

# A CHILD'S RIGHT TO COUNSEL

## **First Star's National Report Card on Legal Representation for Children**

Whytni Kernodle Frederick Esq., Program Director, Legal Projects, First Star  
*Principal Investigator and Research Analyst*

Deborah L. Sams, Chief Executive Officer, First Star  
*Project Director*

With a foreword by Peter Samuelson, *Founder and President of First Star*



First Star was founded in 1999 as a national 501(c)(3) public charity dedicated to improving life for child victims of abuse and neglect. First Star's Founder and President, Peter Samuelson, also founded the Starlight Children's Foundation in 1982 and the Starbright Foundation in 1990.

**We believe** that when society fails to prevent child maltreatment, our nation must provide abused and neglected children with quality and compassionate care.

**We believe** that abused and neglected children have the right to:

- Safe, permanent and nurturing homes.
- Representation by qualified legal counsel.
- Protection by open and accountable systems.
- Services that address their educational, medical and mental health needs.

**We believe** that the systems intended to protect, treat and ensure permanency for abused and neglected children should be provided with adequate resources.

**We believe** that the child welfare professionals who protect, treat and represent abused and neglected children should be well-trained and fairly compensated.

**We believe** that child abuse and neglect is not a partisan issue.

In 2006, First Star conducted an extensive analysis of child representation laws in all 50 United States and the District of Columbia.

First Star obtained the data on which the states' grades are based through leveraging its own existing compilation of statutes and rules with data received through a commercial legal database as well as state legislative websites. In addition, a questionnaire devised to gather information directly from the states was sent to practitioners in every state. To the best of our knowledge, the laws that were analyzed for this report were current as of December 31, 2006.

For more information about this report please contact:

Whytni Kernodle Frederick Esq.  
Program Director, Legal Projects  
First Star  
1666 K Street, NW, Suite 700  
Washington, D.C. 20006  
202-293-3703/102  
wfrederick@firststar.org

Additional copies of this report can be obtained by contacting First Star at 202-293-3703 or on the internet at [www.firststar.org](http://www.firststar.org).

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REPORT ON A

# CHILD'S RIGHT TO COUNSEL

## Table of Contents

- 2 Foreword
- 4 Preface
- 4 Introduction
- 6 First Star National Report Card on Legal Representation for Children
  - 7 Executive Summary
  - 8 Grading Methodology
  - 10 National Snapshot
  - 14 The Grades by State with Special Reports on Best Practice
- 116 Call To Action
  - 117 Federal Remedies
  - 118 State Action: Elements of a Model Law for a Child's Right to Counsel
  - 119 Guiding Principles for Legal Representation for Children
  - 120 Multidisciplinary Training and Certification for Child Welfare Professionals
- 121 Appendix of Peer Review Contacts
- 125 Appendix of Citations to Statutes and Rules Relating to Counsel for Children



## Foreword

**E**VERY AMERICAN CORPORATION committed to best business practices makes frequent comparisons between the performance of its various depots, factories, retail outlets and offices. Why are we delivering the overnight packages faster in Cleveland than Cincinnati? What do they know in the San Francisco depot which they have lost sight of in Atlanta? Why is customer satisfaction higher in Miami than Chicago? These kinds of lateral geographical comparisons are standard in well managed companies across the United States; **yet we apply virtually none of them to help abused and neglected children.**

STATES RIGHTS WERE CREATED BY THE FOUNDING FATHERS to preserve freedom and quite rightly to apply local standards and practices to many aspects of government intervention in the lives of citizens. Because the provision of support and oversight to abused and neglected children as they pass through the hands of adults in the United States is heavily fragmented, being organized and directed locally, there are glaring anomalies in how we serve these children who desperately need sophisticated and best practice help:

- Some locations do a good job for the challenged children in their midst.
- Most do not.
- The substandard performance of specific localities is different from the substandard performance elsewhere by category, type and focus: we get it wrong **differently** depending in which zip code the unfortunate child happens to live.
- Individual jurisdictions do not learn from the expertise and successes, not to mention failures, of their peers.
- Best practices exist **somewhere** in this country for every individual subset of legislative, professional, judicial, sociological and governmental behavior towards abused and neglected children. But we do not propagate them in the vast majority of the country. It is as though they do not exist.
- This is not only a question of money. While improved resources are clearly of benefit, it is remarkable that economically disadvantaged states in several cases manage to do a much better job for their challenged children than others which are more affluent.



**WHY IS THIS IMPORTANT?** No bigger reason than the intrinsic worth of children and the moral imperative to maximize their potential to live productive and happy adult lives. But oh, so many other reasons!

- The United States spends one hundred billion dollars each year on the consequences of the abuse and neglect of its children.
- There are six million allegations of abuse and neglect annually and one thousand five hundred children die each year from its consequences.
- Fifty percent of adult male incarcerated prisoners were abused or neglected as children.
- A considerable proportion of abuse and neglect rolls on from generation to generation, malign behavior learned at the hands of adults and then perpetrated on future children.
- Reversing this vicious cycle, the silent and disgusting curse in our midst, will save generations to come and avoid untold misery and waste of human and financial resources.

Earlier this year, the seventh edition of the UNICEF Overview of Child Wellbeing in affluent countries was published ([www.unicef.org/irc](http://www.unicef.org/irc)). Of the twenty one nations in the First World, the United States ranks **twentieth** by the six dimensions of child well-being that are assessed. In First Star's many years of studying these issues **no driving cause looms larger than our fragmented system** which perpetuates appalling circumstances for abused and neglected children in the majority of the country.

**WELL MIGHT ONE ASK TWO SIMPLE QUESTIONS:** Is not the true state of a civilization best judged by the way it brings forward its next generation? What future does any society **have** except through its children?

We are proud to present this first edition of the First Star Report Card. We will publish updated versions on a regular basis. We hope First Star's work will drive debate and break new ground in focusing attention on our most precious commodity: the children who are our future.

Peter Samuelson  
Founder and President, First Star  
Washington DC, April 2007

**T**HE RIGHT TO AN ATTORNEY is one of America's most basic civil, legal privileges.

Yet at this writing, only 17 states currently provide client-directed legal representation for child victims in dependency court and foster care proceedings.

This report serves two purposes: To alert child advocates, policy makers, the media, and the public of the inequities within the child welfare system; and to initiate a national Call to Action promoting strong laws that will ensure trained, qualified, client-directed counsel to child victims in every state in this nation. The report is intended as an objective, credible tool to evaluate performance, to highlight models of success, and to provide motivation for improvement.



A galaxy of thanks to Barbara Bennett Woodhouse, Bob Fellmeth, Jane Spinak, Sherry Quirk, Lewis Pitts, Emma Hand, Kay Farley, Erika Germer, Stacey Williams, Stacey Fersko, David Gable, Derik Smith, Amy DiBella, Ben Stetler, and the many child welfare practitioners and state court administrators who participated as peer reviewers for the Report.

Special thanks to Build-A-Bear Workshop®, The Louise & Herb Horvitz Charitable Foundation, Lt. General Claudia Kennedy, and Sullivan & Worcester LLP for financial and in-kind support of this report and the First Star Campaign for a Child's Right to Counsel.

Thanks for your interest in this report and our work to make life better for all children by starting with those who are most vulnerable.

Deborah Sams  
Chief Executive Officer, First Star  
Washington, D.C., April 2007

## Introduction

**I**N ABUSE AND NEGLECT CASES, court orders determine a child's future, including whether the child will remain in his or her home, the nature and duration of any placement outside the home, the child's contact with parents and other relatives, and the child's access to social services. Clearly, a child's interest in these proceedings is of fundamental importance. Yet the level to which children are involved with their legal representation in court 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 uniform standards for the representation of children, coupled with the lack of sufficient training necessary for attorneys to provide adequate representation to their child clients.

Nearly 6,000,000 American children are currently involved in reports of abuse and neglect (Child Maltreatment Data 2005). Every year, 50,000 children are adopted out of foster care while more than 65,000 children have had their ties to their parents legally severed (AFCARS 2003 Report). An estimated 70% of children who enter the dependency<sup>1</sup> system end up in long term foster care until they are emancipated (Bob Fellmeth, Child Rights and Remedies 2002). This means that most children who come into contact with dependency court spend the majority of their childhood in and out of proceedings to determine what course of action may be in their "best interests." In these

<sup>1</sup> In this report, the term "dependency proceedings" will be used to describe what some jurisdictions may call "child welfare proceedings" or "child protection proceedings."

proceedings the family of a child can be created and or destroyed based on the determination by the court. And too often, the child, although most impacted by the court, has the least amount of input.

In 1967 the Supreme Court opened the door for discussion regarding children's right to counsel in any proceedings of which they, or their interests, are a part, including dependency proceedings. In 1974, Congress passed the Child Abuse and Neglect Prevention and Treatment Act (CAPTA) which conditioned states' eligibility for federal grants on meeting certain requirements, particularly mandating the appointment of a guardian ad litem (GAL) to any child who is the subject of abuse and neglect proceedings. Over time, Congress has provided a little more direction by amending the statute to specify that a GAL "may be an attorney" and that the GAL must receive training "appropriate to the role." But still, such minimal direction from federal statutes has left the states to interpret the law and construct their own models of practice. Although attorneys for children are statutorily mandated in many jurisdictions, the duties and responsibilities of the attorneys are rarely specified by statute or court rule. Moreover, even those statutes or rules that do address the duties and responsibilities are not as clear as they should be.

The states' use of different statutory language and mandated roles for child representation has led to much confusion within the field. Although child welfare advocates have been diligent to improve and enhance legal representation by developing guidelines and standards in an attempt to provide consistency among state laws, there is still no established binding legal authority defining the role attorneys should play in representing children, the type of training that will sufficiently prepare them, or the duties and responsibilities entrusted to each one. Thus, currently, all 50 states and the District of Columbia require some form of child representation in abuse and neglect proceedings, but each jurisdiction has developed its own statutory provisions and each state varies widely from the next in its requirements.

### **Client directed representation**

While 36 states and the District of Columbia require that a lawyer be appointed to a child in dependency and foster care proceedings, only 17 states require that the lawyer be "client directed," represent the child's "expressed" wishes, and require that the child be heard. Children in abuse and neglect hearings often do not receive the kind of legal representation that allows the child equal access to justice and to have his or her own voice heard in a court of law.

In fact, most official consideration of a child's "best interests" in abuse, neglect and dependency determinations takes place without the child being heard, without the necessary resources and without the trained, qualified investigation and deliberation that would best serve the child. First Star believes that each state should require mandatory appointment of an independent attorney to every child in dependency and foster care proceedings. A child's cognitive and developmental abilities and the child's ability, regardless of the attorney's determination, to express his or her wishes to the court should be considered and decided by the child's attorney. It is the attorney's role to decide if a child can present his or her wishes and goals; by allowing the judiciary to make such decisions for the child interferes with the independent judgment that a lawyer would apply to representing a client.

According to the American Bar Association (ABA), "the term 'child's attorney' means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due to an adult client." "Traditional," "client-directed" or "expressed interest" attorneys are governed by the Model Code of Professional Responsibility, the same code that governs attorneys representing adults, and must abide by the child clients' expressed wishes concerning the objectives of the representation, counseling them on those objectives.

The National Association of Counsel for Children has amended the ABA and Model Code standards to provide an alternate representation scheme in certain circumstances, particularly where very young children are concerned. Should the attorney feel that the child's expressed preference conflicts with his or her best interest, a GAL should be appointed to advocate the best interest position. The attorney may counsel the child as to what may be in his or her best interest; however, the decision regarding what position will be advocated in court remains in the hands of the child. In cases where direct danger is likely to result from advocating the child's preference, the attorney-client privilege may be abrogated. The ABA states quite clearly that a "nonlawyer [GAL] cannot and should not be expected to perform any legal functions on behalf of a child."

# **first star** NATIONAL REPORT CARD

ON LEGAL REPRESENTATION FOR CHILDREN



**F**IRST STAR ADVOCATES for three key issues to yield tangible long-term benefits for child victims:

- Open courts and open records to promote and enforce agency accountability,
- University-based, multidisciplinary training and certification for all professionals working to benefit abused and neglected children, and
- A child's right to professional, client-directed legal counsel.

In abuse and neglect hearings, the person with the most to gain or lose is the child. Consistent with traditional notions of a hearing, every party should have a right to be heard—and children cannot be meaningfully heard without an advocate. There are crucial constitutional issues at stake in dependency proceedings for children: their liberty (are they going to be wards of the state or returned home?), their safety, and their statutory rights. Client-directed representation empowers the court to make the most prudent and wise decision as to the best interests of the child.



To receive funding under CAPTA, states are required to provide “training appropriate to the role” to any individual appointed by the courts to represent children. While this is a step in the right direction, the definition of “appropriate training” is left to each state’s own interpretation. Approved legal representation might be in the form of a lay GAL or a volunteer court-appointed special advocate (CASA) who may have no legal experience at all. Even in states where a child is represented by an attorney, the nature of that representation can differ significantly.

To this end, First Star initiated a comprehensive review of our nation’s laws regarding representation for abused and neglected children. The First Star National Report Card on Legal Representation for Children is the first-ever report of this kind.

Advised by leading experts in children’s rights across the United States, First Star has developed a comprehensive and fair grading methodology that measures the complex inconsistencies in uniform standards for the representation of children. Our grading methodology is designed using the most rigorous of standards and provides a clear contrast of both the strengths and weaknesses for each state.

Perhaps the most important element of our process is the participation of key court officials, child law centers, and child welfare agencies in each state to work hand-in-hand in raising these important standards for children.

Our objective is to encourage states to learn better legal practices for child victims from other states, and also, in some cases, from a local jurisdiction within their own state.

**B**etween May and December 2006, First Star conducted an extensive analysis of child representation laws in all 50 states and the District of Columbia.

First Star obtained the data on which the states' grades are based through leveraging its own existing compilation of statutes and rules with data received through a commercial legal database as well as state legislative websites. In addition, a questionnaire devised to gather information directly from the states was sent to practitioners in every state. To the best of our knowledge, the laws that were analyzed were current as of December 31, 2006.

First Star assembled national child welfare experts from leading organizations to develop the grading criteria. This group of experts formalized into the Report Card Steering Committee. The Report Card Steering Committee formulated research questions that ultimately

developed into the draft criteria for the Model Law. The committee next reviewed the criteria and made necessary recommendations for improvement. Based upon the importance of the criteria, the committee determined the weight to be given to each issue and sub-issue. All weights were assigned according to the importance of the issue addressed as well as the reliability and objectiveness of the measures involved.



First Star based its 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 not to exceed 100. Grades A through F were then awarded to each state according to the following standard academic grading system.

### Grading System

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

It is important to note that each grade is based solely on the language of the law or state court rule. *Grades do not imply any correlation between a state's law and the enforcement of such law.* Our only assumption is that a good law is the cornerstone of any state's commitment to the rights of its children.

## Grading Analysis: The Point System

First Star weighted each component of the model law with the following point values. Each state law was then assigned points based on its ability to comply with the model law standards.

Criteria	Points
By state statute and or state court rule, is counsel for children required in dependency proceedings?	<b>Maximum 40 points</b> Counsel required for all children: 40 points Counsel required if child > 10: 25 points Counsel required if child > 12: 20 points Counsel required if child > 14: 15 points Appointment of counsel is discretionary: 15 points
By state statute and or state court rule, is counsel for children required to advocate for the expressed wishes of the child in a client directed manner?	<b>Maximum 20 points</b> Client Directed counsel required: 20 points Client Directed counsel required if child has "considered judgment": 14 points Client Directed counsel required if child > 10: 12 points Client Directed counsel required if child > 12: 10 points Client Directed counsel required if child > 14: 8 points Appointment of Client Directed counsel is discretionary: 6 points Best Interest Representative is required to express the child's views: 6 points
Are requirements for the child's counsel set forth in the state statute and or state court rule? Does the law mandate multidisciplinary interaction between counsel and other professionals?	<b>Maximum 10 points</b> Trained in child law and advocacy: 6 points Multidisciplinary Interaction: 4 points
Does the child maintain the legal status of a party? Does the child have the right to be present at significant court hearings? Does the state provide the child with advance notice of those proceedings?	<b>Maximum 10 points</b> Legal status of a party: 4 points Present at all proceedings: 3 points Entitled to notice: 3 points
Does the appointment of counsel last throughout the appellate process? If so, does the child have the right to continued representation by the same counsel?	<b>Maximum 10 points</b> The appointment lasts through all reviews and the appellate process: 5 points The child has the right to continued representation by the same counsel: 5 points
Under the law, does counsel for a minor bear the same ethical and professional responsibilities toward his client as counsel for an adult may bear? Is counsel responsible for maintaining client confidences? Does the law account for a client under a disability/ with diminished capacity? Does the law reject immunity for children's counsel?	<b>Maximum 10 points</b> Same professional responsibilities: 2 points Responsibility to maintain client confidences: 3 points Provision for client under a disability/ with diminished capacity: 2 points No immunity for children's counsel: 3 points

# NATIONAL GRADES BY STATE

Grade	Jurisdiction	Form of Representation
D- 65	Alabama	Attorney-GAL
F- 32	Alaska	GAL
B- 84	Arizona	Attorney
B- 86	Arkansas	Attorney ad Litem
C- 73	California	Attorney-GAL
C- 70	Colorado	Attorney-GAL
A- 94	Connecticut	Attorney
F- 48	Delaware	CASA or Attorney-GAL
B- 80	District of Columbia	Attorney-GAL
F- 39	Florida	GAL
B- 81	Georgia	Attorney
F- 33	Hawaii	GAL
F- 28	Idaho	GAL
F- 45	Illinois	GAL
F- 48	Indiana	GAL
D- 60	Iowa	Attorney and GAL
B- 86	Kansas	Attorney-GAL
D- 60	Kentucky	Attorney-GAL
A- 96	Louisiana	Attorney
F- 31	Maine	GAL or CASA
B- 88	Maryland	Attorney
B- 81	Massachusetts	Attorney
C- 73	Michigan	Attorney-GAL
C- 75	Minnesota	GAL or Attorney
A- 90	Mississippi	Attorney
F- 47	Missouri	GAL

Grade	Jurisdiction	Form of Representation
D- 69	Montana	Attorney
C- 73	Nebraska	Attorney-GAL
F- 31	Nevada	GAL
F- 35	New Hampshire	GAL
B- 89	New Jersey	Attorney Law Guardian
B- 82	New Mexico	Attorney-GAL or Attorney
A- 94	New York	Attorney Law Guardian
B- 83	North Carolina	Attorney-GAL or Attorney and GAL
F- 35	North Dakota	GAL
C- 74	Ohio	Attorney
B- 84	Oklahoma	Attorney
D- 60	Oregon	CASA or Attorney
C- 79	Pennsylvania	Attorney-GAL
F- 25	Rhode Island	GAL or CASA
C- 70	South Carolina	Attorney
F- 54	South Dakota	Attorney
B- 87	Tennessee	Attorney GAL
B- 87	Texas	Attorney ad Litem
C- 78	Utah	Attorney-GAL
C- 79	Vermont	Attorney
B- 83	Virginia	Attorney-GAL
F- 31	Washington	GAL
A- 96	West Virginia	Attorney-GAL
D- 64	Wisconsin	Attorney-GAL
C- 78	Wyoming	Attorney-GAL

# SUMMARY THE GRADES

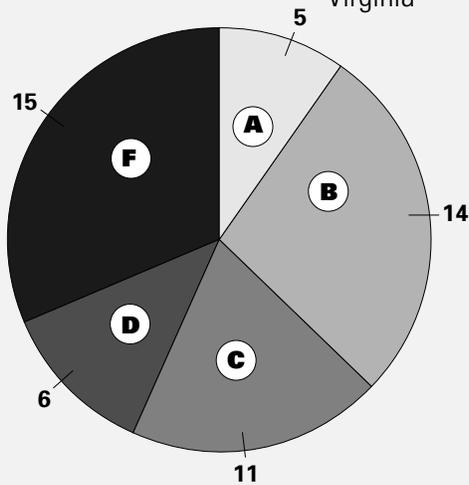
**A**  
 Connecticut  
 Louisiana  
 Mississippi  
 New York  
 West Virginia

**B**  
 Arizona  
 Arkansas  
 District of Columbia  
 Georgia  
 Kansas  
 Maryland  
 Massachusetts  
 New Jersey  
 New Mexico  
 North Carolina  
 Oklahoma  
 Tennessee  
 Texas  
 Virginia

**C**  
 California  
 Colorado  
 Michigan  
 Minnesota  
 Nebraska  
 Ohio  
 Pennsylvania  
 South Carolina  
 Utah  
 Vermont  
 Wyoming

**D**  
 Alabama  
 Iowa  
 Kentucky  
 Montana  
 Oregon  
 Wisconsin

**F**  
 Alaska  
 Delaware  
 Florida  
 Hawaii  
 Idaho  
 Illinois  
 Indiana  
 Maine  
 Missouri  
 Nevada  
 New Hampshire  
 North Dakota  
 Rhode Island  
 South Dakota  
 Washington



## Grade Summary

State	mandate legal representation	mandate client directed legal representation	require child advocacy and law training	child considered a party to all proceedings	child's right to representation on appeal	immunity from malpractice
Alabama	•			•	•	
Alaska						
Arizona	•	•		•	•	
Arkansas	•		•	•	•	
California	•		•	•	•	
Colorado	•		•		•	
Connecticut	•	•	•	•	•	
Delaware			•		•	•
District of Columbia	•		•	•	•	
Florida				•		
Georgia	•	•		•		
Hawaii				•		
Idaho						
Illinois			•	•		
Indiana			•	•		•
Iowa	•			•		
Kansas	•		•	•	•	
Kentucky	•			•		
Louisiana	•	•	•	•	•	
Maine						
Maryland	•		•	•	•	
Massachusetts	•	•	•		•	
Michigan	•			•	•	
Minnesota		•			•	
Mississippi	•	•	•	•	•	
Missouri			•	•		
Montana	•			•	•	

State	mandate legal representation	mandate client directed legal representation	require child advocacy and law training	child considered a party to all proceedings	child's right to representation on appeal	immunity from malpractice
Nebraska	•		•	•		
Nevada						
New Hampshire				•		
New Jersey	•	•	•	•	•	
New Mexico	•		•	•	•	
New York	•	•	•	•	•	
North Carolina	•		•	•	•	
North Dakota			•	•		
Ohio	•	•		•		
Oklahoma	•	•		•	•	
Oregon		•	•	•	•	
Pennsylvania	•		•	•	•	•
Rhode Island						
South Carolina	•	•				
South Dakota	•			•		
Tennessee	•	•	•	•	•	•
Texas	•	•	•		•	
Utah	•		•	•	•	•
Vermont	•	•		•	•	
Virginia	•		•	•	•	
Washington						
West Virginia	•	•	•	•	•	
Wisconsin	•			•		
Wyoming	•		•	•	•	•
	<b>35 of 51</b>	<b>17 of 35 mandating legal representation</b>	<b>28 of 51</b>	<b>39 of 51</b>	<b>30 of 51</b>	<b>6 of 51</b>

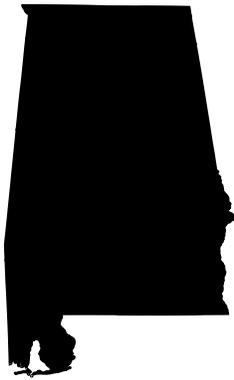
# Alabama

## Summary and Analysis

UNDER THE CODE OF ALABAMA, appointment of an attorney is mandatory in every case involving an abused or neglected child which results in a judicial proceeding. This attorney is charged with representing the “rights, interests, welfare, and well-being of the child” and also serves as a GAL. Although attorneys may take into account the child’s wishes when assisting the child, representing the child’s expressed wishes is not a duty of the attorney under Alabama law.

