates from across the country asked the appellate court to retain jurisdiction over the question of whether it was a violation of the children's constitutional rights to deny them counsel in dependency proceedings. The court implicitly admitted error and remanded the case in order to ensure that these children receive proper representation, but declined to consider the larger constitutional issue of right to counsel for other similarly situated children in the state. It is only a matter of time before advocates in the state have another opportunity to bring this issue to the court's attention.

### ***NACC Certification***

The National Association of Council for Children (NACC) offers the only 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 (CWLSs). As of September 2009, NACC Certification was available in 13 jurisdictions: California, Connecticut, District of Columbia, Georgia, Iowa, Michigan, New Hampshire, New Mexico, New York, North Carolina, Tennessee, Texas, and Utah.

NACC is currently implementing its plan to open the Certification program in all fifty-one jurisdictions. The goal of the plan is to open the Certification Program in eight to ten states each year. As of July 2009, there were 234 Child Welfare Law Specialists in the United States.

### ***Research and Data on Right to Counsel***

In 2008, the Chapin Hall Center for Children published a report entitled *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*.<sup>20</sup> This report suggests that there is an increased initial cost in providing attorneys for children in dependency hearings. The report also demonstrated, however, that children with this level of representation achieve permanency more quickly. Expedited permanency means reduced court costs, less money spent on foster care, and fewer services needed for the child and family. This long-term savings indicates that providing abused and neglected children with effective legal representation is not only the right thing to do, but also might be economically advantageous for states.

Additionally, the U.S Department of Health and Human Services' Administration on Children, Youth, and Families recently awarded a five-year, five million dollar grant to the University of Michigan Law School Child Advocacy Clinic to establish a National Quality Improvement Center (QIC) to generate and disseminate knowledge on the representation of children and youth in the child welfare system.<sup>21</sup> The QIC will work to improve the quality and quantity of competent representation for children and youth in child welfare cases so that States and Tribes achieve the best safety, permanency and well-being outcomes for these

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<sup>18</sup> 205 P.3d 441 (2008).

<sup>19</sup> *In re D.R. and A.R.*, No. 27394-III (Wash. Ct. App. filed Sept. 2, 2009).

<sup>20</sup> A.E. Zinn & J. Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* (2008), available at [http://www.chapinhall.org/article\\_abstract.aspx?ar=1467](http://www.chapinhall.org/article_abstract.aspx?ar=1467).

<sup>21</sup> See <http://www.acf.hhs.gov/grants/open/HHS-2009-ACF-ACYF-CO-0077.html>.

children and youth. The research conducted by this Center and the information disseminated through it will greatly add to the available data in this field.

### ***Caseload Standards***

Strong statutes ensuring client-directed representation for maltreated children are the foundation of effective advocacy for abused and neglected children. Well-trained and dedicated attorneys carry out this advocacy. However, even the best statutes are rendered meaningless—and the most committed attorneys cannot serve their given purpose—without caseload standards. 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. Special acknowledgement goes to Arkansas, Massachusetts, New York, and Wyoming for their statewide caseload standards.

The NACC recommends that a full-time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group.<sup>22</sup> This is the same cap recommended by the U.S. Department of Health and Human Services' (HHS) Children's Bureau<sup>23</sup> and the American Bar Association.<sup>24</sup> One hundred cases averages to 20 hours per case in a 2000-hour year. First Star and the Children's Advocacy Institute endorse this caseload ceiling standard.

### ***Attorney Compensation***

Attorneys who represent abused and neglected children do not embark upon this demanding and draining work with any promise of great financial gain. Compensation does, however have a significant impact on the number and quality of attorneys who enter and remain in the field. Rates of pay for children's attorneys are often under \$55 per hour.<sup>25</sup> Many states distinguish between in-court and out-of-court work, paying attorneys around \$50 for in court and \$30 for out of court work. Some counties in Wyoming pay their children's attorneys as low as \$15 per hour. These rates are far less than attorneys engaged in other fields of law—many of whom charge from \$200 to \$1,000 per hour. Many attorneys simply cannot take on this important work due to the burden of massive educational debt and family responsibilities. Others dedicate several years of service to the practice and become excellent practitioners but are then compelled to move on to other better paying legal work.

First Star and the Children's Advocacy Institute strongly support federal and state efforts toward loan forgiveness for children's attorneys. A substantial step forward towards this was taken when Congress passed the College Cost Reduction Act.<sup>26</sup> The more bright and dedicated attorneys practicing in this field, and the longer they are able to stay, the better the outcomes for children.

The NACC adopted the following U.S. Department of Health and Human Services position on this point: "Primary causes of inadequate legal representation of the parties in child welfare cases are low

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<sup>22</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)

<sup>23</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau.

<sup>24</sup> 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.abanet.org/child/repstandwhole.pdf>.

<sup>25</sup> National Association for Counsel on Children, Child Representation Hourly Compensation Rates as of June 1, 2006.

<sup>26</sup> Pub. L. No. 110-84, 121 Stat. 784 (2007) (to be codified in scattered sections of 20 U.S.C.).

compensation and excessive caseloads. Reasonable compensation of attorneys for this important work is essential. Rather than a flat per case fee, compensate lawyers for time spent. This will help to increase their level of involvement in the case and should help improve the image of attorneys who are engaged in this type of work....The need for improved compensation is not for the purpose of benefiting the attorney, but rather to ensure that the child receives the intense and expert legal services required.”<sup>27</sup> First Star and CAI endorse this position as well.

***ABA National Summit on Right to Counsel: “Raising our Hands”***

The American Bar Association Section of Litigation Children’s Rights Litigation Committee is sponsoring a national summit at Northwestern University in fall 2009 called, “Raising our Hands: Creating a National Strategy for Children’s Right to Education and Counsel” This summit will allow 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.



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<sup>27</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), citing to *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau (1999) at VII-4.

## DEFINITIONS

In a report that compares the laws of 50 different states and the District of Columbia, it is important to lay a linguistic foundation. In the process of compiling this report, we have become aware of the wide discrepancies in the language that states use in their statutes, and even in how certain terms are used discordantly in different states.

Jurisdictions use different terms to mean “client-directed” or to define the legal proceedings governing the adjudication of child abuse and neglect cases. For the purposes of this Report Card, we are using the following definitions for these and other relevant terms:

- 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 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. 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 Attorney – an attorney whose duty of loyalty is to the child and who must advocate for their client’s expressed preferences and positions. When the child client’s expressed wishes cannot be conveyed to the attorney the lawyer may take reasonably necessary protective action, and will sometimes seek the appointment of a best interest advocate to make an independent recommendation to the court with respect to the best interest of the child.
- 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.
- 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.

## GRADING METHODOLOGY

First Star received voluminous feedback following the release of the First Edition of *A Child's Right to Counsel* in April, 2007. Based on that feedback, we continued to monitor the changes to laws governing a child's right to counsel in dependency proceedings. In 2008, First Star and the Children's Advocacy Institute partnered on this project and embarked on an extensive repeated review and analysis of child representation laws in all 50 states and the District of Columbia.

We started with an analysis of the data that was gathered by First Star for the First Edition of this Report Card. First Star and the Children's Advocacy Institute then searched a commercial legal database along with state legislative websites for updated information regarding the relevant statutes and rules on which the states' grades would be based. Where statutes and rules were vague or confusing, caselaw, local administrative documents, and court orders were also consulted for clarification. After compiling a thorough analysis of the relevant statutes and rules, and applying the grading criteria, draft gradesheets were sent directly to several officials and practitioners in every state. To the best of our knowledge, the laws that were analyzed are current as of September 15, 2009.

The grading criteria for the Second Edition of *A Child's Right to Counsel* vary considerably from the grading criteria of the First Edition. Because of these revisions, comparisons between a State's grades on the First and Second Editions of the Report Card only tell part of the story and should be carefully analyzed by the reader. Variations in grades may be due to changes in state law or they may be due to the changes in the grading criteria. 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.

### ***Does state law mandate that attorneys be appointed for children in dependency proceedings?***

We believe this is 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 were 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>28</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 7. 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

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<sup>28</sup> First Star and the Children's Advocacy Institute chose age seven as a demarcation point between a major and minor restriction based on the position of some advocates that a particular age is an appropriate separation between the need for a client-directed attorney and a best interests attorney (see, for example, 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). Furthermore, the 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* indicates 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.



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.

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

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.

***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?***

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 counsel to advocate in a client-directed manner. When a child is represented by counsel, if that counsel does not represent the child in a client-directed manner, the child's voice is silenced. The child's voice (as opposed to any advocate's assessment of what may be in the child's best interest) is crucial to the dependency proceedings – this is, after all, the child's life that is being decided. Once the child's voice is adequately considered along with the voices of the State and the parents, the judge can make sound decisions as to how the case must proceed to comport with the law and to protect the child's best interests. This criterion only grades how a child's attorney, when appointed, must advocate on the child's behalf. If the child is appointed a lay guardian ad litem in addition to an attorney, the role of the lay guardian ad litem is not considered in the grading of this criterion. 5 points are deducted if there is any "minor" exception to the requirement that a child's attorney advocate in a client-directed manner. 8 points are deducted if there is an exception to the requirement that a child's attorney advocate in a client-directed manner that we deemed major. If a child's attorney is not even required to advocate for that child's wishes, the state loses more than half of the possible points awarded in this category. If state law requires the child's attorney to at least articulate (but not advocate for) a child's wishes, 14 points are deducted. If state law only requires client-directed attorneys to some children on a discretionary basis, 16 points are deducted. If the law is vague regarding when or whether client-directed representation is required of the attorneys representing children, 17 points are deducted. Finally, no points are awarded to states that allow attorneys to substitute their own judgment and do not require attorneys representing children to advocate in a client-directed manner.

***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?***

An advocate is only as good as the training that advocate has received. States could receive a total of ten 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. We acknowledge that many states' Court Improvement Programs have done outstanding work in the area of training for children's attorneys but this work must be adopted into law to be enforceable and uniform throughout the state. Furthermore, 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 specialized education and/or training for attorneys representing children.

***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?***

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.

***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?***

A child should be represented by an attorney who treats that child as they would any other client. A child's relationship with their attorney is hindered when the child cannot trust the attorney to keep confidences. Furthermore, there is no reason that an attorney representing children should have any greater liability from immunity 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.

***Does state law address caseload standards for children's counsel in dependency proceedings?***

We have 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. Without caseload standards, a child's attorney is, in essence, a muted participant in the proceedings. We believe that 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.

While we included an acknowledgement of this need only as “extra credit” for the 2nd Edition of the Report Card, we will be including caseload standards as one of the actual grading criteria in future reports.

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 note that each grade is based solely on the language of the law, state court rule, caselaw, 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 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.



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

Criteria	Details	Points
1. Does state law mandate that attorneys be appointed for children in dependency proceedings? <i>Maximum Points: 40</i>	<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 (<i>e.g.</i>, counsel is not required for children under age 7) .....30</li> <li>▪ Independent counsel is required for all children with major restrictions (<i>e.g.</i>, 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>	
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment? <i>Maximum Points: 10</i>	<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>	
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? <i>Maximum Points: 20</i>	<ul style="list-style-type: none"> <li>▪ Client-directed counsel is required .....20</li> <li>▪ Client-directed counsel is required with minor exceptions .....15</li> <li>▪ Client-directed counsel is required with major exceptions .....12</li> <li>▪ Counsel is required to articulate, but not advocate for, the child's wishes .....6</li> <li>▪ Client-directed counsel is provided only on a discretionary basis .....4</li> <li>▪ Law is vague regarding client-directed representation .....3</li> <li>▪ Counsel is required to advocate only for the best interests of the child .....0</li> </ul>	
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? <i>Maximum Points: 10</i>	<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>	
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? <i>Maximum Points: 10</i>	<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>	
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? <i>Maximum Points: 10</i>	<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 (<i>e.g.</i>, children's counsel are immune for ordinary negligence) .....6</li> <li>▪ The Rules of Professional Conduct apply to children's counsel with major exceptions (<i>e.g.</i>, children's counsel have blanket immunity) .....4</li> <li>▪ The Rules of Professional Conduct do not apply to children's counsel .....0</li> </ul>	
<b>Extra Credit: Caseload Standards</b>		
Does state law address caseload standards for children's counsel in dependency proceedings? <i>Maximum Extra Credit Points: 5</i>	<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	71	C
Arizona	63	D
Arkansas	77	C
California	82	B
Colorado	73	C
Connecticut	103	A+
Delaware	51	F
District of Columbia	78	C
Florida	58	F
Georgia	68	D
Hawaii	55	F
Idaho	45	F
Illinois	63	D
Indiana	43	F
Iowa	90	A
Kansas	86	B
Kentucky	68	D
Louisiana	95	A
Maine	52	F
Maryland	93	A
Massachusetts	104	A+
Michigan	76	C
Minnesota	70	C
Mississippi	96	A

State	Score	Grade
Missouri	61	D
Montana	79	C
Nebraska	76	C
Nevada	71	C
New Hampshire	66	D
New Jersey	88	B
New Mexico	92	A
New York	98	A
North Carolina	82	B
North Dakota	55	F
Ohio	86	B
Oklahoma	93	A
Oregon	83	B
Pennsylvania	82	B
Rhode Island	84	B
South Carolina	76	C
South Dakota	65	D
Tennessee	87	B
Texas	85	B
Utah	77	C
Vermont	90	A
Virginia	77	C
Washington	61	D
West Virginia	93	A
Wisconsin	76	C
Wyoming	83	B

# POINT DISTRIBUTION

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	20	6	10	10	0	71
Arizona	15	10	20	3	5	10	0	63
Arkansas	40	5	6	10	5	6	5	77
California	35	8	6	10	10	10	3	82
Colorado	40	10	0	8	5	10	0	73
Connecticut	40	10	20	10	10	10	3	103
Delaware	15	10	6	9	5	6	0	51
District of Columbia	40	10	6	9	5	5	3	78
Florida	15	0	20	3	10	10	0	58
Georgia	20	10	12	6	10	10	0	68
Hawaii	15	0	20	0	10	10	0	55
Idaho	15	5	4	6	5	10	0	45
Illinois	15	5	20	3	10	10	0	63
Indiana	15	5	3	0	10	10	0	43
Iowa	40	10	20	0	10	10	0	90
Kansas	40	10	6	10	10	10	0	86
Kentucky	40	5	3	0	10	10	0	68
Louisiana	40	10	20	10	5	10	0	95
Maine	15	10	6	6	5	10	0	52
Maryland	40	10	20	3	10	10	0	93
Massachusetts	40	10	20	9	10	10	5	104
Michigan	40	10	6	0	10	10	0	76
Minnesota	20	10	20	0	10	10	0	70
Mississippi	40	10	20	6	10	10	0	96
Missouri	15	10	6	10	10	10	0	61
Montana	40	10	3	6	10	10	0	79
Nebraska	40	10	3	3	10	10	0	76
Nevada	15	10	20	6	10	10	0	71
New Hampshire	15	5	20	6	10	10	0	66
New Jersey	40	5	20	8	5	10	0	88

States	Criteria 1	Criteria 2	Criteria 3	Criteria 4	Criteria 5	Criteria 6	Extra Credit	Final Score
New Mexico	40	10	12	10	10	10	0	92
New York	40	10	20	8	5	10	5	98
North Carolina	40	10	6	6	10	10	0	82
North Dakota	15	5	20	0	5	10	0	55
Ohio	40	5	20	6	5	10	0	86
Oklahoma	40	10	20	3	10	10	0	93
Oregon	20	10	20	10	10	10	3	83
Pennsylvania	40	10	12	0	10	10	0	82
Rhode Island	40	10	6	8	10	10	0	84
South Carolina	40	10	6	0	10	10	0	76
South Dakota	40	10	0	0	5	10	0	65
Tennessee	40	10	20	8	5	4	0	87
Texas	40	5	20	9	5	6	0	85
Utah	40	10	6	9	5	6	1	77
Vermont	40	10	20	0	10	10	0	90
Virginia	40	10	6	10	5	6	0	77
Washington	15	5	20	6	5	10	0	61
West Virginia	40	5	20	8	10	10	0	93
Wisconsin	30	5	20	6	5	10	0	76
Wyoming	40	10	6	8	10	4	5	83

## GRADE DISTRIBUTION

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



# 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 §12-15-304(a)).

“Guardian ad litem. 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 §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

The duties of the guardian ad litem include “attend[ing] all juvenile court hearings scheduled by the juvenile court” (ALA § 12-15-304(b)(4)).

Basis for deduction: Alabama law requires the attorney GAL to attend and participate in all juvenile court proceedings, but does not expressly assure the attorney GAL’s participation on appeal.

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: 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 §12-15-102(10)).

