FILED
SUPREME COURT
STATE OF WASHINGTON
1/26/2018 10:26 AM
BY SUSAN L. CARLSON
CLERK

No. 94798-8

THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF E.H.,

A minor child.

STATE OF WASHINGTON,

Respondent,

v.

R.R.,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF WITH CORRECTED JOINT APPENDIX

JAN TRASEN
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. INTRODUCTION 1

B. ISSUES FOR WHICH REVIEW HAS BEEN GRANTED 1

C. STATEMENT OF THE CASE 3

D. ARGUMENT 6

1. Article I, section 3 categorically entitles dependent children to the appointment of counsel, to protect their fundamental liberty and due process rights. 6

a. Under article I, section 3, Washington children have a due process right to counsel no less than that of their parents....7

b. An analysis of the Gunwall criteria demonstrates a state constitutional right to counsel for dependent children.....8

2. Given the interests at stake and the high risk of error, the denial of counsel to E.H. constituted a denial of due process under the Fourteenth Amendment 11

a. This Court applies the Mathews factors de novo 12

b. On review, this Court should find the circumstances required the appointment of counsel for E.H.....13

c. The risk of error is unacceptably high in dependency cases, and the CASA program is not an adequate safeguard. 15

3. Case-by-case analysis is inadequate to protect children's due process rights under the Fourteenth Amendment. 19

E. CONCLUSION 20

TABLE OF AUTHORITIES

Washington Supreme Court

Bellevue School District v. E.S, 171 Wn.2d 695, 257 P.3d 570 (2011).. 10, 12

Braam v. State, 150 Wn.2d 689, 81 P.3d 851 (2003) 15, 19

In re Dependency of M.S.R., 174 Wn.2d 1, 271 P.3d 234 (2012)..... 7, 8, 9, 15, 16, 17

In re Marriage of King, 162 Wn.2d 378, 174 P.3d 659 (2007) 19

In the Matter of the Dependency of M.H.P., 184 Wn.2d 741, 364 P.3d 94 (2015) 6

In re Welfare of Luscier, 84 Wn.2d 135, 524 P.2d 906 (1974) 6, 9

In re Welfare of Myricks, 85 Wn.2d 252, 533 P.2d 841 (1975)..... 6, 9

State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984) 9

State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986) 5, 8

State v. Smith, 117 Wn.2d 263, 814 P.2d 652 (1991) 10

Washington Court of Appeals

In re Dependency of G.G., Jr., 185 Wn. App. 813, 344 P.3d 234 (2015)... 7

In re Dependency of S.K.-P., 200 Wn. App. 86, 401 P.3d 442 (2017).6, 11, 16, 18, 20

In the Matter of the Dependency of Griffin Lee, 200 Wn. App. 414, 404 P.3d 575 (2017)..... 16, 17

United States Supreme Court

Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981). 6, 20

Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) ..... *passim*

Rose v. Rose, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987) 10

Other Courts

In re A.T., 744 N.W.2d 657 (Iowa Ct. App. 2007) 13

Washington Constitution

Article I, section 3 ..... 1, 5, 6, 8, 10, 11

United States Constitution

Const. art. IX, § 1 10

Const. art. XIII, § 1 10

Fourteenth Amendment 11, 19

Rules

RPC 1.14 18

Statutes

RCW 13.34.100 11

RCW 13.34.100(6) 7

RCW 13.34.100(7) 12

RCW 13.34.130 16

Other Authorities

A Child's Right to Counsel: A National Report Card on Legal Representation for Abused & Neglected Children, 12 (3rd. ed. 2012). 13

Alicia LeVezu, Defending Our Children: A Child's Access to Justice in Washington State, 2016 Status Report, Children and Youth Advocacy Clinic at the University of Washington (2016): https://www.law.washington.edu/Clinics/Child/Projects/DefendingOurChildrenAugust2016.pdf. 12

Amy Mulzer & Tara Urs, However Kindly Intentioned: Structural Racism and Volunteer CASA Programs, 20 CUNY L. Rev. 23 (2016)..... 15, 18

Br. of Amici Curiae Legal Counsel for Youth and Children and TeamChild, No. 48299-1-II (filed Aug. 18, 2016). 18

Br. of Amicus Curiae Fred T. Korematsu Center for Law and Equality, No. 48299-1-II (filed Aug. 16, 2016) 8, 10

Gary Soloman, Role of Counsel in Abuse and Neglect Proceedings, 192 Prac. Law Inst. Crim. Law and Urb. Prob. 543 (2003)) 13

Justice Robert F. Utter, Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491 (1983-1984)..... 9

Randi Mandelbaum, Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers, 32 Loy. U. Chi. L.J. 1 (2000)..... 17

Susannah Frame, Judge: "Pervasive and Egregious" Misconduct by Child Advocacy Program, King 5.com (Jun. 10, 2016), available at: http://www.king5.com/article/news/local/investigations/judge-pervasive-and-egregious-misconduct-by-child-advocacy-program/281-239304714.....17

WSBA Resolution in Support of Attorney Representation for Children in Dependency Proceedings, September 17, 2015. 18

A. INTRODUCTION

E.H. is a ten-year-old boy. The juvenile court denied his mother's request that he be appointed counsel, even though E.H. suffered within the foster care system; he was shuttled from placement to placement and separated from his siblings and other family members. E.H. yearned for reunification with his mother, and he expressed this to the person who was supposed to be his advocate in the courtroom – a guardian ad litem through the CASA program, who was assigned to E.H. and his younger siblings. The CASA, however, refused to recommend reunification as E.H. asked for, and instead recommended that the court terminate Ms. R.'s parental rights to all three young children.

This Court should hold – consistent with Washington precedent that parents have the right to counsel in dependencies – that article I, section 3 requires the categorical appointment of counsel for dependent children, to protect their fundamental liberty and due process rights, as well. This Court should further hold that, given the circumstances of E.H.'s case, a proper balancing of factors required the appointment of counsel; thus, the denial of counsel constituted a violation of due process.

B. ISSUES FOR WHICH REVIEW HAS BEEN GRANTED

1. The guarantee of due process under the Washington Constitution is greater than under the federal constitution. Unlike the Fourteenth

Amendment, article I, section 3 categorically requires parents be appointed counsel in dependency and termination proceedings. Children have significant liberty interests at stake in dependency actions. Only an attorney can effectively protect a child's liberty interests and give voice to a child's stated interests. In dependency cases, does article I, section 3 categorically provide children a right to counsel?

2. Under the Fourteenth Amendment, due process may require appointment of counsel to children in dependency cases. Where the stakes for children in dependency proceedings are high, and the State has an interest in an accurate resolution, the costs of providing children an attorney must be assessed in light of the interests at stake. Where there were insufficient safeguards in place to protect the child, due to the CASA's advocacy against E.H.'s stated position, the risk of error was great. Does a valid balancing of Mathews[1] factors show E.H. was improperly denied his right to counsel?

3. Does Mathews case-by-case analysis adequately protect the due process rights of dependent children under the Fourteenth Amendment, and does due process require the categorical appointment of counsel to children in dependency cases?

---

[1] Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

C. STATEMENT OF THE CASE

1. Ms. R. sought counsel for E.H. because the CASA advocated against E.H.'s stated goals during the dependency.

R.R. is the mother of E.H., a ten-year-old boy, who is in foster care. In re Dependency of E.H., (Comm. Ruling, No. 76000-9-I, Mar. 30, 2017). Age-wise, E.H. is in the middle of his group of siblings; he has three older brothers, between the ages of 14 and 17. Id. He also has two younger siblings, who are five and six. Id.

The children were found dependent due to the abuse of a third party, after the children were no longer living with Ms. R. Jt. App. at 18.[2] When Ms. R. learned she was facing a prison sentence, she arranged for her children to live with a family friend. Id. An incident of physical abuse against one of the older brothers by the caregiver alerted the Department of Social and Health Services (the Department), and all six of the children were placed in foster care. Id. The Department acknowledged that "the mother was not aware of this abuse." Id.

Since the Department became involved with the family, E.H. and his two younger siblings have been shuttled among various foster care placements, including several different foster homes, motel rooms with a

[2] Jt. App. refers to a joint appendix filed by the parties, containing redacted copies of the exhibits filed in the Court of Appeals. A corrected copy of this brief and the Joint Appendix were filed at the Court's request on Jan. 26, 2018, providing complete redaction, but no substantive changes.

social worker and even their teacher's home. Jt. App. at 37. E.H. has always been placed alone. Jt. App. at 198.

Ms. R., meanwhile, has pursued parenting classes, has followed facility guidelines, and has an expected release date of 2019 or earlier. E.H., No. 76000-9-I, at 1-2 (noting release to a halfway house in 2018 is possible). Ms. R. calls her younger three children approximately twice each week and sends cards and letters. Id. The juvenile court has found Ms. R. in full compliance with all services offered, finding her participation in the "many services and programs available to her" to be "considerable" and "notable." Id.; Jt. App. at 50.[3] Ms. R. has also participated in liberal in-person visitation with her children, having earned furloughs during her incarceration. E.H., No. 76000-9-I, at 1-2.

In August 2016, Ms. R. moved for the appointment of counsel for E.H, when he was almost nine. Jt. App. at 53-69. Ms. R. argued the Washington and United States Constitutions required her son be appointed counsel. Ms. R. also argued that E.H.'s interests were not adequately protected by the Court-Appointed Special Advocate (CASA). Id. at 54-56. E.H. fervently expressed his wish to return to his mother once she was released, and he was the only child in the younger group of siblings to be

[3] Ms. R. has even been permitted to spend time with her children at local beaches and water parks during her incarceration. Jt. App. at 50-51.

placed alone. Id. Despite this, the CASA advocated for the same plan for all three young siblings – termination of the parent-child relationship between the children and their mother. Id. at 55. Thus, the CASA did not represent E.H.'s stated interests, nor did the CASA in any manner advocate for E.H. as an attorney would. Id.[4]

The juvenile court refused to appoint E.H. counsel. Jt. App. at 1-12, 13-14. The court held that in a case-by-case analysis under Mathews v. Eldridge, supra, due process did not require the appointment of counsel for E.H. Id. After conducting a Gunwall[5] analysis, the court held that article I, section 3 did not require a different outcome. Id. at 1-12.

2. Ms. R. sought discretionary review because E.H. remains voiceless in the dependency process.

Seeking discretionary review, Ms. R. argued the Superior Court erred in its analysis under Mathews, and that article I, section 3 provides greater protection to children in dependency proceedings than does the Fourteenth Amendment.

A Court of Appeals Commissioner denied review, finding the trial court correctly applied the Mathews test. The Commissioner also refused

---

[4] The juvenile court remarked that the CASA suggested a guardianship as an alternative plan for E.H., although guardianship was not a goal that E.H. wanted, and the court did not consider it, noting the CASA seemed "leery" of her own recommendation. Jt. App. at 10.

[5] State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

to address whether article I, section 3 provides a broader due process right to counsel than does the Fourteenth Amendment, and whether the Washington Constitution requires the universal appointment of counsel for children in dependency proceedings. A motion to modify was denied.

This Court granted Ms. R.'s motion for discretionary review, consolidating the case with In re Dependency of S.K.-P.,[6] on the issue of the right to counsel for dependent children.

D. ARGUMENT

1. Article I, section 3 categorically entitles dependent children to the appointment of counsel, to protect their fundamental liberty and due process rights.

Washington courts have long been committed to protecting fundamental rights in the dependency context. Well before Lassiter, this Court held article I, section 3 mandated the appointment of counsel to parents in dependency and termination proceedings.[7] In re Welfare of Luscier, 84 Wn.2d 135, 137, 524 P.2d 906 (1974) (termination of parental rights cases); In re Welfare of Myricks, 85 Wn.2d 252, 255, 533 P.2d 841 (1975) (dependency cases). This remains the law, with article I, section 3 requiring the appointment of counsel for parents. E.g., In the Matter of the Dependency of M.H.P., 184 Wn.2d 741, 759, 364 P.3d 94 (2015)

[6] In re Dependency of S.K.-P., 200 Wn. App. 86, 401 P.3d 442 (2017).

[7] Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981).

(declining to "revisit the state constitutional component of Luscier"); In re Dependency of G.G., Jr., 185 Wn. App. 813, 826 & n.18, 344 P.3d 234 (2015) (recognizing "vitality of the due process-based right to counsel in termination proceedings" under article I, § 3).

a. Under article I, section 3, Washington children have a due process right to counsel no less than that of their parents.

This Court held in In re Dependency of M.S.R. that dependent children have at least the same due process right to appointed counsel as do their parents. 174 Wn.2d 1, 20, 271 P.3d 234 (2012). This Court based its holding on Lassiter, which recognized no right to counsel for parents in termination proceedings, but authorized the use of the Mathews balancing factors. M.S.R., 174 Wn.2d at 20 (citing Lassiter, 452 U.S. at 31).[8]

This Court acknowledged in M.S.R. that although a case-by-case analysis might suffice in the termination context, "a different analysis would be appropriate during the dependency stages." Id. at 22 n.13. E.H.'s case is an example of why a case-by-case analysis is not adequate or feasible in the dependency phase, and why the Mathews test, as applied, results in the deprivation of due process for children.

[8] In M.S.R. this Court held that RCW 13.34.100(6), a discretionary appointment statute, was adequate to protect the due process rights of children in parental termination proceedings. 174 Wn.2d at 22.

M.S.R. analyzed the child's right to counsel under the Fourteenth Amendment, without considering the scope of the article I, section 3 right to counsel. 174 Wn.2d at 20. However, this Court emphasized that "[t]he Washington State Constitution, of course, would not provide less due process protection." 174 Wn.2d at 20 n.11. An analysis of the Washington Constitution demonstrates that due process requires the appointment of counsel for all children in dependency proceedings under article I, section 3.

b. An analysis of the *Gunwall* criteria demonstrates a state constitutional right to counsel for dependent children.

In Gunwall, this Court articulated standards to determine when and how Washington's constitution may provide broader protection for individual rights than does the United States Constitution. 106 Wn.2d at 54; See Br. of Amicus Curiae Fred T. Korematsu Center for Law and Equality, No. 48299-1-II, pp. 3-5 (filed Aug. 16, 2016).[9]

As to the first two Gunwall factors, since the text of the Fourteenth Amendment and article I, section 3 is almost identical, these textual differences do not seem to be "meaningful" to the analysis, without more.

[9] The Court examines six nonexclusive criteria: (1) the text of the state provision, (2) the differences in the texts of the parallel state and federal provisions, (3) state constitutional history, (4) pre-existing state law, (5) structural differences between the two constitutions, and (6) matters of particular state interest and local concern. Gunwall, 106 Wn.2d at 61-62.

106 Wn.2d at 61.[10]

The third and fourth Gunwall factors, state constitutional history and preexisting law, support broader interpretation of article I, section 3. State constitutional provisions require independent interpretation unless historical evidence shows otherwise.[11] In the criminal context, this Court has found the state due process clause is subject to broader interpretation than its federal counterpart. State v. Bartholomew, 101 Wn.2d 631, 639-40, 683 P.2d 1079 (1984).

The third and fourth factors are also well supported by this Court's dependency jurisprudence. This Court has long held that parents have a due process right to counsel in proceedings where their parental rights are at stake. Luscier, 84 Wn.2d at 139 (acknowledging the child's rights, noting, "a child may be deprived of the comfort and association of its parents"); Myricks, 85 Wn.2d at 253.

In M.S.R., this Court explicitly recognized that children have a significant liberty interest in termination proceedings. 174 Wn.2d at 20.

---

[10] The Article I, section 3 provision emphasizes individual rights: "no persona shall be deprived of life, liberty, or property, without due process of law." The Fourteenth Amendment focuses on the State ("nor shall any State deprive any person of life, liberty, or property, without due process of law.)"

[11] Justice Robert F. Utter, Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491, 514-16 (1983-1984) (interpret identically worded provisions independently absent a strong "historical justification for assuming the framers intended an identical meaning").

Likewise, in dependencies, children are "at risk of not only losing a parent but also relationships with sibling, grandparents, aunts, uncles, and other extended family." Id. at 15. The third and fourth Gunwall factors support an independent analysis and a broad reading of article I, section 3.

The fifth and sixth factors – differences in structure between the state and federal constitutions and matters of state or local concern – also support an independent analysis. See Br. of Amicus Curiae Korematsu Center, supra, at 12-18. The federal constitution is a grant of power from the people, while the state constitution represents a limitation on the State. Bellevue School District v. E.S, 171 Wn.2d 695, 713, 257 P.3d 570 (2011). Moreover, the framers of the Washington Constitution recognized the State must be responsible for the care of children. See, e.g., Const. art. IX, § 1 (paramount duty to provide education to children); Const. art. XIII, § 1 (institutions for the benefit of disabled youth to be supported).

As to the sixth factor, family relations and minors are inherently matters of state or local concern. State v. Smith, 117 Wn.2d 263, 286-87, 814 P.2d 652 (1991) (Utter, J. concurring); Rose v. Rose, 481 U.S. 619, 625, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987). States are authorized to create independent and broader procedures to protect due process rights where family matters are concerned. Lassiter, 452 U.S. at 33; Santosky v. Kramer, 455 U.S. 745, 769-70, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

Our courts recognize that "Washington law has become increasingly protective of children's due process rights, particularly in the dependency context." Matter of Dependency of S.K.-P., 200 Wn. App. at 105 (noting 2010 amendments to RCW 13.34.100). In fact, in S.K.-P., the Court held that "Washington's long history and tradition of protecting children in dependency proceedings lends support to our decision to conduct an independent state constitutional analysis." Id. at 106.

Accordingly, an examination of the non-exclusive Gunwall criteria, as well as Washington's proud history of protection of dependent children, supports a broad reading of the due process protections afforded by article I, section 3.

2. Given the interests at stake and the high risk of error, the denial of counsel to E.H. constituted a denial of due process under the Fourteenth Amendment.

At the time of the dependency proceedings, E.H. stood before the court without legal representation, although he was the only child in his family placed alone, isolated from his siblings, with a representative advocating for the opposite of his stated goals in the dependency.[12] This

[12] Dependent children are often voiceless in the proceedings that determine the most important decisions affecting their lives. As one child said:

> " Once I got an attorney, I remember feeling official, like I had good representation. The state, my foster parents, everybody had somebody who represented them. It had always felt weird that I didn't have one, that I didn't have someone to fight for me."

deprivation of counsel for the most vulnerable and at-risk individuals in the dependency system has not been addressed by this Court. This Court should find the case-by-case Mathews analysis conducted by the juvenile court violated due process, and here, entitled E.H. to appointed counsel.

a. This Court applies the *Mathews* factors de novo.

The question before the Court is whether the case-by-case review under Mathews was constitutionally adequate to protect E.H.'s liberty and due process interests as a dependent child.[13] Issues of law are reviewed de novo. E.S, 171 Wn.2d 695 at 702.

Under Mathews, upon a request for counsel in a dependency or termination proceeding, the trial court must apply a three-part test. 424 U.S. at 335. The court must weigh: 1) the private interest at stake; 2) the risk of error involved through the procedures used and the probable value of additional procedural safeguards; and 3) the government's interest, including fiscal and administrative burdens. Id.

-Deonate, age 23, Washington foster care alumnus. Alicia LeVezu, Defending Our Children: A Child's Access to Justice in Washington State, 2016 Status Report, Children and Youth Advocacy Clinic at the University of Washington (2016) at 5: https://www.law.washington.edu/Clinics/Child/Projects/DefendingOurChildrenAugust2016.pdf.

[13] Ms. R. moved for counsel for E.H. under RCW 13.34.100(7). Under RCW 13.34.100(7), the juvenile court "may appoint an attorney to represent the child's position in any dependency action."

Mathews analysis demonstrates the importance of providing counsel to children engaged in dependency proceedings. On the particular facts presented on behalf of E.H., this Court should find that given the circumstances, the appointment of counsel was required.

b. On review, this Court should find the circumstances required the appointment of counsel for E.H.

E.H. was almost nine years old when the court considered the application for counsel. E.H. has been described as thoughtful, articulate, and extremely attached to his mother. Jt. App. at 54-46. E.H. repeatedly expressed to the CASA his preference to stay at his current placement only until he could return home to his mother; yet the CASA advocated for the opposite outcome – a termination petition which would permanently sever the parent-child relationship. Id.

"[T]he older, more intelligent, and mature the child is, the more impact the child's wishes should have, and a child of sufficient maturity should be entitled to have the attorney advocate for the result the child desires." In re A.T., 744 N.W.2d 657, 663 (Iowa Ct. App. 2007) (citing Gary Soloman, Role of Counsel in Abuse and Neglect Proceedings, 192 Prac. Law Inst. Crim. Law and Urb. Prob. 543, 550 (2003)).[14]

[14] "Age seven is viewed by some advocates as the appropriate separation between the need for a client-directed attorney and a best interests' attorney." A Child's Right to Counsel: A National Report Card on Legal Representation for Abused & Neglected Children, 12 n.14 (3rd. ed. 2012) (citing various authority).

E.H. was of sufficient age and maturity to express his stated interests, and the CASA was not only inadequate to safeguard E.H.'s concerns, but under the circumstances, the CASA was actually working as an agent against E.H.

The juvenile court's application of the Mathews factors in this case was highly problematic. The court commenced its analysis by stating it was unclear what value counsel could provide for E.H., when he had an "actively involved" CASA and an incarcerated mother. Jt. App. at 9.[15] The court also found that counsel would provide "no benefit" to E.H., since "[w]ith or without counsel, [E.H.] would be in foster care."[16] In its analysis, the court misapprehended the abilities and ethical duties of lawyers, even suggesting that because the CASA program was represented by counsel, a sufficient procedural safeguard was provided for E.H. Jt. App. at 9-10. Certainly, the CASA counsel's ethical duties – including client confidentiality and zealous advocacy – are to the CASA Program,

---

[15] Where the CASA is actively advocating for the termination of the parent-child relationship against the child's wishes, as here, this finding actually cuts against the court's conclusion denying counsel.

[16] The court also justified not appointing counsel with a finding that E.H. is purportedly slow to trust new people and does not like being "called out" as a foster child. Jt. App. at 10.

rather than to E.H., who remains unrepresented and voiceless in the courtroom.[17]

The court's analysis was flawed, because the court failed, in its self-defined "fact-specific" area of the analysis, to properly balance the risk of error and the probable value of additional procedural safeguards. Jt. App. at 9 (citing Mathews).

c. The risk of error is unacceptably high in dependency cases, and the CASA program is not an adequate safeguard.

This Court held in M.S.R. that "the child's liberty interest in a dependency proceeding is very different from, but at least as great as, the parent's." 174 Wn.2d at 17-18. Although this Court acknowledged this truism, dependent children have a great deal more to lose during this process than do their parents.[18]

---

[17] Amy Mulzer & Tara Urs, However Kindly Intentioned: Structural Racism and Volunteer CASA Programs, 20 CUNY L. Rev. 23, 59 (2016) (available at: https://academicworks.cuny.edu/clr/vol20/iss1/3) (CASA does not have a client – "she is the client, a party to the case with all of the rights that entails, from notice and the right to be heard to the right to be represented by counsel.").

[18] Children in the foster care system are moved by the State to multiple placements and schools, and separated from siblings, as was E.H. here. "It is the child, not the parent, who may face the daunting challenge of having his or her person put in the custody of the State as a foster child, powerless and voiceless, to be forced to move from one foster home to another." M.S.R., 174 Wn.2d at 16; see also Braam v. State, 150 Wn.2d 689, 694, 81 P.3d 851 (2003).

In M.S.R., this Court found the Mathews analysis to be constitutionally adequate solely in the termination context. 174 Wn.2d at 21-22. However, unlike M.S.R., this case involves a dependency. A dependency proceeding much more directly implicates a child's fundamental liberty interests, triggering a child's need for – and right to – his or her own counsel. See M.S.R., 174 Wn.2d at 22 n.13 (suggesting a different analysis might apply in dependency). While termination proceedings focus primarily on parental fitness, a dependency is a complex civil proceeding that dictates every facet of a child's life. E.g., RCW 13.34.130. The dependency court issues orders stating who a child may visit, the services a child may or must receive, the school a child will attend, and even the pharmaceuticals a child may (and must) take. Id.

In a dependency, the existing safeguards, including the appointment of a CASA/GAL, are insufficient to protect the rights of a dependent child. In the Matter of the Dependency of Griffin Lee, 200 Wn. App. 414, 452-53, 404 P.3d 575 (2017) ("the appointment of a CASA is often insufficient."). "The CASA is not required to be an attorney, does not protect the legal rights of the child, and 'does not represent the child as an attorney represents a client.'" Id. (quoting S.K.-P., 200 Wn. App. at 110-11). In Dependency of Lee, the Court of Appeals reversed a dependency for the failure to appoint counsel for the child, noting, "the

ways that an attorney can assist a person in need – as Griffin plainly is – are sometimes limited only by the imagination, intellectual dexterity, and assertiveness of the lawyer." 200 Wn. App. at 454.

Even when, as in E.H.'s case, a CASA has been appointed for the child, the risk of erroneous decisions remains unacceptably high. A CASA does not share the same obligations to the child that an attorney has, nor does the CASA share the same training or ethical duties to a client. In M.S.R., this Court articulated some of the differences between attorneys and CASAs:

> We recognize that GALs and CASAs are not trained to, nor is it their role to, protect the legal rights of the child. Unlike GALs or CASAs, lawyers maintain confidential communications, which are privileged in court, may provide legal advice on potentially complex and vital issues to the child, and are bound by ethical duties. Lawyers can assist the child and the court by explaining to the child the proceedings and the child's rights. Lawyers can facilitate and expedite the resolution of disputes, minimize contentiousness, and effectuate court orders.

174 Wn.2d at 21 (citing Randi Mandelbaum, Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers, 32 Loy. U. Chi. L.J. 1, 61-62 (2000)).

Unlike CASAs, attorneys are bound by the Rules of Professional Conduct (RPCs), and have a privileged and confidential relationship with their client. M.S.R., 174 Wn.2d at 19. The RPCs envision the

representation of young clients, as well as those with limited capacity; trained lawyers have the skills required to communicate with those with diminished capacity, including providing them with requested materials and information.[14]

Children represented by counsel at their first hearing are more likely to be placed with relatives or with "other caring adults they know throughout their dependencies;" representation dramatically reduces or eliminates the time children spend in foster care, as well. S.K.P., 200 Wn. App. at 117 (citing Br. of Amici Curiae Legal Counsel for Youth and Children and TeamChild, No. 48299-1-II, pp. 7 (filed Aug. 18, 2016).[15]

Attorneys, unlike CASAs or other GALs, are subject to oversight by the Washington State Bar Association, which has a transparent disciplinary complaint system.[16]

---

[14] RPC 1.14, Comment [1]. Even "children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody." Id. Parents are not denied counsel due to capacity issues; thus, capacity or infancy should not be used as an excuse to deny children counsel.

[15] The Washington State Bar Association has called for attorney representation for children at every stage of dependency proceedings, due to the vulnerability of children in these actions. WSBA Resolution in Support of Attorney Representation for Children in Dependency Proceedings, September 17, 2015.

[16] Mulzer & Urs, However Kindly Intentioned, supra, at 60 n. 174 (noting a recent Snohomish County scandal, where the county's GAL program gained access to the confidential defense list-serv, submitted false declarations in Superior Court, retaliated against parents, and committed perjury; see also

Finally, under Mathews, there can be no overriding countervailing governmental interest to deny an application for counsel, other than perhaps financial. Where fiscal constraints are the only countervailing interest, courts will not excuse a violation of due process. Mathews, 42 U.S. at 348. "Financial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard." Id. See also Braam, 150 Wn.2d at 710 ("Lack of funds does not excuse a violation of the constitution and this court can order expenditures, if necessary, to enforce constitutional mandates.").

This Court should find that the court erred in its analysis, and that the denial of counsel for E.H. constitutes a denial of due process.

3. Case-by-case analysis is inadequate to protect children's due process rights under the Fourteenth Amendment.

Given the interests at stake for dependent children and the high risk of error, a case-by-case analysis of motions for counsel, per Mathews, insufficiently protects the due process rights of dependent children.

This Court has previously held that a case-by-case approach for appointment of counsel is "unwieldy, time-consuming, and costly. The proceeding itself might require appointment of counsel…" In re Marriage of King, 162 Wn.2d 378, 390 n.11, 174 P.3d 659 (2007).

---

http://www.king5.com/article/news/local/investigations/judge-pervasive-and-egregious-misconduct-by-child-advocacy-program/281-239304714 (J. Anita Farris finds pattern of misdeeds in GAL program, with misconduct "pervasive and egregious.").

