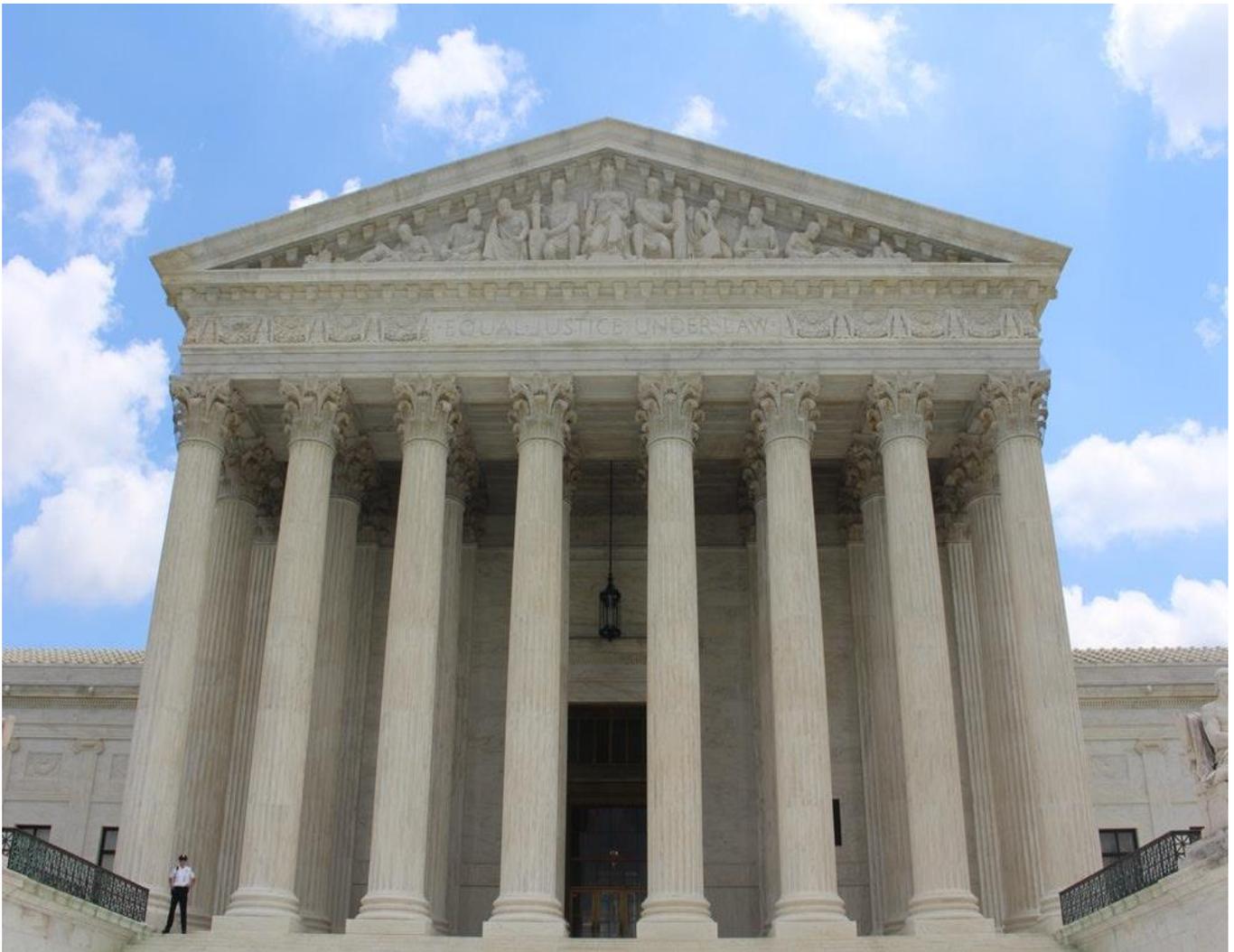




Fourth Edition

A CHILD'S RIGHT TO COUNSEL

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





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

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

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First Star Institute was created as a national 501(c)(3) public charity following a reorganization of First Star and continues the policy advocacy and publications, such as this Right to Counsel Report to improve the lives of abused and neglected children..

We envision a world where all children have the supports they need to grow up to lead happy and productive lives. We pursue our mission through research, public engagement, policy advocacy, education and litigation.

We work towards a day when all systems entrusted with the care and protection of neglected and abused children nurture and fuel these children to heal and thrive. We work in coalition and in partnership with others to pursue a better world for these children and youth. We believe that these youth have insights no other person has. Individually, they must be able to have a voice in their own lives. Collectively, we believe foster youth and former foster youth will provide the knowledge and leadership to bring these systems forward. We are proud to build collaborations with those who have experienced abuse, neglect and foster care as well as other experts whose work is grounded in data, child development, education, and an understanding of our existing legal and social service systems.

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A CHILD'S RIGHT TO COUNSEL, 4TH ED.

A National Report Card on Legal Representation for Abused and Neglected Children

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A Child's Right to Counsel, Fourth Edition A National Report Card on Legal Representation for Abused & Neglected Children

Introduction

Twelve years ago, First Star published the first edition of *A Child's Right to Counsel*,¹ evaluating state laws relating to the legal representation of children in civil child abuse and neglect proceedings. Since then, as this report shows, state grades have steadily increased with 31 states showing improvement between 2009 and 2018. Currently, a record 19 states are now “A” states. Unfortunately, 11 states have statutes that fall far short of providing these children with quality legal representation. High quality representation has been associated with better outcomes and shorter times in care for children in dependency cases. Five states received an “F” and six received a “D” in the current edition.

Hand in hand with the 31 states whose laws have improved, the effort to ensure quality legal representation for children has had many milestones and contributors in the last decade. The American Bar Association passed its Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings (Model Act)² in 2011, setting forth a comprehensive client-directed model of representing children, allowing age to be taken into account through diminished capacity directives. The first large-scale federally-funded research on legal representation for children at the University of Michigan concluded in 2016, premised upon legal representation for children and providing and testing a model for trained representation of children.³ An increasing number of children's attorneys are obtaining national certification in this field, that of a Child Welfare Law Specialist (CWLS), a specialized program offered by the National Association of Counsel for Children (NACC).⁴

Beginning this year, federal policy is facilitating further state action on the right to counsel in child abuse and neglect proceedings by opening up federal funds to help support states in providing high-quality legal representation of children. This policy recognizes that the legal representation of these children, parents and agencies not only helps protect the parties' legal rights of parties, but helps create better outcomes for children. As described more fully below, Title IV-E funds can be used to cover up to 50% of the costs of legal representation in these proceedings. First Star Institute (hereinafter First Star) and the Children's Advocacy Institute (CAI) invite states to make use of this assistance to ensure that children have the critical representation needed to be heard and judges better able to make informed decisions and achieve better outcomes for these children. Moreover, when combined with Court Improvement Program grants, states can develop approaches that monitor successes as they continue to work to better the lives of abused children who come through the civil court system.

A Child's Right to Counsel grades each state using criteria that assess statutory mandates for attorney representation of abused and neglected children and the extent to which that representation is client-directed, encompasses all hearings (including appeals), requires multi-disciplinary training and maintains confidentiality and liability under Professional Responsibility standards applicable to children's counsel. In addition, extra credit is provided if a statute sets caseload standards. More on these criteria is contained in the body of the report.

This fourth edition of *A Child's Right to Counsel* confirms that states are continuing to move in the direction of quality representation of children: 31 states showed improvement since 2009; 19 states now receive an “A,” and more than half – 29 states received an “A” or “B.” This also points to the need for work still to be done to ensure that all children have the representation that they need -- 11 states have statutes that need significant improvement. This year, our analysis includes a breakdown of the individual criterion across states so we know where some of the work on this issue lies, and states can see where they are not in sync with the rest of the country. From our current review: 34 of the 51 statutes (66%) require counsel for children in abuse and neglect proceedings, but only 15 of the 34 require client-directed counsel under all reasonable circumstances. Of the statutes that provide counsel for children in these proceedings, most (74%) provide

that the appointment continues throughout the abuse and neglect proceedings, including appeals, and most (76%) also give the child party status in these proceedings. More detailed findings, charts and tables are set forth in the Analysis and Results section of this report.

Why Effective Counsel is Critical: 670,000 Child Abuse and Neglect Victims Each Year

In 2017, over 670,000 children were victims of child abuse or neglect,⁵ 443,000 children were in foster care,⁶ and approximately 40,000 were in care for three years or more.⁷ This 670,000 number of victims is a constant. From 2013 to 2017, the number of child victims was 656,000, 675,000, 683,000, 677,000 and 674,000 respectively.⁸ The systems that come into play to protect these children sometimes help, but too many children who survive familial maltreatment to enter foster care end up having that experience exacerbate their trauma. The societal and economic costs of child abuse and neglect are staggering. According to the Centers for Disease Control, “[t]he estimated US population economic burden of child maltreatment based on 2015 substantiated incident cases (482,000 nonfatal and 1670 fatal victims) was \$428 billion, representing lifetime costs incurred annually,” and “[u]sing estimated incidence of *investigated* annual incident cases (2,368,000 nonfatal and 1670 fatal victims), the estimated economic burden was \$2 trillion.”⁹

Background and Context of the Report Card

Federal and State Statutes

In 1974, Congress first addressed the representation of abused and neglected children in dependency proceedings by requiring a Guardian ad Litem (GAL) for these children in the Child Abuse Prevention and Treatment Act (CAPTA).¹⁰ A series of amendments added to that directive: lawyers may be appointed, and GALs are to obtain a clear understanding of the child’s situation and needs and to advocate in the best interests of the child (1996); GALs must have appropriate training, including training in early childhood, child and adolescent development (2003 and 2010).¹¹

CAPTA currently requires that “in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child and adolescent development, and who may be an attorney or court appointed special advocate who has received training appropriate to the 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 ...”¹² CAPTA does not identify children as parties to their own case.

Building upon this CAPTA mandate, state statutes historically set forth models of child representation in dependency cases that typically focused on best interest advocacy through a lay or legal guardian ad litem and included the use of non-lawyer advocates such as Court Appointed Special Advocates (CASAs).¹³ Increasingly, lawyers for children have been authorized by statute and fall into one of three approaches:

- (i) Best Interest Model where “best interest attorneys” are appointed to determine and make recommendations to the court as to the child’s best interest;
- (ii) Client-Directed Model (also called direct attorney model or expressed wishes representation) most closely approximates the adult-client model where the attorney counsels his/her client and advocates for the client’s position, but takes into account diminished capacity such as age as set forth in the ABA Model Act;¹⁴ and
- (iii) Hybrid Approaches with legal representation in both a best interest and a client-directed manner, either through a two attorney model or where one attorney performs both roles, sometimes only until a conflict between the roles triggers a request for additional counsel.

With respect to CASA volunteers, a number of jurisdictions continue to utilize lay CASA volunteers, although their roles vary among the jurisdictions. A CASA volunteer in a number of states is the only representative for the child, while in others, e.g. Rhode Island, the CASA volunteer works with the attorney representing the child. In still other states such as Florida, the CASA volunteer represents the child and an attorney is available to represent the CASA, but does not represent the child.

The reauthorization process for CAPTA is underway as this report goes to print. In spite of recommendations to improve and strengthen its language around representation for children, signs point to the existing language regarding representation remaining as it is.

In 2017, the Children’s Bureau of the U.S. Department of Health and Human Services issued a policy memorandum¹⁵ renewing its 2001¹⁶ support for all children receiving high-quality legal representation in dependency proceedings. As noted above, policy changes issued in early 2019 translated this support into federal dollars, facilitating state action in this arena by opening up federal funds to help cover the costs of legal representation of children. This change allows federal financial participation (FFP) at the rate of 50% for the title IV-E agency “to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child’s removal from the home.”¹⁷

Moreover, this funding for legal representation encompasses not only children in dependency proceedings (which CAPTA addresses), but includes pre-petition representation, tracking language of the Family First Prevention and Services Act.¹⁸ The new policy does not require states to provide legal representation to children, but offers powerful financial support for states seeking better outcomes for abused and neglected children.

Litigation

Gideon v. Wainwright established a conclusive right to counsel for criminal defendants.¹⁹ *In re Gault* extended that right to juvenile defendants.²⁰

The landmark 1967 U.S. Supreme Court case, *In re Gault*, established that children have a due process right to an attorney in delinquency proceedings.²¹ Many advocates believe that *Gault*, by analogy, applies to children involved in other types of cases.²² Some courts have agreed. In 2005, the landmark federal case, *Kenny A. v. Perdue*, filed by Children’s Rights Inc., found that under state law and the state’s constitution, “children have fundamental liberty interests at stake in deprivation and TPR proceedings . . . includ[ing] a child’s interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit.”²³ The court also found that because a child’s fundamental liberty interests were at stake, it was in the state’s and child’s interest to appoint an attorney for the child. The court reasoned that 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.²⁴ This ruling resulted in settlement agreements guaranteeing every child the right to effective legal counsel by attorneys who carry caseloads of no more than 90 children.

Kenny A set out a blueprint for establishing a federal constitutional right to counsel for children in dependency proceedings. Other lawsuits have followed *Kenny A*. In Connecticut, children’s attorneys filed suit against the state alleging that systematic inadequate representation by court-appointed counsel violated the rights of the children involved in child protection cases.²⁵ Other cases of note include *Matter of T.M.H.*, 613 P.2d 468, 470-471 (Okla. 1980) (“independent counsel must be appointed to represent the children if termination of parental rights is sought”); *Matter of Adoption of K.D.K.*, 940 P.2d 216, 217 (Okla. 1997) (describing *T.M.H.* as a case where “this Court held that a child has a constitutional right to counsel in a

proceeding initiated by the state for the termination of parental rights”); and *Roe v. Conn*, 417 F. Supp. 769, 780 (M. D. Ala. 1976) (children have due process right to counsel in Alabama dependency proceedings under U.S. Constitution). CAI also filed a 2009 class action in California alleging that the constitutional and statutory rights of Sacramento County’s foster children were violated by caseloads approaching 400 per attorney and 1,000 per judge. The court never reached the substantive issues of the case, dismissing it under the doctrine of abstention.²⁶

Most recently, CAI, along with *pro bono* co-counsel Morrison & Foerster and DeLaney & DeLaney, filed a class action lawsuit in Indiana in 2019 claiming in part that, “*Without an attorney, a child in a dependency proceeding risks losing his or her liberty interests, as other parties present evidence, offer witnesses, and make decisions about the child’s future that the child is not permitted to discredit, challenge, or even address. Such an omission is fundamentally unfair and contrary to the due process and equal protection clauses of the Fourteenth Amendment.*”²⁷ At this writing, this case is pending in the United States District Court for the Southern District of Indiana.

The reasoning in *In re Gault* and *Kenny A.* logically applies to children in dependency proceedings -- these children also can remain in state custody for up to 18 years and can be removed and then transferred from placement to placement without notice or consent. Moreover, these children find themselves in state care through no wrongdoing of their own. The National Association of Counsel for Children has published “a practical tool to help children’s attorneys make the argument for a child’s right to counsel in dependency proceedings,” which reflects the arguments advanced above and is available at <https://cdn.ymaws.com/www.nacchildlaw.org/resource/resmgr/infographic/nacc-infographic.pdf>

Ultimately, absent legislative action to provide representation, a class action lawsuit may work its way to the Supreme Court to wrestle with the federal constitutional due process rights of children in dependency cases.

A Civil Right to Counsel

The right to counsel for children in dependency proceedings has become part of a larger civil right to counsel movement²⁸ that encompasses the right to counsel for parents in these proceedings.²⁹ The National Coalition for a Civil Right to Counsel (NCCRC) was founded in 2003 “to encourage, support, and coordinate advocacy to expand recognition and implementation of a right to counsel for low-income people in civil cases that involve basic human needs such as shelter, safety, sustenance, health, and child custody.”³⁰ The NCCRC maintains interactive maps showing legislative proposals and litigation on the right to counsel for children in dependency cases.

Recently, a national collaborative of children’s attorneys, parents’ attorneys, and advocates for children’s and for parents’ rights including the ABA Center on Children and the Law, the Children’s Law Center of California and the Center for Family Representation launched the Family Justice Initiative. The Initiative aims to bring together these advocacy camps which have traditionally operated separately in order to increase access to quality legal representation for both parties in child welfare cases.³¹

The Nature of a Dependency Case: It is a Legal Process

Why quality representation for children makes a difference rests in the nature of these cases. Dependency or civil child abuse and neglect cases arise when a child is determined to be abused or neglected. The judicial process which first determines that a child is abused or neglected so as to require state intervention in the family continues, often for years, until a “permanent” placement is made – e.g., child ages out, is adopted or placed in guardianship. During this time, the court becomes the “parental” decision-maker overseeing all aspects of the child’s life. Judges rely entirely on those before him/her for information and recommendations in order to make appropriate decisions. Judges hear from all parties to the case and consider each party’s counseled position as they make a determination as to the child’s best interest. Social service agency workers,

agency attorneys, and parent attorneys all provide information to the court—it is critical that the child have legal representation as well.

The literature resounds with how competent children’s counsel facilitate better outcomes and create an elevated sense of procedural justice for the children involved³². For example, children are best situated to know what is taking place in their lives and, through counsel, can best provide the vital information that will support informed judicial decisions. Children’s counsel can help prevent unnecessary removal and inappropriate placements and facilitate case planning that addresses permanency goals. Moreover, having counsel serves considerations of procedural justice by giving children a voice and treating them with due process, dignity and respect.³³ The Model Act provides a thoughtful approach for representing children through a considered diminished capacity process.

While more research is necessary to flesh out best practices for the representation of children, in the words of the Children’s Bureau, “Numerous studies and reports point to the importance of competent legal representation for parents, children, and youth in ensuring that salient information is conveyed to the court, parties’ legal rights are protected and that the wishes of parties are effectively voiced. There is evidence to support that legal representation for children, parents and youth contributes to or is associated with:

- increases in party perceptions of fairness;
- increases in party engagement in case planning, services and court hearings;
- more personally tailored and specific case plans and services;
- increases in visitation and parenting time;
- expedited permanency; and
- cost savings to state government due to reductions of time children and youth spend in care.”³⁴

What Constitutes a Good Child’s Attorney?

A consensus in the child welfare legal field favors legal representation by attorneys trained in child development, family dynamics and a host of legal, medical, psychological and educational issues faced by their child clients. Good children’s attorneys are able to counsel their clients on their rights and options and ascertain their client’s position in a developmentally appropriate way. Effective programs ensure that attorneys are able to maintain caseloads that allow for zealous and effective representation of their child clients.

The ABA Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings (Model Act)³⁵ delineates a client-directed model of representation, and includes the need to make a determination as to whether a child client is sufficiently verbally and developmentally capable of expressing a counseled position. In such cases of diminished capacity, attorneys are advised to make a substituted judgment determination for their client. Variations on the Model Act have centered on how to best incorporate minority into client-directed representation.

The Quality Improvement Center on the Representation of Children in the Child Welfare System

Research on legal representation of abused and neglected children reinforces the need for training and an understanding of the child and her world as well as legal skills. The Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-Child Rep) at the University of Michigan was commissioned by the Children’s Bureau in 2009. This seven-year, multimillion dollar project includes some of the few empirically-based analyses of how legal representation for the child might best be delivered. One of the premises of the QIC-Child Rep model was that “All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court’s jurisdiction continues.”³⁶ The QIC ChildRep model’s research and demonstration projects in Georgia and Washington

State employed the model's Six Core Skills for attorneys working with children - (1) enter the child's world; (2) assess child safety; (3) actively evaluate needs; (4) advance case planning; (5) develop a theory of the case; and (6) advocate effectively.³⁷ These core skills clearly reflect the legal representation premise and the criteria of this Report Card as they embody a need for legal skill and specialized child-centered knowledge. The QIC's work was extensive, and includes findings from Georgia and Washington State that: (i) QIC-trained lawyers initiated more contact with the children they represented, increased communications with others involved in their cases, and were more actively involved in conflict resolution and negotiation activities; (ii) This resulted in measurable improvement in case outcomes for at least some children; and (iii) Children represented by QIC treatment attorneys in Washington were 40% more likely to experience permanency within six months of placement."³⁸

The National Association of Counsel for Children (NACC) Certification

Child welfare law is an increasingly complex and specialized area of law that requires knowledge of child safety and protection laws, related mandates pertaining to education, immigration, and civil rights as well as relevant social science foundations such mental health, trauma, resiliency, cultural humility, and child development. These elements converge at the intersections of local policies, state regulations, and federal law—and often involve inter-jurisdictional considerations.

NACC offers extensive training and the only nationally accredited certification for attorneys representing abused and neglected children, as well as for attorneys representing parents and the state agency. NACC has established certification in jurisdictions across the country, and qualifies attorneys as Child Welfare Law Specialists (CWLS). The Certification reflects significant experience, training, and understanding of issues in children's law. NACC Certification is currently available in 38 states. Appendix B contains more information from NACC about its programs.

Caseload Standards and Attorney Compensation

Quality legal representation requires reasonable caseloads.³⁹ While the stage of the proceeding and the number of children per case impact workload, caseload limits are necessary—and are increasingly being established. In the oft-cited study of the Legal Aid Society of Palm Beach County's Foster Children's Project (FCP), children represented by FCP, whose attorneys carried a caseload of about 35 children apiece, had significantly higher rates of permanent placements than children not served by FCP.⁴⁰

A related issue is fair compensation for children's attorneys. These attorneys' high caseloads and low salaries result in burnout and high-turnover rates—both factors impact adequate representation⁴¹ and the long-term quality of this bar. One California study found that although implementation of draft caseload and compensation standards would require a significant resource infusion, the increase would be offset by reduced out-of-home placement costs.⁴² The Chapin Hall study in West Palm Beach acknowledged an increased up-front investment in counsel, but concluded that children receiving quality counsel in that program spent shorter times in out-of-home care and achieved permanency more quickly, ultimately resulting in cost-savings for the state.⁴³

The NACC recommends that a full-time attorney represent no more than 100 individual clients at a time.⁴⁴ This limit generally assumes a caseload that includes various stages of cases, and recognizes that some clients may be part of the same sibling group. One hundred cases averages to 20 hours per case in a 2000-hour year. Other states have imposed or recommended lower limits, including Massachusetts with a 70 case limit.⁴⁵

Call to Action

As of January 2019, federal dollars are available to all states to claim reimbursement for a portion of the costs of children’s legal representation. This federal funding change is a victory for children, advocates and states seeking to assure basic civil and due process rights of abused and neglected children and provides clear opportunities for state action.

First Star Institute and the Children’s Advocacy Institute call on all to move forward in ensuring that quality legal representation is provided to all abused and neglected children.

Federal Action

Legislation

Federal legislation requiring that all children in dependency cases have a right to high-quality legal representation offers a more permanent way of ensuring the legal representation of abused and neglected children. Law is generally more enduring than practices or policies—which is why this Report Card evaluates state statutes and regulations rather than policies or practices. Legislative reform can be accomplished in several ways.

CAPTA has been and continues to be the only federal law that specifically addresses children’s representation in dependency proceedings. Although CAPTA’s legislative history clearly indicates Congressional interest in providing *legal* representation to children,⁴⁶ the law’s provisions could be clarified. The following four amendments to CAPTA would advance a child’s right to counsel:

1. Conform CAPTA to the Fostering Connections to Success Act to ensure that CAPTA’s legal representation mandate continues for youth who opt to remain in care past the age of 18.
2. Explicitly grant party status to children in maltreatment cases. Party status ensures that children are provided basic due process protections, such as notice of all proceedings and decisions, the right to appear in court, and the right to participate fully in court proceedings.
3. Fund research to provide additional data on the costs, benefits, outcomes, and return on investment on providing representation to children, and in particular legal versus non-legal representation to children and on models that incorporate both in dependency cases, such as multi-disciplinary teams, that may include attorneys. The legal versus non-legal question has been addressed on a small scale in the Chapin Hall study out of West Palm Beach⁴⁷ and has been discussed in the QIC project from the University of Michigan,⁴⁸ but additional data on a national scale will be beneficial.
4. Amend CAPTA to require high-quality attorney representation for children in child maltreatment cases according to standards such as those set forth in the ABA Model Act and consistent with the Children’s Bureau memorandum⁴⁹ and the Child Welfare Policy Manual change.⁵⁰

As this report goes to print, legislators are debating the language of the reauthorization of CAPTA. Although CAPTA has traditionally been the statute that addressed legal representation for children, it is by no means the only federal path to effect change on this issue. With the federal policy change allowing access to Title IV-E funds to recover a portion of the costs of children’s representation, codifying the representation of children and its funding could be the next step.

Administration/Regulation

First Star Institute and the Children's Advocacy Institute applaud the Children's Bureau's decision to revise the Child Welfare Policy Manual and release Title IV-E funding for legal representation in child abuse and neglect proceedings. We suggest continued action to ensure implementation as follows:

- Technical assistance on how to access funds to help more states deliver high-quality representation to children.
- Meaningful oversight and enforcement of current law by the Children's Bureau. CAPTA's existing provisions on representation for children are not being executed throughout the nation.⁵¹ Federal data consistently conveys that only about 20% of children are receiving adequate representation.⁵² The Office of Inspector General at DHHS⁵³ is currently investigating this issue and we look forward to its report, expected by the end of 2019. More robust oversight could include and provide a fuller understanding of how many children are being represented and by whom. More diligent enforcement might produce greater compliance, especially if CAPTA is reauthorized with funding levels better aligned with its mandates.
- Research to more fully explore representation of children, including multi-disciplinary teams and the foundational attorney/non-attorney question from a national return-on-investment perspective.

State Action

Legislation

As of 2019, federal funds are now available to help all states fund legal representation of children in child abuse and neglect proceedings. States now have financial support to effect change to help children and families in their states and reduced costs from better outcomes – increased permanency, shorter times in care and increased long term gains in terms of children growing up to lead productive lives.

All states can utilize this federal funding:

- States that already provide legal representation for children in abuse and neglect cases can use these funds to continue to provide this representation or to further improve the representation.
- States that do not currently provide representation for children in these cases can seek these federal funds to support providing legal representation to children in these cases.
- States who provide a limited right to counsel can expand upon this representation in accordance with the Children's Bureau's policy.
- States that provide counsel to GAL's or CASA's but not to children can expand their programs to provide legal representation directly to children.

New or improved state laws providing legal representation for children in dependency proceedings will continue to push the national consensus and aid abused and neglect children and youth in states throughout the country. Independent change through state policy, regulation or court rules can also advance the issue.

Litigation

Class action litigation can advance a right to counsel for children in dependency cases as placement in state custody triggers constitutional due process concerns. The pending and settled caselaw in this field over the last decade has helped move the issue forward. Future cases expanding the findings of *Kenny A* nationwide could result in a national right to counsel for dependent children.

Conclusion

This report analyzes and evaluates state laws throughout the 50 states and the District of Columbia through an assessment of criteria critical to effective representation of children in child abuse and neglect proceedings. This report documents and details a state law trend toward implementing these criteria. Moreover federal policy now recognizes the importance of quality legal representation in these proceedings and offers financial support for this purpose. We encourage all states to make use of this federal support and to help their courts achieve better outcomes for the abused and neglected children in their states. Federal legislators can also look to codify a national right to counsel for every abused and neglected child.

DEFINITIONS

For the purposes of this Report Card, terms below have the following definitions. To the extent we have quoted from a statute in the individual report cards, the definition may differ from that outlined below.

- 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 social services attorney, the parent or other custodian alleged to have abused or neglected the child and who is represented by an attorney, and as we are advocating for here, the child victim, whose position should be presented through an attorney and considered by the judge in making this best interest determination.
- Best Interest Attorney – an attorney who owes a duty of loyalty to their child client, but is bound to make recommendations to the court based on his or her determination of what is in the child’s best interest, even when that is not the child’s expressed position.
- Client-Directed Representation – representation where the attorney’s duty of loyalty is to the child and who must advocate for their client’s expressed preferences and positions to the extent possible consistent with any diminished capacity of the child, including age.
- 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. While some states may define dependency in a more limited sense, we use the term to include all proceedings until the child has achieved permanency or has aged out.
- Guardian ad Litem – an individual appointed by the court to represent a child in court proceedings. The GAL may or may not be an attorney, and may advocate for the child’s best interest, or be client-directed, or both.
- Multidisciplinary Training – training which includes both information regarding the juvenile court system and laws and also includes one or more ancillary disciplines such as child development, child psychology, education issues, etc.

GRADING CRITERIA AND METHODOLOGY

This Fourth Edition of the Right to Counsel Report Card generally maintains the criteria and grading methodology and criteria developed and utilized in the previous editions. The only exception to this from the third edition is a one point elimination under criterion 4 where it is no longer possible to receive nine points (0, 3, 6, 8 and 10 point differences are discussed below).

For the Fourth Edition, we started with the gradesheets from the Third Edition and in 2017-18, we conducted legal statutory research through commercial databases and state websites. We updated the third edition gradesheets with the new information. 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 October 1, 2018. Where we have become aware of subsequent changes, we have endeavored to include them in the individual report cards, to the extent feasible.

At the outset, we note that we have an expansive view of dependency proceedings. While some states may define dependency in a more limited sense, we use the term to include all proceedings until the child has achieved permanency or has aged out.

Specific Criteria

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

This criterion addresses the most important aspect of a child's right to counsel in dependency proceedings. These proceedings are legal proceedings and, as in all legal proceedings, an attorney is the appropriate representative to best utilize the tools that will guide the decisions made by the judge. To assure zealous advocacy – a key component of an attorney's role - this attorney must be independent and not represent the interests of any other party (such as the State or a parent) simultaneously. Points 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 such that independent counsel is required for all children unless the court finds and states on the record the basis for its finding 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 specific circumstances of the case, the child would not gain any benefit by being represented by counsel. 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. This age stems from recommendations in the literature regarding the appropriate age and the age at which a child begins to have greater decision-making ability.⁵⁴ 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 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.

2. 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 before the child achieves permanency or ages out. It is imperative for the attorney to be an advocate for the child at each and every hearing 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 two points in this category if state law only expressly guarantees counsel for a child on appeal when the child is the appellant. Because the appellate portion of a case is just as crucial to the life of a dependent child as the decisions made by the lower court, a state loses half of the possible points in this category if appointment of attorneys only lasts through the juvenile court process and does not extend to representation on appeal. No points are awarded to states that do not address continuity of counsel in their laws.

3. *When an attorney is appointed for a child in dependency proceedings, to what extent will the child receive client-directed representation? If not required for child's counsel, is it required for a child's GAL?*

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. Our criterion and point allocation continue to reflect the variety of ways that states are responding to calls to hear the child's voice: from never requiring the child's wishes to be expressed, to articulation of the child's expressed wishes, to client-directed counsel (based on the Modell Act and its diminished capacity component) advising and assisting the child to develop and articulate informed views.

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

Five points are deducted if there are specified circumstances that provide an exception to the requirement that a child's attorney advocate in a client-directed manner. Eight points are deducted if the statute provides that the child (i) receives client-directed representation only in certain proceedings or (ii) may receive client-directed representation on a discretionary basis and if not, his or her expressed wishes must be articulated to the court. If representation is not client-directed, but state law requires the child's attorney to articulate the child's wishes, 14 points are deducted. If state law provides that a child may receive client-directed representation on a discretionary basis and his or her wishes are not required to be articulated to the court, 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 here to states whose laws provide only for best interest representation.

4. *To what extent does state law require specialized education with multidisciplinary elements for the child's counsel?*

Legal training and specialized education in other child and family-related disciplines is essential to good child advocacy. 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 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.

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

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

A child should be represented by an attorney who treats that child as he or she would any other client. A child’s relationship with their attorney is hindered when the child cannot trust the attorney to keep confidences. 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.

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

As with the third edition, 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. In order to adequately represent their clients, all attorneys must have reasonable caseloads. As noted above, research indicates that low caseloads are associated with better outcomes for children. 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.

Grading Scale

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:

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

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. The following chart summarizes our grading criteria and scoring for this edition of the report card.

Grading Methodology Point Distribution

Criteria	Details	Points
<p>1. Does state law mandate that attorneys be appointed for children in dependency proceedings? <i>Maximum Points: 40</i></p>	<ul style="list-style-type: none"> ▪ Independent counsel is required for all children.....40 ▪ Independent counsel is required for all children unless the court under stringent standard finds that the child would not benefit from the appointment of counsel.....35 ▪ Independent counsel is required for all children with minor restrictions (e.g., counsel is not required for children under age 7)30 ▪ Independent counsel is required for all children with major restrictions (e.g., counsel is not required for children under an age higher than 7).....20 ▪ Independent counsel is provided on a discretionary basis only 15 ▪ No state law or court rule provides for the appointment of counsel.....0 	
<p>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></p>	<ul style="list-style-type: none"> ▪ Appointment lasts through entire juvenile court proceedings and on appeal 10 ▪ Appointment of counsel on appeal expressly guaranteed only when child is the appellant.....8 ▪ Appointment lasts through entire juvenile court proceedings but not on appeal; OR only a subset of attorney appointments last for the pendency of the child protection proceedings5 ▪ No state law defines the duration of appointment for children's counsel0 	
<p>3. To what extent will a child receive client-directed representation? <i>Maximum Points: 20</i></p>	<ul style="list-style-type: none"> ▪ Child receives client-directed representation under all reasonable circumstances.....20 ▪ Child receives client-directed representation under specified circumstances 15 ▪ Child will receive client-directed representation only in certain proceedings; OR child may receive client-directed representation on a discretionary basis, but if not, his/her expressed wishes must be articulated to the court 12 ▪ Child will not receive client-directed representation but his/her expressed wishes must be articulated to the court..... 6 ▪ Child may receive client-directed representation and, if not, his/her expressed wishes are not required to be articulated to the court..... 4 ▪ Law is vague regarding client-directed representation 3 ▪ Child will receive only best interests representation0 	

<p>4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?</p> <p><i>Maximum Points: 10</i></p>	<ul style="list-style-type: none"> ▪ Specialized education and/or training is required for child’s counsel; multidisciplinary elements are required10 ▪ Specialized education and/or training is required for child’s counsel; multidisciplinary elements are neither expressly nor impliedly required8 ▪ Specialized education and/or training is required for GALs (who may be attorneys).....6 ▪ Specialized education and/or training is encouraged, but not required, for child’s counsel3 ▪ No specialized education and/or training is required0
<p>5. Does state law expressly give the child the legal status of a party with all or some of the rights of a party?</p> <p><i>Maximum Points: 10</i></p>	<ul style="list-style-type: none"> ▪ Child is expressly given the legal status of party with all rights appurtenant thereto10 ▪ Child is expressly given the legal status of party, but specific rights are withheld; OR 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 ▪ Child is not given the legal status of party or any of the rights specified above 0
<p>6. Does state law pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?</p> <p><i>Maximum Points: 10</i></p>	<ul style="list-style-type: none"> ▪ The Rules of Professional Conduct apply to children’s counsel10 ▪ The Rules of Professional Conduct apply to children’s counsel with minor exceptions (e.g., children’s counsel are immune for ordinary negligence)6 ▪ The Rules of Professional Conduct apply to children’s counsel with major exceptions (e.g., children’s counsel have blanket immunity)4 ▪ The Rules of Professional Conduct do not apply to children’s counsel0
<p>Extra Credit: Caseload Standards</p>	
<p>Does state law address caseload standards for children’s counsel in dependency proceedings?</p> <p><i>Maximum Extra Credit Points: 5</i></p>	<ul style="list-style-type: none"> ▪ State statute and/or state court rule requires children’s counsel to comply with specific reasonable caseload standards up to 5 ▪ 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

RESULTS AND ANALYSIS OF GRADING

HIGHLIGHTS OF REPORT CARD ANALYSIS

1. More than half of the states – 29 -- are now A or B grade states. (19 A and 10 B states.) This compares with 22 A and B in 2008.
2. 11 states are now D or F States. (6 D and 5 F States.) This compares with 15 in 2008.
3. 11 states are now C states. This compares with 14 in the 2008.
4. Most statutes 34 of the 51 statutes (66%) require independent counsel for all children in abuse and neglect proceedings, but only 15 of the 34 require client-directed counsel under all reasonable circumstances.
5. Seven states have statutes that provide counsel for children only on a discretionary basis, with another 14% providing this representation with major restrictions.
6. When an attorney is appointed for a child in these proceedings, most state statutes (76%) provide that the attorney is appointed for all phases of the case, including appeal.
7. A slim majority of state statutes now want to at least hear the child's views (54%) although only a third of all states require client-directed child representation in these proceedings.
8. Most state statutes (76%) give the child all the rights of a party in child abuse and neglect proceedings.
9. The Rules of Professional Responsibility apply to attorneys in all states, but in 4% there is a statutory blanket immunity, and another 14% provide immunity for ordinary negligence.
10. While states reported that caseload standards were required in practice in a number of locales, our statutory review indicated that only 10% set a specified caseload standard, with another 12% acknowledging that a child's attorney needs to comply with reasonable caseload limits.
11. Trend analysis of grading from all editions of *A Child's Right to Counsel* report cards indicates that states *increasingly are* providing independent representation to children in child abuse and neglect cases and are providing this counsel through appeals; are providing party status to children in these cases, and are holding children's attorneys to professional responsibility standards of confidentiality and liability.