Basis for deduction: Alabama law does not provide client-directed counsel to children.

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?

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 §12-15-304(c)).

Basis for deduction: Although requiring attorney GALs to receive training appropriate to their role, Alabama law does not expressly require that this training 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 a party?

**Points: 10 out of 10**

The child is a party to the proceedings (ALA § 12-15-304(a), ALA § 12-15-308(c)).

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

The child has a right, as a party, to appeal a case (Ala.Code 1975, § 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 while allegations of delinquency or in need of supervision are being heard (Ala.Code § 12-15-129).

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?

**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” (Ala. Rules of Prof. Conduct Rule 1.14).

Extra Credit: Does state law address caseload standards for children’s counsel 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.
- ★ Alabama passed a 2008 amendment (Acts 2008, No. 08-277) which revised and reorganized major portions of the Alabama Juvenile Justice Act to, among other things, clarify and make more stringent the requirement that every child in dependency proceedings be provided an attorney. Additionally, the 2008 amendment codified into law training standards for attorney GALs (standards had previously been adopted by the Court Improvement Program). Due to Alabama’s efforts in this regard, its grade has improved accordingly.



# Alaska

Score: 71

Grade: C

**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...attorney, acting on the child’s behalf,...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. 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**

Alaska law differentiates between the appointment of an attorney to represent the preferences and expressed interests of the child and the appointment of a GAL to represent the child’s best interests. 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? Is such education and/or training required to include multidisciplinary elements?**

**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)).

“Within seven days of the court’s appointment, the designated GAL must file an entry of appearance indicating whether or not the GAL is an attorney and certifying that the GAL has completed guardian ad litem training through OPA [the Office of Public

Advocacy]" (AK CINA Rule 11(a)(3)).

Basis for deduction: While Alaska law requires GALs to have specialized education and/or training, it neither encourages nor requires attorneys appointed to represent 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 a 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 hearing" (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)).

**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?**

**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" (Alaska R. Prof. Conduct 1.14).

**Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

#### **SIDEBAR NOTES:**

- ★ In Alaska, GALs are trained via an extensive specialized training program provided by the Office of Public Advocacy to inform children during their first meeting that they may have the right to appointment of counsel and that the appointment of counsel can occur at any time during the proceedings. GALs are also trained to request the appointment of an attorney if a child expresses an interest different than the GAL's position on a substantive issue such as placement. We encourage Alaska to also adopt laws requiring specialized training for the attorney representing children in dependency court.
- ★ In Alaska, GALs do not routinely request attorney appointments for children under the age of nine. We encourage Alaska advocates to study the child development literature which shows that children begin to be able to participate in decision-making processes earlier.



# Arizona

**Score: 63**

**Grade: D**

**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. 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**

When an attorney is appointed, the first obligation is to represent the child’s wishes (Arizona Ethics Opinion # 86-13). An attorney “shall, as far as reasonably possible, maintain a normal client-lawyer relationship” with a client whose capacity to make adequately considered decisions in connection with the representation is diminished due to minority (Az Ethics Rule 1.14(a)).

**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?**

**Points: 3 out of 10**

The Arizona Supreme Court, Administrative Office of the Courts has published Statewide Standards and Training Guidelines for Attorneys in Dependency Cases which states “attorneys must be familiar with the substantive dependency law. Attorneys have an obligation to stay abreast of changes and developments in relevant Federal and State laws, state regulations, and relevant court decisions. They should also receive training on child development, substance abuse, behavioral health and

other common issues including affects of child abuse and neglect.” (Arizona Statewide Standards and Training Guidelines for Attorneys in Dependency Cases, adopted December, 2000.)

Basis for deduction: “The presiding juvenile court judge in each county may modify [the above] standards for good cause” (Arizona Statewide Standards and Training Guidelines for Attorneys in Dependency Cases, adopted December, 2000). Thus, specialized education and/or training is encouraged, but not required, for the child’s counsel as the standards are not mandatory unless incorporated into county contracts or required by specific court.

**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?**

**Points: 5 out of 10**

“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)).

Basis for deduction: Although it recognizes a child to be a party, Arizona law does not guarantee children the right to be present at or participate in dependency hearings (“[a] child, through the child’s guardian ad litem or attorney, has the right to be informed of, to be present at and to be heard in any proceeding involving dependency or termination of parental rights” (A.R.S. § 8-522(A), emphasis added).

**6. Do the Rules of Professional Conduct (or the state’s equivalent thereto) pertaining to liability or and confidentiality apply to attorneys 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” (Ariz. Rules of Prof’l Conduct 1.14(a)).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

#### **SIDEBAR NOTES:**

- ★ Under Arizona law, the appointment of an attorney for children in dependency proceedings is discretionary, and as such Arizona merits only 15 points for Criteria # 1. However, in First Star's 2007 Report Card, Arizona was inadvertently awarded 40 points for Criteria #1, which is only appropriate where the appointment of an attorney for children in dependency proceedings is mandatory. First Star and CAI regret the error in the 2007 Report Card.
- ★ 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.
- ★ A modification to the Rules of Procedures for the Juvenile Court Rule 41 is currently pending Court consideration. This rule would not only encourage a child's presence at court hearings, but mandate it, unless good cause is shown. If the Rule is accepted as currently drafted, the new version of Rule 41 will read, "at every substantive dependency hearing, such as the Preliminary Protective Hearing, the Report and Review Hearing and the Permanency Hearings, the child who is the subject of a dependency proceeding shall be present. Upon motion of the child, the court may enter a written order excusing a child from each hearing, for good cause shown. The Court shall determine whether counsel for the child had meaningful contact with the client prior to each substantive hearing. Additionally, on July 13, 2009, Arizona Governor Jan Brewer signed SB1209, which goes into effect on September 30, 2009 and establishes bill of rights for children in foster care. These rights include attending the child's court hearing and speaking to the judge. Based on this change and the modification to the Rules of Procedure for the Juvenile Court Rule 41 currently being considered, Arizona would receive five additional points for Criterion # 5; however we encourage Arizona to additionally amend ARS § 8-522(A), which gives a child the right to be present at a hearing only through his/her guardian ad litem, and ARS § 8-847, which indicates that only a child 12 or older shall receive notice of the review hearings and the right to participate in the hearings.
- ★ 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. While Arizona state statutes and court rules do not mandate training for child's counsel, the Court has worked tirelessly to ensure attorneys who represent all parties in dependency cases participate in various training opportunities throughout the year. In fact in 2000, the Statewide Court Improvement Advisory Workgroup, a multidisciplinary workgroup, developed attorney standards and attorney training curriculum based on these standards. At its December 2000 meeting, the Arizona Judicial Council (AJC), which was created to assist the Supreme Court and the Chief Justice in the development and implementation of policies and procedures for the administration of all courts, uniformity in court operations and the coordination of court services that improve the administration of justice in the state of Arizona, moved and passed to accept the attorney standards and authorized the development of an attorney training curriculum based on these standards. This training is offered regionally to each county throughout the state each year.







# Arkansas

**Score: 77**

**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 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: 5 out of 10**

The attorney ad litem’s participation is authorized to “represent the juvenile at all appearances before the court” (A.C.A. § 9-27-316(c)).

Basis for deduction: Arkansas law authorizes a child’s attorney to participate in all appearances before the juvenile division of the circuit court, but does not expressly state that this representation will continue on appeal.

**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: 6 out of 20**

“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)).

Basis for deduction: Arkansas law requires the attorney ad litem to articulate, but not advocate for, 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? Is such education and/or training required to include multidisciplinary elements?**

**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 § 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 & 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 (DCFS) 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 (2008)).

**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?**

**Points: 5 out of 10**

Basis for deduction: 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. 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?**

**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)).

Basis for deduction: Arkansas law provides that “[a]n 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(k) (2008)).

**Extra Credit: Does state law address caseload standards for children’s counsel 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)).



# 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 the child is the appellant; when a party other than the child is the appellant, the appointment of counsel is discretionary.

**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: 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 authorizes the child’s attorney to articulate, but not advocate for, 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? Is such education and/or training required to include multidisciplinary elements?**

**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 a 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. 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?**

**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 children’s counsel in dependency proceedings?**

**Points: 3 extra credit points**

“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 the requirements stated in (3), (4), and (5)” (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:**

- ★ 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.
- ★ AB 3051 (Jones) (Chapter 166, Statutes of 2008) provides children subject to dependency hearings a greater opportunity to attend and participate in their hearings by requiring the court to allow a child present at his/her juvenile court hearing who so desires to address the court and participate in the hearing; requiring the court in a juvenile court hearing, where the child who is the subject of the hearing is 10 years of age or older and is not present at the hearing, to determine whether the minor not only was properly notified, but also was given an opportunity to attend; requiring the court, if the child was not properly notified or, if he/she wished to be present and was not given an opportunity to be present, to continue the hearing to allow the child to be present, unless the court finds that it is in the best interest of the child not to continue the hearing; requiring the court to continue the hearing only for that period of time necessary to provide notice and secure the presence of the child; and permitting the court to issue any and all orders reasonably necessary to ensure that the child has an opportunity to be present.





# Colorado

**Score: 73**

**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. 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: 0 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)).

Basis for deduction: Colorado law does not require the child’s attorney to advocate for the expressed wishes of 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? Is such education and/or training required to include multidisciplinary elements?**

**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 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)).

Basis for deduction: Although requiring attorney GALs to have the knowledge, expertise, and training necessary to perform the court appointment, Colorado law does not expressly require that this training 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 a party?**

**Points: 5 out of 10**

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)).

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))).

**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?**

**Points: 10 out of 10**

“When a client’s capacity to make adequately considered decisions in connection with 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” (Colo. RPC 1.14(a)). “All attorneys appointed as a GAL...shall be subject to all of the rules and standards of the legal profession, including the additional responsibilities set forth by Colorado Rule of Professional Conduct 1.14” (Colorado Chief Justice Directive 04-06).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

No Colorado law regarding caseload standards for attorneys representing children in dependency proceedings was identified.

#### **SIDEBAR NOTES:**

- ★ 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. We commend Colorado for these efforts and urge Colorado to adopt these standards into law.
- ★ The Colorado Supreme Court is currently considering the case of *People v. Gabriesheski* (2008) 205 P.3d 441 which holds that a guardian ad litem for a child in all dependency and neglect cases should maintain a normal client-lawyer relationship as far as reasonably possible and, thus, the guardian ad litem is precluded from divulging the child’s communications in the absence of a waiver. The Supreme Court’s decision in this matter could affect Colorado’s grade for Criteria #6 and is being closely watched by Colorado advocates.





# 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. 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**

“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? Is such education and/or training required to include multidisciplinary elements?**

**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 a party?**

**Points: 10 out of 10**

Connecticut law recognizes children as parties to dependency proceedings (see, e.g., 2009 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. 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?**

**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 children’s counsel 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:**

- ★ Connecticut has legislatively delegated to the Commission on Child Protection the responsibility for providing a system of quality legal representation. Through that system the Standards of Practice and the contract for providing legal representation requires that attorneys remain on the case through disposition, as long as the child is committed and through adoption and appeal unless a separate appellate attorney is appointed. Additionally, if an 18-year-old client in DCF care wishes continued representation, the Commission will continue to compensate the attorney for work performed on behalf of that client. The Commission has also provided separate appellate contracts so that children can be represented by an attorney with expertise in appellate work in the event an appeal is taken by another party or the child wishes to appeal and the trial attorney chooses not to handle the appeal. The trial attorney stays the child’s attorney for all other purposes providing continuity of representation.
- ★ Legislation seeking to amend C.G.S. § 46b-129a to provide children 7 and older with attorneys, as opposed to attorney/GAL’s was proposed this year and will be proposed again in the 2010 session and now has the support of a key legislator who initially opposed the bill.
- ★ 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. The Commission has and will continue to propose legislation to provide children with traditional attorneys governed by the Rules of Professional Conduct requiring loyalty and confidentiality and that a GAL only be requested in circumstances where substantial harm is at risk.



# Delaware

Score: 51

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 litem 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 guardian ad litem 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. 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: 6 out of 20

Basis for deduction: Although attorney GALs are required 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)). Thus, attorney GALs are required to articulate, but not advocate for, a child’s expressed wishes.

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?

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)(2)).

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

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

Points: 5 out of 10

“The attorney guardian ad litem shall be a party to any child welfare proceeding in

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

which the child is the subject, and shall possess all the procedural and substantive rights of a party” (29 Del. AC. § 9007A(b)(3)).

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)).

**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?**

**Points: 6 out of 10**

“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...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). “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” (DL R. of Prof. Conduct 1.14).

Basis for deduction: Although Delaware law generally requires attorneys representing minors to, as far as reasonably possible, maintain a normal client-lawyer relationship with the client, Delaware law specifically exempts attorney guardians ad litem from the duty of confidentiality to a child client under specified circumstances, and generally immunizes attorneys from acts or omissions within the scope of their appointment.

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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 the sidebar note below.

#### **SIDEBAR NOTES:**

- ★ In Delaware, the child’s expressed wishes are an integral part of the best interest determination in practice. Additionally, when a child’s guardian ad litem’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, after receiving this information, the Court concludes that a conflict exists, the practice of the Courts is to appoint an attorney to advocate for the child’s expressed wishes. While we commend this practice, we encourage Delaware to adopt this practice into law.
- ★ 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.



# District of Columbia

**Score: 78**

**Grade: C**

**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 her or her client” (Atty Practice Standards § A-6, adopted by Admin. Order 03-07).

**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: 6 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” (Atty Practice Standards § A-6, adopted by Admin. Order 03-07).

Basis for deduction: Counsel is required to articulate, but not advocate for, the child’s wishes.

<p><b>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?</b></p>	<p><b>Points: 9 out of 10</b></p> <p>“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 [Counsel for Child Abuse and Neglect] 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” (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-1).</p> <p>Basis for deduction: Although multidisciplinary elements are impliedly required as part of the specialized education and/or training, they are not expressly required.</p>
<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><b>Points: 5 out of 10</b></p> <p>“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).</p> <p>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).</p>
<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><b>Points: 5 out of 10</b></p> <p>Basis for Deduction: The attorneys appointed to represent children in the District of Columbia are appointed as GALs and not as lawyers. Thus, the Rules of Professional Conduct do not apply to their role as advocate for a child in a dependency proceeding.</p>
<p><b>Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?</b></p>	<p><b>Points: 3 extra credit points</b></p> <p>“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).</p>



# Florida

Score: 58

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 expressly require that appointed counsel stay on throughout the appellate process. Furthermore, when appointed, the attorney ad litem is authorized to “represent the child in any proceeding as allowed by law” (Fla. R. Juv. P. Rule 8.217(b)) but not, necessarily, for all proceedings; further, there is no definition in Florida law of the phrase “as allowed by law”.

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

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...(20) [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).

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?

Points: 3 out of 10

Attorneys ad litem appointed pursuant to the Keeping Children Safe Act, specifically pertaining to sexual abuse, “shall have special training in the dynamics of child sexual abuse” (Fla. Stat. § 39.0139(4)(a)).

Basis for deduction: Although Florida law requires the Statewide Guardian Ad Litem

office to develop a guardian ad litem training program, and to establish a multidisciplinary curriculum committee to develop the training program (Fla. Stat. § 39.8296 Rule (b)(4)), it does not require attorneys ad litem to undergo the training prior to appointment. Only attorneys ad litem appointed to cases involving alleged sexual abuse are expressly required to have specific training (see above).

**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?**

**Points: 10 out of 10**

“[T]he 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)).

**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?**

**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” (Fla. Bar Reg. R. 4-1.14).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

#### **SIDEBAR NOTES:**

- ★ 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.
- ★ First Star and CAI are concerned that, although Florida law requires that a child have a guardian ad litem in every case, the most recent annual report of the Statewide Office of the GAL indicates that 5,100 children did not receive a GAL in 2008. Particularly troubling is the fact that those who did receive a GAL did not necessarily have one from initial detention to permanency. This report only studied whether there was a GAL assigned at some time during the case.
- ★ This report is generous with Florida’s grade for Criteria #3. The quoted statutory language speaks to Florida’s “goals” and we urge Florida advocates to urge adoption of amendments which make Florida Statute § 39.4085’s goals mandatory.
- ★ There is some interesting advocacy currently taking place in Florida. The Florida Bar Association Standing Committee on the Legal needs of Children has developed a draft bill that would amend existing state statute and address legal representation of children involved in dependency proceedings. While First Star and CAI are pleased that this draft bill will ensure that those children who are represented receive quality and zealous advocacy by requiring qualification standards, providing for multi-disciplinary training, ensuring the child has the same advocate throughout the proceedings, and requiring attorneys to maintain a normal client-lawyer relationship in which they abide by a client’s informed decisions, we encourage amendments to this draft bill which more clearly demonstrate a child’s need for the right to counsel and which guarantee the right to counsel for every child in dependency proceedings.