## Grading Analysis

Criteria	How Alabama Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Alabama law requires an attorney-GAL be appointed to every child.
Client Directed Counsel Mandatory <b>0 points out of a possible 20 points</b>	There is no statutory provision requiring the attorney-GAL to advocate for or even express the child’s views.
Professional Considerations <b>0 points out of a possible 10 points</b>	Although Alabama has adopted training standards for attorney-GALs through the Court Improvement Program, such standards have yet to be codified by law. Alabama law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	Alabama maintains that the child is a party in child abuse and neglect cases. Formal legal notice is required to all persons aged 12 and older. Further, every child must be present at each hearing unless excused by the court.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	Although the right to counsel at all stages of the proceedings includes the right to counsel in an appeal, children in Alabama have no right to representation by the same counsel during reviews or appeals.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Alabama has a general provision binding counsel to its ethical rules. Alabama also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Alabama.



**GRADE**

**D**

**SCORE**

**65**

### **Alabama's CALL TO ACTION**

First Star is alarmed by Alabama's grade. The Alabama Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Alaska

## Summary and Analysis

A GAL IS REQUIRED IN ALL CHILD IN NEED OF AID (CINA) PROCEEDINGS, which include all abuse or neglect and termination of parental rights cases. The GAL does not have to be an attorney. The GAL must represent the “best interests” of the child. There is no statutory provision or court rule requiring the GAL to inform the court of the child’s views. The court may appoint an attorney to represent the child’s “expressed interests” when the court determines that the interests of justice require the appointment. The court may also appoint an attorney for the child when there is a conflict between the GAL’s position and the child’s preference.

## Grading Analysis

Criteria	How Alaska Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Alaska provides only for the appointment of a GAL who may or may not be an attorney.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL must represent the best interests of the child. When necessary to represent the child’s expressed interests, the court may appoint an attorney for the child.
Professional Considerations <b>4 points out of a possible 10 points</b>	Under Alaska law, a GAL should possess knowledge, skill, experience, training, or education that allows the GAL to advocate effectively for the best interests of the child. Nonetheless, Alaska law does not provide guidance on training for children’s counsel. The GAL must consult professionals as necessary to determine the child’s best interests.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	In Alaska, the GAL stands in the place of the child in court; therefore, it is the GAL, not the child, who maintains party status in CINA cases. In addition, a child has no right to be informed of, to be present at or to be heard in any proceeding.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Although a GAL may take or participate in an appeal, there are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>7 points out of a possible 10 points</b>	Although Alaska has a general provision binding counsel to its ethical rules including a provision concerning clients with diminished capacity, the child’s statements to the GAL are not confidential, since an attorney-GAL is not functioning as traditional counsel. No statutory provision granting immunity from malpractice exists for any attorney in Alaska.



**GRADE**

**F**

**SCORE**

**32**

## **Alaska's CALL TO ACTION**

First Star is appalled by Alaska's grade. The Alaska Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews
- Protect a child's statements as confidential



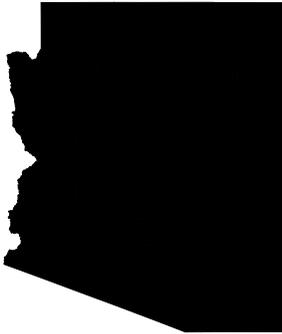
# Arizona

## Summary and Analysis

ALL JUVENILES INVOLVED IN CHILD PROTECTION proceedings have the right to be represented by counsel in Arizona. In addition, the court shall appoint a GAL to protect the juvenile's best interests. One individual may be appointed to serve as both legal counsel and GAL. Where an attorney serves as both counsel for the child and GAL, the attorney is required to seek the appointment of a separate GAL when there is a conflict between the child's wishes and the best interests determination by counsel.

## Grading Analysis

Criteria	How Arizona Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Arizona's law requires that children be appointed counsel in every abuse and neglect proceeding.
Client-Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Children are entitled to legal counsel and a GAL. One individual may serve as both.
Professional Considerations <b>0 points out of a possible 10 points</b>	Arizona law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Arizona maintains that the child is a party in child abuse and neglect cases. The attorney or GAL receives notice on behalf of the child but children in Arizona are not entitled to notice themselves nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Under Arizona law, children are entitled to representation during any appeal of a final order of the juvenile court. Counsel must represent the party until the dependency action is dismissed and the time for filing a notice of appeal has expired, or the issuance of an appellate mandate if counsel was ordered to represent the party on appeal, or the court orders termination of representation.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Arizona has a general provision binding counsel to its ethical rules. Arizona also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Arizona.



**GRADE**

**B**

**SCORE**

**84**

### **Arizona's CALL TO ACTION**

Arizona's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Arizona Legislature should:

- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings



# Arkansas

## Summary and Analysis

IN ARKANSAS, AN ATTORNEY AD LITEM FOR THE CHILD IS REQUIRED when a dependency-neglect petition is filed. The AAL represents the best interests of the child. If there is a conflict between the child's views and the best interests assessment, the AAL is required to communicate the child's views to the court.

## Grading Analysis

Criteria	How Arkansas Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	An attorney ad litem is mandatory in all abuse and neglect proceedings.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The AAL represents the best interests of a juvenile but is responsible for ensuring the child's wishes are expressed to the court, even if those wishes differ from the AAL's recommendations.
Professional Considerations <b>10 points out of a possible 10 points</b>	Arkansas law both provides guidance on training for children's counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	Arkansas maintains that the child is a party in child abuse and neglect cases. Formal legal notice is required to all persons aged 10 and older. Further, every child must be present at each hearing unless excused by the court.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Arkansas law requires that the AAL remain appointed at all stages of the proceedings. If the proceeding includes an appeal, then the attorney must remain appointed throughout the appeal.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Arkansas has a general provision binding counsel to its ethical rules. Arkansas also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Arkansas.



**GRADE**

**B**

**SCORE**

**86**

### **Arkansas's CALL TO ACTION**

Arkansas' child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Arkansas Legislature should:

- Require that all counsel be independent and client directed



**A**rkansas has a comprehensive program of best practices in place for Attorneys ad litem, parent counsel, agency counsel, judges, caseworkers, foster parents, and CASA for dependency neglect cases. State summits have been in place to promote best practices pursuant to a Call to Action by the Supreme Court Chief Justice. Continued monitoring of CIP recommendations and best practices is an ongoing and intensive part of AOC operations.

Arkansas is a front-runner in dependency neglect representation. All involved entities and organizations work well together to assure the best possible services and representation for children and families. The Arkansas legislature has been very supporting of all efforts to protect children in the state.

# California

## Summary and Analysis

IN CALIFORNIA, COUNSEL IS RESPONSIBLE for both representing the best interests of the child and presenting the child’s wishes to the court. Counsel is charged “in general with the representation of the child’s interests,” and in particular, 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.” On the other hand, in any case in which the child is four years of age or older, counsel is required to interview the child to “determine the child’s wishes and to assess the child’s well-being, and to advise the court of the child’s wishes.”

## Grading Analysis

Criteria	How California Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	California’s law requires that the court appoint counsel for all children unless the court finds that the child would not benefit from the appointment.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	In California, counsel is required to express, but not advocate for, the child’s views.
Professional Considerations <b>6 points out of a possible 10 points</b>	California has adopted training standards for children’s counsel. California law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	Each minor in dependency is a party in California. The child should be present at significant court hearings. Notice is required for children over the age of 10.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	Children in California have no right to continued representation by the same counsel during reviews or appeals.
Professional Responsibility <b>6 points out of a possible 10 points</b>	In California, counsel does not bear the same ethical and professional responsibilities toward his / her client as counsel for an adult nor does the law include an ethical provision regarding youth and or those with diminished capacity. California holds counsel responsible for maintaining client confidences and children’s counsel do not have immunity from malpractice.



**GRADE**

**C**

**SCORE**

**73**

### California's CALL TO ACTION

First Star is concerned by California's grade. The California Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for multidisciplinary interaction
- Require the appointment of the same legal counsel throughout the appellate process and all subsequent reviews
- Provide a general provision to the law binding children's counsel to ethical rules
- Provide a provision to the law regarding a client with diminished capacity

**C**alifornia is one of three states to approve the National Association of Counsel for Children's certification system to designate counsel who have demonstrated competence in child welfare law.

The legal representation of children in dependency courts vary widely by county, with representation of children handled by a wide array of providers. Los Angeles County excels in child presence in proceedings and in a child-friendly courtroom facility. Sacramento's model involves representation through a stand-alone 501-c-3 entity that implies a measure of useful independence from other local agencies and interests. San Diego alone has afforded consistent representation of children at the appellate level. Many counties have active CASA programs whose appointees provide important help to both counsel and their child clients.

The major deficiencies of the state include the failure to assure continued representation of children where the state or parents appeal the trial court's decision—five of the state's six judicial districts effectively cut-off such representation (or impose unfortunate procedural barriers) at this crucial and often final stage of the proceedings. The Judicial Council (the state Supreme Court's administrative arm) is now considering rules to make continuity of representation more prevalent, but the new rules may impose a burdensome and gratuitous set of motions and justifications to appellate courts for the child simply to be heard before the final decision makers. The state continues to have a dual representation model, with representation and Guardian Ad Litem features somewhat confusingly combined.

# Colorado

## Summary and Analysis

IN COLORADO, A GAL IS ALWAYS APPOINTED by the court to represent the child in dependency and neglect cases. The GAL must be an attorney licensed to practice law in the state of Colorado. The GAL is statutorily required to act in the best interests of the child. The attorney-GAL does not follow the traditional attorney-client role, where counsel must advocate for the clients wishes. Moreover, the GAL is not required to inform the court of the child’s wishes. The child’s health and safety shall be the paramount concern of the GAL rather than the child’s goals and expectations.

## Grading Analysis

Criteria	How Colorado Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Colorado law requires that an attorney-GAL be appointed to every child.
Client Directed Counsel Mandatory <b>0 points out of a possible 20 points</b>	The attorney-GAL is not statutorily required to express the child’s wishes.
Professional Considerations <b>10 points out of a possible 10 points</b>	Colorado law both provides guidance on training for children’s counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	Under Colorado law, it is the GAL and not the child that is afforded party status. A child has no statutory right to be present at any proceeding in Colorado. Colorado does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	The attorney-GAL shall appeal matters to the court of appeals or the supreme court, and participate further in the proceedings to the degree necessary to adequately represent the child.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Colorado has a general provision binding counsel to its ethical rules. Colorado also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Colorado.

**GRADE**

**C**

**SCORE**

**70**

## Colorado's CALL TO ACTION

First Star is concerned by Colorado's grade. The Colorado Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings



**C**reated in 2000, The Office of the Child's Representative (OCR) empowers Colorado's most vulnerable children with uniform, high-quality counsel and non-legal advocacy.

Over sixty percent of Colorado court cases involve families; the majority of these directly affect children. Recognizing that effective legal representation and advocacy requires unique and significant expertise, the OCR is devoted to enhancing children's representation in the court system.

The OCR co-sponsored a national symposium, Voices of Youth in the Courtroom: Is it Time for a Change, with the University of Colorado Law School, to initiate dialogue between judges, court facilitators, county attorneys, GALs, CASAs and caseworkers. The youth speakers changed the perspectives of many of the participants who previously opposed youth having court voices. Several jurisdictions are working on model programs to bring youth into court when age-appropriate.

Three programs, which are part of the National Council of Juvenile and Family Court Judges Model Court programs, exist in Denver, Adams and El Paso county and ensure that all disciplines within the child welfare system work together to protect children, keep families intact, and provide a safe community. This requires the participation of social service and law enforcement agencies, schools, and court representatives. The OCR's multidisciplinary organizational model of practice is being replicated throughout the country. In fact, Theresa Spahn, the Executive Director of OCR has been invited to Connecticut, one of the five A states, to speak with key legislators about this, as well as other, issues related to ensuring quality representation.

# Connecticut

## Summary and Analysis

CONNECTICUT RECEIVED ONE OF ONLY FIVE As in First Star's state analysis. Connecticut's child representation law does a nearly perfect job of protecting abused and neglected children. Connecticut's law contains almost all the necessary provisions needed to adequately protect children within the child welfare system. In Connecticut, 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. Under the current statute, a lawyer must represent the child's wishes and best interests unless and until there is a conflict between the two at which time the court should appoint a separate guardian ad litem, who may or may not be an attorney. Even in the dual capacity role, the lawyer's primary duty must still be focused on the protection of the legal rights of the child client.

## Grading Analysis

Criteria	How Connecticut Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Connecticut's law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Under Connecticut's statute, a lawyer must represent the child's wishes and best interests unless and until there is a conflict between the two, at which time the court should appoint a separate guardian ad litem.
Professional Considerations <b>6 points out of a possible 10 points</b>	Connecticut has adopted training standards for children's counsel. Connecticut law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>8 points out of a possible 10 points</b>	Connecticut maintains that the child is a party in child abuse and neglect cases. Counsel receives notice on behalf of the child but children in Connecticut are not entitled to notice themselves. Under Connecticut law, children are entitled to be present at all court hearings and any objection to their presence must establish good cause for their exclusion.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	After disposition the child's attorney must seek to ensure continued representation of the child at all further hearings so long as the court maintains its jurisdiction.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Connecticut has a general provision binding counsel to its ethical rules. Connecticut also holds lawyers responsible for maintaining client confidences and seeking the appointment of a GAL when the lawyer reasonably believes that the client cannot adequately act in the client's own interest. No statutory provision granting immunity from malpractice exists for any attorney in Connecticut.



**GRADE**

**A**

**SCORE**

**94**

## Connecticut's CALL TO ACTION

### Congratulations to Connecticut!

While Connecticut should include provisions requiring multidisciplinary interaction between counsel and other professionals and requiring that a child be entitled to notice, First Star commends the Connecticut Legislature, its governor, and child welfare advocates who have worked so diligently to protect the rights of Connecticut's children.



**T**he Commission on Child Protection (CCP) and the position of the Chief Child Protection Attorney were established by the Connecticut legislature in June of 2005. The intent of the legislation is to ensure the provision of quality legal representation and guardian ad litem services to children and indigent parents involved in child protection matters in Juvenile and Family courts. Within its first six months of operation, the CCP has reduced attorney caseloads which has resulted in a reduction in the number of attorneys with caseloads over 100 from 73 attorneys to 58, and attorneys with over 150 cases from 53 to 26. In addition, the Commission has successfully instituted a quality assurance program that includes surveys of attorney performance distributed to court personnel, attorneys, foster parents, parents and youth over 14.

During this legislative session the CCP has been working to pass legislation that will permit and encourage attorneys to utilize a multidisciplinary approach to representation and require my agency to pay an hourly rate in order to encourage diligence and accountability. In addition CCP proposed a pilot project for the implementation of a multidisciplinary organizational model of practice in two courts. CCP is also working with the Connecticut Judicial Branch and the ABA around precipitating a culture change in the views of the bench and bar on kids in court and will be holding seminars for judges and attorneys on this issue in the near future.

# Delaware

## Summary and Analysis

ANY CHILD WHO IS THE SUBJECT OF A CUSTODY, VISITATION, guardianship, TPR, adoption or other related proceeding in which the Division of Family Services is a party should have a GAL appointed by the Court to represent the best interests of the child. The Court, in its discretion, may also appoint an attorney to represent the child's wishes. The GAL shall be an attorney authorized to practice law in the State or a CASA. When determining whether to appoint an attorney through the Office of the Child Advocate or a CASA, the Family Court judge, in his or her discretion, should assign the most complex and serious cases to the Office of the Child Advocate.

## Grading Analysis

Criteria	How Delaware Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Delaware's children are represented either by CASA- or Attorney- GALs.
Client-Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	GALs represent the child's best interests. The GAL must ascertain the wishes of the child and make the child's wishes known to the court. If an attorney-GAL concludes that the child's wishes differ from the position of the attorney-GAL, he or she must notify the court of the conflict and must request that independent counsel be additionally provided for the child by the court.
Professional Considerations <b>10 points out of a possible 10 points</b>	Delaware law both provides guidance on training for children's counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	In Delaware, the attorney-GAL is a party to any child welfare proceeding in which the child is the subject, not the child. Although judges have the authority to interview a child in chambers, a child has no statutory right to be present at any proceeding. Delaware does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	In cases where an attorney is appointed as GAL, the attorney must participate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals.
Professional Responsibility <b>7 points out of a possible 10 points</b>	Delaware has a general provision binding counsel to its ethical rules. Delaware also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No attorney shall be subject to suit 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.



**GRADE**

**F**

**SCORE**

**48**

## Delaware's CALL TO ACTION

First Star is appalled by Delaware's grade. The Delaware Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client-directed
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Prohibit immunity from malpractice for children's attorneys

**T**he Office of the Child Advocate works to safeguard the welfare of Delaware's children through educational advocacy, system reform, public awareness, training, and legal representation of children.

The goals of the Office are to:

- Ensure that every child's voice is heard in every court proceeding; Ensure that every player in the child protection system has the necessary education and training to put a child's safety and well-being above all else; and, Ensure that Delaware's child welfare laws reflect the needs of our children and are a model for the nation.

Some of the duties of the Child Advocate:

- Take all possible actions, including programs of public education and legislative advocacy, to ensure the legal, civil and special rights of children; Revise, periodically, all relevant policies and procedures with a view toward the rights of children; Examine policies and procedures and evaluate the effectiveness of the child protection system, specifically the respective roles of the Division of Family Services, the Attorney General's Office, the courts, the medical community and law enforcement agencies; Review and make recommendations concerning investigative procedures and emergency responses of the child welfare system; and, Develop and provide quality training to Division of Family Services' staff, Deputy Attorneys General, law enforcement officers, the medical community, Family Court personnel, educators, day care providers, and others on the various standards, criteria and investigative technology used in child welfare cases.

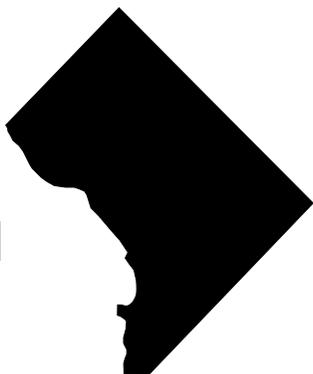
# District of Columbia

## Summary and Analysis

IN THE DISTRICT OF COLUMBIA, all children involved in abuse and neglect proceedings are entitled to legal representation at all critical stages of the proceeding by GALs. The GAL must be an attorney who is charged with representation of the child's best interests. An attorney-GAL fulfills a dual role, as neutral fact finder for the judge and as zealous advocate for the child's best interests.

## Grading Analysis

Criteria	How DC Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	An attorney-GAL is mandatory in all abuse and neglect proceedings.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	Although the GAL serves to protect the best interest of the child, the GAL is responsible for ensuring the child's wishes are expressed to the court, even if those wishes differ from the GAL's recommendations.
Professional Considerations <b>10 points out of a possible 10 points</b>	The District of Columbia law both provides guidance on training for children's counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	DC law maintains that the child is a party in child abuse and neglect cases. Children in the District are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	In the District, a child is entitled to be represented by counsel at all critical stages of the proceedings, including all reviews and appeals. Where trial counsel does not handle an appeal, he or she is must keep apprised of the matter and monitor whether necessary motions are filed with the trial court.
Professional Responsibility <b>10 points out of a possible 10 points</b>	DC has a general provision binding counsel to its ethical rules. DC also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in District of Columbia.