Tables and maps that follow depict:

A National Report Card showing states from A+ to F, with points for individual criteria and total grade; a **State Grade Breakdown** (graphically depicting state grades) and a **National Map** reflecting grades throughout the country.

Criteria Analysis through tables and maps for each individual question that were the criteria by which states were graded, discussed and depicted by pie chart and national map.

Cross tables are also presented showing the correlation between the criterion for mandated representation of children and other grading criteria – duration of appointment and client-directed representation.

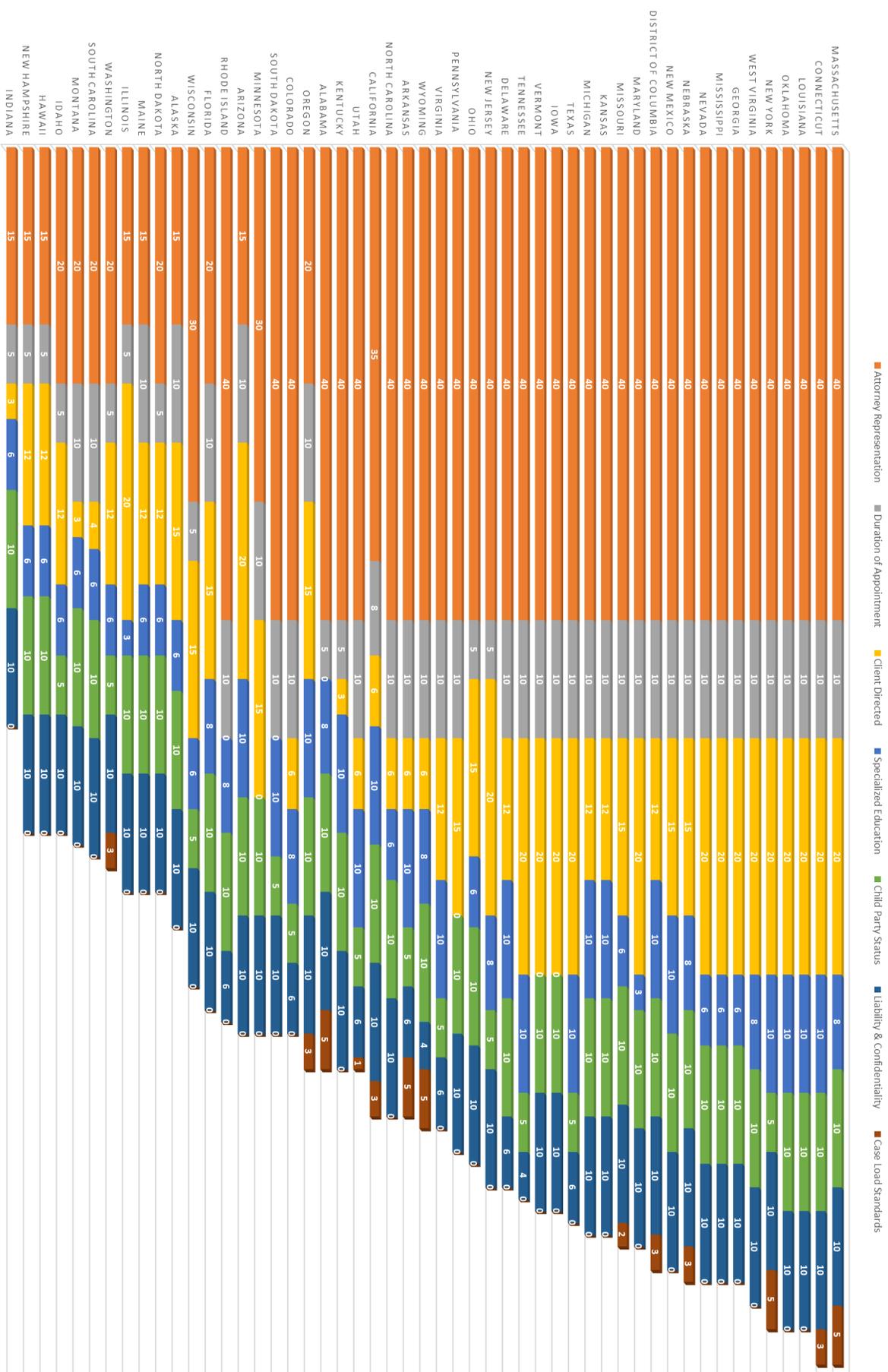
Trends are discussed and tables presented showing change since *A Child's Right to Counsel* was first published (2006), and for subsequent editions - 2nd Ed- 2009, 3rd Ed. 2012 and this Fourth Edition. Edition years may reflect analysis of laws from the year before the edition's publication.

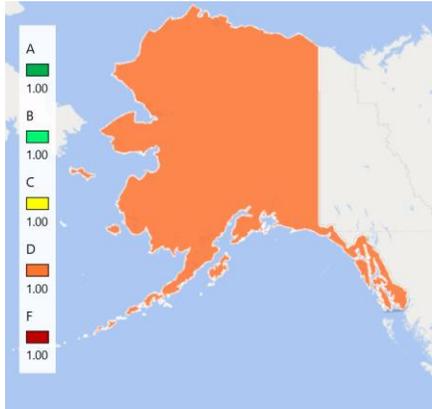
THE NATIONAL REPORT CARD

States	Attorney Representation	Duration of Appointment	Client Directed	Specialized Education	Child Party Status	Liability & Confidentiality	Case Load Standards	Total	Letter Grade
Massachusetts	40	10	20	8	10	10	5	103	A+
Connecticut	40	10	20	10	10	10	3	103	A+
Louisiana	40	10	20	10	10	10	0	100	A+
Oklahoma	40	10	20	10	10	10	0	100	A+
New York	40	10	20	10	5	10	5	100	A+
West Virginia	40	10	20	8	10	10	0	98	A
Georgia	40	10	20	6	10	10	0	96	A
Mississippi	40	10	20	6	10	10	0	96	A
Nevada	40	10	20	6	10	10	0	96	A
Nebraska	40	10	15	8	10	10	3	96	A
New Mexico	40	10	15	10	10	10	0	95	A
District of Columbia	40	10	12	10	10	10	3	95	A
Maryland	40	10	20	3	10	10	0	93	A
Missouri	40	10	15	6	10	10	2	93	A
Kansas	40	10	12	10	10	10	0	92	A
Michigan	40	10	12	10	10	10	0	92	A
Texas	40	10	20	10	5	6	0	91	A
Iowa	40	10	20	0	10	10	0	90	A
Vermont	40	10	20	0	10	10	0	90	A
Tennessee	40	10	20	10	5	4	0	89	B
Delaware	40	10	12	10	10	6	0	88	B
New Jersey	40	5	20	8	5	10	0	88	B
Ohio	40	5	15	6	10	10	0	86	B
Pennsylvania	40	10	15	0	10	10	0	85	B
Virginia	40	10	12	10	5	6	0	83	B
Wyoming	40	10	6	8	10	4	5	83	B

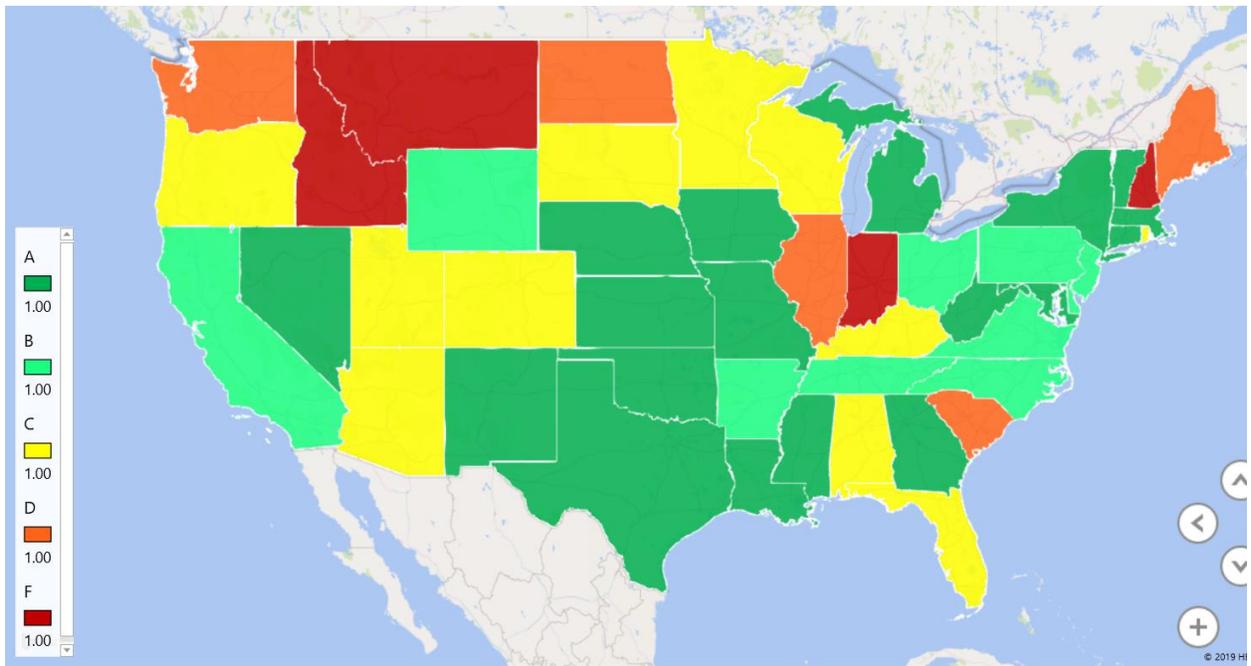
Arkansas	40	10	6	10	5	6	5	82	B
North Carolina	40	10	6	6	10	10	0	82	B
California	35	8	6	10	10	10	3	82	B
Utah	40	10	6	10	5	6	1	78	C
Kentucky	40	5	3	10	10	10	0	78	C
Alabama	40	5	0	8	10	10	5	78	C
Oregon	20	10	15	10	10	10	3	78	C
Colorado	40	10	6	8	5	6	0	75	C
South Dakota	40	10	0	10	5	10	0	75	C
Minnesota	30	10	15	0	10	10	0	75	C
Arizona	15	10	20	10	10	10	0	75	C
Rhode Island	40	10	0	8	10	6	0	74	C
Florida	20	10	15	8	10	10	0	73	C
Wisconsin	30	5	15	6	5	10	0	71	C
Alaska	15	10	15	6	10	10	0	66	D
North Dakota	20	5	12	6	10	10	0	63	D
Maine	15	10	12	6	10	10	0	63	D
Illinois	15	5	20	3	10	10	0	63	D
Washington	20	5	12	6	5	10	3	61	D
South Carolina	20	10	4	6	10	10	0	60	D
Montana	20	10	3	6	10	10	0	59	F
Idaho	20	5	12	6	5	10	0	58	F
Hawaii	15	5	12	6	10	10	0	58	F
New Hampshire	15	5	12	6	10	10	0	58	F
Indiana	15	5	3	6	10	10	0	49	F

ALL STATES GRADE BREAKDOWN





NATIONAL MAP OF STATE REPORT CARD GRADES 2018

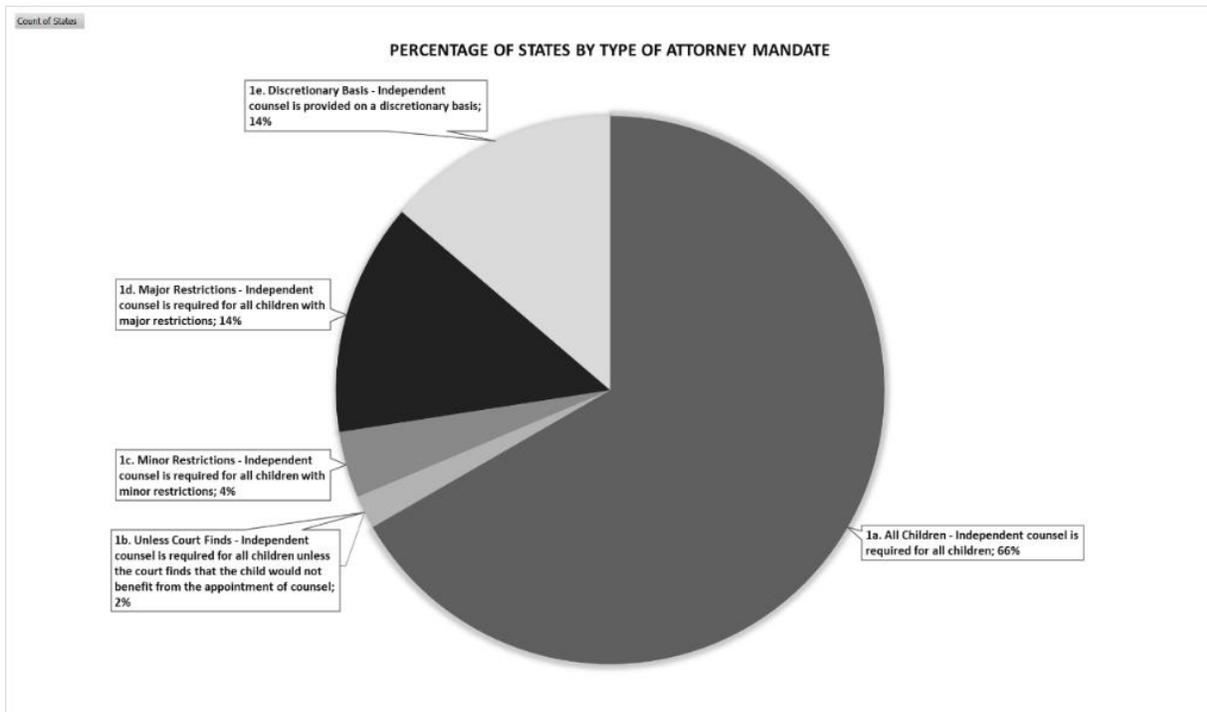


INDIVIDUAL CRITERIA RESULTS

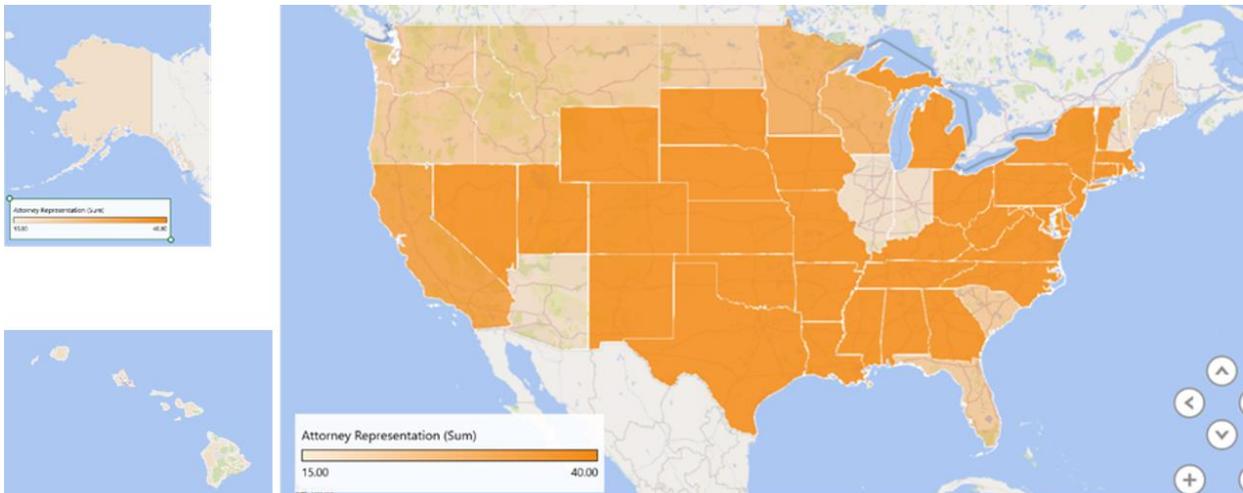
Grading points and methodology described more fully above.

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

Of the 51 jurisdictions (50 states and DC), by far most -- two-thirds (66%) require counsel for all children in abuse and neglect proceedings. All of the remaining jurisdictions provide for counsel to varying degrees as reflected on these tables. 14% (7 states) provide counsel only on a discretionary basis, and another 14% provide counsel with major restrictions which we considered to be statutory frameworks that set an age cutoff over 7.

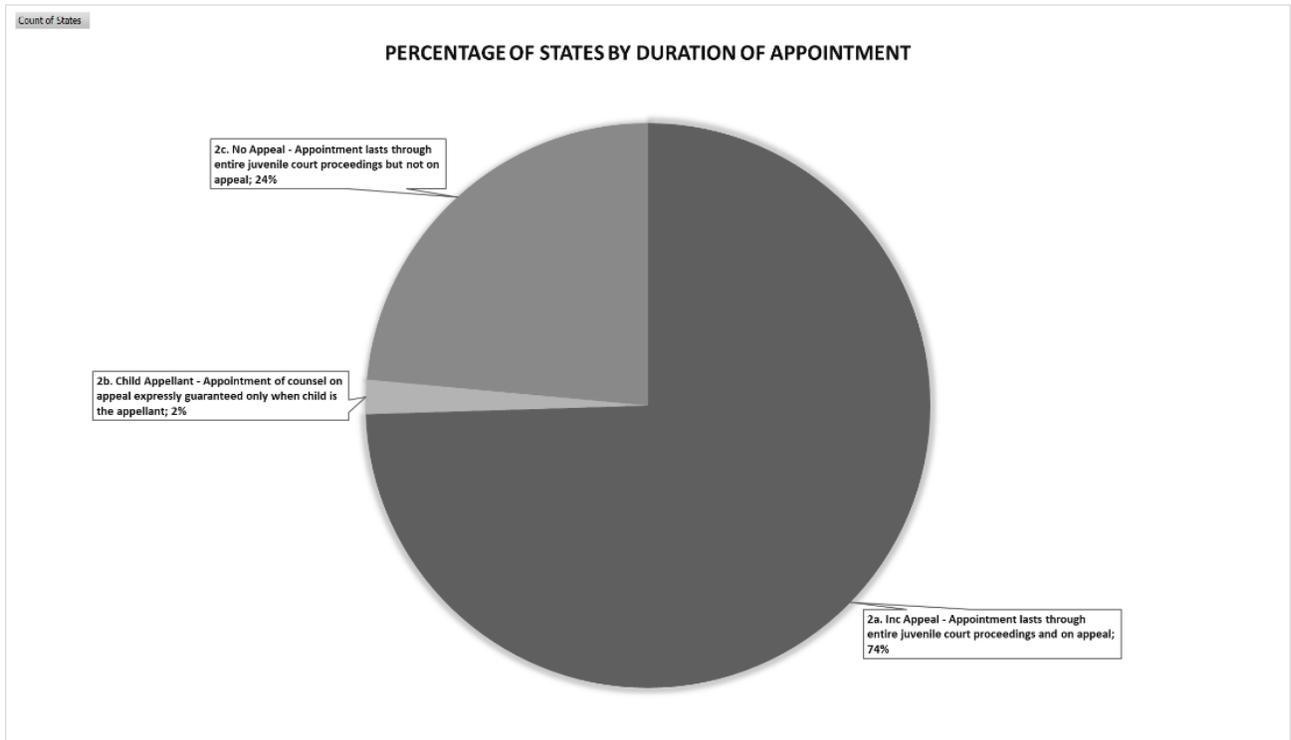


The map below depicts attorney representation by state. The darkest colored states provide representation for all children in all proceedings. Color lightens based on decreasing statutorily required representation.

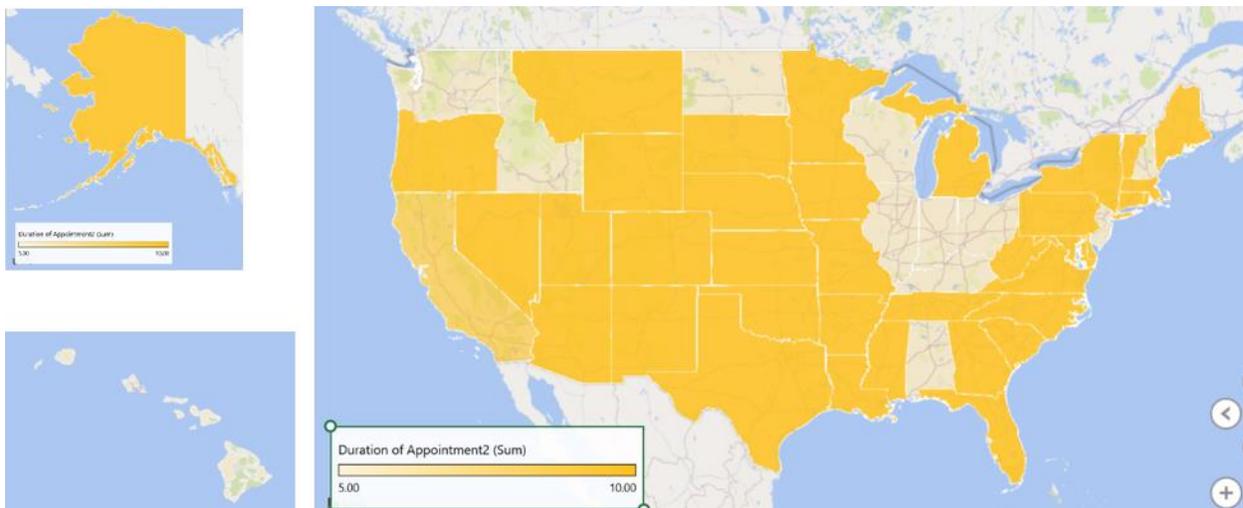


Criterion 2: When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment? (10 pts possible)

The vast majority (76%) of state statutes that provide attorneys for children do so through the appellate process. Another 2% provide counsel through appeal when the child is the appellant. 24% do not statutorily ensure counsel for children on appeals in these cases.

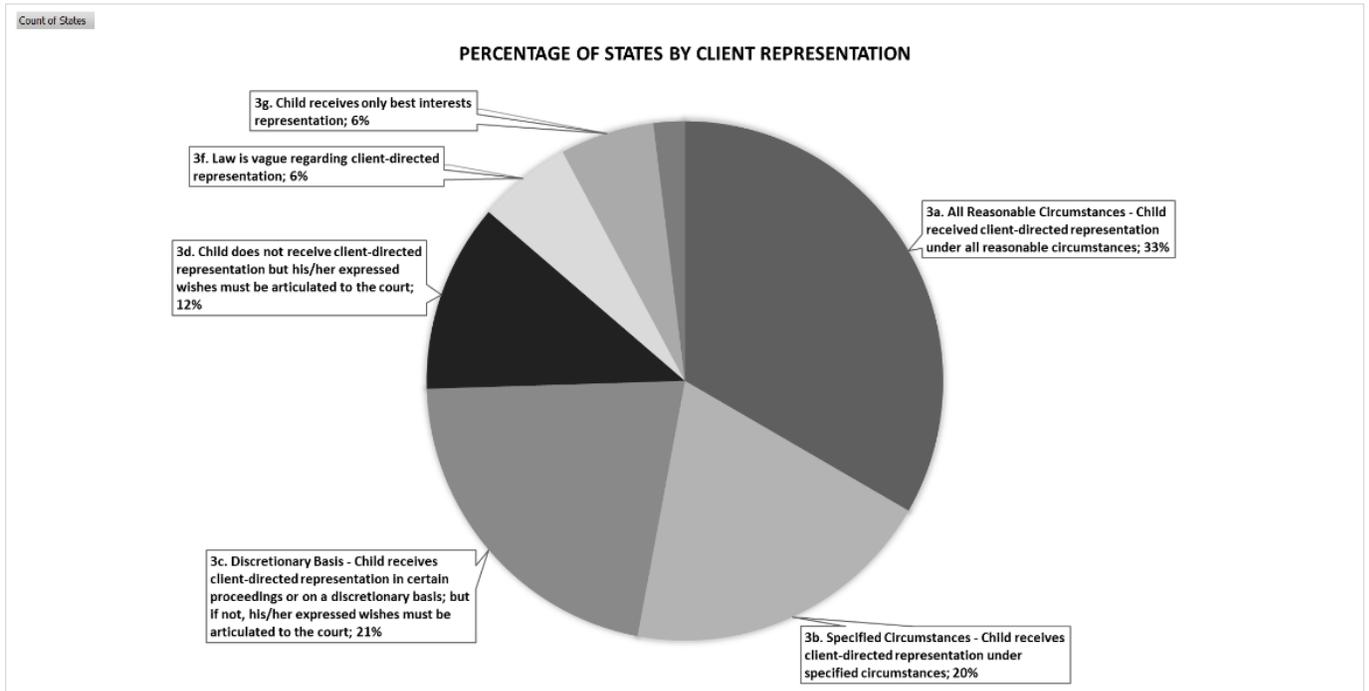


The map below depicts duration of attorney representation by state. The darkest colored states provide representation through appeals. Color lightens based on decreasing statutorily required duration of appointment.

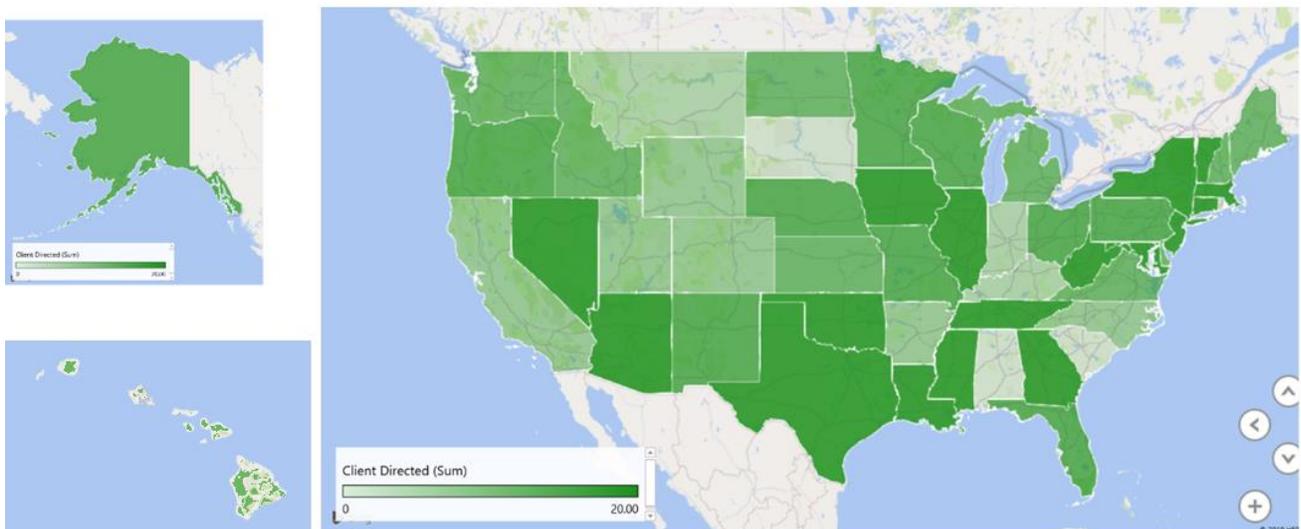


Criterion 3: To what extent will a child receive client-directed representation? (20 pts possible)

A third of the state statutes require client-directed representation under all reasonable circumstances such as frameworks similar to the ABA Model Act that take minority into account through diminished capacity provisions. Another 20% provide for client-directed representation under specified circumstances (e.g. age 12), and another 34% (3c +3d in table) provide that the child’s views must be articulated to the court. Only 6% provide only for best interest representation only, with another 6% have laws vague regarding client-directed representation.

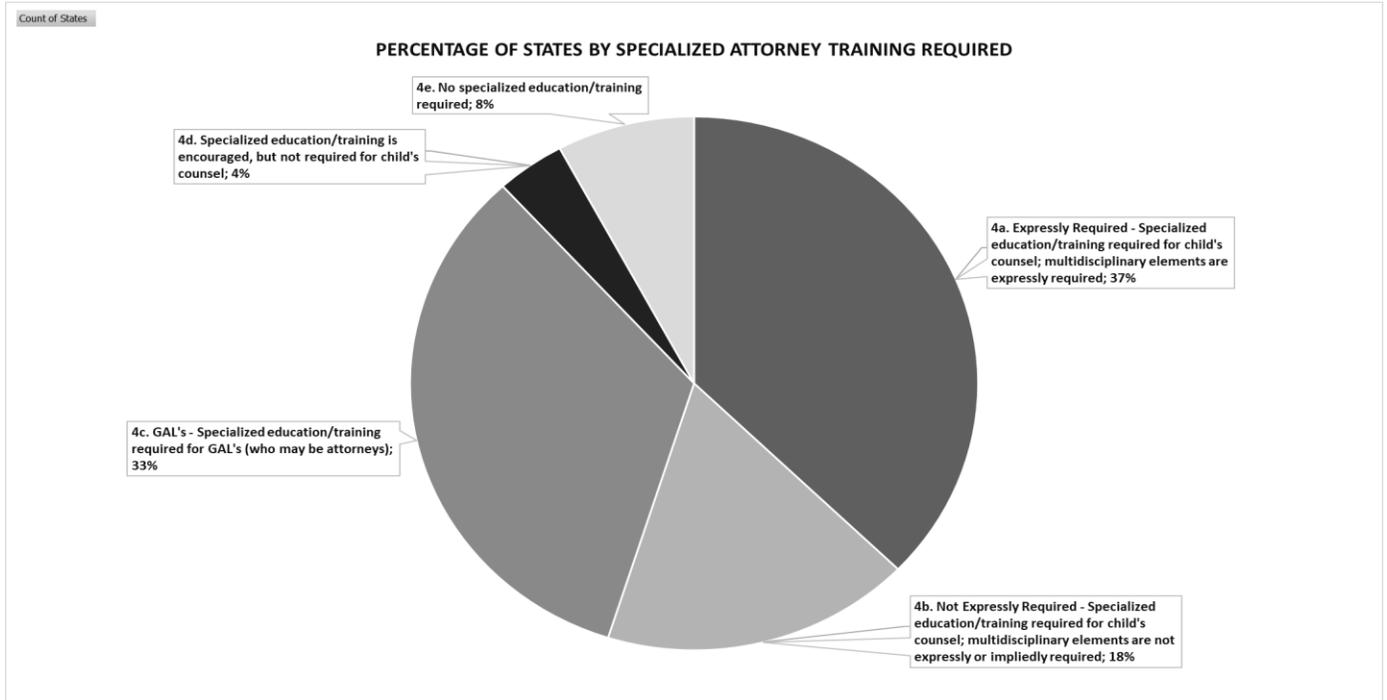


The map below depicts client-directed representation by state. The darkest colored states provide representation client-directed representation in all reasonable circumstances. Color lightens based on decreasing statutorily required client-directed representation.

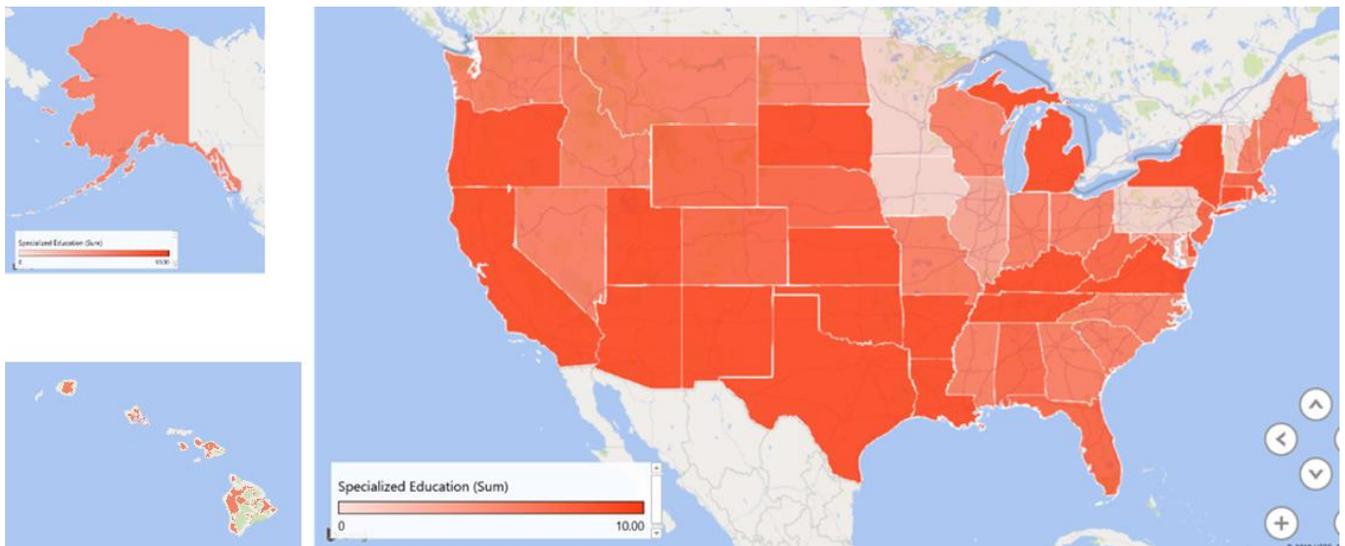


Criterion 4: To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL? (10 points possible)

Most states now require this type of training for either child’s counsel or children’s GAL’s: A third (37%) of states expressly require multidisciplinary training for child’s counsel and another third (33%) require this training for GAL’s who may or may not be attorneys.

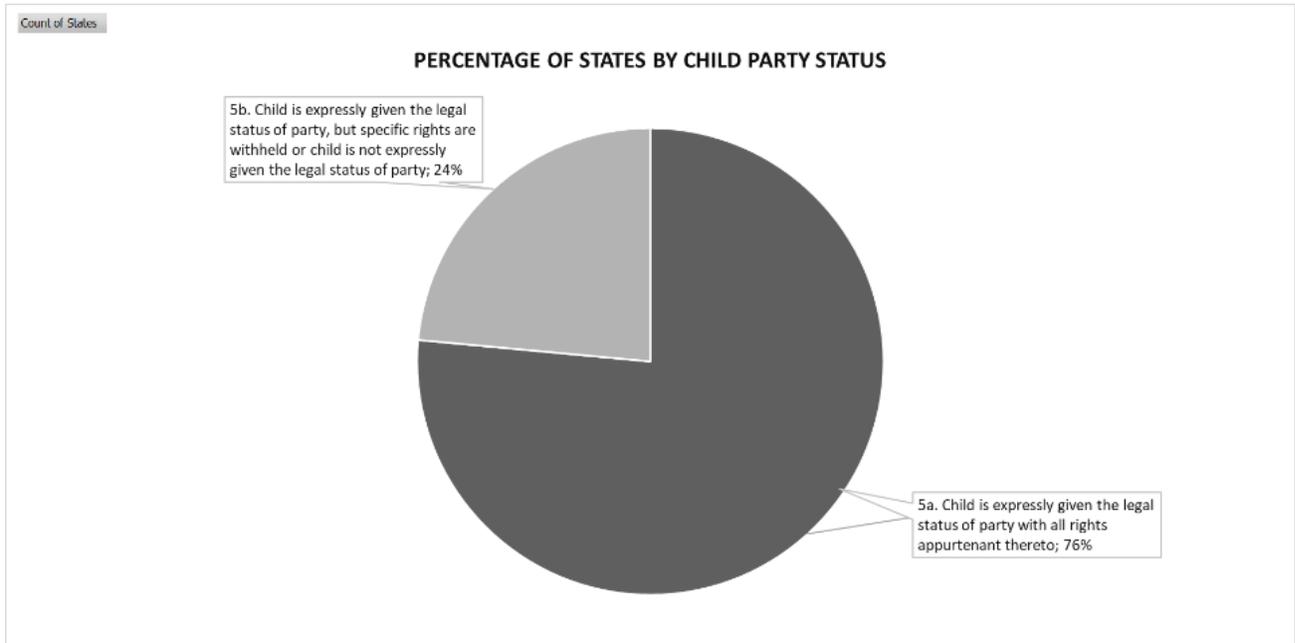


The map below depicts statutorily required specialized, multidisciplinary training by state. The darkest colored states expressly require this training. Color lightens based on decreasing statutory requirements.