# 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 caselaw 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, “this 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(a)).

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: 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)).

Basis for deduction: Client-directed counsel is required with major exceptions because client-directed counsel is only required at termination of parental rights proceedings.



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?

**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.C.G.A. § 15-11-9(b)).

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

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?

**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)).

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?

**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)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?

**Points: 0 extra credit points**

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



#### SIDEBAR NOTES:

- ★ The practice for appointing attorneys varies greatly across Georgia. In some counties, all children are appointed attorneys with the full ethical duties accompanying the attorney-client relationship. However, this is the exception, rather than the rule. Other counties use attorney guardians ad litem or lay guardians ad litem to represent children. Some counties do not appoint any representative for the child at all in some cases before the court.
- ★ Georgia is currently considering a proposed bill, SB 292, which, in its current form, would completely rewrite Georgia's code. The bill currently proposed would clarify that a child has a right to separate and independent counsel and that the child is a party to dependency proceedings. We encourage Georgia advocates to continue pushing for adoption of this bill.
- ★ 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.
- ★ Under Georgia law, the appointment of an independent attorney for children in dependency proceedings is required for children with major restrictions, and as such Georgia merits only 20 points for Criteria # 1. However, in the First Edition of this Report Card, Georgia was inadvertently awarded 40 points for Criterion #1, which is only appropriate where the appointment of an attorney for children in dependency proceedings is mandatory. Additionally, when an attorney is appointed for a child in dependency proceedings, state law only requires the attorney to advocate for the expressed wishes of the child in a client-directed manner with major exceptions, and as such Georgia merits only 12 points for Criterion #3. However, in the First Edition, Georgia was inadvertently awarded 20 points for Criterion #3, which is only appropriate where client-directed counsel is always required for a child. First Star and CAI regret these errors in the 2007 Report Card, and wish to emphasize that changes to Georgia's score are attributable more to this than to changes in law.
- ★ While Georgia has no statewide caseload standards for dependency attorneys, the Atlanta counties of Fulton and DeKalb are currently operating under a Settlement Agreement that does prescribe maximum caseloads for dependency attorneys. 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.) This is a landmark ruling that has led to more quality representation for children in Fulton and DeKalb counties. We commend the work of all the advocates who continue to work on the *Kenny A.* case and encourage Georgia to use the Settlement Agreements as a template for statewide caseload standards.





# Hawaii

Score: 55

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 the child to serve throughout the pendency of the child protective proceedings....The court may appoint additional counsel for the child...” (HRS § 587-34(a)).

Basis for deduction: Although appointment of a GAL is mandatory in Hawaii, there is no requirement that the GAL be an attorney (GAL “means a person appointed by the court...whose role is to protect and promote the needs and interests of the child...” (HRS § 587-2). 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

Basis for deduction: Hawaii law does not expressly require that appointed counsel stay on throughout the appellate process. Additionally, appointment of counsel for a child might not include all proceedings before the juvenile court (counsel will 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 § 587-34(c))).

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

When the child and the child’s GAL are not in agreement, the court may appoint special counsel for the child, whose role is “to serve as the child’s legal advocate” (HRS § 587-34(c)).

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?

Points: 0 out of 10

Basis for deduction: Hawaii law does not specify any training requirements for attorneys representing 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 a party?</p>	<p><b>Points: 10 out of 10</b></p> <p>“‘Party’ means...the child...” (HRS § 587-2).</p>
<p>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?</p>	<p><b>Points: 10 out of 10</b></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” (HI R. of Prof. Conduct 1.14(a)).</p>
<p>Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?</p>	<p><b>Points: 0 extra credit points</b></p> <p>Hawaii law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**SIDEBAR NOTES:**

- ★ While training is not a requirement found in Hawaii statute or court rule, Hawaii does require newly contracted attorneys and guardians ad litem to participate in Volunteer Guardians Ad litem Training or similar training approved by the Judiciary within 90 days of contract execution. Additionally, attorneys and guardians ad litem must complete 20 hours of annual training in areas such as dynamics of child abuse and neglect, child development, cultural competence, child sex abuse, sex offender treatment, family dynamics, domestic violence, and/or related topics. We commend Hawaii for this work and encourage Hawaii to adopt this great work into law.





# Idaho

Score: 45

Grade: F

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

**Points: 15 out 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 specify whether counsel appointed for children in dependency proceedings continue that representation on appeal.

**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: 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 is discretionary.

**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?**

**Points: 6 out of 10**

Basis for deduction: Although Rule 35 of the Idaho Juvenile Rules requires that GALs (who may be attorneys) “complete at least 30 hours of required pre-service training and 12 hours of required in-service training per year,” Idaho law does not require specialized education and/or training for separate counsel appointed to represent children in dependency proceedings.

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?

**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. 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?

**Points: 10 out of 10**

Special counsel appointed to represent a child is bound by the duty to, "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 children's counsel in dependency proceedings?

**Points: 0 extra credit points**

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

**SIDEBAR NOTES:**

- ★ The Idaho Supreme Court Child Protection Committee is currently researching and discussing ways to improve legal advocacy for children in child protection cases in Idaho. For a predominately rural state, such as Idaho, there are many challenges to implementing a system that provides an attorney for every child in dependency proceedings. These challenges include funding for counsel for children and, in small rural counties, too few attorneys to provide separate counsel for each child in a case. First Star and the Children's Advocacy Institute commend Idaho for these efforts and encourage collaboration between Idaho and other predominately rural states who have scored well on this Report Card.



# Illinois

**Score: 63**

**Grade: D**

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

**Points: 15 out of 40**

The minor has “the right to be represented by counsel. At the request of any party financially unable to employ counsel,...the court shall appoint the Public Defender or such other counsel as the case may require” (705 ILCS 405/1-5). However, Illinois law also provides that “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...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 guarantees counsel for children during the trial court proceeding but not at the appellate stage of dependency proceedings.

**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**

If counsel is appointed for the child, the role of such counsel is to represent the minor’s interests, as opposed to what the GAL determines to be in the best interest of the minor: “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).



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?

**Points: 3 out of 10**

Basis for deduction: Although Illinois does set forth multidisciplinary training requirements applicable to some GALs, who may or may not be attorneys, it is not mandated for all GALs, nor are training requirements specifically required for attorneys appointed to represent the minor's interest in dependency proceedings ("[i]n counties with a population of 100,000 or more but less than 3,000,000, each guardian ad litem must successfully complete a training program approved by the Department of Children and Family Services" (705 ILCS 405/2-17(9))).

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?

**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. 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?

**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(4e)).

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

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ 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 are concerned 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: 43

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 guarantee counsel for children at the appellate stage of dependency proceedings.

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: 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 (“the attorney representing the child may also 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? Is such education and/or training required to include multidisciplinary elements?

Points: 0 out of 10

Basis for deduction: No specialized training requirements for attorneys representing children in dependency proceedings could be identified. In fact, attorneys are explicitly excluded from the statutory GAL training requirement (“[a] guardian ad litem who is not an attorney must complete the same court approved training program that is required for a court appointed special advocate” (Burns Ind. Code Ann. § 31-9-2-50)).

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?

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).

**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?**

**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)).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ Indiana code provides, except in cases of gross misconduct, “immune[ity] 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 Rule of Appellate Procedure Rule 6.109(4).)

**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**

“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). Thus, it appears that under Iowa law the primary role of the child’s counsel is to represent the legal interests of the child.

**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?**

**Points: 0 out of 10**

Basis for deduction: Iowa law does not mandate training requirements for attorneys representing children in dependency proceedings.

**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?**

**Points: 10 out of 10**

Under Iowa law, the petition recognizes the child as a party to the proceedings (Iowa Code § 232.89(2)).

“Notice shall...be served upon the child and upon the child’s guardian ad litem, if any” (Iowa Code § 232.37(2)).

“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)).

“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)).

“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)).

**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?**

**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” (IA R .of Prof. Conduct 1.14(a)).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ The Attorney Training Subcommittee of the Training Grant Committee of Iowa’s Judicial Branch’s Children’s Advisory Committee is working with the State Public Defender to require training as a prerequisite to practicing as a GAL in Iowa. First Star and the Children’s Advocacy Institute commend these efforts and encourage Iowa to adopt these prerequisites into law.



# Kansas

Score: 86

Grade: B

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(d)).

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: 6 out of 10

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)).

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?

Points: 10 out of 10

“A guardian ad litem should...participate in prerequisite education prior to appointment ... areas of education should include... 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. Ct. Admin. Order 100).

<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><b>Points: 10 out of 10</b></p> <p>“‘Party’ means ... the child” (K.S.A. § 38-2202(u)).</p> <p>“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)).</p> <p>“The court may not exclude the guardian ad litem, parties and interested parties” (K.S.A. § 38-2247(a)(1)).</p>
<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><b>Points: 10 out of 10</b></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” (KS R. of Prof. Conduct 1.14).</p>
<p><b>Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?</b></p>	<p><b>Points: 0 extra credit points</b></p> <p>Kansas law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**SIDEBAR NOTE:**

- ★ Kansas law requires the guardian ad litem to inform the court when the child disagrees with the guardian ad litem’s assessment of the child’s best interests and gives the court the discretionary authority to appoint a second attorney. The appointment of a second attorney is no longer unusual in Kansas. While First Star and the Children’s Advocacy Institute commend Kansas for their practice of regularly appointing client-directed counsel, we encourage Kansas to adopt into law the requirement that a child’s expressed wishes always be advocated to the court.





# 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 proceedings are required, . . . [t]he court 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 children have the right to appeal (“any interested party . . . including the . . . child . . . may appeal . . . as a matter of right” (KRS § 620.155)), Kentucky law does not expressly require counsel for children on appeal in dependency proceedings.

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: 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? Is such education and/or training required to include multidisciplinary elements?

Points: 0 out of 10

Basis for deduction: Kentucky law does not mandate training requirements for attorneys representing children in dependency proceedings.

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?

Points: 10 out of 10

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 rights appurtenant thereto (“[i]f the court determines that further proceedings are required, the court also 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))).



**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?**

**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] age, mental disability 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).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**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.
- ★ In 2007, the Administrative Office of the courts published recommendations for Guardians Ad Litem. These recommendations included the standard that “a GAL should advocate the child’s best interests but advise the court when the child disagrees with the attorney’s assessment of the case.”
- ★ In 1982, the Kentucky General Assembly created a Citizen Foster Care Review Board (CFCRB). Nearly 775 volunteers, from across the state and from a variety of educational and professional backgrounds, serve as members of the Board. The goal of the board is to decrease the time young people spend in foster care. Volunteer reviewers help ensure that necessary services are provided to children in alternative placement and make every effort to locate permanent homes for these children. All CFCRB members are required to engage in multi-disciplinary training and are required to engage in six hours of continuing education training each year. These advocates have a deep compassion for children and actively work to decrease the time that children spend in foster care.



# 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 qualified, independent counsel for the child, including a referral to the district public defender...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....An attorney serving as counsel for a child in a Child in Need of Care proceeding should continue representation of the child through any subsequent Certification for Adoption proceedings, including any relevant writs or appeals” (La Sup. Ct. Rule XXXIII).

“Any attorney appointed to represent the child in the termination action shall continue to represent the child in all subsequent review hearings until the child is permanently placed” (LA Ch. C. Art. 1042).

**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**

“Counsel for a child should...[d]etermine the client’s desires and preferences in a developmentally appropriate and culturally sensitive manner; [and]...[a]dvocate 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).

**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?**

**Points: 10 out of 10**

Prior to appointment as counsel for children in child abuse and neglect proceedings, an attorney shall have the following qualifications:...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....[T]he attorney shall complete a minimum of six hours of approved continuing legal education each calendar year...[which] 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). Further, “[c]ounsel 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. Resources to support the provision of legal representation of children should be used efficiently and equitably to assure qualified representation throughout the state” (LA Ch. C. Art. 551).

**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?**

**Points: 5 out of 10**

Louisiana law expressly gives children several rights, 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) and the right to discovery (see La. Ch. C. Art. 652).

Basis for deduction: Although Louisiana law gives children many of the same rights as their parents (see, *e.g.*, La. Ch. C. Art. 604, 608), it does not expressly give children party status in dependency proceedings.

**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?**

**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. Rule XXXIII).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

#### **SIDEBAR NOTES:**

- ★ Louisiana is working on implementing recommendations of the Task Force on Legal Representation in Child Protection Proceedings, including a general caseload standard at 100 cases for a full time attorney. Although the state is facing severe financial hardship, several jurisdictions have recently made significant voluntary changes in their systems to adopt best practices. When fully implemented, Louisiana will have an efficient and effective statewide system of qualified child (and parent) representation in child protection cases. The legislation and infrastructure are in place, and the only present barrier to continuing implementation of the model is access to sufficient funding during the state’s current fiscal crisis.
- ★ The Task Force on Legal Representation, the Louisiana Court Improvement Program, and the Louisiana Children’s Justice Act Task Force have collaborated with the National Resource Center on Family Centered Practice to produce a video (“Telling Their Stories”) featuring former and present foster children, to educate and inform legislators, state administrators and community stakeholders about the urgent need to ensure quality legal representation in these critical proceedings.



# Maine

Score: 52

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(1)(B)). If the GAL is an attorney, “she or he acts in his or her capacity as a Guardian, rather than as an attorney” (Me. R. Guardians Ad Litem II(3)(A)). “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, as well as the appointment of separate 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: 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. 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: 6 out of 20

Basis for deduction: 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)). However, Maine law does not expressly specify the role of legal counsel appointed to represent children in dependency proceedings pursuant to 22 M.R.S. § 4005(1)(F).

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?

Points: 6 out of 10

Basis for deduction: Although Maine law requires multidisciplinary training for GALs (who may be attorneys) (“[a]ttendance at a Guardian training with a curriculum of at least 16 hours that has been approved by the Chief Judge satisfies this [core training] requirement (Maine Rules for GALs, Rule C(ii)), it does not expressly require training for separate legal counsel who may be appointed to represent children in dependency proceedings.

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?

**Points: 5 out of 10**

Basis for deduction: Although the child is given some rights through his/her GAL (such as 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.

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?

**Points: 10 out of 10**

“When a client’s ability to make adequately considered decisions in connection with the representation is impaired because of mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Me. Bar R. 3.6(j)(1)).

Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?

**Points: 0 extra credit points**

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

**SIDEBAR NOTES:**

- ★ During 2009 the Maine legislature considered LD 1188 (SP 436), “An Act to Clarify Child Protection Proceedings.” The measure, which was not enacted, would have—among other things—required the Department of Health and Human Services to provide sworn testimony or affidavit as to efforts to notify the parents or custodian of a child or facts justifying exception to notice in a preliminary protection proceeding; required the District Courts to keep publicly accessible records relating to preliminary protection hearings including notice given, exceptions to notice taken and other information; required parties under most circumstances to resolve disputes within the adjudicatory structure of the department after disposition in a protection proceeding has been ordered; and clarified what constitutes reasonable efforts in the department's requirement to rehabilitate or reunify a family.
- ★ 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.



# 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 under this subtitle” (Md. Courts and Judicial Proceedings Code Ann. § 3-813(a)).

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

“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, A).

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?

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, attorneys for children to obtain multidisciplinary 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 a party?

**Points: 10 out of 10**

Maryland law expressly gives children party status in dependency proceedings (“[p]arty means...[a] child who is the subject of a petition” (Md. Courts and Judicial Proceedings Code Ann. § 3-813(u)(1)(I))).

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?

**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” (MD R. of Prof. Conduct 1.14).

Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ The Maryland Legal Services Program, run by the State of Maryland and the Maryland Department of Health and Human Resources, requires that all CINA/TPR Attorney Contractors acquire sixteen hours of CINA/TPR-related training credits each year. MLSP also encourages all Contractors to pursue additional training credits above this minimum requirement, and grants numerous requests for additional training over the course of each contract year. The CINA Contractors are also required to maintain a maximum caseload of 150. First Star and CAI encourage Maryland to adopt these training and caseload standards into state law.





# Massachusetts

**Score: 104**

**Grade: A+**

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

**Points: 40 out of 40**

The “child shall have and be informed of the right to counsel at all hearings and ... the court shall appoint counsel for that ... child if the ... child is not able to retain counsel” (ALM GL ch. 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**

Massachusetts law provides attorneys for children on appeal. “If a final judgment is adverse to the client, counsel shall explain the client’s right to appeal the decision, the appellate process, including the time limits in which a notice of appeal must be filed, and any alternative post-judgment strategy that may be appropriate. Counsel shall also explain the process and availability of post-trial reviews, if applicable. If a final judgment is not adverse to the client, counsel shall ensure that opponents adhere to time limits and discharge other appellate responsibilities until appellate counsel files an appearance” (MA CFLP, Stds. Gov. Rep. of Children 1.3).