For this reason, the Mathews analysis is insufficient to protect the due process rights of children in dependency proceedings. Rather, the Mathews factors should be applied contextually, as related to the collective experience of children in dependencies, rather than individually, as related to the individual child before the court. See, e.g., Lassiter, 452 U.S. at 49 (the flexibility of due process requires a "case-by-case consideration of different decision-making contexts, not of different litigants within a given context.") (Blackmun, J., dissenting) (emphasis original); see S.K.-P., 200 Wn. App. at 114.

E.H. and other dependent children should be afforded the right to counsel to protect their fundamental liberty and due process rights.

E. CONCLUSION

Ms. R. respectfully requests this Court hold that due process under article I, section 3 requires the universal appointment of counsel for dependent children. Alternatively, the Court should hold that E.H. was entitled to counsel and remand for further proceedings.

DATED this 22nd day of January, 2018.

Respectfully submitted,

s/ Jan Trasen

_____

JAN TRASEN – WSBA 41177
Washington Appellate Project (91052)
Attorneys for Petitioner

JOINT APPENDIX[1]

[1] Corrected Copy filed Jan. 26, 2018 (to provide complete redaction).

TABLE OF APPENDICES

1. Superior Court Opinion and Order on Mother's Motion 1-12
2. Order on Mother's Motion to Appoint Counsel 13-15
3. Order of Dependency 16-34
4. Mother's Motion for Overnight Visitation 35-48
5. Mother's Motion for Unsupervised Visitation 49-52
6. Motion for Appointment of Counsel for Child & Attachments 53-193
7. CASA's Response to Mother's Motion for Counsel 194-243
8. Department's Response to Mother's Motion for Counsel 244-261

FILED
16 OCT 11 AM 11:06

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

IN RE THE DEPENDENCY OF:	No. 14-7-01413-7 SEA
[redacted] Minor Child.	MEMORANDUM OPINION AND ORDER ON MOTHER'S MOTION FOR REVISION

On September 1, 2016, the Honorable Susan Llorens, Commissioner, *pro tem*, denied the mother's motion to appoint counsel for [redacted] The mother is now moving for revision of that order. The court reviewed the motion for revision filed by the mother and the responses in opposition filed by Department and the CASA. In addition, the court reviewed the materials submitted below and listened to the audio tape of the September 1 hearing. The matter was reviewed on a *de novo* basis. RCW 2.24.050.

The mother makes two primary arguments in support of her motion for counsel for her son. First, she argues that Art. I, §3 of the Washington State Constitution (the due process clause) requires that counsel for children be appointed in all dependency cases.[1] Second, she

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

argues that even if counsel is not required in all cases, [redacted]'s situation is such that due process requires appointment of counsel in his particular case. She also raises, as a third argument, a federal constitutional claim. These will be discussed separately below.

I. Right to Counsel under the Washington State Due Process Clause, Art 1, §3

As recognized in *Bellevue School District v. E.S.*, 171 Wn. 2d 695 (2011), courts must look at the specific issue presented to determine whether Art. I, §3 provides broader protection than does the Fourteenth Amendment.[2] However, to date, the weight of authority supports a conclusion that the protections of Art. I, §3 are no broader than the federal provision. *See e.g. Bellevue School District, supra* (Right to counsel at initial hearing on a truancy petition); *State v. Turner*, 145 Wn. App 899 (2008) (No requirement to electronically record police interrogations); *In re Marriage of King*, 162 Wn. 2d 378 (2007) (Right to counsel in a dissolution proceeding involving children); *State v. Ortiz*, 119 Wn. 2d 294 (1992)(Destruction of evidence in a criminal case). *But see State v. Davis*, 38 Wn. App. 600 (1986)(Art. I, §3 requires suppression of post-arrest silence). However, although instructive, the cases do not control the question raised by the mother: Does Art. I, §3 require appointment of counsel for all children involved in a dependency? To answer this question, the court must consider the factors set forth in the seminal case of *State v. Gunwall*, 106 Wn. 2d 54 (1986).[3]

---

[2] In earlier cases, the court took a more categorical approach. For example, In *In re Dyer*,143 Wn. 2d 384, 393 (2001) the Supreme Court flatly interpreted its prior case law as establishing that "Washington's due process clause does not afford a broader due process protection than the Fourteenth Amendment."

[3] As stated by the court in *State v. Reece*, 110 Wn. 2d 7 at 777-778 (1988), "[T[he proper inquiry under *Gunwall* is not to ask whether state constitutional analysis is necessary, but to ask whether on a given subject matter the Washington constitutional provision should afford greater protection than the minimum protection afforded by the federal constitution." On the other hand, at least as to Factors 5 and 6, there is some indication that the proper inquiry is simply to determine whether a state constitutional analysis is necessary. *See Bellevue School District v. E.S.*, 171 Wn. 2d 713; *In re Marriage of King*, 162 Wn. 2d at 393.

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

In *State v. Gunwall*, the Supreme Court established a non-exclusive list of factors that must be examined in determining whether a state constitutional provision is more protective than its federal counterpart. These factors are:

> (1) the textual language; (2) differences in the texts; (3) constitutional history; (4) preexisting state law; (5) structural differences; and (6) matters of particular state or local concern. *Gunwall*, 106 Wn. 2d at 58.

All parties agree that factors (1) and (2) do not support a conclusion that Art. I, §3 is more protective than the Fourteenth Amendment. The mother, however, urges that the other four factors militate in favor of conducting an independent state analysis.

The court finds no evidence that supports a conclusion that the drafters of the state constitution intended "to confer greater protection" than does the federal due process clause—the third Gunwall factor. In fact, in *Ortiz*, the court specifically concluded that there is no historical "justification for interpreting the identical provisions [of the 14th Amendment and Art. I, §3] differently." *Ortiz*, 119 Wn. 2d 294 (1992). Certainly, there is no common law in Washington pre-dating the enactment of the State Constitution granting children the right to counsel in child welfare cases. Children were not even provided with the right to counsel in delinquency proceedings until 1967, when the landmark *Gault* case was decided. *In re Gault*, 387 U.S. 1 1428 (1967). Provisions establishing the special rights of children contained in other sections of our state constitution provide no basis for concluding that Art. I, §3 is to be interpreted more broadly when issues involving children are at stake.

The fourth factor looks to previously existing state law. This is a recognition that:

> Previously established bodies of state law, including statutory law, may also bear on the granting of distinctive state constitutional rights. State law may be responsive to concerns of its citizens long before they are addressed by

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

> analogous constitutional claims. Preexisting law can thus help to define the scope of a constitutional right later established.

H. Spitzer, *Which Constitution? Eleven Years of Gunwall in Washington State*, 21 Seattle U. Law Review 1187, 1214 (Spring 1998).

Certainly, Washington has a robust statutory scheme intended to protect the significant rights of children caught up in the dependency system. RCW 13.34.050 provides for the appointment of counsel for children over the age of twelve and authorizes the court to appoint counsel for younger children when appropriate. As recently as 2014, RCW 13.34.100 was amended to add a new provision requiring that counsel be appointed for a child, regardless of age, who is "legally free" for six months. RCW 13.34.100(6). See also JuCR 9.2.

Children in dependency actions are further protected by the requirement that a child be appointed a guardian *ad litem (GAL),* unless the appointment of independent counsel renders a GAL unnecessary. A GAL, whether volunteer or staff, is required to undergo significant training and background checks. The GAL has party status and is entitled to notice of all hearings. The GAL, through counsel or as otherwise authorized by the court, "shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings." RCW 13.34.100(5). GALs are required to conduct independent factual evaluations and to "meet with, interview, or observe the child, depending on the child's age and developmental status, and *report to the court any views or positions expressed by the child on issues pending before the court." (Emphasis added).* RCW 13.34.105(1)(b).

Recent case law also recognizes that the State owes foster children a special duty. Foster children have a substantive due process right to be "to be free from unreasonable risks of harm and a right to reasonable safety." As a matter of due process, the State "must provide conditions free of unreasonable risk of danger, harm, or pain, and must include adequate

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

services to meet the basic needs of the [foster] child." In *Braam v. State*, 150 Wn. 2d 689 at 700 (2003).

In *Dependency of MSR*, 174 Wn. 2d 1 (2012), our Supreme Court concluded that the children in termination proceedings do not have an absolute right to counsel under the federal due process clause. The court recognized that "children have at least the same due process right to counsel as do indigent parents subject to dependency proceeding." *Id.* at 20. [4] However, after applying all three *Mathews* factors, the court in *MSR* determined that due process did not require appointment of counsel for these children. The Court declined to analyze the Article 1, § 3 claim because the *Gunwall* factors had not been adequately briefed. In the final footnote, the Court indicated that its analysis might be different if it were dealing with a dependency, as opposed, to a termination proceeding.[5]

In the dependency context, the Washington Supreme Court recognized a due process right for parents to be appointed counsel. *In re Welfare of Myricks*, 85 Wash.2d 252, 253–54, 533 P.2d 841 (1975)(Dependency proceeding); *In re Welfare of Luscier*, 84 Wash.2d 135, 136–39, 524 P.2d 906 (1974)(Termination proceeding). Subsequently, the United States Supreme court holding in *Lassiter* abrogated the holding of *Luscier* (and thus *Myricks)* to the extent *Luscier* relied on a federal due process analysis. *Lassiter v. Dep't of Soc. Servs.*,462 U.S. 18 (1981). The right of indigent parents to counsel at public expense at all stages of a dependency is now enshrined in statute. *See* RCW 13.34.092.

---

[4] Part II of this Opinion contains a discussion of the *Mathews* factors.

[5] In Footnote 14, the court noted: "We recognize that this is an appeal of a termination order. Nothing in this opinion should be read to foreclose argument that a different analysis would be appropriate during the dependency stages."

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

This court has not been able to locate a case finding that the Washington Due Process Clause of Art 1, §3 provides an independent basis for appointing counsel.[6] The two cases the court has located, *Bellevue School District*, 171 Wn. 2d 695 (2011) and *In re Marriage of King*, 162 Wn 2d 378 (2007), each reached the opposite conclusion. Even recognizing the special duty the State owes to foster children, the court is satisfied that the current state of the statutory and case law does not establish that our state due process clause requires the appointment of counsel for children in dependency proceedings—the relevant inquiry under the fourth *Gunwall* factor. At least as this court understands the fourth factor, it is not immutable. As the law continues to develop, a stronger argument for state constitutional protection may arise.

The fifth factor recognizes the differing structures of the state and federal due process clause. "Our consideration of this factor is always the same; that is that the United States Constitution is a *grant* of limited power to the federal government, while the state constitution imposes *limitations* on the otherwise plenary power of the state." *State v. Foster*, 135 Wash.2d 441, 458–59 (1998). Thus, an independent analysis always will be required and such analysis has been undertaken by this court, through the application of *Gunwall* Factors 1, 2, 3, 4 and 6.

The final factor is whether the subject matter is issue of particular state interest and local concern. The parties urge that the welfare of children is a matter of local control. Certainly family matters, in general, are a matter of substantial state concern. *Rose v. Rose*, 107 S. 602 (2001); *In re Custody of R.R.B*, 108 Wn App 602 (2001). However, as pointed out in an article attached as an exhibit to the mother's motion, the federal government also has substantial interest and involvement in child welfare matters. R. Mandlebaum, *Revisiting the*

[6] *Luscier* did mention Art. 1 §3 but did not contain an independent analysis of the state constitutional provision.

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

Question of whether Young Children in Child Protection Proceedings Should be Represented by Lawyers, 32 Loy U Chicago 1 (Fall 2000). For example, The Child Abuse Prevention and Treatment Act (CAPTA) contains a federal requirement that all children in dependency actions be represented by either a guardian *ad litem* or attorney. Federal guidelines control the timing of hearings, the expectation of when permanency will be achieved and many other aspects of state dependency proceedings. When Native American children are before the court, there is an almost pervasive regulation of the state system by federal statute and administrative rules. *See generally, Major Federal Legislation Concerned with Child Protection, Child Welfare and Adoption*, https://www.childwelfare.gov/pubpdfs/majorfedlegis.pdf; National Indian Child Welfare Association, *The Indian Child Welfare Act of 1978*, nicwa.org/indian_child_welfare_act/

The sixth factor provides no basis for construing Art. 1 §3 more broadly in the context of a right to counsel for children in dependency proceedings than does the federal due process clause.

In summary, application of the six *Gunwall* factors does not lead to a conclusion that Art. 1, §3 requires appointment of counsel for all children in foster care.

Finally, even the mother apparently recognizes that there are some children too young to benefit from the appointment of counsel. She did not move for appointment of counsel for her two younger children—[redacted] (Born [redacted]) and [redacted] (Born [redacted]). Professor Mandelbaum's article contains an interesting analysis of the various models to be used by attorneys representing very young children. Certainly, enactment of any of these models

---

Bellevue School District contains an interesting summary of the law in this regard. 171 Wn. 2d at 712.

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

would be a matter for the legislature and the Washington State Bar Association and could not simply be imposed as a penumbra of Art 1, §3.

In summary, the court considered the six non-exclusive *Gunwall* factors and briefly considered the policy issues raised above to extent that the policy issues are helpful in analyzing whether Art. 1, §3 provides a right to counsel for all dependent children. The court is satisfied that Art. 1, §3 does not so require and that the proper analysis remains the case-by-case analysis employed by the court in *In re Dependency of MSR*, 174 Wn. 2d 1 (2012), based on the three-part test of *Mathews*.

II. Application of the *Mathews* factors

Even when there is not a blanket right to counsel, the facts of an individual case may require the appointment of counsel. These factors were announced by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 at 335 (1976). These factors are:

> [f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In *Lassiter v. Department of Social and Health Services*, as discussed at page 5 of this memorandum opinion, the United States Supreme Court concluded that the 14th amendment does not require appointment of counsel for a parent for a trial on a petition to terminate parental rights in all cases and, after applying the *Mathews* factors, determined that appointment of counsel was not required under the specific facts of that case. Thirty-one years later, In *Dependency of MSR*, the court had the opportunity to apply the *Mathews* factors when addressing a child's right to counsel in a termination proceeding. *Mathews v. Eldridge*,

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

424 U.S.319 (1976), *MSR* provides significant assistance to this court in analyzing the question of whether counsel should be appointed to [redacted] in this dependency action.

The court is satisfied that a child in a dependency action has a significant private interest in the proceedings. In fact, most of the risks that that Supreme Court articulated in *MSR* are applicable in a dependency proceeding. That is, removal from home, the possibility of repeated placements in foster care and the dangers of being returned to an unsafe home with biological parents who are not truly ready to assume care of the child are most at play in a dependency –as opposed to termination-- proceeding. 174 at 16-17. The child's ultimate interest in having (or not having) a relationship with his or her biological parent and extended family and the grim possibility that the child will remain a ward of the state until "aging out" are the only interests uniquely at play in a termination proceeding.

The government interests, as articulated by the Court in *MSR*, are identical in dependency and termination cases and need not be elucidated here.

The second factor-- the risk of an erroneous deprivation of the public and private interest and the probable value, if any, of additional or substitute procedural safeguards—is the most fact-specific of the three *Mathews* factors.[7]

It is unclear what additional value appointment of counsel for [redacted] a child not yet nine years of age, would provide. Laura Clough, who has been [redacted]'s CASA since July 2015, has been actively involved in [redacted]'s case. The expectation is that the mother will be in federal custody until July 2019. Ms. Clough has been forthright in explaining that [redacted] wishes to live with his mother when she is released from prison and until then wishes to remain

[7] The mother criticized Commissioner Llorens for commenting that there were no particularly complex issues involved in [redacted] dependency. This simply is another way of stating that the risk of a wrong decision is low.

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

in his current foster placement. Ms. Clough has recommended alternative plans of guardianship and adoption, as the permanent plans for [redacted]. Although it is clear that Ms. Clough is somewhat leery of making this recommendation for guardianship, she is doing so out of deference to [redacted]'s stated wishes to ultimately return to his mother. [redacted]'s voice is not going unheard in these proceedings.

In addition, under King County procedures, Ms. Clough is represented by counsel. Thus none of the barriers to accessing the court discussed in Professor Mandelbaum's article are present. Ms. Clough can, and has, filed motions, responded to motions filed by other parties and in all ways fully participated in the legal process.

In her September 1, 2016 report, Ms. Clough indicated that [redacted] is slow to trust and to open up. He has had many adults in and out of his life since 2013, when his mother was first incarcerated. He does not like being "called out" as a foster child. An attorney would be one more person that [redacted] would need to integrate into his life.

The court sees no benefit to [redacted] in appointing counsel at this juncture. There is no alternative, at this point, to [redacted] remaining a dependent child. Neither parent is available to care for him. His CASA is zealous in ensuring his well-being. Given the current posture of the case, it is unclear what counsel could contribute that a conscientious CASA represented by an attorney cannot. With or without counsel, [redacted] would be in foster care.[8]

That is not to say some children might not benefit from appointment of counsel. A child who is being subjected to frequent placement disruptions, who has complex mental health needs, or who needs assistance in accessing supportive educational advices might benefit by

[8] The court declines to address whether the Mathews would require appointment of counsel if a termination petition is ultimately filed.

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

attorney[9]. Similarly, a child where reunification is on a shorter-time line may need particular legal assistance in understanding the court process. However, none of these variables are now at play in [redacted]'s case.

When all three *Mathews* factors are considered, the court is satisfied that due process does not require appointment of counsel for [redacted].

III. Presumption of Appointment of Counsel

The mother argues that, pursuant to *MSR*, [redacted]'s liberty issues are at stake as he is a child removed from his mother's care. She thus argues that there is a presumption that counsel be appointed. Again, as recognized in *Lassiter* and *MSR*, there is no absolute federal due process right to the appointment of counsel. Even assuming that a foster child's liberty interest is the type of interest that creates a presumption for the appointment of counsel, the court is still to weigh and balance the other three factors to determine if the presumption has been overcome.

In Part II of this opinion, the court evaluated and balanced the *Mathews* factors and determined that counsel was not constitutionally required. In this analysis, the court, of course, considered the impact on children when they can no longer safely live with their parents—their "liberty interest." For the reasons stated above, sadly, the only choice for [redacted] and his siblings is to be placed in foster care as dependent children.

[9] This is not intended to be an exhaustive list of the circumstances under which counsel might be constitutionally mandated.

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

ORDER

The court has determined that [redacted] is not entitled to the appointment of counsel at this time. The motion for revision is therefore denied.

Signed electronically

Helen L. Halpert, Judge

Helen L. Halpert, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 477-1513

FILED
KING COUNTY, WASHINGTON

SEP 01 2016

SUPERIOR COURT CLERK
BY MARY TOWNSEND
DEPUTY

Superior Court of Washington
County of King
Juvenile Division

IN RE THE DEPENDENCY OF:	**No. 14-7-01413-7 SEA**
[redacted] D.O.B. [redacted]	ORDER ON MOTHER'S MOTION TO APPOINT COUNSEL FOR THE CHILD AT PUBLIC EXPENSE

THIS MATTER, having come on before the court, and the court having reviewed the motion, declaration, heard argument of the parties, and being familiar with the records and the court engaging in a review of RCW 13.34.100(7) and files herein, it is hereby: and the Matthews v Eldridge factors

FOUND, ORDERED, ADJUDGED and DECREED

1. The mother's motion to appoint counsel for the child at public expense is denied.
2. There is a CASA appointed to [redacted]
3. The CASA advocates strongly for [redacted] best interest.
4. The CASA also informs of the court of [redacted] stated interest.

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

ORIGINAL

122

5. The CASA has a lower case load than an attorney for the child would, and therefore is able to spend more time with [redacted] an an attorney could.

6. There is no evidence that [redacted] has desires that are not being met.

7. No decisions are being made today that an attorney for [redacted] would have an effect on.

8. The facts in this case are not so unusual or compelling to require an attorney for [redacted] at this time.

9. All previous orders remain in full force and effect except as modified above.

DATED this 1 day of September, 2016.

COMMISSIONER PRO TEM
SUSAN LLORENS
pro tempore

Susan Llorens

Presented by:

Jennifer A. Garber, WSBA # 42966
Attorney for the Mother

Zachary Brown, WSBA # 37327
Assistant Attorney General

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

April Rivera, WSBA # 21841
Attorney for CASA

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

☐ King West ☐ OICW
☒ White Center ☐ MLK
☐ King East ☐ King South
☐ Adoptions/BRS

FILED
KING COUNTY, WASHINGTON
SEP - 5 2014
SUPERIOR COURT CLERK
BY LONNIE BERGER
DEPUTY

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING, JUVENILE COURT

Dependency of:

[redacted]
DOB: [redacted]

[redacted]
DOB: [redacted]

[redacted]
DOB: [redacted]

[redacted]
DOB: [redacted]

[redacted]
DOB: [redacted]

[redacted]
DOB: [redacted]

Minor Children

No: 14-7-01414-5 SEA
14-7-01411-1 SEA
14-7-01413-7 SEA
14-7-01415-3 SEA
14-7-01416-1 SEA
14-7-01408-1 SEA

Order of Dependency as to Mother (OROD)

☒ Agreed as to ☒ mother ☐ father ☐ other
☐ Contested as to ☐ mother ☐ father ☐ other
☐ Default as to ☐ mother ☐ father ☐ other
☐ Dismissed (**ORDYMT**) 4.1
☐ Clerk's Action Required. Paragraphs 4.1, 4.3, 4.6 (EDL), 4.7

The court will hear ☐ disposition ☐ interim review ☐ dependency review ☐ permanency planning ☑ initial progress review hearing on 9/19/14 at 8:30 a.m. p.m. at: Juvenile Court, Room/Department: _____, located at:

☐ 1211 East Alder Street, Seattle, Washington

I. Hearing

1.1 **Petition**: A petition was filed by ☒ DSHS ☐ Licensed Child Placement Agency ☐ Other alleging that the above-named children are dependent, and the court held a hearing on

1.2 **Appearance**: The following persons appeared at the hearing:

☐ Mother, [redacted]
☐ Father
☐ Child, [redacted]
☐ Child, [redacted]

☐ Mother's Lawyer, James W. Daugherty
☐ Father's Lawyer
☐ Child's Lawyer, Ken Bromet
☒ Child's Lawyer, Alexandra Narvaez

☐ Child, [redacted]
☒ Child's GAL/CASA – Kilmer
☒ DSHS/Supervising Agency Worker, ~~Tatiana Ponny~~ (as to [redacted] and [redacted] Jessica Andrews
☐ DSHS/Supervising Agency Worker, ~~Romy Garcia~~ (as to [redacted] Sabic Bingham
☐ And [redacted])
☐ Tribal Representative
Interpreter for ☐ mother ☐ father
☐ other _____

☒ Child's Lawyer, Chorisia J. Folkman
☒ GAL/CASA's Lawyer Kilmer
☒ Agency's Lawyer, ~~Jasmine K. Alonso~~ Z. Brown
☐ Current Caregiver
☐ Other _____

1.3 **Basis**: ☐ The court heard testimony ☒ The parties submitted an agreed order.
☒ The children are 12 years old or older (as to [redacted]) and the court made the inquiry required by RCW 13.34.100(6).

Except where otherwise indicated, the following facts have been established by a preponderance of evidence:

II. Findings

2.1 **Children's Indian status**:

The petitioner ☒ has ☐ has not made a good faith effort to determine whether the children are Indian Children.

☒ Based upon the following, the children may be Indian children as defined in RCW 13.38.040, and the federal and Washington State Indian Child Welfare Acts may apply to these proceedings: The mother has reported Cherokee and Blackfeet ancestry and that the children may be enrollable. [redacted] the father of [redacted] III reports no Native American ancestry. The alleged father of [redacted] ancestry and that [redacted] do not claim Native American ancestry. The Native American ancestry of the other fathers/alleged fathers is unknown. The Department will continue to investigate.

☐ Based upon the following, the children are Indian children as defined in RCW 13.38.040, and federal and Washington State Indian Child Welfare Acts apply to this proceeding:

☐ The facts establish by clear, cogent and convincing evidence, including the testimony of a qualified expert witness, that continued custody of the children by the ☐ mother ☐ father ☐ Indian custodian is likely to result in serious emotional or physical damage to the children.

☐ DSHS/Supervising Agency made active efforts by actively working with the parent, parents, or Indian Custodian to engage them in remedial services and rehabilitative programs to prevent the breakup of the Indian family beyond simply providing referrals to such services, but those efforts have been unsuccessful.

☐ The petitioner ☐ has ☐ has not provided notice of these proceedings as required by RCW 13.38.070 and the federal Indian Child Welfare Act to all tribes to which the

petitioner or court knows or has reason to know the children may be members or eligible for membership.

2.2 **Facts**:

☐ Facts establishing dependency have not been proved.

☒ The following facts establishing dependency have been ☒ agreed upon ☐ proved:

1. The mother of the children is [redacted] (AKA [redacted] alleged father is [redacted] Eugene Arnold III's father is [redacted] and is on the birth certificate. [redacted]s father is E[redacted] Jr., who is on the birth certificate. [redacted] father is [redacted] who is on the birth certificate. [redacted] father is [redacted] who is on the birth certificate. [redacted]s alleged father is [redacted] Sr.

2. [redacted] is currently incarcerated at the Dublin Federal Corrections Institution in California on weapons and drug charges. She is scheduled to be released in 2019.

3. Ms[redacted]rranged for the children, [redacted] (age 14), [redacted] (age 13), [redacted] (age 12), [redacted] (age 6), [redacted] (age 3), and [redacted] (age 2) to live with family friend, Vatieka Murray, in the family's own residence, when the Mother began her current incarceration in June 2013.

4. Ms. Murray then sent three of the children, [redacted] and [redacted] to live with a different family friend, Clenten Terrell, in October 2013.

5. The Department of Children and Family Services (DCFS) received an intake on 5/22/2014 alleging that [redacted] sustained injuries from being beaten with an extension cord by his caregiver, Clenten Terrell. The intake also alleged that Mr. Terrell consistently engages in discipline such as hitting the children with a closed fist, requiring thousands of push-ups, as well as emotional abuse and requiring the children to either go without food or eat food off of the floor. The intake identifies victims as [redacted] and [redacted]; it identifies the subject as Clenten Terrell. The mother was not aware of this abuse.

6. Law Enforcement responded to see [redacted] and [redacted] in the home of their 18-year-old sister and a family friend, Tina Terry. Law Enforcement did not issue protective custody for the children, but assessed these three children to be safe in the care of their sister and Ms. Terry.

7. DCFS conducted initial face to face investigative interviews with [redacted] and [redacted] had injuries on his arms, left shoulder, and right thigh and reported these injuries were sustained by being beaten with an extension cord by Mr. Terrell. [redacted] and [redacted] report to have been present for this beating and their narrative reports are consistent. Medical consultation has been requested regarding these injuries and a Law Enforcement investigation is occurring concurrent to the Child Protective Services investigation.

8. At a Family Team Decision Meeting on 5/27/2014, concerns were reported that Ms. Murray and Mr. Terrell frequently remind all of [redacted]'s children that they are not "real family" and that the caregivers do not have to take care of them. There were allegations of preferential treatment of the caregivers' biological children over the children in their temporary custody. It is not known whether Ms. Murray will pass a criminal background check.

9. [redacted] [redacted] and [redacted] had previously been participating with Catholic Community Services case management and wraparound services. They ceased participating due to their prior caregiver failing to sign an authorization.

10. The Mother, [redacted] is currently incarcerated in federal prison on felony drug and weapons charges. The mother has prior criminal history for assault from 1999, and manufacture of a controlled substance, robbery and burglary from 1989 and 1990. According to the information obtained by the Department, the Mother's anticipated release date is July 2019. However, the mother reports that she could be released as early as 2016.

2.3 **Statutory Basis**: ☒ The children are dependent according to RCW 13.34.030, in that the children:

☐ (a) has been abandoned, as defined in RCW 13.34.030;

☐ (b) is abused or neglected, as defined in Chapter 26.44 RCW, by a person legally responsible for the care of the children; and/or

☒ (c) have no parent, guardian or custodian capable of adequately caring for the children, such that the children are in circumstances which constitute a danger of substantial damage to the children's psychological or physical development.

2.4 **Placement**:

☐ If the court schedules a separate disposition hearing, the children should remain in the placement and care authority of DSHS/Supervising Agency pending further order of the court.

☐ The children should be placed or remain in the home of the ☐ mother ☐ father ☐ legal custodian ☐ guardian.

☒ It is currently contrary to the children's welfare to return home. The children should be placed or remain in the custody, control and care of ☒ DSHS/Supervising Agency ☐ a relative ☒ an other suitable person for the following reasons:

☒ there is no parent or guardian available to care for the children; and/or

☐ the parent or guardian is unwilling to take custody of the children; and/or

☐ the court finds by clear, cogent and convincing evidence that a manifest danger exists that the children will suffer serious abuse or neglect if the children are not removed from the home, and an order under RCW 26.44.063 will not protect the children from danger.

☒ The children should be placed or remain in:

☐ Relative placement.