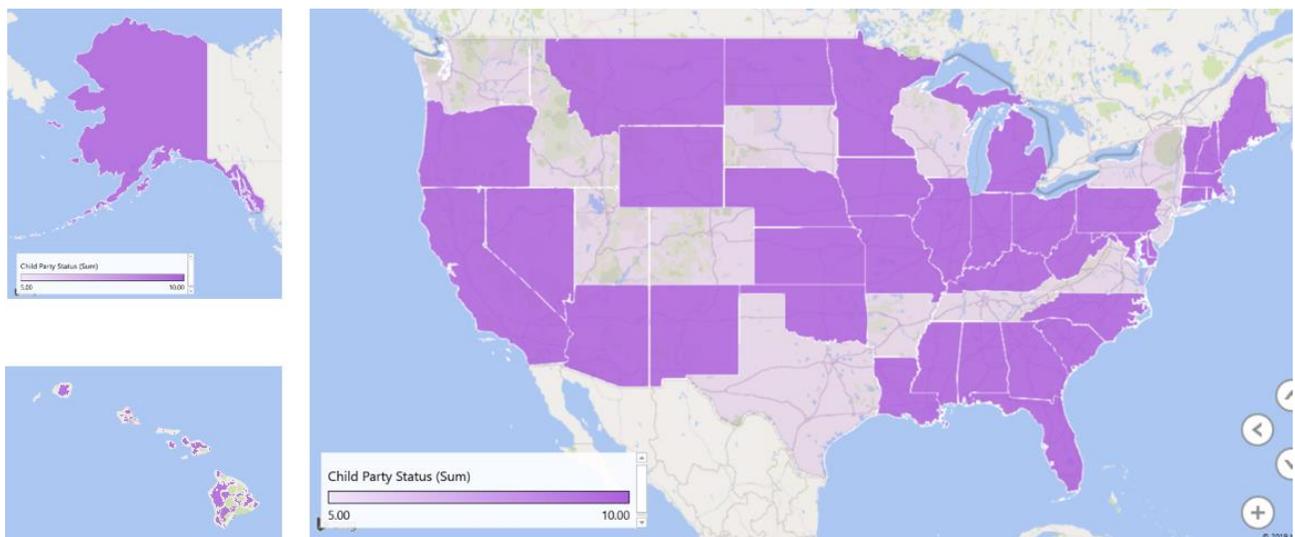


Criterion 5: Does state law expressly give the child the legal status of a party with all or some of the rights of a party? (10 pts possible)

The vast majority of state statutes (76%) give the child legal party status with all the rights of a party in child abuse and neglect proceedings. The remaining states either give the party status, but withhold specific rights or do not expressly give the child party status by statute.

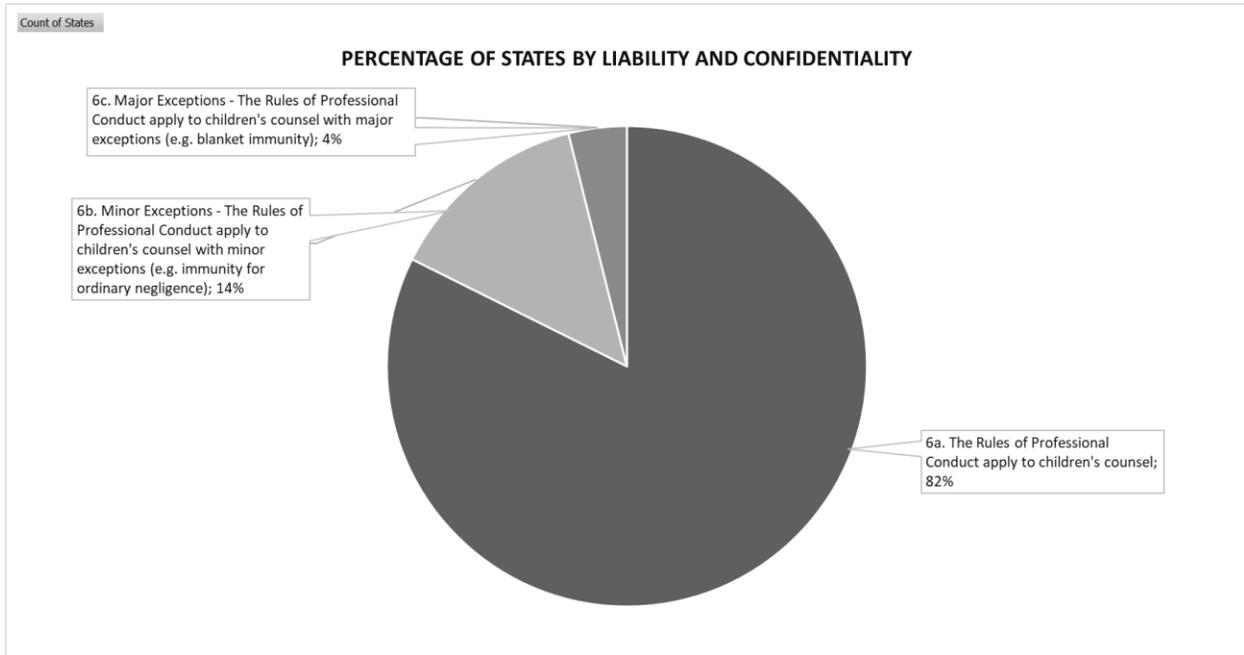


The map below depicts laws giving the child party status, by state. The darkest colored states have statutes that expressly provide that the child is a party. Lightly colored states have statutes that do not give the child party status or expressly withhold specific rights of a party to the child.

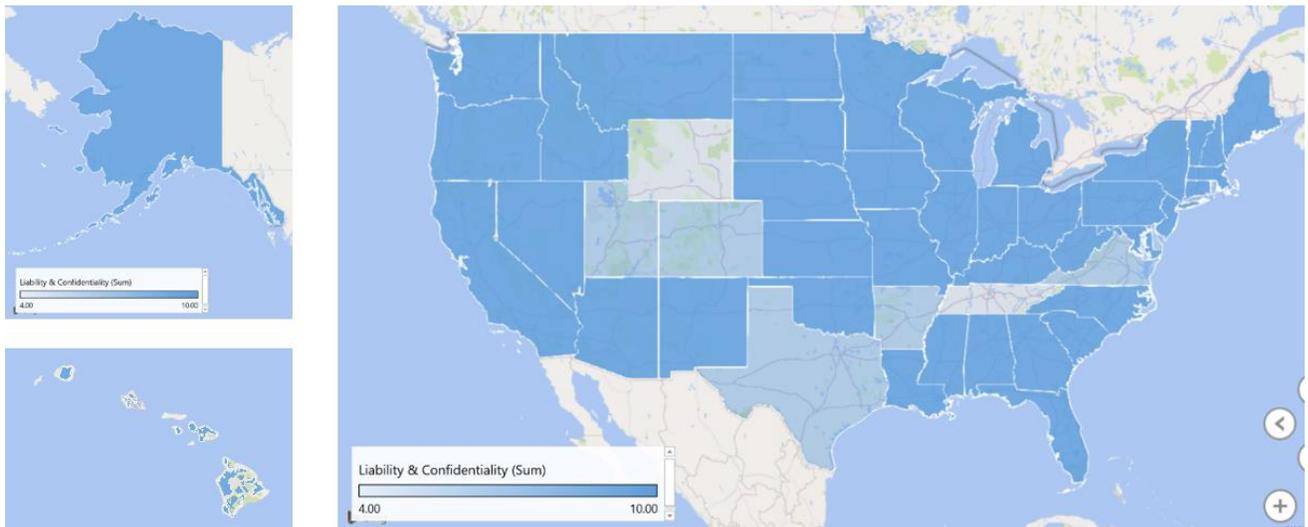


Criterion 6: Does state law pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings? (10 pts possible)

Our review indicates that 82% of state statutes provide that the rules of professional responsibility apply to children’s counsel, including confidentiality requirements and allowing for attorney liability. 14% of states provide that the rules of professional responsibility but provide for immunity for ordinary negligence or other items we grouped as minor exceptions. 4% provided for blanket immunity or other major exceptions to the rules of professional responsibility.

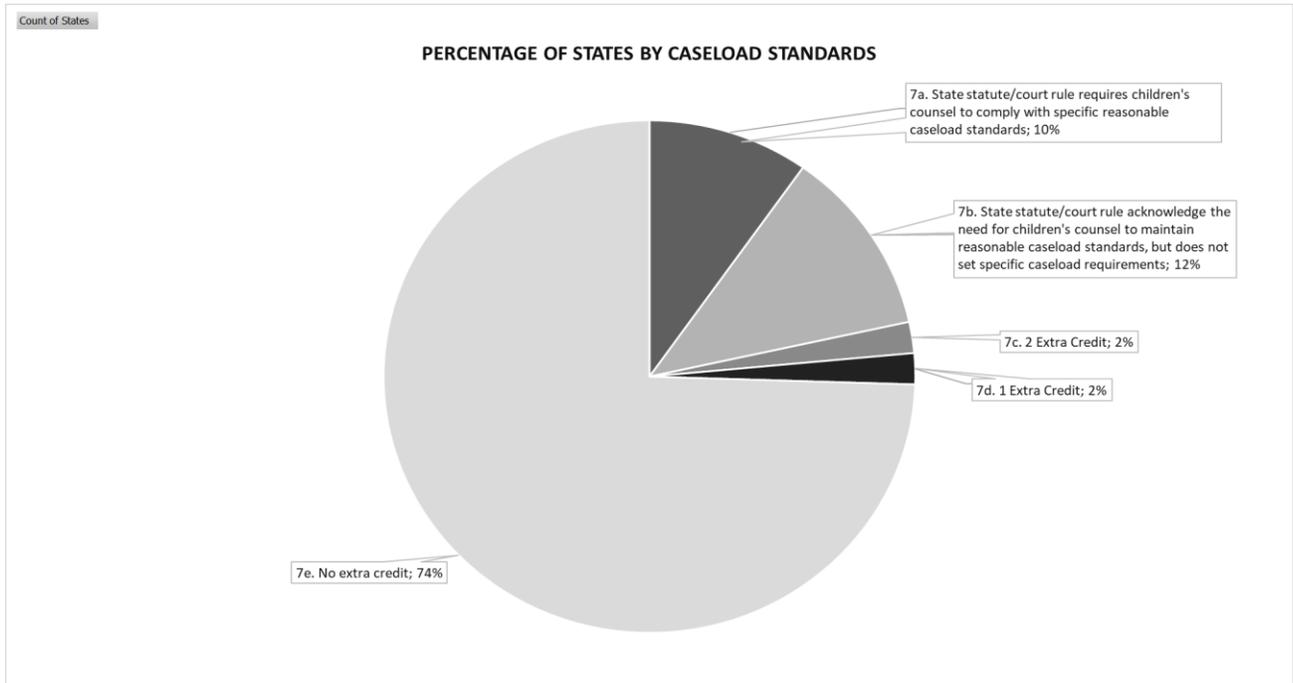


The map below depicts professional responsibility requirements for child’s counsel by state. The darkest colored states require confidentiality and allow attorney liability. Color lightens based on decreasing statutory requirements.

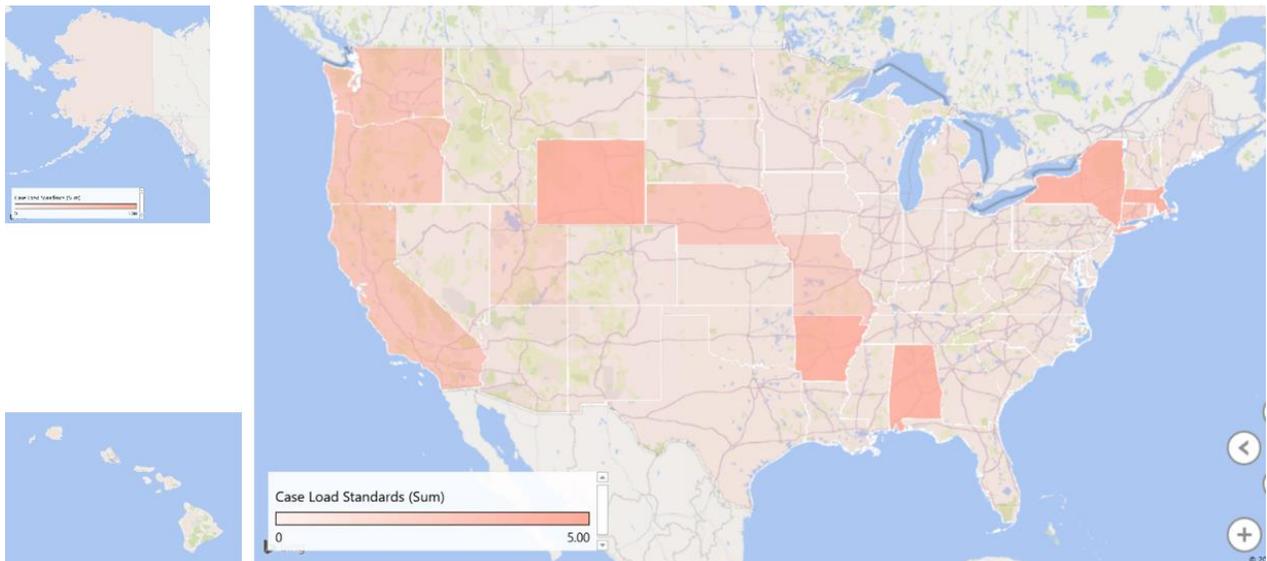


Extra Credit: Does state law address caseload standards for children’s counsel in dependency proceedings? (5 pts possible)

Most states do not statutorily set caseload limits for children’s counsel in child abuse and neglect proceedings. 10% have specific requirements for reasonable caseloads, another 12% have statutes or court rules that acknowledge the need to maintain reasonable caseloads.



The map below depicts statutory caseload standards for children’s counsel, by state. The darkest colored states set specific caseload standards. Color lightens based on decreasing statutory requirements.



CORRELATIONS AMONG THE CRITERIA

The following crosstabs depict the correlations between attorney representation and other grading criteria.

Mandated Attorney Representation (criterion 1) and Duration of Appointment (criterion 2)

This table shows that the majority (30 of 51) of states provide independent counsel for all children and ensure that representation lasts through all proceedings, including appeals. Notably, when looking only at the 34 states that provide independent counsel for all children, almost all of these -- 30 of 34 -- ensure that the representation lasts through all proceedings, including appeal.

Count of States Duration of Appointment	Attorney Representation					Grand Total
	15	20	30	35	40	
5	4	3	1		4	12
8				1		1
10	3	4	1		30	38
Grand Total	7	7	2	1	34	51

Mandated Attorney Representation (criterion 1) and Client-Directed Representation (criterion 3)

The crosstab below shows the correlation between attorney representation and the extent to which that representation is client-directed. Of 34 states that provide independent counsel for all children, 15 provided client-directed representation to the child under all circumstances. Another 10 of those 34 who provide independent counsel for all children, client-directed representation is provided under specified circumstances or on a discretionary basis.

Count of States Client Directed	Attorney Representation					Grand Total
	15	20	30	35	40	
0				3		3
3	1	1			1	3
4		1				1
6				1	5	6
12	3	3			5	11
15	1	2	2		5	10
20	2				15	17
Grand Total	7	7	2	1	34	51

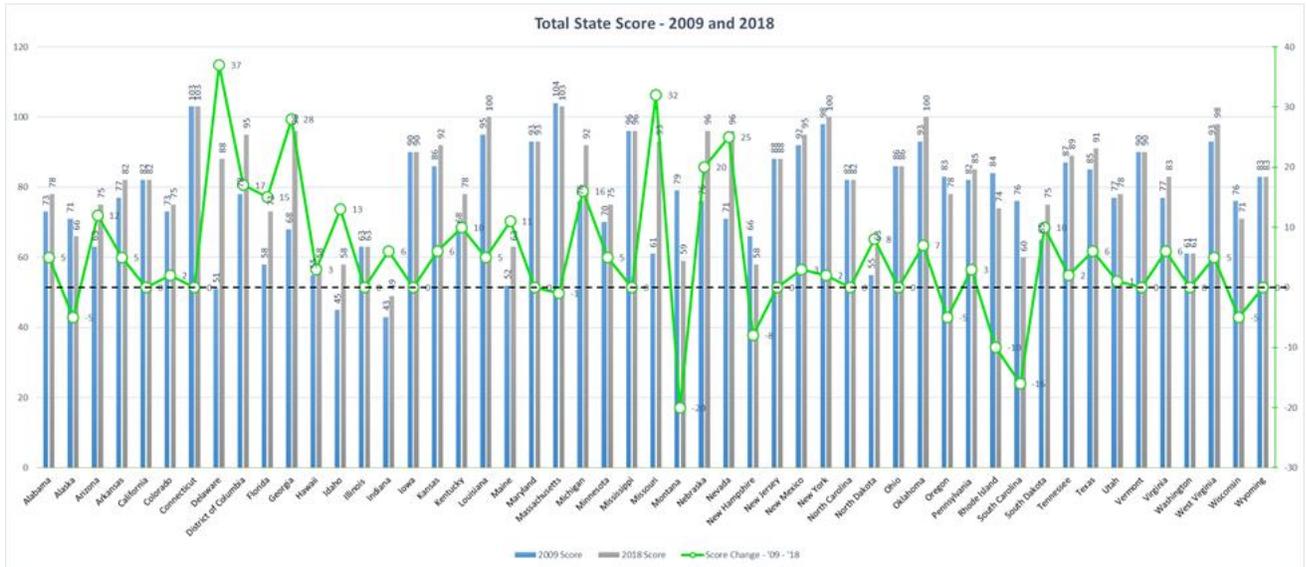
TRENDS THROUGH A CHILD'S RIGHT TO COUNSEL 2006 - 2018

Data on state statutes reported in A Child's Right to Counsel through the years from 2006 to 2018 demonstrate an increase in state statutes authorizing counsel for children in abuse and neglect proceedings.

From 2006 to 2018, state grades have improved for most states.

The table below depicts state grades from 2009-2018 through the second and fourth editions of A Child's Right to Counsel.⁵⁵

In the table below, the blue and gray vertical bars show each state's grades in 2009 and in 2018 respectively. One can see the differences in the grades through the height of these columns. We have also depicted the increase or decrease in each state's grade through the circles within the green line. Green line circles above the dotted line running across the center of the graph reflect increases in grade, with the axis scale for the change located at the right. 43 states improved or stayed the same. **31 states showed score improvement, 12 stayed the same, and 7 states had decreases in scores.**⁵⁶

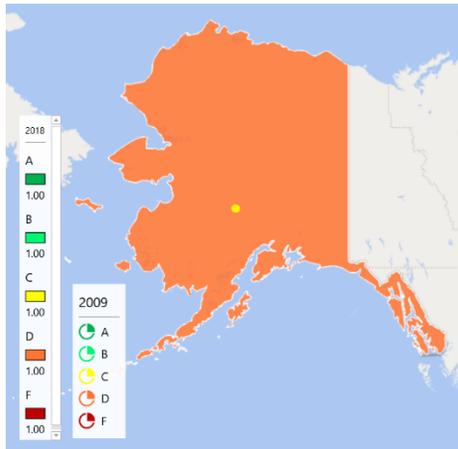


REPORT CARD GRADE DISTRIBUTION 1ST-4TH EDITIONS

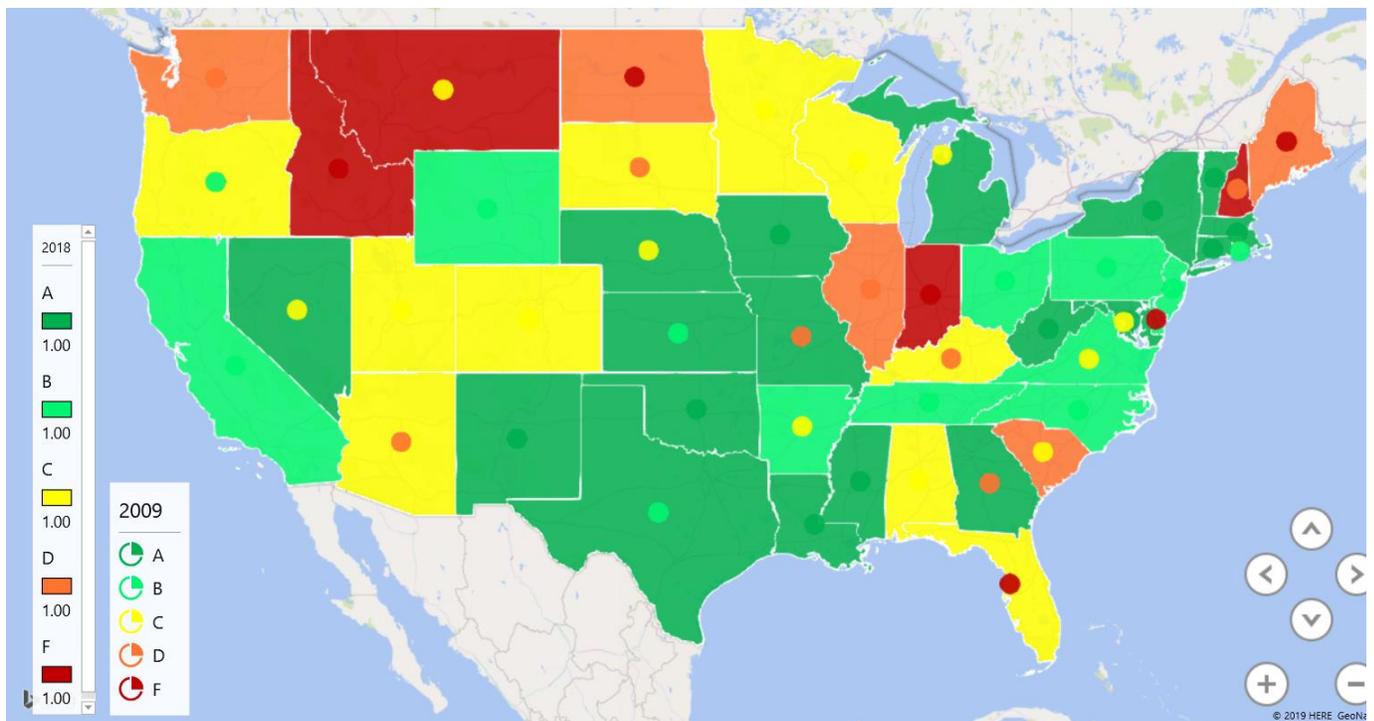
Showing numbers of states by letter grade

EDITION-YEAR*	A	B	C	D	F
4 TH - 2019	19	10	11	6	5
3 RD -2012	15	11	9	6	10
2 ND - 2009	11	11	14	8	7
1 ST -2006	5	14	11	6	15

*edition year may reflect analysis of laws from previous year



National Report Card Grade Trend
Map 2018 Grade is color of total state area
2009 Grade is color of circle within state
A-B (Dark-Light Green) C (yellow)
D (Orange) F (Red)



STATE REPORT CARDS

	<h1>ALABAMA</h1>	Grade: C
	<h2>SCORE: 78</h2>	

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” ...who is a party to the proceedings and whose primary responsibility shall be to protect the best interests of the child (Ala. Code § 12-15-304(a)).

Alabama law defines the term guardian ad litem as “[a] licensed attorney appointed by a juvenile court to protect the best interests of an individual without being bound by the expressed wishes of that individual” (Ala. Code § 12-15-102(10)).

“In every case involving an abused or neglected child which results in a judicial proceeding, an attorney shall be appointed to represent the child in such proceedings Such attorney will represent the rights, interests, welfare and well-being of the child, and serve as a guardian ad litem for the child” (Ala. Code § 26-14-11). See also Ala Code 12-15-308(c), 15-21(b) and Ala R Civ. P. 17(d).

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

Points: 5 out of 10

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

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

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

Points: 0 out of 20

The guardian ad litem is appointed “to protect the best interests of an individual without being bound by the expressed wishes of that individual” (Ala. Code § 12-15- 102(10)). The primary responsibility of the child’s attorney GAL is to “protect the best interests of the child” (Ala. Code § 12-15-304(a)). See also Ala. Code 12-15-308(c).

Basis for deduction: Alabama law requires best interest representation, not client-directed representation, for abused and neglected children.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 8 out of 10

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

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

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

Points: 10 out of 10

A child is a party to the proceedings (Ala. Code §§ 12-15-304(a), 12-15-308(c), 12-15-122(a)). The summons must be “issued to the child, if he or she is 12 or more years of age” (Rule 13(A), Ala. R. Juv. P.). The child has a right, as a party, to “written notice of all hearings and hearings on the merits of the petition”, with specified exceptions (Rule 13(C), Ala. R. Juv. P.)

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

Points: 10 out of 10

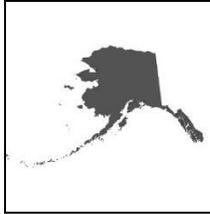
“When a client’s ability to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client”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

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

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

Points: 5 extra credit points

Alabama sets caseload limits of 100 open juvenile dependence cases per attorney per year or 100 GAL cases per attorney per year (Ala. Dep’t of Finance Admin Code 355-9-1.10; Guidelines with Comments for Guardians Ad Litem in Dependency and Termination of Parental Rights Cases in Juvenile Courts).



ALASKA

Grade:

D

SCORE: 66

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. If it appears to the court that the welfare of a child in the proceeding will be promoted by the appointment of a guardian ad litem, the court shall make the appointment” (AS § 47.10.050(a)). The court “may appoint an attorney to represent the legal interests of the child...” (AS § 47.10.010).

Basis for deduction: The appointment of an attorney for the 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

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

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

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

Points: 15 out of 20

Basis for deduction: A child receives client-directed counsel only under certain circumstances. 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)).

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

Points: 10 out of 10

“Party” is defined to include the child who appears to have all the rights appurtenant thereto (AK CINA Rule 2(l)).

6. Does state law 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 impaired, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (Alaska R. Prof. Conduct 1.14).

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

Points: 0 extra credit points

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



	<h1>ARIZONA</h1>	Grade: C
	<h2>SCORE: 75</h2>	

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

Points: 15 out of 40

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

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

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

Points: 10 out of 10

“The judge of the juvenile court shall appoint an attorney for an indigent party appealing a final order of the juvenile court” (A.R.S. § 8-235(D)). “When required by law, the presiding judge of the juvenile court shall appoint an attorney for a party to an appeal from a final order of the juvenile court. Unless the presiding judge of the juvenile court finds on motion or on its own initiative that a party who had appointed counsel before the juvenile court is currently able to employ counsel, that party may continue with appointed counsel on appeal without further authorization, subject to substitution of new appointed counsel in the discretion of the presiding judge of the juvenile court” (Ariz. R. Juv. P., Rule 103).

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

Points: 20 out of 20

“The attorney should follow the wishes of the child whenever possible, but if a conflict arises in which the guardian believes that what the child wants is not in the child’s best interests, then the matter should be taken up with the court” (Arizona Ethics Opinion #86-13). “Attorney may accept employment as both the guardian ad litem and attorney for a minor child in dependency proceedings provided no conflict of interest arises. Attorney representing minor child should follow the wishes of the client as much as possible” (State Bar of Arizona Ethics Opinions 83-13).

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 10 out of 10

“Attorneys and guardians ad litem shall be familiar with the substantive juvenile law. Attorneys and guardians ad litem shall stay abreast of changes and developments in relevant federal and state laws and regulations, Rules of Procedure for the Juvenile Court, court decisions and federal and state laws concerning education and advocacy for children in schools. Attorneys and guardians ad litem shall complete an introductory six (6) hours of court approved training prior to their first appointment unless otherwise determined by the presiding judge of the juvenile court in which the attorney or guardian is practicing for good cause shown and an additional two (2) hours within the first year of practice in juvenile court. All attorneys and guardians ad litem shall complete at least eight (8) hours each year of ongoing continuing education and training. Education and training shall be on juvenile law and related topics, such as child and adolescent development (including infant/toddler mental health), effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental incarceration, education, Indian Child Welfare Act, parent and child immigration status issues, the need for timely permanency, the effects of the trauma of parental domestic violence upon children and other issues concerning abuse and/or neglect of children...” (Ariz. R. Juv. P. 40.1(J)).

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

Points: 10 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)). “A child in foster care has the right to attend the child’s court hearing and speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court shall determine that the child has been informed of and understands this right” (Ariz. R. Juv. P. Rule 41(B)).

6. Does state law 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 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)).

“Except as provided...the physician-patient privilege, husband-wife privilege, or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-

client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is in issue nor in any judicial proceeding resulting from a report submitted pursuant to this article (Ariz. Rev. Stat. Ann. § 8-805(B)).

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

Points: 0 extra credit points

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

Sidebar Note:

- In practice, children in Arizona may be appointed an attorney in dependency proceedings. However, the above grades do not reflect practices not embodied in statewide laws and regulations. We encourage Arizona to adopt laws mandating the appointment of attorneys to represent children in dependency proceedings.



	<h1>ARKANSAS</h1>	Grade: B
	<h2>SCORE: 82</h2>	

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	<p>Points: 40 out of 40</p> <p>“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)).</p>
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	<p>Points: 10 out of 10</p> <p>The attorney ad litem is authorized to participate in “all stages of the proceedings when necessary to protect the best interest of the juvenile” (A.C.A. § 9-27-316(f) (3) (A)).</p>
3. To what extent will a child receive client-directed representation?	<p>Points: 6 out of 20</p> <p>Basis for deduction: Arkansas law requires the attorney ad litem to communicate, but not advocate for, the child’s expressed wishes. “An attorney ad litem shall represent the best interest of the juvenile” (A.C.A. § 9-27-316(f) (5) (A)). If the juvenile’s wishes differ from the attorney’s determination of the juvenile’s best interest, the attorney ad litem shall communicate the juvenile’s wishes to the court in addition to presenting his or her determination of the juvenile’s best interest” (A.C.A. § 9-27-316(f)(5)(B)). An attorney ad litem shall determine the best interest of a child by consideration such factors as the child’s age and sense of time, level of maturity, culture and ethnicity, degree of attachment to family members including siblings; as well as continuity, consistency, and the child’s sense of belonging and identity (AR Sup. Ct. Adm. Order No. 15 §2(b) (2008)).</p>
4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?	<p>Points: 10 out of 10</p> <p>“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” (A.C.A § 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</p>

must include child development, dynamics of abuse and neglect; attorney roles and responsibilities, including ethical considerations; relevant state law, federal law, case law, and rules; family dynamics, which may include but is not limited to, the following topics: substance abuse, domestic violence and mental health issues; and Division of Children and Family Services policies and procedures. Additional initial legal education may include, but is not limited to grief and attachment; custody and visitation; resources and services; and trial and appellate advocacy (AR Sup. Ct. Adm. Order No. 15 § 1(b) (1)).

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

Points: 5 out of 10

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

6. Does state law pertaining to liability and confidentiality apply to 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)).

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

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

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

Points: 5 extra credit points

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



CALIFORNIA

Grade:

B

SCORE: 82

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

Points: 35 out of 40

“If a child or nonminor dependent is not represented by counsel, the court shall appoint counsel for the child or nonminor dependent, unless the court finds that the child or nonminor dependent would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding” (Cal. Wel. & Inst. Code §317 (c) (1)).

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

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

Points: 8 out of 10

“A notice of appeal on behalf of the child must be filed by the child’s trial counsel, guardian ad litem, or the child if the child is seeking appellate relief from the trial court’s judgment or order. . . . In any juvenile dependency proceeding in which a party other than the child files a

notice of appeal, if the child’s trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child’s best interests cannot be protected without the appointment of separate counsel on appeal, the child’s trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel” (Cal. Rules of Ct., Rule 5.661(b)–(c)).

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

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

Points: 6 out of 20

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

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 10 out of 10

“The appointed counsel shall have...training that ensures adequate representation of the child or nonminor dependent (Cal. Wel. & Inst. Code § 317(c) (5) (A)).

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel. 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. Attorney training must include: an overview of dependency law and related statutes and cases; information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts; and, for any attorney appointed to represent a child, instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home placements. 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 or 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. Does state law 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 attorneys in dependency proceedings?

Points: 3 extra credit points

“The appointed counsel shall have a caseload...that ensures adequate representation of the child or nonminor dependent (Cal. Wel. & Inst. Code § 317(c) (5) (A)).

“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)).

Sidebar Notes:

- While California receives three extra credit points for having a statute that acknowledges the need for children’s counsel to maintain reasonable caseload standards, the reality in the state is that many children’s attorneys practice with excessive caseloads. Several children in Sacramento County brought suit in federal court to challenge their attorneys’ high caseloads in the case of *E.T., K.R., C.B., & G.S. v. Cantil-Sakanye*. The Ninth Circuit Court of Appeals found that the foster youth do not have the right to challenge their attorneys’ caseloads in federal court.
- Some advocates 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 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 “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.

	<h1>COLORADO</h1>	Grade: C
	SCORE: 75	

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, who shall be an attorney-at-law licensed to practice in Colorado...” (C.R.S. § 19-3-203(1)). Also, “an attorney may be appointed as counsel for child subject to a dependency and neglect proceeding in addition to the GAL if the court finds that the appointment is in the best interests and welfare of the child” (Colorado Chief Justice Directive (CJD) 04-06(III)(B) (revised Jan. 2016); see also C.R.S. 19-1-105(2)).

“A guardian ad litem, who shall be an attorney and who shall be the child’s previously appointed guardian ad litem whenever possible, shall be appointed to represent the child’s best interests in any hearing determining the involuntary termination of the parent-child legal relationship” (C.R.S. § 19-3-602(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 guardian ad litem shall, among other things, “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); CJD 04-06(V)(D)(6)).

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

Points: 6 out of 20

“The guardian ad litem shall be charged in general with the representation of the child’s interests” (C.R.S. § 19-3-203(3)). The “‘client’ of a GAL or a Child’s Legal Representative is the best interests of the child” (CJD 04-06(V) (B)). However, the GAL is required to “state the child’s position, when ascertainable” (CJD 04-06(V) (D) (1)) and “must include consultation with the child in a developmentally appropriate manner and consideration of the child’s position regarding the disposition of the matter before the court” (CJD 04-06(V) (B)).

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

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 8 out of 10

“Attorneys appointed as GALs, attorney child and family investigators or Child’s Representatives shall possess the knowledge, expertise and training necessary to perform the court appointment” (CJD 04-06(V) (A) (1)). GALs “shall obtain 10 hours of OCR-sponsored or approved continuing legal education courses. This requirement shall be met prior to attorney’s first appointment and on an annual basis while under contract with the OCR” (CJD 04-06(V) (A) (2)).

Basis for deduction: Although requiring attorney GALs to receive training necessary to perform the court appointment, Colorado law does not expressly or impliedly require such training to be multidisciplinary.

5. Does state law expressly give the child the legal status of a party with all or 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. Does state law pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?

Points: 6 out of 10

“All attorneys appointed as GALs or Child’s Legal Representatives shall be subject to all of the rules and standards of the legal profession. The unique statutory responsibilities of a GAL and a Child’s Legal Representative do not set forth a traditional attorney-client relationship between the appointed attorney and the child; instead, the “client” of a GAL or a Child’s Legal Representative is the best interests of the child. The ethical obligations of the GAL or Child’s Legal Representative, under the Colorado Rules of Professional Conduct, flow from this unique definition of “client.” Because of this unique relationship, an attorney’s obligation not to reveal confidential information provided by the child does not apply if the information must be revealed to ensure the child’s best interests. A determination by the GAL or the Child’s Legal Representative of a child’s best interests must include consultation with the child in a developmentally appropriate manner and consideration of the child’s position regarding the disposition of the matter before the court. A GAL or a Child’s Legal Representative must also explain to the child the limitations on confidentiality” (Colorado Chief Justice Directive 04-06(V) (B) (Rev. January 2016)).

Basis for deduction: Colorado law expressly states that an attorney's obligation not to reveal confidential information provided by the child does not apply if the information must be revealed to ensure the child's best interests.

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

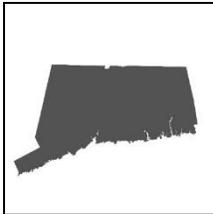
Points: 0 extra credit points

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

Sidebar Notes:

- A proposed revision to CJD 04-06 would establish a caseload maximum of 100 children for a full-time attorney.