**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**

“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, even if the attorney believes the child’s position to be unwise or not in the child’s best interest” (MA CFLP, Stds. Gov. Rep. of Children 1.3).

**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?**

**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” (Committee for Public Counsel Services (CPCS) 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.



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?

**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)).

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?

**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” (MA CFLP, Stds. Gov. Rep. of Children 1.1).

Extra Credit: Does state law address caseload standards for children’s counsel 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” (MA CFLP, Stds. Gov. Rep. of Children 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” (Committee for Public Counsel Services (CPCS) Manual for Assigned Counsel (2003) at Ch. 5, No. 22).





# Michigan

Score: 76

Grade: C

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).

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 lawyer-guardian ad litem’s powers and duties include at least all of the following:...To ... be entitled to full and active participation in all aspects of the litigation” (MCL § 712A.17d(1)(b)).

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: 6 out of 20

“The lawyer-guardian ad litem’s powers and duties include at least all of the following:...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)).

Basis for deduction: Under Michigan law, the lawyer-GAL represents the child’s best interests. On a discretionary basis, the court may appoint an additional attorney to represent the child’s interests.

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?

Points: 0 out of 10

Michigan law contains no statewide mandatory training or education requirements for attorneys representing children in dependency proceedings.

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?

**Points: 10 out of 10**

Michigan law appears to give children the right of notice, the right to attend and participate in hearings, and the right of appeal (see, e.g., MCL § 712A.19b; MI Ct. Rule 3.921; MI Ct. Rule 3.976(C)).

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?

**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 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)).

Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?

**Points: 0 extra credit points**

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

#### **SIDEBAR NOTES:**

- ★ In 2008, the Michigan legislature enacted SB 669 (Act 200, Public Act of 2008), which—among other things—requires courts to “obtain the child’s views regarding the permanency plan in a manner that is appropriate to the child’s age”.
- ★ In practice, many Michigan attorneys are following 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.



# Minnesota

Score: 70

Grade: C

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

Points: 20 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)(b)).

Basis for deduction: Minnesota law requires the appointment of counsel only for children ten years of age or older.

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” (MN Juv. Prot. Proc. R. 25.01).

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

Under Minnesota law, when an attorney is appointed to represent a child, it appears that 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? Is such education and/or training required to include multidisciplinary elements?

Points: 0 out of 10

Basis for deduction: Minnesota law contains no statewide mandatory training or education requirements for attorneys representing children in dependency proceedings.

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?

Points: 10 out of 10

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

**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?**

**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 some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (MN R. of Prof. Conduct 1.14).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**SIDEBAR NOTES:**

- ★ 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 believe 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.
- ★ The Children’s Justice Initiative annually provides training to all child protection system stakeholders, specifically attorneys.



# 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 which 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**

“[T]he child shall be represented by counsel at all critical stages” (MS §43-21-201). “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” (MS §43-21-201(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**

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? Is such education and/or training required to include multidisciplinary elements?**

**Points: 6 out of 10**

Basis for deduction: Although Mississippi law requires training for GALs (who may or may not be attorneys) (“in 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” (Miss. Code Ann. § 43-21-121)), it does not expressly mandate multidisciplinary training for attorneys appointed to represent children in dependency proceedings.

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

**Points: 10 out of 10**

Mississippi law recognizes the party status of children in dependency proceedings

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

(Miss. Code Ann. § 43-21-201). “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). “Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his or her parent, guardian or custodian; to his or her guardian ad litem, if any; and to his or her counsel” (Miss. Code Ann. §43-21-309). 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).

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?

**Points: 10 out of 10**

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 (MS §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).

Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?

**Points: 0 extra credit points**

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

#### SIDEBAR NOTES:

- ★ Mississippi advocates noted that, while the state laws are positive, actual state practice is much less impressive. If the grade were to reflect practice it would score much lower. For example, although state law merits a perfect score for Criteria # 1, state practice merits only 15 points out of 40. The basis for this deduction is that many courts use a CASA as a GAL and may or may not appoint an attorney in addition.
- ★ Similar deductions might be made in the other categories as well if graded on implementation of Mississippi law. For example, no two youth courts are run the same, with some counties appointing private attorneys to juvenile cases while others have a GAL/attorney pair work on the case; many GALs never get a chance to meet their clients; and court decisions are inconsistent, and these decisions are not reviewed because juvenile cases are rarely appealed. First Star and the Children’s Advocacy Institute call on Mississippi to comply with the laws it has duly adopted regarding legal representation for children in dependency proceedings.
- ★ In practice, GALs are always attorneys and if appointed in two or more cases, they must have training. While this is a great start, we suggest that all attorneys be required to have training and that this requirement be codified in state law.





# Missouri

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**Score: 61** **Grade: D**

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

**Points: 15 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” the child (§ 210.160 R.S.Mo.). “Only a lawyer licensed by the Supreme Court of Missouri and, when authorized by law, a court appointed special advocate volunteer sworn in as an officer of the court shall be appointed to act as a guardian ad litem for a child” (MO GAL Stds. of Prac. 1.0).

The court shall appoint counsel for a juvenile prior to the filing of a petition if a request is made therefore to the court and the court finds that the juvenile is subject to juvenile proceedings and that the juvenile making the request is indigent (Mo. Sup. Ct. R. 116.01(b)). When a petition has been filed, the court shall appoint counsel for the juvenile when necessary to assure a full and fair hearing. (Mo. Sup. Ct. R. 116.01(c)).

Basis for deduction: Although Missouri statutory law mandates the appointment of a GAL for a child in a dependency proceeding, that person may or may not be an attorney. Under court rule, the appointment of an attorney for a juvenile is not automatic (prior the filing of a petition, a request must be made and the juvenile must be indigent, and after the filing of a petition, the court must find that the appointment of counsel for a juvenile is necessary to assure a full and fair hearing).

**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 serve for all stages of the proceedings, including appeal, unless relieved by the court for good cause shown. If no appeal is taken, services of counsel are terminated following the entry of an order of disposition” (Mo. Sup. Ct. R. 116.01(f)).

**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: 6 out of 20**

Missouri law requires a GAL to advocate for the best interests of the child and to ascertain the child’s wishes and inform the court when “the recommendations of the guardian ad litem are not in agreement with the wishes of the child” (MO GAL Stds. of Prac. 13.0).

Basis for deduction: Missouri law does not specify the role of a child’s counsel. For an attorney serving as a child’s GAL, Missouri law requires the GAL to articulate, but not advocate for, the wishes of the child when they are not in agreement with the GAL’s recommendations” (MO GAL Stds. of Prac. 13.0).

<p><b>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?</b></p>	<p><b>Points: 10 out of 10</b></p> <p>For attorneys serving as GALs, Missouri law sets forth multidisciplinary training requirements, which include topics such as cultural and ethnic diversity and gender-specific issues, family and domestic violence issues, community resources and services, and child development issues, among other things (MO GAL Stds. of Prac. 16.0).</p>
<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><b>Points: 10 out of 10</b></p> <p>“‘Party’ means a juvenile who is the subject of a court proceeding” (MO Sup. Ct. R. 110.05(19)). “The juvenile officer shall give notice orally or, if possible, in writing of the date, time and place of the protective custody hearing. Notice shall be provided to all parties, including the parents, guardian or custodian, children's division or other legal custodian, and the guardian ad litem” (MO Sup. Ct. R. 111.14(a)). “The juvenile and the juvenile’s custodian shall have the right to be present at all times during any hearing” (MO Sup. Ct. R. 117.01(a)).</p>
<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><b>Points: 10 out of 10</b></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 4-1.16(a)).</p>
<p><b>Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?</b></p>	<p><b>Points: 0 extra credit points</b></p> <p>Missouri law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

#### **SIDEBAR NOTES:**

- ★ Missouri’s new Supreme Court Rules, going into effective January 1, 2010, will require the court to appoint counsel for all juvenile hearings if necessary to provide a full and fair hearing and will no longer require indigency as a basis for appointing counsel for abused or neglected children.
- ★ In 2008, the Missouri legislature amended Chapter 484 RSMo. to require that the Supreme Court's Guardian ad Litem Standards "shall be adopted statewide and each circuit shall develop a plan for implementation which takes into account the individual needs of their circuit as well as the negative impact that excessive caseload have upon effectiveness of counsel. These plans shall be approved by the Supreme Court en banc and fully implemented by July 1, 2011" (484.350 RSMo.). As a result, the Supreme Court has directed its Family Court Committee to review the current standards and submit recommendations for revisions as appropriate. This committee is also charged with developing a template for the circuits to use when developing their plan for implementation. This review process is currently underway.



# Montana

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**Score: 79** **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 immediately appoint or have counsel assigned for...any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422” (Mont. Code Anno., § 41-3-425).

**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).

**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: 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? Is such education and/or training required to include multidisciplinary elements?**

**Points: 6 out of 10**

Montana law requires that a GAL, who may or may not be an attorney, “must have received appropriate training that is specifically related to serving as a child’s court-appointed representative” (Mont. Code Anno., § 41-3-112).

Basis for deduction: Montana law does not require training of attorneys appointed pursuant to § 41-3-425, but does require training for 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?**

**Points: 10 out of 10**

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

**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?**

**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 children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ Montana advocates note that the state’s Constitution provides that “[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons” (Mont. Const., Art. II § 15 (2007)).





# 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. 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: 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? Is such education and/or training required to include multidisciplinary elements?**

**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 attorneys 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).

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

**Points: 10 out of 10**

“Parties means the juvenile” (R.R.S. Neb. § 43-245(12)). “Notice of the time, date, place, and purpose of any juvenile court hearing subsequent to the initial hearing, for

expressly give the child some of the rights of a party?

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. 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?

**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” (NE R. of Prof. Conduct 1.14).

Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ While Nebraska gives judges the flexibility to appoint attorneys without specialized Guardian ad Litem training, advocates note that this exception is not used often and is included only so that children in rural areas do not lose the opportunity for counsel simply because there are no specially trained attorneys in the area. We encourage Nebraska to make changes in its laws to require training for all attorneys representing children.



# Nevada

Score: 71

Grade: C

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, 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

Representation by an attorney is provided for “all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive” (Nev. Rev. Stat. Ann. § 432B.420).

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

“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.42(1)), representing children 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? Is such education and/or training required to include multidisciplinary elements?

Points: 6 out of 10

Basis for deduction: Nevada law does not specify any training requirements for attorneys appointed to represent children pursuant to Nev. Rev. Stat. Ann. § 432B.420; however, some training is required for some special advocates appointed to serve as 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 a 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. 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?**

**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 children's counsel 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.
- ★ Education and training are priorities for children's attorneys in Nevada. At the Children's Attorneys Project, all of the attorneys participate in training offered by the National Association of Counsel for Children. Before any pro bono attorney may accept a children's case for representation, he/she is required to attend a training offered by the Project which includes a child welfare judge or hearing master and attorneys. Before pro bono attorneys accept their first cases, they are required to meet with an experienced children's attorney to review first steps. Every other month, the Project offers a "drop in" session and free lunch for any attorney with a children's case who wishes to talk about their case. Training is often tailored to special issues (*i.e.*, representing young children, representing children with mental health issues, etc.), and some trainings include experienced child psychologists.





# New Hampshire

Score: 66 Grade: D

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

Points: 15 out 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).

Basis for deduction: under New Hampshire law, appointment of an attorney to represent 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: 5 out of 10

Basis for deduction: New Hampshire law does not expressly guarantee that children will be represented by an attorney during appeals.

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

“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). “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).

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?

Points: 6 out of 10

Basis for deduction: New Hampshire law does not require specific training for attorneys appointed pursuant to RSA 169-C:10. However, New Hampshire’s Guardian ad Litem Board has established training requirements that are mandatory for GALs (“[g]eneral guardian ad litem training shall consist of a single course of study of at least 16 hours of training” (see Administrative Rules, Chapter GAL 303.02)).

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?

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. 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?

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 children’s counsel 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 NOTE:

- ★ 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/neglect cases NJ §§ 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.” N.J.S. A. 9:6-8.23.

Basis for deduction: New Jersey law does not expressly ensure counsel on appeal for children in dependency proceedings.

**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**

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 § 9:6-8.23).

**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?**

**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” (N.J. Stat. § 30:4C-15.4(c)).

Basis for deduction: New Jersey law does not expressly require the training to include multidisciplinary elements.

<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><b>Points: 5 out of 10</b></p> <p>New Jersey law provides children with the right to counsel, notice of placement review hearings, and right to contribute at proceedings. NJ §§ 9:6-8.23, 9:6-8.21; N.J. Div. of Youth and Fam. Servs vs. E.P., 196 N.J.88 (2008).</p> <p>Basis for deduction: New Jersey law does not expressly give children the status of party.</p>
<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><b>Points: 10 out of 10</b></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” (NJ R. of Prof. Conduct 1.14a).</p>
<p><b>Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?</b></p>	<p><b>Points: 0 extra credit points</b></p> <p>New Jersey law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

**SIDEBAR NOTES:**

- ★ 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

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**Score: 92** **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. 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: 12 out of 20**

Only children fourteen years of age or older receive client-directed representation, with the attorney required to zealously represent the child (N.M. Stat. Ann. § 32A-4-10(F)).

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)).

**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?**

**Points: 10 out of 10**

Attorneys and attorney GALs “shall receive periodic training ... to develop ... 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).

**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?**

**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).



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?

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)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?

Points: 0 extra credit points

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

**SIDEBAR NOTE:**

- ★ 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 Children's Counsel.







# 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**

McKinney's Family Court Act § 249(a) provides that "[i]n a proceeding under article three, seven, ten or ten-A of this act or where a revocation of an adoption consent is opposed . . . or in any proceeding under § 358, § 358-c, § 384 or § 384-b of the social services law or when a minor is sought to be placed in protective custody . . . the family court shall appoint a law guardian 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."

**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**

McKinney's Family Court Act § 1120(b) states that "[w]henever a law guardian has been appointed by the family court pursuant to § 249 of this act . . . the appointment shall continue without further court order or appointment where (i) the law guardian 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 law guardian 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 law guardian.

**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**

N.Y.Ct.Rules, § 7.2 states that (d) "[i]n other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position." Further, the rule provides that "[i]f 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."

**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?**

**Points: 8 out of 10**

"[A]ll attorneys for children, including new and veteran attorneys, [must] receive initial and ongoing training" as provided by Family Court Act § 249-b.

Basis for deduction: Although § 249-b requires specialized training for children's attorneys, it is only in the field of domestic violence and is not 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 a party?

**Points: 5 out of 10**

Basis for deduction: While McKinney's Family Court Act § 1016 states that "[a]ll notices and reports required by law shall be provided to such law guardian", New York law does not expressly give children party status.

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?

**Points: 10 out of 10**

N.Y.Ct.Rules, § 7.2(b) declares that "[t]he 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."

Extra Credit: Does state law address caseload standards for children's counsel 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" (22 NYCRR §127.5).

**SIDEBAR NOTE:**

- ★ In 2009 the New York Legislature amended the Family Court Act to, among other things, require attorneys for children to receive training or education in domestic violence prevention (A. 9017, Ch. 476, Statutes of 2009).



# 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**

N.C.G.S.A. § 7B-601 mandates that “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.” Furthermore, “[i]n every case where a nonattorney 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.”

**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’s attorney has “standing to represent the juvenile in all actions . . .” and the attorney’s “appointment shall terminate when the permanent plan has been achieved for the juvenile and approved by the court.” N.C.G.S.A. § 7B-601. “Appeal from an order permitted under G.S. 7B-1001 may be taken by a juvenile acting through the juvenile’s guardian ad litem previously appointed under G.S. 7B-601.” N.C.G.S.A. § 7B-1002(1).

**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: 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 child’s counsel required by state law? Is such education and/or training required to include multidisciplinary elements?**

**Points: 6 out of 10**

“A volunteer must complete 30 hours of required training” which is “taught by certified and experienced GAL trainers and staff”. Further, “[v]olunteers also receive continuing education on advocacy issues” (N.C. GAL Program Ch. 8.4 C2(4)(b)).

Basis for deduction: Training is only required for attorneys who are also serving as 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 a party?

**Points: 10 out of 10**

“The juvenile is a party in all actions under this Subchapter” (N.C.G.S.A. § 7B-601).

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?

**Points: 10 out of 10**

“The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice...shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:...[t]he violation of the Rules of Professional Conduct adopted and promulgated by the Council in effect at the time of the act” (N.C. Gen. Stat. § 84-28(b)(2)). “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)).

Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ GAL attorneys are required by contract to complete training within six months of signing their contract for the first time. All GAL attorneys are invited and encouraged to attend all trainings offered by the GAL Program and Court Improvement Project, both under the Administrative Office of the Courts.





# North Dakota

Score: 55

Grade: F

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

Points: 15 out of 40

“If, at any time in the proceeding, the court determines that the interest of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child” (N.D. Cent. Code, § 27-20-48.4(4)).

Basis for deduction: North Dakota law provides that the appointment of counsel 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: 5 out of 10

Basis for deduction: When an attorney is provided for a child, the appointment appears to last through the juvenile court process (see N.D. Cent. Code, § 27-20-26(1)); however, North Dakota law does not assure counsel for children on appeal.

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

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 and/or training requirements for the child’s counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 0 out of 10

Basis for deduction: North Dakota law does not set forth specialized education and/or training requirements 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 a party?

Points: 5 out of 10

“The court shall direct the issuance of a summons [of a deprivation proceeding] to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if the child is fourteen or more years of age or is alleged to be a delinquent or unruly child” (N.D. Cent. Code, § 27-20-22).

Basis for deduction: Although N.D. Cent. Code § 27-20-26(3) defines “party” to include the child, it is only for the limited purposes set forth in §§ 27-20-26 and 27-20-49.

**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?**

**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 children’s counsel 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: 86

Grade: B

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).

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 through the entire juvenile court process, Ohio law does not assure children continued representation on appeal.

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

“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)).

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?

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” (Ohio Sup. R. 48).

Basis for deduction: Training is only required for guardians ad litem, who may or may not be attorneys (Ohio Sup. R. 48).

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

Points: 5 out of 10

“‘Party’ means a child who is the subject of a juvenile court proceeding” (Ohio R. Juv. P. 2). Ohio Juv. R. 4 and Ohio Rev. Code Ann. § 2151.352 similarly imply party status



**expressly give the child some of the rights of a party?**

in relation to children in juvenile proceedings. “The court shall give all parties to the action and the child's guardian ad litem notice of the adjudicatory and dispositional hearings in accordance with the Juvenile Rules” (Ohio Rev. Code Ann. § 2151.35). “The court shall give notice of the review hearings held pursuant to this section to every interested party, including, but not limited to, the appropriate agency employees who are responsible for the child's care and planning, the child's parents, any person who had guardianship or legal custody of the child prior to the custody order, the child's guardian ad litem, and the child” (Ohio Rev. Code Ann. § 2151.417(F)).

Basis for deduction: The child is not guaranteed to be present at all proceedings and “shall not be summoned unless the court so directs” (Ohio R. Juv. P. 15).

**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?**

**Points: 10 out of 10**

“When a court appoints an attorney to serve as both the guardian ad litem and attorney for a child, the attorney shall advocate for the child's best interest and the child's wishes in accord with the Rules of Professional Conduct. Attorneys who are to serve as both guardian ad litem and attorney should be aware of Rule 3.7 of the Rules of Professional Conduct and act accordingly” (Ohio Sup. Ct. R. 48).

**Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?**

**Points: 0 extra credit points**

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





# Oklahoma

Score: 93

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 OK 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’s attorney “shall represent the child and any expressed interests of the child” (10 Ok St Ann. 7003-3.7(A)(2)(C)).

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?

Points: 3 out of 20

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)).

Basis for deduction: Oklahoma law encourages but does not require children’s counsel to obtain 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 a party?

Points: 10 out of 10

The child is “a party to the proceeding” (10A Ok. St. § 1-4-601(E)(2)).

**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?**

**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” (5 Okl. St. Chap. 1, Appx. 3-A, Rule 1.14(a)).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ On May 21, 2009, the Oklahoma Legislature passed a new Children’s Code, which took effect immediately upon enactment. Among other things, the new Code expressly provides that children are parties to dependency court proceedings and requires the court to ensure that the child is represented by independent counsel throughout the pendency of the action.





# Oregon

Score: 83

Grade: B

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” (O.R.S. 419B.195).

Basis for deduction: Under Oregon law, attorneys are not automatically provided for children in dependency proceedings (the court must be requested to do so).

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).

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

“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? Is such education and/or training required to include multidisciplinary elements?

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 a party?

Points: 10 out of 10

“Parties to proceedings in the juvenile court under O.R.S. 419B.100 and 419B.500 are...[t]he child or the ward.” Further, “[t]he rights of the parties include, but are not limited to: (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers; (b) The right to appear with counsel and, except

for interveners under subsection (1)(b) of this section, 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..." (O.R.S. § 419B.875(1)(a), (2)(a)-(d)).

**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?**

**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).

**Extra Credit: Does state law address caseload standards for children's counsel 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, Qualification 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. Consol. Stat. § 6311). When a child is taken into custody, the court shall appoint a GAL or legal counsel “immediately after a child is taken into protective custody and prior to any proceeding,” and where the child is not taken into custody, “the court shall appoint a guardian ad litem or legal counsel for the child when a dependency petition is filed” (Pa.R.J.C.P. No. 1151).

**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. Consol. Stat. § 6311). “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 proceedings upon direct appeal and permanency review” (Pa.R.J.C.P. No. 1150).

**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: 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: Under Pennsylvania law, client-directed counsel is required for children with major exceptions; children coming under certain definitions of “dependent child” are provided with a GAL who will articulate but not advocate for the child’s expressed wishes. 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).

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?

**Points: 0 out of 10**

Basis for deduction: Pennsylvania law 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 a party?

**Points: 10 out of 10**

A "party is a person who is legally entitled to participate in the proceedings" (Pa.R.J.C.P. No. 1120). "The summons shall...be directed to the child if he is 14 or more years of age" (42 Pa. Consol. Stat. §6335). "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).

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?

**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 (Pa. RPC 1.14(a)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?

**Points: 0 extra credit points**

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







# 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); RI R. Juv. P. Rules 15(c)(3), 18(c)(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

Once an attorney has appeared in a matter, his/her continued representation may not be terminated without court permission. An attorney's "representation of the children is continuing" during the time that the "children are subject to the ongoing jurisdiction of the Family Court" (*Sam and Tony M., et al. v. Carcieri, et al.* (2009) 610 F. Supp. 2d 171).

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: 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 attorneys from the CASA office are both charged with ensuring "that the best interests of the child are served" (R.I. Fam. Ct. Admin. Order 1979-13(1), (2)).

Basis for deduction: Lawyer GALs and attorneys from the CASA office 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? Is such education and/or training required to include multidisciplinary elements?

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).

Basis for deduction: Although specialized education and/or training is required for attorneys serving as GALs, Rhode Island law does not expressly or impliedly require that 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 a party?

Points: 10 out of 10

Under Rhode Island law, children are considered 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. 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?

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 Sup. Ct. Art. V, Rule 1.14(a)).

Extra Credit: Does state law address caseload standards for children’s counsel 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: 76

Grade: C

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

Points: 40 out of 40

In dependency proceedings “[c]hildren must be appointed legal counsel and a guardian ad litem by the family court” (S.C. Code Ann. § 63-7-1620).

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 law ensures counsel for children “[i]n all child abuse and neglect proceedings” (S.C. Code Ann. § 63-7-1620), which includes appeals.

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: 6 out of 20

When “the child’s position...is in conflict with the guardian ad litem’s view of the best interests of the child”, the GAL is authorized to “request for counsel to be appointed for a child to advocate the child’s position,” but such appointment by the court is discretionary (S.C. Ethics Advisory Op. 08-04 (July 2008)).

Basis for deduction: Attorney GALs represent the child’s best interests. The attorney GAL is authorized to articulate but not advocate for the child’s wishes.

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?

Points: 0 out of 10

Basis for deduction: South Carolina law does not require specialized education and/or training for children’s legal counsel in dependency proceedings.

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?

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. 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?**

**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 (Rule 407, Rule 1.14, SCACR).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**SIDEBAR NOTES:**

- ★ The General Assembly determined that the Children’s Code, as previously contained in one chapter of Title 20, had become cumbersome and difficult to use. In 2008, pursuant to Act 361, it transferred the Children’s Code to its own new title (Title 63). The General Assembly determined that the new Children’s Code in Title 63 will be a more accessible, practical resource for those working in the area of children’s law.
- ★ State advocates note that although S.C. Code Ann. § 63-7-1620 states that a child is entitled to a GAL and legal counsel, in practice the appointment of legal counsel is rare unless recommended by the child welfare agency or the GAL where there is conflict between the best interest recommendation and the child’s wishes—and even in those cases appointment of legal counsel is at the discretion of the court.





# South Dakota

**Score: 65**

**Grade: D**

**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**

The attorney appointed by the court shall represent the child “in any judicial proceeding” (S.D. Codified Laws § 26-8A-18).

**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: 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: 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? Is such education and/or training required to include multidisciplinary elements?**

**Points: 0 out of 10**

Basis for deduction: South Dakota 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 appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?**

**Points: 5 out of 10**

South Dakota law expressly provides children with some rights (the court should advise the child of his/her “right to be represented by an attorney” and 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” (S.D. Codified Laws § 26-7A-30)).

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



**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?**

**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-appx-1.14).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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





# 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 at any stage of a [juvenile] proceeding, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding” (T.C.A. § 37-1-149). A guardian ad litem is “a lawyer appointed by the court” (Tenn. R. of Juv. P., R 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 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). 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. 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**

“In a dependency, neglect or abuse case the guardian ad litem must...ensure that the child’s concerns and preferences are effectively advocated” (Tenn. R. of Juv. P., R 2). “If, after fully investigating and advising the child, the guardian ad litem is still in a position in which the child is urging the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child’s best interest, the guardian ad litem shall pursue one of the following options: Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child’s position while the other lawyer advocates for the child’s best interest; Request that the court appoint another lawyer to represent the child in advocating the child’s position, and then advocate the position that the guardian ad litem believes serves the best interests of the child” (Tenn. Sup. Ct R. 40(e)).

**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?**

**Points: 8 out of 10**

Tennessee law requires that “[a]ny guardian ad litem appointed by the court shall receive training appropriate to that role prior to such appointment” (T.C.A. § 37-1-149).

Basis for deduction: Although Tennessee law requires that attorney GALs receive training prior to appointment, it does not expressly require such training to be multidisciplinary in nature.



**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?**

**Points: 5 out of 10**

Under Tennessee law, children in dependency proceedings do have some express rights (“The summons shall also be directed to the child if the child is fourteen (14) years of age or more” (T.C.A. § 37-1-121(a)); a child has a “[r]ight to an attorney at all stages of the proceedings [which] shall include the right to an attorney in an appeal” (T.C.A. § 37-1-121).

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

**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?**

**Points: 4 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” (Tenn. Sup. Ct. R. 8, Rule 1.14(a)). However, “[a]ny guardian ad litem...appointed by the court shall be presumed to be acting in good faith and in so doing shall be immune from any liability” while under appointment (T.C.A. § 37-1-149(b)(3)).

Basis for deduction: Tennessee law provides broad immunity for GALs representing children in dependency proceedings.

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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

**SIDEBAR NOTE:**

- ★ 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.



# Texas

Score: 85

Grade: B

**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 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: 5 out of 10**

The attorney ad litem is entitled to “attend all legal proceedings in the suit” (Tex. Fam. Code § 107.003(3)(g)). “[A]n order appointing the Department of Protective and Regulatory Services as the child’s managing conservator may provide for the continuation of the appointment of the...attorney ad litem for the child for any period set by the court” (Tex. Fam. Code § 107.016).

Basis for deduction: Texas law provides the court with authority to provide for the continuation of appointment of the child’s attorney ad litem for any period (Tex. Fam. Code § 107.016), but does not expressly ensure that the attorney ad litem will represent the child on appeal.

**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**

“[T]he attorney ad litem appointed for a child shall, in a developmentally appropriate manner...advise the child [and] represent the child’s expressed objectives of representation” (Tex. Fam. Code § 107.004).

**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?**

**Points: 9 out of 10**

“An attorney ad litem appointed to represent a child...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)).

Basis for deduction: Under Texas law, multidisciplinary elements are impliedly required as part of the specialized education and/or training, but are not expressly required.

**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?**

**Points: 5 out of 10**

Although 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),

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

**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?**

**Points: 6 out of 10**

An attorney ad litem shall comply with the Texas Disciplinary Rules of Professional Conduct (Tex. Fam. Code § 107.003). An attorney ad litem owes to his/her client “the duties of undivided loyalty, confidentiality, and competent representation” (Tex. Fam. Code § 107.001(2)).

Basis for deduction: Texas law provides limited immunity for some actions taken by attorneys ad litem (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 guardian ad litem, attorney ad litem, or amicus attorney” unless the action was taken, the recommendation was made, or the opinion was given “with conscious indifference or reckless disregard to the safety of another...in bad faith or with malice...or...is grossly negligent or wilfully wrongful”) (Tex. Fam. Code § 107.009).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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



**SIDEBAR NOTES:**

- ★ A three-year grant awarded in 2009 by the Texas Supreme Court will fund two public law offices in Travis County that will focus solely on families involved in Child Protective Services court cases. The Office of Parental Representation works with parents to protect their rights and help them obtain services they need, and the Office of Child Representation (OCR) provides legal representation and case management for children who are involved in Child Protective Services cases. OCR works as a team to effectively represent clients' legal interests and serves as a resource for the community on topics related to child welfare law. This model will help ensure that attorneys representing children are familiar with the child welfare system and understand the unique issues that their clients face. If successful, the OCR model might be replicated in other areas of Texas.
- ★ The Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families is embarking upon a year-long study of legal representation of children and parents in Texas child protection cases. At the conclusion of the study, the Commission will have recommendations for improving the quality of legal representation; these recommendations will likely include statutory changes to the Texas Family Code.
- ★ The final order templates used by the Texas Department of Family and Protective Services include an optional provision continuing the appointment of the attorney ad litem in the event of an appeal. The person preparing the final order must consider this option during the drafting process; whether the provision is included depends on the preference of the court with jurisdiction over the matter.
- ★ Although Texas law does not expressly require multidisciplinary elements as part of specialized education and/or training, in practice multidisciplinary elements are routinely included in child advocacy training. This area of law requires understanding of many multidisciplinary issues, including domestic violence, substance abuse, homelessness, and child development. The State Bar of Texas Child Abuse and Neglect Committee sponsors a child abuse and neglect track at the annual Advanced Family Law conference; this track usually includes multidisciplinary topics. Additionally, the Permanent Judicial Commission for Children, Youth and Families is funding 14 one-day attorney trainings across Texas in 2009; the training materials, particularly the attorney manual, include many multidisciplinary topics.
- ★ The Texas Board of Legal Specialization recently approved the Child Welfare Law Attorney Certification program for attorneys in this area of practice.







# 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” (Utah Code Ann. § 78A-6-317). “An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency” (Utah Code Ann. § 78A-6-902(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**

An attorney representing a child must do so at “the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights” (Utah Code Ann. § 78A-6-317). The attorney “shall...participate in all appeals unless excused by the court,” and “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)).

**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: 6 out of 20**

The “[a]ttorney guardian ad litem shall represent the best interest of each child. If the minor’s wishes differ from the guardian ad litem’s determination of the child’s best wishes, the guardian ad litem must present the child’s wishes to the court. It is not considered a conflict of interest” (Utah Code Ann. § 78A-6-902(8)).

Basis for deduction: Utah law requires a child’s attorney guardian ad litem to articulate but not advocate for 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? Is such education and/or training required to include multidisciplinary elements?**

**Points: 9 out of 10**

Each attorney guardian ad litem shall 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.

**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?**

**Points: 5 out of 10**

Utah law provides children with some rights in dependency proceedings (such as the right “to notice of, and to be present at, each hearing and proceeding” and the “right to be heard at each hearing and proceeding” (Utah Code Ann. § 78A-6-317(1)).

Basis for deduction: Utah law does not expressly provide party status to children in dependency proceedings.

**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?**

**Points: 6 out of 10**

All Utah attorneys are bound by the Rules of Professional Conduct (Utah R. of Prof. Cond., Preamble). However, “[a]n attorney guardian ad litem...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. § 78A-6-902(7)).

Basis for deduction: Although attorneys ad litem are bound by the Rules of Professional Conduct, Utah law immunizes them from being personally liable for acts or omissions occurring during the performance of their duties unless specified conditions are present (e.g., they acted or failed to act through fraud or willful misconduct) (Utah Code Ann. § 63G-7-202(3)(c)).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 1 extra credit point**

Utah law requires that the Guardian ad Litem Oversight Committee shall, among other things, “monitor the Office’s caseload and recommend to the Judicial Council adequate staffing of guardians ad litem and staff” (Judicial Administration Rule 4-906).