**GRADE**

**B**

**SCORE**

**80**

### **DC's CALL TO ACTION**

The District of Columbia's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the District of Columbia Council should:

- Require that all counsel be independent and client directed
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings



# Florida

## Summary and Analysis

CHILDREN IN FLORIDA ARE REPRESENTED in juvenile protection matters primarily through CASA, provided through the Statewide Office of the Guardian ad Litem. Florida law provides that the court shall appoint a GAL to represent the best interests of the child. Although Florida's statutes provide that an attorney can be appointed as a GAL, this appointment is purely discretionary.

## Grading Analysis

Criteria	How Florida Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Florida law provides only for the appointment of a GAL who may or may not be an attorney. Florida's courts also have the authority to appoint attorneys ad litem, in addition to GALs, to provide legal representation to the child.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	Where a dependent child is facing an involuntary commitment to a locked psychiatric treatment facility and does not agree to this placement, Florida law mandates that the child must be appointed an attorney.
Professional Considerations <b>0 points out of a possible 10 points</b>	Florida law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>8 points out of a possible 10 points</b>	Florida maintains that the child is a party in child abuse and neglect cases. A child has the right to be informed of, to be present at and to be heard in any proceeding. Florida law does not provide that the child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Florida has a general provision binding counsel to its ethical rules. Florida also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Florida.



**GRADE**

**F**

**SCORE**

**39**

## Florida's CALL TO ACTION

First Star is appalled by Florida's grade. The Florida Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training, compensation, and caseload
- Require notice for every child
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews

**W**hile Florida law does not mandate representation for children in dependency courts, the Florida Bench and Bar are working to bridge this gap. Since 1999, the Florida Bar Foundation has funded special annual grants for legal assistance to children. This "children's legal services" grant initiative aims at creating and energizing a statewide network of children's legal services providers in public interest and pro bono settings. Grantees include regional legal services offices, university-based legal clinics and advocacy organizations focusing on specific needs such as immigration, education and advocacy for foster children. In addition, child advocacy projects have been launched at several universities. One example is Gator TeamChild, based at University of Florida's Levin College of Law. Under the leadership of law professor Meshon Rawls and MSW Karen Keroack, and with assistance from experts like Professor Tom Oakland at the College of Education and Dr. Lauren Fasig of the Psychology Department, students are trained to provide direct representation to children in a variety of contexts including dependency, delinquency, mental health, education and public benefits cases. At Florida State University School of Law, Professor Paolo Annino directs the Children's Advocacy Center, also engaged in training students to represent children in education and health care matters. Finally, the Florida Supreme Court has created a Steering Committee on Families and Children in the Courts and charged it with studying and recommending reforms that will make the system work better for children.

# Georgia

## Summary and Analysis

CHILDREN IN GEORGIA ARE ENTITLED to both legal counsel and a GAL at every step of deprivation proceedings. Rather than the GAL acting as a substitute for an attorney, Georgia law requires the appointment of both in cases where the child is not represented by a parent, guardian or custodian or when the interests of such conflict with the child's interests.<sup>1</sup>

## Grading Analysis

Criteria	How Georgia Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Georgia law requires an attorney be appointed to every child.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	A GAL and counsel for the child are required in all child protective proceedings. The counsel for the child advocates for the child's views. The child is entitled to legal counsel at every stage of a deprivation proceeding. The GAL is tasked with protecting the "interests of the child." The GAL can be either an attorney or a CASA.
Professional Considerations <b>4 points out of a possible 10 points</b>	Georgia law does not require training for children's representatives. Georgia Child Advocate for the Protection of Children Act stipulates that the Child Advocate shall have the authority to contract with experts in fields including but not limited to medicine, psychology, education, child development, juvenile justice, mental health, and child welfare, as needed to support the work of the advocate.
Presence at Proceedings <b>7 points out of a possible 10 points</b>	Georgia maintains that a child is a party in child abuse and neglect proceedings. A child has no statutory right to be present at any proceeding in Georgia. Georgia law provides that children age 14 and older are entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Appointment of counsel does not last throughout the appellate process and all subsequent reviews.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Georgia has a general provision binding counsel to its ethical rules. Georgia also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Georgia.

<sup>1</sup>First Star interprets Georgia law as mandating that an attorney be appointed for every child. However, reading several statutes together, many in GA interpret the statutes to require appointment of a GAL who may or may not be an attorney. While the decisional law is clear that a child is a party to his or her deprivation proceeding, and thereby entitled to adequate representation by an attorney as any other party is so entitled, many juvenile court professionals continue to read the representation statutes together to require only the appointment of a GAL, who may or may not be an attorney, to represent the best interest of the child.



**GRADE**

**B**

**SCORE**

**81**

## Georgia's CALL TO ACTION

Georgia's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Georgia Legislature should, among other things:

- Establish respectable requirements for attorney training
- Require that a child be present in all child protective, foster care or dependency proceedings
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



**T**he Atlanta Volunteer Lawyers Foundation directs the One Child, One Lawyer program, which operates in Fulton and DeKalb County Juvenile Courts. Through the One Child, One Lawyer program, attorneys in private practice are recruited and trained to represent children in deprivation cases on a pro bono basis. See <http://www.avlf.org/onechild-onelawyer.html>.

Georgia has a local affiliate program of the National Association of Counsel for Children (NACC) in the Georgia Association of Counsel for Children (GACC), which is a non-profit child advocacy and professional membership organization dedicated to improving the lives of children and families through legal advocacy. GACC provides training, education and support to attorneys and other professionals who represent children in deprivation, custody, and delinquency proceedings. See [www.gaccchildlaw.org](http://www.gaccchildlaw.org).

Thirdly, the Supreme Court of Georgia Committee on Justice for Children sponsors a symposium on topics related to the status of a child as a party to a deprivation proceeding. The webcast of that discussion was archived for later viewing and a bulletin board was established to serve as a place to facilitate continued dialogue on these issues. See <http://www.georgiacourts.org/agencies/cpp/seminar.php> for more information. Additionally, publications on issues related to a child's right to representation have been and will continue to be published in the Georgia Bar Journal and other periodicals of legal and general circulation.

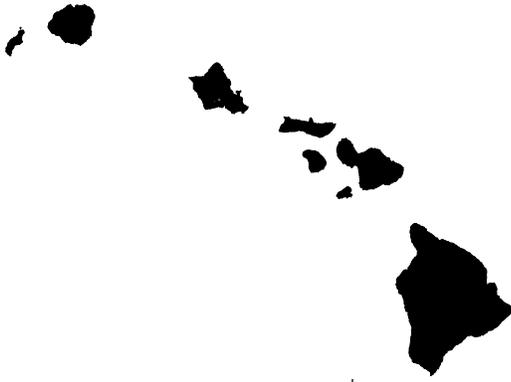
# Hawaii

## Summary and Analysis

IN HAWAII THE LAW MANDATES the appointment of a GAL in all child protective proceedings. There is no requirement that GALs must be attorneys. The court has the discretion to also appoint counsel for the child in cases where the child and the child's GAL "are not in agreement" and where the court finds the appointment would be in the best interests of the child. By statute the GAL is also required to inform the court of the "child's perceived interests" if they differ from those the GAL is advocating.

## Grading Analysis

Criteria	How Hawaii Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Hawaii law provides that appointment of attorneys is discretionary.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The court has the discretion to appoint counsel for the child in cases where the child and the child's GAL "are not in agreement" and where the court finds the appointment would be in the best interests of the child.
Professional Considerations <b>0 points out of a possible 10 points</b>	Hawaii law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Hawaii law does not specifically indicate that a child is a party in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in Hawaii. Hawaii law does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>8 points out of a possible 10 points</b>	Hawaii's Office of Disciplinary Counsel has affirmed that attorney-GALs are not subject to the Hawaii Rules of Professional Conduct because GALs do not act in the traditional attorney role. Nor does Hawaii law hold an attorney responsible for maintaining client confidences. Hawaii has no provision for attorneys with a client with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Hawaii.



**GRADE**

**F**

**SCORE**

**33**

## **Hawaii's CALL TO ACTION**

First Star is appalled by Hawaii's grade. The Hawaii Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews
- Require children's counsel to adhere to the Hawaii Rules of Professional Conduct
- Protect a child's confidences as confidential
- Provide a provision for clients with diminished capacity



# Idaho

## Summary and Analysis

IN IDAHO "... THE COURT SHALL APPOINT a guardian ad litem for the child... to serve at each stage of the proceeding." The GAL does not need to be an attorney and advocates for the best interests of the child. If the GAL is not an attorney, counsel is appointed to represent the GAL. In appropriate cases, the court shall appoint separate counsel for the child. For a child under the age of 12, this appointed attorney operates under the powers and duties of a GAL; for a child 12 years of age or older, the court may order that counsel act with or without the powers and duties of a GAL (or as a traditional attorney). There is no statutory provision requiring the GAL to notify the court of the child's wishes; however, there is a provision requiring the GAL to "act as an advocate for the child."

## Grading Analysis

Criteria	How Idaho Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Idaho provides only for the appointment of a GAL who may or may not be an attorney.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL advocates for the best interests of the child. The court should appoint counsel to represent the GAL, unless the GAL has counsel or has waived counsel. The court may appoint separate counsel for the child in appropriate cases. If there is no qualified guardian ad litem program or qualified guardian ad litem available, the court shall appoint counsel for the child.
Professional Considerations <b>0 points out of a possible 10 points</b>	Although Idaho law mandates training standards for GALs, the law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	In Idaho, the GAL stands in the place of the child in court; therefore, it is the GAL, not the child, who maintains party status in abuse and neglect cases. A child has no statutory right to be present at any proceeding in Idaho. Idaho does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>7 points out of a possible 10 points</b>	Although Idaho has a general provision binding counsel to its ethical rules including a provision concerning clients with diminished capacity, the child's statements to the GAL are not confidential, since an attorney-GAL is not functioning as traditional counsel. No statutory provision granting immunity from malpractice exists for any attorney in Idaho.



**GRADE**

**F**

**SCORE**

**28**

### **Idaho's CALL TO ACTION**

First Star is appalled by Idaho's grade. The Idaho Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews
- Protect a child's statements as confidential



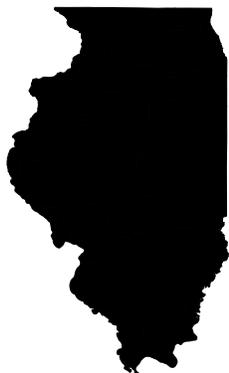
# Illinois

## Summary and Analysis

UNDER THE JUVENILE COURT ACT OF ILLINOIS, a GAL must be appointed by the court to represent a minor when a petition is filed that alleges that either the minor is abused or neglected, or that charges of a sexual offense have been filed against a defendant and the minor is the alleged victim. The GAL is required to represent the minor’s best interests and present recommendations to the court consistent with that duty.

## Grading Analysis

Criteria	How Illinois Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Illinois law provides only for the appointment of a GAL. The appointed GAL need not be an attorney, but if he or she is not one, then he or she must be represented by counsel.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The court may require the appointment of counsel to represent the minor where the court finds that the minor’s interests are in conflict with what the GAL determines to be in the best interest of the minor.
Professional Considerations <b>6 points out of a possible 10 points</b>	Although Illinois law provides guidance on attorney training, Illinois law does not mandate multidisciplinary interaction between counsel and other professionals.
Presence at Proceedings <b>8 points out of a possible 10 points</b>	Illinois maintains that the child is a party in child abuse and neglect cases. A child has the right to be informed of, to be present at and to be heard in any proceeding. Additional points could have been garnered if Illinois provided that the child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Illinois has a general provision binding counsel to its ethical rules. Illinois also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Illinois.



**GRADE**

**F**

**SCORE**

**45**

## **Illinois's CALL TO ACTION**

First Star is appalled by Illinois's grade. The Illinois Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements multidisciplinary interaction
- Require notice for every child
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Indiana

## Summary and Analysis

UNDER INDIANA LAW, THE JUVENILE court may appoint a GAL or a CASA, or both, for the child at any time. Although the GAL is not required to be an attorney, an attorney may be appointed as GAL. The court may appoint an attorney to represent the GAL. According to Indiana law, the GAL must represent the child's best interests. If there is a conflict between the child's best interests and what the child wants, the GAL will generally present both positions to the court, although the GAL is not required to do so by statute.

## Grading Analysis

Criteria	How Indiana Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Indiana law provides that appointment of an attorney-GAL is discretionary.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	Where an attorney is appointed for a child, he/she is required to represent the child like any other client, and thus would be required to promote the child's desires and goals. If a GAL/CASA is appointed for the child (including an attorney appointed as a GAL or CASA) he or she is required to represent and protect the best interests of the child.
Professional Considerations <b>10 points out of a possible 10 points</b>	All GALs (attorney and nonattorney) are required to have court approved training. Indiana law authorizes multidisciplinary interaction between GALs and other professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	Indiana law states that a child is a party in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in Indiana. Indiana law does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>7 points out of a possible 10 points</b>	Indiana has a general provision binding counsel to its ethical rules. Indiana also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. Except for gross conduct, child representatives are provided immunity.



**GRADE**

**F**

**SCORE**

**48**

## **Indiana's CALL TO ACTION**

First Star is appalled by Indiana's grade. The Indiana Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews
- Reject immunity from malpractice for children's counsel



# Iowa

## Summary and Analysis

UNDER IOWA LAW, A COURT must appoint counsel and a GAL to represent the child in Child in Need of Assistance proceedings. The same person may serve both as the child's counsel and as GAL. However, the court may appoint a separate GAL if the same person cannot properly represent both the legal interests of the child as legal counsel and the best interests of the child as GAL. Counsel is usually appointed as both attorney and GAL for the child, and provides for the child's wishes and best interests at the same time.

## Grading Analysis

Criteria	How Iowa Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Iowa law provides for the appointment of a child's attorney.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	Where an attorney-GAL cannot represent both the legal interests and the best interests of the child, the court may appoint a separate GAL and the attorney will continue as legal counsel.
Professional Considerations <b>0 points out of a possible 10 points</b>	Iowa law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	In Iowa the child is afforded party status. A child has no statutory right to be present at any proceeding in Iowa. Iowa does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Under Iowa law, appointment of counsel does not last throughout the appellate process and all subsequent reviews.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Iowa has a general provision binding counsel to its ethical rules. Iowa also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Iowa.



**GRADE**

**D**

**SCORE**

**60**

## **Iowa's CALL TO ACTION**

First Star is alarmed by Iowa's grade. The Iowa Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction.
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Kansas

## Summary and Analysis

KANSAS REQUIRES THE APPOINTMENT of a GAL for all children in “child in need of care” proceedings. The GAL, who must be an attorney, determines the best interests of the child. When the child’s position regarding best interests is not consistent with the determination of the GAL, the GAL must present the child’s position to the court. Then, either the child or the GAL may request the court to appoint a second attorney to represent the child. The court may appoint such a second attorney. If an attorney for the child is appointed, he should allow the GAL and child to communicate, but may require that such communication occur in his presence.

## Grading Analysis

Criteria	How Kansas Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Kansas law requires that children be appointed an attorney-GAL in every “child in need of care” proceeding.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL represents the child’s best interests. When the child’s position is in conflict with the determination of the GAL, the GAL must present the child’s position to the court. Then, either the child or the GAL may request the court to appoint a second attorney to represent the child.
Professional Considerations <b>10 points out of a possible 10 points</b>	Kansas establishes training minimums for children’s attorneys. The court on its own motion or upon request may at any time appoint a multidisciplinary team.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	Children in Kansas are automatically afforded party status. Kansas law also provides for children to be served with notices of hearing and all pleadings. As a party, the child is entitled to and is almost always present at each proceeding.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Under Kansas law, the attorney-GAL, as well as any second attorney that is appointed, shall continue to represent the client throughout any future hearings or an appeal process.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Kansas has a general provision binding counsel to its ethical rules. Kansas also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Kansas.

**GRADE**

**B**

**SCORE**

**86**

## **Kansas'** **CALL TO ACTION**

Kansas' child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Kansas Legislature should:

- Require that all counsel be independent and client directed



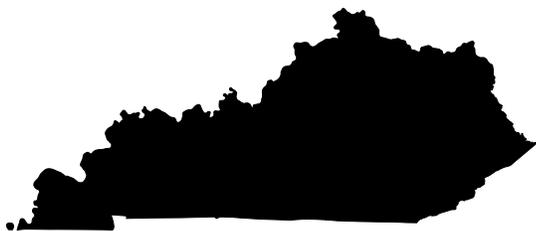
# Kentucky

## Summary and Analysis

IN KENTUCKY, COUNSEL FOR THE CHILD is required in all abuse and neglect and termination of parental rights proceedings. The attorney is required to represent the best interests of the child. The terms “counsel for the child” and “GAL” are used interchangeably. When the best interests are in conflict with the child’s views, the lawyer must inform the court of this conflict.

## Grading Analysis

Criteria	How Kentucky Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	An attorney-GAL is mandatory in all abuse and neglect proceedings.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL is responsible for ensuring the child’s wishes are expressed to the court, even if those wishes differ from the GAL’s recommendations.
Professional Considerations <b>0 points out of a possible 10 points</b>	Kentucky law neither provides guidance on training for children’s counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Kentucky maintains that the child is a party in child abuse and neglect cases. Children in Kentucky are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Children in Kentucky have no right to continued representation during reviews or appeals.
Professional Responsibilities <b>10 points out of a possible 10 points</b>	Kentucky has a general provision binding counsel to its ethical rules. Kentucky also holds lawyers responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Kentucky.



**GRADE**

**D**

**SCORE**

**60**

## **Kentucky's CALL TO ACTION**

First Star is alarmed by Kentucky's grade. The Kentucky Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Louisiana

## Summary and Analysis

LOUISIANA RECEIVED ONE OF ONLY FIVE As in First Star’s state analysis. Louisiana’s child representation law does a nearly perfect job of protecting abused and neglected children. Louisiana’s law contains almost all the necessary provisions needed to adequately protect children within the child welfare system. Children are appointed counsel in every abuse and neglect proceeding. Attorneys are required to advocate for the desires and expressed preferences of the child and follow the child’s direction throughout the case. In every proceeding, the court must appoint qualified counsel who owes the same duties of loyalty, confidentiality, advocacy and competent representation to the child as are owed to any client. Each child has a right to be present and have independent counsel at every stage of Child in Need of Care proceedings, including any relevant writs or appeals.

## Grading Analysis

Criteria	How Louisiana Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Louisiana’s law requires that counsel for children be appointed in every proceeding.
Client-Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Attorneys are required to advocate for the desires and expressed preferences of the child and follow the child’s direction throughout the case in a developmentally appropriate manner.
Attorney Considerations <b>6 points out of a possible 10 points</b>	Louisiana has adopted training standards for children’s counsel. Although the Task Force on Legal Representation in Child Protection Cases has active multidisciplinary representatives, Louisiana statutes do not specifically provide for multidisciplinary interaction between counsel and other child welfare professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	Louisiana maintains that the child is a party in child abuse and neglect cases. The child should be present at significant court hearings. Children in Louisiana are entitled to direct notice.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Each child has a right to continued representation by counsel at each stage of the proceedings, including any relevant writs or appeals.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Louisiana has a general provision binding counsel to its ethical rules. Louisiana also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Louisiana.



**GRADE**

**A**

**SCORE**

**96**

## Louisiana's CALL TO ACTION

### Congratulations to Louisiana!

While Louisiana should include provisions requiring multidisciplinary interaction between counsel and other professionals and requiring that a child be entitled to notice, First Star commends the Louisiana Legislature, its governor, and child welfare advocates who have worked so diligently to protect the rights of Louisiana's children. The entire nation can learn from Louisiana's effort and ultimate outcome.



**T**he Task Force on Legal Representation in Child Protection Cases has been working for 3 years towards the creation of a uniform system of representation in Louisiana. Louisiana is in a transition process from its current "ad hoc" arrangement to a system where qualified, trained, salaried attorneys represent children in child abuse/neglect proceedings in accordance with nationally accepted standards and best practices. Under this model, children are represented by the Child Advocacy Program.

Louisiana's Court Improvement Program hosts an annual statewide multidisciplinary "Together We Can" conference and offers local multidisciplinary trainings, as well. In addition, CIP has facilitated the creation of a website to support child advocates, Children's Legal Advocacy Resources Online (CLARO), which is in the process of full development ([www.childrenslawla.org](http://www.childrenslawla.org)).

# Maine

## Summary and Analysis

UNDER MAINE LAW, the juvenile court may appoint a GAL or a CASA, or both, for the child at any time. Although the GAL is charged with representing the child’s “best interests,” he or she must also report the wishes of the child to the court if the child has made those wishes known. Where legal counsel is appointed for the child at the request of the GAL or child, such counsel represents the child’s expressed wishes.

## Grading Analysis

Criteria	How Maine Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Maine’s children are represented either by CASA- or Attorney-GALs.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	GALs represent the child’s best interest. In cases where the child’s expressed wishes differ from the determined best interest, the GAL or the child may request that independent counsel be additionally provided for the child by the court.
Professional Considerations <b>0 points out of a possible 10 points</b>	Maine law neither provides guidance on training for children’s counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	Maine law does not specifically indicate that a child is a party in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in Maine. Maine does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Maine has a general provision binding counsel to its ethical rules. Maine also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Maine.



**GRADE**

**F**

**SCORE**

**31**

## **Maine's CALL TO ACTION**

First Star is appalled by Maine's grade. The Maine Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Maryland

## Summary and Analysis

UNDER MARYLAND LAW, counsel for the child is required in all Child in Need of Aid proceedings. If the child has “considered judgment,” the attorney should advocate a position consistent with the child’s wishes. If the attorney determines that the child lacks considered judgment, the attorney must inform the court and then advocate a position consistent with the child’s best interests. Where the attorney advocates a position different from the child’s wishes, the attorney must ensure that the child’s position is made known to the court.