☒ Placement with a suitable person and this placement is in the children's best interests.

☐ Adoptive parent or other person with whom the children's siblings or half-siblings live.

☒ Licensed care if suitable adults are no longer willing or able to be an appropriate placement option:

☐ pending completion of DSHS/Supervising Agency investigation of relative placement options.

☒ because there is no relative or other suitable person who is willing, appropriate, and available to care for the children, with whom the children have a relationship and is comfortable.

☐ because there is reasonable cause to believe that relative placement would jeopardize the safety or welfare of the children; and/or hinder efforts to reunite the parent(s) and children.

☐ The children are Indian children as defined in RCW 13.38.040, and this placement complies with the placement priorities in RCW 13.38.180, and 25 U.S.C. § 1915.

2.5 **Reasonable Efforts**:

☒ DSHS/Supervising Agency ~~made~~ could not make reasonable efforts to prevent or eliminate the need for removal of the children from the children's home; ~~but those efforts were unsuccessful~~ because: the children were removed by the mother prior to filing because mother was incarcerated.

☒ The health, safety, and welfare of the children cannot be adequately protected in the home.

☒ Specific services have been offered or provided to the parent(s), guardian or legal custodian and have failed to prevent the need for out-of-home placement and make it possible for the children to return home. The following services have been offered or provided to the children and the children's parent(s), guardian or legal custodian:

☒ as listed in the social study (ISSP); and/or

☐ _____

☐ housing assistance, if applicable.

☐ The whereabouts of the ☐ mother ☐ father ☐ alleged father ☐ guardian or ☐ legal custodian are unknown.

☐ Additional Reasonable Efforts Findings:

☐ Reasonable efforts are not required at this time to attempt to reunify the children with their parent(s), guardian or legal custodian because:

☐ The children have been abandoned.

☐ *Aggravated circumstances exist and reasonable efforts are not in the children's best interests, as determined by clear, cogent, and convincing evidence. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court considered and found:*

☐ that the following factor(s) listed in RCW 13.34.132, exist: _____

☐ other: _____

☐ The court ordered the children removed from the home pursuant to RCW 13.34.130(1)(b), and DSHS/Supervising Agency has recommended that a petition be filed seeking termination of the parent-child relationship between the children's ☐ mother ☐ father and the children. Because of ☐ abandonment of the children and/or ☐ the existence of aggravated circumstances as set forth above, filing of a termination petition is in the children's best interest and DSHS/Supervising Agency is not required to make reasonable efforts to reunify the family.

2.6 **Sibling contact**: N/A. The children are currently placed together with a suitable adult placement.

☐ If disposition is heard separately, reserved pending dispositional hearing.

☐ The court ordered the children removed from the home and it ☐ is ☐ is not in the children's best interest to be placed with or to have contact or visits with these siblings (which could include step-siblings if there is a pre-existing relationship and the children are comfortable with the step-siblings):

and, *a)* the court has jurisdiction over the children listed above or the parents of the children for whom there is no jurisdiction are willing to agree; and *b)* there is no reasonable cause to believe that the health, safety, or welfare of any child would be jeopardized or that efforts to reunite the parent and children would be hindered by placement, contact or visitation.

2.7 **Children's school**:

☐ If disposition is heard separately, reserved pending dispositional hearing.

☒ The court found that the children should be removed from the home pursuant to RCW 13.34.130(1)(b) and placed into out-of-home care. A placement that allows the children to remain in the same school district (Ballard High for [redacted] he or she attended prior to the start of the dependency proceeding ☒ is ☐ is not practical and ☒ is ☐ is not in the children's best interests.

☒ The children, [redacted], [redacted], and [redacted] meet the criteria for appointment of an educational liaison. DSHS/Supervising Agency recommends that the court appoint (name) Katie Higgins as the children's educational liaison.

☒ The parents are not able to serve as the educational liaison because: Mother is incarcerated in federal prison out of state. The children all have different fathers, some of whom are whereabouts unknown or reside out of state. The children are all placed together with Ms. Higgins, who should be responsible to serve as the educational liaison for all of the children.

2.8 **Other**:

☒ The parent or guardian/custodian was informed of the right to appear in court for presentation and entry of this agreed order of dependency.

☐ The parent or guardian/custodian appeared before the court for entry of this order.

☒ The parent or guardian/custodian waived his/her right to be present in court for entry of this order by submitting the attached Waiver of Right to Appear In Court.

☐ The parent or guardian/custodian had actual notice of the right to appear before the court and chose not to do so after stipulating to this agreed order. The other parties to the order have appeared and advised the court of the parent's/guardian's knowledge of the right to be present for entry of the stipulated order, and his/her understanding of the legal effects of this order as set forth in RCW 13.34.110.

The Court finds:

1. The parent or guardian/custodian understands the terms of the order he/she signed, including his/her responsibility to participate in remedial services in the below dispositional order.
2. The parent or guardian/custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his/her parental rights if he/she fails to

comply with the terms of the dependency or dispositional orders or fails to substantially remedy the problems that necessitated the children's out-of-home placement.

3. The parent or guardian/custodian understands that entry of this agreed order of dependency is an admission that the children are dependent with the meaning of RCW 13.34.030. The parent or guardian/custodian understands that he/she will not have the right to challenge this determination in a subsequent proceeding.

4. The parent or guardian/custodian knowingly and willingly stipulated and agreed to entry of this order and did so without duress, misrepresentation or fraud by any other party.

III. Conclusions of Law

3.1 **Jurisdiction**: The court has jurisdiction over:

☒ the child ☒ the mother
☒ the fathers/alleged fathers ☐ the guardian or legal custodian

3.2 **Notice**:
The following have received timely and proper notice of these proceedings:
The ☒ mother ☐ father ☐ guardian or legal custodian ☒ child if 12 or older.
☒ The child is 12 or older and was notified that he/she may request an attorney.

3.3 **Default**: The following have failed to appear and a default order has been entered:
☐ The ☐ mother ☐ father ☐ guardian or legal custodian.

3.4 **Dependency**:
☐ The children are not dependent and the matter should be dismissed.
☒ The children should be found dependent pursuant to RCW 13.34.030.

3.5 **Termination petition**: ☐ A termination petition should be filed pursuant to RCW 13.34.132.

3.6 **Other**:

IV. Order

4.1 **Dependency**:
☐ The children are not dependent and the matter is dismissed.
☒ The children are dependent pursuant to RCW 13.34.030 ☐ (a) ☐ (b) ☒ (c).

4.2 **Social study**:
☒ DSHS/Supervising Agency has conducted a social study, a report of which was filed and provided to the parties.
☐ DSHS/Supervising Agency has not conducted a social study and shall return a report to the court and to the parties on a timely basis.

4.3 **Disposition hearing**:
☒ A disposition ~~hearing has been held~~. agreed
☐ A disposition hearing is set for the date and time on page one.

4.4 **Placement**:

☐ If disposition is heard at a later date, the children shall remain in the placement and care authority of DSHS/Supervising Agency pending further order of the court.

☐ The children shall be placed or remain in the home of the ☐ mother ☐ father ☐ legal custodian ☐ guardian.
Subject to the following conditions:

☒ The children are placed in the custody, control and care of DSHS, which shall have the authority to place and maintain the children in:

☐ Relative placement with _____ [name].

☒ Placement with suitable adult placements, Tina and Kevin Terry ([redacted]; Katie Higgins ([redacted]). Mike Knowles is approved as respite for the three oldest boys. The Department shall explore other possible respite options.

☐ The home of an adoptive parent or other person with whom the children's siblings or half-siblings live.

☒ Licensed care if suitable adults are no longer willing or able to be an appropriate placement option:

☐ pending completion of DSHS/Supervising Agency investigation of relative placement options.

☒ because there is no relative or other suitable person with whom the children have a relationship and who is willing, appropriate and available to care for the children.

☐ because there is reasonable cause to believe that relative placement or placement with a proposed other suitable person would jeopardize the safety or welfare of the children and/or hinder efforts to reunite the parent(s) and children.

Absent good cause, DSHS/Supervising Agency shall follow the wishes of the natural parent regarding the placement of the children in accordance with RCW 13.34.260.

☐ The children are placed into the custody, control, and care of:

☐ a relative, _____ (name(s)), without supervision of this placement by DSHS/Supervising agency.

☐ an other suitable person: _____ (name(s)), without supervision of this placement by DSHS/Supervising agency.

☐ DSHS/Supervising Agency is authorized to place the children with a relative who is willing, appropriate and available, with prior reasonable notice to the parties, subject to review by the court.

☐ The ordered placement is subject to the following placement conditions. _____

_____

_____

4.5 **Services**:

☐ If disposition is heard separately, reserved pending dispositional hearing

☒ Services for the parents/guardians/legal custodians entered pursuant to RCW 13.34.130 [any evaluation must comply with RCW 13.34.370]:

☐ see attached service plan.

☒ as follows:

Evidence-based age appropriate parenting classes at provider approved by Department

- The parent's compliance with parenting classes will be evaluated based on oral and written reports from provider; consistent attendance and completion of parenting class and demonstration of knowledge of parenting skills at visitation; and no CPS referrals.
- Parent shall contact service provider and complete all requirements for enrollment in the next available class within 30 days of entry of this order. Service to be completed consistent with program requirements. Parent is responsible for providing written documentation of completion to Department.
- If available, the parent shall participate while incarcerated and sign releases of information for the Department.
- If the program the mother is participating in while incarcerated is not accepted by the Department, the Department may set a motion.

Drug/alcohol evaluation and follow treatment recommendations

- The parent's compliance shall be based upon making the initial appointment, completing all steps necessary to complete the evaluation, and enrolling in and successfully completing any recommended treatment program. Progress will be verified by reports from the service provider.
- The evaluation shall be completed while the mother is incarcerated if it is available. If this service is not available while the mother is incarcerated, then she shall participate within 30 days of her release from incarceration and completed as recommended by the treatment provider.
- If available, the parent shall participate while incarcerated and sign releases of information for the Department.
- If the program the mother is participating in while incarcerated is not accepted by the Department, the Department may set a motion.

Parenting assessment and follow all recommendations

- The parent's compliance with the assessment will be evaluated based upon the parent's cooperation in selecting a mutually agreed upon provider in a timely fashion; the participation in and cooperation with the assessment in a timely fashion; and the compliance with recommended services, if any. The assessment may include direct observation of the parent and child together, a parenting and family history, collateral contacts, review of records and standardized testing.
- The assessment is to be scheduled by the parent within thirty (30) days of identifying a mutually agreed upon provider. The assessment is to be completed within ninety (90) days of the date of this order, as allowed by the schedule of the provider. Any services recommended are to be initiated promptly.
- The Department shall pay for the assessment.
-

****Department recommends the mother participate in DV support services.**

Cooperate with the establishment of paternity as to [redacted] and [redacted]

- Parent is to contact Family Support Division of King County Prosecutor's Office at King County Courthouse, 516 3rd Avenue, Seattle, WA 98104, telephone (206) 296-9020 OR 610 W. Meeker Street, Suite 203, Kent, WA 98032, telephone (206) 296-9595, and provide child(ren)'s name and dependency cause number(s). Parent shall attend paternity interview if requested.
- Parent's compliance with above requirement will be evaluated based on their cooperation with the prosecutor's office; appearance and cooperation in the paternity action; and participation in genetic testing if necessary. Service shall be deemed completed upon entry of a final court order determining paternity. Parent shall keep the Department apprised of status of parentage action.
- While mother is incarcerated out of state, she will not be able to comply except to accept calls from the Prosecutor's Office and to provide a swab if she is on furlough in Washington State and if this is coordinated by the Department.

For [redacted] and assment for Early Child Development [redacted]

DSHS/Supervising Agency shall provide and the children shall participate in the following examinations, evaluations, or services: [redacted]

The children's medical, dental, psychological, educational, social, ethnic and cultural needs shall be met while in care. Counseling for [redacted] Wraparound services through Catholic Community Services or equivalent for [redacted] and [redacted]

☐ SAY evaluation, and the child was notified that he/she may request an attorney.
☒ The child is 12 or older and ☐ agrees to the services ☒ was notified of the services ☒ was notified that he/she may request an attorney.

4.6 ☒ Educational Liaison

[redacted] and [redacted] and Mike Ngll DeMast for

(Name) Katie Higgins is appointed as the children's educational liaison to carry out the responsibilities described in Laws of 2013, ch. 182, §5. The educational liaison must complete criminal background checks required by DSHS/Supervising Agency.

4.7 **Visitation**:

☐ If disposition is heard separately, reserved pending dispositional hearing.

☒ The specific visitation plan between the children and mother shall be:
☐ as set forth in the visitation attachment.
☒ as follows:

The mother shall have weekly liberal telephone contact with [redacted] and [redacted] as arranged with DCFS and/or the children's placement.

The mother may have telephone contact with [redacted], [redacted] and [redacted] at the youths' discretion.

If the mother is able to visit on a furlough, liberal supervised by DSHS or its designee, coordinated by caretakers and DCFS.

☒ Visitation between the mother, [redacted] and the children may be liberalized and expanded upon consultation with CASA.

☒ The specific plan for visitation or contact between the children and children's siblings shall be:
☐ as set forth in the visitation attachment.
☒ as follows: at least twice per month. Phone contact with the mother may occur during these visits.

4.8 **Restraining Order**:
☐ The court entered a separate restraining order pursuant to RCW 26.44.063.

4.9 **Parental Cooperation**:
☒ The parents shall cooperate with reasonable requests by DSHS/ Supervising Agency and provide DSHS/Supervising Agency with income and asset information necessary to establish and maintain the children's eligibility for medical care, evaluations, counseling and other remedial services, foster care reimbursement, and other related services and benefits.

4.10 **Health Care**:
DSHS/Supervising Agency with custody of the children shall have full power to authorize and provide all necessary, routine and emergency medical, dental, or psychological care as recommended by the children's treating doctor or psychologist, subject to review by the court, as needed.

4.11 **Release of Information**:
All court-ordered service providers shall make all records and all reports available to DSHS, attorney for DSHS, parent's attorney, the guardian ad litem and attorney for the children. Parents shall sign releases of information and allow all court-ordered service providers to make all records available to DSHS and the guardian ad litem or attorney for the children. Such information shall be provided immediately upon request. All information, reports, records, etc., relating to the provision of, participation in, or parties' interaction with services ordered by the court or offered by DSHS may be subject to disclosure in open court unless specifically prohibited by state or federal law or regulation.

4.12 **Reports**:
DSHS/Supervising Agency shall submit a report for the next review hearing to the court and to the parties in a timely manner.

4.13 **Termination Petition**:
☐ Due to ☐ abandonment of the children and/or ☐ existence of aggravated circumstances as found by this court, filing of a termination petition is in the children's best interests and DSHS/Supervising Agency is not required to make reasonable efforts to reunify the family. DSHS/ Supervising Agency shall file within days a petition to terminate the parent-child relationship between the children's ☐ mother ☐ father and the children. A permanency planning review hearing shall be held within thirty (30) days.

4.14 All parties shall appear at the next scheduled hearing (see page one).

4.15 ☐ **Other**:
_____
_____
_____
_____
_____
_____

The permanent plan for the children is to return home to the ☒ mother ☐ father ☐ other:

_____

☒ DSHS is authorized to consent to travel by the children with their licensed foster parent/relative caregiver/other suitable person placement for up to two weeks to other states within the United States. If the travel will interfere with scheduled visits between the children and a parent, DSHS shall give 10 calendar days' notice to that parent so that a plan for make-up visits can be made. The licensed foster parent/relative caregiver/other suitable person placement may consent to emergency medical and dental care during these trips.

Dated: _____

_____
Judge/~~Commissioner~~

Presented by:

_____ for
JASMINE K. ALONSO
Assistant Attorney General
WSBA ~~# 39077~~ 37327

Notice: A petition for permanent termination of the parent-child relationship may be filed if the children are placed out-of-home under an order of dependency. (RCW 13.34.180.)

Copy Received; Approved for Entry; Notice of Presentation Waived:

See attached pages.

[redacted]
Mother

JAMES C. DAUGHERTY WSBA # 33332
Mother's Lawyer

CRYSTAL KILMER
Children's CASA

~~LORI IRWIN~~ Aoni Rivas WSBA # 31847
CASA's Lawyer

[redacted]
Child

KEN BROMET WSBA #
Child's Lawyer

[redacted]
Child

[redacted]
Child

~~TATIANA POPOV~~ Jessica Andrews
DSHS Social Worker
(as to [redacted]

~~ROMY GARCIA~~ Sadie Bigham
DSHS Social Worker
(as to [redacted]

ALEXANDRA NARVAEZ WSBA # 398266
Child's Lawyer

CHORISIA J. FOLKMAN WSBA # 38591
Child's Lawyer

JASMINE ALONSO WSBA # ~~30677~~ 37327
DSHS Attorney

AGREED DEPENDENCY/DISPOSITIONAL STATEMENT
WAIVER OF RIGHT TO APPEAR IN COURT FOR PRESENTATION
AND ENTRY OF AGREED ORDER OF DEPENDENCY

If the father, mother or legal guardian/custodian agrees to dependency and desires to waive presentation and not appear in court for entry of this order, the following certification shall also be signed.

The undersigned declares that:

I have read or been told the contents of this Agreed Order of Dependency and Disposition, and I agree that the order is accurate and should be signed by the court. I understand the terms of the order being entered, including my responsibility to participate in remedial services as provided in the dispositional order.

I understand that entry of this order starts a process that could result in the filing of a petition to terminate my relationship with my children if I fail to comply with the terms of this order and/or I fail to substantially remedy the problems that caused the children's out-of-home placement.

I understand also that entry of this order is an admission that the children are dependent within the meaning of RCW 13.34.030 and it shall have the same legal effect as a finding by the court that the children are dependent by at least a preponderance of the evidence. I understand that I will not have the right in any subsequent proceeding to challenge or dispute the fact that the children were found to be dependent.

I stipulate and agree to entry of this order, and do so knowingly and willingly without duress, misrepresentation or fraud by any other party.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

_____ _____

Children's Mother Date/Place of Signature

[redacted]
Mother

JAMES C. DAUGHERTY WSBA # 33332
Mother's Lawyer

CRYSTAL KILMER
Children's CASA

LORI IRWIN WSBA #
CASA's Lawyer

[redacted]
Child

KEN BROMEY WSBA #
Child's Lawyer

[redacted]
Child

ALEXANDRA NARVAEZ WSBA #
Child's Lawyer

[redacted]
Child

CHORISIA J. FOLKMAN WSBA # 38591
Child's Lawyer

TATIANA POPOV
DSHS Social Worker
(as to [redacted]

JASMINE ALONSO WSBA # 39677
DSHS' Attorney

ROMY GARCIA
DSHS Social Worker
(as to [redacted]

The permanent plan for the children is to return home to the ☒ mother ☐ father ☐ other:

_____

_____

_____

_____

_____

_____

☒ DSHS is authorized to consent to travel by the children with their licensed foster parent/relative caregiver/other suitable person placement for up to two weeks to other states within the United States. If the travel will interfere with scheduled visits between the children and a parent, DSHS shall give 10 calendar days' notice to that parent so that a plan for make-up visits can be made. The licensed foster parent/relative caregiver/other suitable person placement may consent to emergency medical and dental care during these trips.

Dated: September 5, 2014 _____
Judge/~~Commissioner~~

Presented by:

_____
JASMINE K. ALONSO
Assistant Attorney General
WSBA # 39677

Notice: A petition for permanent termination of the parent-child relationship may be filed if the children are placed out-of-home under an order of dependency. (RCW 13.34.180.)

Copy Received; Approved for Entry; Notice of Presentation Waived:

[redacted]
Mother

_____
JAMES C. DAUGHERTY WSBA # 33332
Mother's Lawyer

_____
CRYSTAL KILMER
Children's CASA

_____
LORI IRWIN WSBA #
CASA's Lawyer

[redacted]
Child

_____
KEN BROMET WSBA #
Child's Lawyer

If the father, mother or legal guardian/custodian agrees to dependency and desires to waive presentation and not appear in court for entry of this order, the following certification shall also be signed.

The undersigned declares that:

I have read or been told the contents of this Agreed Order of Dependency and Disposition, and I agree that the order is accurate and should be signed by the court. I understand the terms of the order being entered, including my responsibility to participate in remedial services as provided in the dispositional order.

I understand that entry of this order starts a process that could result in the filing of a petition to terminate my relationship with my children if I fail to comply with the terms of this order and/or I fail to substantially remedy the problems that caused the children's out-of-home placement.

I understand also that entry of this order is an admission that the children are dependent within the meaning of RCW 13.34.030 and it shall have the same legal effect as a finding by the court that the children are dependent by at least a preponderance of the evidence. I understand that I will not have the right in any subsequent proceeding to challenge or dispute the fact that the children were found to be dependent.

I stipulate and agree to entry of this order, and do so knowingly and willingly without duress, misrepresentation or fraud by any other party.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

[redacted]
Children's Mother

8-28-14 Dublin, CA
Date/Place of Signature

AGREED DEPENDENCY/DISPOSITIONAL STATEMENT
WAIVER OF RIGHT TO APPEAR IN COURT FOR PRESENTATION
AND ENTRY OF AGREED ORDER OF DEPENDENCY

If the father, mother or legal guardian/custodian agrees to dependency and desires to waive presentation and not appear in court for entry of this order, the following certification shall also be signed.

The undersigned declares that:

I have read or been told the contents of this Agreed Order of Dependency and Disposition, and I agree that the order is accurate and should be signed by the court. I understand the terms of the order being entered, including my responsibility to participate in remedial services as provided in the dispositional order.

I understand that entry of this order starts a process that could result in the filing of a petition to terminate my relationship with my children if I fail to comply with the terms of this order and/or I fail to substantially remedy the problems that caused the children's out-of-home placement.

I understand also that entry of this order is an admission that the children are dependent within the meaning of RCW 13.34.030 and it shall have the same legal effect as a finding by the court that the children are dependent by at least a preponderance of the evidence. I understand that I will not have the right in any subsequent proceeding to challenge or dispute the fact that the children were found to be dependent.

I stipulate and agree to entry of this order, and do so knowingly and willingly without duress, misrepresentation or fraud by any other party.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

[redacted] 8-28-11 Dublin, CA

Children's Mother Date/Place of Signature

The permanent plan for the children is to return home to the ☒ mother ☐ father ☐ other:

_____

_____

_____

_____

_____

_____

☒ DSHS is authorized to consent to travel by the children with their licensed foster parent/relative caregiver/other suitable person placement for up to two weeks to other states within the United States. If the travel will interfere with scheduled visits between the children and a parent, DSHS shall give 10 calendar days' notice to that parent so that a plan for make-up visits can be made. The licensed foster parent/relative caregiver/other suitable person placement may consent to emergency medical and dental care during these trips.

Dated: _____ _____
Judge/Commissioner

Presented by:

_____
JASMINE K. ALONSO
Assistant Attorney General
WSBA # 39677

Notice: A petition for permanent termination of the parent-child relationship may be filed if the children are placed out-of-home under an order of dependency. (RCW 13.34.180.)

Copy Received; Approved for Entry; Notice of Presentation Waived:

[redacted]
Mother

JAMES C. DAUGHERTY WSBA # 33332
Mother's Lawyer

by phone permission
CRYSTAL KILMER
Children's CASA

LORI IRWIN WSBA #
CASA's Lawyer

[redacted]
Child

KEN BROMET WSBA #
Child's Lawyer

FILED
16 JAN 12 PM 2:12

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING
JUVENILE DIVISION

IN RE THE DEPENDENCY OF:	NO. 14-7-01414-5 SEA 14-7-01411-1 SEA 14-7-01413-7 SEA 14-7-01415-3 SEA 14-7-01416-1 SEA 14-7-01408-1 SEA
[redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted]	MOTHER'S MOTION FOR OVERNIGHT VISITATION

MOTION

The undersigned attorney represents to the Court the facts recited below and moves the Court for an order authorizing a special overnight visit while the mother is on

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

56

furlough and in the Seattle area.

RELIEF REQUESTED

1. That the court grant overnight visitation between the children and their mother.

STATEMENT OF FACTS

Jennifer A. Garber, counsel representing R[redacted] the mother of the above named minor children, presents to the Court the following facts in support of this motion:

R[redacted], mother of the above-named children, is currently incarcerated in federal prison camp in Dublin, California. Ms. [redacted] is permitted furlough approximately every 90 days to visit Washington, see her children, and take care of matters relating to this dependency case. Ms. [redacted]s scheduled to be on furlough from February 3rd until February 10th. While on furlough, Ms. [redacted] will stay at the home of her father, who reportedly has been approved to be unsupervised around the children. However, Ms. R[redacted] father has some medical issues that prevent him from being a full-time caregiver to his grandchildren. Ms. [redacted] also reported that during furlough she is able to stay with Kyana Givens, her federal defense attorney. *See* Exhibit A, attached, Email from Ramona R[redacted]

Since our last court hearing, there has been significant disruption for the children

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

and there has been an unfortunate and unreasonable delay in maintaining communication between the children and their mother. [redacted] and [redacted] have changed placements multiple times, including spending one or more evenings with a social worker in a motel. Before [redacted] and [redacted] were asked to leave the last placement, Ms. [redacted] informed the Department of significant concerns regarding the foster parents. During one telephone call, Ms. [redacted] reported that [redacted] and [redacted] told her that they were going to have to find a new place to live because they were not behaving well. They also reported that they did not get to go trick or treating because they were being bad. Ms. [redacted] was worried about why her children were saying these things and expressed concerns that the former foster parents were inappropriate with the children.

Ms. [redacted] attempted to prevent further emotional harm to her children by reporting this information to the relevant parties. The children remained in that home for several weeks, with the Department Social Worker and CASA attempting to monitor the situation. Nevertheless, just a few weeks later, the foster parents requested respite for the children, and once the children were in respite, the foster parents indicated they would not take the children back into their home. The children then went from the respite home, to a motel with a social worker, to a teacher's home, and now, presumably, into a stable foster home.

Most unfortunate, during this period of placement disruption, the children's regularly scheduled telephone calls with Ms. [redacted] also were disrupted. These young children, who were told by former caregivers that essentially they were not good enough to be in their

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

home, were then also deprived of talking to their mom. Phone calls, reportedly, have just recently been reinstated. This lapse in support for the children during a very trying and confusing time is troubling to Ms. [redacted]

In October, the court found Ms. [redacted] in full compliance and making partial progress. The court found that Ms. [redacted] is incarcerated and not currently able to parent but was pursuing resources to be available to parent soon, including working on her compassionate release application.

Ms. [redacted] is attending Coastline Community College, where she already completed a course in Child Growth and Development, and was taking Introduction to Psychology in the fall term. Ms. [redacted] participated in a class called, "Twisting the Truth: Learning to Discern in a Culture of Deception." Ms. [redacted] also participated in a class on relationships: "Relationship the Ripple Effect." *See* Exhibit B, attached.

The parties have been attempting to set up video visitation, but there has been some difficulty communicating with the prison. An attempt to set up a legal telephone call for an emergency situation was handled with push back from the prison. Video visitation has not yet begun.

When Ms. [redacted] travels on furlough, generally she has visits with the children at her father's home. Her visitation is brief, given the 90 or more days between in-person visits.

At this time, there is no safety risk in allowing the children to have overnight

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

visitation with Ms. [redacted] She is appropriate during telephone calls, and there has been no suggestion that she is anything but appropriate during her in-person visits. The children ask her when they will see her and report to her that they want to be with her. [redacted] and [redacted] regularly ask mom when she will be done with her "time out."

[redacted] is still at JRA. It is unknown if he will still be at JRA at the time of the mother's furlough. She is including him in this motion in case he is out of JRA and available to participate in the visit.

[redacted] is currently whereabouts unknown. If he should appear, Ms. [redacted] requests that he be included in the visit.

[redacted] has a busy schedule, and Ms. [redacted] wishes that the overnight visit be at his discretion.

STATEMENT OF LAW

Visitation is the right of the family, including the parent and child. RCW 13.34.136 (2)(b)(ii). Consistent and *frequent* visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. *Id* (emphasis added). The Department is required to provide visitation ordered by the court and in the best interest of the child. *See* RCW 13.34.062(b)(7); Children's Administration Practices and Procedures Guide, 4254 (1)(A) (1); 13.34.065 (4)(k) (Court must inquire about terms of parental visitation). The supervising agency or department shall encourage the maximum

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

parent and child relationship possible, when it is in the best interest of the child, including regular visitation. RCW 13.34.136(2)(b)(ii).