CONNECTICUT

Grade:

A+

SCORE: 103

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 knowledgeable about representing such children who shall be assigned to represent the child by the office of Chief Public Defender, or appointed by the court if there is an immediate need for the appointment of counsel during a court proceeding....Counsel for the child shall act solely as attorney for the child” (Conn. Gen. Stat. § 46b-129a (2) (A)). *In re Christina M.*, 877 A.2d 941, 949-50 (Conn. App. 2005), extended the statutory right to counsel for children in § 46b-129a (2) (A) to termination proceedings.

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

Points: 10 out of 10

Although a Connecticut statute states that the appointment of counsel for a child on appeal is discretionary (“[i]n any proceeding in a juvenile matter in which the custody of a child is at issue, the judge may authorize the child’s attorney or appoint another attorney to represent such child or youth on an appeal from a decision in such proceeding” (Conn. Gen. Stat. § 46b-136)), the Connecticut Practice Guide provides that “[t]he child or youth...shall be represented by counsel in each and every phase of any and all proceedings in child protection matters, including appeals” (2018 Conn. Practice Book, § 32a-1(b)).

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

Points: 20 out of 20

“The primary role of any counsel for the child shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child’s wishes to the child’s counsel because of age or other incapacity, the counsel for the child shall advocate for the best interests of the child” (Conn. Gen. Stat. § 46b-129a (2) (c)).

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required

Points: 10 out of 10

“The division shall establish training, practice and caseload standards for the representation of children....Such standards shall apply to each attorney who represents children...and shall be designed to

for a child's GAL?

ensure a high quality of legal representation. 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. § 51-296(c) (3)).

“New Assigned Counsel for Child Protection matters must attend a 3-day pre service training provided under a contract with the Center for Children’s Advocacy” (2017 Annual Report of the Chief Public Defender, Connecticut Division of Public Defender Services (Feb. 1, 2018) at 17).

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

Points: 10 out of 10

Connecticut law expressly affords children party 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(a))), as well as the rights of confrontation and cross-examination, and to be represented by counsel in each and every phase of any and all proceedings in child protection matters, including appeals (2018 Conn. Practice Book § 32a-1(b)).

6. Does state law 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 shall be to advocate for the child in accordance with the Rules of Professional Conduct” (Conn. Gen. Stat. § 46b-129a (2) (C)).

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

Points: 3 extra credit points

The Public Defender “shall establish...caseload standards for the representation of children” (Conn. Gen. Stat. § 51-296(c) (3)).

	DELAWARE	Grade: B
	SCORE: 88	

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

Points: 40 out of 40

“When a petition is filed under this chapter, the Court shall appoint an attorney authorized to practice law in this State to represent the child. When appointing an attorney, the Court may also appoint a Court Appointed Special Advocate volunteer to work in conjunction with the attorney” (13 Del. C. § 2504(f)).

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 shall...[p]articipate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals” (29 Del. C. § 9007A(c) (7)). “The appointment shall last until the attorney...is released from responsibility by order of the court, or until his or her commitment to the court ends” (29 Del. C. § 9007A(b)(2)).

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

Points: 12 out of 20

“[T]he scope of the representation of the child is the child’s best interests” (29 Del. C. § 9007A(c)).

One duty of the attorney is to “[a]scertain the wishes of the child, give appropriate weight to the child’s wishes understanding his or her age and emotional development, and make the child’s wishes known to the court. If the attorney concludes that the child’s wishes conflict with his or her position or the position of the Court Appointed Special Advocate volunteer, if one is appointed, he or she will make the child’s wishes known to the court, and notify the court of the conflict so the court can determine if a conflict exists. If the court determines a conflict exists, the court shall determine how to remedy the conflict such that the child’s best interests and wishes are represented” (29 Del. C. § 9007A(c)(15)). The court, in its discretion, “may also appoint an attorney to represent the child’s wishes” (13 Del. C. § 2504(f)).

Basis for deduction: Although his/her wishes will be made known to the court, a child is not assured of client-directed representation.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 10 out of 10

Delaware law requires that attorneys be trained by the Office of the Child Advocate or a course approved by the Office prior to representing any child before the court. Further, “the attorney...shall be required to participate in ongoing multidisciplinary training regarding child welfare” (29 Del. C. § 9007A(c)(2)).

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

Points: 10 out of 10

“Upon appointment of an attorney, the child shall be a party to any child welfare proceeding in which the child is the subject, and shall possess all the procedural and substantive rights of a party...” (29 Del. C. § 9007A(b)(3)).

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

Points: 6 out of 10

“The attorney...shall have the duty of confidentiality to the child unless disclosure is necessary to protect the child” (29 Del. C. § 9007A(c)). “No attorney, director, investigator, social worker or other person employed or contracted by or volunteering for the Office of Child Advocate shall be subject to suit directly, derivatively or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any act or omission performed during or in connection with the discharge of his or her duties with the Office within the scope of his or her employment or appointment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in bad faith” (29 Del. C. § 9008A).

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

Points: 0 extra credit points

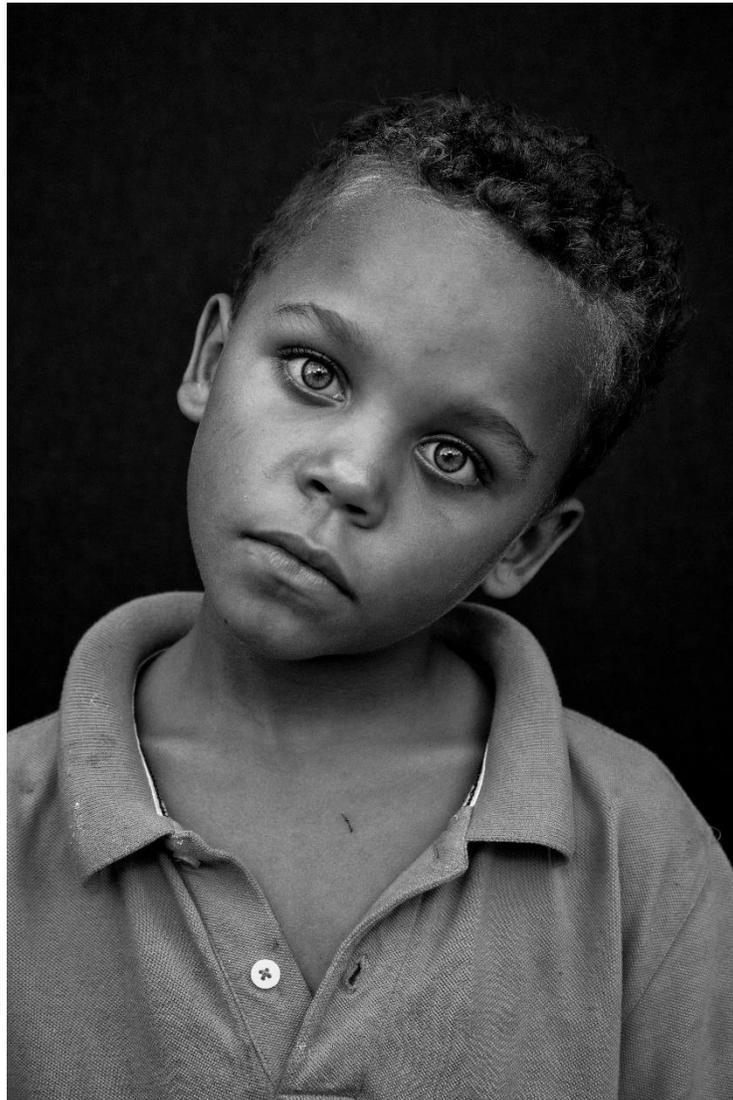
While there is no Delaware law regarding caseload standards for attorneys representing children in dependency proceedings, Delaware attorneys do actually carry very low caseloads. Please see sidebar note below.

Sidebar Notes:

- Delaware’s Office of the Child Advocate’s caseload standard of 35 children per attorney enables the attorneys to become involved in every aspect of the child’s life. There are also 7 contract child attorneys. These attorneys have a maximum caseload of 65 children but each child also has a CASA assigned. Volunteer attorneys in Delaware are only permitted to represent a maximum of two children at a time. However, this report reflects

state laws, not practices; therefore Delaware has not received any extra credit points despite its extraordinary efforts. We encourage Delaware to develop statutory caseload standards which reflect its outstanding work and which will ensure that these caseload standards are maintained should Delaware see an increase in the filing of child abuse and neglect petitions.

- In 2016, Delaware's legislature made substantive amendments to 13 Del. C. § 2504, regarding the appointment of attorneys for children in abuse and neglect proceedings. Following the enactment of SB 188 (2016 Del. ALS 417), § 2504(f) now requires the appointment of an attorney to represent the child, and provides that the court may also appoint a CASA to work in conjunction with the attorney. The bill also amended 29 Del. C. § 9007A(c)(15) to provide that if a child's stated wishes conflict with the child's best interests, the attorney must make the child's stated wishes known to the court; the court will then determine if a conflict exists and how to remedy the conflict such that the child's best interests and wishes are both represented.



	DISTRICT OF COLUMBIA	Grade: A
	SCORE: 95	

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)). “An attorney shall be appointed to serve as guardian ad litem for a child or children alleged to be neglected and the Court may, in addition, appoint an attorney to represent such child or children” (D.C. SCR-Neglect Rule 42(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

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

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

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

Points: 12 out of 20

“The guardian ad litem shall in general be charged with the representation of the child’s best interest” (DC Code § 16-2304(b)(5)).

“If there is a conflict between the guardian ad litem and the child regarding the child’s best interests, and the conflict cannot be reconciled, the Court may appoint an attorney to advocate for the child” (DC Fam. Ct. Admin. Order 04-05(II)(B)).

“[I]f the guardian ad litem’s assessment of the child’s best interests conflicts with the views of the child, the guardian ad litem shall notify the court of the child’s views and in some circumstances, an attorney

may be appointed to represent the child's expressed interests. The new attorney for the child will represent the child's expressed interests, while the guardian ad litem will make recommendations to the court with regard to the child's best interests. As soon as the court resolves the issue that caused the conflict, the attorney for the child representing the child's expressed interests shall request leave of court to withdraw" (Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 at § B-2)).

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

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 10 out of 10

In addition to 16 hours of mandatory initial training for any attorney admitted to the GAL panel, "[a]ll panel attorneys are required to complete a minimum of twelve hours of CLE annually; at least one hour shall be devoted to trial, evidence, and ethics and at least one hour shall be multi-disciplinary training (*i.e.*, sessions on interviewing children, understanding different types of therapy, developmental stages of children, understanding substance abuse and mental illness, developmental disabilities, etc.)" (Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 at § A-1, A-3).

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

Points: 10 out of 10

"Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child" (D.C. Code § 16-2356). A "child alleged to be neglected" is a party under Superior Court Rules for Abuse and Neglect Proceedings, Neglect Rule 10.

6. Does state law 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 typical client-lawyer relationship with the client" (D.C. Bar Appx. A, Rule 1.14).

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

Points: 3 extra credit points

"Counsel should maintain a manageable caseload to adequately represent clients and avoid scheduling conflicts" (Superior Court of the District of Columbia Child Abuse and Neglect Attorney Practice Standards, Adopted by Administrative Order 03-07 at B-5; see also E-1).

	<h1>FLORIDA</h1>	Grade: C
	<h2>SCORE: 73</h2>	

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

Points: 20 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, if one has not already been appointed” (Fla. R. Juv. P., Rule 8.217(a)). “The court may appoint an attorney ad litem to represent the child in any proceeding as allowed by law” (Fla. R. Juv. P., Rule 8.217(b)).

However, “[a]n attorney shall be appointed for a dependent child who: (a) resides in a skilled nursing facility or is being considered for placement in a skilled nursing home; (b) is prescribed a psychotropic medication but declines assent to the psychotropic medication; (c) has a diagnosis of a developmental disability...; (d) is being placed in a residential treatment center or being considered for placement in a residential treatment center; or (e) is a victim of human trafficking...” (Fla. Stat. § 39.01305(3)).

Basis for deduction: Florida law provides that appointment of an attorney for a child in dependency proceedings is mandatory only with regard to certain dependent children, and otherwise 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

“After an attorney is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under

this section to represent the child shall provide the complete range of legal services, from the removal from home or from the initial appointment through all available appellate proceedings” (Fla. Stat. § 39.01305(4)(b)).

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

Points: 15 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(20)).

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

Basis for deduction: Children who receive an attorney ad litem receive client-directed representation. Children who receive a GAL do not receive client-directed representation, although their wishes must be articulated to the court. Recently, one of Florida’s courts of appeal noted with favor that “the attorney ad litem clearly protected [the] child’s best interests” and, therefore, the child had a guardian ad litem (*A.F. v. Dep’t of Children and Families*, 39 Fla. L. Weekly D 2183 (Fla. Dist. App. 3d Dist. Oct. 15, 2014)). While it is certainly possible a child’s best interests may be consistent with the child’s legal interests, any subsequent caselaw emphasizing the attorney ad litem’s representation of a child’s best interest will be closely monitored to assure a representation of a child’s best interests does not negate representation of a child’s legal interests.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 8 out of 10

Where a court of competent jurisdiction has found probable cause that a parent or caregiver has sexually abused a child, “[a]ny attorney ad litem...appointed shall have special training in the dynamics of child sexual abuse” (Fla. Stat. § 39.0139(4)(a)).

A guardian ad litem must successfully complete 30 hours of certification training and 12 hours annually of recertification training.

Basis for Deduction: Florida law requires certain attorneys ad litem to have specialized training in child sexual abuse but does not expressly require multidisciplinary training or education for attorneys ad litem or guardians ad litem.

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

Points: 10 out of 10

The terms party and parties “shall include ...the child...and the guardian ad litem” (Fla. R. Juv. P., Rule 8.210(a)). “The child has a right to be present at all hearings” (Fla. R. Juv. P., Rule 8.255(b)(1)).

6. Does state law 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 attorneys in dependency proceedings?

Points: 0 extra credit points

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

Sidebar Notes:

- In 2017, Commissioner Belinda Keiser of the Florida Constitutional Revision Commission introduced P. 40, a proposed constitutional amendment that would have established a right to counsel for all Florida children in dependency proceedings. Specifically, the proposal provided that “Every child who has been removed from the custody of his or her parents or a legal guardian by the state due to abuse or neglect, or is otherwise placed in the jurisdiction of the dependency court, has a right to counsel.” In January 2018, the Commission rejected the proposal by a vote of 5-2.
- The compensation for attorneys appointed to represent dependent children with special needs is limited to \$1,000 per child per year (Fla. Stat. § 39.01305(5)).
- In 2014, Representative Fresen successfully sponsored HB 561, to provide—for the first time in Florida—that children with certain special needs who are in foster care must have an attorney appointed to represent their interests (Chapter No. 2014-227). In 2018, Senator Bean successfully sponsored SB 146, providing that with regard to such appointments, all attorneys, including pro bono attorneys, must be provided to access to funding for expert witnesses, depositions, and other due process costs of litigation (Chapter No. 2018-14).
- Florida Statute § 39.013, which delineates the right to counsel in proceedings relating to children requires the court to “encourage the Statewide Guardian Ad Litem Office to provide greater representation to those children who are within 1 year of transferring out of foster care” (Fla. State. § 39.013 (11)).
- Florida Rules of Court for Palm Beach County (15th Judicial District) have issued an administrative order that authorized the Legal Aid Society in Palm Beach County to administer an Attorney Ad Litem program for the representation of children ages birth to five years and their siblings in the juvenile division. (Fla. 15th Jud. Cir. AO 5.701-9/08.) The Administrative Order limits representation of the program itself to a maximum of 420 children (Fla. 15th Jud. Cir. AO 5.701-9/08 (3)).

	<h1>GEORGIA</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 96</h2>	

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

Points: 40 out of 40

“A child...shall have the right to an attorney at all stages” of a dependency proceeding (O.C.G.A. §§ 15-11-103(a) (dependency proceedings) and 15-11-262(a) (termination of parental rights proceedings)). “The court shall appoint an attorney for an alleged dependent child. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child” (O.C.G.A. § 15-11-103(b)). “Neither a child nor a representative of a child may waive a child’s right to an attorney in a dependency proceeding” (O.C.G.A. § 15-11-103(f)).

“A child...shall have the right to an attorney at all stages” of a termination of parental rights proceeding (O.C.G.A. § 15-11-262(a)). “The court shall appoint an attorney for a child in a termination of parental rights proceeding. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child” (O.C.G.A. § 15-11-262(b)).

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

Points: 10 out of 10

“An attorney appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court” (O.C.G.A. § 15-11-103(e)).

“An attorney appointed to represent a child in a termination proceeding shall continue the representation in any subsequent appeals unless excused by the court” (O.C.G.A. § 15-11-262(h)).

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

Points: 20 out of 20

“A child’s attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship” (O.C.G.A. § 15-11-103(c) (dependency proceedings), O.C.G.A. § 15-11-262(c) (termination of parental rights proceedings)).

“An attorney for an alleged dependent child may serve as such child’s guardian ad litem unless or until there is conflict of interest between

the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem (O.C.G.A. § 15-11-104(b)).

"The court shall appoint a guardian ad litem for a child in a termination proceeding; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem (O.C.G.A. § 15-11-262(d)).

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 6 out of 10

"Before the appointment as a guardian ad litem, such person shall have received training appropriate to the role as guardian ad litem which is administered or approved by the Office of the Child Advocate for the Protection of Children. For attorneys, preappointment guardian ad litem training shall be satisfied within the attorney's existing continuing legal education obligations and shall not require the attorney to complete additional training hours in addition to the hours required by the State Bar of Georgia" (O.C.G.A. § 15-11-104(f)).

Basis for Deduction: Although Georgia requires training appropriate to the role for guardians ad litem, it does not require attorneys to complete any specialized multidisciplinary training.

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

Points: 10 out of 10

"Party means the state, a child..." (O.C.G.A. § 15-11-2(52)).

"A party has 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 appeal the orders of the court..." (O.C.G.A. § 15-11-19).

6. Does state law 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" (Ga. R. Pro. Conduct 1.14(a)). "A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship" (O.C.G.A. §§ 15-11-103(c), 15-11-262(c)).

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

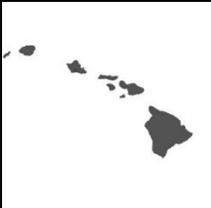
Point: 0 extra credit points

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

Sidebar Notes:

- In 2013, in response to recommendations by Georgia’s Governor’s Special Council on Justice Reform in Georgia, House Bill 242 (2013 Act 127) was enacted to substantially revise and modernize provisions relating to juvenile proceedings. Part of the revisions included the addition of O.C.G.A. § 15-11-103, explicitly mandating the appointment of attorneys for children in dependency court proceedings. House Bill 242 also clarified that the child’s attorney owes the child client the duties imposed by law in any other attorney-client relationship, and clarified that the duration of appointment for a child’s attorney extends through the appeal process.



	<h1>HAWAII</h1>	Grade: F
	<h2>SCORE: 58</h2>	

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

Points 15 out of 40

A child in foster care shall have the right “[t]o ask for an attorney, if the child’s opinions and requests differ from those being advocated by the guardian ad litem pursuant to § 587A-16(c) (6)” (HRS § 587A-3.1(b) (4)). Further, “[t]he court may...appoint an attorney to represent another indigent party based on court-established guidelines, if it is deemed to be in the child’s best interest (HRS § 587A-17(a)). The term party includes a child subject to a dependency proceeding (HRS § 587A-4).

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

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

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

Points: 5 out of 10

Hawaii law provides that an attorney appointed to serve as a child’s legal advocate extends only “during such proceedings as the court deems to be in the best interests of the child” (HRS § 587A-16(c)(6)). A GAL, who may or may not be an attorney, is required to serve throughout the pendency of the child protective proceedings (HRS § 587A-16).

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

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

Points: 12 out of 20

“If the child’s opinions and requests differ from those being advocated by the guardian ad litem, the court shall evaluate and determine whether it is in the child’s best interests to appoint an

attorney to serve as the child’s legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child” (HRS § 587A-16(c)(6)).

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

“‘Court-appointed special advocate’ means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who, when appointed by the court, serves as an officer of the court in the capacity of a guardian ad litem” (HRS § 587A-4).

Basis for deduction: Hawaii law does not require training requirements for attorneys representing children in dependency proceedings, and while it envisions training for guardians ad litem, it does not expressly require multidisciplinary elements.

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

Points: 10 out of 10

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

6. Does state law pertaining to liability and confidentiality apply to 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” (HI R. of Prof. Conduct 1.14(a)).

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

Points: 0 extra credit points

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

Sidebar Notes:

- In 2018 Hawaii amended its law to expressly state rights of children in foster care. This law imposes obligations on the social service agency, including ensuring children in foster care will “receive notice of court hearings, and if the child wishes to attend, the department or authorized agency shall ensure that the child is transported to the court hearing” (HRS § 587A-3.1).

	<h1>IDAHO</h1>	Grade: F
	SCORE: 58	

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

Points: 20 out of 40

“In any proceeding... for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child. In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem and may, in addition, appoint counsel to represent the child” (Idaho Code § 16-1614(1)).

“In any proceeding under this chapter for a child twelve (12) years of age or older, the court: (a) [s]hall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or (b) [w]here appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel” (Idaho Code § 16-1614(2)).

“Guardian ad litem’ means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child...” (Idaho Code § 16-1602(23)).

Basis for deduction: Under Idaho Code § 16-1614(1), regarding children under age twelve, the appointment of counsel for children is mandatory only when a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem. While Idaho Code § 16-1614(2)(a) purports to make the appointment of counsel mandatory for children age twelve and older, subsection (b) allows the court to appoint a lay GAL for the child (with counsel appointed to represent the GAL) under specified circumstances.

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

Points: 5 out of 10

Basis for deduction: Idaho law does not expressly extend the appointment of children’s counsel to include appeals. A guardian ad litem’s duties shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs (Idaho Code § 16-1633).

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

Points: 12 out of 20

“Subject to the direction of the court, the guardian ad litem shall advocate for the best interests of the child” (Idaho Code § 16-1633).

A guardian ad litem is required to “inquire of any child capable of expressing his or her wishes regarding permanency and, when applicable, the transition from foster care to independent living and shall include the child’s express wishes in the report to the court” (Idaho Code § 16-1633(2)).

Basis for deduction: As noted above, under Idaho law a child will receive counsel to represent the child only under specified circumstances. Under Idaho law, a child who is represented only by a guardian ad litem will receive best interest representation and will have his or her wishes reported to the court only in certain situations.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

Basis for Deduction: Although Id. R. Juv. Rule 35 requires GALs to complete specialized multidisciplinary training, Idaho law does not expressly require such training for attorneys appointed to represent children or their GALs.

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

Points: 5 out of 10

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

6. Does state law pertaining to liability and confidentiality apply to 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” (ID R. of Prof. Conduct 1.14(a)).

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

Points: 0 extra credit points

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

	<h1>ILLINOIS</h1>	Grade: D
	<h2>SCORE: 63</h2>	

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

Points: 15 out of 40

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

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

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

Points: 5 out of 10

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

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

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

Points: 20 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 3 out of 10

“In 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. The Department of Children and Family Services

shall provide training materials and documents to guardians ad litem who are not mandated to attend the training program. The Department of Children and Family Services shall develop and distribute to all guardians ad litem a bibliography containing information including but not limited to the juvenile court process, termination of parental rights, child development, medical aspects of child abuse, and the child's need for safety and permanence" (705 ILCS 405/2-17(9)).

Basis for deduction: Although Illinois law requires multidisciplinary training for some GALs, who may or may not be attorneys, it does not mandate such training for all GALs or for counsel appointed to represent children.

5. Does state law expressly give the child the legal status of a party with all or 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(1)). Additionally, the rights of children are listed in Illinois statute 705 ILCS 405/1-5 which is titled "Rights of parties to proceedings" so children are considered parties in Illinois.

6. Does state law pertaining to liability and confidentiality apply to 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(4)(e)).

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

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

Points: 0 extra credit points

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

	<h1>INDIANA</h1>	Grade: F
	<h2>SCORE: 49</h2>	

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(b)).

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

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

Points: 5 out of 10

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

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

Points: 3 out of 20

Basis for deduction: Although Indiana law expressly states that “[a] guardian ad litem or court appointed special advocate shall represent and protect the best interests of the child” (Burns Ind. Code Ann. § 31-32-3-6), it is vague with regard to whether counsel appointed for a child in dependency proceedings is required to advocate for the expressed wishes of the child in a client-directed manner.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

A guardian ad litem must complete “training appropriate for the person’s role,” including training in the identification and treatment of child abuse and neglect and early childhood, child, and adolescent development (Burns Ind. Code Ann. § 31-9-2-50(b) (3)).

Basis for Deduction: Although some specialized multidisciplinary training is required for GALs, it is not expressly required for counsel appointed to represent children in dependency proceedings.

5. Does state law expressly give the child the legal status of a party with all or 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. Does state law 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” (Ind. R. of Prof. Conduct 1.14(a)).

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

Points: 0 extra credit points

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

Sidebar Notes:

- In February 2019, the Children’s Advocacy Institute (CAI), along with pro bono co-counsel Morrison & Foerster and DeLaney & DeLaney, filed a federal class action in Indiana to challenge how the state appoints guardians ad litem to represent children in every case of abuse or neglect that results in a judicial proceeding, as is required by federal law. In addition to challenging the state’s failure to comply with federal law, CAI is arguing that only attorneys are capable of adequately representing a party’s interest in such legal proceedings, claiming in part that, “Without an attorney, a child in a dependency proceeding risks losing his or her liberty interests, as other parties present evidence, offer witnesses, and make decisions about the child’s future that the child is not permitted to discredit, challenge, or even address. Such an omission is fundamentally unfair and contrary to the due process and equal protection clauses of the Fourteenth Amendment.” At this writing, this case is pending in the United States District Court for the Southern District of Indiana.

	<h1>IOWA</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 90</h2>	

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 in a child in need of assistance proceeding, “the court shall appoint counsel and a guardian ad litem for the child...” (Iowa Code § 232.89(2)).

Upon the filing of a petition for the termination of parental rights, “the court shall appoint counsel for the child...” (Iowa Code § 232.113(2)). A GAL must be appointed for the child prior to service of notice on the parties (Iowa Code § 232.112(2)).

“The court shall appoint counsel or a guardian ad litem to represent the interests of the child at the hearing to determine whether the family is a family in need of assistance unless the child already has such counsel or guardian” (Iowa Code § 232.126).

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

Points: 10 out of 10

“The attorneys and guardians ad litem of record in the district court shall be deemed the attorneys and guardians ad litem in the appellate court unless others are retained or appointed and notice is given to the parties and the clerk of the supreme court” (Iowa R. App. P., Rule 6.109(4)).

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

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)).

4. To what extent does state law require specialized education with multidisciplinary elements for

Points: 0 out of 10

Basis for deduction: Although Iowa law mandates specialized

child's counsel? If not required for child's counsel, is it required for a child's GAL?

education and/or training for attorneys representing parents in dependency proceedings (Iowa Ct. R. 8.36(1)), it does not require such education and/or training for attorneys representing children in these proceedings.

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

Points: 10 out of 10

Under Iowa law, the petition in a child in need of assistance proceeding recognizes the child as a party to the proceedings: "the court shall appoint counsel and a guardian ad litem for the child identified in the petition as a party to the proceedings" (Iowa Code § 232.89(2)).

Under Iowa law, the petition for the termination of parental rights recognizes the child as a party: "the court shall appoint counsel for the child identified in the petition as a party to the proceedings" (Iowa Code § 232.113(2)).

6. Does state law 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 32:1.14(a)).

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

Points: 0 extra credit points

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

	<h1>KANSAS</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 92</h2>	

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

Points: 12 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required

Points: 10 out of 10

“As a prerequisite to appointment, a guardian ad litem must complete at least 6 hours of education, including 1 hour of professional

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

responsibility. An appointed guardian ad litem also must participate in continuing education consisting of at least 6 hours per year" (Kan. Sup. Ct. Rule 110A(b)(1)(A)). Areas of education include but are not limited to dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and communication with children skills and information gathering and investigatory techniques; advocacy skills; child development; mental health issues; permanence and the law; community resources; professional responsibility; special education law; substance abuse issues; school law; and the revised code for the care of children (Kan. Sup. Ct. Rule 110A(b)(1)(B)).

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

Points: 10 out of 10

"Party' means... the child" (K.S.A. § 38-2202(v)).

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

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

6. Does state law pertaining to liability and confidentiality apply to 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" (KS R. of Prof. Conduct 1.14(a)). An attorney who serves as GAL may submit reports and recommendations to the court and testify only as permitted by Kansas Rule of Professional Conduct 3.7(a) (Kan. Sup. Ct. Rule 110A).

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

Points: 0 extra credit points

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

	<h1>KENTUCKY</h1>	Grade: <h1>C</h1>
	<h2>SCORE: 78</h2>	

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, the court shall advise the child and his parent or other person exercising custodial control or supervision of their right to appointment of separate counsel...[and] shall appoint counsel for the child...” (KRS § 620.100(1)(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: Although Kentucky law appears to provide for the child’s counsel appointment to continue through further proceedings before the Juvenile Court (KRS § 620.100), it does not expressly guarantee counsel for the child on appeal.

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

Points: 3 out of 20

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

In a case dealing with a custody matter (not a dependency, neglect or abuse (DNA) case or a termination of parental rights case), the Supreme Court of Kentucky noted that, “it is clear that in practice the attorney appointed to represent the child in a DNA...is commonly thought of and referred to as a ‘guardian ad litem’” (*Morgan v. Getter* (2014) 441 S.W.3d 94, 109, FN 6). GALs are statutorily required to serve a best interest role in DNA and termination cases (see, e.g., KRS § 625.041(1) (requiring appointment of a GAL to represent a child’s best interests in voluntary termination of parental rights cases)).

“A lawyer reasonably convinced that his or her child-client wants an outcome significantly at odds with the child’s best long-term interests...should explain to the child, if and to the extent possible,

why he or she feels bound not to pursue what the child wants and should, if the child wishes, advise the court that the child disagrees with the attorney's assessment of the case (*Morgan v. Getter* (2014) 441 S.W.3d 94, 116).

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 10 out of 10

"Counsel shall document participation in training on the role of counsel that includes training in early childhood, child and adolescent development" (KRS § 620.100(1)(a)).

5. Does state law expressly give the child the legal status of a party with all or 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 the rights appurtenant thereto ("[i]f the court determines that further proceedings are required, the court shall advise the child... that they have... a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal" (KRS § 620.100(2)).

6. Does state law 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, age, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (KY R. of Prof. Conduct 1.14).

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

Points: 0 extra credit points

Kentucky law does not address caseload standards in dependency proceedings.

	LOUISIANA	Grade:
SCORE: 100	A+	

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

Points: 40 out of 40

The Louisiana Legislature has made specific findings that the “[p]rovision of independent counsel for abused and neglected children is an essential due process right provided by Louisiana law to ensure sound and fair decision-making concerning children’s safety, permanency, and well-being” (La. Ch.C. Art. 551).

The purpose of the Louisiana’s child advocacy program “is to provide for an effective system of providing qualified legal representation for children in child abuse and neglect cases” (La. Ch.C. Art. 557).

“The court shall appoint the program designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent counsel for the child at the time the order setting the first court hearing is signed. Neither the child nor anyone purporting to act on his behalf may be permitted to waive this right” (La. Ch.C. Art. 607(A)).

“The court shall appoint the program designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent attorney to represent the child in ... a [termination] proceeding” (La. Ch.C. Art. 1016(B)).

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 for the child shall have the authority to represent the child at all stages of the proceedings (La Ch.C. Art. 607(B)).

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

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

Points: 20 out of 20

“Representation of children in abuse and neglect cases shall comply with the provisions of Part III of Rule J of the Administrative Rules of the Supreme Court, including qualifications of appointed counsel and child attorney standards” (La. Ch. C. Art. 560(B)).

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

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 10 out of 10

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

“Representation of children in abuse and neglect cases shall comply with the provisions of Part III of Rule J of the Administrative Rules of the Supreme Court, including qualifications of appointed counsel and child attorney standards” (La. Ch. C. Art. 560(B)).

“...the attorney shall have completed within the last two years a minimum of eight hours of training or education relevant to child abuse and neglect cases, and/or shall have sufficient knowledge to satisfy the court of the attorney’s qualifications. Evidence of qualifications may include proof of attendance at relevant continuing education programs or documentation of qualifications signed by a judge (La. Sup. Ct. Rule XXXIII, Part III, Subpart I, Section 3A(2)).

...the attorney shall complete a minimum of six hours of approved continuing legal education each calendar year, and shall submit to the Supreme Court documentation of compliance no later than January 31 of the following calendar year. The requisite education shall include relevant law and jurisprudence, child development, child abuse and neglect, and the roles, responsibilities and duties of independent counsel for children, including the Standards for Representation of Children” (La. Sup. Ct. Rule XXXIII, Part III, Subpart I, Section 3A (3)).

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

Points: 10 out of 10

“The child shall be a party to the proceedings” (La Ch.C. Art. 607(B)).

6. Does state law 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. R. XXXIII, Part III, Subpart II, Standard 2).

“Records and reports concerning all matters or proceedings before the juvenile court, except traffic violations, are confidential and shall not be disclosed except as expressly authorized by this Code. Any person authorized to review or receive confidential information shall preserve its confidentiality unless a court order authorizes them to share with others” (La. Ch.C. Art. 412(A)). “Any violation of the confidentiality provisions of this Article shall be punishable as a constructive contempt of court...” (La. Ch.C. Art 412(I)).

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

Points: 0 extra credit points

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

Sidebar Notes:

- In 2014 Louisiana passed House Bill (HB) 1061, a bill that, among other things, amended Louisiana code related to the legal representation for children and indigent parents in child protections and provided the designation of programs by the Louisiana Supreme Court for the provision of child representation services in certain courts. HB 1061 established the Child Protection Representation Commission “for the purpose of reviewing the system of representation of children and indigent parents in child protection cases” (La Ch.C. Art. 581(A)).
- The practice in Louisiana is to follow the ABA Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings and the National Association of Counsel for Children representation standard. Through practice, Louisiana has recognized that a caseload of 100 is the appropriate standard. Although Louisiana has not been able to achieve this standard of 100 cases per attorney throughout the state, Louisiana believes this is the appropriate standard and through the Louisiana Supreme Court’s oversight has made this the goal for the Legal Services Corporations and Mental Health Advocacy Services Child Advocacy Program to strive to reach.

	<h1>MAINE</h1>	Grade: D
<h2>SCORE: 63</h2>		

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 ad litem appointed in child protection proceedings...shall be either a CASA or an attorney...” (Me. R. Guardians Ad Litem Rule 2(a)(2)).

“The guardian ad litem or the child may request the court to appoint legal counsel for the child” (22 M.R.S. § 4005(1)(F)).

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

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

Points: 10 out of 10

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

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

Points: 12 out of 20

“The guardian ad litem shall act in pursuit of the best interests of the child” (22 M.R.S. § 4005(1)(B)). “The guardian ad litem shall 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)).

Basis for deduction: A child may receive client-directed counsel on a discretionary basis, but if not, Maine law expressly requires the child’s GAL to articulate the wishes of the child.

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Point: 6 out of 10

Basis for Deduction: Although Maine requires multidisciplinary training for GALs, who may be attorneys (Me. R. Guardians Ad Litem Rule 2(b)(2)(B)), 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 or some of the rights of a party?

Points: 10 out of 10

Maine caselaw holds that a "child has a significant interest in child protection proceedings and is a party to the proceedings" (*In re Nikolas E.* (1998) 720 A.2d 562).

6. Does state law 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" (Me. Rules of Prof'l Conduct 1.14(a)).

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

Points: 0 extra credit points

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

Sidebar Notes:

- Maine House Bill 363, introduced on February 2, 2017, would have provided that a child who is the subject of a child protection proceeding and who is living with a relative has a right to legal counsel at state expense during the child protection proceeding. The measure failed passage on April 20, 2017.

	<h1>MARYLAND</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 93</h2>	

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).