## Grading Analysis

Criteria	How Maryland Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Maryland law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>15 points out of a possible 20 points</b>	Where an attorney determines that the child lacks considered judgment, the attorney advocates a position consistent with the child’s best interests. If counsel advocates a position different from the child’s wishes, the attorney must ensure that the child’s position is made known to the court.
Professional Considerations <b>6 points out of a possible 10 points</b>	Maryland has established training minimums for children’s counsel. Maryland law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>7 points out of a possible 10 points</b>	Maryland maintains that the child is a party in child abuse and neglect cases. Children have the right to be present at significant court hearings, however counsel must determine whether the presence of the child at the proceedings should be waived, i.e., whether the child wants or needs to be present at the hearing or whether the child will be harmed by appearing in court. Children are not entitled to direct notice.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	The attorney should continue to represent the child after the initial court proceedings. The attorney should consider and discuss with the child the possibility and ramifications of an appeal and, when appropriate, take all steps necessary to note an appeal or participate in an appeal filed by another party.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Maryland has a general provision binding counsel to its ethical rules. Maryland also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. Maryland has explicitly rejected immunity from malpractice for children’s attorneys.



**GRADE**

**B**

**SCORE**

**88**

## Maryland's CALL TO ACTION

Maryland's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Maryland Legislature should:

- Require that all counsel be independent and client directed
- Establish respectable requirements for multidisciplinary interaction
- Require that a child be entitled to notice



In 2001, Maryland underwent significant efforts to create the "Guidelines of Advocacy for Attorneys Representing Children in Need of Assistance (CINA) and Related Termination of Parental Rights and Adoption Proceedings" which are included as an appendix in the Maryland Rules. These guidelines were created under the premise that the court's ability to protect the interests of children rests in large part upon the skill and expertise of the advocate.

Although Maryland requires all children to be appointed counsel in all abuse and neglect proceedings, the requirement is weakened in two regards. First, the caseloads of most CINA lawyers in Maryland is substantially too large to allow effective assistance of counsel. Second, the contracting process in Maryland creates perverse incentives. Maryland has generally used the same agency that provides services to foster children to also contract out for attorneys to represent the children. The contracting attorneys, Legal Aid being the largest, are paid on a cost per case. The agency awards contracts based upon several factors—with the lowest cost per case considered strongly. Legal Aid lawyers are paid a salary by the legal aid bureau regardless of their caseload or time spent on each case. Private attorney contractors, however, have an incentive to do as little work as possible in CINA cases because under the cost-per-case model they receive the same pay regardless of how many hours they devote to each case.

# Massachusetts

## Summary and Analysis

UNDER MASSACHUSETTS LAW, the court must appoint counsel in all abuse and neglect proceedings. The court may additionally involve one or more GALs. In most abuse and neglect proceedings, counsel represents the expressed wishes of the child client; in cases where those expressed wishes are difficult to ascertain, the law has provided guidelines that detail how attorneys should elicit their clients' views and how to go about representing those views when the attorneys do not think those views are in the clients' best interests. The attorney may request a GAL be appointed only in cases in which the child cannot express an opinion or in cases in which the lawyer feels the child is not able to make an adequately considered decision.

## Grading Analysis

Criteria	How Massachusetts Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Massachusetts' law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Attorneys are required to advocate for the desires and expressed preferences of the child and follow the child's direction throughout the case in a developmentally appropriate manner.
Professional Considerations <b>6 points out of a possible 10 points</b>	Massachusetts has adopted training standards for children's counsel. Massachusetts law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	In Massachusetts, children are not afforded party status. Moreover, children are not entitled to notice and are excused from personal appearance at significant court hearings.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	Under Massachusetts law, trial counsel must maintain representation until appellate counsel has been assigned.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Massachusetts has a general provision binding counsel to its ethical rules. Massachusetts also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Massachusetts.



**GRADE**

**B**

**SCORE**

**81**

## **Massachusetts's CALL TO ACTION**

Massachusetts's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Massachusetts Legislature should:

- Establish respectable requirements for multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require the appointment of the same legal counsel throughout the appellate process and all subsequent reviews



# Michigan

## Summary and Analysis

IN MICHIGAN, A “LAWYER-GAL” IS REQUIRED in all child protective proceedings. A lawyer-GAL’s duty is to the child, and not the court. These duties include the obligations of the attorney-client privilege. Notwithstanding this, the lawyer-GAL is responsible for advocating for the best interests of the child, regardless of whether that assessment reflects the child’s wishes. Consistent with the law governing attorney-client privilege, the lawyer-GAL shall inform the court as to the child’s wishes and preferences. The lawyer-GAL must inform the court if her best interest determination conflicts with the child’s wishes, at which time the court may appoint a separate attorney for the child, if so appropriate.

## Grading Analysis

Criteria	How Michigan Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	A lawyer-GAL is mandatory in all child protective proceedings.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The lawyer-GAL is responsible for ensuring the child’s wishes are expressed to the court, even if those wishes differ from the GAL’s recommendations. Where the lawyer-GAL determines that the child’s interests as identified by the child are inconsistent with the lawyer-GAL’s determination of the child’s best interests, the lawyer-GAL shall communicate the child’s position to the court. If the court considers the appointment appropriate, the court may appoint counsel for the child.
Professional Considerations <b>0 points out of a possible 10 points</b>	Michigan law neither provides guidance on training for children’s counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>7 points out of a possible 10 points</b>	Michigan maintains that the child is a party in child abuse and neglect cases. Notice is required for children age 11 or over. Children are not required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	In Michigan, an appeal in all cases may be taken by the lawyer-GAL for the child.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Michigan has a general provision binding counsel to its ethical rules. Michigan also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Michigan.



**GRADE**

**C**

**SCORE**

**73**

## **Michigan's CALL TO ACTION**

First Star is concerned by Michigan's grade. The Michigan Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be present in all child protective, foster care or dependency proceedings



# Minnesota

## Summary and Analysis

IN MINNESOTA, A GAL IS REQUIRED in every child protection proceeding. The role of the GAL is to advocate for the child's best interests. In addition, if a child age ten or older desires counsel, the court must appoint counsel for the child; for a child under ten, separate counsel is appointed at the discretion of the court. The role of counsel for the child is to advocate for the child's expressed preference. Counsel for the child shall not also act as the child's GAL. The GAL shall request appointment of counsel for a child if the GAL determines that the appointment is necessary to protect the legal rights or legal interests of the child.

## Grading Analysis

Criteria	How Minnesota Fared
Counsel Mandatory <b>25 points out of a possible 40 points</b>	Minnesota law provides that if a child age ten or older desires counsel, the court must appoint counsel for the child. For a child under ten, separate counsel is appointed at the discretion of the court.
Client-Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Appointed counsel is to advocate for the desires and expressed preferences of the child. The GAL must advocate for the child's best interests.
Attorney Considerations <b>4 points out of a possible 10 points</b>	There is no statutory mandate that children's counsel receive specialized training. Under a statewide collaboration of all child protection system stakeholders, including attorneys and GALs, each county has established a collaborative team designed to improve outcomes for abused and neglected children and their families.
Presence at Proceedings <b>6 points out of a possible 10 points</b>	The child who is the subject of an abuse or neglect petition is a participant to the case, not a party. Minnesota law dictates that a child who is the subject of a petition has the right to participate in all proceedings. All children are entitled to notice of all proceedings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Every child has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. An attorney representing a party in a juvenile protection matter shall continue representation throughout any reviews and appeals.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Minnesota has a general provision binding counsel to its ethical rules. Minnesota also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Minnesota.



**GRADE**

**C**

**SCORE**

**75**

### **Minnesota's CALL TO ACTION**

First Star is concerned by Minnesota's grade. The Minnesota Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Establish respectable requirements for attorney training
- Require that a child be considered a party



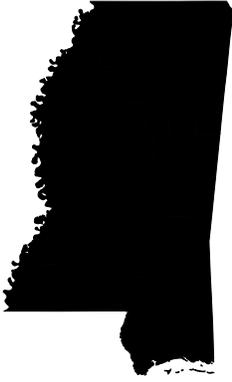
# Mississippi

## Summary and Analysis

MISSISSIPPI RECEIVED ONE OF ONLY FIVE As in First Star's state analysis. Mississippi's child representation law does a nearly perfect job of protecting abused and neglected children. Mississippi's law contains almost all the necessary provisions needed to adequately protect children within the child welfare system. In Mississippi, counsel for the child is required at all critical stages in abuse and neglect proceedings. The attorney is required to advocate for the child's expressed wishes. A GAL is also required in all abuse and neglect proceedings. The GAL, who may be an attorney, is required to represent the best interests of the child. One attorney can serve as both the counsel for the child and GAL however, if there is a conflict between the child's views and the best interests of the child, a separate GAL must be appointed.

## Grading Analysis

Criteria	How Mississippi Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Mississippi law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	The GAL represents the child's best interests. However, if there is a conflict between the child's wishes and best interests, the attorney must represent the child's wishes and request the appointment of a separate GAL.
Professional Considerations <b>6 points out of a possible 10 points</b>	Mississippi has adopted training standards for children's counsel. Mississippi law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Mississippi maintains that the child is a party in child abuse and neglect cases. Children in Mississippi are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Under Mississippi law, 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.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Mississippi has a general provision binding counsel to its ethical rules. Arizona also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Mississippi.



**GRADE**

**A**

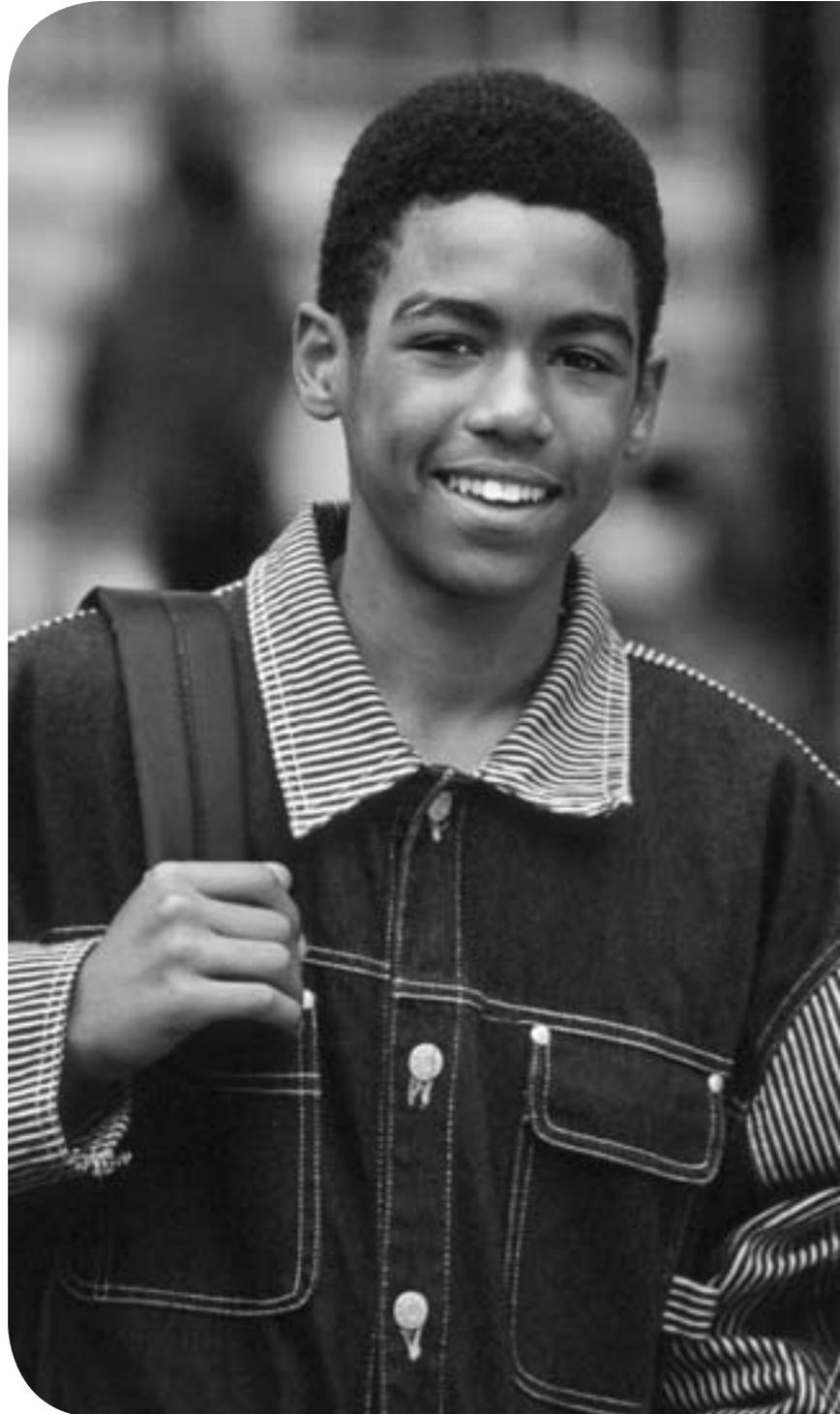
**SCORE**

**90**

## **Mississippi's CALL TO ACTION**

### **Congratulations to Mississippi!**

While Mississippi should include provisions requiring multidisciplinary interaction between counsel and other professionals and requiring that a child be entitled to notice and be present at significant court hearings, First Star commends the Mississippi Legislature, its governor, and child welfare advocates who have worked so diligently to protect the rights of Mississippi's children. The entire nation can learn from Mississippi's effort and ultimate outcome.



# Missouri

## Summary and Analysis

MISSOURI LAW REQUIRES THE APPOINTMENT of a GAL in both abuse and neglect cases and termination of parental rights proceedings. In abuse and neglect cases, the statute requires the GAL to “appear for and represent” the child. In TPR cases, the statute more precisely defines the GAL’s role as “the legal representative of the child” and gives instructions for “ascertain[ing] the child’s wishes, feelings, attachments, and attitudes.” Although the statute requires that the GAL ascertain the child’s wishes, the GAL represents the child’s best interests.

## Grading Analysis

Criteria	How Missouri Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Missouri provides only for the appointment of a GAL who may or may not be an attorney. A nonattorney advocate shall have access to a court appointed attorney GAL should the circumstances of the particular case so require.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL advocates for the best interests of the child, although the GAL is required to ascertain the child’s wishes. In appropriate cases, the court shall appoint separate counsel for the child. For a child under the age of 12, this attorney operates as a GAL; for a child 12 years of age or older, the attorney functions either as a GAL or as a traditional attorney at the discretion of the court.
Professional Considerations <b>6 points out of a possible 10 points</b>	Missouri has adopted training standards for all attorney and non-attorney GALs. Missouri law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	In Missouri, a juvenile is a party to abuse and neglect proceedings. As a party, a juvenile is entitled to notice of all hearings. A juvenile should be present if age appropriate, but attendance is not mandatory.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Missouri has a general provision binding counsel to its ethical rules. Missouri also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Missouri.



**GRADE**

**F**

**SCORE**

**47**

### **Missouri's CALL TO ACTION**

First Star is appalled by Missouri's grade. The Missouri Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements multidisciplinary interaction
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Montana

## Summary and Analysis

IN MONTANA, COUNSEL FOR THE CHILD and a GAL are both required for all child protection proceedings. While Montana statutes are unclear as to the role of counsel, the law clearly indicates that the GAL is charged with the representation of the child's best interests. Where the GAL is an attorney, the attorney-GAL must assert the child's legal rights.

## Grading Analysis

Criteria	How Montana Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Montana law requires counsel for children in all abuse and neglect proceedings.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The Montana Code provides that any party involved in a dependency petition has the right to counsel and that counsel must assert a client's legal rights.
Professional Considerations <b>4 points out of a possible 10 points</b>	Montana law does not provide guidance on training for children's counsel law. Montana statutes authorize multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Montana maintains that the child is a party in child abuse and neglect cases. Children are not entitled to notice and they are excused from personal appearance at significant court hearings.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	Children in Montana have the right to counsel in all proceedings held pursuant to the dependency petition.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Montana has a general provision binding counsel to its ethical rules. Montana also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Montana.

**GRADE**

**D**

**SCORE**

**69**

## Montana's CALL TO ACTION

First Star is alarmed by Montana's grade. The Montana Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Nebraska

## Summary and Analysis

IN NEBRASKA, THE APPOINTMENT OF A GAL is mandatory in abuse or neglect proceedings. The court must appoint an attorney as GAL unless there are “special reasons why a particular layperson would be the most appropriate guardian ad litem.” Where a layperson, or CASA, is appointed, an attorney is appointed to represent the CASA, not the child. GALs are appointed to stand in lieu of a parent for a protected juvenile. The GAL has the “duty to protect the interests of the juvenile” and must act “in the juvenile’s best interests” in order to “defend the legal and social interests of such juvenile.” There is no statutory provision requiring the GAL to inform the court of the child’s wishes. In rare cases, where conflict arises, the child may be appointed separate counsel.

## Grading Analysis

Criteria	How Nebraska Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Nebraska requires that an attorney-GAL be appointed. In the rare event where a nonattorney is appointed as a GAL, an attorney shall be appointed to represent the nonattorney-GAL.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL protects both the best and legal interests of the child. Where the GAL and child disagree, the GAL may inform the court of the conflict and the court may appoint counsel for the child.
Professional Considerations <b>10 points out of a possible 10 points</b>	Nebraska law does not provide guidance on training for children’s counsel. The duties of the GAL include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members.
Presence at Proceedings <b>7 points out of a possible 10 points</b>	Nebraska law affords the juvenile party status in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in Nebraska. Nebraska law requires that a child age 10 and older receive direct notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Under Nebraska law, appointment of counsel is not guaranteed throughout the appellate process and all subsequent reviews.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Nebraska has a general provision binding counsel to its ethical rules. Nebraska also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Nebraska.

**GRADE**

**C**

**SCORE**

**73**

## Nebraska's CALL TO ACTION

First Star is concerned by Nebraska's grade. The Nebraska Legislature should, among other things:

- Require that all counsel be independent and client directed
- Require that a child be present in all child protective, foster care or dependency proceedings
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Nevada

## Summary and Analysis

A GAL FOR THE CHILD IS REQUIRED in all abuse and neglect proceedings. The GAL does not have to be an attorney. The GAL is to “represent and protect the best interests of the child.” As part of her responsibilities, the GAL must inform the court of the “child’s desires.” The court may appoint an attorney to represent the child. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.

## Grading Analysis

Criteria	How Nevada Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Nevada provides only for the appointment of a guardian ad litem who may or may not be an attorney.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL must represent the “best interests” of the child. As part of her responsibilities, the GAL must inform the court of the “child’s desires.” The court may appoint an attorney to represent the child. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.
Professional Considerations <b>0 points out of a possible 10 points</b>	Nevada law neither provides guidance on training for children’s counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	Nevada law does not specifically indicate that a child is a party in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in Nevada. Nevada law does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Nevada has a general provision binding counsel to its ethical rules. Nevada also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Nevada.



**GRADE**

**F**

**SCORE**

**31**

## **Nevada's CALL TO ACTION**

First Star is appalled by Nevada's grade. The Nevada Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews

**T**he Children's Attorney Project (CAP) at Clark County Legal Services was formed in 1999 from a task force of County Commissioner's, Clark County District Court, Social Worker's, Attorney's, Family Law Judges and State Children's Rights workers. The fundamental goal was to create a method for abused and neglected children to have a voice in court and speak out for their destiny.

CAP attorneys provide counsel, advice and representation to abused and neglected children who have never before had representation. Children in foster care in Clark County make up approximately 70% of the foster care population in Nevada. CAP has grown to seven attorneys plus a pro bono component. CAP attorneys currently represent approximately 1/3 of the children in foster care. In order to provide quality, client directed representation, caseloads are limited to no more than 50 cases per attorney. This allows each attorney to see his or her clients regularly at their residences, and attend many meetings where preliminary decisions regarding their care are made. It also allows counsel to be pro-active in filing legal pleadings and obtaining enforceable orders.

The Children's Attorney Project fully support legislation that would require an attorney for each child in dependency court, funded in a manner consistent with keeping caseloads per attorney at their present levels.

# New Hampshire

## Summary and Analysis

CHILDREN IN NEW HAMPSHIRE ARE REPRESENTED in abuse and neglect cases by GALs. New Hampshire law provides that the court shall appoint all GAL to represent the best interests of the child. Courts, at their discretion, may appoint attorneys for the child where the child's expressed interests conflict with the recommendations of the GAL.

## Grading Analysis

Criteria	How New Hampshire Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	New Hampshire's children are represented by volunteer, unpaid CASA GALs or paid GALs. Courts at their discretion may appoint an attorney as a GAL and may also appoint an attorney for the child where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	CASAs and GALs represent the child's best interest. In cases involving an abused or neglected child, where the child's expressed interest conflict with the recommendation for dispositional orders of the GAL or CASA GAL, the court may appoint an attorney to represent the interests of the child.
Professional Considerations <b>0 points out of a possible 10 points</b>	New Hampshire law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	In New Hampshire, a child falls within the definition of a "party having an interest" in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in New Hampshire. New Hampshire law does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	New Hampshire has a general provision binding counsel to its ethical rules. New Hampshire also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in New Hampshire.



**GRADE**

**F**

**SCORE**

**35**

## **New Hampshire's CALL TO ACTION**

First Star is appalled by New Hampshire's grade. The New Hampshire Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# New Jersey

## Summary and Analysis

IN NEW JERSEY, ANY MINOR who is the subject of a child abuse or neglect proceeding must be represented by either privately retained counsel or an appointed law guardian to help protect his interests and to help him express his wishes to the court. Law guardians must be attorneys. Law guardians advocate for the child’s expressed views.