Visitation may be limited or denied *only* if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. *Id* (emphasis added). It cannot be withheld as a sanction for failure to comply. *See In re Dependency of T.L.G.*, 139 Wn.App. 1, 17-18, 156 P.3d 222 (2007). "Risk of harm" must be actual risk, not speculation based on reports. *Id.* In addition, parents are not required to prove absence of risk. *Id.* Instead, RCW 13.34.136 "places the burden on the agency to encourage maximum parent-child contact and to prove the visitation poses a current concrete risk to the children." *Id.* Finally, the Department is required to "develop methods for coordination of services to parents and children" including *therapeutic* services for families. *In re Dependency of Tyler L*, 150 Wash.App. 800, 805-6, 208 P.3d 1287, 1290 (2009) (citing RCW 13.34.025(2)(b)) (emphasis added). Absent a finding of actual harm, denial of such therapeutic services is unreasonable. *Id.* In *In re Dependency of T.L.G* the court was troubled by the Department's failure to arrange therapeutic counselling services to prepare children for unification and found that the State had "exacerbated the problem" and was "now using the the extended separation itself as a reason to deny visitation." *In re Dependency of T.L.G.*, 17-18.

In the present case, Ms. [redacted] children were removed from the care of third parties while Ms. [redacted] was incarcerated. Ms. [redacted] has maintained compliance with

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

court orders, maintained communication with the parties, and consistently been on top of her phone calls with the children. Ms. [redacted] has also regularly complied with her furlough, which allows her to travel out of prison and to Washington State for increasing periods of time. She is a strong advocate for herself and, most importantly, for her children. Her awareness and concern over the emotional harm to [redacted] and [redacted] resulting from the previous foster parents' actions truly exemplifies Ms. [redacted]'s abilities as a parent and the lengths she will go to protect her children.

Ms. [redacted] has phone calls about twice per week with [redacted], and [redacted]. There have been no noted concerns about Ms. [redacted] conversations with the children. Ms. [redacted] has in-person visits whenever she is able to travel to Washington. There have been no noted concerns about Ms. [redacted]'s interactions and parenting during the visits.

Continuing to limit Ms. [redacted]'s visitation is not currently supported by evidence that Ms. [redacted] is incapable of protecting the children's health, safety, and welfare. There is no indication that any such concern exists. If not for her incarceration, the children could safely be in Ms. [redacted]'s care. Further, it is in the children's best interest to maximize their time with their mother, while she is available to see them, nurture them, and care for them in person.

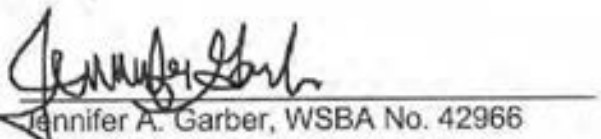
Ms. [redacted] recognizes that it is impracticable for the children to stay with her the entire time she is present in Washington. Thus, she is requesting overnights for the weekend that she will be present, February 5th and 6th. Ms. [redacted] recognizes that

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

[redacted] may not be available for the entire weekend and that [redacted] and [redacted] may not be available at all for the overnights. They are included in this motion as Ms. [redacted] would like to see them, at their discretion and availability.

DATED this 12th day of January, 2016.

Presented by:



Jennifer A. Garber, WSBA No. 42966
Attorney for Mother

I certify that this report was disturbed via email/e-service to the AAG, DSHS, Alexandra Narvaez, Chori Folkman, Ken Bromet, Teresa Conlan, Craig McDonald, and CASA on January 12, 2016. I further certify that this motion was requested and approved by my client. */s J. Garber*

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

CorrLinks

Inbox

From: [redacted]

Date: 1/5/2016 4:50:42 PM

Subject: DECLARATION

Message: JENNIFER,

I HAVE SPOKEN TO THE WARDEN AND I HAVE FORMALLY REQUESTED TO THE FOLLOWING DATES, LOCATION, AND TIMES:

I PLAN TO LEAVE DUBLIN 2-3-16 AND RETURN ON 2-10-16. I HAVE PLANS TO STAY WITH MY FATHER AS I HAVE ON THE OTHER FURLOUGHS AND WANT TO VISIT AS MUCH AS POSSIBLE WHILE I AM IN SEATTLE. I WOULD LIKE THE OVERNIGHTS FOR THE WEEKEND FRI AND SAT NIGHTS. I ALSO ADDED KYANA'S ADDRESS AS VISTING PLACE AS WELL SO IF NEEDED I CAN DO IT THERE. BUT AS THE YOU ALL KNOW I HAVE BEEN SUCCESSFUL AND IN COMPLIANCE WITH ALL MY VISITS AND COURT ORDERS.

SINCERELY,

[redacted]

Guidance to REMOVE yourself from this specific prisoner's contact list or REFUSE all federal prisoner's requests for message exchanges is provided within CorrLinks.

By utilizing CorrLinks to send or receive messages you consent to have Bureau of Prisons staff monitor the informational content of all electronic messages exchanged and to comply with all Program rules and procedures.

Your messages may not exceed 13,000 characters and no attachments will be accepted.

For additional information related to the program, please visit the http://www.bop.gov/inmate_programs/trulincs_faq.jsp

In order to print a message, you need to have Adobe Acrobat installed. Click here to download it for free.

Print | Reply | Delete | Close

English Español

Logged in as jennifer@sorichlaw.com. Logout

Terms and Conditions FAQ Customer Support About Privacy Policy

© 2008-2015 Advanced Technologies Group, LLC. All Rights Reserved.

EXHIBIT A

COASTLINE
COMMUNITY COLLEGE

[redacted]
Student Name

Thank you for applying to Coastline Community College!

Dear Student,

Your application has been processed by our Incarcerated Student Support/Admissions and Records office and an attempt to register you in your requested courses has been made. Unfortunately at this time, we could not register you due to the following reason(s):

_____ Prerequisite has not been met for the following course(s) _____ _____ _____

_____ Outstanding balance for a previous term: Fall, Spring or Summer _____ for the amount of $_____

_____ Course Repeat (Completed course with "C" or better grade, or attempted 3 times). _____

_____ Academic/Progress Disqualification (see enclosed form)

_____ Wrong/Incomplete/Photocopied application has been submitted (see enclosed application)

_____ OTHER _____

X Course(s) FULL/CLOSED (Maximum number of students has been reached)

SOC C100, PHIL C100, HLTH C100 _____

Options on how to resolve the issue(s) listed above:

- **Prerequisite:** Our records indicate that the prerequisite has not been met for the course(s) listed above. If prerequisite courses have been completed with a passing grade (C or better), please submit official college transcripts. Placement-test results showing proper prerequisite clearance will also be accepted.
- **Outstanding Balance:** Students with balances are asked to submit payment as soon as possible to avoid having their account sent to a collections agency. Students inquiring about their balance and have applied for the Board of Governor's fee waiver will need to contact the Financial Aid Office.
- **Course Repeat:** Contact the prison education department for a Change Petition (add slip) and submit it with alternate courses found in the Incarcerated Student Guide to the Admissions & Records Office. Courses taken at Coastline can only be attempted 3 times (including "W" grades).
- **Academic Disqualification:** Students are placed on academic disqualification once their GPA goes below 2.0 for two consecutive semesters. Please submit the enclosed Petition to Waive Academic/Progress Disqualification to the Counseling Department.
- **Wrong/Incomplete Application:** New/Returning applications **MAY NOT BE PHOTOCOPIED**. Submit the enclosed application to the Admissions & Records Office.
- **Classes Closed:** Contact the prison education department for a Change Petition (add slip) and submit it with additional courses found in the Incarcerated Student Guide to the Admissions & Records Office. Once received, the office will attempt registration again.
  - Helpful Tip – Requesting several "back-up courses" will increase chances of enrollment in the semester.

Coastline Community College Incarcerated Student Admissions & Registration Support
11460 Warner Avenue Fountain Valley, CA 92708.

EXHIBIT B

Coastline Community College

Student Grade Mailer

OFFICE OF THE REGISTRAR

Student Name [redacted]

Student ID: C02454849

[redacted]
INMATE 41672-086 (CAMP)
F P C Dublin
5675 8th St
Dublin, CA 94568-3106

RETURN SERVICE REQUESTED

Messages:

Message 1: The student bears responsibility to contact the instructor regarding grade issues.

Course Name	Course Number	Section	Campus	Course Title	Grade	Credit Hours	Earned Hours	GPA Hours	Grade Points	Term GPA
PSYC	C116	001	C	Child Growth and Development	B	3.00	3.00	3.00	9.00	
					Total		3.00	3.00	9.00	3.00

Cumulative	3.00	3.00	9.00	3.00
Transfer				
Overall	3.00	3.00	9.00	3.00

Major	Academic Standing
General Interest	CCC Under 12 cumulative u
Level	**Term**
Coastline Undergraduate	CCC Summer 2015

EXPLANATION OF GRADES	
A -- Outstanding	L -- Listener/Auditor
B -- Good	O -- Official Withdrawal
C -- Average	*AE
D -- Deficient	*BE
F -- Failed	*CE
W -- Withdawal	*SE
I -- Incomplete	*RE
In order to become passing grades, incompletes must be fully satisfied by the end of the next semester.	(*Not included in GPA)

Coastline Commun _ College

.udent Schedule and Bill

Issued Date: 08/21/2015

Student Name: [redacted]

Student ID: C02454849

Term: CCC Fall 2015(201523)

[redacted]
INMATE 41672-086 (CAMP)
F P C Dublin
5675 8th St
Dublin, CA 94568-3106

Please notify the Admissions Office of any address change.

Billing Summary:

Previous Balance:	
Current Term Balance:	0.00
Future Balance:	0.00
Payment Due:	
Past Payment Due:	
Current Term Charges Total:	138.00
Current Term Payments Total:	138.00
Total Course Credits:	3.00

CRN	Subject	Course	Course Title	Waitlist	Instructor	Credits	Days	Time	Building	Room
82582	PSYC	C100	Intro to Psychology		Barnes, R.	3.00	TBA	TBA	CCC	TV

CRN	Subject	Course	Refund Deadline	Last Day to Drop without a Withdrawal	Last Day to Drop with a Withdrawal	Start Date	End Date	Notes
82582	PSYC	C100	09/06/2015	09/06/2015	11/14/2015	08/23/2015	12/13/2015	

Current Term Charges		Current Term Payments	
CCC Enrollment Fee	138.00	CCC BOGW B	138.00

certificate of participation

A W A R D

This certificate is awarded to

[redacted]

for her 5 week participation in

Twisting the Truth

Learning to Discern in a Culture of Deception

A Bible Study by Andy Stanley

Facilitator

Chaplain

3/5/15

Date

Certificate of Completion

This certificate is presented to

[redacted]

For your participation in
Relationship The Ripple Effect
4 Hour Workshop

Parenting Coordinator Ms. Jo Chapman

07/14/2015
Date

FILED
KING COUNTY, WASHINGTON

AUG 03 2016

SUPERIOR COURT CLERK
BY MARY TOWNSEND
DEPUTY

Superior Court of Washington
County of King
Juvenile Division

IN RE THE DEPENDENCY OF:	No. 14-7-01414-5 SEA 14-7-01411-1 SEA 14-7-01413-7 SEA 14-7-01415-3 SEA 14-7-01416-1 SEA 14-7-01408-1 SEA
[redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted] [redacted] D.O.B. 0[redacted] [redacted] D.O.B. [redacted] [redacted] D.O.B. [redacted]	**Order re:** MOTHER'S MOTION FOR UNSUPERVISED AND OVERNIGHT VISITATION ☒ **Clerk's action required**, see § A.

A. The PPR hearing for September 1st. is reset to September 1, 2016 at 8:30 AM. (JF)

B. THIS MATTER, having come on before the court, and the court having reviewed the motion, declaration, heard argument of the parties, and being familiar with the records

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

ORIGINAL

and files herein, it is hereby:

FOUND, ORDERED, ADJUDGED and DECREED

1. The mother has established a change in circumstances in that she has participated in the Reunification FCAP and the Parenting Assessment, and the parties have received the results.

2. The mother has engaged in many services and programs available to her through her incarceration. This does not contribute to the change of circumstances, but it is notable.

3. The mother has been entrusted with the ability to take furlough, travel freely from California to Washington, and she is doing that. That is a considerable factor. It does not contribute to the court's finding of change of circumstances, but it is considerable.

4. As to the three youngest children: [redacted] and [redacted], record indicates the two youngest have some issues with phone calls. The FCAP and parenting assessment suggest services to mother around the phone calls.

5. With [redacted] and [redacted] the mother may have one supervised visit on September 1, 2016, at Coulon Park, from 1:00PM – 6:00PM. The visit supervisor has the authority to liberalize the visit to monitored, if the provider believes it is appropriate. If the visit on September 1st is appropriate, the visit supervisor may also liberalize the next visit to monitored. The mother may have a visit on September 2, 2016, from 1:00PM – 6:00PM, at the Maple Valley water park.

6. The Department shall provide the visit supervisor for the mother's visits with the younger children.

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

7. Given the age of [redacted] [redacted] and [redacted], they should be allowed to have unsupervised, overnight visitation with the mother at the maternal grandfather's home.

8. (JK) The overnight is permitted for September 2nd and September 3rd, 2016 for [redacted], [redacted], [redacted].

9. Department shall be given notice of the overnight.

10. There shall be no drugs or alcohol during the visit.

11. Only immediate family/Department-approved adults may be present for the overnights. During the Period 8.31.16 + 9.4.16 (JK)

12. Visits and contact for [redacted], [redacted], and [redacted] shall be at the youths' discretion and shall be liberal and unsupervised as arranged between the mother, the youth, and the youths' placements.

13. All previous orders remain in full force and effect except as modified above.

DATED this 3rd day of August, 2016.

COMMISSIONER KAHAN

James Kahan

Presented by:

Jennifer A. Garber, WSBA # 42966
Attorney for the Mother

COPY RECEIVED; APPROVED FOR ENTRY;

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

NOTICE OF PRESENTATION WAIVED

Approved as to form waived presence
Teresa Conlan WSBA #

Rosalyn Di Tano WSBA # 29600
Assistant Attorney General

Lori IRWIN WSBA # 13523
CASA Attorney

Laura CLOUGH-CASA

Narvaez WSBA # 39826
Attorney for [redacted]

Chorisin Folkman WSBA # 38591
Attorney for [redacted]

WSBA #
Attorney for [redacted]

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
Main/fax (206) 336-9195
sorichlaw@gmail.com

E-201
Commissioner Kahan
September 1, 2016
8:30 AM

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

IN RE THE DEPENDENCY OF:	) NO. **14-7-01413-7 SEA**
[redacted]	)
D.O.B. [redacted]	) **MOTION FOR APPOINTMENT OF COUNSEL FOR DEPENDENT CHILD AT PUBLIC EXPENSE**

MOTION

The undersigned represents to the court the facts and briefing below and moves for an order of the Court appointing legal counsel for [redacted] at public expense.

I. RELIEF REQUESTED

[redacted] mother of the above-named child, requests the appointment of an attorney at public expense to represent [redacted]ed interests in this matter.

II. STATEMENT OF ISSUES

1. Does the due process clause of the U.S. Constitution require that [redacted] be appointed legal counsel at public expense to represent him in his dependency proceedings?

2. Does the due process clause of the Washington Constitution require [redacted] be appointed legal counsel at public expense to represent him in him dependency proceedings?

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

III. STATEMENT OF FACTS

[redacted]s 8-years old. [redacted] has a Court Appointed Special Advocate (CASA), representing [redacted] best interests. The CASA is not an attorney and is not acting as an attorney.

[redacted]s one of Ms. [redacted]'s six dependent children and two adult children. Prior to the dependency, [redacted] had a close relationship with each of his siblings. He continues to ask Ms. [redacted] about them and other family members. *See Declaration of* [redacted] [redacted] sees his younger siblings approximately once per month. He does not see or speak with his older siblings, except possibly during Ms. [redacted]'s in-person visits. Recently, the court ordered that there be no family visitation between all siblings and the mother during this furlough. The Department has made no efforts to set up sibling visitation between [redacted] and his older siblings. CASA relies on two-year-old allegations of sexual abuse to prevent [redacted] from visiting with his older siblings. Neither the Department nor CASA have recommended services or opportunities to allow [redacted] to visit with his older siblings.

[redacted] has a close relationship with his mother. During he visits asks when she will be coming home so he can go home with her for good. [redacted] speaks to his mother weekly, receives mail from his mother regularly, and visits with her in person when she is present in Washington State. The FCAP Report observed [redacted] sadness and despondency during the visit, expressing how he misses his mother. It

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

also observed Ms. [redacted]'s positive parenting practices in role-modeling behavior for [redacted] *Exhibit A*, FCAP Report at 7.

This is the only dependency action ever for [redacted]. This case began as a result of allegations of abuse towards one of [redacted] brothers by a caregiver. Ms. [redacted] was incarcerated at the time and had left the children in the care of a relative who then placed the children with the perpetrator of the assault. [redacted] was never removed from his mother prior to this dependency action.

The CASA reports that she did not discuss Ms. [redacted]'s last motion with [redacted] due to her assessment of his age and ability to comprehend the issues. She did not obtain his express wishes. The CASA has addressed [redacted]'s "expressed wishes" in her last three court reports for review hearings. It is unknown how her inquiry was phrased. In the May 2016 CASA report, [redacted]'s express wishes, reportedly, were that "he does not want to move." In the February 2016 and October 2015 reports, [redacted] did not want to discuss the topic.

In February 2016, the CASA advocated for termination, arguing it was in his best interest. Ms. [redacted] asked the court to consider her incarceration and the close relationship that she has with [redacted] as good cause not to order that a termination petition be filed. The court did not have information about [redacted]'s position. The court did not make a good cause finding; set a primary, permanent plan of adoption; and ordered the Department to file a termination petition.

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

[redacted] is a thoughtful, articulate, and aware child. He is capable of comprehending the dependency case and expressing his wishes to an attorney. It is unknown what information he has been given about the dependency case, his rights, or his options. However, it is clear that [redacted] is capable of working with an attorney and may have express wishes that differ from those of the CASA and the other parties.

IV. ARGUMENT

The due process clause of the U.S. and Washington State constitutions require that E.H. and all similarly situated children, be appointed legal counsel in their dependency proceedings. RCW 13.34.100(7)(a) provides that "[t]he court may appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of *a parent*, the child, a guardian ad litem, a caregiver, or the department." This demonstrates the state's recognition of the value of the appointment of counsel for children in dependencies.

A. THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION REQUIRES THIS COURT TO APPOINT COUNSEL TO E.H. AND ALL SIMILARLY SITUATED CHILDREN IN DEPENDENCY PROCEEDINGS AT PUBLIC EXPENSE.

In 2012 the Washington Supreme Court analyzed a child's right to counsel under the federal due process clause in a *termination of parental rights proceeding* and, in that circumstance, found there was not a universal right to counsel for children. *In re Dependency of M.S.R. and T.S.R.*, 174 Wn.2d 1, 22 (2012), reconsideration denied (May 9, 2012), as corrected (May 8, 2012) (herein referred to as "*M.S.R.*"). In

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

evaluating a child's right to counsel in a *dependency* proceeding, *M.S.R.* should be considered the bare minimum standard.

In many ways, dependency dictates a *higher* level of protection than TPR proceedings when both proceedings are viewed from the perspective of the child's experience. Children in dependencies are initially impacted the most as they are removed from their families, schools, and familiar surroundings. The condition of being a dependent child is one that influences every aspect of a child's life in ways that the singular issue of termination does not. How a child's dependency proceeding is managed by state actors determines whether a termination will ever happen.

1. Child's physical liberty is at risk in this dependency proceeding and therefore there is a presumption that federal due process requires the appointment of counsel.

A dependency proceeding entrusts the state with power over the physical liberty of the child. Where an individual's physical liberty is threatened, there is a presumption that due process requires counsel:

> "[T]he [Supreme] Court's precedents speak with one voice about what "fundamental fairness" has meant when the Court has considered the right to appointed counsel, and we thus draw from them the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty. It is against this presumption that all the other elements in the due process decision must be measured."

Lassiter v. Dep't of Soc. Servs. of Durham County, 452 U.S. 18, 26-27 (1981).

The physical liberty of children is impacted from the moment the State removes them from their biological families and further when they are forced to move from one

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

home to another while in placement. *See M.S.R.*, 174 Wn.2d at 14. The loss of liberty through an involuntary placement process is compounded given that "foster children are 'involuntarily placed. . . in a custodial environment, and . . . unable to seek alternative living arrangements.'" *Braam v. State*, 150 Wn.2d 689, 698 (2003) (quoting *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791, 795 (11th Cir. 1987) (comparing foster children to individuals involuntarily committed to hospitals)); *M.S.R*, 174 Wn.2d at 14 (highlighting how children can be powerless and voiceless as they are moved between homes). Dependencies directly determine placement of the child and the services to be provided. RCW 13.34.130.

Because [redacted]'s physical liberty is at stake in these proceedings and therefore there is a presumption that due process requires counsel, the burden must shift to DSHS to establish why [redacted] should not be appointed counsel in his case.

2. <u>An application of the *Mathews v. Eldridge* analysis to dependency proceedings requires this court to appoint counsel to</u> [redacted]

If this court engages in a *Mathews v. Eldridge* analysis regarding [redacted]'s right to counsel in his dependency proceeding, it is not limited to a case-by-case approach. The provision of counsel should be determined for each *context*, not for each *litigant*, as the *Mathews* Court originally envisioned. *Id.* at 49; *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976) ("But procedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions."). Applying an individual analysis obligates courts to compare one child's

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

case to another and children requesting counsel are then forced to compare themselves to their peers to prove they are especially more traumatized to obtain an attorney – this creates an extra step not contemplated in *Mathews*.

The *Mathews* test requires the Court to balance: (1) the private interest at stake; (2) the risk of error involved under the current procedures and the probable benefits of additional procedural protections; and (3) the government's interest in the proceeding, including fiscal and administrative burdens. *Mathews*, 424 U.S. at 335. At a minimum, an analysis of these factors demonstrates the need for court appointed counsel for E.H. and similarly situated children.

a. Children In Dependencies Have Fundamental Liberty Interests At Stake

As discussed above, a child's physical liberty is at stake in a dependency proceeding in ways that the one issue of termination do not address - a situation which gives rise to the presumption of appointment of counsel. 452 U.S. 18, at 26-27. [redacted]s case demonstrates the need for counsel to protect the physical liberty of children in dependency proceedings. [redacted] is limited in his ability to visit with his mother and siblings and is physically separated from his siblings.

Additionally, a child's family integrity is at stake in a dependency proceeding. Family integrity is among the most important liberty interests that children possess. In its analysis of the *Mathews* factors, the *M.S.R.* Court noted that "[i]n a dependency or termination proceeding, the parent is at risk of losing the parent-child relationship, but the child is at risk of not only losing a parent but also relationships with siblings ... and

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

other extended family." 174 Wn.2d at 14 (citing *In re Custody of Shields*, 157 Wn.2d 126, 151-52 (2006) (Bridge, J., concurring)). In this sense, a child has an even stronger fundamental interest than his or her parent in a dependency proceeding. Like all children in dependency proceedings, [redacted]s liberty interest in family integrity has already been impacted by these proceedings—the State interfered with the family unit, separated him from his biological family and community, and continues to restrict [redacted]s contact with his family members.

Children subject to dependency proceedings also have the right to health and safety. RCW 13.34.020; *Braam v. State*, 150 Wn.2d 689, 699 (2003) (holding that foster children have a substantive due process right to be free from unreasonable risks of harm, including mental harm, and a right to reasonable safety). In *Braam*, the Washington Supreme Court acknowledged that the State can cause harm to foster children when it fails to provide "adequate services to meet the basic needs of the child." *Braam*, 150 Wn.2d. at 700. To ensure that a child is provided *adequate* services, this Court must hear from the child. For [redacted], ensuring he is free from an unreasonable risk of harm may require additional services at a later time, particularly given the extensive separation from his siblings and extended family. Children in dependency proceedings need legal representation to protect their interests in physical liberty and family integrity and their rights to safety, health and well-being.

b. There is a high risk of error in dependency proceedings which will be reduced with the addition of an attorney.

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

The potential risk of erroneous decisions is very high for children in every dependency proceeding because courts are granted broad discretion in making these determinations. *In re J.S.*, 111 Wn. App. 796, (2002). An attorney can reduce that risk of error. The WSBA recently recognized the additional benefit of an attorney for a child in dependency proceedings when they called for attorney representation for children at every stage of these proceedings. *Exhibit B*, WSBA Resolution in Support of Attorney Representation for Children in Dependency Proceedings, September 17, 2015. Without an attorney for [redacted] the court will not fully understand the child's stated and legal interests. Moreover, [redacted] will have no chance to correct the harm because no one will be capable of appealing on his behalf. By denying an attorney for [redacted], the court will deprive him of the right to a fair and just hearing, as well as of the right to appeal.[1]

The high risk of error in dependency proceedings is demonstrated in this case where the court has already set a primary, permanent plan of adoption, without information about the child's express wishes. The court also ordered that a termination petition be filed, despite the basis for the dependency action (children removed from someone other than their mother) and despite Ms. [redacted] extensive efforts to

[1] The parent's presence in a dependency case does not mitigate the risk of erroneous decisions—the parent, or counsel for the parent, is not sufficient to protect the interests of the child. While the interests of the parent and the child may converge, the viewpoints and the situations of each are unique. The parent's interests may favor the preservation of natural familial bonds, whereas the child's interests may lie in continuing under the auspices and care of a foster family or other relative. Ultimately, the court's orders have wholly different effects on a parent than on a child. The parent faces the loss of her child, but the Child faces the possibility of being moved from placement to placement, being incarcerated or committed, and being separated from siblings, schools, and foster parents. A parent's presence cannot mitigate the risk of errors in dependency that will directly affect the child.

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

meaningfully maintain her relationship with [redacted] through regular phone calls, cards, letters, and in-person visits every 3-4 months.

The risk of erroneous decisions remains high even when a CASA has been appointed. A CASA does not share the same obligations to the child as an attorney. In *M.S.R.*, the Supreme Court articulated some of the differences between attorneys and CASAs:

> We recognize that GALs and CASAs are not trained to, nor is it their role to, protect the legal rights of the child. Unlike GALs or CASAs, lawyers maintain confidential communications, which are privileged in court, may provide legal advice on potentially complex and vital issues to the child, and are bound by ethical duties. Lawyers can assist the child and the court by explaining to the child the proceedings and the child's rights. Lawyers can facilitate and expedite the resolution of disputes, minimize contentiousness, and effectuate court orders.

174 Wn.2d at 21 (citing Randi Mandelbaum, *Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers*, 32 Loy. U. Chi. L.J. 1, 61-62 (2000), *Exhibit C*).

An attorney, unlike a CASA, is bound by the Rules of Professional Conduct (RPCs) and would have a confidential and privileged relationship with [redacted] – allowing for unfettered disclosure of issues and privileged legal advice on issues directly relating to the dependency or on issues that overlap with it. An attorney, unlike a CASA, is also overseen by the WSBA. When attorneys do not fulfill their duties under the RPCs, a client or any concerned individual can file a complaint with the WSBA. There is no such oversight for CASAs. Only a child's attorney is required to advocate for the

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

child's expressed wishes, exhibit competence in the law, keep the child informed, consult with the child, and promptly comply with requests for information, among other unique duties. RPC 1.2; RPC 1.1; RPC 1.4; RPC 1.14.[2]

The high risk of error in dependency proceedings is demonstrated in this case where [redacted]'s express wishes have either not been given or were unclear. The last CASA report in May states that [redacted] wishes to stay where he currently lives. It does not say what question the CASA asked to obtain this express wish. That [redacted] currently wishes to remain in his foster care placement is uninformative. [redacted] understands that his mother is away for a period of time because she got in trouble. He understands that right now he cannot live with her. It is highly unlikely anyone has ever explained to him what the dependency case is about or what happens in court. This case has many complicating factors, not least of which are [redacted]s relationship with his family, the fact that he was not removed from his mother, the positive observations of Ms. [redacted]s parenting, and the length of Ms. [redacted]'s scheduled incarceration.

An attorney can adequately represent a child even in the most complex cases. With legal representation, [redacted] will be able to understand the dependency proceeding, assert his legal rights, and express his needs and concerns about his

[2] Attorneys also have a duty to act in a professional manner towards their clients and maintain a traditional relationship with clients with diminished capacity, including children. Despite legal presumptions of incapacity, minors often have the ability to comprehend, consider, and make decisions about the legal matters at issue. RPC 1.14, Comment [1]. Even "children *as young as five or six years of age*, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody." *Id.* (emphasis added). It is precisely because children face difficulties in understanding complex legal proceedings that they should be provided counsel, and the RPC guide attorneys on how to address the needs of a child-client. Parents are not denied counsel because of their capacity issues and, thus, the capacity of children should not be used as an excuse to deny them counsel.

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

placement, parent and sibling visitation, permanency plans, and other important court decisions. Only a child's attorney is required to advocate for the child's expressed wishes, keep the child informed, consult with the child, and comply with requests for information, among other unique duties. RPC 1.2; RPC 1.1; RPC 1.4; RPC 1.14.

c. There is no countervailing interest to justify denial of counsel to children in dependencies.