In termination of parental rights proceedings, “a juvenile court shall appoint an attorney to represent a child” (Md. Family Law Code Ann. § 5-307(b)(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

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

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

Points: 20 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 3 out of 10

“Lawyers who seek to represent children in these proceedings are encouraged to seek training and education in such subjects as: a. the role of child’s counsel; b. assessing considered judgment; c. basic interviewing techniques; d. child development: cognitive, emotional, and mental stages; e. federal and state statutes, regulations, rules, and case law; f. overview of the court process and key personnel in child-related litigation; g. applicable guidelines and standards of representation; h. family dynamics and dysfunction, including

substance abuse and mental illness; i. related issues, such as domestic violence, special education, mental health, developmental disability systems, and adult guardianships; j. social service agencies, child welfare programs, and medical, educational, and mental health resources for the child and family; and k. written materials, including related motions, court orders, pleadings, and training manuals” (MD Guidelines for Attys Rep CINA, F2).

Basis for deduction: While Maryland law encourages specialized training and education for lawyers who seek to represent children, such training and education is not required.

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

Points: 10 out of 10

Maryland law expressly gives children party status in dependency proceedings (“party means...(a) child who is the subject of a petition” (Md. Courts and Judicial Proceedings Code Ann 3-801(u)(1)(i)).

“[I]n creating the statutory scheme governing the status of a child in a termination of parental rights action following a CINA action, the legislature intended to make the child a party to the proceeding” (*In Re Adoption/Guardianship No. T97036005 et al.* (2000) 358 Md. 1, 15 [746 A.2d 379, 387].

6. Does state law pertaining to liability and confidentiality apply to 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 attorney shall, as far as reasonably possible, maintain a normal client-attorney relationship with the client” (Md. Rule 19-301.14(a)).

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

Points: 0 extra credit points

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

Sidebar Notes:

- The Maryland Court Improvement Program offers a biennial Child Welfare Attorney Conference for all child welfare attorneys in Maryland free of charge.
- Maryland child representation contracts require all contract attorneys to acquire 16 hours annually of Child In Need of Assistance and related Guardianship (TPR) training credits based on the areas delineated in the Guidelines. If these contractual requirements existed in a statute or rule, Maryland’s points for criterion 4 would improve.
- In Maryland, child attorney contracts are administered through the Maryland Legal Services Program which sets a maximum caseload of 150 cases for attorneys representing children in dependency cases. If these caseload limitations were included in state law, Maryland would receive extra credit points.

	MASSACHUSETTS	Grade: A+
	SCORE: 103	

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

Points: 40 out of 40

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

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

Points 10 out of 10

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

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

Points: 20 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 8 out of 10

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

Basis for deduction: Although specialized education and/or training is required for child’s counsel, as part of the specialized education and/or training, multidisciplinary elements are neither expressly nor impliedly required.

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

Points: 10 out of 10

“Party—Any person who may be entitled to the appointment of counsel in relation to any court proceeding on the basis of indigency under the law of the Commonwealth” (MA Sup. Jud. Ct. Rule 3:10(1)(o)).

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

Points: 10 out of 10

“The role of counsel in these cases is to be an advocate for the client. Counsel shall diligently and zealously protect and advance the client’s interests, rights and goals in the proceedings. This involves explaining the nature of all legal and administrative proceedings to the extent possible given the client’s age and ability, determining the client’s position and goals, and vigorously advocating such position and goals. The role of counsel is also to ensure that the client is afforded due process and other rights and that the client’s interests are protected” (Massachusetts Committee for Public Counsel Services, Children and Family Law Division, Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases, 1.1(a)).

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

Points: 5 extra credit points

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

“Care and Protection case assignments are limited to 75 open cases at any one time and all CAFL cases to 100 open cases at a time” (Massachusetts Committee for Public Counsel Services Manual for Assigned Counsel (2011) at Ch. 5, No. 22).

	<h1>MICHIGAN</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 92</h2>	

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 duties of the lawyer-guardian ad litem include “full and active participation in all aspects of the litigation” (MCL § 712A.17d(1)(b); *see* (MCL 712A.17c (9) (court must replace lawyer guardian ad litem discharged for good cause)).

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

Points: 12 out of 20

Basis for deduction: A child may receive client-directed representation but if not, the lawyer-guardian ad litem must communicate the child’s position to the court. “The lawyer-guardian ad litem’s powers and duties include...To make a determination regarding the child’s best interests and advocate for those best interests according to the lawyer-guardian ad litem’s understanding of those best interests, regardless of whether the lawyer-guardian ad litem’s determination reflects the child’s wishes. The child’s wishes are relevant to the lawyer-guardian ad litem’s determination of the child’s best interests, and the lawyer-guardian ad litem shall weigh the child’s wishes according to the child’s competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child’s wishes and preferences” (MCL § 712A.17d(1)(i)).

“If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child’s interests as identified by the child are inconsistent with the lawyer-guardian ad litem’s determination of the child’s best interests, the lawyer-guardian ad litem shall communicate the child’s position to the court. If the court considers the appointment appropriate considering the child’s age and maturity and the nature of the inconsistency between the child’s and the lawyer-guardian ad litem’s identification of the child’s interests, the court may appoint an

attorney for the child. An attorney appointed under this subsection serves in addition to the child’s lawyer-guardian ad litem” (MCL § 712A.17d(2)). “‘Attorney’ means, if appointed to represent a child in a [child protection] proceeding. . . , an attorney serving as the child’s legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child’s expressed wishes as the attorney would to an adult client. For the purpose of a notice required under these sections, attorney includes a child’s lawyer-guardian ad litem. (MCL § 712A.13a(1)(c)).

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 10 out of 10

Michigan law requires a lawyer-guardian ad litem “to participate in training in early childhood, child, and adolescent development” (MCL § 712A.17d(1)(m)).

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

Points: 10 out of 10

The term party includes the “...child...in a protective proceeding” (MCR Rule 3.903(A)(19)(b)).

6. Does state law 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)). Except when required by law, with the consent of the client, or in other specified circumstances, a lawyer may not “reveal a secret or confidence of a client” (MI R. of Prof. Conduct 1.6(b) (1-2)).

A lawyer-guardian ad litem’s duties include “[t]he obligations of the attorney-client privilege” (MCL § 712A.13a(1)(a)).

Extra Credit: Does state law address caseload standards for attorneys 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 2017 Michigan Governor Richard D. Snyder issued an Executive Order to refocus the activities and duties of the Governor’s Task Force on Child Abuse and Neglect. Among other things, the Order provides that at least once every three years, the Task Force shall comprehensively review and evaluate state investigative and administrative handling, civil judicial handling, and criminal judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation; cases involving suspected child maltreatment-related fatalities; and cases of child abuse and neglect involving a potential combination of jurisdictions, including, but not limited to, interstate, federal-state, and state-tribal. In conjunction with those regular reviews, the Task Force is charged with making policy and training recommendations with regard to, among other things, the judicial handling of child abuse and neglect cases in a manner that reduces any additional trauma to the child or the child’s family and experimental, model and demonstration programs applicable to enhancing the performance of court-appointed attorneys and guardians ad litem for children (Executive Order No. 2017-4 (June 13, 2017)).



	<h1>MINNESOTA</h1>	Grade: C
	SCORE: 75	

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

Points 30 out of 40

“In any proceeding where the subject of a petition for a child in need of protection or services is ten years of age or older, the responsible social services agency shall, within 14 days after filing the petition or at the emergency removal hearing...if the child is present, fully and effectively inform the child of the child’s right to be represented by appointed counsel upon request and shall notify the court as to whether the child desired counsel. Information provided to the child shall include, at a minimum, the fact that counsel will be provided without charge to the child, that the child’s communications with counsel are confidential, and that the child has the right to participate in all proceedings on a petition, including the opportunity to personally attend all hearings. The responsible social services agency shall also, within 14 days of the child’s tenth birthday, fully and effectively inform the child of the child’s right to be represented by counsel if the child reaches the age of ten years while the child is the subject of a petition for a child in need of protection or services or is a child under the guardianship of the commissioner” (Minn. Stat. § 260C.163(3)(d)).

“...if the child 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 for children ten years of age or older, but makes the appointment of counsel for children under age ten discretionary.

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

Points: 10 out of 10

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

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

Points: 15 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 0 out of 10

Basis for deduction: Although Minnesota law mandates that counsel for the parent, guardian, or custodian meet specified education and/or training requirements (Minn. Stat. §260C.163(3)(i)), it does not mandate such requirements for child's counsel.

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

Points: 10 out of 10

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

6. Does state law pertaining to liability and confidentiality apply to 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 possible, maintain a normal client-lawyer relationship with the client" (Minn. R. of Prof. Conduct 1.14).

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

Points: 0 extra credit points

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

	<h1>MISSISSIPPI</h1>	Grade: A
	SCORE: 96	

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

Points: 40 out of 40

In every case involving an abused or neglected child that results in a judicial proceeding, the court “shall appoint a guardian ad litem for the child” (Miss. Code Ann. §43-21-121(1) (e)). “The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layperson as guardian ad litem, the court shall also appoint an attorney to represent the child” (Miss. Code Ann. §43-21-121(4)).

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

Points: 10 out of 10

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

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

Points: 20 out of 20

“If there is a conflict between the child’s preferences and the guardian ad litem’s recommendation, the court shall retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child’s preferences” (Miss. Uniform Rules of Youth Court Practice, Rule 13(f)).

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

“[I]n order to be eligible for an appointment as a guardian ad litem, such attorney or lay person must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall

be satisfactory to fulfill the requirements of this section” (Miss. Code Ann. § 43-21-121(4)).

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

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

Points: 10 out of 10

“Party’ means the child” (Miss. Uniform Rules of Youth Court Practice, Rule 4, at commentary). “All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence: (a) to subpoena, confront and examine the person who prepared or furnished data for the report; and (b) to introduce evidence” (Miss. Code Ann. §43-21-203(9)). “Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child” (Miss. Code Ann. §43-21-309(2)).

6. Does state law 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” (Miss. Code Ann. § 43-21-201(4)). “When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (MS R. of Prof. Conduct 1.14(a)).

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

Points: 0 extra credit points

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

	<h1>MISSOURI</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 93</h2>	

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

Points: 40 out of 40

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

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

Points 10 out of 10

“A child is entitled to be represented by...a guardian ad litem in all proceedings...” (§ 211.211 R.S.Mo.). “A party is entitled to be represented by counsel in all proceedings” (Mo. Sup. Ct. R. 115.01(a)).

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

Points: 15 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

Basis for deduction: While multidisciplinary training is required for an attorney serving as a child’s GAL, no such training is required for an attorney serving a child’s counsel. “The court shall not appoint a lawyer to serve as guardian ad litem until the lawyer has completed

eight hours of continuing legal education devoted to guardian ad litem training. Thereafter, to continue to be appointed as a guardian ad litem, a lawyer shall complete three hours of continuing legal education devoted to guardian ad litem training annually....

Guardian ad litem practice is unique and complex and, as such, requires specialized education, training, and experience. The specialized training may include the following topics: (a) Dynamics of child abuse and neglect issues; (b) Factors to consider in determining the best interests of the child, including the required permanency planning and the child's right to be with his or her family; (c) Inter-relationships between family system, legal process and the child welfare system; (d) Federal, state and local legislation and case law affecting children; (e) Cultural and ethnic diversity and gender-specific issues; (f) Family and domestic violence issues; (g) Available community resources and services; (h) Child development issues; and (i) Guardian ad litem standards" (Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 14.0).

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

Points: 10 out of 10

“[P]arty” means the juvenile who is the subject of the proceeding” (Mo. Sup. Ct. R. 110.04(a)(20)).

6. Does state law 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” (Mo. R. of Prof. Conduct 4-1.14(a)).

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

Points: 2 extra credit points

Standards adopted by the Missouri Supreme Court provide that “[a] guardian ad litem has a duty to notify the court if the caseload reaches a level bearing upon the guardian ad litem’s ability to meet these standards or to comply with the ethical standards of the rules of professional conduct” and that “[t]he appointing court is responsible for making certain each lawyer appointed as a guardian ad litem is able to meet his or her obligations to the child. These obligations include those required under these standards and those required under the ethical and professional standards of a lawyer” (Mo. Sup. Ct., Standards with Comments for Guardians Ad Litem in Missouri, Standard 2.0).

While Missouri law addresses caseload standards for attorneys serving as GAL, it does not address caseload standards for attorneys serving as child’s counsel in abuse and neglect proceedings.

	<h1>MONTANA</h1>	Grade: F
	<h2>SCORE: 59</h2>	

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

Points: 20 out of 40

“[T]he court shall immediately appoint the office of state public defender to assign counsel for...any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth” (Mont. Code Anno., § 41-3-425(2)(b)). “When appropriate, the court may appoint or have counsel assigned for...any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth” (Mont. Code Anno., § 41-3-425(3)). “In every judicial proceeding, the court shall appoint a court-appointed special advocate as the guardian ad litem for any child alleged to be abused or neglected. If a court-appointed special advocate is not available for appointment, the court may appoint an attorney or other qualified person to serve as the guardian ad litem” (Mont. Code Anno., § 41-3-112(1)).

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

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

Points: 10 out of 10

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

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

Points: 3 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 6 out of 10

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

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

5. Does state law expressly give the child the legal status of a party with all or 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) 2001 MT 219 [306 M 430, 35 P3d 291]) and requires the child to receive notice of at least some hearings (*see, e.g.,* Mont. Code Anno., § 41-3-115).

6. Does state law pertaining to liability and confidentiality apply to 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(a)).

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

Points: 0 extra credit points

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

Sidebar Note:

- Practitioners in Montana report that while the code mandates appointment of a CASA as the guardian ad litem or an attorney, this appointment does not always happen in practice. There remain children unrepresented by either a lay guardian ad litem or an attorney.

	<h1>NEBRASKA</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 96</h2>	

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

Points 40 out of 40

“The court, on its own motion or upon application of a party to the proceedings, shall appoint a guardian ad litem for the juvenile...in any proceeding pursuant to the provisions of subdivision (3)(a) of section 43-247” (R.R.S. Neb. § 43-272(2)(e)). “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 authority of the guardian ad litem shall commence upon appointment by the court and shall continue in that case until such time as the court terminates its jurisdiction” (Neb. Ct. Rules, § 6-1468(F)(1)).

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

Points: 15 out of 20

“Neb. Rev. Stat. § 43-272(3) authorizes a guardian ad litem in juvenile proceedings to fulfill a “dual role” with respect to the juvenile, that is, to serve as... (a) [a]n advocate for the juvenile who is deemed as the parent of the juvenile and charged with a duty to investigate facts and circumstances, determine what is in the juvenile’s best interests, report to the court and make recommendations as to the juvenile’s best interests, and take all necessary steps to protect and advance the juvenile’s best interests; and (b) [l]egal counsel for the juvenile” (Neb. Ct. Rules, § 6-1468(C)(1)). “In serving as advocate for the juvenile to protect his or her best interests, the guardian ad litem shall...make such recommendations to the court and shall take the necessary actions to advocate and protect the best interests of the juvenile” and “[a]s legal counsel for the juvenile, the guardian ad litem shall be entitled to exercise and discharge all prerogatives to the same extent as a lawyer for any other party in the proceeding...Where the juvenile expresses a preference which is inconsistent with the guardian ad litem’s determination of what is in the best interests of the juvenile,

the guardian ad litem shall assess whether there is a need to request the appointment of a separate legal counsel to represent the juvenile's legal interests in the proceeding" (Neb Ct. Rules, § 6-1468(C)(3)).

Basis for deduction: Nebraska law provides that "[w]here the juvenile expresses a preference which is inconsistent with the guardian ad litem's determination of what is in the best interests of the juvenile, the guardian ad litem shall assess whether there is a need to request the appointment of a separate legal counsel to represent the juvenile's legal interests in the proceeding" (Neb. Ct. Rules, § 6-1468(C)(3)(d)). Thus, whether a juvenile will receive client-directed representation under specified circumstances depends on the assessment of the guardian ad litem, as well as the discretion of the court to appoint separate counsel if so requested by the guardian ad litem.

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 8 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. Rules, 4-401(A)).

Basis for deduction: Nebraska law 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. Rules, 4-401(A)). Although the law also states that "the attorney must agree to complete the six-hour on-line training within thirty (30) days of the appointment," it nonetheless allows the appointment of attorneys with no specialized training. Thus, two points are deducted.

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

Points: 10 out of 10

"Parties means the juvenile..." (R.R.S. Neb. § 43-245(19)).

6. Does state law 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" (Neb. Ct. R. of Prof. Cond. § 3-501.14).

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

Points: 3 extra credit points

Court rules in Nebraska provide practice standards for GALs and require the attorney to “provide quality representation and advocacy...throughout the entirety of the case” (Neb. Ct. Rules, § 6-1468(E)(5)(a)). The GAL “should not accept workloads or caseloads that by reason of their excessive size or demands ... interfere with or lead to the breach of the professional obligations,” (Neb. Ct. Rules, § 6-1468(E)(5)(b) or “are likely to ... lead to representation or service that is ineffective to protect and further the interests of the juvenile...” Neb. Ct. Rules, § 6-1468(E)(5)(c).



	NEVADA	Grade: A
	SCORE: 96	

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 to represent the child” (Nev. Rev. Stat. Ann. § 432B.420(2)).

“In any proceeding for the termination of parental rights to a child who has been placed outside of his or her home pursuant to chapter 432B of NRS, or any rehearing or appeal thereon, or any proceeding for restoring parental rights to such a child, the court shall appoint an attorney to represent the child as his or her counsel” (Nev. Rev. Stat. Ann. § 128.100(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 must be represented by an attorney at all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive” (Nev. Rev. Stat. Ann. § 432B.420(2)).

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

Points: 20 out of 20

“The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings” (Nev. Rev. Stat. Ann. § 432B.420(2)).

The person appointed as the child’s guardian ad litem “[m]ust not be an attorney appointed to represent the child pursuant to NRS 432B.420” (Nev. Rev. Stat. Ann. § 432B.500(1)(c)).

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

To qualify for appointment as a guardian ad litem in certain judicial districts, a special advocate must complete an initial 12 hours of specialized training and, annually thereafter, complete 6 hours of specialized training. The training must be approved by the court and include information regarding the dynamics of the abuse and neglect of children; factors to consider in determining the best interests of a child, including planning for the permanent placement of the child; the interrelationships between the family system, legal process and system of child welfare; skills in mediation and negotiation; federal, state and local laws affecting children; cultural, ethnic and gender-

specific issues; domestic violence; resources and services available in the community for children in need of protection; child development; standards for guardians ad litem; confidentiality issues; and such other topics as the court deems appropriate. To qualify for appointment as a guardian ad litem in other judicial districts, a special advocate must be qualified pursuant to the standards for training of the National Court Appointed Special Advocate Association or its successor (Nev. Rev. Stat. Ann. § 432B.505).

Basis for deduction: Although Nevada requires GALs to have with specialized multidisciplinary education and/or training, it does not require attorneys appointed to represent children to have any such education and/or training.

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

Points: 10 out of 10

“A child who is alleged to have been abused or neglected shall be deemed to be a party to any proceedings under NRS 432B.410 to 432B.590, inclusive” (Nev. Rev. Stat. Ann. § 432B.420(2)).

“In any proceeding for the termination of parental rights to a child who has been placed outside of his or her home pursuant to chapter 432B of NRS, or any rehearing or appeal thereon, or any proceeding for restoring parental rights to such a child,...[t]he child shall be deemed to be a party...” (Nev. Rev. Stat. Ann. § 128.100(2)).

6. Does state law 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 attorneys in dependency proceedings?

Points: 0 extra credit points

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

Sidebar Note:

- SB 305, enacted in 2017, amended Nevada law to mandate the appointment of attorneys for all children who are alleged to have been abused or neglected in civil child protection proceedings and proceedings to terminate parental rights; explicitly provide that the child is deemed to be a party to such proceedings; and prohibit the court from appointing an attorney who has been appointed to represent the child to also serve as a guardian ad litem. The measure also revised Nevada law to authorize a board of county commissioners to impose a fee of not more than \$6, instead of \$3, for recording certain documents to fund the provision of legal services to abused and neglected children.

	NEW HAMPSHIRE	Grade:
	SCORE: 58	F

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

Points: 15 of 40

“In cases brought pursuant to this chapter involving a neglected or abused child, the court shall appoint a Court Appointed Special Advocate (CASA) or other approved program guardian ad litem for the child. If a CASA or other approved program guardian ad litem is unavailable for appointment, the court may then appoint an attorney or other guardian ad litem as the guardian ad litem for the child. The court shall not appoint an attorney for any guardian ad litem appointed for the child” (RSA 169-C:10(I)).

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

Basis for deduction: Under New Hampshire law, appointment of an attorney 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

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

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

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

Points: 12 out of 20

“In cases involving a neglected or abused child under this chapter, where the child’s expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child”

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

“The child’s Court Appointed Special Advocate (CASA), guardian ad litem (GAL), and/or attorney, shall consult in an age-appropriate manner with the child about the child’s views of the proposed permanency plan and/or transition plan. The CASA, GAL or attorney shall report about the consultation to the court in writing and/or orally at a permanency hearing. Such consultation shall not preclude the child, at the child’s own request or the request of the Court, from attending and/or being heard at a permanency hearing (N.H. Cir. Ct. Fam. Div. R. 4.5).

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

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

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

Points: 10 out of 10

“Party having an interest’ means the child...” (RSA 169-C:3(XXI-a)).

6. Does state law 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 1.14(a)).

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

Points: 0 extra credit points

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

	NEW JERSEY	Grade: B
	SCORE: 88	

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” (NJ Stat. § 9:6-8.23(a)).

“A child who is the subject of an application for the termination of parental rights...shall be represented by a law guardian...” (N.J. Stat. § 30:4C-15.4(b)).

A law guardian is an attorney regularly employed to represent minors in alleged cases of child abuse or neglect and in termination of parental rights proceedings (NJ Stat. § 9:6-8.21(d)).

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

Points: 5 out of 10

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

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

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

Points: 20 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 8 out of 10

“In selecting attorneys to serve as law guardians...the Office of the Public Defender shall take into consideration the nature, complexity and other characteristics of the cases, the services to be performed, the status of the matters, the attorney’s pertinent trial and other legal experience and other relevant factors....The Office of the Public Defender shall ensure that an attorney selected ...has received training

in representing clients in child abuse and neglect and termination of parental rights actions from the Office of the Public Defender or will receive such equivalent training, as soon as practicable, from other sources” (NJ Stat. § 30:4C-15.4(c)).

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

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

Points: 5 out of 10

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

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

6. Does state law pertaining to liability and confidentiality apply to 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” (NJ R. of Prof. Conduct 1.14(a)).

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

Points: 0 extra credit points

Sidebar Note:

- Reviewers indicated that in practice attorneys are appointed for children through appeal, and the child is given full party status. The grades above reflect the results of the statutory review.
- Reviewers indicated that New Jersey follows the Hardin rule of a maximum of 88 cases per full-time attorney.

	<h1>NEW MEXICO</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 95</h2>	

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)).

“An attorney who has entered an appearance or who has been appointed by the court to represent a party in a children’s court proceeding shall continue such representation until relieved by the court, unless a substitution of counsel is filed not less than fifteen (15) days prior to the adjudicatory hearing” (Children’s Court Rule 10-165(B)).

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

Points: 15 out of 20

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

Basis for deduction: For children under fourteen years of age, the GAL’s role is to zealously represent the child’s best interest, not to zealously represent the child in a client-directed manner.

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 10 out of 10

A person who serves as a child's attorney or guardian ad litem "shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs" (N.M. Stat. Ann. § 32A-18-1). NM Supreme Court performance standards expect attorneys for youth, and guardians ad litem for children to participate in at least 10 hours of "relevant annual training."

5. Does state law expressly give the child the legal status of a party with all or 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. Does state law 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)). "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (N.M. R. of Prof. Cond. 16-114).

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

Points: 0 extra credit points

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

Sidebar Note:

- One reviewer noted that New Mexico requires contract GAL's and other attorneys, within the first 3 years of starting to practice in this area, to attend a 3-day training offered annually by the University of New Mexico's Corinne Wolfe Center for Child and Family Justice.

	NEW YORK	Grade:
SCORE: 100		A+

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

Points 40 out of 40

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

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

Points: 10 out of 10

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

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

Points: 20 out of 20

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 10 out of 10

“[A]ll attorneys for children, including new and veteran attorneys, [are required to] receive initial and ongoing training” (NY CLS Family Ct Act § 249-b(a)). “Such training programs must include the dynamics of domestic violence and its effect on victims and on children, and the relationship between such dynamics and the issues considered by the court, including, but not limited to, custody, visitation and child support” (NY CLS Family Ct Act § 249-b(a)(2)).

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

Points: 5 out of 10

“All notices and reports required by law shall be provided to [the] attorney for the child” (NY CLS Family Ct Act § 1016).

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

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

Points: 10 out of 10

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

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

Points: 5 extra credit points

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

Sidebar Note:

- Reviewers shared that in practice, children are treated as parties for all intents and purposes because through their lawyers they can take any procedural step that any other party in the proceeding can take. The grades above reflect grades based on New York statutes and rules.



NORTH CAROLINA

Grade:
B

SCORE: 82

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

Points: 40 out of 40

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

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

Points: 10 out of 10

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

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

Points: 6 out of 20

Per the North Carolina Court System’s GAL Attorney Manual, the attorney advocate represents the “best interests of the child” and not necessarily the child’s wishes even though any wishes expressed by the child are factored into best interest and conveyed to the court (N.C. GAL Program Ch. 8.6).

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

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

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"; "[v]olunteers also receive continuing education on advocacy issues" (N.C. GAL Program Ch. 8.4).

Attorney advocates must complete training related to Juvenile Law and the Guardian ad Litem Program as required by the Attorney Advocate contract (N.C. GAL Program Ch. 8.4).

Basis for deduction: Although North Carolina requires GALs to have specialized multidisciplinary education and/or training, and requires attorney advocates to complete some training, it does not expressly require attorney advocates to have multidisciplinary education and/or training.

5. Does state law expressly give the child the legal status of a party with all or 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. Gen. Stat. Ann. § 7B-601(a)).

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

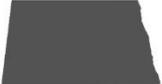
Points: 10 out of 10

"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" (N.C. Prof. Cond. Rule 1.14(a)).

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

Points: 0 extra credit points

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

	NORTH DAKOTA	Grade: D
	SCORE: 63	

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

Points: 20 out of 40

A child “who is indigent and unable to employ legal counsel is entitled to counsel at public expense at . . . custodial, post-petition, and informal adjustment stages of proceedings under this chapter” (N.D. Cent. Code, § 27-20-26(1)). However, North Dakota law also provides that counsel must be provided for a child who is under the age of eighteen years if the child “is not represented by the child’s parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them” (N.D. Cent. Code, § 27-20-26(1)).

Basis for deduction: North Dakota law requires independent counsel for children with major restrictions (only at certain stages, and only if the child is not represented by the child’s parent, guardian, or custodian at those stages).

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

Points: 5 out of 10

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

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

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

Points: 12 out of 20

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).

Basis for deduction: A child will receive client-directed representation only under specified conditions.

<p>4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?</p>	<p>Points 6 out of 10</p> <p>Basis for deduction: Although North Dakota law requires specialized education and/or training requirements for GALs (N.D.R. Juv. P. Rule 17(a)(1)(B)-(C)), it does not require such specialized education and/or training for children's counsel.</p>
<p>5. Does state law expressly give the child the legal status of a party with all or some of the rights of a party?</p>	<p>Points: 10 out of 10</p> <p>The term "parties" includes the child (N.D. R. Juv. P. 3(b)).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?</p>	<p>Points: 10 out of 10</p> <p>"When a client's capacity to make adequately considered decisions in connection with a representation is 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 1.14(a)).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>North Dakota law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

Sidebar Note:

- North Dakota recently enacted legislation that will impact abused and neglected children. SB 2124 is a major redesign of social services throughout the state.
- Reviewers from North Dakota indicated the requirement in N.D. Cent. Code, § 27-20-26 regarding the appointment of counsel is only applied in delinquency proceedings. The authors of this report have not been able to find anything in rule or statute to so limit the statute's application thus have graded North Dakota as the statute is written and encourage child advocates to push for the more robust application.

	<h1>OHIO</h1>	Grade: B
	<h2>SCORE: 86</h2>	

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). However, Ohio law also provides that “[c]ounsel must be provided for a child not represented by the child’s parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them” (Ohio Rev. Code Ann. 2151.352).

Thus, Although Ohio law provides that a child is entitled to legal counsel, the legal counsel provided to a child may be the same counsel provided to his/her parents. According to the Ohio Supreme Court, a child may have a right to appointed counsel separate from that provided to his or her parents “in certain circumstances” (*In re Williams* (2004) 101 Ohio St. 3d 398, 405).

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]... of the Revised Code” (Ohio Rev. Code Ann. § 2151.352).

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

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

Points: 15 out of 20

“When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist[s]” (Ohio Juv. R. 4(C)(1)).

“A guardian ad litem shall represent the best interest of the child for whom the guardian is appointed. Representation of best interest may be inconsistent with the wishes of the child whose interest the guardian ad litem represents” (Ohio Sup. R. 48(D)(1)).

If a person is serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward (Ohio Juv. R. 4(C)(2)).

Basis for deduction: Although Ohio law provides that a child is entitled to legal counsel, the legal counsel provided to a child may be the same counsel provided to his/her parents. Independent counsel is appointed for children only under certain circumstances. According to the Ohio Supreme Court, a child may have a right to appointed counsel separate from that provided to his or her parents “in certain circumstances” (*In re Williams* (2004) 101 Ohio St. 3d 398, 405). Thus, independent counsel is required for children with major restrictions. The determination of separate counsel should be made on “a case-by-case basis...taking into account the maturity of the child and the possibility of the child’s guardian ad litem being appointed to represent the child.” (*Id.* at 403.)

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

“In order to serve as a guardian ad litem, an applicant shall have, at a minimum, the following training: (1) Successful completion of a pre-service training course to qualify for appointment and thereafter, successful completion of continuing education training in each succeeding calendar year to qualify for continued appointment...the pre-service course shall include training on all the following topics: (a) Human needs and child development including, but not limited to, stages of child development; (b) Communication and diversity including, but not limited to, communication skills with children and adults, interviewing skills, methods of critical questioning, use of open-ended questions, understanding the perspective of the child, sensitivity, building trust, multicultural awareness, and confidentiality; (c) Preventing child abuse and neglect including, but not limited to, assessing risk and safety; (d) Family and child issues including, but not limited to, family dynamics, substance abuse and its effects, basic psychopathology for adults and children, domestic violence and its effects; (e) Legal framework including, but not limited to, records checks, accessing, assessing and appropriate protocol, a guardian ad litem’s role in court, local resources and service practice, report content, mediation and other types of dispute resolution” (Ohio Sup. R. 48(E)).

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

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

Points: 10 out of 10

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

6. Does state law pertaining to liability and confidentiality apply to 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” (OH R. of Prof. Cond. 1.14(a)).

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

Points: 0 extra credit points

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

Sidebar Note:

- As noted above, in *In re Williams* (2004) 101 Ohio St.3d 398, the Ohio Supreme Court recognized that the plain language of Ohio Rev. Code Ann. § 2151.352 provides a child with a right to counsel. However, as a subsequent appellate court later noted, the state Supreme Court “refused to set forth a bright-line rule,” instead holding that a child who is the subject of a juvenile court proceeding to terminate parental rights is entitled to independent counsel “in certain circumstances” (*In re L.W.* (2013) 2013-Ohio-5556). And as another appellate court noted, the Ohio Supreme Court “did not explain exactly what circumstances might trigger the juvenile court’s duty to appoint counsel, [but]...indicated that such determinations should be made on a case-by-case basis” (*In re J.B.* (2007) 2007-Ohio-620). The caselaw interpreting § 2151.352, specifically with regard to the appointment of independent (client-directed) counsel for children, was not reflected in Ohio’s grade for criterion 3 in the 3rd edition of *A Child’s Right to Counsel*, but is now factored into the revised grade above.

	<h1>OKLAHOMA</h1>	Grade: A+
	SCORE: 100	

1. Does state law mandate that attorneys be appointed for children in dependency proceedings?	Points: 40 out of 40 “[W]hen a petition is filed alleging the child to be deprived, the court shall appoint a separate attorney for the child” (10A Ok St. § 1-4-306(A)(5)).
2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?	Points: 10 out of 10 “The court shall ensure that the child is represented by independent counsel throughout the pendency of the deprived action” (10A Okl. St. § 1-4-306(A)(5)).
3. To what extent will a child receive client-directed representation?	Points: 20 out of 20 A child’s “attorney shall represent the child and any expressed interests of the child. To the extent that a child is unable to express an interest, either because the child is preverbal, very young or for any reason is incapable of judgment and meaningful communication, the attorney shall substitute his or her judgment for that of the child and formulate and present a position which serves the best interests of the child” (10A Okl. St. § 1-4-306(A)(2)(c)). Thus, a child will receive client-directed representation under all reasonable circumstances.
4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?	Points: 10 out of 10 “Any ... court-appointed or retained attorney, ... whose duties include juvenile docket responsibility shall complete at least six (6) hours of education and training annually in courses relating to the topics described in paragraph 1 of subsection A of this section” (10A Okl. St. § 1-8-101(B)(1)), which are juvenile law, child abuse and neglect, foster care and out-of-home placement, domestic violence, behavioral health treatment, and other similar topics.
5. Does state law expressly give the child the legal status of a party with all or some of the rights of a party?	Points: 10 out of 10 “The child, as a party to the proceeding, shall be given the opportunity to cross-examine witnesses and to present a case in chief if desired” (10A Okl. St. § 1-4-601(E)(2)).

6. Does state law 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 attorneys in dependency proceedings?

Points: 0 extra credit points

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



	<h1>OREGON</h1>	Grade: C
	<h2>SCORE: 78</h2>	

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

Points: 20 out of 40

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

Further, in termination of parental rights proceedings, Oregon caselaw has authorized “flexible approach which permits the trial court to determine on a case-by-case basis whether separate counsel for the child is required.... Independent counsel may continue to be necessary under some circumstances...” (*In re D.* (1976) 24 Ore. App. 601).

Basis for deduction: Under Oregon law, attorneys are not automatically provided for children in dependency or termination proceedings.

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

Points: 10 out of 10

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

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

Points: 15 out of 20

Basis for deduction: It appears that children receive client-directed representation under specified circumstances. Although not binding, the Oregon State Bar has issued guidelines stating that “[t]he role of the child-client’s lawyer is to ensure that the child client is afforded due process and other rights and that the child client’s interests are protected. For a child client with full decision-making capacity, the child-client’s lawyer must maintain a normal lawyer-client relationship with the child client, including taking direction from the child client on matters normally within the child client’s control (Oregon State Bar, Specific Standards for Representation in Juvenile Dependency Cases, Standard 1A (June 23, 2017)).

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 10 out of 10

Oregon State Bar Practice Standards require “[t]he child-client’s lawyer [to] have a working knowledge of child development, family dynamics” and “become familiar with normal growth and development in children and adolescents as well as common types of condition and impairments” (Oregon State Bar, Specific Standards for Representation in Juvenile Dependency Cases, Standard 3A (June 23, 2017)).

Oregon law also requires training for court appointed special advocates appointed to serve as GALs for children in these proceedings (*see* ORS §§ 419B.112, 184.492).

5. Does state law expressly give the child the legal status of a party with all or 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...the child or the ward....The rights of the parties include, but are not limited to: (a) The right to notice of the proceeding and copies of the petitions, answer, motions, and other papers; (b) The right to appear with counsel and...to have counsel appointed as otherwise provided by law; (c) The right to call witnesses, cross examine witnesses and participate in hearings; (d) The right of appeal; and (3) The right to request a hearing” (ORS § 419B.875(1)(a)(A), (2)(a)-(d)).

6. Does state law pertaining to liability and confidentiality apply to 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(2)).

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

Points: 3 extra credit points

“The child-client’s lawyer in a dependency case should have adequate time and resources to competently represent the child client, including maintaining a reasonable caseload and having access to sufficient support services” (Oregon State Bar, Specific Standards for Representation in Juvenile Dependency Cases, Standard 3A (June 23, 2017)).

Sidebar Note:

- Reviewers indicate current practice in the majority of counties is for the court to appoint counsel for the child in every case. According to reviewers, when there are sibling groups, courts vary in whether one attorney is appointed to represent multiple children in a sibling group, or whether each child receives his or her own counsel. The grades above reflect Oregon statutes and rules. When Oregon statute and rules are amended to reflect current practice, Oregon’s grade will similarly improve.