## Grading Analysis

Criteria	How New Jersey Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	New Jersey requires that a child who is the subject of a child abuse, neglect, or TPR proceeding must be represented by an attorney law guardian.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Counsel advocates for the expressed interests of the child.
Professional Considerations <b>10 points out of a possible 10 points</b>	The Office of the Public Defender must ensure that all attorneys hired to perform the task of law guardian must have received adequate training. New Jersey law provides for collaborative, multi-disciplinary efforts on behalf of abused and neglected children.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	New Jersey maintains that the child is a party in child abuse and neglect cases. Children in New Jersey are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	Although in practice the trial lawyer will collaborate with the appellate attorney, the Office of Law Guardian has an established appellate unit that provides all legal representation for children in appellate matters.
Professional Responsibility <b>10 points out of a possible 10 points</b>	New Jersey has a general provision binding counsel to its ethical rules. New Jersey also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in New Jersey.



**GRADE**

**B**

**SCORE**

**89**

## **New Jersey's CALL TO ACTION**

New Jersey's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the New Jersey Legislature should:

- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require the appointment of the same legal counsel throughout the appellate process and all subsequent reviews



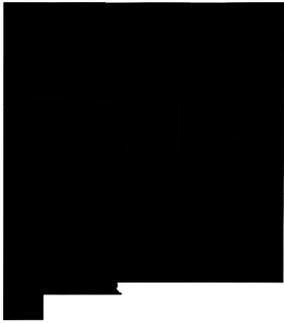
# New Mexico

## Summary and Analysis

ACCORDING TO NEW MEXICO'S CHILDREN'S Code, children are afforded the same basic rights as adults, except as otherwise provided in the Code. The child is entitled to a GAL appointed by the court at the inception of the proceeding; the GAL must be an attorney appointed to represent and protect the child's best interests. The GAL is responsible for advocating for the best interests of the child. The GAL has a duty to "convey the child's declared position to the court at every hearing." For children 14 years of age and older, an attorney is appointed to "provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client."

## Grading Analysis

Criteria	How New Mexico Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	New Mexico's law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>8 points out of a possible 20 points</b>	If the child is fourteen years of age or older, the court shall appoint a client directed attorney for the child.
Professional Considerations <b>10 points out of a possible 10 points</b>	New Mexico law both provides guidance on training for children's counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	The child who is the subject of an abuse or neglect petition is a party to the case. The attorney-GAL receives notice on behalf of the child but children in New Mexico are not entitled to notice themselves nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	The attorney-GAL in an abuse or neglect case is obligated to represent the child during any appellate proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	New Mexico has a general provision binding counsel to its ethical rules. New Mexico also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in New Mexico.



**GRADE**

**B**

**SCORE**

**82**

### **New Mexico's CALL TO ACTION**

New Mexico's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the New Mexico Legislature should:

- Require that all counsel be independent and client directed
- Require that a child be entitled to notice and be present at significant court hearings



**N**ew Mexico, through its Court Improvement Project, has implemented standards for Guardians ad Litem, Youth Attorneys, and Respondent Attorneys. These are part of the contracts negotiated at the Judicial District level for court appointed counsel. These standards were adopted by the New Mexico Supreme Court in 2006.

New Mexico has also issued a number of Best Practice Bulletins, each with specified roles for Court Appointed Counsel. These Best Practices promote multi-disciplinary involvement in a wide range of processes. In addition, Team Decision Making meetings involving the parties and the professionals, including treatment providers, occur throughout the life of the case.

The court may require mediation at any stage of the proceedings. Mediation for post-adoption contact between adoptive parents, the adoptee and the birth family is available in appropriate cases.

# New York

## Summary and Analysis

NEW YORK RECEIVED ONE OF ONLY FIVE As in First Star's state analysis. In New York, a "law guardian" is required to represent children in all proceedings alleging abuse and neglect as well as all permanency proceedings including termination of parental rights. The law guardian must be an attorney. A law guardian fills a dual role and is required to help protect children's interests and to help them express their wishes to the court. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition.

## Grading Analysis

Criteria	How New York Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	New York's law requires that children be appointed counsel in every abuse and neglect proceeding and when children are voluntarily placed into foster care.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Under New York's statute, a lawyer must represent the child's wishes and interests. The lawyer may request, or the court may determine, that a conflict requires the additional appointment of a separate guardian ad litem.
Professional Considerations <b>10 points out of a possible 10 points</b>	New York law both provides guidance on training for children's counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	New York maintains that the child is a party in child abuse and neglect cases. The law guardian receives notice on behalf of the child but children in New York are not entitled to notice themselves nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	After disposition the child's attorney must seek to ensure continued representation of the child at all further hearings so long as the court maintains its jurisdiction.
Professional Responsibility <b>10 points out of a possible 10 points</b>	New York has a general provision binding counsel to its ethical rules. New York also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in New York.

**GRADE**

**A**

**SCORE**

**94**



## **New York's CALL TO ACTION**

### **Congratulations to New York!**

While New York should require that a child be entitled to notice and be present at significant court hearings, First Star commends the New York Legislature, its governor, and child welfare advocates who have worked so diligently to protect the rights of New York's children.



# North Carolina

## Summary and Analysis

IN NORTH CAROLINA, when in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a GAL to represent the juvenile. In every case where a nonattorney is appointed as a GAL, an attorney for the child shall be appointed in the case in order to assure protection of the child’s legal rights throughout the proceeding.

## Grading Analysis

Criteria	How North Carolina Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	North Carolina requires that a GAL be appointed. In every case where a nonattorney is appointed as a GAL, an attorney shall be appointed in the case in order to assure protection of the child’s legal rights throughout the proceeding.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL protects the best interests of the child, however GALs are required to express the views of the child to the court as part of a statewide court-sponsored GAL policy.
Professional Considerations <b>10 points out of a possible 10 points</b>	North Carolina has adopted training standards for children’s counsel. North Carolina law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>7 points out of a possible 10 points</b>	North Carolina maintains that the juvenile is a party in all actions. Juveniles over the age of 12 are entitled to notice in North Carolina. Children are not required be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Under North Carolina law, representation is terminated after a permanent plan for the child is approved by the court.
Professional Responsibility <b>10 points out of a possible 10 points</b>	North Carolina has a general provision binding counsel to its ethical rules. North Carolina also holds GALs responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in North Carolina.

**GRADE**

**B**

**SCORE**

**83**



## North Carolina's CALL TO ACTION

North Carolina's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the North Carolina Legislature should:

- Require that all counsel be independent and client directed
- Require that a child be present in all child protective, foster care or dependency proceedings



**A**lthough not codified, the North Carolina GAL Attorney Advocates Program encourages children's participation in court and will facilitate their presence at the proceeding, particularly "older youth." Juveniles can direct the kind of participation that is comfortable. For instance, the GAL may arrange for the child to testify, observe the hearing, speak to the judge in chambers, or write a letter to the court. If a child must testify at an adjudicatory proceeding "against" their parents, then the GAL Attorney makes a motion to utilize close circuit television or to remove the parent from the court room while the child testifies. If necessary, the GAL Attorney will subpoena the child to ensure that the Department of Social Services, as legal custodian, arranges for transportation to court. GAL's often speak with children's therapists to determine whether their presence in court would be empowering or detrimental to their welfare.

With respect to special training, GAL Attorney Advocates must complete New Attorney Training within six months of signing their contract, and staff attorneys must also complete this training. Other trainings occur on a yearly basis to ensure that attorneys are updated with new legislation and case law as well as training specific to appellate advocacy. Continuing Legal Education credit is given by the North Carolina State Bar for these GAL Program sponsored trainings. GAL Attorneys are also notified of other legal programs relevant to juvenile law and encouraged to attend.

# North Dakota

## Summary and Analysis

UNDER THE NORTH DAKOTA CHILD ABUSE and Neglect Act, a GAL must be appointed to children in judicial proceedings involving abuse and neglect allegations. A GAL is not required to be a licensed attorney. The role of a GAL is to advocate the best interests of the child. When determining the best interests of the child, the GAL is required to consider the wishes of the child, but is not bound by these wishes.

In parental rights termination cases, the North Dakota Uniform Juvenile Court Act applies. A child involved in proceedings under this Act who is not represented by a parent, guardian, or custodian is entitled to counsel at custodial, post-petition, and informal adjustment stages of the proceedings. Alternately, if a child is a party to the proceedings and has interests that conflict with those of one or more of the other parties, that child is also entitled to counsel.

## Grading Analysis

Criteria	How North Dakota Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	GALs in deprivation cases in North Dakota are not required to be licensed attorneys.
Client Directed Counsel Mandatory <b>0 points out of a possible 20 points</b>	GALs are not bound by the child's desires and may substitute their own judgment for the child's.
Professional Considerations <b>6 points out of a possible 10 points</b>	North Dakota has adopted training standards for children's counsel. North Dakota law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	North Dakota maintains that the child is a party in child abuse and neglect cases. Children in North Dakota are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Although counsel must be provided for a child at custodial, post-petition, and informal adjustment stages of proceedings, the appointment of counsel need not last throughout the appellate process and all subsequent reviews.
Professional Responsibility <b>10 points out of a possible 10 points</b>	North Dakota has a general provision binding counsel to its ethical rules. North Dakota also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in North Dakota.



**GRADE**

**F**

**SCORE**

**35**

## **North Dakota's CALL TO ACTION**

First Star is appalled by North Dakota's grade. The North Dakota Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews

**C**urrently, North Dakota employs the Rules for Civil Procedure for juvenile deprivation cases. However, the North Dakota Juvenile Policy Board is in the process of establishing court rules for juvenile procedure and intends to draft rules with regards to GALs. Recently, the Board finished reviewing the Uniform Juvenile Code for North Dakota and has made recommendations to the state legislature which is currently considering the Board's recommendations. Hopefully new legislation will be passed during the current legislative session. The Uniform Juvenile Code has not been modified in forty years.

# Ohio

## Summary and Analysis

OHIO LAW MANDATES THE APPOINTMENT of counsel for children in abuse and neglect proceedings. The court must also appoint a GAL. The GAL is responsible for protecting the best interests of the child and counsel must protect the child’s legal interests. If an attorney is appointed as GAL, that attorney can serve in a dual capacity as both the GAL and as the child’s counsel. If a conflict arises between these two roles, the court must appoint a separate GAL.

## Grading Analysis

Criteria	How Ohio Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Under Ohio law, a child is entitled to representation by legal counsel at all stages of the proceedings.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Children’s counsel represents the child’s legal interests; the GAL represents the child’s best interests. When the GAL is an attorney, the guardian may also serve as counsel to the ward providing no conflict between the roles exist. If a person is serving as GAL 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 GAL, the court shall appoint another person as GAL for the ward.
Professional Considerations <b>0 points out of a possible 10 points</b>	Ohio law does not provide guidance on training for children’s counsel nor does the law provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Ohio maintains that the child is a party in child abuse and neglect cases. The GAL shall be given notice of all proceedings on behalf of the child. Children are excused from personal appearance at significant court hearings.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel during reviews or appeals.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Ohio has a general provision binding counsel to its ethical rules. Ohio also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Ohio.



**GRADE**

**C**

**SCORE**

**74**

### **Ohio's CALL TO ACTION**

First Star is concerned by Ohio's grade. The Ohio Legislature should, among other things:

- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews

**O**hio operates under a uniquely “home rule” style of government with state supervised but county administered systems. This results in practice methods that may vary in each of Ohio’s 88 counties. For example, while in Franklin County all appointed GALs are attorneys, that is not the case in many other counties, although mandated by law.

Franklin County also appoints a CASA to help with the investigation phase of the case and has implemented a mediation program for dependency cases so as to allow for the best family centered alternatives to be presented to the court. This program allows participation of all parties, including the children, the attorneys, and GAL. The courts also generally allow for a GAL to cross over between domestic and juvenile courts if the family is involved with both custody and dependency proceedings.

Statewide, Ohio has recognized ongoing problems in relation to representation of children in dependency proceedings and has made significant strides in the past few years in promulgating change. In 2005, the Ohio General Assembly enacted O.R.C. § 2151.282, which created a CASA/GAL committee to study the issue of costs associated with advocating on behalf of children and to analyze advocacy services provided to abused, neglected and dependent children. The study committee is to compile, examine and analyze all of the data it receives and prepare a final report for the governor, speaker of the House of Representatives, and the president of the Senate by July 1, 2007.

# Oklahoma

## Summary and Analysis

IN OKLAHOMA, EVERY CHILD who is alleged to be deprived (abused, neglected, or abandoned) must be appointed an attorney. The child's attorney is statutorily required to represent "any expressed interest of the child." A GAL may also be appointed at the discretion of the court if requested by the child's attorney.

## Grading Analysis

Criteria	How Oklahoma Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Oklahoma law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	The child's attorney has a statutory obligation to represent the child's expressed interests, which may be in conflict with the child's best interests.
Professional Considerations <b>0 points out of a possible 10 points</b>	Oklahoma law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between the child's attorney and other child welfare professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Oklahoma maintains that the child is a party in child abuse and neglect proceedings. The child's attorney receives notice on behalf of the child but children in Oklahoma are not entitled to notice themselves nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Under Oklahoma law, a child is entitled to counsel until his or her case is dismissed by the court, as a result of the child's return home, adoption, or the child's turning 18.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Oklahoma has a general provision binding counsel to its ethical rules. Oklahoma also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Oklahoma.

**GRADE**

**B**

**SCORE**

**84**

## **Oklahoma's CALL TO ACTION**

Oklahoma's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Oklahoma Legislature should:

- Establish respectable requirements for multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings



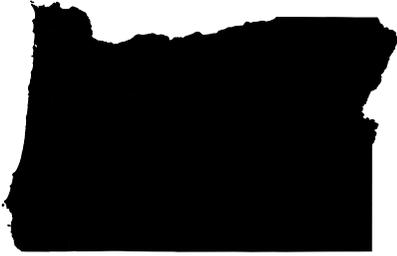
# Oregon

## Summary and Analysis

IN OREGON, WHERE A REQUEST FOR COUNSEL for the child is made to the court, the court is required to appoint counsel. In all other cases, a CASA is required for every child who is the subject of a child abuse or neglect hearing. The CASA is considered a party to the proceeding and may be represented by counsel. There is no statutory provision requiring the CASA to express the child's wishes. Where a request for counsel for the child is made to the court, the court is required to appoint counsel.

## Grading Analysis

Criteria	How Oregon Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Whenever requested to do so, the court shall appoint counsel to represent the child in all abuse and neglect proceedings.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	Attorneys for children in Oregon represent the child's expressed interests. CASAs represent the child's best interests.
Professional Considerations <b>6 points out of a possible 10 points</b>	Oregon law establishes training guidelines for children's counsel. Oregon law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	In Oregon, the juvenile is considered a party in all actions. Children are entitled to be present and to receive notice of all significant court hearings.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	In Oregon, there is express statutory authority for counsel on appeal upon the request of any party.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Oregon has a general provision binding counsel to its ethical rules. Oregon also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Oregon.



**GRADE**

**D**

**SCORE**

**60**

## **Oregon's CALL TO ACTION**

First Star is alarmed by Oregon's grade. The Oregon Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Pennsylvania

## Summary and Analysis

IN PENNSYLVANIA, COURTS MUST APPOINT A GAL to children in proceedings brought under the Juvenile Act who are determined to be “dependent”. The GAL must be an attorney at law. The GAL must represent both the child’s legal interests and best interests, including expressing the wishes of the child to the court to the extent that these wishes are ascertainable. The attorney-GAL may move the court for appointment as legal counsel and assignment of a separate GAL, especially if the information that the GAL is privy to is ripe for the conflict and can be used to the detriment of the child.

## Grading Analysis

Criteria	How Pennsylvania Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Pennsylvania law requires an attorney and a GAL to be appointed to every child.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	While the attorney-GAL is required to report the child’s wishes to the court, the attorney-GAL may advocate in opposition to the child’s wishes.
Professional Considerations <b>6 points out of a possible 10 points</b>	Pennsylvania law neither provides guidance on training for children’s counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>7 points out of a possible 10 points</b>	In Pennsylvania the child is afforded party status. Notice is required for all children over the age of fourteen. However, there are no express statutory provisions concerning the right of the child to attend court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Counsel must represent the child until the closing of the dependency case, including any subsequent reviews or appeals.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Pennsylvania has a general provision binding counsel to its ethical rules. Pennsylvania also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists in Pennsylvania.



**GRADE**

**C**

**SCORE**

**79**

## **Pennsylvania's CALL TO ACTION**

First Star is concerned by Pennsylvania's grade. The Pennsylvania Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for multidisciplinary interaction.
- Require that a child be present in all child protective, foster care or dependency proceedings



# Rhode Island

## Summary and Analysis

IN RHODE ISLAND, ANY CHILD WHO IS ALLEGED to be abused or neglected as a subject of a petition filed in family court shall have a GAL and/or a CASA appointed by the court to represent this child, all in the discretion of the court. Only an attorney can function as a GAL, whereas laypersons may perform their duties as a CASA. There is no statutory provision requiring the attorney-GAL to inform the court of the child's expressed wishes.

## Grading Analysis

Criteria	How Rhode Island Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Rhode Island law requires that children be appointed a GAL or CASA. Legal counsel may be appointed at the discretion of the court.
Client Directed Counsel Mandatory <b>0 points out of a possible 20 points</b>	Child representatives are not required to advocate for the child's expressed wishes.
Professional Considerations <b>0 points out of a possible 10 points</b>	Rhode Island law does not provide guidance on training for children's counsel nor does the law provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	Rhode Island law does not specifically indicate that a child is a party in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in Rhode Island law does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Rhode Island has a general provision binding counsel to its ethical rules. Rhode Island also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Rhode Island.



**GRADE**

**F**

**SCORE**

**25**

## Rhode Island's CALL TO ACTION

First Star is appalled by Rhode Island's grade. The Rhode Island Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# South Carolina

## Summary and Analysis

IN SOUTH CAROLINA, THE SCOPE OF A CHILD'S RIGHT to legal representation differs by type of proceeding. In abuse and neglect proceedings, the court is statutorily required to appoint both a GAL and an attorney for the child. The court is also required to appoint a GAL in termination of parental rights proceedings, but appointment of separate legal counsel for the child is discretionary. In both types of proceedings, legal counsel is provided to guardians who are not themselves attorneys.

## Grading Analysis

Criteria	How South Carolina Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	South Carolina law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	The attorney for the child represents the child's expressed interests since the GAL is appointed to represent the child's best interest.
Professional Considerations <b>0 points out of a possible 10 points</b>	South Carolina law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	South Carolina law does not specifically indicate that a child is a party in child abuse and neglect cases. Children in South Carolina are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Appointment of counsel does not last throughout the appellate process and all subsequent reviews.
Professional Responsibility <b>10 points out of a possible 10 points</b>	South Carolina has a general provision binding counsel to its ethical rules. South Carolina also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in South Carolina however GALs are immune from liability.



**GRADE**

**C**

**SCORE**

**70**

## **South Carolina's CALL TO ACTION**

First Star is concerned by South Carolina's grade. The South Carolina Legislature should, among other things:

- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# South Dakota

## Summary and Analysis

AN ATTORNEY MUST BE APPOINTED to represent the child’s best interests in abuse and neglect proceedings. A GAL or CASA may be appointed to assist such an attorney, and must be appointed as assistant when the child is adjudicated as abused or neglected and removed from his or her home. There is no statutory provision requiring an attorney or GAL to express the wishes of the child.

## Grading Analysis

Criteria	How South Dakota Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	South Dakota law requires that children be appointed counsel in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>0 points out of a possible 20 points</b>	The attorney for the child shall represent the child’s best interests. Attorneys are not required to advocate for the child’s wishes.
Professional Considerations <b>0 points out of a possible 10 points</b>	South Dakota law does not provide guidance on training for children’s counsel nor does the law provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	In South Dakota, the child is considered a party in all actions. However, there are no express statutory provisions entitling children to notice or the right to attend significant court hearings.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	Under South Dakota law, appointment of counsel is not guaranteed throughout the appellate process and all subsequent reviews.
Professional Responsibility <b>10 points out of a possible 10 points</b>	South Dakota has a general provision binding counsel to its ethical rules. South Dakota also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in South Dakota.



**GRADE**

**F**

**SCORE**

**54**

## **South Dakota's CALL TO ACTION**

First Star is appalled by South Dakota's grade. The South Dakota Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Tennessee

## Summary and Analysis

IN CASES OF ALLEGED ABUSE OF A CHILD IN TENNESSEE, the court shall appoint a GAL for the child. The GAL must be an attorney. The GAL is required to both advocate for the child’s best interests and ensure that the child’s concerns and preferences are effectively advocated. If there is a conflict between the child’s best interests and the child’s views, the GAL may request that another attorney be appointed to either represent the best interests of the child or the child’s views.

## Grading Analysis

Criteria	How Tennessee Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Tennessee law requires that an attorney-GAL for children be appointed in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	If, after fully investigating and advising the child, the GAL is in a position in which the child is urging the GAL to take a position that the GAL believes is contrary to the child’s best interest, the GAL shall either: (i) request that the court appoint another lawyer to serve as GAL, and then advocate for the child’s position while the other lawyer advocates for the child’s best interest, or (ii) request that the court appoint another lawyer to represent the child in advocating the child’s position, and then advocate the position that the GAL believes serves the best interests of the child.
Attorney Considerations <b>6 points out of a possible 10 points</b>	Tennessee has adopted training standards for children’s counsel. Tennessee law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	In Tennessee, the child is considered a party. However, there are no express statutory provisions entitling children to notice or the right to attend court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Counsel is responsible for filing an appeal when appropriate; and representing the child on appeal, whether the appeal is filed by or on behalf of the child or filed by another party.
Professional Responsibility <b>7 points out of a possible 10 points</b>	Tennessee has a general provision binding counsel to its ethical rules. Tennessee also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. In Tennessee, any GAL shall be presumed to be acting in good faith and in so doing shall be immune from liability.