There is no overriding countervailing interest here. The only possible *countervailing* governmental interest is financial. Where fiscal constraints are the only countervailing interest, however, the court will not excuse a violation of due process. *Mathews*, 42 U.S. at 348. ("Financial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard."); *see also Braam*, 150 Wn.2d at 710 ("Lack of funds does not excuse a violation of the constitution and this court can order expenditures, if necessary, to enforce constitutional mandates."). Additionally, at least one study has indicated that attorneys can expedite permanency for the child, thereby reducing the State's cost in foster care and prolonged court proceedings, as well as ensuring the child's right to a speedy resolution.[3]

Providing legal counsel to children in dependencies is, in fact, in line with the state's *parens patriae* interest to protect a child's safety and well-being. *Kenny A.*, 356

[3] In a recent study conducted in Palm Beach County, Florida, children represented by attorneys experienced exits to permanent homes about 1.5 times more frequently than children who were not afforded counsel. Children with their own lawyers also moved from case plan approval to permanency at approximately twice the rate of those not represented by counsel. The study examined cases where the children were age twelve or younger at the time of removal. Zinn, A. E. & Slowriver, J. *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County.* Chicago, IL: Chapin Hall Center for Children (2008), *available at* http://www.chapinhall.org/research/report/expediting-permanency.

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

F.Supp.2d at 1361 (finding that the state's *parens patriae* function "can be adequately ensured only if the child is represented by legal counsel throughout the course of deprivation and TPR proceedings. Therefore, it is in the state's interest, as well as the child's, to require the appointment of a child advocate attorney.").

B. THE DUE PROCESS CLAUSE OF THE WASHINGTON CONSTITUTION REQUIRES THIS COURT TO APPOINT LEGAL COUNSEL TO [redacted] AND ALL CHILDREN IN DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS AT PUBLIC EXPENSE.

The Court in *M.S.R.* only analyzed the right of the child to counsel under the Federal Constitution and did not analyze the child's right to counsel under the Washington Constitution. 174 Wn.2d, at 20n11 (2012). The Court did make clear that "[t]he Washington State Constitution, of course, would not provide less due process protection." *Id.*, at 20. An analysis of the Washington Constitution demonstrates the need for appointment of counsel for all children in dependency and termination of parental rights proceedings.

1. WASHINGTON LAW PROVIDES GREATER ACCESS TO COUNSEL THAN ITS FEDERAL COUNTERPART

Three critical differences between the state and federal due process provisions mandate recognition of the right to counsel for dependent children. First, whereas the federal clause only mandates counsel where physical liberty is at stake, Washington's due process clause also requires counsel where fundamental liberty interests are at stake. *In re Grove*, 127 Wn.2d 221, 237 (1995). Second, after *Lassiter* held that parents

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

lack an absolute right to counsel under the U.S. Constitution, Washington courts have continued to recognize parents' absolute constitutional right to counsel—a right that, post-*Lassiter*, must be based on the Washington Constitution. Third, "the right to counsel in child deprivation proceedings finds its basis solely in state law." *In re Welfare of Hall*, 99 Wn.2d 842, 846 (1983). Within this context, there can be no question that the right to counsel for these children is required under the state constitution.

2. A *GUNWALL* ANALYSIS SUPPORTS AN INDEPENDENT STATE CONSITUTIONAL ANALYSIS AND CONCLUDES THAT ART. I, 3 PROVIDES BROADER PROTECTION ON THIS ISSUE

State v. Gunwall sets forth six nonexclusive factors to guide the Court in determining whether a state constitutional provision affords greater rights than its federal corollary: (1) the text of the state constitution; (2) significant differences in the texts of parallel provisions; (3) state constitutional history; (4) preexisting state law; (5) structural differences between the state and federal constitution; and (6) matters of particular state or local concern. 106 Wn.2d 54, 61-2 (1986).

With regard to the first two factors, the texts of the federal due process clause and Art. I, § 3 are not significantly different. However, even where state and federal constitutional provisions are identical, the intent of the framers of each may have been different or another intent may be found in a different provision of the state constitution. *Gunwall*, 106 Wn.2d at 61. The third *Gunwall* factor strongly counsels for an independent state constitutional analysis with broader protections. Art. I, § 3 requires independent interpretation unless historical evidence shows otherwise. *Gunwall*, 106

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

Wn.2d at 514-16. Additionally, Washington's constitution, unlike the federal, is far more protective of children, twice referencing their care. Art. IX, § 1 and Art. XIII, § 1.

The fourth *Gunwall* factor points toward broader protection of children's fundamental liberty interests. This factor refers to case law and statutory law "dealing with the issue and not just the particular constitutional provision." *State v. Smith*, 117 Wn.2d 263, 286 (1991) (Utter, J., concurring). Unlike federal precedent which extends the right to counsel only where physical liberty is curtailed, longstanding Washington case law has required that counsel be appointed in civil cases when an individual's physical liberty is threatened "or where a fundamental liberty interest, similar to the parent-child relationship, is at risk." *In re Grove*, 127 Wn.2d 221, 237. As dependent children "have at least the same due process right to counsel" as their parents, *M.S.R.*, 174 Wn.2d at 20, an absolute right to counsel for children must follow. *See also* RCW 13.34.090; *In re Welfare of Myricks*, 85 Wn.2d 252, 253 (1975).

As to the fifth *Gunwall* factor, the Washington Supreme Court has "consistently concluded that this factor supports an independent analysis" as it is "more protective of individual rights than its federal counterpart." *King v. King*, 162 Wn.2d 378, 393 (2007). The sixth *Gunwall* factor weighs heavily in favor of independent interpretation because "the right to counsel in child deprivation proceedings finds its basis solely in state law." *In re Welfare of Hall*, 99 Wn.2d 842, 846 (1983). Additionally, issues of family relations are matters of state or local concern. *Rose v. Rose*, 481 U.S. 619, 625 (1987).

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

Under the above *Gunwall* analysis it is clear that [redacted] has a right to legal counsel under the Washington Constitution.

V. EVIDENCE RELIED UPON

Exhibit A: FCAP Report

Exhibit B: WSBA Resolution in Support of Attorney Representation for Children in Dependency Proceedings, September 17, 2015.

Exhibit C: Randi Mandelbaum, *Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers*, 32 Loy. U. Chi. L.J. 1, 61-62 (2000).

VI. AUTHORITY RELIED UPON

Mathews v. Eldridge, 424 U.S. 319 (1976)
Lassiter v. Dep't of Soc. Servs. of Durham County, 452 U.S. 18 (1981)
Santosky v. Kramer, 455 U.S. 745 (1982)
Rose v. Rose, 481 U.S. 619, 625 (1987)
In re Welfare of Myricks, 85 Wn.2d 252 (1975)
In re Welfare of Hall, 99 Wn.2d 842 (1983)
State v. Gunwall, 106 Wn.2d 54 (1986)
State v. Smith, 117 Wn.2d 263, 286 (1991)
In re Grove, 127 Wn.2d 221 (1995)
In re J.S., 111 Wn. App. 796 (2002)
Braam v. State, 150 Wn.2d 689 (2003)
In re Dependency of Schermer, 161 Wn.2d 927 (2007)
King v. King, 162 Wn.2d 378 (2007)
In re Dependency of M.S.R. and T.S.R., 174 Wn.2d 1 (2012), reconsideration denied (May 9, 2012), as corrected (May 8, 2012)
McCleary v. State, 173 Wn.2d 477 (2012)
Kenny A. ex rel. Winn v. Perdue, 356 F. Supp. 2d 1353, 1361 (N.D. Ga. 2005)
Wash. Const. art. I, § 3; art. IX § 1; art. XIII, § 1

RCW 13.34.020
RCW 13.34.025
RCW 13.34.040
RCW 13.34.100
RCW 13.34.130
RCW 13.34.136
RCW 13.34.138
RCW 28A.150.510

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

RCW Ch. 28A.155
RCW 74.13.310
WAC 388-148-1520(8)
RPC 1.2
RPC 1.1
RPC 1.4
RPC 1.14

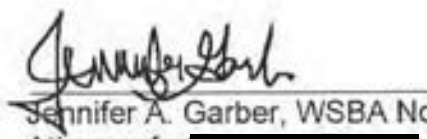
Zinn, A. E. & Slowriver, J. *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chicago, IL: Chapin Hall Center for Children (2008) (attached).

VII. CONCLUSION

In this dependency proceeding, in which the Court must determine what is in [redacted]s best interest, this Court's decision can only be equitable if all parties are given an opportunity to be heard. Ms. [redacted] has requested that an attorney be appointed at public expense to represent [redacted]'s interest in this matter so that he can participate in this proceeding on the same footing as the Department and all other parties. Without [redacted]'s participation this Court will not be able to fully understand the issues relevant to his dependency and make fully informed decisions in his best interest. Ms. [redacted] therefore, requests that this Court grant her motion for a court appointed attorney for [redacted].

DATED this 17th day of August, 2016.

Presented by:



Jennifer A. Garber, WSBA No. 42966
Attorney for [redacted], mother

Law Offices of Mackenzie Sorich, PLLC
3418 NE 65th ST, Ste. A
Seattle, WA 98115
(206) 336-9195 main/fax
sorichlaw@gmail.com

Foster Care Assessment Program - Services/Permanency Assessment Report

Final SPAR

Reunification Assessment ☒ **Standard Assessment** ☐

Name of Child: E.A. [redacted]

DOB: [redacted] **Age:** 5 years 5 months **Gender:** Male **Ethnicity:** African American

Date of Referral: 5/27/16 **Report Date:** 7/15/16

REASON FOR REFERRAL

E.A. [redacted] is an almost five and a half year old African American boy who was referred to the Foster Care Assessment Program (FCAP) by his DCFS social worker, Ryan Bennett. E.A. [redacted]'s younger sister, J. [redacted], has also been referred for an FCAP assessment. Mr. Bennett would like to determine the suitability of reunification for E.A. [redacted] with his mother. He would also like to know what would be most helpful to address E.A. [redacted]'s emotional and behavioral challenges.

SOURCES OF INFORMATION

Interviews/observations:

Sources	Type	Date	Time
Ryan Bennett, DCFS social worker	Face-to-face	6/3/16	60-minutes
Laura Clough, CASA	Face-to-face	6/8/16	75-minutes
Ingrid Buchan, former DCFS social worker	Face-to-face	6/6/16	10-minutes
E.A. [redacted] child	Visit observation Face-to-face	5/13/13 6/21/16	60-minutes 15-minutes
Jaime H, foster mother Jaime H and Aaron N, foster parents	Phone Face-to-face	6/8/16 6/21/16	15-minutes 75-minutes
R.R. [redacted] mother	Phone	6/15/16	20-minutes
Saileshni Sharma, mother's prison counselor	Phone	6/15/16	30-minutes
Tiffany Ezra, E.A. [redacted]'s therapist	Phone	6/8/16	30-minutes
Diane Toy, Triple P provider	Phone	6/16/16	5-minutes
Jennifer Stapleton, Head Start teacher	Phone	6/9/16	15-minutes
Rosalinda Salomon, former Head Start teacher	Phone	6/9/16	5-minutes
Gary Sampson, WACAP social worker	Phone	6/22/16	25-minutes

Standardized Measures:

Pediatric Symptom Checklist (PSC-17), Child Sexual Behavior Inventory (CSBI), Trauma Symptom Checklist for Young Children (TSCYC), Strengths and Difficulties Questionnaire (SDQ) Teacher Version, Preschool and Early Childhood Functional Assessment Survey (PECFAS).

Records/materials/reports:

DCFS case records; medical records; educational records. CHET Screening, dated 7/1/14; R.R. [redacted]'s Inmate Education Data Transcript, dated 6/8/16. Confidential records pertaining to E.A. [redacted]'s father, E.A. [redacted] Sr., were not reviewed for this report.

Team Review: 6/27/16

Reason(s) for report delay beyond 50 days from referral date, if any (circle all that apply):

1 ☐ Referral Backlog
2 ☐ Waiting for key interview(s)
3 ☐ Waiting for completion of tests/specialized assessments
4 ☐ Evaluator absence
5 ☐ Review Team consultation postponed
6 ☐ Other:

EXHIBIT A

CURRENT SITUATION

E.A. has been dependent since September 2014. He has resided in the licensed foster home of Jaime H and Aaron N in Bothell since December 2015. Also in the home is E.A. 's younger sister, J.R. (4). Currently E.A. has supervised phone visits twice per week with his mother who is incarcerated. He also has monitored visits with his mother when she is on furlough approximately every three to six months. E.A. has no contact with his father whose parental rights were relinquished. He has visits with his older half-brother, E.H. (8) at least once per month and has less regular contact with his older half siblings.

SOCIAL AND LEGAL HISTORY

E.A. is the seventh of eight children born to R.R. , who was 39 years old at the time of his birth. Ms R.R. has an extensive criminal history and is currently incarcerated in federal prison in California related to drug and firearm sales convictions. Records indicate that she also has a prior criminal history for assault, manufacture of a controlled substance, robbery, and burglary. Ms R.R. has been incarcerated since June 2013 and is scheduled to be released in July 2019, however she is in the process of applying for an earlier Compassionate Release. E.A. has adult half siblings, D. (23) and Da. (20). He also has four older half-brothers: De. (16) who is in a suitable adult placement K. (14) who was recently released from Echo Glen, Ds. (12) who has been on the run for several months, and E.H. (8) who is placed in a licensed foster home in Seattle. E.A. 's younger sister, J.R. (4), is placed with him. His father is identified as E.A. Sr., who was 47 years old at the time of his birth. Records indicate that Mr E.A. has an extensive history of substance abuse, domestic violence and criminal activity. He is also noted to possibly have several other children. Mr E.A. has relinquished his parental rights.

The CPS history for this family began in October 1992, with several referrals for Ms. R.R. as a parent primarily involving her older children. Referrals were related to substance abuse, physical neglect, lack of supervision, and criminal activity. On 10/17/92, there was a referral regarding Ms. R.R. being intoxicated and late to return to the shelter to care for her two week old infant. Records indicate that the baby was placed by law enforcement in an emergency receiving home. Ms. R.R. had tested positive for cocaine at the baby's birth and during the pregnancy.

On 1/20/00 there was a referral alleging that Ms. R.R. hit her adult sister, S.R. , with a brick and took her daughter Da. (then 4) whom the aunt had cared for due to Ms. R.R. 's incarceration. On 6/12/00, there was a referral alleging physical abuse of Da. (then 4) by her mother. She was noted to have several bruises on her back and chest. Ms R.R. was also noted to leave the children unattended for several days at a time. There was a referral on 10/28/00 alleging Ms. R.R. gave birth to a boy who tested positive for marijuana.

In February 2006, there was a referral when K. (then 5) came to school with shoes that were too small. He reported that his 9 year old sister had gotten him dressed. When Ms. R.R. was contacted, she came and took all three children home and expressed anger at the children for not getting dressed properly. On 3/8/10, there was a referral alleging that K. (then 9) tried to inappropriately touch a female peer under her clothes. On 3/23/11, there was a referral alleging drug use by Ms. R.R. and her partner as well as domestic violence. There was a referral on 9/23/11 regarding Ms. R.R. having been arrested for drugs and firearms. She reportedly had left the children in the care of Da. (then 15 years old). A note on 10/3/11 indicates that Ms. R.R. 's sister, S.R. , relapsed and had an open CPS case with her own children, but was noted to also be caring for Ms. R.R. 's children since she was incarcerated. On 10/20/11, a referral alleged safety concerns in the home with Ms. R.R. running guns and selling/using drugs out of the home. There was also a noted drive-by shooting related to Ms. R.R. 's reported gang involvement and the children were home at the time. In July 2012, there was a referral alleging

loud children who were unsupervised late at night, and when police responded there was significant garbage outside the home. On 4/27/13, E.H. 's preschool reported that E.H. (then 5) pulled down a male peer's pants and put the boy's penis in his mouth.

The incident which led to the children's removal and subsequent dependency occurred in May 2014. Ms. R.R. had placed her children in the care of a friend, Vatieka Murry, when she was incarcerated (June 2013). Ms. Murry determined that she could not care for all the children and thus placed the three oldest boys with the father of S.R. 's children, Clenten Terrell, in October 2013. On 5/22/14, there was a referral alleging that Ds. sustained injuries from being beaten with an extension cord by Mr. Terrell (the father of S.R. children). Upon investigation, it was discovered that Mr. Terrell had been physically abusing all three boys. All the children were then placed with family friend Tina Terry as a suitable adult placement. DCFS objected to this placement for the three youngest children due to criminal history for Ms. Terry and her husband. Ms. Terry was noted to be a longtime friend of Ms. R.R. and was caring for her own children as well. Of note, there had been a referral on 4/3/14 while the children were in Ms. Vatieka Murry's care, that E.H. was exhibiting sexualized behaviors (e.g. pulling down a female cousin's pants and touching her privates, pulling up his teacher's shirt at school) and possibly reporting sexual abuse by K. .

Dependency was established for J.R. and E.A. on 9/5/14. While Ms. Terry asked that the older three boys be moved from her home due to behavior challenges, E.H. E.A. , and J.R. remained in this home until December 2014. At that time, they were removed (due to ongoing concerns with the condition of the Terry's home) and placed in licensed foster care with Dinko P and Marie B in Bellevue. E.H. was placed in a different licensed foster home in Seattle in January 2015 where he remains. Mr. P and Ms. B requested placement change for E.A. and J.R. on 11/8/15 (due to reported behavior challenges of the children) but then changed their minds. On 12/7/15 they left E.A. and J.R. with DCFS staff to leave for a 10 day respite, but later called to report the children could not return. After staying briefly in a motel, a teacher from the children's school (E.A. 's current teacher) volunteered to take them. On 12/18/15 they were moved to the home of Jaime H and Aaron N, a foster family licensed through World Association for Children and Parents (WACAP) where they remain. There have been ongoing challenges for the children (e.g. asking daily if they will be killed or hit, episodes of extreme anger and sadness), with noted improvements with their functioning since being in this home and the H-N's are a potential permanent resource.

A CPS referral was made on 1/19/16 when E.A. expressed fear of physical discipline and reported having been hit with a belt in his previous foster placement. The Court Report, dated 1/21/16 indicates that the Department cannot allow E.A. to wait four years for his mother's release to achieve permanency and proposed adoption as the primary plan and return home as the alternate plan. Mr. Arnold relinquished his parental rights on 3/4/16. In March 2016, a friend of Ms. R.R. 's, Jeri Davis (Vatieka Murry's mother), requested placement of E.H. , E.A. , and J.R. and has submitted background check forms. The children have contact with Ms. R.R. through twice weekly phone visits. Records indicate significant concerns with the phone calls being distressing for the children and them often refusing to participate. In addition, in-person visits occur up to four times per year when Ms. R.R. is released on furlough for court hearings and visits. Records describing visits during Ms. R.R. 's furloughs in October 2015 and May 2016 indicate they went well. There was a visit scheduled for 1/16/15 which was cancelled due to Ms. R.R. 's furlough being denied. Ms. R.R. also maintains communication with the children through the mail. While the foster parents report consistent negative responses to the phone visits, the children have made comments about wishing that Ms. R.R. could live with them at their current home and wondering if they will be there forever. E.A. visits with his older brother, E.H. , once or twice per month, however the older siblings do not consistently attend the visits. Of note, records indicate that in March 2015, K. and Ds. were on probation for car theft.

Ds. has been on the run for several months.. Their oldest brother, De. has convictions involving weapons and violent crimes and is not allowed to be around them.

Mother's History and Compliance:

R.R. is court-ordered to participate in the following: Evidence-based age-appropriate parenting classes (at a provider approved by the Department); Drug and Alcohol Evaluation and follow treatment recommendations; Parenting Assessment and follow all recommendations. She was also recommended to participate in DV support services. The FCAP assessments for E.A. and J.R. were also court-ordered. According to Ms. R.R. 's Inmate Education Data Transcript, dated 6/8/16, Ms. R.R. has completed several parenting related courses from July 2013 through December 2015 including Parenting Holiday Feelings, Parenting From a Distance, Planning Activities for Children, Parenting Domestic Violence, Active Parenting English, Parenting Relationships, and Parenting Self-Esteem Camp. This transcript also indicates that Ms. R.R. has participated in drug education classes. It is unclear if Ms. R.R. completed a Drug and Alcohol Evaluation and treatment while incarcerated. Ms. R.R. participated in a parenting assessment with Carmela Martin, MA in May 2016 which is being completed concurrently with the FCAP assessment and was not reviewed for this report.

Saileshni Sharma, Ms. R.R. 's prison case manager, stated that she has worked with her for the past four years. According to her records, Ms. R.R. is due to be released on 7/6/19. Ms. R.R. checks in with Ms. Sharma every other day informally, but they officially meet to review her paperwork every six months and Ms. Sharma is responsible for setting up Ms. R.R. 's furloughs. Since Ms. R.R. has been there, she has not had any disciplinary action. Ms. Sharma stated that Ms. R.R. portrays herself very differently with staff than with inmates. Other inmates report being bullied by her. Ms R.R. completes her programs, classes and necessary paperwork. She has a work detail off campus through the Parks and Recreation Department which she takes very seriously. There have been rumors that Ms. R.R. brings things in (e.g. lotions, shampoos) to sell but she has never been caught. Ms. Sharma has heard from inmates that Ms. R.R. manipulated the van driver to stop at different locations, but there is no evidence and Ms. R.R. denies this. Ms. Sharma noted that most inmates attend dependency court proceedings and visits by phone so it is unusual that she is allowed to attend in person. Ms. R.R. was granted furlough on 10/16/14, 6/25/15, 10/7/15, 2/3/16, and 5/12/16. She decreased Ms. R.R. 's last furlough by three days after she learned from Mr. Bennett that Ms. R.R. was not having overnight visits (which she reported she would be having). With regard to the compassionate release, Ms. Sharma reported that once Ms. R.R. has completed all of the paperwork she is required to sign it and send it on to the warden. She is still waiting for Ms R.R. 's proposed future employer (at a pizza restaurant) to provide documentation on letterhead. Ms. Sharma noted that Ms. R.R. documented that there are no other relatives who can care for her children as her mother died (she provided death certificate). Ms R.R. has denied any CPS history to Ms. Sharma and Ms. Sharma was trying to verify this claim, but learned that she cannot access that information without a signed release of information. She noted that Ms R.R. would likely not agree to sign a release because she would "know they were going to deny her request." Ms. Sharma related that compassionate release is very uncommon except in rare cases of terminal illness and there is a high chance it will be denied. Ms. Sharma related that Ms R.R. provides UA's randomly and after furloughs and has always been negative, however alcohol use would not show up and she has heard from other inmates that Ms. R.R. has reported drinking on furlough.

Father's History and Compliance:

E.A. Sr. was court-ordered to participate in the following: Domestic Violence Batterer's Treatment Assessment and follow recommendations; Substance Abuse Assessment and follow recommendations; and a psychological evaluation if recommended by his providers. Records indicate that Mr. E.A. had previously indicated that he wanted his parental rights terminated, but

then changed his mind to request that he be considered for placement (with him in Illinois). An ICPC request was submitted, but he eventually determined to relinquish his parental rights in March 2016 and has had no contact since that time. E.A. and J.R. have had very limited contact with Mr. E.A. throughout their lives. Records indicate that he stopped calling them for phone visits in February 2015.

Child's development:

According to E.A.'s CHET Screening, dated 7/1/14, his scores on the Ages and Stages Questionnaire (ASQ) were in the normal range. E.A. (age 3) was noted to be an easy going, smart, happy child with no behavioral concerns reported. While he did not meet the cutoff for a mental health assessment, participation in Head Start was recommended. Records indicate that E.A. was referred for toddler play therapy at Sound Mental Health (SMH) in May 2015 due to concerns about tantrums and emotion dysregulation.

E.A. has been participating in mental health services at Compass Mental Health (CMS) since March 2016. According to his therapist, Tiffany Ezra, E.A. is diagnosed with Adjustment Disorder with Mixed Emotions and Conduct. They have generally met weekly for sessions, but have met twice per week when needed. Ms. Ezra related that E.A. will begin seeing a new therapist, Anna Short, when she goes on maternity leave very soon. E.A.'s treatment goals include improving his calming and coping strategies, helping reduce his anxiety, using words to express his feelings, and processing his trauma. Ms. Ezra related that E.A.'s foster parents are helpful with reinforcing the skills learned in therapy (e.g. deep breathing, combating his anger monster, etc.). She has used more open play therapy to address his trauma as he tolerates very little discussion of his biological family. Ms. Ezra related that his foster parents participate in part of each session and have reported improvement in his communication and ability to calm himself. She noted that Ms. H reported that they have neighbors who are Caucasian and have adopted African American children so they keep contact with them and they identified the importance of adding a goal in his treatment to help support his African American identity.

E.A. attends preschool at Head Start in Bellevue and is noted to do well in the program. He began attending in February 2015. E.A. is noted to learn quickly and to be strong in reading and writing. His teacher, Jennifer Stapleton, has had him in her classroom since February 2016. Ms. Stapleton describes E.A. as funny, talkative, and happy and noted that he is doing well academically. E.A. "has his days" (especially right before or after visits) where he can be nasty to peers or staff. He has had some "huge blowouts" (yelling, crying, hitting), but this occurs less frequently now. Ms. Stapleton noted that he has friends and is well liked. He does fairly well with following the classroom rules and instructions and is not aggressive towards peers. They had some concerns about his speech, but he was tested and did not qualify for services. Ms. Stapleton noted that reminders and re-direction work well for E.A. e. She related that when E.A. is angry he needs to be reminded to breathe and do problem solving. E.A.'s former Head Start teacher, Rosalinda Salomon, stated that when he was in her class he was interested in learning and did well with math and reading. She did not have any behavior problems with him at school.

This evaluator met with E.A. at his foster home. He greeted this evaluator from the front porch, introducing himself and his sister. E.A. later agreed to meet with this evaluator in his room. He reported that he attends preschool and provided his teachers names, but stated that he does not like school. He stated that the worst part of school is a child in his class who hits people and he has no favorite part. E.A. likes to play games on his tablet. He identified the following three wishes: to have his own Nintendo DS and play all night; to be a super hero; and to be able to fly. When asked what he wants to be when he grows up, E.A. reported that he wants to be a super hero, specifically Flash even though he noted that super heroes are not real. During the interview, E.A. excused himself a couple of times to ask his foster mother a question and to get a snack. He reported that he does ok with following the rules and he does not need help with anything.

E.A. was excited about the sticker book he received from this evaluator and thanked this evaluator at Mr. N's prompting. E.A. easily re-engaged with his sister to watch their favorite movie, *Inside Out*.

E.A. 's mother, Ms. R.R. , describes E.A. as friendly, talkative, emotional, and noted that he gets upset easily. She has no concerns for E.A. and J.R. 's development as they are both quick-witted and learn quickly. Both were early with walking and talking. Ms. R.R. feels that the children are doing fine socially and academically. She would like to know if the children are having any behavioral issues so she can be involved to assist them. Ms. R.R. would like to talk with the children's therapists more about this. She always tells E.A. and J.R. that she is proud of them, but feels like she is being cut out of their lives.

Jaime H and Aaron N, E.A. 's foster parents, stated that E.A. and J.R. are charming and can be sweet and delightful. Ms. H reported that E.A. is very bright and also very emotionally intelligent. He will attend public school for kindergarten in the fall. E.A. had an evaluation through Childfind and did not qualify for services. The H-N's report concerns regarding E.A. anger and "PTSD issues", but noted that he is making improvement. The Compass therapist has been very helpful in giving E.A. the tools to improve his behavior and ability to regulate his emotions. In the past, E.A. struggled significantly with not staying in his car seat, hitting, yelling, threatening with his fist in Ms. H's face. He recently had a couple of aggressive incidents towards his teacher at school. He is very proud when he "uses his tools" to overcome his anger. Both children often make negative comments about themselves (e.g. E.A. told her to put him in the trash). The caregivers use a sticker chart to address behavior goals which the children (especially E.A.) have responded well to.

Ryan Bennett, E.A. 's DCFS social worker, and Laura Clough, E.A. 's CASA, related that both children have marked separation anxiety from their caregivers related to how they exited their last placement. The former foster parents were part of the Opus Dei Catholic church which has very conservative views. E.A. has stated that he is a sinner and a terrible person. Mr. Bennett stated that they are high needs children who have had numerous outbursts, but E.A. is getting better with verbalizing his emotions. Ms. Clough noted that there are some issues with food guarding for both children. They are both very bright and are making great improvements in their current home and in their therapy.