# Vermont

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**Score: 90** **Grade: A**

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

**Points: 40 out of 40**

Under Vermont law, “a court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings” (33 Vt. Stat. Ann. § 5112).

**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 a final judgment in such an action, an attorney who has entered an appearance may withdraw only with leave of court” (Vt. Fam. Proc. Rule 15). “When counsel is assigned by the court, the responsibility for the representation shall continue in all subsequent proceedings until the attorney is relieved by the trial court making the appointment or by the Supreme Court on appeal” (Vt. A.O. 32 § 3(b)).

**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**

“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? Is such education and/or training required to include multidisciplinary elements?**

**Points: 0 out of 10**

Basis for deduction: 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 appurtenant thereto? If not, does state law expressly give the child some of the rights of a party?**

**Points: 10 out of 10**

Under Vermont law, a “[p]arty includes...[t]he child with respect to whom the proceedings are brought” (33 Vt. Stat. Ann. § 5102).

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?

**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" (Vt. A.O. 32 § 2).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?

**Points: 0 extra credit points**

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



**SIDEBAR NOTE:**

- ★ 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: 77 Grade: C

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 is alleged to be abused or neglected or who is the 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

The attorney guardian ad litem must “ensure that the child has representation in any appeal related to the case” and if the attorney “feels he or she lacks the necessary experience or expertise to handle an appeal, the guardian ad litem should notify the court and seek to be replaced” (VA Standards for GAL Representation of Children, Standard J Comments).

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: 6 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 interest and welfare” (Va. Sup. Ct R. 8:6).

Basis for deduction: Virginia law requires the attorney guardian ad litem 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 child’s counsel required by state law? Is such education and/or training required to include multidisciplinary elements?

Points: 10 out of 10

Pursuant to Va. Code Ann. § 16.1-266, the Virginia Judicial Council has promulgated standards that require that attorney guardians ad litem to complete seven hours of continuing legal education in the areas of “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 services 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” (Virginia Judicial Council, Standards to Govern the Appointment of Guardians Ad Litem).

**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?**

**Points: 5 out of 10**

Under Virginia law, children have some rights in dependency proceedings, 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) and the right to participate on appeal, “regardless of who files the appeal” (Va. Standards for GAL Representation of Children, Standard J).

Basis for deduction: Virginia law does not expressly provide party status to children in dependency proceedings.

**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?**

**Points: 6 out of 10**

Basis for deduction: “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 the Performance of Guardians Ad Litem for Children).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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





# Washington

Score: 61

Grade: D

**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 who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings” (Wash. Rev. Code Ann. § 13.34.100(1)). “‘Guardian ad litem’ means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter” (Wash. Rev. Code Ann. § 13.34.030). “The term guardian ad litem shall not include an attorney appointed to represent a party” (Wash. Super. Ct. GALR, Rule 1(b)(2)).

“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” (Wash. Rev. Code Ann. § 13.34.100(6)).

“Upon request of a party or on the court’s own initiative, the court shall appoint a lawyer for a juvenile who has no guardian ad litem and who is financially unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile’s family....If the court has appointed a guardian ad litem for the juvenile, the court may, but need not, appoint a lawyer for the juvenile” (Wash. JUCR 9.2(c)(1)).

Basis for deduction: Under Washington law, the appointment of an attorney for a child in dependency proceedings is discretionary in some circumstances (e.g., if the child has a GAL) and conditional in others (e.g., the child has no GAL and a party has requested appointment of counsel or the court decides to appoint counsel).

**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 court proceedings, Washington law does not expressly ensure attorney representation for children on appeal.

**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**

When an attorney is appointed for a child in dependency proceedings, the role of the attorney is “to represent the child’s position” (Wash. Rev. Code Ann. § 13.34.100(6)).

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?

**Points: 6 out of 10**

Any individual serving as a guardian ad litem must "comply with training requirements established under § 2.56.030 prior to appointment" (Wash. Rev. Code Ann. § 13.34.102).

Basis for deduction: Although Washington law requires specialized training for GALs, it does not expressly require specialized education and/or training for attorneys appointed as legal counsel for children in dependency proceedings.

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?

**Points: 5 out of 10**

Washington law expressly provides some children in dependency proceedings with at least one right (the right to service of summons "if the child is twelve or more years of age" (Wash. Rev. Code Ann. § 13.34.070)).

Basis for deduction: Washington law does not expressly provide party status to children in dependency proceedings.

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?

**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" (Wash. RPC 1.14(a)).

Extra Credit: Does state law address caseload standards for children's counsel in dependency proceedings?

**Points: 0 extra credit points**

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





#### **SIDEBAR NOTES:**

- ★ A bill introduced in the Washington Legislature in January 2009 would have recognized that few children in the state are given attorneys during dependency proceedings and their health, safety, and welfare are put at risk. H.B. 1183, and its companion bill S.B. 5609, would have required the court, whether or not requested by the child, to consider appointing an attorney at the first regularly scheduled hearing after (1) the child's 12<sup>th</sup> birthday; (2) the date the dependency petition is filed for a child age 12 or older; or (3) the date the bill takes effect, for unrepresented children who are already age 12 or older. If the court does not appoint an attorney, it must state its reasons on the record, tell the parties and the child, if present, of their right to request an attorney for the child in the future, and direct the caseworker or a party to notify any absent party of that right. In addition, the measure would have required the court to consider whether to appoint an attorney for the child at all subsequent hearings until an attorney is appointed or until the dependency is dismissed. Although these measures did not pass out of committee during 2009, Washington advocates will introduce a new right to counsel bill in the next session.
- ★ Similarly, a bill was introduced in the 2008 Washington legislative session addressing legal representation for children in dependency proceedings who are age twelve or older. H.B. 3048, and its companion bill S.B. 6896, would have established a Dependent Youth Representation Pilot Program to ensure that in the selected counties all children ages twelve and over who are in dependency proceedings have legal representation, and would have requested that University of Washington School of Law, Children and Youth Advocacy Clinic administer the Pilot Program, measure its effectiveness and issue preliminary and final reports to the legislature.
- ★ Although attorneys appointed for children pursuant to Wash. Rev. Code Ann. § 13.34.100(6) are required "to represent the child's position," it is unclear whether that same role applies to attorneys appointed for children pursuant to Wash. JUCR 9.2(c)(1), which does not expressly state whether the attorney is to advocate for the child in a client-directed manner or advocate for the child's best interests.
- ★ Although the appointment of legal counsel for children is discretionary and/or conditional under Washington state law, it is common practice in King County (where Seattle is located) for children age 12 and older to be automatically appointed an attorney in dependency and termination proceedings. Also, in Benton-Franklin County, the general practice is to appoint attorneys for children age 9 and older, and appoint CASAs for children age 8 and younger.





# West Virginia

**Score: 93**

**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...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, that 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: 5 out of 10**

Basis for deduction: West Virginia law expressly requires the appointment of counsel for children during all proceedings under article 6 of Chapter 49 of the West Virginia Code (W. Va. Code Ann. § 49-6-2(a)), but does not expressly require appointed counsel to represent children on appeal.

**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**

“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? Is such education and/or training required to include multidisciplinary elements?**

**Points: 8 out of 10**

“Any attorney appointed pursuant to this section shall...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 to receive training on the representation of children, child abuse and neglect, West Virginia law does not expressly require that this training 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 a 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. 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?**

**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” (W. Va. Prof. Cond., Rule 1.14(a)).

**Extra Credit: Does state law address caseload standards for children’s counsel 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: 76

Grade: C

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

**Points: 30 out of 40**

“If the [dependency] 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)(2)).

Basis for deduction: For children 12 years of age or older, Wisconsin law mandates the appointment of attorneys for children in dependency proceedings; however, for children under 12 years of age, such appointment 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**

Under Wisconsin law, attorneys appointed for children in contested dependency proceedings provide such representation at the “fact-finding hearing and subsequent proceedings” (Wis. Stat. § 48.23(1m)(b)(2)).

Basis for deduction: Wisconsin law does not expressly ensure attorney representation on appeal.

**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**

“‘[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” (Wisc. Stat. 48.23(1g)).

**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?**

**Points: 6 out of 10**

Basis for deduction: Although Wisconsin law requires lawyers serving as GALs to have specialized education and training (Wis. Sup. Ct. R. Rule 35.01), it does not require specialized education and/or training for attorneys serving as legal counsel for children in dependency proceedings.



**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?**

**Points: 5 out of 10**

Wisconsin law expressly provides some children in dependency proceedings with at some rights (“a copy of the petition...shall be given to the child if the child is 12 years of age or over” (Wisc. Stat. § 48.255) and children are generally entitled to attend hearings unless the court finds it to be in the best interest of the child to temporarily exclude the child from a hearing, and the child’s counsel or GAL consents thereto (Wisc. Stat. § 48.299(3)).

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.

**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?**

**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” (Wis. SCR 20:1.14(a)).

**Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?**

**Points: 0 extra credit points**

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







# 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 has been appointed by the court”(Wyo. Stat. Ann. § 14-3-211(a)).“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 has been appointed by the court”(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**

A child “is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule” (Wyo. Juv. Proc Rule 5). “[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 jurisdiction over the child. This continuing obligation includes any appeals that may result from the case in which the GAL has been appointed” (Wyo. Rules and Regulations for Guardian Ad Litem Program, Ch. 2, § 3(b)(xiv)).

**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: 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)).

“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 court” (Wyo. Rules and Regulations for Guardian Ad Litem Program, Ch. 2, § 2(a)).

Basis for deduction: Wyoming law requires the attorney guardian ad litem to articulate but not advocate for the child’s expressed preferences and wishes.

<p><b>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?</b></p>	<p><b>Points: 8 out of 10</b></p> <p>“A lawyer shall not be qualified for an initial contract, employment, appointment or assignment...[as a guardian ad litem] unless the attorney has received within the two (2) years prior...ten (10) or more live hours of child related training...or the attorney otherwise provides evidence acceptable to the Administrator that he or she has recent training, experience, or both, which is reasonably equivalent.” Further, to remain eligible for appointment, attorneys must “obtain five (5) live hours of continuing legal education per...year. These five (5) live hours shall be child related training and relevant to an appointment in Juvenile Court proceedings” (Wyo. Rules and Regulations for the Guardians Ad Litem Program, Ch. 2, § 4(b)(i), (ii)).</p> <p>Basis for deduction: Wyoming law does not expressly require that the training for attorney GALs be multidisciplinary in scope.</p>
<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><b>Points: 10 out of 10</b></p> <p>“‘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)).</p>
<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><b>Points: 4 out of 10</b></p> <p>All attorneys in Wyoming are bound by the Rules of Professional Conduct, but attorney guardians ad litem acting “in good faith” are “immune from any civil or criminal liability that might otherwise result” (Wyo. Stat. Ann. § 14-3-209).</p> <p>Basis for deduction: Wyoming law provides broad immunity for attorney GALs representing children in dependency proceedings.</p>
<p><b>Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?</b></p>	<p><b>Points: 5 extra credit points</b></p> <p>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 eighty (80) juvenile court cases, including juvenile delinquencies” (Wyo. Rules and Regulations for the Guardians Ad Litem Program, Ch. 2, § 6(b)).</p>

**SIDEBAR NOTE:**

- ★ 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.

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

**Call to Action**

We have provided a thorough analysis of each state's laws regarding the representation of maltreated children in dependency courts. A great deal of progress has been made in the last few years, but there is still room for improvement across the board. A major goal of this report is to present the Model Act as well as examples from other states as tools for advocates to use as they engage in continued advocacy. The following are examples of what needs to be done to improve representation for children.

**Federal Action**

- **Amendment of CAPTA.** Take an opportunity to encourage your legislators to amend CAPTA to 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.
- **Student Loan Forgiveness.** Encourage your legislative leaders to fully support student loan forgiveness for attorneys representing children in child abuse and neglect proceedings. There is a dire lack of trained attorneys willing to work in this area of law and student loan forgiveness is one step that we can take to mitigate this problem.

**Adoption of ABA Model Law**

- Encourage your ABA delegate to support passage of the ABA Model Act Governing the Representation of Children in Dependency Proceedings when it is voted on.

**State Action**

- **Amendment of State Statutes.** Take an opportunity to encourage your state legislative leaders to adopt state legislation to 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. Work with your State's Court Improvement Project. Many of these projects are doing great work – particularly in the area of multi-disciplinary training. Take this good work and help to turn it into mandated state law.
- **Collaboration with Other States.** This report highlights that while each state approaches the issue of counsel for children differently, many states are doing phenomenal work. Collaborate with similarly-situated states that have received positive scores. Talk with fellow advocates to see what practices can be adopted and utilized in your home jurisdiction.
- **Right to Counsel for Abused and Neglected Children— Beyond Dependency.** Maltreated children are involved in a variety of court proceedings that impact their lives and futures. Some of these children may be involved in custody, immigration, and education cases in which their views and desires are not represented by any of the parties. Like in dependency cases, these children are extremely vulnerable and deserve to have their voices heard and their rights protected when their perspectives are not aligned with the parties charged with protecting them. Only through competent and properly trained legal representation can these voices be heard and considered by the judge.

## Appendix A: Proposed ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

This Act has *not* been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy.

### 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 or 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>i</sup> These proceedings include:

- (1) abuse;
- (2) neglect;
- (3) dependency;
- (4) child placed voluntarily into 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 who is under the age of 18; or
- (2) an individual under the age of 21 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 all of the same duties that are due an adult client, including loyalty, confidentiality, diligence, client direction, communication, duty to advise, and competent representation.<sup>ii</sup>

(d) “Best interest advocate” means an individual, not functioning or intended to function as a lawyer, appointed by the court to assist the court in determining the best interests of the child.

(e) “Developmental level” means the ability to understand others and communicate, taking into account such factors as age, mental capacity, level of education, cultural background, and degree of language acquisition.<sup>iii</sup>

<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 provisions of the NCCUSL Representation of Children in Abuse, Neglect and Custody Proceedings Act. This Act has *not* been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy.



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*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).*

The best interests advocate includes but is not limited to well-trained lay volunteer advocates, such as a Court Appointed Special Advocate (“CASA”), guardians *ad litem* or a professional who holds a relevant professional license and whose training relates to the determination of a child’s best interests.

## **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 lawyer for each child who is the subject of a petition in an abuse and neglect proceeding. The appointment of a lawyer for the child 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 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 lawyer to represent siblings if there is no conflict of interest as defined under the applicable rules of professional conduct.<sup>iv</sup>

(d) The applicable rules of professional conduct and any law governing the obligations of lawyers to their clients shall apply to such appointed lawyers.

(e) The appointed lawyer shall represent the child for all stages of the proceedings.<sup>v</sup>

(f) The child, and only the child, after consultation with a lawyer and with informed consent, may waive representation. Neither the best interest advocate, nor a representative of the child, may waive representation for the child.<sup>vi</sup>

### *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 proceedings, regardless of developmental level. Nothing in this Act precludes a child from retaining a lawyer. States also 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, even through the

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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.

A child is entitled to conflict-free counsel 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 also 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.

*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>vii</sup>*

*Jurisdictions are urged to specify the case limit at the time of passage of this Act.*

*Commentary:*

States should establish training requirements for lawyers for children that focus on the applicable, controlling law, the development of a meaningful lawyer-client relationship with the child, assessing the capacity of the child and 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 effectively represent will differ based on a number of



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factors, including type of case, 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>viii</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, in an abuse and neglect proceeding, an appointment of a child's lawyer continues in effect until the lawyer is discharged by court order or the case is dismissed.<sup>ix</sup> The appointment includes all stages thereof, from removal from the home or initial appointment through all available appellate proceedings. The lawyer may, with the permission of the court, arrange for supplemental or separate counsel to handle proceedings at an appellate stage.<sup>x</sup>

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 his or her 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 care for lawyers acting on behalf of children in

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**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>xi</sup>**

**(5) meeting with the child prior to each hearing and for at least one in-person meeting every quarter;**

**(6) consulting with any best interest advocate for the child;**

**(7) consulting prior to each hearing with any person providing medical, mental health, social, educational, or other services to the child;**

**(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;**

**(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 [inset local rule/law etc]; and**

**(11) where appropriate, endeavoring to represent the child in ancillary legal matters, either through appointment from the court or through the retention of alternate legal counsel.**

*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.

Under (b)(9) every effort should be made to have the same lawyer in trial and appellate proceedings.