**GRADE**

**B**

**SCORE**

**87**

## Tennessee's CALL TO ACTION

Tennessee's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Tennessee Legislature should:

- Establish respectable requirements for multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Reject immunity from malpractice for children's attorneys



# Texas

## Summary and Analysis

REPRESENTATION BY AN ATTORNEY AD LITEM (AAL) AND A GAL is mandatory in cases in which the government is seeking conservatorship of the child in response to child abuse or neglect allegations or is seeking termination of parental rights. An attorney may serve in a dual role as both attorney and GAL. If the attorney is appointed in the dual role, she may subsequently request, or the court may choose to appoint, a separate GAL. The GAL acts upon the child's best interests, and the AAL acts upon the child's expressed objectives. The attorney ad litem owes the duties of undivided loyalty, confidentiality, and competent representation to her client, but is authorized to reveal confidential information in order to comply with her duties as a mandated reporter.

## Grading Analysis

Criteria	How Texas Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Texas law provides that the appointment of an AAL and a GAL are mandatory in child abuse and neglect proceedings.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	The AAL's role is to advise the child and represent the child's expressed objectives.
Professional Considerations <b>6 points out of a possible 10 points</b>	Texas has established training minimums for children's counsel. Texas law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>3 points out of a possible 10 points</b>	Texas law does not specifically indicate that a child is a party in child abuse and neglect cases. Children in Texas are not entitled to notice. A child shall attend each permanency hearing unless the court specifically excuses the child's attendance.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested, an order appointing the Department of Protective and Regulatory Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court.
Professional Responsibility <b>8 points out of a possible 10 points</b>	Texas has a general provision binding counsel to its ethical rules. Texas and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Texas. Under Texas law, an attorney is authorized to reveal confidential information in order to comply with her duties as a mandated reporter.



**GRADE**

**B**

**SCORE**

**87**

## **Texas's CALL TO ACTION**

Texas's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Texas Legislature should, among other things:

- Establish respectable requirements for multidisciplinary interaction
- Require that a child be considered a party entitled to notice
- Require that client confidences remain confidential



# Utah

## Summary and Analysis

IN UTAH, AN ATTORNEY-GAL REPRESENTS the best interests of each child who may become the subject of a petition alleging abuse, neglect, or dependency. The attorney-GAL is required to represent the child's best interests throughout all subsequent court proceedings after appointment. The attorney-GAL is required to advocate only the best interests of the child, though if the child's wishes are contrary to their best interests, the attorney-GAL is legally obligated to express the child's wishes to the court.

## Grading Analysis

Criteria	How Utah Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	An attorney-GAL shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The attorney-GAL shall represent the best interests of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interests, 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 interests.
Professional Considerations <b>10 points out of a possible 10 points</b>	Utah establishes training minimums for children's counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	Utah maintains that the child is a party in child abuse and neglect cases. A child who is the subject of a juvenile court hearing is entitled to notice, to be present at each hearing, and is entitled to an opportunity to be heard.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	After disposition the child's attorney must seek to ensure continued representation of the child at all further hearings so long as the court maintains its jurisdiction.
Professional Responsibility <b>7 points out of a possible 10 points</b>	Utah has a general provision binding counsel to its ethical rules. Utah also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. An attorney-GAL is considered an employee of Utah for purposes of indemnification against malpractice liability.

**GRADE**

**C**

**SCORE**

**78**

## Utah's CALL TO ACTION

First Star is concerned by Utah's grade. The Utah Legislature should, among other things:

- Require that all counsel be independent and client directed
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews
- Reject immunity from malpractice for children's counsel



**T**he Utah Office of the Guardian ad Litem is a statewide office of specially trained full time attorneys and CASA volunteers. There are 10 physical offices throughout the state. The Office was established in 1994, and since then every single child in every abuse/neglect case has been represented by an attorney guardian ad litem in their case throughout the state.

# Vermont

## Summary and Analysis

VERMONT LAW MAKES APPOINTMENT OF A GAL or counsel mandatory in juvenile court proceedings. However, representation of children by GALs or by counsel in family court proceedings is governed by the Rules for Family Proceedings. The Rules require that a child who is the subject of such a proceeding be represented both by counsel and by a GAL. When a ward and a ward's GAL disagree as to a matter, the attorney assigned to represent the ward shall promptly and fully inform the court of the position of the GAL. The GAL also shall be afforded the right to be heard but shall not disclose privileged information or information that has not been admitted into evidence. The court may, in its discretion, appoint additional counsel for the GAL.

## Grading Analysis

Criteria	How Vermont Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Vermont law provides that the appointment of a child's attorney is discretionary; however the Rules for Family Proceedings require that a child be represented by counsel and a GAL.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	The role of counsel for the child is not significantly different from that of a lawyer representing an adult client.
Professional Considerations <b>0 points out of a possible 10 points</b>	Vermont law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Vermont law maintains that the child is a party in child abuse and neglect proceedings. Children in Vermont are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>5 points out of a possible 10 points</b>	The Office of the Public Defender assigns appellate counsel to represent all children involved in family court proceedings where an appeal is necessary.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Vermont has a general provision binding counsel to its ethical rules. Vermont also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Vermont.



**GRADE**

**C**

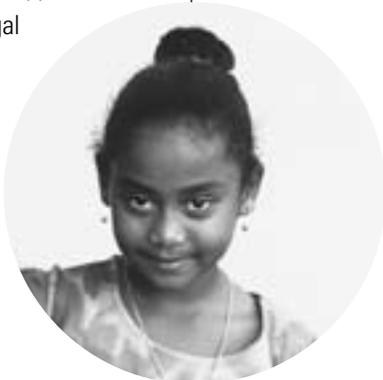
**SCORE**

**79**

## Vermont's CALL TO ACTION

First Star is concerned by Vermont's grade. The Vermont Legislature should, among other things:

- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



**W**hile Vermont law doesn't specifically provide guidance for training of children's counsel nor mandate or authorize multidisciplinary interaction between the various professionals, e.g. attorneys, social workers, judges, mental health counselors, probation officers, and the like, there are a number of informal multidisciplinary task forces and councils that do address these issues. Vermont's Chief Justice has impaneled a Justice for Children Task Force which consists of policy-makers at the highest levels of state government, the Chief Justice, himself, the Chief Administrative Judge and members of the Legislature who are reviewing public policy regarding improvements in the manner in which children enter and are treated in the child welfare and judicial systems. Likewise, the Office of the Defender General has offered cross-training to public defenders, private counsel, prosecutors, members of the judiciary and social workers on such topics as adolescent brain development. Additionally, there are a significant number of other initiatives statewide dealing with a multidisciplinary approach to child welfare and juvenile justice issues.

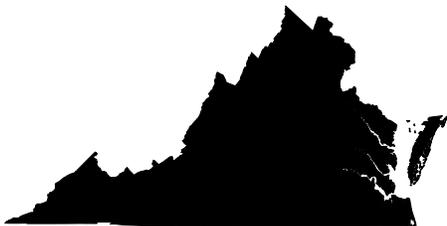
# Virginia

## Summary and Analysis

AN ATTORNEY MUST BE APPOINTED to represent the child’s best interests in abuse and neglect proceedings in Virginia. When appointed for a child, the attorney-GAL shall vigorously represent the child fully protecting the child’s interests and welfare. The attorney-GAL 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 GAL as to what is in the child’s interests and welfare.

## Grading Analysis

Criteria	How Virginia Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Virginia law requires that children be appointed an attorney-GAL in every abuse and neglect proceeding.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The attorney-GAL shall represent the child’s best interests. Attorneys are not required to advocate for the child’s wishes, however where the wishes of the child are at conflict with the best interests determination of the attorney-GAL, the attorney-GAL must apprise the court of the child’s wishes.
Professional Considerations <b>10 points out of a possible 10 points</b>	The Virginia Standards to Govern the Performance of GALs for Children both provides guidance on training for children’s counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	In Virginia, the child is considered a party in all actions. The GAL should assure the meaningful participation of the child in all phases of the proceedings which would include attendance at appropriate court hearings; a decision to exclude the child from a hearing should be based on a particularized determination. Virginia law provides that children 12 and over receive direct notice.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	The GAL must file any and all appeals on behalf of the child. 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.
Professional Responsibility <b>7 points out of a possible 10 points</b>	Attorneys who serve as GALs are subject to the Rules of Professional Conduct as they would be in any other case, except when the special duties of a GAL conflict with such rules. An attorney-GAL must follow the traditional rules as they relate to clients with diminished capacity. However, unlike the Rules for Professional Conduct as they apply to confidentiality, there may be times when an attorney-GAL may, in furtherance of their role as GAL, disclose information provided by the child to the court. No statutory provision granting immunity from malpractice exists for any attorney in Virginia.



**GRADE**

**B**

**SCORE**

**83**

### **Virginia's CALL TO ACTION**

Virginia's child representation law goes a long way toward protecting its abused and neglected children. Nonetheless, the Virginia Legislature should:

- Require that all counsel be independent and client directed
- Require that client confidences remain confidential



# Washington

## Summary and Analysis

A GAL IS REQUIRED IN ALL ABUSE AND NEGLECT PROCEEDINGS. The GAL does not need to be an attorney. If a child requests legal counsel and is age twelve or older, or if the GAL or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position. The GAL requirement is fulfilled with the appointment of independent counsel. There is no statutory provision requiring the GAL to express the child's views to the court.

## Grading Analysis

Criteria	How Washington Fared
Counsel Mandatory <b>15 points out of a possible 40 points</b>	Washington provides only for the appointment of a guardian ad litem who may or may not be an attorney. The court may appoint legal counsel if the child is twelve years of age or older and requests one or if the GAL or court determines that the child needs to be independently represented.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The GAL must represent the "best interests" of the child. There is no provision requiring the GAL to inform the court of the child's views. Where independent counsel is appointed, counsel performs in the traditional attorney role.
Professional Considerations <b>0 points out of a possible 10 points</b>	Washington law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>0 points out of a possible 10 points</b>	Washington law does not specifically indicate that a child is a party in child abuse and neglect cases. A child has no statutory right to be present at any proceeding in Washington. Washington law does not provide that a child be entitled to notice.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	There are no expressed statutory provisions guaranteeing the right to counsel at any stage of the proceedings.
Professional Responsibility <b>10 points out of a possible 10 points</b>	Washington has a general provision binding counsel to its ethical rules. Washington also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Washington.



**GRADE**

**F**

**SCORE**

**31**

## Washington's CALL TO ACTION

First Star is appalled by Washington's grade. The Washington Legislature should, among other things:

- Require legal counsel for all children in all proceedings
- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# West Virginia

## Summary and Analysis

WEST VIRGINIA RECEIVED ONE OF ONLY FIVE As in First Star’s state analysis. West Virginia’s child representation law does a nearly perfect job of protecting abused and neglected children. West Virginia’s law contains almost all the necessary provisions needed to adequately protect children within the child welfare system. In West Virginia, counsel for the child is required in all abuse and neglect proceedings. Although the attorney is called a “guardian ad litem,” the attorney-GAL has a dual role: a duty to maintain a normal lawyer-client relationship with the child client and a duty to achieve a result which will serve the best interests of the child. The attorney-GAL is required to “apprise the court of the child’s wishes.”

## Grading Analysis

Criteria	How West Virginia Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	West Virginia requires that every child involved in an abuse or neglect case be represented by a guardian ad litem, who must be an attorney, at every stage during the proceedings.
Client Directed Counsel Mandatory <b>20 points out of a possible 20 points</b>	The GAL has a duty to maintain a normal lawyer-client relationship with the child client, although the GAL should be committed to achieving a result which will serve the best interest of the child.
Professional Considerations <b>6 points out of a possible 10 points</b>	West Virginia has adopted training standards for children’s counsel. West Virginia law does not provide for multidisciplinary interaction between professionals.
Presence at Proceedings <b>10 points out of a possible 10 points</b>	West Virginia maintains that the child is a party in child abuse and neglect cases. The child should be present at significant court hearings. Counsel is responsible for providing notice to all children.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Counsel must exercise the appellate rights of the child, if an appeal is necessary and must continue to represent the child until such time as the child is adopted, placed in a permanent home, or the case is dismissed.
Professional Responsibility <b>10 points out of a possible 10 points</b>	West Virginia has a general provision binding counsel to its ethical rules. West Virginia also holds an attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in West Virginia.



**GRADE**

**A**

**SCORE**

**96**

## **West Virginia's CALL TO ACTION**

### **Congratulations to West Virginia!**

While West Virginia should include provisions requiring multidisciplinary interaction between counsel and other professionals, First Star commends the West Virginia Legislature, its governor, and child welfare advocates who have worked so diligently to protect the rights of West Virginia's children. The entire nation can learn from West Virginia's effort and ultimate outcome.



# Wisconsin

## Summary and Analysis

IN WISCONSIN, THE COURT MUST APPOINT counsel for any child alleged to be in need of protection or services except that if the child is less than twelve years of age the court may appoint a GAL instead of counsel. The GAL must be an attorney. If there is a conflict between the GAL's best interests assessment and the child's views, separate counsel may be appointed for a child who is less than twelve years of age. A GAL is required to express the wishes of the child.

## Grading Analysis

Criteria	How Wisconsin Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	Wisconsin law requires that children be appointed either independent counsel or an attorney-GAL in every abuse or neglect proceeding.
Client Directed Counsel Mandatory <b>10 points out of a possible 20 points</b>	Wisconsin law requires that a child of 12 or older be appointed counsel in every child protection proceeding. Client directed counsel is appointed for a child under the age of 12 at the court's discretion. Appointed counsel is to advocate for the desires and expressed preferences of the child. The GAL must advocate for the child's best interest, although the GAL must express the wishes of the child.
Professional Considerations <b>0 points out of a possible 10 points</b>	Wisconsin law neither provides guidance on training for children's counsel nor authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Wisconsin maintains that the child is a party in child abuse and neglect cases. Children in Wisconsin are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>0 points out of a possible 10 points</b>	An attorney/attorney-GAL has broad discretion as to whether and how to participate in any reviews or appeals.
Professional Requirements <b>10 points out of a possible 10 points</b>	Wisconsin has a general provision binding counsel to its ethical rules. Wisconsin also holds the attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. No statutory provision granting immunity from malpractice exists for any attorney in Wisconsin.



**GRADE**

D

**SCORE**

64

## Wisconsin's CALL TO ACTION

First Star is alarmed by Wisconsin's grade. The Wisconsin Legislature should, among other things:

- Require that all counsel be independent and client directed
- Establish respectable requirements for attorney training and multidisciplinary interaction
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Require continuity of counsel, and that the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews



# Wyoming

## Summary and Analysis

IN WYOMING, THE COURT MUST 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 GAL unless a GAL has been appointed by the court. The attorney-GAL is charged with representation of the child's best interests and must advocate for a result which he/she believes (not necessarily what the child believes) is in the child's best interests.

## Grading Analysis

Criteria	How Wyoming Fared
Counsel Mandatory <b>40 points out of a possible 40 points</b>	An attorney-GAL is mandatory in all abuse and neglect proceedings.
Client Directed Counsel Mandatory <b>6 points out of a possible 20 points</b>	The attorney-GAL is not bound by the client's expressed preferences, but by the client's best interests. If the attorney-GAL determines that the child's expressed preference is not in the best interests of the child, both the child's wishes and the basis for the attorney-GAL's disagreement must be presented to the court. When justice requires, the court may appoint an attorney to represent the child and a different individual to serve as GAL.
Professional Considerations <b>10 points out of a possible 10 points</b>	Wyoming law both provides guidance on training for children's counsel and authorizes multidisciplinary interaction between professionals.
Presence at Proceedings <b>4 points out of a possible 10 points</b>	Wyoming maintains that the child is a party in child abuse and neglect cases. Children in Wyoming are not entitled to notice nor are they required to be present at significant court hearings.
Right to Continuity of Counsel <b>10 points out of a possible 10 points</b>	Under Wyoming law, participation of counsel is mandatory throughout the appellate process and all subsequent reviews.
Professional Responsibility <b>8 points out of a possible 10 points</b>	Wyoming has a general provision binding counsel to its ethical rules. Wisconsin also holds the attorney responsible for maintaining client confidences and maintains a provision concerning clients with diminished capacity. All attorney-GAL's in Wyoming are indemnified against malpractice liability.

**GRADE**

**C**

**SCORE**

**78**

## **Wyoming's CALL TO ACTION**

First Star is concerned by Wyoming's grade. The Wyoming Legislature should, among other things:

- Require that all counsel be independent and client-directed
- Require that a child be entitled to notice, and be present in all child protective, foster care or dependency proceedings
- Explicitly reject immunity from malpractice for children's counsel



# CALL TO ACTION



**T**HE CHILD WELFARE system is intricate—involving many agencies, organizations, and individuals. Ultimately, however, it is state government that has primary responsibility for carrying out child welfare programs and for protecting children in their care and custody. But because states retain significant latitude in the design and delivery of child welfare services, there is significant variation across states in practice and policy. It is clear, then, that in order to effectuate the best practices throughout the states with regards to representation of children in abuse and neglect proceedings, the federal government must play a vital role.

The federal government's responsibility to abused and neglected children must include creating and implementing a common policy framework in which representation of children should be carried out; sharing in the financing such representation; and, holding states accountable both for using federal dollars in an appropriate manner and for achieving the results that federally sponsored programs are intended to accomplish.



As such, Congress should encourage the development of national and state professional standards to ensure that attorneys representing children in maltreatment and dependency cases are trained in child law and provide effective representation to their child clients. National uniform standards for practice, such as the American Bar Association's *Standards of Practice For Lawyers Who Represent Children In Abuse and Neglect Cases* (1996) and the National Association of Counsel for Children's *Recommendations for Representation of Children in Abuse and Neglect Cases* (2001), should be further developed and their adoption strongly encouraged by federal law to the full extent possible.

In addition, Congress should amend CAPTA to require:

- That an independent, competent, and zealous attorney be appointed to represent the interests of children in all child abuse and neglect proceedings
- That attorneys be trained and practice in accordance with the standards arrived at by the American Bar Association.
- Every child shall be entitled, to the fullest extent possible given the child's cognitive and developmental capacity, to contribute his or her voice to the proceedings through counsel.
- That each state report on its current representation model and standards, stated goals for the representation of children, and steps being taken towards their implementation.
- Better oversight and enforcement of the Act's provisions, including strict penalties for states that delay in complying with such standards to protect children.

Lastly, Congress should work to pass new authorizing legislation in order to attract and retain trained and qualified lawyers in the dependency practice area by the development and implementation of standards for reasonable compensation for dependency counsel; the establishment of loan forgiveness programs for children's counsel; the development and implementation of standards for reasonable attorney caseloads; and the allocation of resources and support for attorney training. This should be done concurrently with the explicit rejection of any proposed legislation that weakens a federal or state position on the need for competent, trained legal counsel working for abused, neglected and dependent children.

**F**IRST STAR BELIEVES a state's dependency law should be designed to promote the safety, stability, and well being of children through the provision of high quality legal services for child clients. To this end, all states should:

- Require a statutory right to counsel for every child involved in child welfare proceedings;
- Require that counsel for children advocate for the expressed wishes of the child in a client directed manner;
- Provide specific training requirements for all child's counsel and mandate multidisciplinary interaction between counsel and other professionals;
- Require that a child be considered a party entitled to notice, and be present in all child protective, foster care or dependency proceedings;
- Specify that each juvenile has the right to continuous representation by the same counsel at all stages of the proceedings, including all reviews and appeals; and
- Ensure that all children's counsel be bound by the ethical and professional responsibilities established by the traditional attorney-client relationship, including the duty to maintain client confidences. The law must contain appropriate provisions to account for a client with diminished capacity. In addition, the law must reject any immunity from malpractice liability for children's counsel.



## Guiding Principles for a Child's Right to Counsel

**E**VERY CHILD in every child welfare proceeding, including foster care and dependency proceedings, should be provided with competent independent legal counsel. The following principles are designed to promote the safety, stability and well-being of children through the provision of high quality legal services.