Pediatric Symptom Checklist (PSC-17) The PSC is a caregiver-completed checklist that measures caregiver assessment of child and adolescent emotional and behavioral problems. Caregivers for children between the ages of 4 and 18 years complete this screening questionnaire. The instrument assesses the overall level of behavior problems and problems in three specific areas (attention, externalizing, and internalizing problems).

Results: *Aaron N and Jaime H E.A. 's foster parents, completed this form. E.A. was not* reported to exhibit any emotional or behavioral problems at home.

Trauma Symptom Checklist for Young Children (TSCYC) This caregiver-report instrument assesses trauma symptoms in children from ages 3 to 12 years over the past month. The measure ascertains the validity of the caregiver report and evaluates a wide range of potentially posttraumatic symptoms. The TSCYC has eight clinical scales: Anxiety, Depression, Anger/Aggression, Posttraumatic Stress-Intrusion, Posttraumatic Stress-Avoidance, Posttraumatic Stress-Arousal, Dissociation, Sexual Concerns, and a summary Posttraumatic Stress total scale. Because FCAP uses this measure as a screening tool for post-traumatic stress symptoms, only the Post-Traumatic subscales and summary PTS Total score are reported. Please note that a clinical score is not equivalent to a diagnosis of PTSD.

Results: Aaron N, E.A. s foster father, completed this form and produced a valid profile. E.A. 's total PTS score was in the normal range, as were his PTS-Arousal and PTS-Intrusion scores. His PTS-Avoidance score was in the borderline clinical range which suggests some level of avoidance that may or may not be clinically meaningful. The child is using cognitive, behavioral and/or emotional avoidance strategies in an attempt to avoid posttraumatic distress.

Preschool and Early Childhood Functional Assessment Scale (PECFAS) FCAP Program Evaluators complete this measure for children who are not yet in kindergarten or who are ages 3 to 7 years olds and developmentally delayed based on information collected from a variety of sources including caseworker(s), case records, teachers/educational records, primary caretaker, service providers, the child and their birth parents (if applicable). The information is based on the child's functioning over the past three months. Functional impairment is rated as severe, moderate, mild, or minimal/none for the following scales: role performance in the areas of school/daycare, home and community; behavior toward others; moods/emotions; self-harmful behavior; and thinking/communication. Overall dysfunction is calculated based on the youth's total score across the seven scales. Levels of functional impairment are correlated with the amount and intensity of services that are necessary.

Results: This evaluator completed this form. E.A. 's role performance at home and role performance at school were mildly impaired. His moods/emotions and behavior towards others were also mildly impaired. E.A. 's overall score placed him in a category of mild to moderate impairment.

Strengths and Difficulties Questionnaire (SDQ) Teacher Version The SDQ is a teacher-completed checklist that measures teacher assessment of child/adolescent behavior. Teachers for children between the ages of 3 and 17 years complete this questionnaire. The instrument assesses the overall level of behavior problems, problems in specific areas, and strengths in pro-social behavior. There are 5 sub-scales: emotional symptoms, conduct problems, hyperactivity, peer problems, and pro-social behavior.

Results: Jennifer Stapleton E.A. s teacher, completed this form. E.A. 's total difficulties score was in the normal range, as was his emotional symptoms, hyperactivity, peer problems, and prosocial behavior scores. E.A. 's conduct problems score was in the clinical range.

PARENT/CHILD OBSERVATION

A visit observation occurred at the West Seattle Family Visitation Center with FCAP evaluator Laura Mueser, LICSW. The family had been out to the park earlier in the visit, but at the time of the observation, they remained in the visitation room talking, eating, coloring, and watching movies. Ms. R.R. was highly attentive to the children and was particularly protective of and reassuring toward E.H. . E.H. appeared very distressed about missing his siblings and his mother, and he was tearful throughout much of the observation. Ms. R.R. kept him physically close and reassured him, often reaching out to him when he attempted to withdraw. E.H. worked to make a special picture for Ms. R.R. to keep, and when it did not turn out as well as he expected, he became frustrated and self-deprecating. Ms. R.R. offered him significant support and reassurance. She coached him in deep breathing ("Smell the flower. Blow out the candle,"), admired his work, and made some suggestions on good methods for coloring. At one point she appeared to intentionally make a mistake on a picture she was drawing in order to model skills for him: showing mild frustration and then verbally reassuring herself and continuing to color. When E.H. mourned that he did not color as well as she did, she reassured him that it was a learned skill: "I'm 45. I've been doing it a long time." J.R. and E.A. appeared inclined to tease E.H. for crying, and Ms. R.R. repeatedly defended him and reminded all of the children that it is all right to cry. E.H. n did not initiate affection toward Ms. R.R. but permitted her to be affectionate with him and appeared reassured by her.

J.R. was somewhat sassy or obstinate toward Ms. R.R. at times. On two occasions she gave orders to Ms. R.R. in a rude tone (regarding a dropped apple: "You go wipe it off *by yourself!*"). She was resistant to following direct instructions. However, she showed a desire to be close to Ms. R.R. , for example following Ms. R.R. when she left the room briefly or snuggling up on Ms. R.R. s lap during a movie. J.R. was also rude at times toward her brothers (e.g. fighting over food or poking fun at E.H.) but also was friendly at times, for example sharing food with E.H. and moving so that E.A. could sit next to Ms. R.R. E.A. was restless with the slow indoor pace of the visit. Ms. R.R. engaged him well, highly praising his coloring and playing cars with him. Ms. R.R. showed a good capability to meet the children's needs by focusing her attention jointly, re-directing negative behavior, giving clear commands, and watching for safety concerns. She was affectionate and creative with the children.

This evaluator attempted to observe a phone visit with Ms. R.R. and the children, but due to reported technical difficulties this did not occur. Of note, Ms. R.R. scheduled an appointment with Ms. Mueser for the following day to complete the FCAP interview, but she did not show up for the scheduled appointment.

CULTURE/ETHNICITY

E.A. is African American, as are his mother and father. His caregivers are Caucasian. Ms. H shared that they have been discussing with the children about race and different types of families (e.g. E.H. has two foster fathers) and the children have also learned about different cultures and ethnicities at school. Mr. N noted that now everything the children see that is a darker color they question if it is African American (e.g. a dark colored airplane). Ms. H related that they have a diverse group of friends who they spend time with in the neighborhood.

PERMANENCY STATUS

Current Permanency Status: Dependent since 9/5/14 and in the current home since 12/18/16. The permanent plan is either reunification or adoption.

E.A. identified the following people in his family: J.R. himself, Aaron, and Jamie. When questioned if there was anyone else in his family, he stated that there was not. In terms of other people who are important to him who do not live with him, E.A. identified "Mona" who lives in California. He stated that is his real mother. He later identified "Boo Boo" (referring to his sister Da.) and then named his older brothers, E.H. , De. , Ds. , and K. . E.A. noted that he does not see them very often and asked if it was time to end the interview.

Ryan Bennett, E.A. 's DCFS social worker, stated that he is not sure what is in E.A. 's best interest for permanency: whether E.A. should stay in his current foster home or be reunified with Ms. R.R. . Mr. Bennett stated that there have been some noted concerns from Ms. R.R. 's prison case manager, although only "off the record." Ms. Sharma informed Mr. Bennett that she was instructed to sign Ms. R.R. 's compassionate release paperwork. Primary concerns in addition to Ms. R.R. 's incarceration include her past CPS history, substance abuse, and noted concerns with extended family criminal activity and possible gang involvement. He reported that various people involved are afraid of Ms. R.R. at least in part based on her criminal history. Mr. Bennett stated that both J.R. and E.A. have significant difficulty with the phone visits, and Ms. R.R. 's attorney has suggested that Ms. R.R. speak with the children's therapists to help with this. When Mr. Bennett observed them at the visit in May 2016 they seemed to do well with their mother. He noted concerns with Ms R.R. not having a plan or bringing food (or accessing what was available at the site). Mr. Bennett stated that another consideration is Ms. R.R. 's friend who has come forward to request placement of all three younger children. He is currently processing her finger prints, but is not sure if it would be best to disrupt their current placement which is finally stable and positive for them where they are making progress. Mr. Bennett noted that he has not yet filed TPR because of the possibility that Ms. R.R. may be released early. The furlough visits previously occurred at the maternal grandfather's home (where the mother stays), but there were concerns regarding unknown adult men standing in the yard during visits.

Laura Clough, E.A. 's CASA, indicated that it would be in J.R. and E.A. s best interest to be adopted by the H-N's. Ms. Clough noted that the Department was ordered to file TPR in February 2016, however they have not done so yet and seem to be waiting for FCAP. Ms. Clough filed the motion for an FCAP because she needs additional help with this complex case. She noted that if FCAP recommends reunification, she would want to know how to proceed. Additionally, she would want to know how to process reunification with the children as they have been out of their mother's care for most of their lives and they express they want to stay in the current home. Ms. Clough stated that even if Ms. R.R. was released in the next few weeks or months (which she has been informed by Ms. Sharma is unlikely), she would have concerns based on her criminal and CPS

history and noted that her parental deficiencies would need to be addressed. It is difficult for these young children to understand why they are court-ordered to have phone calls with their mother that they do not want. Ms. Clough feels that Ms. R.R. seems to be putting her own needs first and although at the last hearing expressed that she would be willing to reduce phone visits to once per week due to the negative impact on her children, she has not agreed to the reduction. Ms. Clough indicated that the children know she is their mother, but have no memory of her as their mother. She has considered filing a motion to stop or reduce the phone visits. She shared that a couple months ago E.A. was stating that he did not want to have the calls with Ms. R.R. and she explained that he needs to be polite, but can express if he does not feel like talking. Ms. Clough also discussed her concerns regarding the children's previous foster placement. She feels that the current home is doing an excellent job of meeting the needs of these children.

Jaime H and Aaron N, E.A. 's foster parents, stated that they are an adoptive home if the children become legally free. This is their first foster placement and it had been their intention to take only children who needed permanent homes. The H-N's would have some concerns about an open adoption with regard to Ms. R.R. 's criminal history and associations and whether she is a safe person to be around the children. They would support the children getting to know her at 18 to better understand their identity. The H-N's understand the need for sibling visits and so will be beginning visits with Dm. next month. They have indicated that they do not want K. at these visits due to safety concerns about his criminal activity and possible sexual abuse of E.H. . They see E.H. and his foster fathers at least once a month at each other's homes. They recently discussed being respite care options for each other, as the H-N's would not want to access respite care for E.A. and J.R. with unknown respite providers given their expressed anxiety about the caregivers leaving. Ms. H noted that E.H. is very sweet and always brings food for the younger two children. She reported that E.A. and J.R. both love family time (reading, going to parks) and also love individual attention. They approached Ms. H in regards to the family member stickers on the back of the car (which only included the adults and the dogs and had been on before the children were placed there) asking where their stickers were. Ms. H ordered one for each of them and they were very excited and talk fondly about it being their family.

With regard to the phone visits, the H-N's found it helpful to have their WACAP social worker facilitate the call which helped keep the children engaged. The H-N's do not feel comfortable in that role. The children have been expressing that they do not want to participate in the calls and exhibiting significant distress (e.g. E.A. hyperventilating, curling up in a ball crying on the floor). The CASA gave E.A. permission to end the call if he was done talking, which has allowed E.A. to assert his own needs and has diminished his anxiety. E.A. is very sensitive and does not want to hurt anyone's feelings. The H-N's have had to end the phone call on occasion due to Ms. R.R. 's response to the children wanting to end the call (e.g. repeatedly asking the children why they do not want to talk and if it means that they do not love her). The children understand that their mother is in "time out," however during the calls a recorded message repeats every five minutes stating that the call is from the federal prison. Mr. N also noted concerns about E.A. reporting Ms. R.R. threatened to whoop him if he called her "Mona."

Ingrid Buchan, E.A. 's former DCFS social worker, stated that if Ms. R.R. were to be released from prison early, she would support giving her a chance to care for her children, but she does not feel that Ms. R.R. could parent all of her children without significant support and monitoring. Ms. Buchan feels that the children's strong family connections should continue. She related that there have been concerns regarding rumors of Ms. R.R. "partying" when she is on furlough and also that she does not plan well for the visits. Ms. Buchan feels that if Ms. R.R. will not be released until 2019, DCFS should proceed with filing for termination of parental rights.

R.R. , E.A. 's mother, reports that her only concerns about E.A. and J.R. are related to her interactions with their placements. In the prior foster home there were allegations of

child abuse towards E.A., however those foster parents always reminded them that she was their mother. They were told that they were misbehaved in this home and reported to her in a phone visit that they were going to have to move because they were "bad." Ms. R.R. has had twice weekly phone calls with E.A. and J.R. since they came into care, however there were times when it was not consistent. The previous foster parents would email her about behavior concerns with the children so she could help address it as well. She thinks the children are doing adequately well in the current home, however she has concerns about the foster parents having talked to the children about adoption. Ms. R.R. noted that she learned this from the children during a phone visit. The children refer to the foster parents as "mom and dad" and either refer to her as "mommy" or "Mona." The visits in person go well and she crochets them something for each visit. Ms. R.R. noted that the CASA has told them they do not have to talk which she finds unhelpful and unacceptable. She would like more assistance with the communication with her children. Ms. R.R. is not sure how to handle them wanting to end visits at times, but generally just tells them that she loves them. The previous foster parents would also help guide the call (e.g. tell mommy about school) and the social worker for the foster parents has also helped with keeping them engaged. She writes letters to the children every week, but it takes a month for them to get the letters which concerns Ms. R.R. because they are so young and need more consistency.

Ms. R.R. reported that she has taken parenting classes and drug education classes while incarcerated. She has completed her parenting assessment and now is participating in the FCAP. She has no issues with drugs and alcohol and does not feel that she needs any additional supports or services once she is released. Ms. R.R. is open to any recommendations of the FCAP program to move towards reunification. She reported that she has completed all of her paperwork for the compassionate release and is hopeful she will know more in approximately three months. Ms. R.R. would want to establish herself upon release and work gradually to have all the children returned to her care. She would like to participate in counseling for the family to address anxiety and the separation. She noted that she needed a letter from DCFS that the children can be placed with her and verification of why they were in foster care for her compassionate release application. Mr. Bennett would not provide her with a letter so she provided her court order indicating the primary plan of return to mother and the first dependency hearing documents which indicated they were removed from her family friend. Ms. R.R. reports that she has no CPS history prior to her incarceration. Ms. R.R. noted that there is no one else available to care for her children except her oldest children (ages 23 and 20). She reiterated that she loves her children and wants to do anything she can to help them. Ms. R.R. is working with the Parents for Parents program to help with finding a job and housing once she is released. Currently she works for the National Park Services doing landscaping. Ms. R.R. related that she was unable to meet with the FCAP evaluator on 5/14/16 (as planned) because the transmission went out in the vehicle and it was towed with the contact information for Ms. Mueser in the vehicle. Ms. R.R. reported that she emailed her attorney to let her know what happened.

Jennifer Stapleton, E.A.'s Head Start teacher, stated that he talks about his family in reference to his foster family and seems so bonded and happy in this placement. He and J.R. appear to get along well. E.A. has mentioned his older brother but not his mother.

Diane Toy, E.A.'s Triple P Provider, stated that she worked with E.A. and his foster parents, Jaime H and Aaron N, for eight sessions of Triple P. Ms. Toy reported that the foster parents performed well in the program. The H-N's were very sensitive to the children's needs and the environment is highly conducive to their healthy development. Ms. Toy does not think other services are needed and believes that the caregivers are meeting the children's needs.

Tiffany Ezra, E.A.'s therapist, stated that she is hesitant to give an opinion on the phone visits or permanency, but she does understand that the calls are anxiety-provoking and that it was going better when Ms. R.R. would accept the children's request to end the call in a pleasant way

without any guilt or negative comments. She indicated that she had suggested to the foster family to plan a fun activity after the phone visits and the H-N's successfully did this recently. Ms. Ezra indicated it is important to empower E.A. to have a voice. He was proud in sharing with Ms. Ezra recently that he had used his words to indicate that he no longer wanted to talk for the visit. Ms. Ezra stated that she would have concerns about talking to E.A.'s mother (as was proposed) because she is E.A.'s therapist and it is his safe space so she thinks it would be best for someone else to talk with Ms. R.R. about what could be helpful (e.g. her own therapist). The foster parents are cautious about mentioning adoption and only provide reassurance by telling the children that they are coming back here after visits. Phone calls are the biggest concern by the foster parents because it is impacting the children's behavior. Ms. Ezra is concerned that E.A. told Mr. N that if he called Ms. R.R. "Mona" she would "whoop" him. Ms. Ezra stated that she attributes E.A.'s remarkable progress to the excellent care he is receiving and has informed the foster parents that she would like them to train other foster parents.

Gary Sampson, E.A.'s WACAP social worker, stated that he completed the home study for the H-N's and continues to provide post-placement services. Mr. Sampson sees the family approximately once per month and has tried to schedule some of his visits to be able to provide assistance with the phone visits. Mr. Sampson related that he feels the H-N's are doing an excellent job in caring for E.A. and J.R. who have had some significant challenges based on the trauma and disruptions they have experienced. Mr. Sampson noted that these children need to be in a setting that recognizes their history and carefully nurtures them through their recovery, which the current home is providing. He noted that the foster parents are in an awkward position and do not feel comfortable facilitating the phone visits and the children are often very resistant to participating. When he was helping with a call he tried to give Ms. R.R. ideas of what to talk about or describe what the children were doing on their end which seemed to help. He noted that getting children of these ages to talk on the phone to anyone can be difficult and they have not been cared for by their mother for three years. Mr. Sampson opined that the calls should be reduced to once per week and that they should be facilitated by a trained professional and perhaps scheduled around the children's therapy. He understands Ms. R.R.'s frustration in the calls, but related that as the adult she should respond appropriately to the children and anticipate that they will likely want to end the call early (especially after having this occur with so many of the calls). Mr. Sampson has observed and heard reports of Ms. R.R. getting upset which in turn confuses and upsets the children and it makes him question her ability to meet the needs of the children. He has also observed Ms. R.R. attempting to engage and listen to the children. Mr. Sampson stated that while the H-N's would like to adopt E.A. and J.R. they understand the legal risk and would do what is needed to support the children. Mr. Sampson feels strongly that these children in particular cannot wait in limbo for three years for permanency, as their permanency is part of their recovery. They need emotional stability and security. Mr. Sampson believes that the H-N's would consider an open adoption if there was a highly organized and safe plan for any contact with their mother.

IMPRESSIONS

E.A. is an attractive, smart, resilient boy with much potential. He is functioning with mild to moderate impairment in the home and school environments. E.A. has struggled most with emotion dysregulation, anxiety, and disruptive behaviors. He has been particularly impacted by his many moves, both before and since coming into care. At this point, E.A.'s permanency is of the utmost concern. E.A. most needs stability, consistency, structure, nurturing, and evidence-based services. Steps should be taken now to expedite E.A.'s permanency and determine a clear plan for either adoption or reunification over the next six months. Additionally, changes need to be made with the current visitation plan due to the negative impact on E.A. and his sister J.R.'s emotional well-being.

E.A. is the seventh of eight children born to R.R. He and his younger sister, J.R. (4), have been in care for over two years, since May 2014. They have been out of their mother's care longer, since June 2013, due to her incarceration in federal prison in California. E.A.'s older half siblings are all placed separately in other foster or suitable adult placements. E.A.'s primary permanent plan is adoption and his alternate permanent plan is reunification. The Department has not yet filed for termination of parental rights at least in part due to the fact that Ms. R.R. may receive compassionate release. Of note, in addition to Ms. R.R.'s current incarceration, she has a significant CPS and criminal history. Despite Ms. R.R.'s expressed love and desire for E.A. and all of his siblings to be returned to her care upon her release (which is currently scheduled for July 2019), concerns remain regarding the impact of further delaying the children's permanency, as well as Ms. R.R.'s ability to safely parent upon her release. Given the length of time E.A. and J.R. have been in care, as well as their unique temperaments and functioning, it is not in their best interest to delay permanency. Delay undermines their security which affects all areas of their functioning and well-being. Both children are exhibiting emotional and behavioral challenges related to anxiety and both are desperately in need of stability, reassurance, and structure. Their current foster home is providing this and they are responding well. It is recommended that the Department proceed with filing for termination of parental rights now without waiting for the outcome of the Ms. R.R.'s application for compassionate release.

Although Ms. R.R. has been making positive efforts at maintaining contact with the children through letters, calls, and visits, there continues to be concerns about her ability to safely parent them based on her past history of CPS involvement and criminal history which would need to be addressed prior to moving forward with reunification. Of note, Ms. R.R. has participated in parenting classes available at the prison and participated in a parenting evaluation as well as the FCAP assessment. Records indicate that she participated in drug education classes while incarcerated, however it is unclear if this will satisfy her requirement for participation in a court-ordered drug and alcohol evaluation. While Ms. R.R. rightly notes that the children were removed from someone else's care, she also denies any CPS history of her own which is not accurate. There are several CPS referrals between 1992 and 2013 (prior to Ms. R.R. incarceration) with allegations indicating a pattern of unsafe activity (e.g. exposure to domestic violence, criminal activity, substance abuse, lack of supervision). Furthermore, Ms. R.R.'s prison case manager, Ms. Sharma, reported concerns about deceptive behavior by Ms. R.R. while incarcerated with unsubstantiated reports of Ms. R.R. not following the prison rules (e.g. selling supplies, drinking on furlough). Further, as part of her compassionate release application, Ms. R.R. was noted to have reported that the children were being cared for by her mother who died (which is not accurate) and there is no other family available to care for them. She has also reported to the prison staff that she has no CPS history and that her children could be placed with her immediately upon release (also not accurate). These concerns are relevant in considering reunification and speak to Ms. R.R.'s cooperation and ability to make changes in her behavior and lifestyle that would prevent her from returning to high risk criminal activity upon release.

If Ms. R.R.'s compassionate release application is approved and she is released early, then several steps are recommended prior to moving forward with reunification for E.A. and J.R. First, Ms. R.R. would need to establish safe, stable housing free of criminal activity. Second, given Ms. R.R.'s history of substance abuse and drug related criminal charges, she should participate in random urinalysis twice per week which should include testing for alcohol. If there are any positive UA's Ms. R.R. should participate in a drug and alcohol evaluation and treatment if needed. Third, Ms. R.R. would need to cooperate and be forthcoming with the Department and providers (e.g. signing a release to facilitate open communication). This is important given reported concerns of Ms. R.R. not being straightforward and her noted denial of past CPS history. Fourth, if Ms. R.R. is moving towards reunification, she should participate in Parent Child Interaction Therapy (PCIT) with E.A. and J.R. PCIT is an evidence-based treatment that coaches parents/caregivers in the development and use of specific skills to effectively manage

child behavior problems and improve the quality of parent-child relationships. While PCIT is recommended for this family, it should not be initiated until the process of reunification is well underway. Finally, it is recommended that if Ms. R.R. is released early, there is a short timeline for measuring her progress and compliance (within three to six months of her release) due to the length of time these children have been in care.

In addition to addressing E.A.'s permanency needs, modifications are recommended for the current visitation plan. E.A. and J.R. have phone visits twice per week with Ms. R.R. supervised by the foster parents. These phone visits have been problematic with the children exhibiting significant anxiety and resistance to participating. Ms. R.R. stated that she wants additional help in her communication with the children and seemed to appreciate the support of the WACAP social worker in facilitating the call. Of note, children of this age can have difficulty maintaining a 15 minute phone call under any circumstances. It is recommended that phone visits be reduced to once per week and that they be supervised by someone other than the foster parents (e.g. DCFS social worker, WACAP social worker, visitation provider). Reducing the frequency of calls will help take the pressure off of the children. The goal of these phone visits is to maintain the parent-child relationship and it is important to understand that the children will not form a positive attachment and connection while they are in distress. It is also in everyone's best interest for the quality of these calls to be improved and to prevent further hardship for the children. Therefore, it is recommended that Ms. R.R. participate in parent coaching (over the phone) to improve the quality of these visits. Calls should be activity-oriented (reading a book together, playing a verbal game) with developmentally appropriate expectations and attention to the children's needs for emotional safety and comfort. Ms. R.R. should learn strategies for making the calls more fun and engaging, as well as responding appropriately if the children are distressed or wanting to end the call. Regarding the parent coaching, a portion should be 1:1 with Ms. R.R. and also with Ms. R.R. and the children during the phone visits. It would also be helpful to assist Ms. R.R. in taking the children's perspective (e.g. not making an issue out of how they refer to her, not questioning their love if they do not want to talk) as a means of building a stronger relationship with them. Ms R.R. should be able to demonstrate her use of the newly learned skills and her ability to focus on their needs to help them feel comfortable. It is important to remember that both E.A. and J.R. have been through significant disruption in their young lives and some transitions have been abrupt and traumatic for them. Furthermore, they seem to clearly know that Ms. R.R. is their mother, however because they have not been living with her in that capacity since they were very young, some ambivalence or confusion should be expected. Of note, Ms. R.R. is generally noted to do well with her interactions at the in-person visits during furlough and in particular for the observation for this assessment. She was observed to meet the emotional and physical safety needs of the children well. Concerns noted regarding Ms. R.R. not bringing food for the visits could be addressed if needed with the parent coaching service.

In terms of services for E.A., he began participating in counseling at Compass Mental Health (CMH) in April 2016. This has been noted to be very helpful for E.A. and his caregivers. E.A. is diagnosed with Adjustment Disorder with Mixed Emotions and Conduct. He has responded well to the treatment and the H-N's report appreciating the support they have received from the providers at CMH. Of note, evidence-based cognitive behavior therapy (CBT) is the most effective treatment for anxiety and depression in children. Trauma focused cognitive behavioral therapy (TF-CBT) in particular can help with addressing trauma symptoms, which both E.A. and J.R. have exhibited. E.A.'s results on the standard measures indicate some posttraumatic stress avoidance. His challenges with externalizing behavior problems (which have notably diminished over the past few months) would best be addressed with evidence-based parent management training (PMT). E.A.'s caregivers should continue to actively participate in his treatment to help learn and reinforce the skills learned in therapy. In addition to counseling, E.A. participated in a Head Start program in Bellevue since February 2015. He is currently doing well in the program academically with some continued struggles with his behavior. The

standard measure completed by his teacher indicated clinically significant conduct problems. E.A. is noted to be extremely bright with strong skills in reading and writing. While he expressed discontent with school to this evaluator, his intellectual strengths should continue to be supported and nurtured. Regardless of his placement, E.A. will likely need advocacy and support to ensure his academic success. He would also likely benefit from participation in any positive social activities in the community. Further, E.A. has close connections with his African American extended family members including numerous siblings, and he is living currently in a Caucasian household. E.A.'s cultural needs and identity development should receive special attention and his caregivers should be provided with ample guidance and education on this issue.

RECOMMENDATIONS

1. Proceed with filing for termination of parental rights. If Ms. R.R. is released early (through compassionate release), the following steps should be taken prior to reunification: Ms. R.R. to establish safe, stable, crime-free housing; Ms. R.R. to participate in random urinalysis; Ms. R.R. to sign releases for all parties to promote safety and open communication; Ms. R.R. to participate in PCIT with E.A. and J.R. to improve the relationship and increase parenting skills to address their behavior challenges.

2. Phone visits should be reduced to once per week and should not be supervised by the foster parents. Ms. R.R. should participate in parent coaching to improve the quality of visits and address concerns with her ability make the calls more active and engaging as well as to respond appropriately to any distress experienced by the children and ending the call if needed.

3. E.A.'s therapy should utilize evidence-based CBT to address his challenges with anxiety and PMT to continue improving his externalizing behavior problems. His caregivers should continue to actively participate in his treatment to help learn and reinforce the skills learned in therapy.

4. E.A. is bright and doing well academically, although he reports not liking school. Efforts to support his academic strengths will be important. E.A. needs special attention to his cultural needs and identity development and would also likely benefit from opportunities for involvement positive social activities.