The ancillary matters referred to in (b)(10) 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



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transitioning out of care issues, postsecondary education opportunity qualification, and tort actions for injury, as appropriate.<sup>xii</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. There is value in having one lawyer represent the child across multiple proceedings. 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 lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct.**

*Commentary:*

The client-lawyer 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>xiii</sup>, confidentiality<sup>xiv</sup>, diligence<sup>xv</sup>, competence<sup>xvi</sup>, loyalty<sup>xvii</sup>, communication<sup>xviii</sup>, and the duty to advise.<sup>xix</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>xx</sup> Moreover, providing the child with an independent and client-directed lawyer ensures that the child's legal rights and interests are adequately protected.

**(1) The lawyer for the child shall explain the proceedings to the extent necessary to permit the client to make informed decisions regarding the representation and abide by the child's decisions concerning the child's objectives. This includes advising the child as to options and eliciting the child's wishes in a developmentally appropriate manner.**

*Commentary:*

The 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 happen during the first meeting so the client understands the terms of the relationship.

In addition to explaining the lawyer's role, the lawyer should explain the 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>xxi</sup> This explanation can and will change based on age, cognitive ability, and emotional maturity. 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 lawyer should develop

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a relationship with the client. The lawyer should develop 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 mouth piece. As with any lawyer, a child's lawyer is both an advocate and a counselor for the client. The lawyer should, without unduly influencing the child, advise the child by providing options and information to assist the child in making decisions. 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>xxii</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.

**(2) When the child's capacity to make adequately considered decisions in connection with a representation is diminished, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. When the lawyer reasonably believes that the client:**

**a. Has diminished capacity,**

**b. Is at risk of substantial physical, financial or other harm unless action is taken, and**

**c. 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 best interest advocate or investigator to make an independent recommendation to the court with respect to the best interests of the child. 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. 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>xxiii</sup>**

*Commentary:*

If a child is able to direct counsel, but the lawyer determines that the child has diminished capacity, is at risk of substantial harm and cannot act in the client's own interest in connection with the representation, lawyers shall, after unsuccessful use of the lawyer's counseling role, look to Rule 1.14 of the ABA Model Rules of Professional Conduct ("M.R." or "ABA Model Rules") for guidance.<sup>xxiv</sup> Substantial harm includes both physical and sexual harm.

After due consideration, it is the responsibility of the lawyer to determine whether the child



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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. Just because the lawyer does not agree with the child's stated objectives does not mean the child does not have the capacity to direct the representation. Lawyers should be careful not to construe proof of a disability from a client's insistence upon a view of the client's welfare that the lawyer considers unwise or at variance with lawyer's view.<sup>xxv</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 an adult client would. 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>xxvi</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>xxvii</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>xxviii</sup> A 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. When the child suffers from diminished capacity, the lawyer should continue to assess the child's capacity as it may change over time.

When diminished capacity is an issue, 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. 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>xxix</sup> This rule reminds lawyers, among other things, that they should ultimately be guided by the wishes and values of the child to the extent they can be determined.<sup>xxx</sup>

"Information relating to the representation is protected by M.R. 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 the necessary disclosures, even when the client directs the lawyer to the contrary,<sup>xxxi</sup> however the lawyer must make every effort to avoid disclosures. Where disclosures are unavoidable, the lawyer must limit the disclosures as much as possible. M.R. 1.6 and 1.14 limit what the lawyer may disclose in consulting with other individuals or entities or in seeking the appointment of a best interest advocate. 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



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305 or entity consulted with will act adversely to the client's interests before discussing matters  
306 related to the client.<sup>xxxiii</sup> If any disclosure by the lawyer will have a negative impact on the  
307 client's case or the lawyer-client relationship, the lawyer must consider whether representation  
308 can continue and whether the lawyer-client relationship can be re-established. "The lawyer's  
309 position in such cases is an unavoidably difficult one."<sup>xxxiii</sup>

310 A request made of the judge to appoint a best interest advocate to make an independent  
311 recommendation to the court with respect to the best interests of the child should be reserved for  
312 extreme cases where the child is at risk of substantial physical harm, cannot act in his or her own  
313 interest and all protective action remedies have been exhausted. Requesting the judge to appoint  
314 a best interest advocate may undermine the relationship the lawyer has established with the  
315 child. It also potentially compromises confidential information the child may have revealed to  
316 the lawyer. The lawyer cannot ever become the best interest advocate, in part due to confidential  
317 information that the lawyer receives in the course of representation. Nothing in this section  
318 restricts a court from independently appointing a best interest advocate when it deems the  
319 appointment appropriate.

320 **d) When the child is incapable of directing the representation by expressing his or her**  
321 **objectives, the lawyer shall seek the appointment of a best interest advocate. If the child is**  
322 **incapable of directing the representation and a best interest advocate is not appointed the**  
323 **lawyer may formulate and advocate for a position that is in the best interest of the child,**  
324 **but only after consultation with individuals or entities that can provide the lawyer with the**  
325 **information and assistance necessary to determine the best interest of the child.**

326 Commentary: This section seeks to address the cases involving the very young or severely  
327 incapacitated child, the child who has no capacity to direct the representation. In compliance  
328 with the conception of the lawyer-client relationship embodied in the ABA Model Rules, the  
329 proper approach when the child cannot direct the representation is to seek a best interest  
330 advocate who is trained to bring the multidisciplinary perspectives necessary to determine the  
331 child's best interests. However, the question must be answered as to what happens if the court is  
332 unable or unwilling to appoint a best interest advocate. When a best interest advocate is not  
333 appointed, the lawyer may advocate for what is in the child's best interest. Rather than relying  
334 on the lawyer's own personal views and values, the lawyer should develop the best interest  
335 position that reflects the child's unique circumstances.

336  
337 Recognizing that a lawyer's training does not provide the multidisciplinary perspectives  
338 necessary to determine a child's best interest, the lawyer should seek input from experts from  
339 other disciplines for guidance. Moreover, in determining the child's best interest the lawyer  
340 should seek to protect the child's legal rights, maximize the child's capacities, respect the child's  
341 family and social connections, recommend the least intrusive state intervention, recommend the  
342 least detrimental alternative, address any disabilities the child and family may have, give due  
343 weight to parents' preference in the absence of conflict or harm to the child, and honor the  
344 child's culture. In order to do so, the lawyer needs to understand all available options and  
345 develop a deep, rich understanding of the client in the context of his or her family, his or her  
346 community, and his or her life to that point. Additionally, while the child is in state care, the



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child's lawyer should ensure that the state agency is providing the services to which the child is entitled under the law including, but not limited to, the least restrictive placement alternative, a safe foster home, stability of placements, medical care, early intervention and educational needs, state and federal benefits, visitation, effective case planning, and services to the child and biological family addressing the underlying reason for removal.

Criteria for determining when a client is incapable of directing the representation include the child's age (though age alone is not dispositive) and inability to communicate because the child is preverbal or so young as to be unable to engage in a meaningful reasoning process about issues that are relevant to the proceeding. A child's capacity to direct counsel is contextual and incremental and is not simply a function of his or her chronological age. Because of the evolving nature of children's competencies, a child who is unable to express his or her objectives for one hearing or proceeding may be able to communicate sufficiently to direct the lawyer at a later hearing or proceeding. The lawyer must maintain regular contact with an incapacitated child in order to continue to assess the child's capacity.

Some children are able to articulate thoughts and feelings, but suffer from diminished capacity. Rule (c)(2) provides guidance for lawyers in that situation; (d) refers only to children who are incapable of directing representation.

## **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 lawyer appointed to have access to:

(1) the child; and

(2) confidential information regarding the child, including the child's educational, medical, and mental health records, responsible 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 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

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387 maintain the confidentiality of information released pursuant to Model Rule 1.6. The court  
388 may impose any other condition or limitation on an order of access which is required by  
389 law, rules of professional conduct, the child's needs, or the circumstances of the  
390 proceeding.

391 (d) The custodian of any record regarding the child shall provide access to the  
392 record to an individual authorized access by order issued pursuant to subsection (a).

393 (e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect  
394 upon issuance.<sup>xxxiv</sup>

#### 395 SECTION 9. PARTICIPATION IN PROCEEDINGS.

396 (a) Each child who is the subject of an abuse or neglect proceeding has the right to  
397 attend and fully participate in all hearings related to his or her case.

398 (b) Each child shall receive notice from the child welfare agency worker and the  
399 child's lawyer of his or her right to attend the court hearings.

400 (c) If the child is not present at the hearing, the court shall determine whether the  
401 child was properly notified of his or her right to attend the hearing, whether the child  
402 wished to attend the hearing, whether the child had the means (transportation) to attend,  
403 and the reasons for the non-appearance.

404 (d) If the child wished to attend and was not transported to court the matter shall  
405 be continued.

406 (e) The child's presence shall only be excused after counsel for the child has  
407 consulted with the child and, with informed consent, has waived the child's right to attend.

408 (f) A child's lawyer appointed under this [act] is entitled to:

409 (1) receive a copy of each pleading or other record filed with the court in the  
410 proceeding;

411 (2) receive notice of and attend each hearing in the proceeding [and  
412 participate and receive copies of all records in any appeal that may be filed in the  
413 proceeding];

414 (3) receive notice of and participate in any case staffing or case management  
415 conference regarding the child in an abuse or neglect proceeding; and

416 (4) receive notice of any intent to change the child's placement. In the case of  
417 an emergency change, the lawyer shall receive notice as soon as possible but no later than  
418 48 hours following the change of placement.

419 (g) A child's lawyer appointed under this [act] may not engage in ex parte contact  
420 with the court except as authorized by the applicable rules of professional conduct, court  
421 order, or other law.

422 (h) A best interest advocate may not take any action that may be taken only by a  
423 lawyer licensed in this state, including making opening and closing statements, examining



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**witnesses in court, and engaging in discovery other than as a witness. A best interest advocate may not engage in ex parte contact with the court.**

**(i) A party may call any best interest advocate for the child 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.**

**[(j) 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>xxxv</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 abuse and neglect proceeding.<sup>xxxvi</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. In accepting a decision not to attend, the lawyer should consult with therapists, caretakers, or other persons who have specific knowledge of the child.

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 speak to the judge, 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.

**SECTION 10. LAWYER WORK PRODUCT AND TESTIMONY.**

Except as authorized by [insert reference to this state's rules of professional conduct] or court rule, a child's lawyer may not:

- (a) be compelled to produce the lawyer's work product developed during the appointment;
- (b) be required to disclose the source of information obtained as a result of the appointment;
- (c) introduce into evidence a report prepared by the lawyer; or
- (d) provide any testimony that is subject to the attorney-client privilege.

*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) A best interest advocate appointed pursuant to this [act] is not liable for money damages because of inaction or action taken in the capacity of best interest advocate unless the inaction or action taken constitutes willful misconduct or gross negligence.<sup>xxxvii</sup>

**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>xxxviii</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 the court, after a hearing, 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>xxxix</sup>

This Act has not been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy.

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**SECTION 13. EFFECTIVE DATE. This [act] takes effect on \_\_\_\_\_.**

<sup>i</sup> NCCUSL, 2006 *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*, Sec. 2(2) [Hereinafter NCCUSL Act]

<sup>ii</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].

<sup>iii</sup> ABA Standards, Part I, Sec A-3.

<sup>iv</sup> NCCUSL Act, Sec. 4(c); see also ABA Standards, Part I, Sec B-1

<sup>v</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).

<sup>vi</sup> See La. Child. Code Ann. Art. 1016(A).

<sup>vii</sup> ABA Standards, Part II, Sec L-1-2.

<sup>viii</sup> NCCUSL Act, Sec. 9

<sup>ix</sup> *Id.*, Sec. 10(a)

<sup>x</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>xi</sup> NCCUSL Act, Sec. 11 Alternative A.

<sup>xii</sup> ABA Standards, Part I, Sec C-1-6; see generally La. Sup. Ct. R. XXXIII, Standards 1-7.

<sup>xiii</sup> ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2

<sup>xiv</sup> M.R. 1.6

<sup>xv</sup> M.R. 1.3

<sup>xvi</sup> M.R. 1.1

<sup>xvii</sup> M.R. 1.7

<sup>xviii</sup> M.R. 1.4

<sup>xix</sup> M.R. 2.1

<sup>xx</sup> ABA Standards, commentary A-1

<sup>xxi</sup> M.R. 1.4

<sup>xxii</sup> M.R. 2.1

<sup>xxiii</sup> M.R. 1.14(c)

<sup>xxiv</sup> See ABA *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (NACC Revised Version)*, B-4(4)

<sup>xxv</sup> Restatement (Third) of the Law Governing Lawyers Sec. 24 c. c (2000).

<sup>xxvi</sup> M.R. 1.14 cmt. 1

<sup>xxvii</sup> M.R. 1.14, cmt. 1

<sup>xxviii</sup> Anne Graffam Walker, Ph.D. *Handbook on Questioning Children: A Linguistic Perspective* 2<sup>nd</sup> Edition ABA Center on Children and the Law Copyright 1999 by ABA.

<sup>xxix</sup> M.R. 1.14 cmt. 5

<sup>xxx</sup> M.R. 1.14 cmt. 5

<sup>xxxi</sup> M.R. 1.14, cmt. 8

<sup>xxxii</sup> M.R. 1.14, cmt. 8

<sup>xxxiii</sup> M.R. 1.14, cmt. 8

<sup>xxxiv</sup> NCCUSL Act, Sec. 15

<sup>xxxv</sup> NCCUSL Act, Sec. 16

<sup>xxxvi</sup> American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

<sup>xxxvii</sup> NCCUSL Act, Sec. 18; see also NACC, *Recommendations for Representation of Children in Abuse and Neglect Cases*, Sec. 3A(8).

<sup>xxxviii</sup> N.C. Gen. Stat. Ann. § 7B-603.

<sup>xxxix</sup> NCCUSL Act, Sec. 19.





# Proposed ABA Model Act

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 appoint a lawyer for each child who is the subject of a petition in an abuse, neglect, dependency, termination of parental rights, or post termination of parental rights proceeding. The appointment of the 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 Proposed Model Act, § 3(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 appointment includes all stages thereof, from removal from the home or initial appointment through all applicable appellate proceedings” (ABA Proposed Model Act, § 6).

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

“When the child is capable of directing the representation by expressing his or her objectives, the lawyer shall maintain a normal client-lawyer relationship with the child” (ABA Proposed Model Act, § 7(c)).

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?

Points: 8 out of 10

“The court shall appoint as a child’s lawyer only an individual who is qualified through training or experience, according to standards established by [insert reference to source of standards]” (ABA Proposed Model Act, § 4(a)).

Basis for deduction: The ABA Proposed Model Act does not specifically require multidisciplinary 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 a party?

Points: 10 out of 10

“Children in these proceedings are parties” (ABA Proposed Model Act, § 2(b)). “Each child who is the subject of an abuse or neglect proceeding has the right to attend and fully participate in all hearings related to their case” (ABA Proposed Model Act, § 9).

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?

Points: 10 out of 10

““Child’s lawyer” (or “Children’s lawyer”) means a lawyer who provides legal services for a child and who owes all of the same duties that are due an adult client, including undivided loyalty, confidentiality, diligence, conflict of interest, communication, duty to advise, and competent representation” (ABA Proposed Model Act, § 1(a)). “All rules of professional conduct and any law establishing the obligations of lawyers to their clients shall apply to such appointed lawyers” (ABA Proposed Model Act, § 3(d)). “There shall not be malpractice liability immunity for the child’s lawyer” (ABA Proposed Model Act, § 11(a)).

Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings?

Points: 2 extra credit points

“Children’s lawyers shall not be appointed to new cases when their caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer’s practice spent on abuse and neglect cases, the case complexity, and other relevant factors” (ABA Proposed Model Act, § 4(c)).



## Appendix B: State Contacts

First Star and the Children’s Advocacy sent the following individuals draft versions of the gradesheets for their respective states and asked for comments, feedback, and corrections. We appreciate the cooperation and assistance of all of these individuals, and have underlined the names of individuals who provided substantive feedback or comments that were incorporated into this report or who provided other relevant information. First Star and the Children’s Advocacy Institute are tremendously grateful to all of these individuals for their insights, explanations, and assistance, all of which helped contribute to the accuracy of the information contained in this Report.