### Principles

- I.** Legal representation provided by an attorney trained in child law and practice allows the child equal access to justice. Children, like adults, are deserving of and entitled to representation that protects their interests, expresses their wishes, and gives them meaningful access to the courts. Only lawyers sufficiently trained and financially supported to represent children can provide effective assistance of counsel to their clients.
- II.** A child has a fundamental liberty interest in his or her own safety, health and well-being as well as in maintaining the integrity of the family and in having a relationship with his or her biological parents. A child in state custody continues to have these fundamental liberty interests as well as a right to safe living conditions and services necessary to ensure protection from physical, psychological and emotional harm and to secure permanency in a safe, nurturing family. These fundamental liberty interests are separate and distinct from the interests of parents, guardians, or the state.
- III.** A child's right to due process and equal protection must be guaranteed in order to protect the child's fundamental liberty interests and improve upon the integrity and effectiveness of the judicial, child welfare and foster care systems.
- IV.** "Competent legal counsel" for a child is a lawyer trained in child law and advocacy who is capable, by means of a manageable caseload, available time, resources and support, and adequate compensation, of ensuring effective assistance of counsel. Independent counsel owes the child client the same duties of zealous representation, undivided loyalty and confidentiality ethically required of counsel for adults. "Adequately compensated" means remuneration sufficient to the complexity of the case, comparable to state attorneys and paid in a timely manner.
- V.** A child involved in a child protective, foster care or dependency proceeding shall be considered a party to that proceeding, having the right to pursue legal remedies, to initiate legal proceedings in a court of competent jurisdiction and to express him or herself, with the assistance of counsel, to the court or hearing officer.
- VI.** A child's opinion regarding his or her circumstances is of paramount importance to ensure any judicial understanding of that circumstance. Prior to any judicial disposition, a child shall have the opportunity to express his or her views and wishes to the court, personally or through a lawyer.
- VII.** Every child is presumed competent and entitled to contribute to his or her representation to the fullest extent feasible given the child's cognitive and developmental capacities, absent a showing that he or she is unable to comprehend or make adequately considered decisions in connection with the representation after being counseled by his or her attorney. If the child's attorney determines that it is necessary to substitute judgment for the child, the attorney must continue to maintain an attorney-client relationship with the child, to the fullest extent feasible given the child's cognitive and developmental capacities, as well as inform the court of the child's wishes.
- VIII.** Attorneys representing children are required to counsel the client to the fullest extent feasible given the child's cognitive and developmental capacities with regard to every aspect of the case, including potential ramifications of the client's choices, in order to ensure that the child is expressing his or her counseled wishes. Attorneys are ethically required to bring the fullness of their experiences to representing their child clients. This includes counseling the client against the particular outcome desired by the client where the attorney believes that outcome to be contrary to the interests of the client.
- IX.** Any attorney with legal responsibility for the representation of a child who has an open child welfare case must have full access to all information that bears upon the safety and well-being of the child including services being provided to the child and family, the permanency plan, and steps being taken to secure permanency for the child, consistent with state and federal law.
- X.** Court-appointed special advocates (CASA) and lay Guardians Ad Litem (GAL) can be valuable sources of support for children in maltreatment and dependency proceedings but cannot substitute for independent counsel for the child.
- XI.** Attorneys representing children, parents and guardians and agencies in child welfare cases, as well as judicial officers presiding over those cases, can be assisted by guidelines for such case practice such as those standards set by the American Bar Association, the National Association of Counsel for Children and the National Council of Juvenile and Family Court Judges. Encouraging application of rules of practice nationally through such measures as fiscal incentives may contribute to heightened adherence to desired standards of practice.

## Multidisciplinary Education and Training for Child Welfare Professionals

**W**HEN professionals who work on behalf of vulnerable children are trained to understand each other's disciplines, child welfare systems can be appropriately responsive to each child's needs and each family's situation. In addition, multidisciplinary training programs and certification can change attitudes and broaden understanding of the clients and their needs, and other disciplines important to the well-being of children. Moreover, with shared insight, children can progress more quickly toward nurturing homes and brighter futures.

Experts agree that improved outcomes for the nearly 6,000,000 children involved in reports of abuse and neglect each year depend on collaboration among all professionals in the system. In recent years, several national organizations have released reports citing the need for improved training for America's child welfare workforce. The Pew Commission on Children in Foster Care recommends that every attorney representing children in dependency proceedings needs training beyond the limited offerings that currently exist in most law schools.



The National Center on State Courts' *A National Call to Action* (2006) resulted from the landmark National Judicial Leadership Summit for the Protection of Children held in 2005. The National Call compiles 53 state action plans for improving court oversight of child welfare cases, and specifically highlights the need for increased training for legal representatives for children.

The First Star Multidisciplinary Centers of Excellence (MCEs) are an unprecedented, university-based national education and training model to support an integrated continuum of services for abused and neglected children, and national certification for all child welfare professionals. In collaboration with Columbia Law School, the University of Florida Levin College of Law, and the University of San Diego Law School, the MCEs will provide an interdisciplinary curriculum for graduate level students, as well as distance learning for ad litem representation, criminal justice professionals, the judiciary, and attorneys across the country.

The outcomes to benefit children are a nationwide network of professionals with high caliber, multidisciplinary training to better serve those who are maltreated; the dissemination of evidence-based practices to reduce child trauma; and stronger relationships among the critical support networks that protect and nurture children.

## Appendix of Peer Review Contacts

First Star contacted the following individuals and organizations in order to complete its jurisdictional research. An asterisk has been placed by the name of any organization where information was requested but not received.

### ALABAMA

Bob Maddox  
Administrative Office of the Courts  
300 Dexter Avenue  
Montgomery, AL 36104-3741  
Tel: (334) 954-5032  
Fax: (334) 954-5200  
E-Mail: bob.maddox@alacourt.gov

### ALASKA

Susanne DiPietro  
Court System Administrator  
Alaska Court System  
820 West 4th Avenue  
Anchorage, AK 99501-2005  
Tel: (907) 264-0785  
Fax: (907) 264-8291  
E-Mail: sdipietro@courts.state.ak.us

### ARIZONA

Ann Haralambie, Esq.  
3499 North Campbell Road, St. 901  
Tucson, AZ 85719  
Tel: (520) 327-6287  
E-Mail: ann.haralambie@azbar.org

Caroline Lutt-Owens  
Division Director,  
Dependent Children's Services  
Administrative Office of the Courts  
1501 W. Washington, Suite 128  
Phoenix, AZ 85007-3327  
Tel: (602) 452-3416  
Fax: (602) 452-3598  
E-Mail: clowens@courts.az.gov

Univ. of Arizona Child Advocacy Clinic\*  
James E. Rogers College of Law  
P.O. Box 210176  
Tucson, Arizona 85721  
Tel: (520) 626-5245

### ARKANSAS

Teri Hays  
Director of Juvenile Courts  
Administrative Office of the Courts  
Justice Building  
625 Marshall Street  
Little Rock, AR 72201  
Tel: (501) 682-2656  
Fax: (501) 682-9410  
E-Mail: teri.hayes@arkansas.gov

Children's Legal Clinic\*  
Robert A. Leflar Law Center  
University of Arkansas  
Fayetteville, AR 72701  
Tel: (479) 575-7108

### CALIFORNIA

Whittier Center for Children's Rights\*  
3333 Harbor Boulevard  
Costa Mesa, CA 92626-1501  
Tel: (714) 444-4141

Christopher Wu  
Center for Families, Children & the Courts  
455 Golden Gate Avenue  
San Francisco, California 94102-3660  
Tel: (415) 865-7721  
Fax: (415) 865-7217  
Email: christopher.wu@jud.ca.gov

Robert C. Fellmeth, Esq.  
University of San Diego School of Law  
Center for Public Interest Law  
5998 Alcalá Park  
San Diego, CA 92110-2492  
Tel: (619) 260-4806  
E-Mail: cpil@sandiego.edu

Leslie Heimov  
Children's Law Center of Los Angeles  
201 Centre Plaza Drive, Suite 10  
Monterey Park, CA 91754-2178  
Tel: (323) 980-1700  
E-Mail: heimovl@clcla.org

### COLORADO

Theresa Spahn  
Executive Director  
Office of the Child's Representative  
1650 Pennsylvania St.  
Denver, CO 80203  
Tel: (303) 860-1517  
E-mail: theresaspahn@qwest.net

Sarah Ehrlich  
Staff Attorney  
Office of the Child's Representative  
1650 Pennsylvania St.  
Denver, CO 80203  
Tel: (303) 860-1517  
E-Mail: sarahehrlich@coloradochildrep.org

Shari Shink  
Rocky Mountain Children's Law Ctr  
1325 S. Colorado Blvd., St. 308  
Denver, CO 80222  
Tel: (303) 692-1165  
E-Mail: sharishink@law.du.edu

Court Improvement Project\*  
State Court Administrator's Office  
1301 Pennsylvania Street St. 300  
Denver, CO 80803  
Tel: (303) 837-3647

### CONNECTICUT

The Honorable Charles Gill  
Superior Court, State of Connecticut  
Litchfield Judicial District Superior Court  
15 West Street, Litchfield, CT 06759  
E-mail: Charles.Gill@jud.state.ct.us

Carolyn Signorelli  
Chief Child Protection Attorney  
Commission on Child Protection  
83 Prospect Street  
Waterbury, CT 06721-1146  
Tel: (203)-596-4144  
E-mail: carolyn.signorelli@jud.ct.gov

Center for Children's Advocacy\*  
UCONN School of Law  
65 Elizabeth Street  
Hartford, CO 06105  
Tel: (860) 570-5327

### DELAWARE

Guy Sapp  
Family Court Administrative Office  
New Castle County Courthouse  
500 N. King Street, St. 3500  
Wilmington DE 19801-3757  
Tel: (302) 255-0065  
Fax: (302) 255-2203  
E-Mail: guy.sapp@state.de.us

Tania M. Culley, Esquire  
Child Advocate  
Office of the Child Advocate  
900 King Street, Suite 210  
Wilmington, DE 19801  
Tel: (302) 255-1730  
E-Mail: Tania.culley@state.de.us

### DISTRICT OF COLUMBIA

Stephanie Minor-Harper  
Superior Court of the District of Columbia  
500 Indiana Ave., NW  
Room 4205  
Washington, DC 20001  
Tel: (202) 879-1010  
Fax: (202) 737-0807  
E-Mail: harpersm@dcsc.gov

Georgetown University Law Center\*  
600 New Jersey Avenue  
Washington, DC 20001  
Children's Law Center\*  
901 15th Street, N.W.  
Washington, DC 20005

Wilma Brier  
Branch Chief, CCAN  
Moultrie Courthouse  
500 Indiana Avenue, N.W., Room 4416  
Washington, D.C. 20001  
Tel: (202) 879-1406  
E-mail: brierwa@dcsc.gov

### FLORIDA

Department of Children and Families\*  
1318 Winewood Blvd  
Tallahassee, FL 32399  
Tel: (850) 413-0354

Alachua Family/Civil Justice Center\*  
201 East University Avenue  
Gainesville, FL 32611  
Tel: (352) 374-3652

Office of the State Courts Administrator\*  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399-1900  
Tel: (850) 414-1507

Gerry Glynn  
Dwayne O. Andreas School of Law  
Barry University  
6441 East Colonial Drive  
Orlando, FL 32807  
Tel: (321) 206-5762  
E-mail: gglynn@mail.barry.edu

Barbara Bennett Woodhouse  
David H. Levin Chair in Family Law  
Center on Children and the Law  
Levin School of Law; UF  
P.O. Box 117625  
Gainesville, FL 32611  
Tel: (352) 392-9001  
E-mail: woodhouse@law.ufl.edu

### GEORGIA

DeKalb County Child Advocacy Center\*  
Calloway Building St. 210  
244 Washington Street, SW  
Atlanta, GA 30334  
Tel: (404) 657-9219

Melissa D. Carter  
Training Director  
Supreme Court of Georgia,  
Committee on Justice for Children  
Administrative Office of the Courts  
244 Washington Street, S.W., Suite 300  
Atlanta, GA 30334  
Tel: (404) 463-6383  
Fax: (404) 463-5126  
E-mail: carterm@gaaoc.us

Karen Worthington  
Emory Barton Child Law Center  
Gambrell Hall  
Atlanta, GA 30322  
Tel: (404) 727-6664  
E-Mail: karen@ChildWelfare.net

### HAWAII

First Judicial Circuit\*  
Office of the Chief Court Administrator  
777 Punchbowl Street  
Honolulu, HI 96813  
Tel: (808) 539-4990  
Fax: (808) 539-4402

**IDAHO**

Court Improvement Project\*  
PMB #413  
967 East Park Center Blvd.  
Boise, ID 83706  
Tel: (208) 334-3868

The Hon. Bryan Murray  
Idaho Supreme Court  
P.O. Box 83720  
Boise, ID 83720  
Tel: (208) 234-1087  
E-Mail: bryanm@co.bannock.id.us

**ILLINOIS**

State Court Improvement Program\*  
Administrative Office of the Courts  
3101 Old Jacksonville Road  
Springfield, IL 62704  
Tel: (217) 557-3995  
Fax: (217) 785-3793

Civitas Child and Family Law Center\*  
Loyola University of Chicago  
School of Law  
25 E. Pearson Street  
Chicago, IL 60611  
Tel: (312) 915-7120

Children and Family Justice Center\*  
Northwestern University  
357 East Chicago Avenue  
Chicago, IL 60611-3069  
Tel: (312) 503-0396

Schiller DuCanto & Fleck Family Law Ctr\*  
DePaul College of Law  
25 East Jackson Boulevard  
Chicago, IL 60604  
Tel: (312) 362-5269

Legal Assistance Foundation of Chicago\*  
111 West Jackson St. 300  
Chicago, IL 60604  
Tel: (312) 347-8356

Administrative Office of the  
Illinois Courts\*  
840 S. Spring Street  
Springfield, IL 62704  
Tel: (217) 558-0399

DuPage County Courthouse\*  
505 North County Farm Road  
Wheaton, IL 60187-3907  
Tel: (630) 682-6806

**INDIANA**

Leslie Dunn  
State Court Administration  
115 W. Washington Street, Suite 1080  
Indianapolis, IN 46204-3417  
Tel: (317) 232-2542  
Fax: (317) 233-6586

Indiana Judicial Center\*  
115 W. Washington Street  
Suite 1075  
Indianapolis, IN 46204-3417  
Tel: (317) 232-1313  
Fax: (317) 233-3367

**IOWA**

Iowa Court Improvement Project\*  
131 W. 3rd Street  
Suite 303  
Davenport, IA 52801  
Tel: (563) 884-4768  
Fax: (563) 323-5584

Youth Law Center\*  
218 Sixth Ave., Suite 706  
Des Moines, IA 50309  
Tel: (800) 728-1172

**KANSAS**

Mark Gleeson  
Family and Children Program Coordinator  
Kansas Supreme Court  
Office of Judicial Administration  
301 W. 10th Street  
Topeka, KS 66612-1507  
Tel: (785) 291-3224  
Fax: (785) 296-1804  
E-mail: gleeson@kscourts.org

Linda Elrod  
Washburn Children and Family Law  
Center  
1700 College Ave  
Topeka, KS 66621  
Tel: (670) 1838 office 305  
E-mail: linda.elrod@washburn.edu

**KENTUCKY**

GAL Program\*  
Court Improvement Project  
Administrative Office of the Courts  
100 Millcreek Park  
Frankfort, KY 40601  
Tel: (502) 573-2350  
Fax: (502) 573-1412

Children's Law Center\*  
104 East 7th Street  
Covington, KY 41011  
Tel: (859) 431-3313

**LOUISIANA**

Judicial Administrator's Office\*  
1555 Poydras Street, Suite 1540  
New Orleans, LA 70112  
Tel: (504) 364-3990  
Fax: (504) 599-0098

Karen Hallstrom  
Office of Judicial Administrator  
1555 Poydras Street  
Suite 1540

New Orleans, LA 70112  
Tel: (504) 599-0070  
Fax: (504) 599-0098  
E-Mail: Khallstrom@lajao.org  
Louisiana Supreme Court\*  
400 Royal Street  
Suite 1190  
New Orleans, LA 70130-8101  
Tel: (504) 568-5747

**MAINE**

Tracie Adamson, Esq.  
Family Division Manager  
Maine Administrative Office of the Courts  
171 State House Station  
Augusta, ME 04333  
Tel: (207) 287-6844  
Fax: (207) 287-7553  
E-mail: tracie.adamson@maine.gov  
District Court\*  
145 State Street  
Augusta, ME 04330  
Tel: (207) 287-8075

**MARYLAND**

Daniel L. Hatcher  
Assistant Professor of Law  
University of Baltimore School of Law  
Civil Advocacy Clinic  
40 W. Chase St.  
Baltimore, MD 21201  
Tel: (410) 837-5650  
E-mail: dhatcher@ubalt.edu  
Barbara Babb  
Baltimore Center Families  
Children & the Courts  
1420 North Charles Street  
Baltimore MD 21201  
Tel: (410) 837-5750 (ctr)  
410-837-5661 (barb)  
E-mail: bbabb@ubalt.edu  
Rhonda Lipkin  
Attorney, Child Welfare Advocacy Fellow  
Public Justice Center  
500 East Lexington Street  
Baltimore MD 21202  
Tel: (410) 625-9409 (ext: 240)  
E-mail: lipkin@publicjustice.org

Baltimore Center\*  
Families, Children & the Courts  
1420 North Charles Street  
Baltimore, MD 21201  
Tel: (410) 837-5750  
Althea Stewart Jones  
Administrative Office of the Courts  
Court of Appeals Bldg, 3rd Floor  
361 Rowe Boulevard  
Annapolis, MD 21401  
Tel: (410) 260-1296  
E-mail: althea.stewart.jones@courts.  
state.md.us

**MASSACHUSETTS**

Harvard Child Advocacy Project\*  
Pond Hall 407  
Cambridge, MA 02138  
Tel: (617) 495-3128

NEU Domestic Violence Center\*  
400 Huntington Avenue  
Boston, MA 02115  
Tel: (617) 373-8882

Massachusetts Supreme Judicial Court\*  
1 Beacon Street, 3rd Floor  
Boston, MA 02108  
Tel: (617) 557-1194  
Fax: (617) 557-1052

The Children's Law Center of MA\*  
PO Box 710  
298 Union Street  
Lynn, MA 01903  
Tel: (781) 581-1977  
Fax: (781) 598-9364

**MICHIGAN**

Court Improvement Program\*  
State Court Administrative Office  
Family Division – Child Welfare Services  
925 West Ottawa  
Lansing, MI 48913  
Tel: (517) 373-5322

Child Advocacy Law Clinic\*  
Univ. Of Michigan Law School  
625 South State St.  
Ann Arbor, MI 48109  
Tel: (734) 763-5000

**MINNESOTA**

Judith C. Nord  
Staff Attorney/CIP Manager  
Minnesota Supreme Court  
25 Rev. Dr. MLK Blvd., St.105  
St. Paul, MN 55155  
Tel: (651) 282-3972  
Fax: (651) 296-6609  
E-Mail: judy.nord@courts.state.mn.us

Children and the Law Section\*  
Minnesota State Bar Association  
600 Nicollet Mall, Suite 380  
Minneapolis, MN 55402  
Tel: (612) 333-1183

**MISSISSIPPI**

Court Improvement Program\*  
Mississippi Supreme Court  
P. O. Box 117  
Jackson, MS 39205  
Tel: (601) 354-7406  
Fax: (601) 354-7459

William Charlton  
Mississippi Judicial College  
P.O. Box 8850  
University, MS 38677  
Tel: (662) 915-1249  
E-mail: Charlton@olemiss.edu

#### MISSOURI

Family Preservation Project\*  
Division of Court Programs & Research  
Office of State Courts Administrator  
2112 Industrial Drive  
P.O. Box 104480  
Jefferson City, MO 65110  
Tel: (573) 522-6265  
Fax: (573) 522-6086

Norma Rahm  
Office of the State Courts Administrator  
2112 Industrial Drive; P.O. Box 104480  
Jefferson City, MO 65110  
Tel: (573) 526-8854  
E-mail: Norma\_Rahm@osca.state.mo.us

#### MONTANA

Court Assessment Program Coordinator\*  
Montana Supreme Court  
301 South Park Avenue  
Suite 328  
P.O. Box 203006  
Helena, MT 59620-3006  
Tel: (406) 841-2970  
Fax: (406) 841-2955

#### NEBRASKA

Victoria Weisz  
Ctr. on Children, Families and the Law  
University of Nebraska – Lincoln  
121 South 13th Street  
Suite 302  
Lincoln, NE 68588-0227  
Tel: (402) 472-9814  
Fax: (402) 472-8412  
E-Mail: Vweisz1@unl.edu

#### NEVADA

Court Improvement Project\*  
201 S. Carson Street, Suite 250  
Carson City, NV 89701-4702  
Tel: (775) 684-1712  
Fax: (775) 687-1723  
E-mail: cip@nvcourts.nv.gov  
Steve Hiltz, Esq.  
Children's Attorney Project  
Clark County Legal Services  
800 South Eighth Street  
Las Vegas, Nevada 89101  
Tel: (702) 386-1070  
E-mail: shiltz@clarkcountylegal.com  
Supreme Court of Nevada\*  
Administrative Office of the Courts  
201 S. Carson Street  
Carson City, NV 89701  
Tel: (775) 684-1712

#### NEW HAMPSHIRE

Permanency Planning\*  
Office of the Administrative Judge  
Concord District Court  
P.O. Box 389  
Concord, NH 03302-0389  
Tel: (603) 271-6418  
Fax: (603) 271-6406

David Sandberg  
CASA of New Hampshire  
P.O. Box 1327  
Manchester, NH 03105-1327  
Tel: (800) 626-0622  
www.casanh.org

#### NEW JERSEY

Yvonne Smith Segars  
Public Defender  
Office of the Public Defender  
P.O. Box 850  
Trenton, NJ 08625  
Tel: (609) 984-3804  
Fax: (609) 292-1831  
E-mail: thedefenders@opd.state.nj.us

Court Improvement Program\*  
AOC Family Practice Division  
Hughes Justice Complex  
Post Office Box 983 – 7 North  
Trenton, NJ 08625  
Tel: (609) 984-7793  
Fax: (609) 633-8124

Children's Justice Clinic\*  
Rutgers Law, Camden  
Room 205, 217 N. 5th Street  
Camden, NJ 08102  
Tel: (856) 225-6646

#### NEW MEXICO

Corinne Wolfe Children's Law Center  
Univ. New Mexico, School of Law  
1117 Stanford Ave. NE  
Albuquerque, NM 87131  
Tel: (505) 277-1050

Kathy Spurgin  
Project Manager  
NM Administrative Office of the Courts  
237 Don Gaspar, Room 25  
Santa Fe, NM 87501  
Tel: (505) 827-4808  
E-mail: aockbs@nmcourts.com