FCAP Evaluator Name: Paula Solomon, LICSW

_____

Signature

Agency: Harborview Center for Sexual Assault and Traumatic Stress

Date Report Sent to DCFS: 7/26/16

WSBA

WASHINGTON STATE BAR ASSOCIATION
BOARD OF GOVERNORS

RESOLUTION IN SUPPORT OF ATTORNEY REPRESENTATION FOR CHILDREN IN DEPENDENCY (ABUSE/NEGLECT) PROCEEDINGS

WHEREAS, a child who is the subject of an abuse of neglect proceeding has numerous legal rights at stake, including whether that child will be returned home, and if not, with whom the child will live, where the child will go to school, and how often the child will visit his/her biological family; and

WHEREAS, every other party in a dependency proceeding has the right to be represented by an attorney; and

WHEREAS, attorneys have different skills and roles than guardians ad litem and court-appointed special advocates and an attorney for the child working in tandem with a GAL or CASA volunteer can provide a powerful team approach in juvenile court; and

WHEREAS, only an attorney for a child in the dependency system will be able to maintain confidential and privileged communications with a child who is subject to a proceeding which involves myriad legal rights pertaining to intensely private and personal issues, such as mental health and physical health issues, sexual and physical abuse, and education; and

WHEREAS, an attorney for a child can file motions, present and cross-examine witnesses, in an effort to advocate for the child's stated interests, as well as protect the child's legal rights, in an often years-long, complicated legal process that subject the child to significant risks of harm; and

WHEREAS, an attorney for a child can hold the State accountable in court to its duty to protect and provide for the child while the child is in foster care;

NOW, THEREFORE, BE IT HEREBY RESOLVED:
That the Washington State Bar Association is committed to protecting the legal rights of children in the dependency system and ensuring they have equal access to the justice system; and

BE IT FURTHER RESOLVED:
That the Washington State Bar Association expresses its position that children of all ages who are the subject of a dependency (abuse/neglect) proceeding initiated by the State of Washington must receive court-appointed legal representation at all times during the pendency of that proceeding, to ensure that children who are at the core of a dependency proceeding are afforded equal access to the justice system as urged by the ABA *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*, dated August 21, 2011.

Adopted by the Washington State Bar Association Board of Governors on September 17, 2015.

Paula C. Littlewood

Paula C. Littlewood
Executive Director

EXHIBIT B

32 Loy. U. Chi. L.J. 1

Loyola University Chicago Law Journal
Fall 2000

Article

REVISITING THE QUESTION OF WHETHER YOUNG CHILDREN IN CHILD PROTECTION PROCEEDINGS SHOULD BE REPRESENTED BY LAWYERS

Randi Mandelbaum[a1]

Copyright (c) 2000 Loyola University Chicago School of Law; Randi Mandelbaum

In the late twentieth century, one would expect our nation to have settled the question of whether legal representation must be provided for children involved in judicial proceedings affecting the rest of their lives--cases in which their parents' interest may clearly be at odds with theirs. This question is far from settled.[1]

I. Introduction

In 1974, by its passage of the Child Abuse Prevention and Treatment Act ("CAPTA"), Congress established a statutory right to representation, although not necessarily by counsel, for all children who are the subjects of child protection proceedings.[2] Specifically, as a *2 condition for receiving federal funds, "in every case involving an abused or neglected child which results in a judicial proceeding," each state is required to "provide a guardian ad litem . . . to represent the child."[3] Congress amended the statute in 1996 to specify that the guardian ad litem ("GAL") may "be an attorney or a court appointed special advocate[4] (or both)" and that the purpose of such appointment shall be "(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child."[5] No further congressional *3 guidance was or has been given as to the role of the GAL or the purpose of the representation.[6]

Over the past two decades, numerous scholars and organizations, including various committees of the American Bar Association ("ABA"), have attempted to provide some guidance for child advocates struggling to provide ethical and quality representation to their child clients. For example, in 1983, as part of its efforts to develop model ethical rules, the ABA created Model Rule 1.14.[7] Additionally, during this time, a growing number of scholars have examined and debated the question of what is the appropriate role for the child's representative, particularly the role of an attorney.[8] Most recently, several *4 recommendations for more uniform standards have been developed by various organizations and conferences.[9] Despite these efforts, much confusion remains and many commentators have found that lawyers who represent young children in child protection proceedings exercise too much discretion and therefore may make determinations on behalf of the young children that are based on their own views and backgrounds and not those of their child clients.[10] The situation is worsened by the fact that all of the systems designed to protect these extremely vulnerable children and serve their needs, including the current systems for providing representation, are failing.

Given the lack of clarity over the role of the representative, as well as concerns about the quality of much of the representation being provided to children, it is not surprising that recently there has been renewed scholarly attention and legislative inquiry concerning the question of *5 whether all children, especially young children, should be represented in child protection proceedings. Professor Martin Guggenheim has called for the curtailment, if not the elimination, of legal representation of young children, and Professor Emily Buss has recommended that lawyers refrain from taking positions on behalf of their child clients.[11] *6 The legislative probe has taken several different forms. In 1988, through its reauthorization of CAPTA, Congress directed that the National Center on Child Abuse and Neglect ("NCCAN") study "the effectiveness of legal representation of children in cases of abuse or neglect through the use of the guardian ad litem and court appointed

special advocates" and report the results to Congress.[12] More recently, in 1995, Congress proposed decreasing funding for CAPTA and abolishing the federal requirement for the appointment of representatives for children who are the subjects of child protection proceedings.[13] Additionally, the American Academy of Matrimonial Lawyers ("AAML"), a committee of the ABA's Family Law Section, and the National Conference of Juvenile and Family Court Judges have recently adopted standards and principles that support the notion that *7 children in custody and visitation matters[14] are not required to have lawyers.[15]

It is unclear if the views of two prominent and thoughtful scholars, ongoing legislative concerns, and institutional pronouncements from organizations in different, but related, fields will result in any changes to the current systems that provide representation to young children. The implications are so grave, however, that further examination is warranted as to the appropriate role of an attorney representing young children in the context of child protection proceedings and to our ability to ensure that the needs and legal interests of these children are represented. The thesis of this paper is that representation of young children is needed, that this representation is best when it is conducted by attorneys acting, as much as possible, in the traditional attorney role, and that concerns regarding unguided discretion and bias by lawyers can be substantially reduced with a concerted effort by attorneys to understand the lives of their young child clients, including their families, backgrounds, and cultures.[16] However, recognizing that accomplishing these goals will entail additional resources that jurisdictions may not be willing to allocate, this article also recommends that enhancements in the roles and responsibilities of juvenile court judges and child welfare agency social workers be made. Further, the article advocates that we continue our discussions regarding how court-appointed special advocates ("CASAs") and attorneys can best work together. While these recommendations would not protect the interests of young children to the same degree as a competent and well-supported attorney would, they are worth considering as part of the dialogue *8 which has begun, and needs to continue, on how child protection proceedings can be made more responsive to the needs and interests of the children it serves.

In order to place these questions and issues in context, the second part of this article will discuss the current plight of children in this country who are abused and neglected.[17] This discussion will include brief descriptions of the systems designed to meet the needs of these children, including the provision of legal representation. This part will also address the serious deficiencies in these systems.[18] In addition, Part II of this article will introduce two fictional children whose lives are reflective of the many children who are abused and neglected.[19] Their stories will be used throughout the paper to illustrate common situations confronted by children in the dependency system that must be taken into account when reconsidering the need to provide legal representation to young children.

Part III then elaborates on some additional concerns about the legal representation of young children and summarizes two proposals that call for the curtailment of such representation.[20] Acknowledging the merits of the concerns summarized in Parts II and III of the article, Parts IV, V, and VI respond to the recommendations calling for the reduction or elimination of the role of the attorney for young children.[21] Specifically, Part IV explains how the proposals will not eliminate bias and discretion in the representation of young children,[22] while Part V discusses why it is necessary for young children to have representatives.[23] Part VI focuses on the question of how lawyering for young children can be improved and thus become less haphazard and more reflective of the interests and needs of children.[24] This discussion will highlight some of the recent writings of Professor Jean Koh Peters and will propose areas of study in order to further develop and support her paradigm.[25] Finally, Part VII suggests that alternative approaches to the representation of young children be studied.[26] Part VII also calls for alterations to our child welfare policies, particularly regarding the role *9 of the agency social worker, and in the responsibilities that we place on juvenile court judges.[27] As stated above, these latter recommendations are especially important if the support, financial and otherwise, for the improvement and augmentation of legal representation continues to be deficient.

II. The Context

A. The Lives of Two Neglected Children

In order to better understand the complexities and difficulties of a child protection case, it is helpful to look first at an individual family situation as it might become known to a child's legal representative at the beginning of such a proceeding.[28] Throughout and following this narrative will be more general descriptions of the characteristics of children who may be

victims of abuse and/or neglect, and the systems and laws that are in place to protect and serve them and their families. Such a contextual portrayal is necessary to thoroughly examine the question of whether legal representatives are needed.

The children whose situation we are going to examine are Andrew and Brenda Smith. They entered the child protection system within the last 48 hours. Andrew is ten years old and Brenda is eight. They are African Americans.[29] Prior to being removed from their home, they ***10** lived with their mother, Caroline Smith, who is twenty-six years old.[30] They have different fathers and neither father has had much contact with his child. Brenda's father has a serious substance addiction. The exact whereabouts of Andrew's father are unknown. The family's only source of income is public assistance.[31]

***12** Ms. Smith also suffers from a dependency on drugs.[32] She has been a victim to this addiction for the past five years, but it has become more severe during the last two. Over the years, the family has moved from place to place, staying with friends when possible and, at times, living in shelters or on the street. Approximately one year ago, the family was fortunate to move off of the waiting list and into a two-bedroom apartment in a subsidized housing development. However, the family is about to be evicted from this housing unit due to nonpayment of rent and because drug dealers were alleged to be on the premises.

A social worker from the local child protection services agency ("CPS") removed Andrew and Brenda from their home after the manager of their housing complex called the agency to report that Ms. Smith had left the children unsupervised, alone, and with very little food to eat for two days. The family, however, was already known to CPS. The agency had previously received calls from the children's school about excessive absenteeism and the fact that the children frequently came to school dirty. In addition, Andrew's teacher had expressed concerns of educational neglect. It seems that Andrew is not doing well in school. He has been exhibiting some behavioral problems and the teacher believes that he may have a learning disability. The teacher would like to refer Andrew for a special education assessment and has attempted to meet with Ms. Smith to discuss her concerns. However, Ms. Smith has not responded to any of the letters the teacher has sent home.

After being removed from the family home, Brenda was placed in a family-like foster home. Andrew, however, was placed in an emergency shelter. There were no available foster homes for a boy his age, nor were there any foster homes where Andrew and Brenda could be placed together. Significantly, the extent of CPS's assistance to the ***13** family in the past has been the provision of emergency funds to help pay some overdue rent and to reactivate the electricity and telephone. No other resources or services have been provided.

Just prior to the shelter care hearing,[33] in an interview room at the courthouse, Andrew and Brenda meet individually with their legal representative, a Caucasian woman in her late twenties from a middle-class, suburban background.[34] Ms. Smith has not appeared at the courthouse, so the representative expects that the children will continue to be placed outside the home. Neither has expressed a preference nor a reluctance to go home. However, both children report to her that they are very upset about being separated from one another and have expressed a strong desire to be with Brenda's godmother, Ms. Anita Jones, who has come to the courthouse. Both children appear to the attorney to be frightened and very anxious. Andrew complains of a headache, while Brenda reports having had a stomach ache all day. From what the legal representative can observe while at the courthouse, the children seem very bonded with one another and comfortable with Ms. Jones. The lawyer, however, recognizes that these first impressions are merely preliminary.

There do not appear to be any biological relatives available to care for the children. Ms. Jones, who is a friend of the children's maternal grandmother, informs the representative that all of the children's extended family live out of state, but that she has cared for the two children on and off over the years and would be willing to do so now. The child welfare agency social worker is aware of Ms. Jones' offer and has even been to her home and found both Ms. Jones and her home to ***14** be appropriate. The social worker went to Ms. Jones' home as part of her efforts to locate Ms. Smith. As the social worker would with a blood-relative, she also ran a background clearance check on Ms. Jones in anticipation of the shelter care hearing and the possibility of placing the children with her. However, it is against the policy of the agency to place children in the home of an unrelated person, even someone who is as close with the children as Ms. Jones, unless it is a licensed foster home. The process of licensing can take several months.[35] This is the situation as Andrew and Brenda await their shelter care hearing.

Andrew and Brenda are not alone. Rather, they are two of the approximately one million children who are abused or neglected each year.[36] The type of maltreatment, however, varies. Of those children found to be abused or neglected, more than one-half suffer from neglect, as is the case with Andrew and Brenda; nearly twenty-five percent are victims of physical

abuse; and twelve percent are sexually abused.[37]

***15** Unfortunately, the problems for Andrew and Brenda do not stop at home. Because of the conditions of the systems that are supposed to protect Andrew and Brenda from abuse or neglect, there is no assurance that all will be well for them if they are removed from their home. The two public systems designated to both protect abused and neglected children and assist their families in addressing the causes of maltreatment are our child welfare agencies and our juvenile courts. In addition, to ensure that all children involved in child protection proceedings are represented, most states have established some system or structure to provide for representation. Over the past few decades, however, numerous studies and reports have documented extensive and chronic neglect of children in these systems. In order to understand what Andrew, Brenda and their family are likely to face if they become involved with these systems, it is necessary to briefly describe the functions of each of these systems, as well as some of their many shortcomings.

B. Status of Our Child Welfare Agencies

At present, child welfare agencies in many states are under court supervision as a result of lawsuits that documented extreme violations of federal and state laws in providing services to children and their families.[38] One judge described the system in his jurisdiction as one of ***16** "outrageous deficiencies," while another jurist declared the current state of affairs to be a "bleak and Dickensian picture."[39] According to a report by the United States Advisory Board on Child Abuse and Neglect, "[i]t is not a question of acute failure of a single element of the system; there is chronic and critical multiple organ failure. In such a context, the safety of children cannot be ensured. Indeed, the system itself can at times be abusive to children."[40]

The widespread deficiencies within the child welfare system can be seen in almost every state, at every level, and at every step in the process.[41] For example, the first type of service that child welfare agencies provide is the investigation of reports of child abuse and neglect. The need for this service to occur in a prompt and responsible manner cannot be overstated.[42] Yet, approximately one-third of state agencies charged with this responsibility are "unable to investigate reports within 24 or 48 hours, as required by law."[43] Reviewing the ***17** situation of Andrew and Brenda, it appears that the agency responded promptly. Had it not, however, the likely result would have been that Andrew and Brenda would have spent another night alone, unsupervised, and without sufficient food.

Children removed from the care of their parents and placed in foster care, even temporarily, are also at great risk of not having their needs met by the child welfare agencies.[44] Placements in overcrowded and inadequate foster homes that fail to provide for children's basic needs are common.[45] As Professor Richard Wexler told a Senate committee, "[f]oster care is not a haven. Often it is not even safe. Most people assume that removing children from their parents means removing them from danger and placing them in safety. Often it is the other way around."[46] In the case of Andrew and Brenda, it is too early to predict how they will fare out of their mother's care. However, we do know that the children have been separated[47] from each other and that Andrew was not even able to be placed in a family-like foster home.

Once children are placed in foster care, it is the responsibility of the child welfare agency to meet the needs of the children and to provide ***18** services and resources to the family in order to address the cause or causes of the maltreatment and to hopefully reunify the family as quickly as possible.[48] For Andrew, Brenda, and Ms. Smith, this might mean providing medical, psychological, or educational services to Andrew and Brenda, drug rehabilitative treatment to Ms. Smith, and assistance in securing housing. Here too, however, the agencies have been found to be failing abysmally.[49]

***19** Very few children and families receive the assistance they need, and reunification services are often lacking. Many parents "end up with nearly identical boilerplate plans of counseling, parenting and anger management or drug classes--if they can get into the heavily overbooked classes at all."[50] Consequently, many children have languished in foster care for years on end without a clear permanency plan and without significant efforts having been made by the child welfare agency to either reunify the child's biological family or take the necessary steps to free the child of his legal ties to his biological family so that he can be adopted.[51] Not only does this lack of meaningful assistance and services create a situation that is painfully unfair to the parents and potentially harmful to the children (who are generally better off with their own families, if the abusive or neglectful conditions are remedied), but when an agency fails to provide such assistance it becomes very difficult, if not impossible, for the agency or the court to determine and/or pursue an appropriate long-term or permanent plan for a particular child. Recent changes in federal law, mandating that decisions with respect to permanency be made within twelve months of a child entering foster care, heighten the significance of this scarcity of resources and create an even more

dire situation.[52]

***20 C. Shortcomings of Juvenile Court**

Of course, Andrew and Brenda will not face the perils of the welfare system alone. Their interests are supposed to be protected by our juvenile court system, which will oversee the possible removal and placement of Andrew and Brenda, as well as the provision of services to Andrew and Brenda and their family. However, like the child welfare agency, the juvenile court, with which Andrew and Brenda will find themselves involved, is also likely to suffer from serious deficiencies.[53] Very little data exists that documents or explains how it is determined which substantiated reports of abuse or neglect are brought to the attention of the juvenile court.[54] The few studies that have been conducted reveal that only a small proportion of substantiated cases seek the assistance of the court.[55] Such a small percentage is more easily understood when one considers that the only cases likely requiring the court's attention are those where the child welfare agency finds it necessary to involuntarily remove children from the care of their parents, or where the child welfare agency finds the parents not to be cooperating with treatment plans outlined by the child welfare agencies. Andrew and Brenda fall into this category, as they have essentially been abandoned, and their mother is not available to voluntarily work with the child welfare agency in making arrangements to ensure their safety in the future.

Despite the small percentage of substantiated instances of abuse or neglect requiring judicial attention, the actual number of cases is quite large - many more than most juvenile courts and presiding judges are able to handle in an adequate manner.[56] Descriptions of the operations of our juvenile courts reveal an overwhelmed and, at times, even unresponsive judicial process. Common characteristics include: judges with no more than a few minutes to spend on each case; orders being issued without any legal or factual basis; extraordinarily long delays, ***21** especially if any party wishes to contest an issue; and inadequate appellate processes.[57]

One unfortunate result of such an ill-functioning system is that, in some cases, "children who should be removed from their homes are not, and children who are removed should not have been."[58] Frequently, children like Andrew and Brenda do not receive the attention and protection to which they are entitled. Numerous studies of various juvenile court systems validate these appalling characteristics.[59] A September 1997 report by the Fund for Modern Courts found that New York "Family Court judges were overburdened and were forced to provide 'assembly-line' justice because they had only a few minutes to review each case."[60] A similar report concerning the Massachusetts family court system found it to be in need of a serious overhaul.[61]

In sum, the outlook for Andrew and Brenda is dismal. They and their mother are in need of assistance. Yet, the systems designed and ***22** established to render this aid are unable to assist all of the children and families who are in need.[62] In an effort to ensure that the individual needs of each child are addressed, Congress mandated that each child be provided with a representative.[63] As will be examined next, however, the provision of representation has not always accomplished this goal.

D. Poor, if Any, Representation

Numerous scholars and studies have documented a multitude of systemic problems affecting the provision of competent representation to children who are involved in child protection proceedings.[64] Although the concerns have been characterized in various ways by different commentators, the problems can be separated into two categories.[65] The first set of issues involves the lack of sufficient resources available to support competent representation, while the second involves the lack of guidance available to representatives as to what role they should play.[66] Both, especially the latter, result in representation that is often haphazard and biased.

1. Inadequate Resources and Support for Representation

With regard to the provision of representation, it is first necessary to determine what is currently occurring at the state level. A relatively recent report on the effectiveness of representation pursuant to CAPTA revealed that while all states currently have statutory provisions that provide for representation, in actuality, the states have not been meeting their obligations to provide representation in an appropriate manner, if ***23** at all.[67] "In eight states, the appointment of a representative is

discretionary or required only in some cases, resulting in a substantial number of abused and neglected children in these states not being represented."[68] In many other states, although a representative is required by state statute, children are forced to participate in court proceedings without representation.[69]

In those states where a representative is appointed, the qualifications, training, and support of the representatives vary greatly from state to state, and even among counties within a state. For example, only about half of the states mandate that all children receive representation by attorneys.[70] Where representation is not required to be by attorneys, it may be provided by paid or volunteer lay advocates, or by a combination of different types of representation, including some representation by attorneys.[71]

The most prominent of the lay advocacy programs is the CASA program, which currently operates in some form in every state by volunteer participants.[72] The provision of representation by CASAs - ***24** who typically only handle one case at a time, are motivated, and well-trained - has been found by some researchers to be effective, especially in the tasks of investigation and monitoring.[73] However, such positive reports should be tempered by significant concerns regarding the ability of CASAs to effectively participate in "courtroom activities."[74]

While it may seem that those states that provide attorneys to all children involved in child protection proceedings are fully complying with their obligations under CAPTA, a closer examination reveals otherwise. Many states that provide attorneys as representatives fail to provide a sufficient amount of resources to the appointment of these legal representatives.[75] The result of this deficiency in funding is inadequately trained lawyers[76] who are either poorly paid,[77] forced to ***25** handle voluminous caseloads,[78] or both.[79] Consequently, attorneys appointed to represent children in child protection proceedings are often unable to spend the time necessary to adequately investigate cases, develop relationships with their child clients, monitor court orders, and generally perform their responsibilities in an ethical and competent manner.[80]

*26 2. Lack of Guidance[81]

Compounding the lack of adequate support for representation is the fact that representatives face great confusion over the nature of their role in child protection proceedings.[82] Over the years, various commentators have attempted to define the role of the representative with respect to attorneys representing children.[83] No clear consensus, however, has prevailed, and the impact of this confusion on the quality of representation is a source of enormous concern.[84] In sum, advocates have had very little guidance in determining what their roles and responsibilities should be, creating a situation of haphazard representation.[85] This section details the sources of some of the confusion.

*27 a. Confusion in State Statutes

With relatively no direction provided by the language or legislative history of CAPTA,[86] each state developed its own (and in many regards idiosyncratic) model of practice.[87] In fact, the current state of affairs can best be described as nothing short of "chaotic."[88] This disarray can be attributed to each state's unique customs and "politics,"[89] fiscal concerns,[90] "confusion in terminology,"[91] differences in the state's definitions of the representatives' roles and responsibilities,[92] and great discrepancies between statutory mandates and what occurs in reality.[93] ***28** The last factor may be due to differing interpretations of state mandates by counties, other localities, courts, or individual representatives, or by a combination of some or all of these factors.[94]

b. Unhelpful Ethical Rules

A likely place for children's representatives to turn for direction, at least for those representatives who are lawyers, is to the legal profession's ethical regulations. However, a strong consensus of academics and practitioners agree that these rules provide little, if any, assistance.[95] The ABA's Model Rules of Professional Conduct, which have been adopted in whole or in part in most states, are almost entirely ***29** concerned with the representation of adult clients.[96] The one rule which specifically addresses the concerns of representing children, or others with "impaired decision making capabilities," Model Rule 1.14,[97] provides little guidance on the question of when a client should be deemed to be "impaired" ("unimpaired" children are generally subject to the same rules as competent adults) and what role should be taken by the representative once

this determination is made.[98]

In treating the client's status as a minority as a form of disability, Model Rule 1.14 is a continuation of the approach taken by Ethical Consideration 7-12 of the ABA's Model Code of Professional Responsibility, the predecessor set of ethical rules.[99] Model Rule 1.14 ***30** emphasizes the need for an attorney to "as far as reasonably possible, maintain a normal client-lawyer relationship."[100] Only when the client is found to be unable to act in his own interest may the attorney "seek the appointment of a guardian or take other protective action."[101] However, Model Rule 1.14 and its accompanying comments provide very little guidance as to when an attorney should take such "protective action" (i.e., find a client to be "impaired") and what process an attorney should adopt to make this determination.[102] Additionally, once a client is found to be "impaired," Model Rule 1.14 fails to explain how an attorney should decide what "protective action" to take.[103]

c. Disagreement Within Scholarly Literature

The scholarly literature also provides little guidance to assist lawyers in clarifying what role they should play when representing a child client.[104] Among scholars, the determination of what role a legal ***31** representative for a child should play has evolved into a vigorous, and often heated, debate over whether the legal representative should represent the child's best interests or advocate for the child's wishes as an attorney would do when representing an adult.[105] Under the best interests approach, the child's wishes are usually one among many factors that the attorney would consider in determining what is best for the child.[106] Whereas, under the traditional attorney model, the legal ***32** representative attempts to represent the child in a manner similar to that of an adult client, with the same ethical obligations that representatives have when representing adult clients.[107] Accordingly, directions concerning the objectives of the representation and significant decisions are left up to the child client, as they would be with an adult client.[108] ***33** Additionally, as with an adult client, the attorney must preserve confidences, keep the child informed, maintain undivided loyalty to the child, and conduct himself in accordance with the norms of competent representation.[109] As the debate has evolved, a consensus of scholars and practitioners has expressed a preference for the traditional attorney model.[110]

Nevertheless, neither approach is without problems, and neither works well for children of all ages.[111] It is difficult, if not impossible, to represent the wishes of a child who is too young to communicate verbally.[112] Likewise, it is extremely hard not to advocate for the wishes of a teenager who certainly is mature enough to have a voice and an opinion on important matters in his life.[113] For these reasons, there are few scholars who steadfastly and rigidly adhere to one approach or the other. In sum, the discussion often boils down to the questions of when is a child capable of directing the objectives of the representation, ***34** and what role the attorney should play for the child who lacks this capacity.[114] The remainder of this paper primarily focuses on this latter issue.

III. Concerns Regarding the Representation of Young Children and Proposals to Eliminate or Limit such Representation

A. Concerns About the "Best Interests" Approach - Unfettered Discretion and the Possibility of Attorney Bias

The "best interests" model has been the approach predominantly relied upon by attorneys when representing young children.[115] Yet, many have expressed concern about legal representatives who represent a child's best interests according to what the attorney deems best (often and inevitably based upon the legal representative's values and life experiences, albeit unwittingly at times) and the haphazard representation that ensues. At the Fordham Conference in 1995, the participants determined that "lawyers for children currently exercise too much discretion in making decisions on behalf of their clients."[116] They were concerned that this discretion could lead to situations where two different, equally well-intentioned, legal representatives, in nearly identical situations, might advocate for different, even contradictory, results.[117] While the conferees were concerned about the representation ***35** of children of all ages, they were most concerned about young children, especially those who are not yet verbal. With regard to these children, the conferees felt that because the children were so young, and therefore had only a limited range and number of life experiences, there was very little about the child's life that could be useful in advising the lawyer as to the child's goals and objectives.[118] The situation is only made more difficult by the fact that there are few, if any, helpful professional norms or standards that a legal representative can look to for guidance in determining what would be in the best interests of a particular child.[119]

One might ask what is so alarming about well-meaning attorneys making decisions on behalf of children who have come before the juvenile court because the family that was supposed to love, protect, and care for them has failed in its responsibility in some way. The answer is complex, but essentially can be reduced to two related worries, both of which emphasize a serious concern that the decisions being made are biased and do not reflect the children's lives. First, there is unease caused by the fact that these determinations are beyond the scope of a legal representative's expertise and therefore may require attorneys to make decisions that they are not well-suited to make.[120] Second, there is concern that the determinations that legal representatives are making may not be what is best for the children.[121] Very few lawyers have had any significant training in law school, or elsewhere, on how to represent a child client.[122] Nor have they had training in representing clients from cultural and socioeconomic backgrounds that are different from their own.[123] Lessons in child development; child psychology; recognizing, ***36** understanding, and working with clients from different racial, ethnic, and class backgrounds; and interviewing, counseling, and interacting with a child client are seldom, if ever, a central part of law school curricula, nor are they often, if ever, a legislatively mandated prerequisite for being appointed as a legal representative for a child.[124]

The inevitable result is that many lawyers are likely to arrive at decisions and advocate for positions on behalf of their child clients that are invariably based on what they believe to be best, based on the only value system they know, their own. Not only is there a significant chance that these decisions and ensuing positions may be against the best interests of the individual child, who is likely of a different race, ethnicity, and/or class than the legal representative,[125] but it also leads to a system where the position taken by a child's attorney may largely be based, not on what would be best for the individual child with unique needs and values, but rather on the arbitrary chance of who was appointed to represent the particular child.[126]

Additional concerns about legal representatives who undertake the best interests approach center around the fact that the role of the child in the process is often minimized.[127] At worst, it has led to situations where representatives do not even deem it necessary to meet with their child clients.[128] More frequently, it has led to a greatly reduced role for ***37** the child, such that the child's wishes are not made known to the court and the child has very little, if any, understanding of the court process, his role in it, and what it means to his life.[129]

In sum, there has been widespread dissatisfaction with a best interests approach that, to a large degree, leaves the determination of what is best for their child clients to the discretion of the legal representatives. Inadequate resources, time, training, and awareness of developmental and cultural differences have served only to increase this discontent and to cause growing and serious concerns about both the lack of uniformity in role and potential bias in decision-making. While these concerns have caused many students of child advocacy to favor an approach where legal representatives act as much as possible as traditional counsel in accordance with standard ethical norms, this clearly does not solve the problem for all children, either because of diminished capacity or prevailing state statutes that call for a best interests approach to be taken.