	<h1>PENNSYLVANIA</h1>	Grade: B
	<h2>SCORE: 85</h2>	

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

Points: 40 out of 40

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

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

Points: 10 out of 10

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

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

Points: 15 out of 20

Under Pennsylvania law, the GAL must “[a]dvice the court of the child’s 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. C.S. § 6311(b)(9)). Caselaw has held that where there is a conflict between the child’s legal interests and best interests in a dependency proceeding, the GAL should request that the court appoint a separate GAL (*see In re J’K.M.*, 191 A. 3d 907 (Pa. Super. 2018)).

Pennsylvania Rule of Juvenile Court Procedure No. 1800(3) provides that although § 6311(b)(9) provides that there is not a conflict of interest for the guardian ad litem in communicating the child’s wishes and the recommendation relating to the appropriateness and safety of the child’s placement and services necessary to address the child’s needs and safety, that subsection is suspended insofar as it is inconsistent with Rule 1151, which allows for appointment of separate legal counsel and a guardian ad litem when the guardian ad litem determines there is a conflict of interest between the child’s legal interest and best interest.

“When the client is a minor or suffers from a diminished mental

capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. ...a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody..." "Pa. RPC 1.14 EC (1).

All children have a right to client-directed counsel in termination of parental rights cases (see *In re L.B.M.*, 639 Pa. 428 (2017)).

Basis for deduction: A child will receive client-directed counsel only under specified circumstances and/or in certain proceedings, but if not, the child's wishes will be articulated to the court.

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 0 out of 10

Basis for deduction: Pennsylvania law does not require specialized education and/or training for children's counsel or GALs.

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

Points: 10 out of 10

A "[p]arty is a person...who has standing to participate in the proceedings" (Pa.R.J.C.P. No. 1120). "In any permanency hearing held with respect to the child, the court shall consult with the child regarding the child's permanency plan in a manner appropriate to the child's age and maturity" (42 Pa. C.S. §6351).

6. Does state law 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 attorneys in dependency proceedings?

Points: 0 extra credit points

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

Sidebar Note:

- The Rules of Judicial Administration for Westmoreland County require attorneys “serving as guardian ad litem (GAL) in juvenile and orphans’ court for dependency/termination proceedings [to], annually receive three (3) hours of CLE credits devoted to dependency/termination proceedings.” If this were a statewide requirement, Pennsylvania would receive 6 points for criterion 4.





RHODE ISLAND

Grade:
C

SCORE: 74

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

Points: 40 out of 40

“Any child who is alleged to be abused or neglected as a subject of a petition filed in family court...shall have a guardian ad litem appointed by the court to represent this child. In addition, any young adult, who is eligible for extended foster care...and who has executed a voluntary agreement for extension of care may request the appointment of a guardian ad litem or court-appointed counsel. An appointment shall be in the discretion of the court” (R.I. Gen. Laws § 40-11-14(a)).

“A GAL is an attorney who usually is experienced in juvenile law...” (2009 RI Regulation Text 3795; RI Dept; of Children, Youth and Families, Policy Manual (2018-2019), Reg, 1100.0000(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

Court-appointed guardians ad litem or CASA attorneys represent a minor throughout the course of the family court proceedings in which they are appointed; a family court appointment allows the guardian to represent her ward on appeal (*Sam M. ex rel. Elliott v. Carvieri* (2010) 608 F.3d 77, 86; *Zinni v. Zinni*, 103 R.I. 417, 238 A.2d 373 (1968)).

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

Points: 0 out of 20

“A GAL or CASA is assigned to represent the interests of a child who is the subject of a Dependent/Neglected/Abused Petition” RI Dept; of Children, Youth and Families, Policy Manual (2018-2019), Reg, 1100.0000(A)).

Attorney GALs and CASA attorneys are 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: A child will only receive best interest representation.

<p>4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?</p>	<p>Points: 8 out of 10</p> <p>Rhode Island requires attorneys appointed in dependency/neglect/abuse cases complete “three (3) hours in family law and/or procedure with an emphasis on the specific area of appointment in the previous MCLE reporting year. (R.I. Supreme Court Executive Order No. 2013-07).</p> <p>Basis for deduction: Specialized education regarding family law and procedure with an emphasis in dependency/neglect/abuse cases is required but multidisciplinary elements are neither expressly nor impliedly required.</p>
<p>5. Does state law expressly give the child the legal status of a party with all or some of the rights of a party?</p>	<p>Points: 10 out of 10</p> <p>Rhode Island law appears to consider children to be parties to the legal proceedings (see, <i>e.g.</i>, 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”).</p>
<p>6. Does state law pertaining to liability and confidentiality apply to attorneys representing children in dependency proceedings?</p>	<p>Points: 6 out of 10</p> <p>“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client” (RI Supreme Court Art. V, Rule 1.14(a)).</p> <p>Basis for deduction: While the Rules of Professional conduct apply to children’s counsel, Rhode Island includes the minor exception of holding any attorney, director, coordinator, or social worker employed in the court appointed special advocate program and its court appointed volunteer special advocates harmless for “damages resulting from acts or omissions committed in the discharge of his or her duties with the program and within the scope of his or her employment which may constitute negligence, but which acts are not wonton, malicious, or grossly negligent as determined by a court of competent jurisdiction” (R.I. Genl. Laws § 9-1-27.2).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 0 extra credit points</p> <p>Rhode Island law does not address caseload standards for attorneys representing children in dependency proceedings.</p>

Sidebar Note:

- Under Rhode Island law, a volunteer court-appointed special advocate may be assigned to assist the guardian ad litem, in the court appointed special advocate's office (CASA). (R.I. Gen. Laws § 40-11-14(b)). Regulations detail that the Office of the CASA, an arm of the Family Court, consists of attorneys knowledgeable in juvenile law, social workers and volunteers from the community.

	<h1 style="margin: 0;">SOUTH CAROLINA</h1>	Grade: <h1 style="font-size: 2em; margin: 0;">D</h1>
	<h2 style="margin: 0;">SCORE: 60</h2>	

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

Points: 20 out of 40

“Children must be appointed a guardian ad litem by the family court. A guardian ad litem...must be represented by legal counsel in any judicial proceeding” (S.C. Code Ann. § 63-7-1620(1)).

“The family court may appoint legal counsel for the child” (S.C. Code Ann. § 63-7-1620(2)).

With regard to termination of parental rights proceedings, South Carolina law provides that “[a] child...must be appointed a guardian ad litem by the family court. If a guardian ad litem who is not an attorney finds that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed. If the guardian ad litem is an attorney, the judge must determine on a case-by-case basis whether counsel is required for the guardian ad litem. However, counsel must be appointed for a guardian ad litem who is not an attorney in any case that is contested” (S.C. Code Ann. § 63-7-2560(B)).

Basis for deduction: Under South Carolina law, a GAL may or may not be an attorney, and although the GAL must be represented by legal counsel, the appointment of legal counsel to represent the child is discretionary with regard to dependency proceedings. With regard to termination of parental rights cases, the appointment of counsel for children is required only for contested cases and under other specific circumstances.

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/or guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule” (Rule 264(a), SCACR).

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

Points: 4 out of 20

“The family court may appoint legal counsel for the child” (S.C. Code Ann. § 63-7-1620(2)).

Basis for deduction: Basis for deduction: South Carolina law states that the appointment of client-directed legal counsel for children is discretionary (S.C. Code Ann. § 63-7-1620(2)). Further, South Carolina law requires the GAL to provide the family court with a written report that includes “the wishes of the child” but only “if appropriate” (S.C. Code Ann. § 63-11-510(5)). Thus, the child may receive client-directed representation and if not, his/her expressed wishes are not required to be articulated to the court.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

Basis for deduction: Although South Carolina law appears to require some training for GALs (see, *e.g.*, S.C. Code Ann. § 63-11-500(A)), the elements of that training are not specified. Further, South Carolina law does not expressly require a child’s legal counsel to have any specialized education and/or training.

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

Points: 10 out of 10

“‘Party in interest’ includes the child...” (S.C. Code Ann. § 63-7-20(17)).

6. Does state law 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.C. Rules of Professional Conduct, Rule 1.14(a)).

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

Points: 0 extra credit points

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

Sidebar Note:

- While there is no immunity from liability specifically carved out for counsel to children, court-appointed guardians ad litem are entitled to immunity from liability pursuant to the statute creating the program. (S.C. Code Ann. § 560 (2008).)
- Under *Brode v. Brode*, 287 S.C. 457, 298 S.E.2d 483 (1982), if a child has a duly-appointed legal representative, the attorney has an ethical obligation to look to the legal representative (the guardian ad litem) for those decisions which are ordinarily those of the client.

	SOUTH DAKOTA	Grade: C
SCORE: 75		

<p>1. Does state law mandate that attorneys be appointed for children in dependency proceedings?</p>	<p>Points: 40 out of 40</p> <p>“[T]he court shall appoint an attorney for any child alleged to be abused or neglected in any judicial proceeding” (S.D. Codified Laws § 26-8A-18).</p>
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<p>2. When an attorney is appointed for a child in dependency proceedings, does state law define the duration of the appointment?</p>	<p>Points: 10 out of 10</p> <p>The court shall appoint an attorney for any child alleged to be abused or neglected “in any judicial proceeding” (S.D. Codified Laws § 26-8A-18).</p>
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<p>3. To what extent will a child receive client-directed representation?</p>	<p>Points: 0 out of 20</p> <p>“The attorney for the child shall represent the child’s best interests” (S.D. Codified Laws § 26-8A-18).</p> <p>Basis for Deduction: Under South Dakota law, a child’s attorney must represent the child’s best interests which may not be consistent with the child’s expressed wishes. Thus the child’s wishes may not be represented.</p>
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<p>4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?</p>	<p>Points: 10 out of 10</p> <p>“An attorney appointed to represent abused or neglected children, including those appointed as Guardian ad Litem, shall certify that they have viewed and completed the A&N Attorney Training developed by the South Dakota Unified Judicial System” (UJS Presiding Judge Policy 3-PJ-05, revised and effective February 1, 2010; see also South Dakota Unified Judicial System, <i>South Dakota Guidelines for Judicial Process in Child Abuse and Neglect Cases</i> (March 2014)).</p>
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5. Does state law expressly give the child the legal status of a party with all or some of the rights of a party?

Points: 5 out of 10

Basis for deduction: South Dakota law expressly gives the child some rights of a party, such as requiring the court to advise the child of his/her constitutional and statutory rights, including the right to be represented by an attorney, at the first appearance before the court, the right to file, at the conclusion of the proceedings, a motion for a new hearing and, if the motion is denied, the right to appeal according to the rules of appellate procedure governing civil actions (S.D. Codified Laws § 26-7A-30). However, South Dakota law does not expressly give children the legal status of party.

6. Does state law 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, Rule 1.14).

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

Points: 0 extra credit points

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

Sidebar Note:

- The South Dakota Guidelines for Judicial Process in Child Abuse and Neglect Cases is in the midst of revisions. A new version is expected shortly. To the extent these revisions change South Dakota’s grade, they will be reflected in the next edition of this report.
- Reviewers indicated that in practice in South Dakota, children are treated as a party to the proceedings. The authors recommend incorporating this commendable practice in statute.

	TENNESSEE	Grade: B
	SCORE: 89	

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

Points: 40 out of 40

“A child is entitled to ... a guardian ad litem for proceedings alleging a child to be dependent and neglected or abused” (Tenn. Code Ann. § 37-1-126(a) (1)). “The court, in any proceeding under this part resulting from a report of harm or an investigation report ..., shall appoint a guardian ad litem for the child who was the subject of the report” (Tenn. Code Ann. § 37-1-149(a)(1)). *See also* Tenn. R. Juv. P. Rule 302(d) (1) (“court shall make every effort to appoint a guardian ad litem for the child prior to the preliminary hearing”).

In cases dealing with reports of abuse or neglect or investigation reports under Tenn. Code §§ 37-1-401 through 37-1-411, “[t]he court shall appoint a guardian ad litem for every child who is or may be the subject of such report. The appointment of the guardian ad litem shall be made upon the filing of the petition or upon the court’s own motion, based upon knowledge or reasonable belief that the child may have been abused or neglected. The child who is or may be the subject of a report or investigation of abuse or neglect shall not be required to request the appointment of counsel. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian” (Tenn. Sup. Ct. Rules, Rule 13, § 1 (d)(2)(C)).

In proceedings to terminate parental rights, “[t] he court shall appoint a guardian ad litem for every child, unless the termination is uncontested. The child who is or may be the subject of proceedings to terminate parental rights shall not be required to request appointment of counsel. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian” (Tenn. Sup. Ct. Rules, Rule 13, § 1 (d)(2)(D)).

“‘Guardian ad litem’ is a lawyer ...” (Tenn. Sup. Ct. Rules, Rule 40(b)(1)).

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

Points: 10 out of 10

“The 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. Rules, Rule 40(c)(3)). The responsibilities and duties of a lawyer guardian ad litem include “filing

an appeal when appropriate...and...representing the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party” (Tenn. Sup. Ct. Rules, Rule 40(d)(10)).

“Appointed counsel shall continue to represent an indigent party throughout the proceedings, including any appeals, until the case has been concluded or counsel has been allowed to withdraw by a court” (Tenn. Sup. Ct. Rules, Rule 13, § 1 (e)(5)).

“An attorney who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by order of the court” (Tenn. R. Juv. P. Rule 104(b)).

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

Points: 20 out of 20

“The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child’s best interests and ensuring that the child’s concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem” (Tenn. Sup. Ct. Rules, Rule 40(c)(1)).

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 10 out of 10

“Any guardian ad litem appointed by the court shall receive training appropriate to that role prior to such appointment. Such training shall include, but is not limited to, training in early childhood, child and adolescent development provided by a qualified professional” (Tenn. Code Ann. § 37-1-149(a)(2)).

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

Points: 5 out of 10

Summons must be directed, and service of orders, pleadings subsequent to the original petition and every motion, notice appearance or similar papers, must be directed or served upon a child alleged to be dependent and neglected who is 14 years of age or more, Tenn. R. Juv. P. Rule 103(a); 106(a).

Basis for Deduction: Under Tennessee law, the child is not expressly given the legal status of a party, but the children over the age of 14 are expressly given the right to notice and in certain circumstances the child’s guardian ad litem is given party status (see, *e.g.*, Tenn. Code Ann. § 37-1-602(a)(5)).

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

Points: 4 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” (Tenn. Sup. Ct. Rule 8, Rule 1.14(a)).

“Any guardian ad litem or special advocate so appointed by the court shall be presumed to be acting in good faith and in so doing shall be immune from any liability that might otherwise be incurred while acting within the scope of such appointment” (Tenn. Code Ann. § 37-1-149(b)(3)).

Basis for deduction: Although the Rules of Professional Conduct apply to counsel for children in dependency cases, there is a major exception allowing broad immunity.

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

Points: 0 extra credit points

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

	TEXAS	Grade: A
	SCORE: 91	

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: 10 out of 10

An attorney ad litem is required to “attend all legal proceedings in the suit” (Tex. Fam. Code § 107.003(3) (g)).

“[A]n order appointing the Department of Family and Protective Services as the child’s managing conservator may provide for the continuation of the appointment of the attorney ad litem for the child as long as the child remains in the conservatorship of the department” (Tex. Fam. Code § 107.016(2)).

“An attorney ad litem ... appointed for a young adult who receives services ... shall assist the young adult as necessary to ensure that the young adult receives appropriate services from the service provider or institution, or the state agency that regulates the services provider or institution” (Tex. Fam. Code § 263.606).

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

Points: 20 out of 20

The attorney ad litem for child “shall, in a developmentally appropriate manner, ... represent the child’s expressed objectives of representation and follow the child’s expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem” (Tex. Fam. Code § 107.004(a)(2)). “An attorney ad litem ... who determines [pursuant to Tex. Fam. Code § 107.008(a)] that the child cannot meaningfully formulate the child’s expressed objectives of representation may present to the court a position that the attorney determines will serve the best interests of the child” (Tex. Fam. Code § 107.008(b)).

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 10 out of 10

“An attorney ad litem must be trained in child advocacy or have experience determined by the court to be equivalent to that training” (Tex. Fam. Code § 107.003(a) (2)). “The attorney ad litem appointed for the child shall...as appropriate, considering the nature of the appointment, become familiar with the [ABA's] standards of practice for attorneys who represent children in abuse and neglect cases, the suggested amendments to those standards adopted by the NACC], and the [ABA]'s standards of practice for attorneys who represent children in custody cases” (Tex. Fam. Code § 107.004(a)(3)). “An attorney ad litem appointed for a child in a proceeding under Subtitle E shall complete at least three hours of continuing legal education relating to representing children in child protection cases...as soon as practicable after the attorney ad litem is appointed. An attorney ad litem is not required to comply with this subsection if the court finds that the attorney ad litem has experience equivalent to the required education (Tex. Fam. Code § 107.004(b)). Attorneys on the list maintained by the court as qualified for appointment as attorney ad litem must also complete at least three hours of continuing legal education relating to the representation of a child each year before the anniversary date of the attorney's placement on the list (Tex. Fam. Code § 107.004(b-1)).

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

Points: 5 out of 10

Basis for deduction: Texas law does not expressly give party status to children in these proceedings. However, Texas law expressly gives children certain rights, such as providing that the child “shall attend each permanency hearing unless the court specifically excuses the child's attendance” (Tex. Fam. Code § 263.302), and authorizes the AAL for the child to participate in the litigation “to the same extent as an attorney for a party” (Tex. Fam. Code § 107.003(a)(1)(F)).

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

Points: 6 out of 10

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

conscious indifference or reckless disregard to the safety of another; was made in bad faith or with malice; or is grossly negligent or willfully wrongful” (Tex. Fam. Code § 107.009).

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

Points: 0 extra credit points

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

Sidebar Note:

- Reviewers noted that because the state of Texas provides no funding for representation of children or indigent parents, the burden of providing attorneys falls on the counties, which vary widely in their ability to pay for (or even produce) the number of lawyers necessary to provide adequate representation. Some counties have begun to experiment with two models for providing the representation recently authorized by the Legislature. – a staff attorney model which provides for an “Office of Child Representation” and a private attorney model which provides for a system of “Managed Assigned Counsel”. Both require counties to include the maximum allowable caseloads for the staff or private attorneys who provide legal services (Tex. Fam. Code §§ 107.258(3); 107.304(3)).



	<h1>UTAH</h1>	Grade: <h1>C</h1>
	<h2>SCORE: 78</h2>	

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

Points: 40 out of 40

“In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78A-6-902” (Utah Code Ann. § 78A-6-317(4)), which sets forth the duties and responsibilities of an attorney guardian ad litem. “In any action initiated by the state, a political subdivision of the state, or a private party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in accordance with Sections 78A-6-317 and 78A-6-902” (Utah Code Ann. § 78A-6-1111(1)(d)).

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

Points: 10 out of 10

“The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court” (Utah Code Ann. § 78A-6-902(5)). An attorney guardian ad litem “participates in all appeals, unless excused by the court” (Utah Code Ann. § 78A-6-902(3) (f)).

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

Points: 6 out of 20

“An attorney guardian ad litem shall represent the best interest of a minor....If the minor’s wishes differ from the attorney’s determination of the minor’s best interest, the attorney guardian ad litem shall communicate the minor’s wishes to the court in addition to presenting the attorney’s determination of the minor’s best interest.... A difference between the minor’s wishes and the attorney’s determination of best interest may not be considered a conflict of interest for the attorney....The guardian ad litem shall disclose the wishes of the child unless the child...instructs the guardian ad litem to not disclose the child’s wishes; or...has not expressed any wishes, . (Utah Code Ann. § 78A-6-902(8)(a)–(d)).

Basis for deduction: The child will not receive client-directed representation but his/her expressed wishes must be communicated to the court unless the child has instructed the GAL otherwise.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 10 out of 10

Utah law requires that each attorney guardian ad litem, prior to representing any minor before the court, be trained in “applicable statutory, regulatory, and case law” and “nationally recognized standards for an attorney guardian ad litem” (Utah Code Ann. § 78A-6-902(3) (b)).

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

Points: 5 out of 10

A child who is the subject of a juvenile court hearing is entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative reviews, and has a right to be heard at specified hearings (Utah Code Ann. § 78A-6-317(1)).

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

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

Points: 6 out of 10

“Every lawyer is responsible to observe the law and the Rules of Professional Conduct” (Utah Rules of Professional Conduct Preamble (1)).

Unless subject to a legislative subpoena, “all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise” Utah Code Ann. 78A-6-902(12)).

“An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem’s duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah” (Utah Code Ann. § 63G-7-202(3)).

Except as noted in Utah Code Ann. § 63G-7-202(3)(c), an action under the Governmental Immunity Act of Utah against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee’s duties, within the scope of employment, or under color of authority is a plaintiff’s exclusive remedy, and judgment under that Act against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim (Utah Code Ann. § 78A-6-902(7)(a)–(b)). Section 63G-7-202(3)(c) provides that a plaintiff may

not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim except under specified circumstances.

Basis for deduction: Although the Rules of Professional Conduct generally apply to attorney GALs, Utah law provides a minor exception allowing immunity in certain cases.

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

Points: 1 extra credit point

Utah law requires that the GAL Oversight Committee monitor the Office of the Guardian ad Litem's caseload and recommend to the Judicial Council adequate staffing of GALs and staff? (Judicial Administration Rule 4-906(3)(E)).

Sidebar Note:

- Reviewers from Utah noted that in Utah, the Office of the Guardian ad Litem and CASA is a unified, statewide office that provides training and oversight of all attorneys and staff. In Utah child welfare cases, caseloads are monitored by the director to ensure they are manageable and that each child receives the best representation. The authors encourage these statewide caseload practices to be codified.

	VERMONT	Grade: A
	SCORE: 90	

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

Points: 40 out of 40

“The court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings” (33 V.S.A. § 5112(a)).

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

Points: 10 out of 10

“[T]he appearance of an attorney shall be deemed to be withdrawn upon the entry of final judgment and the expiration of the time for appeal therefrom. Prior to the expiration of the time for appeal from final judgment in such an action, an attorney who has entered an appearance may withdraw only with leave of court granted” (V.R.F.P. Rule 15(f)(1)(A)).

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

Points: 20 out of 20

“It is the duty of assigned counsel to represent the interests of clients to the full measure of their professional responsibility” (Vt. A.O. 32 § 2).

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 0 out of 10

Vermont law does not require specialized education and/or training for attorneys representing children in dependency proceedings.

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

Points: 10 out of 10

The term party includes “the child with respect to whom the proceedings are brought” (33 V.S.A. § 5102(22)(A)).

6. Does state law 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 attorneys in dependency proceedings?

Points: 0 extra credit points

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



	<h1>VIRGINIA</h1>	Grade: B
	<h2>SCORE: 83</h2>	

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

Points: 40 out of 40

“Prior to the hearing by the court of any case involving a child who alleged to be abused or neglected or who is subject of an entrustment agreement or a petition seeking termination of residual parental rights...the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child” (Va. Code Ann. § 16.1-266(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 10

An attorney appointed as a GAL “shall represent the child...at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law” (Va. Code 16-1-268). The attorney GAL is required to “[f]ile appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case” (Virginia Judicial Council, Standards to Govern the Performance of Guardians ad Litem for Children, Standard J). The GAL should also ensure that the child has representation in any appeal related to the case regardless of who files the appeal. During an appeal process initiated by another party, the GAL for a child may file a brief and participate fully at oral argument. If the GAL feels he or she lacks the necessary experience or expertise to handle an appeal, the GAL should notify the court and seek to be replaced (Virginia Judicial Council, Standards to Govern the Performance of Guardians ad Litem for Children, Standard J, Comments).

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

Points: 12 out of 20

Basis for deduction: Under Virginia law, the attorney guardian ad litem “shall vigorously represent the child fully protecting the child’s interest and welfare” and “shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child’s best interest and welfare” (Va. Sup. Ct. R. 8:6). “The role and responsibility of the GAL is to represent, as an attorney, the child’s best interests before the court” (Virginia Judicial Council, Standards to Govern the Performance of Guardians ad Litem for Children,

Introductory Comment). However, Virginia law also provides that under specified circumstances the court may appoint an attorney to act as legal counsel for the child (Va. Code Ann. § 16.1-266(E)).

Thus, a child may receive client-directed representation, but if not the child's wishes will be communicated to the court.

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 10 out of 10

An attorney GAL must complete seven hours of MCLE approved continuing legal education in the following areas in order to initially comply with these standards and be included on the list of qualified attorneys: overview of the Juvenile and Domestic Relations District Court Law; roles, responsibilities and duties of guardian ad litem representation; laws governing child abuse and neglect, foster care case review, termination of parental rights and entrustments; role of social service agencies in handling abuse and neglect cases; developmental needs of children; characteristics of abusive and neglectful families and of children who are victims; physical and medical aspects of child abuse and neglect; communication with children; children as witnesses; use of closed circuit television; and cultural awareness. Additionally, an attorney GAL must complete six hours of continuing education biennially thereafter on any topic related to the representation of children as a guardian ad litem (Virginia Judicial Council, Standards to Govern the Appointment of Guardians ad Litem Pursuant to § 16.1-266, Code of Virginia, Standards, Section B).

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

Points: 5 out of 10

In dependency proceedings, Virginia law expressly gives children some rights, such as the right to be heard in permanency hearings (Va. Code Ann. § 16.1-282.1(C), right to notice of specified hearings if he or she is twelve years of age or older (Va. Code Ann. § 16.1-252(B)), the right to be represented by an attorney GAL (Va. Code Ann. § 16.1-266(A)), and the right to participate on appeal (Virginia Judicial Council, Standards to Govern the Performance of Guardians ad Litem for Children, Standard J).

Basis for deduction: Virginia law does not expressly provide party status to children in dependency proceedings with all rights appurtenant thereto.

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

Points: 6 out of 10

“Attorneys who serve as GALs are subject to the Rules of Professional Conduct promulgated by the Virginia State Bar as they would be in any other case, except when the special duties of a GAL conflict with such rules. For example, an attorney would follow the general conflict rule (1.7) to determine if there would be a possible conflict of interest if the attorney served as GAL. But unlike the Rules for Professional Conduct as they apply to confidentiality, there may be times when attorneys serving as a GAL must, in furtherance of their role as GAL, disclose information provided by the child to the court” (Virginia Judicial Council, Standards to Govern Performance of Guardians ad Litem for Children, Standard J).

Basis for deduction: Although the Rules of Professional Conduct apply to children’s counsel in dependency hearings, there are minor exceptions.





WASHINGTON

Grade:

D

SCORE: 61

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

Points: 20 out of 40

“The court shall appoint a guardian ad litem for a child who is the subject of an action [in Dependency and Termination of Parent-Child Relationship proceedings], 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 an independent attorney in the proceedings (Rev. Code Wash. § 13.34.100(1)). For all children age twelve or older, “the department or supervising agency and the child’s guardian ad litem shall each notify a child of his or her right to request an attorney and shall ask the child whether he or she wishes to have an attorney” on an annual basis (Rev. Code Wash. § 13.34.100(7)(c)). “The court may appoint an attorney to represent the child’s position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department” (Rev. Code Wash. § 13.34.100(7) (a)).

“The court must appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship pursuant to RCW 13.34.180 and when there is no remaining parent with parental rights” (Rev. Code Wash. § 13.34.100(6)(a)), when a child petitions the juvenile court to reinstate the previously terminated parental rights of his or her parent (Rev. Code Wash. § 3.34.215(3)), and when a youth receives extended foster care services (Rev. Code Wash. § 3.34.267 (6)).

Basis for deduction: The appointment of attorneys for children is mandated under limited circumstances, for all other children it 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

“Legal services provided by an attorney appointed [for a child in a dependency proceeding six months after the court grants a petition to terminate the parent and child relationship] do not include representation of the child in any appellate proceedings relative to the termination of the parent child relationship” (Rev. Code Wash. § 3.34.100(6)(b)).

Basis for deduction: In those cases in which an attorney has been appointed for a child in dependency and termination proceedings,

Washington law does not expressly ensure attorney representation on appeal, and in certain situations, expressly precludes attorney representation on appeal.

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

Points: 12 out of 20

When an attorney is appointed for a child in dependency proceedings, the role of the attorney is “to represent the child’s position” (Rev. Code Wash. § 13.34.100(7)(a)). The role of the guardian ad litem includes the duty to “report to the court any views or positions expressed by the child on issues pending before the court” (Rev. Code Wash. § 13.34.105(1)(b)).

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

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

“All guardians ad litem must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements” (Rev. Code Wash. § 13.34.102(1)).

Basis for deduction: Although Washington requires GALs to have specialized multidisciplinary education and/or training, it does not require attorneys appointed as legal counsel for children in dependency proceedings to have specialized education and/or training. Washington law does encourage specialized education and training for attorneys appointed to represent a child in a dependency proceeding six months after the court grants a petition to terminate the parent and child relationship by requiring “[s]ubject to the availability of amounts appropriated for this specific purpose, the state shall pay the costs of legal services provided by an attorney [so] appointed . . . , if the legal services are provided in accordance with the standards of practice, [and] voluntary training . . . developed and recommended by the statewide children’s representation work group pursuant to section 5, chapter 180, Laws of 2010” (Rev. Code Wash. § 13.34.100(6)(c)(i)).

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

Points: 5 out of 10

Washington law expressly provides children in dependency proceedings with the right to service of summons “if the child is twelve or more years of age” (Rev. Code Wash. § 13.34.070(1)).

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

6. Does state law 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” (Washington State Court Rules of Professional Conduct, Rule 1.14(a)).

If the court has not already appointed an attorney for the child, or the child is not represented by a privately retained attorney and the child or any individual retains an attorney for the child for the purposes of filing a motion to request appointment of an attorney at public expense, the rules relating to the confidentiality of records not relating to the commission of juvenile records still apply (Wash. Rev. Code § 13.34.100(7)(b)(ii)).

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

Points: 3 extra credit points

Washington law provides that costs for legal services will only be provided by the state in the legal services are provided in accordance with “caseload limits developed and recommended by the statewide children’s representation work group pursuant to section 5, chapter 180, Laws of 2010” (Rev. Code Wash. § 13.34.100(6)(c)(i)). Further, “[c]ounties are encouraged to set caseloads as low as possible and to account for the individual needs of the children in care.

Notwithstanding the caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010, when one attorney represents a sibling group, the first child is counted as one case, and each child thereafter is counted as one-half case to determine compliance with the caseload standards pursuant to (c)(i) of this subsection and RCW 2.53.045”(Rev. Code Wash § 13.34.100 (6)(c)(i)).

Sidebar Note:

- As noted above, Washington does not explicitly require specialized training for attorneys representing children in dependency cases. However, the Washington legislature “recognizes that when children are provided attorneys in their dependency and termination proceedings, it is imperative to provide them with well-trained advocates so that their legal rights around health, safety, and wellbeing are protected. Attorneys, who have different skills and obligations than guardians ad litem and court-appointed special advocates, especially in forming a confidential and privileged relationship with a child, should be trained in meaningful and effective child advocacy, the child welfare system and services available to a child client, child and adolescent brain development, child and adolescent mental health, and the distinct legal rights of dependent youth, among other things. Well-trained attorneys can provide legal counsel to a child on issues such as placement options, visitation rights, educational rights, access to services while in care and services available to a child upon aging out of care. Well-trained attorneys for a child can: (a) Ensure the child's voice is considered in judicial proceedings; (b) Engage the child in his or her legal proceedings; (c) Explain to the child his or her legal rights; (d) Assist the child, through the attorney's counseling role, to consider the consequences of different decisions; and (e) Encourage accountability, when appropriate, among the different systems that provide services to children” (2010 Session Laws of the State of Washington, Ch. 180, § 1). If this language were a statutory requirement instead of legislative findings, Washington would likely receive full points for criterion 4.



	<h1>WEST VIRGINIA</h1>	Grade: <h1>A</h1>
	<h2>SCORE: 98</h2>	

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

Points: 40 out of 40

Children 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 shall be appointed in the initial order. (W. Va. Code Ann. § 49-4-601(f)).

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

Children have the right to be represented by counsel “at every stage of the proceedings” (W. Va. Code Ann. § 49-4-601(f)). One of the attorney GAL’s duties is to “[a]ctively participate and timely file a response in any appeal, extraordinary writ, modification, or action ancillary to the abuse and neglect proceeding including proceedings to address the disruption of a permanent placement which affect the recommendations of the GAL. If an appeal is filed by another party in an abuse and neglect case, the GAL is required to file a respondent’s brief or summary response...” (W. Va. Rules of Proc. for Child Abuse and Neglect Proceedings, Appendix A at (E)(3)).

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

Points: 20 out of 20

“Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia” (W. Va. Code. Ann. § 49-4-601(g)).

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 8 out of 10

“Any attorney representing a party under this article shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals” (W. Va. Code Ann. § 49-4-601(g)).

Basis for deduction: Although requiring attorneys representing children in dependency court to receive specialized education and/or

training, West Virginia law does not expressly or impliedly require such training to be multidisciplinary.

5. Does state law expressly give the child the legal status of a party with all or 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. Rules of Proc. for Child Abuse and Neglect Proceedings, Rule (3)(m)).

6. Does state law 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. § 49-4-601(g)). “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” (WV Rules of Professional Conduct, Rule 1.14(a)).

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

Points: 0 extra credit points

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

	WISCONSIN	Grade: C
	SCORE: 71	

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

Points: 30 out of 40

“If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court. ...If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel” (Wis. Stat. § 48.23(1m) (b)).

“The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (3m), (10), (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel” (Wis. Stat. § 48.23(3m)).

“The court shall appoint [an attorney] guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding and for a child who is the subject of” legal guardianship proceedings (Wis. Stat. § 48.235(1)(c)).

Basis for deduction: Except for children under 12, Wisconsin law generally mandates the appointment of attorneys for children in dependency proceedings and mandates the appointment of attorney GALs for children in termination of parental rights proceedings.

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

Points: 5 out of 10

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

With regard to termination of parental rights proceedings, Wisconsin law provides that the appointment of the attorney GAL “terminates

upon the entry of the court’s final order or upon the termination of any appeal in which the guardian ad litem participates” (Wis. Stat. § 48.235(7)).

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

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

Points: 15 out of 20

With regard to dependency proceedings, the term counsel “means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem or court-appointed special advocate for any party in the same proceeding” (Wis. Stat. 48.23(1g)).

With regard to termination of parental rights proceedings, an attorney GAL “shall be an advocate for the best interests of the person or unborn child for whom the appointment is made. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of that person or the positions of others as to the best interests of that person or unborn child” (Wis. Stat. § 48.235(3)(a)).

Basis for deduction: A child receives client-directed representation under specified circumstances.

4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?

Points: 6 out of 10

“A lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 48 or 938 of the statutes unless the lawyer has attended 30 hours of guardian ad litem education approved under SCR 35.03; the lawyer has attended 6 hours of guardian ad litem education approved under SCR 35.03 during the combined current reporting period specified in SCR 31.01(7) at the time he or she accepts an appointment and the immediately preceding reporting period; or the appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor” (Wis. Sup. Ct. Rule 35.01).

Basis for deduction: Although Wisconsin requires attorneys serving as GALs to have specialized multidisciplinary education and/or training it does not provide attorneys serving as a child’s legal counsel to have such education and/or training.

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

Points: 5 out of 10

Wisconsin law expressly provides rights to some children in dependency proceedings. “[A] copy of the petition...shall be given to the child if the child is 12 years of age or over” (Wis. Stat. § 48.255(4)). Children are generally entitled to attend hearings unless the court finds it is in the best interest of the child, and if the child’s counsel or guardian ad litem consents, to temporarily exclude the child from a hearing on a petition alleging that the child is in need of protection or services (Wis. Stat. § 48.299(3)). Under certain conditions, the court is required to “consult with the child, in an age-appropriate and developmentally appropriate manner, regarding the child’s permanency plan and any other matters the court finds appropriate” (see, e.g., Wis. Stat. § 48.38(5m)(c)2).

Basis for deduction: Although Wisconsin law affords children some of the rights generally accorded a party it does not expressly provide party status to children in dependency proceedings. Wisconsin law does impliedly refer to the child as a party. *See* Wis. Stat. §§ 48.30(2) (“Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing [to determine whether any party wishes to contest an allegation that the child or unborn child is in need of protection or services] if they wish to consult with an attorney on the request for a jury trial or a substitution of a judge.”); 48.30(8)(a) (“Before accepting an admission or plea of no contest of the alleged facts in a petition, the court shall ... [a]ddress the parties present including the child...”); 48.422(5) (“Any nonpetitioning party, including the child, shall be granted a continuance of the hearing [of the petition to terminate parental rights] for the purpose of consulting with an attorney on the request for a jury trial or concerning a request for the substitution of a judge.”).