State	Persons Provided Draft Gradesheets
Alabama	David Williams, Alabama Administrative Office of the Courts <u>Bob Maddox, Esq.</u> , Alabama Administrative Office of the Courts Sue Ash, Alabama Department of Human Resources Linda Tilly, Voices for Alabama's Children
Alaska	Susanne DiPietro, Judicial Education Coordinator, Alaska Court System Joanne Gibbens, Department of Health & Social Services <u>Amanda Metivier</u> , Facing Foster Care in Alaska Christy Lawton, Child Welfare Administrator, Office of Children Services Barb Malchick
Arizona	Paul Bennett, UA Child Advocacy Clinic <u>Caroline Lauth-Owens</u> , 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
Arkansas	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
California	Bill Patton, Associate Dean of the Clinical Program and Professor of Law, Whittier Law School Deborah Forman, Whittier Center for Children's Rights Jacquelyn Gentry, Director, Whittier Center for Children's Rights Leslie Heimov, Executive Director, Children's Law Center of Los Angeles <u>Christopher Wu</u> , Supervising Attorney, Judicial Council of California Greg Rose, Office of Child Abuse Prevention Joyce Dowell, Chief, Child Welfare Policy and Program Development Bureau <u>Diane Brown</u> , Manager, Child Policy Development and Support
Colorado	Theresa Spahn, Executive Director, Office of the Child's Representative Sarah Ehrlich, Staff Attorney and Legislative Liaison, Office of the Child's Representative <u>Sheri Danz</u> , Office of the Child's Representative Daniel P. Gallagher, Policy Analyst & Court Improvement Project Coordinator, State Court Administrator's Office <u>Marvin Ventrell</u> , Executive Director, Juvenile Law Society Shirley Mondragon, Administrator, Children Services, Dept of Human Services Chris Watney, Interim Director, Colorado Children's Campaign
Connecticut	<u>Honorable Charles Gill</u> , Superior Court, State of Connecticut <u>Carolyn Signorelli</u> , 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
Delaware	<u>Tania M. Culley</u> , Office of the Child Advocate Guy Sapp, Court Administrator, Office of Children Services <u>Linda Shannon</u> , Office of Children Services <u>Andrea Mills</u> , Director of Special Court Services, Family Court of the State of Delaware Trish Hearn, Court Improvement Program Coordinator, Family Court of Delaware
District of Columbia	<u>Professor Wallace Mlyniec</u> , Georgetown Univ. Law Center Diane Weinroth, Children's Law Center Fillmore Lucas, Jr., Deputy Director of the Family Division, Clerk's Office; Superior Court of DC <u>Wilma Brier</u> , Branch Chief, CCAN, Family Courts of the D.C. Superior Court Virginia Monteiro, Children and Family Services Admin.
Florida	<u>Gerry Glynn</u> , 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

Georgia	<p><u>Kirsten Widner</u>, Court of Georgia Committee on Justice for Children</p> <p>Dorothy V. Murphy, Child Advocate Attorney, DeKalb County Child Advocacy Center</p> <p>Michelle R. Barclay, Admin. Office of the Courts</p> <p>Melissa D. Carter, Deputy Director, Office of the Child Advocate</p> <p>Trenny Stovall, Child Advocacy Center Director, DeKalb County Child Advocacy Center</p> <p>Mindy Binderman, Policy Director, Voices for Georgia's Children</p>
Hawaii	<p><u>Sandie Kato</u>, Program Specialist, First Judicial Circuit</p> <p>Faye Kimura, Program Coordinator</p> <p>Rondney Hee, Court Administrator, Court Mgt. Services Branch</p> <p>Gibby Fukutomi, Dept of Human Services</p> <p>Cynthia Goss, Dept of Human Services</p> <p>Colin Fukunaga, Assistant Program Administrator, Department of Human Services</p> <p>Elisabeth Chun, Executive Director, Good Beginnings Alliance</p>
Idaho	<p><u>Debra Alsaker-Burke</u>, Director, Court Improvement Project</p> <p>Hon. Bryan Murray, Idaho Supreme Court</p>
Illinois	<p>Sacha Coupet, Loyola Chicago School of Law</p> <p>Bernadine Dohrn, Northwestern Children and</p> <p>Jane Rutherford, DePaul College of Law</p> <p>Richard Cozzola, Supervising Attorney of Children's Law Project, Legal Assistance Foundation</p> <p>Arlene Grant-Brown, Dept of Children and Family Services</p> <p>Gailyn Thomas, Division of Child Protection</p> <p>Gaylord Gieseke, Interim President, Voices for Illinois Children</p>
Indiana	<p>Mary Wolf, Clinical Professor of Law and Director of Clinical Programs, IU School of Law</p> <p><u>Angela Reid-Brown</u>, CIP Grant Administrator, Indiana Judicial Center</p> <p>Leslie Dunn, Dir of GAL, CASA, State Court Administration</p> <p>Joel Schumm, Professor, Indiana University School of Law - Indianapolis</p> <p>Lilia Judson, State Court Administration</p> <p>Anne Jordan, State Court Administration</p> <p>John Wood, Deputy General Counsel, Dept of Child Services</p> <p>James "Jim" Payne, Director, Dept of Child Services</p> <p>Angel Owens, Dept of Child Services</p>
Iowa	<p>Michael Sorci, Executive Director, Youth Law Center</p> <p>Gail Barber, Project Director, Iowa Court Improvement Project</p> <p><u>Rosemary Norlin</u>, Dept of Human Services</p> <p>Charles Bruner, Child &amp; Family Policy Center</p>
Kansas	<p>Linda Elrod, Washburn Children</p> <p>Dawn Spencer, Court Improvement Specialist, Kansas Supreme Court</p> <p>Frayna Scrinopskie, Court Improvement Specialist, Kansas Supreme Court</p> <p><u>Mark Gleeson</u>, Family and Children Program Coordinator, Kansas Supreme Court</p> <p><u>Roberta Sue McKenna</u>, Dept of Social &amp; Rehabilitation Services</p> <p>Brian Dempsey, Deputy Director of Children and Family Services, Dept of Social &amp; Rehabilitation Services</p> <p>Gary Brunk, President &amp; CEO, Kansas Action for Children</p>
Kentucky	<p>Joshua Crabtree, Managing Attorney, Children's Law Center, Inc.</p> <p><u>Kim Tandy</u>, Executive Director, Children's Law Center, Inc.</p> <p>Patrick Yewell, Admin. Office of the Courts</p> <p>J.R. Hopson, KY Administrative Office of the Courts</p> <p><u>Mike Grimes</u>, Department for Community-Based Services/Division for Protection and Permanency</p> <p>Terry Brooks, Executive Director, Kentucky Youth Advocates</p>
Louisiana	<p><u>Hon. Nancy Amato Konrad</u>, Judicial Court Administrator</p> <p>Cheryl Buchert, Associate Professor, Loyola University New Orleans</p> <p>Hon. Ann Murry Keller, Judicial Court Administrator</p> <p>Hon. Andrea Price Janzen, Judicial Court Administrator</p> <p><u>Jan Byland</u>, Louisiana Dept of Social Services</p> <p><u>Mark Harris</u>, Program Coordinator, Office of Judicial Admin.</p> <p><u>Karen Hallstrom</u>, Office of Judicial Admin.</p> <p><u>David Katner</u>, Director, Tulane Law School's Juvenile Law</p> <p>Anthony J. Gagliano, Deputy Judicial Administrator, Louisiana Supreme Court</p> <p>Cindy Phillips, Dept of Social Services</p> <p>Patrice Waldrop</p> <p>Candice LeBlanc, Deputy General Counsel, Dept of Social Services</p> <p>Judy Watts, Agenda for Children</p>
Maine	<p><u>Dean Crocker</u>, Maine Children's Alliance</p> <p>Tracy Adamson, Family Division Manager, Maine Administrative Office of the Courts</p> <p>Wendy Rau, Family Division Director, Admin. Office of the Courts</p> <p>Hon. Vendean Vafiades, Deputy Chief Judge, District Court</p> <p>James Beougher, Director, Dept of Health &amp; Human Services</p> <p><u>Virginia Marriner</u>, Dept of Health &amp; Human Services</p> <p>Dulcey Laberge, Division of Public Service Management</p> <p>Vickie J Fisher, CAAN Coordinator</p> <p>Elinor Goldberg, Maine Children's Alliance</p>

<b>Maryland</b>	<p><u>Delores Edwards</u>, Department of Human Resources</p> <p><u>Melanie Klein</u>, Metropolitan Maryland Office</p> <p>Tracy Watkins-Tribbitt, Director, Foster Care Court Improvement Project</p> <p>Althea Stewart Jones, Admin. Office of the Courts</p> <p>Rhonda Lipkin, Child Welfare Advocacy Fellow, Public Justice Center</p> <p>Jessica Lynne Cook Rae, Legal Aid Bureau, Inc.</p> <p>Rosaline McDaniel, Dept of Human Resources</p> <p><u>Stephen Berry</u>, Dept of Human Resources</p> <p><u>Daniel L. Hatcher</u>, Assistant Professor of Law, University Baltimore School of Law</p> <p>Matthew Joseph, Executive Director, Voices for Maryland's Children</p>
<b>Massachusetts</b>	<p><u>Jessica Budnitz</u>, Child Advocacy Program at Harvard Law School</p> <p><u>Andy Cohen</u>, Committee for Public Counsel Services</p> <p>Clare Dalton, NEU Domestic Violence Center</p> <p>Brigid Kennedy-Pfister, Staff Attorney, The Children's Law Center</p> <p>Ronald Corbett, Court Administrator, Mass. Supreme Judicial Court</p> <p>Jacqueline Schelfhaudt, Assistant Court Administrator, Juvenile Court Department Administrative Office</p> <p><u>Liz Skinner-Reilly</u>, Dept of Children and Families</p> <p><u>Michael Dsida</u>, Deputy Chief Counsel, Committee for Public Counsel Services</p> <p>Krista Lohr, Committee for Public Counsel Services</p> <p>Virginia Peel, General Counsel, Dept of Children and Families</p> <p>Jetta Bernier, Massachusetts Citizens for Children</p>
<b>Michigan</b>	<p><u>Don Duquette</u>, Child Advocacy Law Clinic, University of Michigan Law School</p> <p>Kathryne O'Grady, Director of Child Welfare Services, State Court Admin. Office</p> <p>Kelly Howard, Court Improvement Program Coordinator, Child Welfare Services Division</p> <p>Jenifer Pettibone, Management Analyst, Michigan State Court Administrator's Office</p> <p><u>Dan Wright</u>, Director, State Court Administrative Office</p> <p>Jack Kresnak, Voices for Michigan's Children</p>
<b>Minnesota</b>	<p>Mark Fiddler, Esq., Fiddler Law Office</p> <p><u>Judith Nord</u>, Staff Attorney/ CIP Manager, Minnesota Supreme Court</p> <p>Ruth Clinard, Dept of Human Services</p> <p>Susan Krinkie, Social Service Consultant, Dept of Human Services</p> <p><u>Erin Sullivan-Sutton</u>, Dept of Human Services</p>
<b>Mississippi</b>	<p><u>Dana Gearhart</u>, Mississippi Department of Human Services</p> <p>William Charlton, Mississippi Judicial College</p> <p>Dennis Perkins, Youth Court Program Director</p> <p>Jamie McBride, Director, Court Improvement Program</p> <p><u>Lori Woodruff</u>, Director, Dept of Human Services</p> <p>Alicia Cole, Dept of Human Services</p>
<b>Missouri</b>	<p><u>Linda Hope</u>, Juvenile and Adult Court Programs</p> <p><u>Norma Rahm</u>, Office of the State Courts Admin.</p> <p>Mary Beck, Professor, University of Missouri School of Law</p> <p><u>Gary Waint</u>, Office of the State Courts Admin.</p> <p>Kathryn Sapp, Dept of Social Services</p> <p><u>Melody Yancey</u>, Acting Assistant Deputy Director, Dept of Social Services</p> <p>F. Scott Gee, Executive Director, Citizens for Missouri's Children</p>
<b>Montana</b>	<p>Sherri Rafter, Montana Supreme Court</p> <p>Sherry Meador, Montana Supreme Court</p> <p>Janice Basso, Dept of Public Health &amp; Human Services</p>
<b>Nebraska</b>	<p><u>Victoria Weisz</u>, Ctr. on Children, Families and the Law</p> <p>Bob German, Legal Aid of Nebraska</p> <p>Patrick Carraher, Nebraska Legal Services</p> <p><u>Kathy Bigsby Moore</u>, Voices for Children in Nebraska</p> <p><u>Suzanne Schied</u>, Dept. of Health and Human Services, Children &amp; Family Services</p>
<b>Nevada</b>	<p><u>Barbara Buckley</u>, Legal Aid Center of Southern Nevada</p> <p>Sheryl Overstreet, Coordinator, Court Improvement Project</p> <p>Annette Ruth Appell, William S. Boyd Professor of Law; William S. Boyd School of Law</p> <p>David Nason, Division of Child and Family Services</p> <p>Barbara Legier, Division of Child and Family Services</p> <p>Betsey Crumine, Executive Director, Clark County Legal</p> <p>Amber Vestbie, Dept. of Children and Family Services</p> <p>Gard Jameson, Children's Advocacy Alliance</p> <p><u>Erica Turner</u>, Court Improvement Program</p>
<b>New Hampshire</b>	<p><u>Jack Lightfoot</u>, Child and Family Services</p> <p>Sue Carmen, CASA of New Hampshire</p> <p>Ann Larney, CASA of New Hampshire</p> <p>David Sandberg, CASA of New Hampshire</p> <p><u>Kristy Lamont</u>, Permanency Planning Coordinator</p> <p>Byry Kennedy, Chief Legal Counsel, Child and Family Services</p> <p>Kristen Neil, Dept of Health and Human Services</p> <p>Ellen Fineberg, Children's Alliance of New Hampshire</p>

<b>New Jersey</b>	<p><u>Sonia Marytinez</u>, Admin. Office of the Courts</p> <p><u>Lorraine Augustini</u>, NJ Office of Public Defender, Office of Law Guardian</p> <p>Lisa Von Pier, Chief Juvenile Justice, Family Division, Administrative Office of the Courts</p> <p>Sandra Simkins, Clinical Associate Professor, Rutgers Law--Camden</p> <p>Mary Helen Cervantes, Director of Communications, Dept of Children &amp; Family Services</p> <p>Michele Safrin, Dept of Children &amp; Family Services</p> <p><u>Kate Bernyk</u>, New Jersey Dept. of Children and Family Services</p> <p>Delphinia McKinnis, Dept of Human Services</p> <p>Yvonne Smith Segars, Public Defender, Office of the Public Defender</p> <p>Cecilia Zalkind, Executive Director, Association for Children of New Jersey</p>
<b>New Mexico</b>	<p><u>Mary Ellen Bearzi</u>, Youth and Families Dept</p> <p>Judy Flynn-O'Brian, Center Director, Corinne Wolfe Children's Law Center, Institute of Public Law</p> <p>Angela Peinado, Project Manager, Supreme Court of New Mexico</p> <p><u>Robert Klein</u>, Management Analyst</p> <p>Eric Griego, Voices for Children</p>
<b>New York</b>	<p><u>Sarah Ramsey</u>, Syracuse University College of Law</p> <p><u>Tamara Steckler</u>, Legal Aid Society, Juvenile Rights Practice</p> <p>Michele Campbell, Permanent Judicial Commission</p> <p><u>Thomas Hess</u>, Office of Children and Family Services</p> <p><u>Judy Richards</u>, Office of Children and Family Services</p> <p>Jennifer March-Joly, Citizen's Committee for Children of New York</p> <p>Betsy Stevens, Office of Children &amp; Family Services</p>
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<b>Ohio</b>	<p>Doug Stephens, Judicial and Court Services</p> <p><u>Kristin Gilbert</u>, Ohio Department of Job and Family Services</p> <p>Leslie McGee, Ohio Department of Job and Family Services</p> <p>Amy Nicholls Swanson, Voices for Ohio's Children</p> <p><u>Denise St. Clair</u>, National Center for Adoption Law &amp; Policy, Capital University Law School</p>
<b>Oklahoma</b>	<p><u>Sue Tate</u>, Administrative Office of the Courts</p> <p>Anne Roberts, Oklahoma Institute for Child Advocacy</p> <p><u>Felice Hamilton</u>, Administrative Office of Oklahoma's Supreme Court</p>
<b>Oregon</b>	<p>Rebecca Orf, Juvenile Court Improvement Program</p> <p>Una Swanson, Oregon Department of Human Services</p> <p>Stacey Ayers, Oregon Department of Human Services</p> <p><u>Robin Christian</u>, Oregon First for Children</p> <p><u>Mark McKechnie</u>, Juvenile Rights Project</p>
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<b>South Dakota</b>	<p>Jill Gusso, Court Support Services, State Capitol</p> <p>Hon. Max A. Gors</p> <p>Sara Kelly, South Dakota Unified Judicial System</p> <p>Carole Cochran, South Dakota Kids Count Project</p>
<b>Tennessee</b>	<p>Leslie Barrett Kinkead, Court Improvement Program</p> <p>Carla Aaron, Department of Children's Services</p> <p><u>Linda O'Neal</u>, Tennessee Commission on Children and Youth</p> <p><u>Nyasha Justice</u>, Court Improvement Program, Tennessee Supreme Court</p>

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