#### NEW YORK

Court Improvement Program\*  
New York State Unified Court System  
Office of Court Administration  
Division of Court Operations  
25 Beaver Street, 8th floor  
New York, New York 10004  
Tel: (212) 428-2863

Court Improvement Program\*  
New York State Unified Court System  
Office of Court Administration  
98 Niver Street  
Cohoes, New York 12047  
Tel: (518) 238-4358

Jane Spinak  
Edward Ross Aranow Clinical Prof of Law  
Columbia University Law School  
435 West 116th Street  
New York, NY 10027  
Tel: (212) 854-3857  
E-mail: spinak@law.columbia.edu

Family Law and Social Policy Center\*  
Syracuse University College of Law  
Syracuse, NY 12344-1030  
Tel: (315) 443-2529

#### NORTH CAROLINA

Court Improvement Project\*  
Administrative Office of the Courts  
P.O. Box 2448  
Raleigh, NC 27602  
Tel: (919) 773-1530  
Fax: (919) 773-1845

Deana K. Fleming  
Associate Counsel  
Guardian ad Litem Program  
P.O. Box 2448  
Raleigh, NC 27602  
Tel: (919) 789-3634  
E-mail: Deana.K.Fleming@nccourts.org

Lewis Pitts  
Senior Managing Attorney  
Advocates for Children's Services  
Legal Aid of NC  
201 West Main Street, St. 400 (27701);  
P.O. Box 2101  
Durham, NC 27702  
Tel: (919) 226-0052 or (919) 226-0053  
E-mail: ACSinfo@legalaidnc.org

#### NORTH DAKOTA

Louis Hentzen  
Assistant State Court Administrator  
for Trial Courts and Juvenile Court  
Coordinator  
ND Supreme Court  
600 E. Boulevard Ave., Dept. 180  
Bismarck, ND 58505  
Tel: (701) 328-2238  
E-Mail: lhentzen@ndcourts.com

Court Improvement Program\*  
Children and Family Services Division  
North Dakota Dept of Human Services  
600 E. Boulevard Ave.  
Bismarck, ND 58505  
Tel: (701) 328-3587

Children and Family Services Center\*  
Univ. of North Dakota  
P.O. Box 7090  
Grand Forks, ND 58202-7090  
Tel: (701) 777-3442

#### OHIO

Family Law Division\*  
The Supreme Court of Ohio  
65 South Front Street  
Columbus, OH 43215-3431  
Tel: (614) 387-9416  
Fax: (614) 387-9419

Kristen Gilbert  
Administrator, Children Services  
Ohio Department of Job & Family Services  
255 East Main Street, 3rd Floor  
Columbus, OH 43215  
Tel: (614) 728-3467  
Fax: (614) 466-6185  
E-Mail: gilbek@odjfs.state.oh.us

Kate Federle  
Ohio State Justice for Children Project  
55 West 12th Avenue  
Columbus, OH 43210  
Tel: (614) 292-9177  
E-mail: federle.1@osu.edu

Judicial and Court Services  
Supreme Court  
30 E. Broad Street  
Columbus, OH 43266  
Tel: (614) 752-8967

#### OKLAHOMA

Anne B. Sublett  
Conner & Winters, LLP  
4000 One Williams Center  
Tulsa, Oklahoma 74172-0148  
Tel: (918) 586-8994  
Fax: (918) 586-8547  
Email: asublett@cwlaw.com  
Administrative Office of the Courts\*  
1915 N. Stiles St., Suite 305  
Oklahoma City, OK 73105  
Tel: (405) 522-7878

#### OREGON

Court Improvement Project\*  
State Court Administrative Office  
Supreme Court Building  
1163 State Street  
Salem, OR 97310  
Tel: (503) 986-6403

Leslie Harris  
UO School of Law  
Child Advocacy Project  
1515 Agate Street  
Eugene, OR 97403  
Tel: (541) 346-3840  
E-mail: lharris@law.uoregon.edu

Ingrid Swenson  
Executive Director  
Office of Public Defense Services  
1320 Capitol St., NE, Suite No. 190  
Salem, Oregon 97301  
Tel: (503) 378-3349, ext. 82515  
E-mail: Ingrid.L.Swenson@opds.state.or.us

#### PENNSYLVANIA

Court Improvement Program\*  
Office of Children & Families in the Courts  
Administrative Office of the Courts  
1515 Market Street, Ste. 1414  
Philadelphia, PA 19102  
Tel: (215) 560-1498  
Fax: (215) 560-5492

Field Center for Children's Policy,  
Practice, and Research\*  
University of Pennsylvania Law School  
3815 Walnut Street  
Philadelphia, PA 19104-6179  
Tel: (215) 573-5442

Support Center for Child Advocates\*  
1900 Cherry Street  
Philadelphia, PA 19103  
Tel: (215) 925-1913

#### RHODE ISLAND

Rhode Island Family Court  
One Dorrance Plaza  
Providence, RI 02903  
Tel: (401) 458-5262  
Fax: (401) 458-5311

Assistant Administrator/Policy  
& Programs\*  
Judicial Planning, RI Supreme Court  
250 Benefit Street  
Providence, RI 02903  
Tel: (401) 222-8666  
Fax: (401) 222-2625

Court Improvement Program\*  
Rhode Island Family Court  
Garrahy Judicial Complex  
One Dorrance Plaza  
Providence, RI 02903  
Tel: (401) 458-3126 or (401) 222-8667

#### SOUTH CAROLINA

Office of Court Administration\*  
Family Court  
1015 Sumter Street, Suite 200  
Columbia, SC 29201  
Tel: (803) 734-0105  
Fax: (803) 734-1821

Children's Law Office\*  
1600 Hampton Street, St. 502  
Columbia, SC 29208  
Tel: (803) 777-1914

#### SOUTH DAKOTA

Court Support Services\*  
State Capitol  
State Court Administrator Office  
500 East Capitol Avenue  
Pierre, SD 57501  
Tel: (605) 773-4874  
Fax: (605) 773-5627

Court Improvement Program\*  
South Dakota Unified Judicial System  
500 East Capital Ave.  
Pierre, SD 57501  
Tel: (605) 773-8459

Dakota Plains Legal Services\*  
518 Second Avenue East  
Sisseton, SD 57262  
Tel: (605) 698-3971

#### TENNESSEE

Administrative Office of the Courts\*  
Tennessee Supreme Court  
Nashville City Center, Suite 600  
Nashville, TN 37243-0607  
Tel: (615) 741-2687  
Fax: (615) 741-6285

Court Improvement Program\*  
Administrative Office of the Courts  
511 Union Street, Ste. 600  
Nashville, TN 37243-0607  
Tel: (615) 741-2687  
Fax: (615) 741-6285

Vanderbilt University Law School\*  
131 21st Avenue South  
Nashville, TN 37203  
Tel: (615) 322-4964

#### TEXAS

Court Improvement Project\*  
Texas Center for the Judiciary  
1210 San Antonio  
Suite 800  
Austin, TX 78759  
Tel: (512) 482-8986  
Fax: (512) 469-7664  
E-Mail: mkbickett@yourhonor.com

Carl Reynolds  
Administrative Director  
Office of Court Administration  
Texas Judicial Council\*  
205 W. 14th Street, St. 600  
Austin, TX 78711-2066  
Tel: (512) 463-1626  
Fax: (512) 463-1648  
E-Mail: carl.reynolds@courts.state.tx.us

Children's Rights Clinic\*  
Univ. Texas School of Law  
727 East Dean Keeton Street  
Austin, TX 78705  
Tel: (512) 232-1290

Kristi Taylor  
Staff Attorney for Children and Families  
Supreme Court of Texas  
P.O. Box 12248  
Austin, Texas 78711  
Tel: (512) 463-7455  
E-mail: Kristi.taylor@courts.state.tx.us

#### UTAH

Court Improvement Program  
Administrative Office of the Courts  
450 S. State  
Box 140241  
Salt Lake City, UT 84114-0241  
Tel: (801) 578-3939

Kristin Brewer, Esq  
Director, Guardian ad Litem Program  
Administrative Office of the Courts  
450 South State Street N-31  
P.O. Box 140241  
Salt Lake City, UT 84114-0241  
Tel: (801) 578-3848  
Fax: (801) 578-3843  
E-mail: kristinb@email.utcourts.gov

#### VERMONT

Shari Young  
Juvenile Justice System Improv  
Manager  
Office of the Court Administrator  
Vermont Supreme Court  
109 State Street  
Montpelier, VT 05609-0701  
Tel: (802) 828-5625  
Fax: (802) 828-0497  
E-Mail: Shari.Young@state.vt.us

Robert Sheil  
Office of the Juvenile Defender  
14-16 Baldwin St.  
Montpelier, VT 05620-3301  
Tel: (802) 828-3168  
E-Mail: bsheil@defgen.state.vt.us

#### VIRGINIA

Lelia Baum Hopper  
Office of the Executive Secretary  
Supreme Court of Virginia  
100 N. Ninth Street, 3rd Floor  
Richmond, VA 23219  
Tel: (804) 786-9546  
Fax: (804) 786-4542  
E-Mail: lhopper@courts.state.va.us

Professor Robert E. Shepherd, Jr.  
T.C. Williams Law School  
Univ. of Richmond  
28 Westhampton Way  
Richmond, VA 23173  
Tel: (804) 289-8203  
Email: rshepher@richmond.edu

#### WASHINGTON

Rick Coplen  
Administrative Office of the Courts  
1112 Quince Street SE  
P.O. Box 41170  
Olympia, WA 98504-1170  
Tel: (360) 705-5306  
Fax: (360) 586-8869

#### WEST VIRGINIA

Supreme Court of Appeals Admin Office\*  
Building 1, Room E-100  
1900 Kanawha Blvd., East  
Charleston, WV 25305  
Tel: (304) 558-0145  
Fax: (304) 558-1212

John Hedges, Esq.  
Byrne & Hedges LLP  
141 Walnut Street  
Morgantown, WV 26505  
Tel: (304) 296-0123

#### WISCONSIN

Children's Court Improvement Program\*  
110 E. Main Street  
Suite 410  
Madison, WI 53703  
Tel: (608) 266-1557  
Fax: (608) 267-0911

#### WYOMING

Children's Justice Act\*  
Wyoming Supreme Court  
2301 Capitol Avenue  
Cheyenne, WY 82002  
Tel: (307) 777-7629  
Fax: (307) 777-3447

Court Improvement Project\*  
123 Capitol Building  
Cheyenne, WY 82002  
Tel: (307) 777-7899

Legal Services Program\*  
University of Wyoming  
203 College of Law Building  
Dept. 3035, 1000 E. University Ave  
Laramie, WY 82071  
Tel: (307) 766-2165

# Appendix of Citations to Statutes and Rule Relating to Counsel for Children

## Alabama

Ala. Code §§12-15-01, 12-15-8, 12-15-53, 12-15-65, 15-12-21, 15-12-22, 26-14-11; Ala. R. Juv. Proc. Rule 22; Ala. R. Prof. Cond. Rule 1.14.

## Alaska

Alaska CINA Rules 11(a)(4), 11(b), 11(c)(1), 11(f)(2)(d), 11(i)(1), 12.

## Arizona

Ariz. Rev. Stat. Ann. §§ 8-221(A), 8-221(I), 8-235, 8-522(A), 8-841(C); Ariz. R. Proc. Juv. Ct. Rules 37, 38(A), 39, 88; Ariz. R. Prof. Cond. ER 1.14.

## Arkansas

Ark. Code Ann. §§ 9-27-310, 9-27-316, 9-27-325(c)(1)(A), 20-47-501; Ark. R. Prof. Cond. Rule 1.14.

## California

Cal. Welf. & Inst. Code §§ 290.1, 317(c), 317(e), 317.5, 317.6, 326.5, 349; Cal. R. of Ct., R. 1412, 1424, 1428; Bus. Prof. Code §§ 3-100, 6068(e)(1).

## Colorado

Colo. Rev. Stat. Ann. §§ 13-19-102, 13-91-104, 13-91-105; Sup. Ct. Colo. Chief Justice Directive 04-06, 98-02, 96-08.

## Connecticut

Conn. Gen. Stat. Ann. §§ 46b-123(d), 46b-123(e), 46b-129(a)(2); Conn. R. Prof. Cond. 1.2(a), 1.14(a).

## Delaware

Del. Code Ann. tit. 13, §701(c); tit. 29, §§9007A(c)(1), §9007A(c)(14), §9007A(b)(3), §9007A(c)(6), §9008A; Del. R. Prof. Cond. 1.14, 1.6.

## District of Columbia

D.C. Code §§ 16-2304(b)(1), 16-2304(3), 16-2328, 16-2329; DC R. Prof. Cond. R. 1.14.

## Florida

Fla. Stat. Ann. §39.822, 39.807, 39.820; Fla. R. Juv. Proc., Rule 8.215, 8.217, 8.350(a)(10); Fla. Bar R. Prof. Cond. Rule 4-1.14.

## Georgia

Ga. Code Ann. §§ 15-11-98(a), 15-11-9(b), 15-11-39(b); Kenny A. v. Perdue, 356 F.Supp.2d 1353 (N.D.Ga. 2005).

## Hawaii

Haw. Rev. Stat. Ann. §§587-34(a), 587-34(c), 587-34(a)-(e); Haw. R. Prof. Cond. R1.14.

## Idaho

Idaho Code Ann. §§ 16-1614(1), 16-1614(2), 16-1634, 16-1635.

## Illinois

Ill. Comp. Stat. Ann. §§ 405/2-17(1)(2)(4), 405/1-5(1); Ill. R. Prof. Cond. Rule 1.14.

## Indiana

Ind. Code Ann. §§ 31-32-3-1, 31-32-3-3, 31-24-6-4(e), 31-32-3-6, 31-32-3-10, 31-34-9-7, 31-34-10-2, 31-34-10-3, 31-34-21-11, 32-32-3-5; Ind. R. Prof. Cond. 1.14.

## Iowa

Iowa Code Ann. §§ 232.89(2), §232.89(4); Iowa Ct. R 32.ECT-12.

## Kansas

Kan. Stat. Ann. §§ 38-1502, 38-1503, 38-1505, 38-38-2202(r), 38-2210, 38-2202(u); Kan. Sup. Ct. Adm. Order No. 100.

## Kentucky

Ky. Rev. Stat. Ann. §§ 4-3/270, 620.050, 620.100, 620.155, 620.500, 625.041, 625.060, 625.080; Ky. Prof. Cond. R. 1.14.

## Louisiana

La. Child. Code Ann. §§ 607, 424, 424.1, 424.2, 424.3, 424.4, 424.5, 424.6, 424.7, 424.8, 424.9, 424.10, 426, 1016, 1042, 1146; La. Sup Ct. R. XXXIII, La. R. Prof. Cond. R. 1.14.

## Maine

Me. Rev. Stat. Ann. tit. 22, §§ 4005, 1501; 1995 Me. Legis. Serv. c. 405, § 25 (West).

## Maryland

Md. Code Ann. §§ 3-813, 3-821, 3-830, 3-834, 3-834.1; Md. R. Prof. Cond. R. 1.14.

## Massachusetts

Mass. Gen. Laws Ann. ch. 106, § 1-101; ALM Probate Ct. Unif. Prac. Rule Xb, Xa; ALM Juv. Ct. Stndg. Order 1-93; Mass. Sup. Jud. Ct. Rule 3:10; Mass. R. Prof. Cond. R. 1.14.

## Michigan

Mich. Comp. Laws Ann. §§ 712A.17c, 712A.17d, 722.24, 722.630; Mich. R. Prof. Cond. R 1.14.

## Mississippi

Miss. Code Ann. §§ 43-21-201, 43-21-121, 93-15-107; Miss. R. Prof. Cond. R.1.14.

## Minnesota

Minn. Stat. Ann. § 260C.163; Minn R. Juv. Prot. Proc. Rules 21.01, 25.01, 25.02, 26.01, 26.04, 27.02, 27.04, 32.03, 108.01, 905; Minn. R. Prof. Cond. R. 1.14.

## Missouri

Mo. Rev. Stat. §§ 210.160, 211.160.5, 211.160.6, 211.160.2, 452.423, 475.010, Mo. Sup. Ct. Rule 110.05, 111.14(a), 119.01, 117.01, Repeal of Standard 13.0; Mo. Sup. Ct. R. Prof. Cond. R. 4-1.14.

## Montana

Mont. Code Ann. §§ 41-3-101(d), 41-3-108, 41-3-112, 41-3-425

## Nebraska

Neb. Rev. Stat. §§ 43-272, 43-1314; Neb. R. Prof. Cond. R. 1.14

## Nevada

Nev. Rev. Stat. Ann. §§ 432B.420, 432B.500.

## New Hampshire

N.H. Rev. Stat. Ann. §§ 169-C:10, 604-A:1; Sup. Ct. N.H., System-wide GAL Application, Certification, and Practice, Rule 2.7.1; N.H. Rules of Prof. Cond., R. 1.14.

## New Jersey

N.J. Stat. Ann. §§ 9:6-8.21, 9:6-8.23, 9:6-8.42, 9:6-8.43, 30:4C-15.4(b); N.J. Ct. R., 1969 R. 5:3-4, 5:8A, 5:8B; N.J. Ct. R., 1969 R. RPC 1.14.

## New Mexico

N.M. Stat. Ann. §§ 32A-4-10, 32A-4-19(b), 32A-4-25.1(a), 32A-8, 10-104(a)(g)(1)(4).

## New York

N.Y. Fam. Ct. Act §§ 241, 242, 249, 1120.

## North Carolina

N.C. Gen. Stat. §§ 7B-600, 7B-601, 7B-1200, 7-B-1201, 7B-3100, 7B-903(a)(3)(b), 7B-906(a), 7B-907(a), 7B-1106.1(6), 7B-908(b)(1), 7B-1106(a)(5), 7B-202, 7A-790 et seq; N.C. Prof. Cond. Rule 1.14.

## North Dakota

N.D. Cent. Code §§14-09-06.4, 50-25-1-08, 27-20-26, 27-20-48; N.D. R. Ct. 8.7; N.D. R. Prof. Cond. 1.14.

## Ohio

Ohio Rev. Code Ann. §§ 2151-352, 2151.352, 2151.23(a)(2)(3)(9)(10)(11)(12)(13), (b)(2)(3)(4)(5)(6), (c), (d), (f)(1)(2), §2151.282.

## Oklahoma

Okla. Stat. tit. 10, §§ 24, 7001-1.3, 7003-3.7; Okla. R. Prof. Cond. R. 1.14.

## Oregon

Ore. Juv. Code §§ 419.195, 419.208.

## Pennsylvania

42 Pa. Cons. Stat. Ann. § 6311, 2313, 5983, 6335, 6337; Rules of Juv Ct Proc Dep Matters §§ 1150, 1151, 1152, 1154; PA. R. Prof. Cond. 1.14.

## Rhode Island

R.I. Gen. Laws §§ 40-11-14; R.I. Sup. Ct. Rules, Rule 1.14.

## South Carolina

S.C. Code Ann. §§ 20-7-110, 20-7-121, 20-7-122, 20-7-124, 20-7-1570; S.C. R. App. Ct. R. 608; S.C. R. Prof. Cond. R. 1.14.

## South Dakota

S.D. Codified Laws §§ 26-7A-6, 26-7A-30, 26-8A-9, 26-8A-18, 26-8A-20; S.D. R. Prof. Cond., R. 1.14.

## Tennessee

Tenn. Code Ann. §§ 34-1-107, 37-1-149; Tenn. R. Juv. Proc., R. 37, 40; Tenn. R. Sup. Ct., R. 13, 40; Tenn. R. Prof. Cond., R. 1.14.

## Texas

Tex. Fam. Code Ann. §§107.001, 107.002, 107.003, 107.004, 107.007, 107.008, 107.011, 107.012, 107.016, 153.371; Tex. Disc. R. Prof. Cond., R. 1.02, 1.03, 1.05.

## Utah

Utah Code Ann. §§ 78-3a-912, 78-7-9, 78(3)(a)(319), 62(a)(4)(a), 78-3a-912(2), 78-3a-912(8)(B).1.

## Vermont

Vt. Stat. Ann. tit. 33, § 5525; Vt. R. Fam. Proc. R. 1, 2, 3, 4, 6; Vt. Prof. Cond. R. 1.14.

## Virginia

Va. Code Ann. §§ 16.1-266, 16.1-266.1, 16.1-263, 16.2-252, 16.1-281(c), 16.1.232.1(a)(3), 16.1.282.2, 2.2-1839; Va. Sup. Ct. R. Juv. & Dom. Rel. Dist. Ct. R. 8.6.

## Washington

Wash. Rev. Code Ann. §§ 13.34.090, 13.34.100.

## West Virginia

W. Va. Code §§ 49-6-2(a); W. Va. R. of Proc. Abuse and Neglect Proc., Rule 3; W. Va. Bar R. Prof. Cond., Rule 1.2, Rule 1.14.

## Wisconsin

Wisc. Child Code §§ 48.23(3m), 48.23(4).

## Wyoming

Wyo. Stat. §§14-3-101-14-3-440, W.S. §§14-2-308-14-2-319; Wy St. Ct. R. 205.

## First Star Leadership

### **DIRECTORS AND OFFICERS**

Lt. General Claudia Jean Kennedy  
(U.S. Army – Rt.)  
*Chair*

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Sherry A. Quirk Esq.  
Schiff Hardin LLP  
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Network Centric Operations Industry  
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Louise I. Alport  
Kolberg and Associates

Norman Aladjem  
Paradigm

Susan Kay Barker-Clem

Paige Bishop  
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1666 K Street, NW, Suite 700  
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