6. Does state law 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” (Wisconsin Supreme Court Rule 20:1:14(a)).

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

Points: 0 extra credit points

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

	WYOMING	Grade: B
	SCORE: 83	

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

Points: 40 out of 40

“The court shall appoint counsel to represent any child in a court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child’s guardian ad litem unless a guardian ad litem shall be charged with representation of the child’s best interest” (Wyo. Stat. Ann. § 14-3-211(a)).

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

Points: 10 out of 10

“[T]he obligation of the attorney guardian ad litem to the child is a continuing one and does not cease until the attorney guardian ad litem is formally relieved by court order or the court terminates its jurisdiction over the child. This continuing obligation includes any appeals that may result from the case in which the GAL has been appointed” (Wyoming Rules and Regulations for the GAL Program, Ch. 2 § 3(b)(xiv)).

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

Points: 6 out of 20

“The attorney or guardian ad litem shall be charged with representation of the child’s best interest” (Wyo. Stat. Ann. § 14-3-211(a)). The attorney guardian ad litem is also charged with making a determination of the child’s best interests and is required to consider the child’s wishes and preferences when determining the child’s best interests. 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 (Wyoming Rules and Regulations for Guardian Ad Litem Program, Ch. 2, § 2(a)). Wyoming’s Guardians Ad Litem Handbook notes that in these situations, the GAL “should consider whether appointment of an attorney to represent the child’s direct wishes is necessary” (Wyoming Guardians Ad Litem Program, *Guardians Ad Litem Skills-Based Handbook: A Guide to Guardian Ad Litem Work in Wyoming’s Juvenile Courts* (Jan. 2014) Appointment Statute and Role P2-1.02.00).

Basis for deduction: A child will not receive client-directed representation but Wyoming law requires the attorney guardian ad litem to articulate the child's expressed preferences and wishes to the court.

4. To what extent does state law require specialized education with multidisciplinary elements for child's counsel? If not required for child's counsel, is it required for a child's GAL?

Points: 8 out of 10

A lawyer shall not be qualified for an initial contract, employment, appointment or assignment for placement on the GAL Panel unless the attorney has received within the two years prior to applying for certification with the Program, ten or more live hours of child related training accredited by the Wyoming State Bar, or the attorney otherwise provides evidence acceptable to the Administrator that he or she has recent training, experience, or both, which is reasonably equivalent. In order to remain on the GAL Panel and be eligible for appointments, the attorney GAL shall obtain five live hours of continuing legal education per legal education reporting year; these five live hours shall be child related training and relevant to an appointment in Juvenile Court proceedings (Wyoming Rules and Regulations for the GAL Program, Ch. 2, § 4(b)(i)(ii)).

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

Points: 10 out of 10

“Parties’ include the child, his parents, guardian, or custodian, the state of Wyoming and any other person made a party by an order to appear, or named by the juvenile court (Wyo. Stat. Ann. § 14-3-402(a)(xiv)).

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

Points: 4 out of 10

While attorneys in Wyoming are bound by the Rules of Professional Conduct, attorney GALs acting “in good faith” are “immune from any civil or criminal liability that might otherwise result” by reason of their actions (Wyo. Stat. Ann. § 14-3-209).

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

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

Points: 5 extra credit points

Wyoming law provides that an attorney “who contracts with, or is employed by, the Office to perform attorney guardian ad litem services on a part-time basis shall not carry more than forty 40 juvenile court cases, including juvenile delinquencies, and an attorney

who contracts with, or is employed by, the Office on a full-time basis shall not carry more than 80 court cases, including juvenile delinquencies” (Guardians Ad Litem Program Ch. 2, § 6(b)). In Wyoming, a case is counted by child so a family with five children counts as five distinct cases for caseload purposes.

Sidebar Notes:

- In practice, Wyoming holds an annual 2-3 day state symposium on children and youth that is mandatory annual multidisciplinary training through its Joint Symposium on Children and Youth. This practice is commendable. If this practice were required by rule or statute, Wyoming would likely receive full credit for criterion 4.
- Wyoming received full credit for criterion 2 based on the GAL Manual and the comprehensive nature of that program within the state. We may revisit this in future editions in light of the possibility of the exercise of judicial discretion under Wyo. Stat. § 14-2-312, which is specific to termination of parental rights and provides "the court shall appoint a guardian ad litem to represent the child unless the court finds the interests of the child will be represented adequately by the petitioner or another party to the action and are not adverse to that party.



APPENDIX A:
ABA Model Act Report Card and Model Act Report Card

ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings	Grade:
SCORE: 100	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 child’s lawyer for each child who is the subject of a petition in an abuse and neglect proceeding. The appointment of a child’s lawyer must be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing” (ABA Model Act, § 3(a)).
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 available appellate proceedings” (ABA Model Act, § 6).
3. To what extent will a child receive client-directed representation?	Points: 20 out of 20 “When the child is capable of directing the representation by expressing his or her objectives, the child’s lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct. In a developmentally appropriate manner, the lawyer shall elicit the child’s wishes and advise the child as to options” (ABA Model Act, § 7(c)).
4. To what extent does state law require specialized education with multidisciplinary elements for child’s counsel? If not required for child’s counsel, is it required for a child’s GAL?	Points: 8 out of 10 “The court shall appoint as the child’s lawyer an individual who is qualified through training and experience, according to standards established by [insert reference to source of standards]...Lawyers for children shall receive initial training and annual continuing legal education that is specific to child welfare law. Lawyers for children shall be familiar with all relevant federal, state, and local applicable laws” (ABA Model Act, § 4(a)-(b)).
5. Does state law expressly give the child the legal status of a party with all or some of the rights of a party?	Points: 10 out of 10 “The child in these proceedings is a party” (ABA Model Act, § 2(b)).
6. Does state law pertaining to liability and confidentiality	Points: 10 out of 10

<p>apply to legal counsel representing children in dependency proceedings?</p>	<p>“Child’s lawyer’ (or ‘lawyer for children’) means a lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality and competent representation, to the child as is due an adult client, subject to Section 7 of this Act” (ABA Model Act § 1(c)). “A child's lawyer shall participate in any proceeding concerning the child with the same rights and obligations as any other lawyer for a party to the proceeding” (ABA Model Act § 7(a)). “When the child is capable of directing the representation by expressing his or her objectives, the child’s lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct” (ABA Model Act, § 7(c)).</p>
<p>Extra Credit: Does state law address caseload standards for attorneys in dependency proceedings?</p>	<p>Points: 2 extra credit points</p> <p>“Lawyers for children shall not be appointed to new cases when their present caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer’s practice spent on abuse and neglect cases, the complexity of the case, and other relevant factors” (ABA Model Act, § 4(c)).</p>

**AMERICAN BAR ASSOCIATION
SECTION OF LITIGATION**

**SECTION OF FAMILY LAW
CRIMINAL JUSTICE SECTION
COMMISSION ON HOMELESSNESS AND POVERTY
COMMISSION ON YOUTH AT RISK**

**GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
STEERING COMMITTEE ON LEGAL AID AND INDIGENT DEFENSE**

JUDICIAL DIVISION

**PHILADELPHIA BAR ASSOCIATION
LOS ANGELES COUNTY BAR ASSOCIATION
LOUISIANA STATE BAR ASSOCIATION
YOUNG LAWYERS DIVISION**

**INDIVIDUAL RIGHTS AND RESPONSIBILITIES
GOVERNMENT AND PUBLIC SECTOR LAWYERS**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1
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8
9 **RESOLVED**, That the American Bar Association adopts the *Model Act Governing the*
10 *Representation of Children in Abuse, Neglect, and Dependency Proceedings*, dated August,
11 2011.

1 **ABA Model Act Governing the Representation of Children in**
2 **Abuse, Neglect, and Dependency Proceedings**¹

3
4 **SECTION 1. DEFINITIONS. In this [act]:**

5 **(a) “Abuse and neglect proceeding” means a court proceeding under [cite state**
6 **statute] for protection of a child from abuse or neglect or a court proceeding under [cite**
7 **state statute] in which termination of parental rights is at issue.**² **These proceedings**
8 **include:**

9 **(1) abuse;**

10 **(2) neglect;**

11 **(3) dependency;**

12 **(4) child in voluntary placement in state care;**

13 **(5) termination of parental rights;**

14 **(6) permanency hearings; and**

15 **(7) post termination of parental rights through adoption or other**
16 **permanency proceeding.**

17 **(b) A child is:**

18 **(1) an individual under the age of 18; or**

19 **(2) an individual under the age of 22 who remains under the jurisdiction of**
20 **the juvenile court.**

21 **(c) “Child’s lawyer” (or “lawyer for children”) means a lawyer who provides legal**
22 **services for a child and who owes the same duties, including undivided loyalty,**
23 **confidentiality and competent representation, to the child as is due an adult client, subject**
24 **to Section 7 of this Act.**³

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

¹ This Model Act was drafted under the auspices of the ABA Section of Litigation Children’s Rights Litigation Committee with the assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some language from the provisions of the NCCUSL Representation of Children in Abuse, Neglect, and Custody Proceedings Act.

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

³ *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].

101A

28 (e) “Developmental level” is a measure of the ability to communicate and
29 understand others, taking into account such factors as age, mental capacity, level of
30 education, cultural background, and degree of language acquisition.⁴
31

32 *Legislative Note: States should implement a mechanism to bring children into court*
33 *when they have been voluntarily placed into state care, if such procedures do not already exist.*
34 *Court action should be triggered after a specific number of days in voluntary care (not fewer*
35 *than 30 days, but not more than 90 days).*
36

37 *Commentary:*
38

39 Under the Act, a “child’s lawyer” is a client-directed lawyer in a traditional attorney-client
40 relationship with the child. A “best interests advocate” does not function as the child’s lawyer
41 and is not bound by the child’s expressed wishes in determining what to advocate, although the
42 best interests advocate should consider those wishes.
43

44 The best interest advocate may be a lawyer or a lay person, such as a court-appointed special
45 advocate, or CASA. The best interests advocate assists the court in determining the best
46 interests of a child and will therefore perform many of the functions formerly attributable to
47 guardians *ad litem*, but best interests advocates are not to function as the child’s lawyer. A
48 lawyer appointed as a best interest advocate shall function as otherwise set forth in state law.
49
50

51 SECTION 2. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.

52 (a) This [act] applies to an abuse and neglect proceeding pending or commenced on
53 or after [the effective date of this act].

54 (b) The child in these proceedings is a party.
55

56 SECTION 3. APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING.

57 (a) The court shall appoint a child’s lawyer for each child who is the subject of a
58 petition in an abuse and neglect proceeding. The appointment of a child’s lawyer must be
59 made as soon as practicable to ensure effective representation of the child and, in any
60 event, before the first court hearing.

61 (b) In addition to the appointment of a child’s lawyer, the court may appoint a best
62 interest advocate to assist the court in determining the child’s best interests.

63 (c) The court may appoint one child’s lawyer to represent siblings if there is no
64 conflict of interest as defined under the applicable rules of professional conduct.⁵ The

⁴ ABA Standards, Part I, Sec A-3.

⁵ NCCUSL Act, Sec. 4(c); *see also* ABA Standards, Part I, Sec B-1

65 court may appoint additional counsel to represent individual siblings at a child’s lawyer’s
66 request due to a conflict of interest between or among the siblings.

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

69 (e) The appointed child’s lawyer shall represent the child at all stages of the
70 proceedings, unless otherwise discharged by order of court.⁶

71 (f) A child’s right to counsel may not be waived at any court proceeding.

72

73 *Commentary:*

74

75 This act recognizes the right of every child to have quality legal representation and a voice in
76 any abuse, neglect, dependency, or termination of parental rights proceeding, regardless of
77 developmental level. Nothing in this Act precludes a child from retaining a lawyer. States
78 should provide a lawyer to a child who has been placed into state custody through a voluntary
79 placement arrangement. The fact that the child is in the state’s custody through the parent’s
80 voluntary decision should not diminish the child’s entitlement to a lawyer.

81

82 A best interest advocate does not replace the appointment of a lawyer for the child. A best
83 interest advocate serves to provide guidance to the court with respect to the child’s best interest
84 and does not establish a lawyer-client relationship with the child. Nothing in this Act restricts a
85 court’s ability to appoint a best interest advocate in any proceeding. Because this Act deals
86 specifically with lawyers for children, it will not further address the role of the best interest
87 advocate.

88

89 The child is entitled to conflict-free representation and the applicable rules of professional
90 conduct must be applied in the same manner as they would be applied for lawyers for adults. A
91 lawyer representing siblings should maintain the same lawyer-client relationship with respect to
92 each child.

93

94 SECTION 4. QUALIFICATIONS OF THE CHILD’S LAWYER.

95 (a) The court shall appoint as the child’s lawyer an individual who is qualified
96 through training and experience, according to standards established by [insert reference to
97 source of standards].

98 (b) Lawyers for children shall receive initial training and annual continuing legal
99 education that is specific to child welfare law. Lawyers for children shall be familiar with
100 all relevant federal, state, and local applicable laws.

101 (c) Lawyers for children shall not be appointed to new cases when their present

⁶ 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).

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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.⁷

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

Commentary:

States should establish minimum training requirements for lawyers who represent children. Such training should focus on applicable law, skills needed to develop a meaningful lawyer-client relationship with child-clients, techniques to assess capacity in children, as well as the many interdisciplinary issues that arise in child welfare cases.

The lawyer needs to spend enough time on each abuse and neglect case to establish a lawyer-client relationship and zealously advocate for the client. A lawyer's caseload must allow realistic performance of functions assigned to the lawyer under the [Act]. The amount of time and the number of children a lawyer can represent effectively will differ based on a number of factors, including type of case, the demands of the jurisdiction, whether the lawyer is affiliated with a children's law office, whether the lawyer is assisted by investigators or other child welfare professionals, and the percent of the lawyer's practice spent on abuse and neglect cases. States are encouraged to conduct caseload analyses to determine guidelines for lawyers representing children in abuse and neglect cases.

SECTION 5. ORDER OF APPOINTMENT.

(a) Subject to subsection (b), an order of appointment of a child's lawyer shall be in writing and on the record, identify the lawyer who will act in that capacity, and clearly set forth the terms of the appointment, including the reasons for the appointment, rights of access as provided under Section 8, and applicable terms of compensation as provided under Section 12.

(b) In an order of appointment issued under subsection (a), the court may identify a private organization, law school clinical program or governmental program through which a child's lawyer will be provided. The organization or program shall designate the lawyer who will act in that capacity and notify the parties and the court of the name of the assigned lawyer as soon as practicable.⁸ Additionally, the organization or program shall notify the parties and the court of any changes in the individual assignment.

⁷ ABA Standards, Part II, Sec L-1-2.

⁸ NCCUSL Act, Sec. 9

141 **SECTION 6. DURATION OF APPOINTMENT.**

142 **Unless otherwise provided by a court order, an appointment of a child’s lawyer in**
 143 **an abuse and neglect proceeding continues in effect until the lawyer is discharged by court**
 144 **order or the case is dismissed.⁹ The appointment includes all stages thereof, from removal**
 145 **from the home or initial appointment through all available appellate proceedings. With**
 146 **the permission of the court, the lawyer may arrange for supplemental or separate counsel**
 147 **to handle proceedings at an appellate stage.¹⁰**

148 *Commentary:*

149 As long as the child remains in state custody, even if the state custody is long-term or permanent,
 150 the child should retain the right to counsel so that the child’s lawyer can deal with the issues that
 151 may arise while the child is in custody but the case is not before the court.

152

153 **SECTION 7. DUTIES OF CHILD’S LAWYER AND SCOPE OF**
 154 **REPRESENTATION.**

155 **(a) A child’s lawyer shall participate in any proceeding concerning the child with**
 156 **the same rights and obligations as any other lawyer for a party to the proceeding.**

157 **(b) The duties of a child’s lawyer include, but are not limited to:**

158 **(1) taking all steps reasonably necessary to represent the client in the**
 159 **proceeding, including but not limited to: interviewing and counseling the client, preparing**
 160 **a case theory and strategy, preparing for and participating in negotiations and hearings,**
 161 **drafting and submitting motions, memoranda and orders, and such other steps as**
 162 **established by the applicable standards of practice for lawyers acting on behalf of children**
 163 **in this jurisdiction;**

164 **(2) reviewing and accepting or declining, after consultation with the client,**
 165 **any proposed stipulation for an order affecting the child and explaining to the court the**
 166 **basis for any opposition;**

167 **(3) taking action the lawyer considers appropriate to expedite the proceeding**
 168 **and the resolution of contested issues;**

169 **(4) where appropriate, after consultation with the client, discussing the**
 170 **possibility of settlement or the use of alternative forms of dispute resolution and**
 171 **participating in such processes to the extent permitted under the law of this state;¹¹**

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

⁹ *Id.*, Sec. 10(a)

¹⁰ 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).

¹¹ NCCUSL Act, Sec. 11 Alternative A..

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174 (6) where appropriate and consistent with both confidentiality and the child's
175 legal interests, consulting with the best interests advocate;

176 (7) prior to every hearing, investigating and taking necessary legal action
177 regarding the child's medical, mental health, social, education, and overall well-being;

178 (8) visiting the home, residence, or any prospective residence of the child,
179 including each time the placement is changed;

180 (9) seeking court orders or taking any other necessary steps in accordance
181 with the child's direction to ensure that the child's health, mental health, educational,
182 developmental, cultural and placement needs are met; and

183 (10) representing the child in all proceedings affecting the issues before the
184 court, including hearings on appeal or referring the child's case to the appropriate
185 appellate counsel as provided for by/mandated by [insert local rule/law etc.].

186
187 *Commentary:*

188
189 The national standards mentioned in (b)(1) include the *ABA Standards of Practice for Lawyers*
190 *who Represent Children in Abuse and Neglect Cases*.

191
192 In order to comply with the duties outlined in this section, lawyers must have caseloads that
193 allow realistic performance of these functions.

194
195 The child's lawyer may request authority from the court to pursue issues on behalf of the child,
196 administratively or judicially, even if those issues do not specifically arise from the court
197 appointment.¹² Such ancillary matters include special education, school discipline hearings,
198 mental health treatment, delinquency or criminal issues, status offender matters, guardianship,
199 adoption, paternity, probate, immigration matters, medical care coverage, SSI eligibility, youth
200 transitioning out of care issues, postsecondary education opportunity qualification, and tort
201 actions for injury, as appropriate.¹³ The lawyer should make every effort to ensure that the child
202 is represented by legal counsel in all ancillary legal proceedings, either personally, when the
203 lawyer is competent to do so, or through referral or collaboration. Having one lawyer represent
204 the child across multiple proceedings is valuable because the lawyer is better able to understand
205 and fully appreciate the various issues as they arise and how those issues may affect other
206 proceedings.

207
208 (c) When the child is capable of directing the representation by expressing his or her
209 objectives, the child's lawyer shall maintain a normal client-lawyer relationship with the
210 child in accordance with the rules of professional conduct. In a developmentally
211 appropriate manner, the lawyer shall elicit the child's wishes and advise the child as to

¹² ABA Standards, Part I, Section D-12.

¹³ *Id.*

212 **options.**

213

214 *Commentary:*

215

216 The lawyer-client relationship for the child’s lawyer is fundamentally indistinguishable from the
 217 lawyer-client relationship in any other situation and includes duties of client direction,¹⁴
 218 confidentiality,¹⁵ diligence,¹⁶ competence,¹⁷ loyalty,¹⁸ communication,¹⁹ and the duty to provide
 219 independent advice.²⁰ Client direction requires the lawyer to abide by the client’s decision about
 220 the objectives of the representation. In order for the child to have an independent voice in abuse
 221 and neglect proceedings, the lawyer shall advocate for the child’s counseled and expressed
 222 wishes.²¹ Moreover, providing the child with an independent and client-directed lawyer ensures
 223 that the child’s legal rights and interests are adequately protected.

224

225 The child’s lawyer needs to explain his or her role to the client and, if applicable, explain in what
 226 strictly limited circumstances the lawyer cannot advocate for the client’s expressed wishes and in
 227 what circumstances the lawyer may be required to reveal confidential information. This
 228 explanation should occur during the first meeting so the client understands the terms of the
 229 relationship.

230

231 In addition to explaining the role of the child’s lawyer, the lawyer should explain the legal
 232 process to the child in a developmentally appropriate manner as required by Rule 1.4 of the ABA
 233 Model Rules of Professional Conduct or its equivalent.²² This explanation can and will change
 234 based on age, cognitive ability, and emotional maturity of the child. The lawyer needs to take the
 235 time to explain thoroughly and in a way that allows and encourages the child to ask questions
 236 and that ensures the child’s understanding. The lawyer should also facilitate the child’s
 237 participation in the proceeding (See Section 9).

238

239 In order to determine the objectives of the representation of the child, the child’s lawyer should
 240 develop a relationship with the client. The lawyer should achieve a thorough knowledge of the
 241 child’s circumstances and needs. The lawyer should visit the child in the child’s home, school,
 242 or other appropriate place where the child is comfortable. The lawyer should observe the child’s
 243 interactions with parents, foster parents, and other caregivers. The lawyer should maintain
 244 regular and ongoing contact with the child throughout the case.

245

246 The child’s lawyer helps to make the child’s wishes and voice heard but is not merely the child’s

¹⁴ ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2

¹⁵ M.R. 1.6

¹⁶ M.R. 1.3

¹⁷ M.R. 1.1

¹⁸ M.R. 1.7

¹⁹ M.R. 1.4

²⁰ M.R. 2.1

²¹ ABA Standards, commentary A-1

²² M.R. 1.4

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247 mouthpiece. As with any lawyer, a child’s lawyer is both an advocate and a counselor for the
248 client. Without unduly influencing the child, the lawyer should advise the child by providing
249 options and information to assist the child in making decisions. The lawyer should explain the
250 practical effects of taking various positions, the likelihood that a court will accept particular
251 arguments, and the impact of such decisions on the child, other family members, and future legal
252 proceedings.²³ The lawyer should investigate the relevant facts, interview persons with
253 significant knowledge of the child’s history, review relevant records, and work with others in the
254 case.

255

256 **(d) The child’s lawyer shall determine whether the child has diminished capacity**
257 **pursuant to the Model Rules of Professional Conduct. {STATES MAY CONSIDER**
258 **INSERTING THE FOLLOWING TWO SENTENCES:} [Under this subsection a child**
259 **shall be presumed to be capable of directing representation at the age of _____. The**
260 **presumption of diminished capacity is rebutted if, in the sole discretion of the lawyer, the**
261 **child is deemed capable of directing representation.] In making the determination, the**
262 **lawyer should consult the child and may consult other individuals or entities that can**
263 **provide the child’s lawyer with the information and assistance necessary to determine the**
264 **child’s ability to direct the representation.**

265 **When a child client has diminished capacity, the child’s lawyer shall make a good**
266 **faith effort to determine the child’s needs and wishes. The lawyer shall, as far as**
267 **reasonably possible, maintain a normal client-lawyer relationship with the client and fulfill**
268 **the duties as outlined in Section 7(b) of this Act. During a temporary period or on a**
269 **particular issue where a normal client-lawyer relationship is not reasonably possible to**
270 **maintain, the child’s lawyer shall make a substituted judgment determination. A**
271 **substituted judgment determination includes determining what the child would decide if he**
272 **or she were capable of making an adequately considered decision, and representing the**
273 **child in accordance with that determination. The lawyer should take direction from the**
274 **child as the child develops the capacity to direct the lawyer. The lawyer shall advise the**
275 **court of the determination of capacity and any subsequent change in that determination.**
276

277

278 *Commentary:*

279

280 A determination of incapacity may be incremental and issue-specific, thus enabling the child’s
281 lawyer to continue to function as a client-directed lawyer as to major questions in the
282 proceeding. Determination of diminished capacity requires ongoing re-assessment. A child may
283 be able to direct the lawyer with respect to a particular issue at one time but not another.
284 Similarly, a child may be able to determine some positions in the case, but not others. For
285 guidance in assessing diminished capacity, see the commentary to Section (e). The lawyer shall
286 advise the court of the determination of capacity and any subsequent change in that

²³ M.R. 2.1

287 determination.

288

289 In making a substituted judgment determination, the child's lawyer may wish to seek guidance
290 from appropriate professionals and others with knowledge of the child, including the advice of
291 an expert. A substituted judgment determination is not the same as determining the child's best
292 interests; determination of a child's best interests remains solely the province of the court.

293 Rather, it involves determining what the child would decide if he or she were able to make an
294 adequately considered decision.²⁴ A lawyer should determine the child's position based on
295 objective facts and information, not personal beliefs. To assess the needs and interests of *this*
296 child, the lawyer should observe the child in his or her environment, and consult with experts.²⁵

297

298 In formulating a substituted judgment position, the child's lawyer's advocacy should be child-
299 centered, research-informed, permanency-driven, and holistic.²⁶ The child's needs and interests,
300 not the adults' or professionals' interests, must be the center of all advocacy. For example,
301 lawyers representing very young children must truly *see* the world through the child's eyes and
302 formulate their approach from that perspective, gathering information and gaining insight into
303 the child's experiences to inform advocacy related to placement, services, treatment and
304 permanency.²⁷ The child's lawyer should be proactive and seek out opportunities to observe and
305 interact with the very young child client. It is also essential that lawyers for very young children
306 have a firm working knowledge of child development and special entitlements for children under
307 age five.²⁸

308

309 When determining a substituted judgment position, the lawyer shall take into consideration the
310 child's legal interests based on objective criteria as set forth in the laws applicable to the
311 proceeding, the goal of expeditious resolution of the case and the use of the least restrictive or
312 detrimental alternatives available. The child's lawyer should seek to speed the legal process,
313 while also maintaining the child's critical relationships.

314

315 The child's lawyer should not confuse inability to express a preference with unwillingness to
316 express a preference. If an otherwise competent child chooses not to express a preference on a
317 particular matter, the child's lawyer should determine if the child wishes the lawyer to take no
318 position in the proceeding, or if the child wishes the lawyer or someone else to make the decision
319 for him or her. In either case, the lawyer is bound to follow the client's direction. A child may
320 be able to direct the lawyer with respect to a particular issue at one time but not at another. A
321 child may be able to determine some positions in the case but not others.

²⁴ Massachusetts Committee For Public Counsel Services, *Performance Standards Governing The Representation Of Children And Parents in Child Welfare Cases*, Chapter Four: Performance Standards and Complaint Procedures 4-1, Section 1.6(c) (2004).

²⁵ Candice L. Maze, JD, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, ABA Center on Children and the Law, October, 2010.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

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322

323 (e) When the child’s lawyer reasonably believes that the client has diminished
324 capacity, is at risk of substantial physical, financial or other harm unless action is taken,
325 and cannot adequately act in the client's own interest, the lawyer may take reasonably
326 necessary protective action, including consulting with individuals or entities that have the
327 ability to take action to protect the client and, in appropriate cases, seeking the
328 appointment of a best interest advocate or investigator to make an independent
329 recommendation to the court with respect to the best interests of the child.

330 When taking protective action, the lawyer is impliedly authorized under Model Rule
331 1.6(a) to reveal information about the child, but only to the extent reasonably necessary to
332 protect the child’s interests.²⁹ Information relating to the representation of a child with
333 diminished capacity is protected by Rule 1.6 and Rule 1.14 of the ABA Model Rules of
334 Professional Conduct. [OR ENTER STATE RULE CITATION]

335

336 *Commentary:*

337

338 Consistent with Rule 1.14, ABA Model Rules of Professional Conduct (2004), the child’s lawyer
339 should determine whether the child has sufficient maturity to understand and form an attorney-
340 client relationship and whether the child is capable of making reasoned judgments and engaging
341 in meaningful communication. It is the responsibility of the child’s lawyer to determine
342 whether the child suffers from diminished capacity. This decision shall be made after sufficient
343 contact and regular communication with the client. Determination about capacity should be
344 grounded in insights from child development science and should focus on the child’s decision-
345 making process rather than the child’s choices themselves. Lawyers should be careful not to
346 conclude that the child suffers diminished capacity from a client’s insistence upon a course of
347 action that the lawyer considers unwise or at variance with lawyer’s view.³⁰

348

349 When determining the child’s capacity the lawyer should elicit the child’s expressed wishes in a
350 developmentally appropriate manner. The lawyer should not expect the child to convey
351 information in the same way as an adult client. A child’s age is not determinative of diminished
352 capacity. For example, even very young children are regarded as having opinions that are
353 entitled to weight in legal proceedings concerning their custody.³¹

354

355 Criteria for determining diminished capacity include the child’s developmental stage, cognitive
356 ability, emotional and mental development, ability to communicate, ability to understand
357 consequences, consistency of the child’s decisions, strength of wishes and the opinions of others,
358 including social workers, therapists, teachers, family members or a hired expert.³² To assist in

²⁹ M.R. 1.14(c)

³⁰ Restatement (Third) of the Law Governing Lawyers Sec. 24 c. c (2000).

³¹ M.R. 1.14 cmt. 1

³² M.R. 1.14, cmt. 1

359 the assessment, the lawyer should ask questions in developmentally appropriate language to
360 determine whether the child understands the nature and purpose of the proceeding and the risks
361 and benefits of a desired position.³³ A child may have the ability to make certain decisions, but
362 not others. A child with diminished capacity often has the ability to understand, deliberate upon,
363 and reach conclusions about matters affecting the child's own well-being such as sibling visits,
364 kinship visits and school choice and should continue to direct counsel in those areas in which he
365 or she does have capacity. The lawyer should continue to assess the child's capacity as it may
366 change over time.

367
368 When the lawyer determines that the child has diminished capacity, the child is at risk of
369 substantial harm, the child cannot adequately act in his or her own interest, and the use of the
370 lawyer's counseling role is unsuccessful, the lawyer may take protective action. Substantial harm
371 includes physical, sexual and psychological harm. Protective action includes consultation with
372 family members, or professionals who work with the child. Lawyers may also utilize a period of
373 reconsideration to allow for an improvement or clarification of circumstances or to allow for an
374 improvement in the child's capacity.³⁴ This rule reminds lawyers that, among other things, they
375 should ultimately be guided by the wishes and values of the child to the extent they can be
376 determined.³⁵

377
378 "Information relating to the representation is protected by Model Rule 1.6. Therefore, unless
379 authorized to do so, the lawyer may not disclose such information. When taking protective
380 action pursuant to this section, the lawyer is impliedly authorized to make necessary disclosures,
381 even when the client directs the lawyer to the contrary."³⁶ However the lawyer should make
382 every effort to avoid disclosures if at all possible. Where disclosures are unavoidable, the lawyer
383 must limit the disclosures as much as possible. Prior to any consultation, the lawyer should
384 consider the impact on the client's position, and whether the individual is a party who might use
385 the information to further his or her own interests. "At the very least, the lawyer should
386 determine whether it is likely that the person or entity consulted with will act adversely to the
387 client's interests before discussing matters related to the client."³⁷ If any disclosure by the
388 lawyer will have a negative impact on the client's case or the lawyer-client relationship, the
389 lawyer must consider whether representation can continue and whether the lawyer-client
390 relationship can be re-established. "The lawyer's position in such cases is an unavoidably
391 difficult one."³⁸

392
393 A request made for the appointment of a best interest advocate to make an independent
394 recommendation to the court with respect to the best interests of the child should be reserved for

³³ Anne Graffam Walker, Ph.D. *Handbook on Questioning Children: A Linguistic Perspective* 2nd Edition ABA Center on Children and the Law Copyright 1999 by ABA.

³⁴ M.R. 1.14 cmt. 5

³⁵ M.R. 1.14 cmt. 5

³⁶ M.R. 1.14, cmt. 8

³⁷ M.R. 1.14, cmt. 8

³⁸ M.R. 1.14, cmt 8

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395 extreme cases, i.e. where the child is at risk of substantial physical harm, cannot act in his or her
396 own interest and all protective action remedies have been exhausted. Requesting the judge to
397 appoint a best interest advocate may undermine the relationship the lawyer has established with
398 the child. It also potentially compromises confidential information the child may have revealed
399 to the lawyer. The lawyer cannot ever become the best interest advocate, in part due to
400 confidential information that the lawyer receives in the course of representation. Nothing in this
401 section restricts a court from independently appointing a best interest advocate when it deems the
402 appointment appropriate.

403

404 **SECTION 8. ACCESS TO CHILD AND INFORMATION RELATING TO THE** 405 **CHILD.**

406 **(a) Subject to subsections (b) and (c), when the court appoints the child’s lawyer, it**
407 **shall issue an order, with notice to all parties, authorizing the child’s lawyer to have access**
408 **to:**

409 **(1) the child; and**

410 **(2) confidential information regarding the child, including the child's**
411 **educational, medical, and mental health records, social services agency files, court records**
412 **including court files involving allegations of abuse or neglect of the child, any delinquency**
413 **records involving the child, and other information relevant to the issues in the proceeding,**
414 **and reports that form the basis of any recommendation made to the court.**

415 **(b) A child’s record that is privileged or confidential under law other than this [act]**
416 **may be released to a child’s lawyer appointed under this [act] only in accordance with that**
417 **law, including any requirements in that law for notice and opportunity to object to release**
418 **of records. Nothing in this act shall diminish or otherwise change the attorney-client**
419 **privilege of the child, nor shall the child have any lesser rights than any other party in**
420 **regard to this or any other evidentiary privilege. Information that is privileged under the**
421 **lawyer-client relationship may not be disclosed except as otherwise permitted by law of this**
422 **state other than this [act].**

423 **(c) An order issued pursuant to subsection (a) shall require that a child’s lawyer**
424 **maintain the confidentiality of information released pursuant to Model Rule 1.6. The court**
425 **may impose any other condition or limitation on an order of access which is required by**
426 **law, rules of professional conduct, the child’s needs, or the circumstances of the**
427 **proceeding.**

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

430 **(e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect**
431 **upon issuance.³⁹**

³⁹ NCCUSL Act, Sec. 15

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SECTION 9. PARTICIPATION IN PROCEEDINGS.

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

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

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

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

(e) The child's presence shall only be excused after the lawyer for the child has consulted with the child and, with informed consent, the child has waived his or her right to attend.

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

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

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

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

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

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

(h) Subject to court approval, a party may call any best interest advocate as a witness for the purpose of cross-examination regarding the advocate's report, even if the advocate is not listed as a witness by a party.

[i] In a jury trial, disclosure to the jury of the contents of a best interest advocate's report is subject to this state's rules of evidence.]⁴⁰

⁴⁰ NCCUSL Act, Sec. 16

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467 *Commentary:*

468

469 Courts need to provide the child with notification of each hearing. The Court should enforce the
470 child's right to attend and fully participate in all hearings related to his or her abuse and neglect
471 proceeding.⁴¹ Having the child in court emphasizes for the judge and all parties that this hearing
472 is about the child. Factors to consider regarding the child's presence at court and participation in
473 the proceedings include: whether the child wants to attend, the child's age, the child's
474 developmental ability, the child's emotional maturity, the purpose of the hearing and whether the
475 child would be severely traumatized by such attendance.

476

477 Lawyers should consider the following options in determining how to provide the most
478 meaningful experience for the child to participate: allowing the child to be present throughout
479 the entire hearing, presenting the child's testimony in chambers adhering to all applicable rules
480 of evidence, arranging for the child to visit the courtroom in advance, video or teleconferencing
481 the child into the hearing, allowing the child to be present only when the child's input is
482 required, excluding the child during harmful testimony, and presenting the child's statements in
483 court adhering to all applicable rules of evidence.

484

485 Courts should reasonably accommodate the child to ensure the hearing is a meaningful
486 experience for the child. The court should consider: scheduling hearing dates and times when the
487 child is available and least likely to disrupt the child's routine, setting specific hearing times to
488 prevent the child from having to wait, making courtroom waiting areas child friendly, and
489 ensuring the child will be transported to and from each hearing.

490

491 The lawyer for the child plays an important role in the child's court participation. The lawyer
492 shall ensure that the child is properly prepared for the hearing. The lawyer should meet the child
493 in advance to let the child know what to expect at the hearing, who will be present, what their
494 roles are, what will be discussed, and what decisions will be made. If the child would like to
495 address the court, the lawyer should counsel with the child on what to say and how to say it.
496 After the hearing, the lawyer should explain the judge's ruling and allow the child to ask
497 questions about the proceeding.

498

499 Because of the wide range of roles assumed by best interest advocates in different jurisdictions,
500 the question of whether a best interest advocate may be called as a witness should be left to the
501 discretion of the court.

502

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

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

⁴¹ American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

- 506 (1) be compelled to produce work product developed during the
507 appointment;
- 508 (2) be required to disclose the source of information obtained as a result of
509 the appointment;
- 510 (3) introduce into evidence any report or analysis prepared by the child's
511 lawyer; or
- 512 (4) provide any testimony that is subject to the attorney-client privilege or
513 any other testimony unless ordered by the court.

514
515 *Commentary:*

516
517 Nothing in this act shall diminish or otherwise change the lawyer-work product or attorney-client
518 privilege protection for the child, nor shall the child have any lesser rights than any other party
519 with respect to these protections.

520 If a state requires lawyers to report abuse or neglect under a mandated reporting statute, the state
521 should list that statute under this section.

522

523 **SECTION 11. CHILD'S RIGHT OF ACTION.**

524 (a) The child's lawyer may be liable for malpractice to the same extent as a lawyer
525 for any other client.

526 (b) Only the child has a right of action for money damages against the child's
527 lawyer for inaction or action taken in the capacity of child's lawyer.

528

529 **SECTION 12. FEES AND EXPENSES IN ABUSE OR NEGLECT** 530 **PROCEEDINGS.**

531 (a) In an abuse or neglect proceeding, a child's lawyer appointed pursuant to this
532 [act] is entitled to reasonable and timely fees and expenses in an amount set by [court or
533 state agency to be paid from (authorized public funds)].⁴²

534 (b) To receive payment under this section, the payee shall complete and submit a
535 written claim for payment, whether interim or final, justifying the fees and expenses
536 charged.

537 (c) If after a hearing the court determines that a party whose conduct gave rise to a
538 finding of abuse or neglect is able to defray all or part of the fees and expenses set pursuant
539 to subsection (a), the court shall enter a judgment in favor of [the state, state agency, or

⁴² N.C. Gen. Stat. Ann. § 7B-603.

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540 political subdivision] against the party in an amount the court determines is reasonable.⁴³

541

542

SECTION 13. EFFECTIVE DATE. This [act] takes effect on _____.

⁴³ NCCUSL Act, Sec. 19.

Report

“The participation of counsel on behalf of **all** parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.” IJA/ABA, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Std. 1.1, at 11 (1980)(emphasis added).

Courts in abuse and neglect cases dramatically shape a child’s entire future in that the court decides where a child lives, with whom the child will live and whether the child’s parental rights will be terminated. No other legal proceeding that pertains to children has such a major effect on their lives. While the outcome of an abuse and neglect case has drastic implications for both the parents and the children involved, only children’s physical liberty is threatened. An abuse and neglect case that results in removal of the child from the home may immediately or ultimately result in the child being thrust into an array of confusing and frightening situations wherein the State moves the child from placement to placement with total strangers, puts the child in a group home, commits the child to an institution, or even locks the child up in detention for running away or otherwise violating a court order. Our notion of basic civil rights, and ABA Policy and Standards, demand that children and youth have a trained legal advocate to speak on their behalf and to protect their legal rights. There would be no question about legal representation for a child who was facing a month in juvenile detention, so why is there an issue for a child in an abuse and neglect case, where State intervention may last up to 18 years? The trauma faced by children in these proceedings has been recognized by at least one federal court which held that foster children have a constitutional right to adequate legal representation.¹

Despite the gravity of these cases, the extent to which a child is entitled to legal representation varies not only from state to state, but from case to case, and all too often, from hearing to hearing. The root of these inconsistencies lies in the lack of a mandate for legal representation for children in abuse and neglect cases, and the lack of uniform standards for the legal representation of children, coupled with the lack of sufficient training necessary for attorneys to provide adequate representation to their child clients.

In 1996 the ABA adopted the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (hereinafter “ABA Abuse and Neglect Standards”) calling for a lawyer for every child subject to abuse and neglect proceedings.² The ABA Abuse and Neglect standards state that “All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continue.” In 2005, the ABA unanimously passed policy that calls upon Congress, the States, and territories to ensure that “all dependent youth . . . be

¹ *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353 (2005).

² American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) at preface.

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on equal footing with other parties in the dependency proceeding and have the right to quality legal representation, not simply an appointed lay guardian *ad litem* or lay volunteer advocate with no legal training, acting on their behalf in this court process.”

The proposed *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (hereinafter “Model Act”) focuses on the representation of children in abuse and neglect cases to ensure that states have a model of ethical representation for children that is consistent with the ABA Abuse and Neglect Standards,³ ABA Policy, and the ABA Model Rules of Professional Conduct (hereinafter “ABA Model Rules”).

Although many states require that a lawyer be appointed for a child in an abuse and neglect proceeding, some require that the child’s lawyer be “client directed” and others require the lawyer to act as a guardian *ad litem* whereby the attorney is charged with the duty of protecting and serving the “best interests” of the child. Often there is not “careful delineation of the distinctions between the ethical responsibilities of a lawyer to the client and the professional obligations of the lay guardian *ad litem* as a best interests witness for the court.”⁴ The states’ use of different statutory language and mandated roles for child representation has led to much confusion within the field.

The proposed Model Act conforms to the clearly stated preference in the ABA Abuse and Neglect Standards for a client-directed lawyer for each child. Similarly, the proposed Model Act is consistent with the ABA Model Rules. The Model Act states that the child’s lawyer should form an attorney-client relationship which is “fundamentally indistinguishable from the attorney-client relationship in any other situation and which includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to advise.”⁵

Consonant with the ABA Model Rules, the drafters of the Model Act started from the premise that all child clients have the capacity to form an attorney-client relationship. An attorney must enter into representation of a child treating the child client as he or she would any other client to every extent possible. The attorney should give the child frank advice on what he or she thinks is the best legal remedy to achieve the child’s expressed wishes. This decision should not be based on the attorney’s mores or personal opinions; rather it should focus on the attorney’s knowledge of the situation, the law, options

³ American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) The Standards can be found at <http://www.abanet.org/leadership/2006/annual/onehundredfourteen.doc>

⁴ *Uniform Representation of Children in Abuse and Neglect, and Custody Proceedings Act* (hereinafter “NCCUSL Act”), National Conference of Commissioners of Uniform State Law. Prefatory Note (2007); the text of the final act can be found at http://www.law.upenn.edu/bll/archives/ulc/rarccda/2007_final.htm. See Atwood, *supra* note 1, at 188-91; Howard A. Davidson, *Child Protection Policy and Practice at Century’s End*, 33 FAM. L. Q. 765, 768-69 (1999). For information about different state practices see *Representing Children Worldwide 2005* (www.law.yale.edu/rcw) or *A Child’s Right to Counsel. First Star’s National Report Card on Legal Representation for Children 2007*.

⁵ ABA Model Act, Commentary to Section 7(c) which refers to ABA Model Rules 1.2, 1.6, 1.3, 1.1, 1.7, 1.4 and 2.1.

available and the child's wishes. The proposed Model Act also provides specific guidance for lawyers charged with representing those child clients with diminished capacity. Some children (including infants, pre-verbal children, and children who are mentally or developmentally challenged) do not have the capacity to form a lawyer-client relationship. These child clients should be considered the exception, not the rule, and the structure of representation for children as a whole should be based upon a theory of competence and capacity.

Providing children in abuse and neglect cases with a client-directed 'traditional' lawyer is consistent with the thinking of national children's law experts. A conference on the representation of children was held at Fordham Law School in 1995 entitled *Ethical Issues in the Legal Representation of Children*. The conference examined the principles set out in the then-proposed (later adopted) ABA Abuse and Neglect Standards and conferees clearly recommended that lawyers for children should act as lawyers, not as guardians *ad litem*.⁶ The co-sponsors and participants at the Fordham conference included national children's law organizations and many ABA entities.⁷

Ten years later in 2006, children's law experts gathered again at a conference at the University of Nevada, Las Vegas (UNLV), to review the state of legal representation of children. Like the Fordham Conference, the UNLV participants produced a set of recommendations.⁸ The UNLV Recommendations encourage lawyers to seek to empower children by helping them develop decision-making capacity. Regarding the role of the lawyer, the UNLV Recommendations strongly support client-directed representation for children capable of making considered decisions.⁹ Again, the list of co-sponsors and participants included nationally respected children's law organizations and many ABA entities.¹⁰

⁶ *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301 (1996) (Fordham Recommendations) (attorney must follow child's expressed preferences and attempt to discern wishes in context in developmentally appropriate way if child is incapable of expressing viewpoint).

⁷ Co-sponsors included the Administration for Children, Youth and Families, U.S. Department of Health and Human Services; ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility, ABA Section of Criminal Justice, Juvenile Justice Committee; ABA Section of Family Law; ABA Section of Individual Rights and Responsibilities; ABA Section of Litigation Task Force on Children; ABA Steering Committee on the Unmet Legal Needs of Children; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; National Counsel of Juvenile and Family Court Judges; Stein Center for Ethics and Public Interest Law, Fordham University School of Law.

⁸ See *Recommendations of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham*, 6 NEV. L. J. 592-687 (2006) (UNLV Recommendations).

⁹ As stated in the Recommendations, "[c]hildren's attorneys should take their direction from the client and should not substitute for the child's wishes the attorney's own judgment of what is best for children or for that child." *Id.* at 609.

¹⁰ Co-sponsors of UNLV included the ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility; ABA Child Custody and Adoption Pro Bono Project; ABA Section of Family Law; ABA Section of Litigation; Home at Last, Children's Law Center of Los Angeles; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; National Council of Juvenile and Family Court Judges; National Juvenile Defender Center; Stein Center

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Consistent with the ABA Abuse and Neglect Standards, ABA policy, and the recommendations of national children's law experts, Section 3 of this Model Act mandates that an attorney, acting in a traditional role, should be appointed for every child who is the subject of an abuse or neglect proceeding.¹¹ Attorneys can identify legal issues regarding their child clients, use their legal skills to ensure the protection of their clients' rights and needs, and advocate for their clients. The Model Act requires lawyers to complete a thorough and independent investigation and participate fully in all stages of the litigation. Lawyers for children, as lawyers for any client, have a role as a counselor to their clients and should assist their clients in exploring 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.¹²

Lawyers for children allow children to be participants in the proceedings that affect their lives and safety. Children who are represented by a lawyer often feel the process is fairer because they had a chance to participate and to be heard. Consequently, children are more likely to accept the court's decision because of their own involvement in the process.

Requiring lawyers to represent children in abuse and neglect cases is also consistent with federal law. The Child Abuse Prevention and Treatment Act (CAPTA) requires the appointment of a "guardian *ad litem*" for a child as a condition of receiving federal funds for child abuse prevention and treatment programs. Providing a child with a lawyer is consistent with the requirements of CAPTA. No state with a lawyer model has been held out of compliance with CAPTA and Health and Human Services (HHS) has issued guidance suggesting that appointing counsel for a child promotes the child's "best interest" consistent with CAPTA.¹³

The Model Act also provides lawyers guidance when representing children with diminished capacity, which includes young children. Like all children in these proceedings, young children are entitled to proceedings that fully examine and address their needs, including *inter alia* their physical, behavioral, and developmental health and well-being, their education and early-learning needs, their need for family permanency and stability, and their need to be safe from harm. The Model Act also allows states to set an age of capacity if they so choose.

The Model Act allows and welcomes "best interest advocates" in child welfare cases. A best interest advocate is defined as "an individual, not functioning or intended to function

for Law and Ethics, Fordham University School of Law; Support Center for Child Advocates; and Youth Law Center.

¹¹ Federal law has long authorized the discretionary appointment of counsel for Indian children subject to the Indian Child Welfare Act. *See* 25 U.S.C. § 1912(b) (2000).

¹² Model Act, Commentary for Section (7)(c)(1).

¹³ U.S. Department of HHS Children's Bureau, *Adoption 2002: The President's Initiative on Adoption and Permanence for Children*, Commentary to Guideline 15A

as the child's lawyer, appointed by the court to assist in determining the best interests of the child."¹⁴ The advisor may be a court-appointed special advocate (CASA), a guardian *ad litem* or other person who has received training specific to the best interest of the child. The Act endorses and in no way restricts the widespread use of CASAs to fulfill the role of court appointed advisor.¹⁵

A state's law regarding abuse and neglect proceedings should be designed to provide children involved in an abuse and neglect case with a well-trained, high quality lawyer who is well-compensated and whose caseload allows for effective representation. Lawyers for children are essential for ensuring that the child's legal rights are protected. "Unless children are allowed by lawyers to set the objectives of their cases, they would not only be effectively deprived of a number of constitutional rights, they would be denied procedures that are fundamental to the rule of law."¹⁶

Children in dependency court proceedings are often taken from their parents, their siblings and extended families, their schools, and everything that is familiar to them. Children and youth deserve a voice when important and life-altering decisions are being made about them. They deserve to have their opinions heard, valued and considered. They have interests that are often distinct or are opposed to those of the state and their parents in dependency proceedings and, as the ABA has recognized many times, they deserve ethical legal representation.

In preparing this Model Act, the drafters have taken into consideration the enormous contributions of various organizations and advocates in defining standards of representation, most notably that of the American Bar Association (ABA), the National Association of Counsel for Children (NACC), the Uniform Law Commission (ULC), participants in the Representing Children in Families UNLV Conference, and the states themselves. In addition, drafters have sought input from the ABA Standing Committee on Ethics, various sections within the ABA, and more than 30 children's law centers around the country who represent children every day.

¹⁴ Model Act, Section 1.

¹⁵ The Court Appointed Special Advocate is a lay volunteer who advocates as a non-lawyer on behalf of a child in child abuse and neglect proceedings. Volunteers are screened and trained at the local level, but all CASA programs that are affiliated with the National Court Appointed Special Advocate Association must comply with the standards issued by that organization. See www.nationalcasa.org. In addition, many states have established their own standards to ensure that the volunteers representing children are competent and possess relevant training and experience. See generally Michael S. Piraino, *Lay Representation of Abused and Neglected Children: Variations on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy*, 1 JOURNAL OF CENTER FOR CHILDREN AND THE COURTS 63 (1999). The Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice is authorized to enter into cooperative agreements with the National CASA Association to expand CASA programs nationally. See 42 U.S.C.A. § 13013 (2005 & Supp. 2006). One of the key strengths of the CASA program is that a CASA volunteer generally represents only one child at a time. Moreover, an attorney for the child working in tandem with a CASA volunteer can provide a powerful "team" approach in juvenile court. In addition, CASA volunteers may have access to the CASA program's own legal representative for legal advice.

¹⁶ Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 Fordham L.Rev. 1399, 1423-24 (1996).

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Respectfully Submitted,
Hilarie Bass, Chair
Section of Litigation
August, 2011

APPENDIX B: NACC MATERIALS

National Association of Counsel for Children (NACC) Certification

A child whose rights and future are at stake deserves legal representation by an attorney whose proficiency and competency in the field of child welfare law have been verified. Just as someone with a diagnosis of cancer might seek the care of a board-certified oncologist rather than a general practitioner, children in abuse and neglect cases must have access to an attorney who is board-certified in the field of child welfare law rather than someone with little in-depth understanding of the discipline. A legal specialist credential in this field does indeed exist. Attorneys and judges can become certified as Child Welfare Law Specialists by the National Association of Counsel for Children (NACC), a credential symbolizing experience and expertise in child welfare law.

Since 2006, NACC has certified over 800 attorneys and judges through its American Bar Association-accredited Child Welfare Law Specialist (CWLS) certification program. NACC is the only national organization accredited by the ABA to grant a specialist credential in this field.

In order to achieve the CWLS credential, attorneys must:

- Provide evidence of substantial involvement in the field of child welfare law
- Provide evidence of continuing legal education specifically related to child abuse/neglect cases
- Submit a writing sample related to an abuse/neglect case
- Submit their public and private disciplinary history and good standing
- Supply a list of attorneys and judges who will submit confidential peer reviews of the attorney's practice, including but not limited to the attorney's substantive knowledge of child welfare law, courtroom skills, representation skills, and proficiency
- Pass a comprehensive, multi-part competency exam on child welfare law

The highly regarded legal reference, [*Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases*](#) [<https://www.naccchildlaw.org/page/RedBook>], along with its comprehensive, companion [*trainings*](#) [<https://www.naccchildlaw.org/page/Training>], can prepare attorneys and judges to take the CWLS exam. Resources such as these improve the knowledge base of readers and participants – but the CWLS credential is the substantiation of that knowledge and expertise. The CWLS credential is a way for courts, colleagues, and clients to easily identify those whose expertise in this field has been verified.

As recognition of the importance of high-quality legal representation grows, the CWLS certification program is one critical pathway toward elevating the level of national child welfare legal practice. The child welfare legal system works best when all parties – children, parents, and social service agencies – are represented by zealous, competent lawyers who advocate for their client's interests, working together to find appropriate solutions. CWLS certification is the hallmark of a high-quality, well-trained attorney or judge who will ensure that children's rights are protected and their voices heard.

In 2017, the CWLS certification program was formally endorsed by the U.S. Department of Health and Human Services' Children's Bureau in its Informational Memorandum on high-quality legal representation. Specifically, the Memorandum stated, "the Children's Bureau strongly encourages all

attorneys and judges practicing child welfare law to obtain CWLS certification...Providing high-quality legal representation to all parties at all stages of dependency proceedings is crucial to realizing [the] basic tenets of fairness and due process under the law.” (U.S. Department of Health and Human Services’ Administration for Children and Families IM-17-02)

CWLS certification is available in all but a few states (due to certain state policies and processes). As of 2018, there are over 550 current CWLS across the country.

Number of CWLS (or Program Status) by State			
Alabama	1	Montana	4
Alaska	3	Nebraska	0
Arizona	13	Nevada	5
Arkansas	14	New Hampshire	6
California	140	New Jersey	10
Colorado	31	New Mexico	19
Connecticut	22	New York	8
Delaware	5	North Carolina	20
Dist. of Columbia	12	North Dakota	1
Florida	Not available	Ohio	Not available
Georgia	56	Oklahoma	Not available
Hawaii	1	Oregon	1
Idaho	5	Pennsylvania	Not available
Illinois	Available in 2019	Rhode Island	1
Indiana	Not available	South Carolina	2
Iowa	8	South Dakota	0
Kansas	0	Tennessee	38
Kentucky	0	Texas	38
Louisiana	28	Utah	36
Maine	Not available	Vermont	2
Maryland	Available in 2019	Virginia	1
Massachusetts	3	Washington	1
Michigan	7	West Virginia	Not available
Minnesota	0	Wisconsin	1
Mississippi	2	Wyoming	7
Missouri	2		

(As of December 2018 - NACC)

For more information about NACC’s CWLS certification program, please visit

www.NACCchildlaw.org/Certification or email Certification@NACCchildlaw.org.

APPENDIX C:
ABA Center on Children and the Law Article on Claiming Title IV-E Funds



www.childlawpractice.org

January 30, 2019

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be construed as representing the policy of the American Bar Association.

Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview

by Mark Hardin

For the first time, states can now claim federal matching funds through Title IV-E of the Social Security Act to help pay the costs of attorneys representing certain children and their parents in child welfare legal proceedings.¹ Before this change, federal matching funds were available to help pay for attorneys representing child welfare agencies, but not for children's or parents' attorneys. The following brief overview explains federal foster care matching funds as they relate to payments for parents' and children's attorneys.

This article is intended for people not familiar with rules of Title IV-E eligibility or the processes for claiming Title IV-E funds. It provides general background to assist courts and legal organizations as they seek to partner with child welfare agencies in leveraging this new source of federal support for child and parent representation.

Basic Explanation of Title IV-E Matching Funds

There are two principal categories of Title IV-E matching funds:

1. "Foster care maintenance payments" are payments to caregivers of eligible foster children. The federal government pays a percentage of the state payments to such caregivers.
2. "Administrative costs," generally speaking, pay for the administration and operation of the foster care system, encompassing many expenses incurred by the state child welfare agency, such as for agency staff, buildings, administration, and related contracts.

The federal government pays 50 percent of the share of administrative costs claimed for each Title IV-E eligible child. As the result of the recent policy change, states can now seek administrative cost reimbursement from the federal government to pay half of the cost of attorneys for children who are eligible for Title IV-E foster care benefits—and half of the cost of attorneys for their parents.

U.S. Children's Bureau Policy

On January 7, 2019, the federal Children's Bureau changed the Child Welfare Policy Manual Q/A 8.4B to remove question 18 and replace it with a new question 20. The following language reflects that change

We want to notify you of a change to the Child Welfare Policy Manual (CWPM).

We will remove CWPM Q/A 8.4B #18 and add the following new Q/A to section 8.4B:

Question: May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?

Answer: Yes. The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency's representation in judicial determinations continues to be an allowable administrative cost.

Previous policy prohibited the agency from claiming title IV-E administrative costs for legal services provided by an attorney representing a child or parent. This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home. These administrative costs of legal representation must be paid through the title IV-E agency. This change in policy will ensure that, among other things, reasonable efforts are made to prevent removal and finalize the permanency plan, and parents and youth are engaged in and complying with case plans.

Scope of Funding: This language authorizes federal matching funds to help pay for the independent legal representation of parents and children and makes those funds available for "all stages" of foster care legal proceedings, i.e., the entire court process. This presumably begins when the case is first brought to the attention of the parent or child's attorney through the time the case is terminated following the child's return home, adoption, guardianship, or aging out of the court process.

The above language from the *Policy Manual* doesn't address availability of federal matching funds to pay for training of parents' and children's attorneys because federal statutes had already made clear that matching funds are available for their training. 42 USC 674(a)(3)(B). Under that statute, federal administrative matching funds for training also include training for CASA volunteers, guardians ad litem, and court staff.

Agency Precedent: These matching funds were already available for the cost of agency attorneys, so there is precedent regarding the process through which these funds are claimed. Courts and legal organizations should look to the agency to learn how they have documented and

claimed funding for attorneys representing the agency. If one's state has never claimed these funds, it may be necessary to look to a neighboring state.

Claiming Funds: Only the Title IV-E agency—and not courts or legal organizations—can claim the matching funds from the federal government. Note the highlighted wording at the beginning of the question preceding the policy change:

May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?

Accordingly, to receive these matching funds, courts or a public entity providing legal representation must reach an agreement with the state child welfare agency. To put it another way, the agency must claim the funds from the federal government through an agreement with the court or public entity providing legal representation then pass through the funds under that agreement. Whether there is one or multiple contracts will depend on the state. In any case, under such an agreement, the courts or other public entities must document the costs of the attorneys in a format that allows the child welfare agency to meet federal reimbursement requirements.

The *Policy Manual* requires agencies, in passing through these funds, to respect the autonomy of attorneys representing parents and children:

This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of *independent legal representation* by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in *all stages of foster care legal proceedings...* (emphasis added).

The words “independent legal representation” make clear that, in claiming the matching funds, the agency cannot limit or compromise the independence of the attorney. And the words “all stages of foster care legal proceedings” mean the agency cannot limit the time or scope of legal representation.

Calculating the Amount of Federal Matching Funds to Cover the Costs of Attorneys for Parents and Children

Eligibility: Not all children in state supervised foster care are eligible for Title IV-E matching funds. Whether a child is eligible for such payments depends on the financial circumstances of the parents or relatives from whom the child was removed. A complicated set of criteria governs such eligibility.

Calculation Criteria: States cannot claim either category of Title IV-E matching funds for non-Title IV-E eligible children, either to pay caregivers or for administrative costs. This means under the new policy, the federal government will not pay for half the cost of representation for *all* foster children and their parents but will pay for the cost of child and parent legal representation based on a state's proportion of foster children eligible for Title IV-E.

Accordingly, to calculate the full amount of federal assistance available to help pay for foster children's and their parents' attorneys, it is necessary to know the proportion of foster children who are Title IV-E eligible. The percentage of states' foster children who meet Title IV-E eligibility requirements on a given day varies widely from state to state, ranging from less than 25% to over 75%. This percentage is sometimes referred to either as a state's Title IV-E "coverage rate" or "penetration rate."

To summarize, the overall amount of federal matching funds available for attorneys for parents and children is based on two factors: the Title IV-E "penetration" or "coverage" rate (percentage of children in care eligible for Title IV-E benefits) and the administrative cost match.

Sample Calculation: An oversimplified calculation of a hypothetical state's available reimbursement for the costs of foster children's and their parents' attorneys is as follows:

- a. Calculate the total cost of representing foster children and their parents.
- b. Multiply (a) by the state's Title IV-E coverage (penetration) rate for foster care.
- c. Multiply (b) by 50%.

Here is an example involving both calculations:

State x spends \$5 million in one year for legal representation of foster children and their parents. 40% of its foster children are eligible for Title IV-E reimbursements. Thus, the amount of available federal foster care matching funds for parent and child legal representation in state x can be calculated as: $\$5,000,000(.4)(.5) = \$1,000,000$. This means that under the new federal policy by paying \$5,000,000 for child and parent legal representation from its own budget state x will now be able to contribute \$6,000,000 to child and parent representation in total, representing a 20% increase in its investment in legal representation based on the additional federal support.

Federal Matching Funds to Help Pay for Training of Attorneys for Parents and Children

Federal matching funds to pay for the cost of representation should be distinguished from matching funds to pay for training of attorneys and their staff. Title IV-E matching funds for training of attorneys for parents and children have been available before the recent policy change, and the rate of reimbursement for training is 75 percent.

Eligibility: As with matching funds for other administrative costs, the costs of training only apply to attorneys for Title IV-E eligible children.

Criteria: While claiming and calculating federal matching funds for training is complicated, courts can usually rely on child welfare agencies to help with technical requirements. However, courts and legal organizations do need to understand that Title IV-E funds can be claimed only to match state funds. That is, Title IV-E funds must be "matched" by state funds and not funds from other federal sources. For example, if a state is using Court Improvement Program funds (Title IV-B, Part 2) for training, it can't claim Title IV-E funds to match a percentage of that amount.

Sample Calculation: Here is a simplified calculation of federal matching funds for training of parent and children's attorneys in foster care cases:

- a. Calculate the training costs for foster children's and their parents' attorneys.
- b. Multiply (a) by the state's Title IV-E "coverage" rate for foster care.
- c. Multiply (b) by 75%.

Consider the following hypothetical: State x spends \$100,000 in a year for foster care training costs. The Title IV-E coverage rate for foster children is 40%. Therefore, federal matching funds available for training can be calculated as: $\$100,000(.4)(.75) = \$37,500$.

Creating a Process to Claim and Disburse Matching Funds

Only the state agency administering the Title IV-E State Plan (i.e., the state child welfare agency of an umbrella state agency) can claim the federal matching funds for parents' and children's attorneys. That is, the state agency must claim the funds on behalf of a state or local program providing representation.

Requirements: Accordingly, to receive the matching funds, the government program providing representation for parents and children must enter into an agreement with the state agency administering the Title IV-E plan. In the agreement, which may take the form of a Memorandum of Understanding, the public organization providing representation must agree to document the costs of representation in a way that satisfies the requirements of the Title IV-E agency. The Memorandum of Understanding should specify that attorneys for parents and children will provide independent representation of their clients, consistent with their ethical obligations as attorneys.

Sample Process: The process for reporting, claiming, and disbursing the Title IV-E matching funds for the representation of parents and children and training of attorneys can be something like:

- a) the public entity providing legal representation of parents or children documents its costs to state agency administering Title IV-E;
- b) the Title IV-E agency includes the sum in its larger claim to the federal government for Title IV-E matching funds;
- c) the federal government pays the matching funds to the Title IV-E agency; and then
- d) the Title IV-E agency disburses to the legal representation program its proportionate share.

A Memorandum of Understanding (MOU) can specify details of the process as they apply in the state. It can set forth a timeline for the steps of the process and can specify how state and federal legal requirements will be met. The MOU can also call for other forms of collaboration between the agency and the public entity providing representation, so long as such collaboration is consistent with the ethics of legal practice.

Practice Concerns

Some practical concerns courts and legal organizations should think about when seeking to partner with child welfare agencies to draw down new federal resources for child and parent counsel include:

1. How can we highlight the improved outcomes for children and families that arise from increased investments in child and parent counsel?
2. What different models of agreements with the Title IV-E agency may be best in your state?
3. What is the process to collect and disburse the funds?
4. How can we ensure the new funds are used to augment not supplant existing state and county investments in child and parent counsel?
5. How can we use the new funds as a catalyst for systemic improvements in representation, including models of multidisciplinary representation (attorney, social worker, investigator, peer advocate) and pre-petition representation. (Note that the costs of social workers to assist attorneys for parents and children can't be included in claims for Title IV-E administrative costs.)

Mark Hardin, JD, served for almost 30 years on the staff of the ABA Center on Children and the Law as director of child welfare. Mark has long been recognized as an early innovator in the child welfare legal field. His research and scholarship and his work on legislative, regulatory, and court rule reform affecting abused and neglected children helped shape child welfare legal policy and practice.

Related Links:

For information about why investing in child and parent counsel is so valuable, see the ABA Center on Children and the Law's [Legal Representation Infographic](#).

For an overview of research on the impact of child welfare representation on child welfare outcomes, see the Family Justice Initiative's chart [Research on Child Welfare Representation in Child Welfare Cases](#).

[ABA President's recent statement commending the Child Welfare Policy change](#)

¹ U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau. "[8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program](#)" *Child Welfare Policy Manual*.

ENDNOTES

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- ¹ First Star, *A Child's Right to Counsel* (2006).
- ² American Bar Association, *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*, dated August, 2011, available at https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf
- ³ <http://www.improvechildrep.org/Portals/0/PDF/QIC-ChildRep%20Brochure%20wRTC%20Language.pdf>
- ⁴ <https://www.naccchildlaw.org/>
- ⁵ *Child Maltreatment 2017*, U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2019). Available from <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/child-maltreatment>
- ⁶ Adoption and Foster Care Analysis and Reporting System AFCARS Report #25, Preliminary FY 2017 Estimates as of August 10, 2018.
- ⁷ *Id.*
- ⁸ *Child Maltreatment 2017* at 20.
- ⁹ Cora Peterson, Curtis Florence, and Joanne Klevens, "The economic burden of child maltreatment in the United States, 2015," *Child Abuse Negl.* 2018 December; 86: 178–183.
- ¹⁰ Child Abuse Prevention and Treatment Act, P.L. 93-247, 42 U.S. 5101, *et seq.*
- ¹¹ *Id.*; LaShanda Taylor, *A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 FAM. CT. REV. 605, 610 (2009).
- ¹² 42 U.S.C. § 5106a(b)(2)(B)(xiii).
- ¹³ LeVezu, A., *Alone and Ignored: Children without Advocacy in Child Abuse and Neglect Courts*, Stan J of Civ Rts & Civ Lib XIV:125 (2018).
- ¹⁴ NACC Recommendations for Representation of Children in Abuse and Neglect Cases https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/Standards/NACC_Standards_and_Recommend.pdf
- ¹⁵ <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>
- ¹⁶ <https://archive.org/stream/guidelinesforpub00duqu#page/n151/mode/2up>
- ¹⁷ https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36
- ¹⁸ <https://www.congress.gov/115/bills/hr253/BILLS-115hr253ih.pdf>
- ¹⁹ See <https://supreme.justia.com/cases/federal/us/372/335/>.
- ²⁰ See <https://supreme.justia.com/cases/federal/us/372/335/>.
- ²¹ *In re Gault*, 387 U.S. 1, 36-37 [87 S.Ct., 1428, 18 L.Ed.2d 527] (1967).
- ²² See Pitchal, E., *Children's Constitutional Right to Counsel in Dependency Cases*, 15 TEMP. POL. & CIV. RTS. L. REV. 663, 694–95 (2006); LaShanda Taylor, *A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 FAM. CT. REV. 605, 607–09 (2009).
- ²³ *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1360 (N.D. Ga. 2005)
- ²⁴ *Id.*
- ²⁵ *Juvenile Matters Trial Lawyers Ass'n v. Judicial Dep't*, 363 F. Supp. 2d 239 (D. Conn. 2005).
- ²⁶ *E.T. v. Cantil-Sakanye*, 682 F.3d 1121 (9th Cir. 2012).
- ²⁷ Emphasis added. See http://www.caichildlaw.org/Misc/RTC_CA-1-ClassActionComplaintforDeclaratoryandInjunctiveRelief.pdf.
- ²⁸ A Civil Right to Counsel Project, the Public Justice Center, monitors civil right to representation efforts including those for children at <http://civilrighttocounsel.org/>
- ²⁹ Thornton & Gwin, *High Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 Fam Law Quarterly 139 (2012); Wood, S.M., Summers, A., & Duarte, C.S., Legal Representation in the Juvenile Dependency System: Travis County, Texas' Parent Representation Pilot Project, *Family Court Rev.* 54, 277-287 (2016); Family Justice Initiative <https://familyjusticeinitiative.org/>
- ³⁰ <http://civilrighttocounsel.org/>.
- ³¹ <https://familyjusticeinitiative.org/>
- ³² https://guardianadlitem.org/wp-content/uploads/2014/12/cinc_article.pdf
- ³³ Tyler, T. & Zimmerman, N., Between Access to Counsel and Access to Justice: A Psychological Perspective *Fordham Urban Law Journal* 37, 473-507 (2010); Conference of Chief Justices and Conference of State Court Administrators, Resolution 12: In Support of State Supreme Court Leadership to Promote Procedural Fairness (2013).

³⁴ U.S. Dep't of Health and Human Servs., Children's Bureau Log No. ACYF-CB-IM-17-02, *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, Jan 17, 2017; Tyler, T. & Zimmerman, N., Between Access to Counsel and Access to Justice: A Psychological Perspective *Fordham Urban Law Journal* 37, 473-507 (2010); Conference of Chief Justices and Conference of State Court Administrators, Resolution 12: In Support of State Supreme Court Leadership to Promote Procedural Fairness (2013).

³⁵ See Note 2.

³⁶ <http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx>

³⁷ <http://www.improvechildrep.org/DemonstrationProjects/SixCoreSkills.aspx>.

³⁸ Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep), 2009-2016 Activities Report at 3. <http://www.improvechildrep.org/Portals/0/PDF/QIC-ChildRep%20Brochure%20wRTC%20Language.pdf>

³⁹ Husain, S., *A Voice for the Voiceless: A Child's Right to Legal Representation*, 79 G.W.L.R. 232 (2010).

⁴⁰ A.E.Zinn & J. Slowriver, Expediting Permanency: Legal Representation for Foster Children in Palm Beach County (2008), available at http://www.chapinhall.org/sites/default/files/old_reports/428.pdf.

⁴¹ HHS Commentary to ACF Guidelines (low compensation as a primary cause of inadequate legal representation in child welfare cases); National Council of Juvenile and Family Court Judges ("almost [three quarters] of the [court improvement] specialist believed that attorneys for children are under-compensated ... "); <http://fostercare.org/research/docs/Representation.pdf> (citing inadequate payment as a barrier to effective representation").

⁴² See <http://www.courtinfo.ca.gov/jc/documents/reports/120106item17.pdf> and <http://www.courts.ca.gov/xbcr/cc/DependencyCounselCaseloadStandards2008.pdf>

⁴³ Re-cite to Chapin Hall West Palm Beach

⁴⁴ National Association of Counsel for Children, Child Welfare Law Guidebook, 2006, at 54.

⁴⁵ U.S. Dep't of Health and Human Servs., Children's Bureau Log No. ACYF-CB-IM-17-02, *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, Jan 17, 2017 at 9.

⁴⁶ See <https://files.eric.ed.gov/fulltext/ED081507.pdf>.

⁴⁷ See <https://www.issuelab.org/resources/1070/1070.pdf>.

⁴⁸ See <http://www.improvechildrep.org/Portals/0/PDF/QIC-ChildRep%20Brochure%20wRTC%20Language.pdf>

⁴⁹ See <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>.

⁵⁰ See https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36; LeVezeu, A., *Alone and Ignored: Children without Advocacy in Child Abuse and Neglect Courts*, Stan J of Civ Rts & Civ Lib XIV:125 (2018).

⁵¹ See <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>.

⁵² *Id.*

⁵³ See <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000005.asp>.

⁵⁴ 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 Donald Duquette's article in *Special Issue on Legal Representation of Children: Responses to the Conference: Two Distinct Roles/Bright Line Test* (Spring, 2006) 6 Nev. L.J. 1240); *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.

⁵⁵ We did not include the first edition from the table below as the grading methodology used in the second through fourth editions reflected variation in state statutes allowing for differentiation in point assessments for the 6 criteria

⁵⁶ One state had a one point decrease due to a slight scoring adjustment and was not included in this count.