B. Recent Proposals Addressing the Role of the Attorney for Young Children

Considering the serious concerns about the role of legal representatives for young children, the quality of representation in general, and the limited resources available for social and judicial services for children and families, it is not surprising that some child advocacy scholars have taken to rethinking issues regarding the appropriate role of legal representatives for young children and, in fact, whether an attorney is even appropriate and/or necessary. The most prominent and vocal of these scholars is Professor Martin Guggenheim, whose writings over the past fifteen years, most notably over the last four, have focused on the dual questions of whether and when representation is needed for young children in child protection proceedings.[130] Specifically, Professor Guggenheim has opined that lawyers for young children are not needed or, at the very least, lawyers ***38** should not advocate for any position in these proceedings.[131] Professor Emily Buss also has recommended that legal representatives of young children decline to take positions, although she clearly finds attorneys necessary and enunciates an alternative role for them - that of "educators" and enforcers of "statutory fidelit[ies]."[132]

1. Professor Guggenheim's Paradigm

Professor Guggenheim proposes that the proper analysis for ascertaining the role of the attorney for a young child involves an assessment of the intended scope and purpose of the representation.[133] He begins his analysis by explaining how the role of

counsel for adults is based on the "central principle" of "individual autonomy."[124] In other words, "[u]nimpaired adults have the inherent power to make all the important decisions concerning their lives."[125] Therefore, consistent with a lawyer's ethical code, "lawyers for adults are obliged to 'abide by the client's decisions concerning the objectives of representation' and to use their skill to achieve the objectives sought by the client."[126]

Professor Guggenheim then contrasts the inherent power of adults with the limitations on young children's ability to exercise power and, therefore, to assert their rights to autonomy.[127] Because of these differences, he concludes that the law "treats children differently than adults in many ways," and, as a result, the role of counsel may be different.[128] Because he finds the right of autonomy to be at the heart of an adult's right to direct the representation, Professor Guggenheim asserts that the same analysis must be applied to the determination of the appropriate role of counsel for children. One must determine "whether law or policy empowers, or refuses to empower children with a prominent role in deciding their own future."[129]

***39** In discussing the autonomy rights of children, Professor Guggenheim distinguishes between inherent autonomy rights and autonomy rights based upon the law of a particular subject area.[130] With respect to the inherent autonomy rights of children, Professor Guggenheim looks to the Model Rules of Professional Conduct and concludes that if a child can be found to be "unimpaired," as defined by the Model Rules, then, like an adult, he presumably is of a sufficient state of mind to make decisions and determine the objectives of his case.[131] Although Professor Guggenheim specifically states that it is beyond the scope of his examination to address the question of how a child is determined to be "impaired,"[132] he defines young children as "children so young that they cannot articulate their preferences to counsel (e.g., newborns to children ages two or three) and children who, though old enough to communicate, would be considered to be 'impaired,' within the meaning of Rule 1.14 of the Model Rules of Professional Conduct."[133] Significantly, Professor Guggenheim also recommends that attorneys err on the side of finding children impaired.[134] Professor Guggenheim's views on the issue are perhaps most apparent when one looks to the AAML standards for custody and visitation proceedings, which he coauthored. ***40** Under these standards, a child is presumed to be impaired until the age of twelve.[135]

If a child is found to be impaired, and therefore not to have any inherent autonomy rights, then a lawyer must "examine the relevant legislation and case law in the particular subject area."[136] If these legal sources confer autonomy rights on the child, then the lawyer must let the child direct the representation.[137] If not, the lawyer must limit her representation to advancing the child's rights "as the legislature and case law have articulated them."[138]

As an example of a circumstance where a child would be found to have autonomy rights based upon substantive law, Professor Guggenheim describes the hypothetical situation of an eleven-year-old girl seeking permission from a judge to terminate her pregnancy.[139] The prevailing law in the jurisdiction described by Professor Guggenheim states that a minor must have the written consent of one of her parents or an adult family member, or a judicial waiver, in order to undergo an abortion.[140] A judge must grant such a waiver if the minor is found to be "'mature and well-informed enough to make the abortion decision on her own' or if the judge finds that the abortion is in [the minor's] best interests."[141] In this situation, Professor Guggenheim believes that whether the child is found to be unimpaired or impaired, a lawyer representing the child must zealously advocate for what the child ***41** wants.[142] He arrives at this conclusion because he finds that the child in this situation is "empowered" to set the objectives of her case "because she possesses a substantive constitutional right to do so."[143]

Professor Guggenheim distinguishes this situation from a child's rights in the adjudicatory phase of a child protection proceeding, where he finds the proceeding to "have virtually nothing to do with empowering children."[144] He, therefore, concludes that the appropriate role of a lawyer for an impaired child "throughout the fact-finding stage of a child protective proceeding is to attempt, in the most objective way, to aggressively enforce the law as it was written by the legislature and interpreted by the courts."[145] According to Professor Guggenheim, if lawyers for young children take any position at adjudicatory hearings, they "should insist that children not be removed from the parents' custody until a court has determined, based on reliable evidence, that there are statutory grounds for removal."[146] Given this limited role, he ultimately concludes that, in many cases, lawyers for young children are not needed at all.[147]

Whether Professor Guggenheim advocates for the complete removal of the attorney from the court process, or merely a limited role, is ***42** ambiguous. Professor Guggenheim was perhaps clearest in his views on the appropriate role for counsel in 1984, when he directed attorneys "not [to] participate in any aspect of a neglect proceeding until the child has been judicially declared to be neglected."[148] In 1996, Professor Guggenheim did not directly suggest that lawyers should not

participate. Instead, he proposed that their role be limited to that of "law enforcers."[159] However, because he focused only on the adjudicatory phase, he emphasized the need to enforce the law that states that children should not be removed from their parents' care until the parents have been found to be unfit.[160] In 1998, Professor Guggenheim once again advised attorneys to refuse to take any position, but also stated that at adjudicatory hearings, "[o]nce attorneys [for children] stop advocating an outcome," the functions they serve "could just as effectively [be] safeguard[ed]" by the judge and the other parties in the matter.[161] Whatever his exact recommendation may be, Professor Guggenheim clearly advocates for substantially limiting the role of the attorney. In all phases of a child protection proceeding, he would limit the role of the attorney for young children to, at most, ensuring that statutory mandates are enforced. At adjudicatory hearings, his preference appears to be to eliminate the role of the attorney for young children.[162]

*43 2. Professor Buss' Recommendations

Professor Emily Buss shares Professor Guggenheim's concerns about the potential influence of attorney bias in determining what is best for their young child clients.[163] She also has concerns about the ability of children, with the exception of older children, to meaningfully participate in attorney-client relationships in accordance with a more traditional attorney model. She therefore recommends that attorneys for children be prohibited from taking any positions in litigation until the children are developmentally capable of understanding the nature of the proceedings and the significance of their role as decision-maker.[164] Until such time, Professor Buss proposes modifying the traditional attorney model.[165] She advocates for attorneys to adopt a "teaching *44 approach" as educators[166] and protectors of "statutory fidelit[ies]."[167]

The overall focus of Professor Buss' analysis is not on whether or how young children should be represented, but on the questions of whether and when children are able to be empowered.[168] In answering these questions, Professor Buss finds it necessary to look to developmental literature that considers children's socio-cognitive functioning and development.[169] This literature leads Professor Buss to the conclusion that, until children are capable of understanding their sense of themselves and their sense of themselves in relation to others, they will not be able to be empowered.[170]

Professor Buss acknowledges that empowerment is not the only goal of attorney-child client relationships, but she explains that her concerns about children's abilities to be empowered extend to all of the other reasons why legal representatives would seek to engage in traditional attorney-client relationships with their child clients.[171] Specifically, she *45 states that "[d]isentangling the empowerment goal from other justifications for the traditional attorney model, we discover that the same socio-cognitive sources of confusion can undermine these other justifications as well."[172]

Professor Buss understandably is reluctant to cite to an exact point in time when children might attain this developmental capacity.[173] Nonetheless, she ultimately concludes that it likely would not occur before children reach "late childhood," a period of time that, for her, corresponds to the ages of ten to twelve.[174] Moreover, Professor Buss notes that children who are abused or neglected, or who have been forced to grow up in other stressful environments, may not develop this requisite capacity until even later.[175] In sum, what is pertinent to the inquiry of whether children need representation is that Professor Buss recommends that lawyers refrain from taking any positions in the litigation and limit their role to ensuring statutory fidelities until their child clients are able to understand the nature and impact of their influence, a point in time that likely would not occur until the child reaches the age of ten or twelve, if not later.

IV. Response to Proposals Calling for the Reduction in the Scope of Representation for Young Children

While attempts to reduce discretion and bias in the representation of young children are extremely important and laudable, limiting the role of attorney to ensuring statutory fidelities or enforcing statutory mandates will not substantially accomplish these goals because much discretion remains in the determination of when a child is impaired and the meaning and implementation of statutory fidelities or statutory mandates.

A. Substantial Discretion Remains in the Determination of Whether a Child is Able to Direct the Objectives of the Representation

Before a decision can be made as to whether an attorney should assume the role of a traditional attorney or limit her role to

enforcer of statutory mandates or statutory fidelities, the attorney must, as discussed above, first decide whether or not a child is capable of directing the objectives of the representation and participating in an attorney-client relationship. Professors Buss and Guggenheim attempt to offer some ***46** guidance on this question. Professor Buss provides an analysis of the necessary developmental thresholds. Professor Guggenheim offers that attorneys should err on the side of finding a child to be impaired. In the end, both suggest that many children will reach significant developmental hurdles between the ages of ten to twelve.[176]

Yet, what is important to highlight is that in making the determination of when a child is sufficiently mature, an extraordinary amount of discretion still remains with the legal representative. For example, Professor Guggenheim claims to be proposing a methodology for all impaired children. Yet, for all but the youngest of these young children (e.g., newborns to ages two or three), there may be a question of whether they are actually impaired. It is highly possible that in the representation of Andrew and Brenda one conscientious lawyer might find the children to be unimpaired, while an equally well-meaning attorney might reach the opposite conclusion. Professor Buss, in an earlier work, examines the likelihood of this occurring:

> [E]ach lawyer will bring her own predilections to bear--predilections about children's needs and abilities, about the legal process, and about the lawyer's place in the process. And it is these predilections, rather than the Rule itself, that will determine what model of representation the lawyer will assume. A lawyer predisposed to depart from the normal client-lawyer relationship in the representation of children will conclude that the differences in children's developmental and life experience make such a relationship impossible. A lawyer predisposed, on the other hand, to maintain the normal client-lawyer relationship in her representation of children will conclude that, despite some differences in children's development and experience, the relationship can nevertheless reasonably be maintained.[177]

The outcome of this exercise of discretion will have a tremendous impact on every aspect of the lawyering that follows. In the case of Andrew and Brenda, it is not likely that either Professor Guggenheim or Professor Buss would find Andrew and Brenda able to maintain a traditional attorney-client relationship. However, considering their ages and their potential maturity levels, it is highly plausible that other scholars and practitioners might disagree.[178] In particular, it may have ***47** significant consequences on the positions advocated by the attorneys for the children, including positions affecting where the children will be placed and what services will be provided to the children and to their mother. For example, if their attorney finds them to be sufficiently mature, she would advocate at the shelter care hearing for the children's desire to be placed with Ms. Jones pending the adjudicatory hearing. In doing so, she would inform the court of Ms. Jones' presence, her bond with the children, her availability and suitability to care for the children, at least temporarily, and the children's wishes to be placed with her.

On the other hand, if the legal representative finds the children to be too young, Professors Guggenheim and Buss would have the attorney limit her representation to enforcing statutory mandates or statutory fidelities. Depending on how one defines statutory mandates or statutory fidelities, and what a lawyer is permitted to do with respect to enforcing such mandates, this difference may prove substantial.[179] If the legal representative does not interpret statutory mandates to allow or require a placement with Ms. Jones, then the lawyer would be silent on this issue, which likely would result in the children remaining separated and in foster care. Statutes, especially at this early stage, seldom direct or provide guidance as to how determinations of where children should be placed are made. At most, they might identify the types of placements that could be considered.[180] Hence, the discretion exercised in making the decision about when children are too young to direct their ***48** representation can have enormous implications on the lives of the children in child protection proceedings.[181]

This brief hypothetical circumstance also illustrates how difficult it is to define what constitutes a statutory mandate and what is the appropriate role for the lawyers in enforcing these mandates. It is to this discussion that we now turn our attention.

B. Enforcing "Statutory Mandates" or "Statutory Fidelities" Requires the Exercise of Discretion

Under Professor Guggenheim's analysis, if the lawyer for the young child determines that her child client is impaired, then the attorney must define her role and responsibilities by the legal interests that are mandated by statute or case law, and the only appropriate role for the lawyer of an impaired child is to "aggressively enforce the law as it was written by the legislature and interpreted by the courts."[182] Professor Buss argues that representatives for young children should "limit [their] advocacy to ensuring statutory fidelities."[183] It is not clear to this writer whether these two recommendations are the same, or

what exactly they mean. However, assuming they are similar, two concerns exist, both of which limit the likelihood that discretion and bias will be substantially reduced. First, it will be difficult to identify the relevant legal interests. ***49** These interests are not always clear and may even be subject to multiple and conflicting interpretations.[184] Second, even if the interests can be identified, it is not possible to ensure that these interests can be enforced without advocating for a position and therefore exercising a substantial degree of discretion.

Studying Professor Guggenheim's framework illustrates the difficulty, if not impossibility, of determining the legal interests of a child in a child protection proceeding. For example, in his analysis of the adjudicatory phase of a child protection proceeding, Professor Guggenheim posits that there are two possible interpretations of a child's legal interests.[185] First, he states that one could "say that children have a right to live with their parents unless a court finds the parents unfit."[186] Second, he explains that children also could be found to "have the right to be separated from their parents whenever their parents are actually unfit."[187] Although he acknowledges that there is "much force to this alternative definition,"[188] Professor Guggenheim does not find these competing conceptions of a child's legal interests to be equally compelling. In fact, he disposes of the second interpretation by stating that "the law prefers nonintervention and presumes that children are best off remaining in their parents' custody without coercive assistance."[189] Yet, some might arrive at the opposite conclusion, while others would find a conflict between two "clearly defined legal rights" of a child.[190] Clearly, there is confusion over what ***50** constitutes a child's legal interests and rights at an adjudicatory hearing, or, if multiple rights are identified, how the differing interests should be "prioritized" or resolved if in conflict.[191]

Assume for the moment that Andrew and Brenda have been determined to be too young to direct the representation and that their legal representative is concerned for their safety if they are returned to the care of their mother. How should the attorney proceed at the adjudicatory hearing?[192] In other words, which legal interests should prevail? Should the lawyer assert the children's right to remain with their mother unless the state can prove unfitness, or should the attorney assert the children's right to be free from harm? The approach of Andrew and Brenda's legal representative will be different depending on how she interprets their legal interests. If the attorney focuses on the children's right to be with their mother, she will seek to ensure that the state is forced to prove its case, that all of their mother's defenses are appropriately and aggressively raised, and that the strong bond between Andrew and Brenda and their mother is highlighted. On the other hand, if the legal representative's emphasis is on protecting Andrew and Brenda from harm, she will be concerned with whether the facts supporting her concerns regarding past, current, and future harm are made known to the court by the state child welfare agency. Clearly, there is tremendous discretion in determining what constitutes the children's legal interests at the adjudicatory stage.

When one moves to phases other than the adjudicatory stage, the number of potential legal interests at stake only increases. Thus, a situation is created where it is either more difficult to determine what interests should prevail,[193] or where the predominant interest is the best interests of the children and it is difficult to determine what is best.[194]

***51** For example, at a disposition hearing, where the focus is on "planning for the child[ren] and the future of the family,"[195] the court must make determinations as to what services are required by the family, where the children should be placed, what the legal status of the children should be, and what should be the plan for the future.[196] The prevailing standard that the court must use in making all of these decisions is the best interests of the children.[197] Moreover, the goal, unless formally changed by the court,[198] is to reunify the family if the children are placed out of the care of the parents, or to maintain the family structure if they have not been removed.[199] However, under the Adoptions and Safe Families Act of 1997 ("ASFA"), if children are placed out of the care of their parents, child welfare agencies are permitted, and even encouraged, to pursue "concurrent planning," a policy whereby the agency simultaneously makes efforts to reunify the family and to develop an alternative permanency plan if reunification is unsuccessful.[200] Once again, multiple legal interests are at stake, especially for the children who now not only continue to have the right to be free of harm, but also to have their needs met by the state if they are placed out of the care of their parents. This includes the need for a permanent placement if attempts at reunification fail and, regardless of where they are placed, to have the state provide services to them and their families to address the cause of maltreatment.

***52** Again, an examination of Andrew and Brenda's situation illustrates these varying and numerous interests. At a disposition hearing, a legal representative of Andrew and Brenda who concludes that the children have a legal interest in being returned to the custody of their mother, likely would focus on the responsibility of the child welfare agency to make "reasonable efforts" to reunify the family and the probability that such efforts, if made in a prompt and appropriate manner,

would be successful.[261] However, an attorney who has found that reunification would not be in the children's best interests likely would not emphasize the "reasonable efforts" requirement and might even assert that it should not be required in this instance. Even if "reasonable efforts" were found to be required, a representative who has come to the conclusion that the best long-term placement for the children is with Ms. Jones, or at the very least not with their mother, would stress that under the ASFA, a parent only has twelve months to make efforts at reunification.[262] Likewise, she would carefully monitor the situation so that, at the first possible moment, she could alert the court that it is time for the permanency plan to be reviewed. Moreover, she would continuously stress to the court the importance of the agency licensing Ms. Jones and/or investigating the out-of-state relatives as to their interest in caring for Andrew and Brenda.

Even if the determination of what legal interests are at stake is clear, it is difficult to envision how one ensures that all of these relevant interests are addressed by the court without the attorney taking or advocating for a position in some way.[263] In other words, how does an attorney play a "watchdog" role without entering into some advocacy-type role where one position is favored over another? By the very nature of what the attorney chooses to call to the judge's attention, the attorney likely is emphasizing a particular point of view. Moreover, it is unclear whether this new role requires the lawyer to conduct a factual investigation. If not, it will be difficult for the attorney to know on what interest and issue the court should be focusing. To the extent that it is appropriate or necessary for a lawyer to conduct a factual investigation, however, it is difficult to comprehend how a lawyer could not help but get involved in advocating for a position.

***53** In sum, not only is it difficult to determine when a child should be deemed too young to direct the representation, but what legal interests or statutory mandates are involved and how they should be enforced also are seldom clear. Hence, any attorney of a young child who seeks to enforce such mandates will be forced to use substantial discretion in interpreting whether a child is impaired, which legal interests are present, and what will be required to satisfy those interests in a given proceeding.

V. Why Children Need Representation

Even if the proposals made by Professors Guggenheim and Buss are found to reduce discretion and bias on the part of legal representatives of young children in child protection proceedings, which I do not believe they do to a significant degree, they should not be followed because, in my view, there are compelling reasons why the representation of young children should not be curtailed or eliminated. Examining why such representation is needed, as this Part does, is not only an important inquiry in its own right, but also aids in our understanding of why their recommendations may be potentially harmful to the young children who are the subjects of child protection proceedings.

A. The Presiding Judge Cannot Adequately Protect the Children's Interests

Professor Guggenheim asserts that young children's interests in child protection proceedings can be adequately represented by either of the other two parties (i.e., the parent(s) and the child welfare agency) in the proceeding or, alternatively, by the presiding judge.[264] In theory, this is conceivable, as the stated charge of the child welfare agency is to ensure that children are protected. In addition, the overriding role of the state, primarily through the court system, is to act in accordance with its obligations as parens patriae.[265] In practice, however, this is not ***54** possible.[266] As one commentator has noted, "[a] judge cannot simultaneously act as an advocate for the child and as an impartial arbiter in the case. Nor can a judge independently investigate the circumstances of a case in order to assist in identifying the child's interests."[267]

Although the prevailing standard, in most phases of child protection proceedings, is the "best interests" of the child,[268] without a representative for the child, a judge will be forced to make this incredibly difficult and important determination with little, if any, knowledge of the child's perspective[269] and without all of the necessary information.[270] For example, a judge cannot visit with the child out of court in a setting that may be more comfortable and natural for the child. Likewise, a judge is unable to conduct any out of court interviews with persons who may be able to provide important information about the child's life experiences and the circumstances that brought the case to the court's attention. In fact, the only way that a judge can hear from such persons as family members, teachers, or therapists is to subpoena them to court and force them to testify in front of many persons, including attorneys, parents, social workers, and, potentially, the children. Unfortunately, information obtained in this manner likely will be different than if the inquiries were made in a more private setting.[271]

Moreover, because a judge would not have had the opportunity to develop the case factually, she might not even know which persons are necessary to subpoena. For example, in the case of Andrew and *55 Brenda, without a representative for the children, a judge might not have become aware of the existence of Ms. Jones, especially early in the proceeding. Nor would the judge necessarily have learned of the extent of the children's medical and educational needs.[212] As stated above, the child welfare agency social worker would have been precluded from discussing Ms. Jones with the judge. It also is questionable whether either the child welfare agency or the children's mother would have been inclined to highlight the needs of the children. While most parents wish for all of their children's medical and educational needs to be met, many parents in child protection proceedings may be hesitant or afraid to openly discuss the needs of their children, as doing so might cause them to publicly air their own perceived failures as parents.[213] Also, disclosure may be against the parents' own interests. Moreover, if the agency, through its representatives, displays openly that it is aware of the children's needs, then it becomes incumbent upon the agency to use its limited resources to provide services to meet those needs.

In sum, a judge is dependent on information being brought to her. Although she certainly has some mechanisms at her disposal to augment the amount of information she receives, and thus to better her understanding of a case, such efforts are inevitably limited.[214] In actuality, the customary, if not only, persons that a judge will hear from are the child welfare agency social worker and one or both of the parents.[215] As will be seen below, however, the interests of both of these parties often do not coincide with those of the child. Consequently, without the input and participation of the child, through a representative, the court will miss critical information.[216] Thus, even the most conscientious and well-trained judge[217] would be unable to make fully informed determinations that are in the best interests of the children.[218]

*56 B. Interests of Children May Differ From All Other Parties

Numerous scholars and commentators have concluded that the interests of the parents and the state do not necessarily coincide with those of the child.[219] In fact, there are many times where neither the interests of the parents nor the state are synonymous with those of the child.

1. Conflict Between Interests of Children and Parents

"One does not have to work in family court very long to learn that in countless circumstances a juvenile's rights and interests . . . are at sharp variance with those of his parents."[220] The very fact that allegations of child abuse or neglect are being brought against a parent places the parent and child in a situation where their interests are potentially, if not actually, in conflict.[221] Even if a parent did not intentionally mistreat her child, once she is alleged to have harmed her child, it cannot be assumed that the parent will act (at least at the court hearing) in a way that is consistent with the well-being of her child. At that point, the parents' interests almost certainly will conflict, to some extent, with those of the child.

2. Conflict Between Interests of Child and Child Welfare Agency

Perhaps less obvious than the interests of the parents and children being in conflict[222] is the situation where the interests of the children *57 and the child welfare agency are in conflict. As was discussed above, state child welfare agencies are plagued with "budgetary constraints, large caseloads, public pressures, political loyalties, and bureaucratic inertia."[223] Moreover, the ability to obtain federal funding for certain activities and services, but not others, creates "perverse incentive[s] to state child services agencies."[224] For example, the provision of a steady stream of income and stable housing may be required to reunify a family and truly advance a child's best interests.[225] Yet, federal funding "for state administered foster care programs [is] readily available, [but not] funding for job training and housing programs and the jobs and homes themselves . . . ."[226] All of these factors not only diminish the ability of these agencies to adequately represent the children's interests, but they create a situation where the agencies may be taking positions primarily based on institutional considerations and not on the needs of individual children.[227]

*58 For example, in the case of Andrew and Brenda, such institutional factors may prevent the agency from adequately representing the children and ensuring that the needs of the children are met. Regardless of where Andrew and Brenda are temporarily placed, there almost surely will be a need for them and their mother to receive multiple services from the state child welfare agency.[228] In addition to medical and mental health services for the children, their mother likely needs substance

abuse treatment, as well as some support and guidance in advocating for Andrew's educational needs. There may be a need for the family to be assisted by the child welfare agency in securing their current housing arrangement or, if this is not possible, in obtaining alternative housing. For the reasons discussed above, it is not likely that the child welfare agency on its own would bring the need for all of these services to the attention of the court.[229]

Even if the child welfare agencies were adequately and appropriately staffed and funded, they likely still would not be able to fully represent the interests of the children. State child welfare agencies would continue to be bound by internal policies that, inevitably, could not meet the unique and individual needs of each child who is forced to interact with them. Studies conducted to determine the appropriate and optimal child welfare policies have proven that it is extremely difficult to establish policies that will meet the needs of all children.[230] Yet, in order to have a well functioning agency, such policies are essential.[231] ***59** Hence, it is necessary to have a representative appointed for the child whose sole responsibility is to learn the unique needs and goals of each child and to ensure that these needs and goals are advocated for and addressed as part of the proceedings.

The placement issues concerning Andrew and Brenda are a good example of this dilemma. One could argue that, rather than require representation for all children, it would be more cost effective and efficient to change the administrative policy concerning non-relative placements. However, this policy is just one of many that might not coincide with Andrew and Brenda's individual needs. It is impossible to anticipate the needs of all of the children forced to interact with our child welfare system and, in turn, to formulate policies that will appropriately address all of those needs. Consequently, representatives are necessary to identify all such needs, to advocate for appropriate and adequate remedies, and to challenge existing policies if necessary.

Finally, at a systemic level, representatives also are needed to keep pressure on the child welfare bureaucracies, which, like most bureaucracies, are not always able to respond to their clients because they are perpetually in need of additional funds and, as a result, are continuously being forced to streamline and curtail services.[232] Even if the child welfare agencies were to receive renewed and augmented funding today, without ongoing pressure from advocates for the children, one cannot assume that the funding would go directly toward addressing the needs of the children and their families, nor that the funding would remain at this increased level over the long-term.

Some might ask why the judge, the ultimate arbiter of the child's best interests, could not monitor the actions of the other parties and ensure that the children's legal interests are protected and their needs addressed. As explained above, however, the judge is not in a position to independently and adequately investigate the matter and, thus, cannot assess whether the children's interests are being met or appropriately represented by the other parties in the proceeding.[233]

Given the differing, and often conflicting, interests of the parties involved in a child protection proceeding, it is critical for each young child to have an independent representative, someone whose sole charge ***60** is to learn and then advocate for the child's needs and goals. Without such an advocate, the child risks being harmed by the very process and parties that are supposed to protect him and ensure that his best interests are being promoted.[234] Professor Ramsey powerfully articulates the multiple ways that a child who is the subject of a child protection proceeding can be harmed.

First, there is the possibility that the gravity of the child's situation may not be realized, adequate protection will not be provided, and the child's parents will seriously injure or even kill him. Second, the child runs the risk of being harmed by too much intervention. The child's family life can be disrupted or even destroyed by coercive state action. Finally, the child runs the risk of being neglected by the state once the state has taken jurisdiction over him.[235]

Clearly, in any given child protection proceeding, numerous possible solutions can be generated, and the need for a careful and comprehensive analysis underlies most decisions that must be made. In such a setting, the child's interests and position will "easily differ" from those of the other parties, and the child's interests will seldom be protected by one of the other parties.[236]

VI. A Better Model for Reducing Bias and Discretion

Recognizing that the interests of young children cannot be sufficiently protected by the presiding judge, nor adequately advanced by one of the other parties in the proceeding, the need for someone to be appointed to identify, understand, and

advocate for the interests of young children becomes apparent. Considering the current state of legal representation, whether there should be a requirement that representation be provided by lawyers is somewhat less clear. The serious nature of child protection proceedings, the substantial interests at stake for the children, the difficult decisions that must be made, and the forum in which these decisions are determined point to the conclusion that the interests of young children would be most adequately advanced and protected if a lawyer is appointed. Yet, at the same time, the legitimate concerns articulated by Professor Guggenheim, Professor Buss, and others about haphazard, underfunded, ***61** and biased representation offer grounds to question a requirement that all young children be provided with legal representation.

The final two parts of this paper will set forth several suggestions addressing these concerns. This part discusses why representation by lawyers is preferable and necessary. Further, this part examines an approach requiring legal representation of all children, which aims to address the concerns regarding haphazard and biased representation by developing a deep understanding of the children's lives and experiences. Part VII, acknowledging the history of insufficient support for providing adequate representation to children and the likelihood that the resources necessary to support the recommendations in Part VI are not going to be available in most jurisdictions in the foreseeable future, proposes several modest recommendations. Two pertain to enhancements in the policies of our child welfare agencies and in the responsibilities of our juvenile court judges. Both of these alterations could help the juvenile courts and child welfare agencies focus more on the needs of the children. A third tentatively suggests that alternative models of representation for young children be studied that might be able to provide more cost effective and principled representation of young children than currently is taking place. While the recommendations in Part VII would not ensure the caliber of representation that is discussed in Part VI, and that I think is necessary to adequately protect and advance the needs and interests of young children, they would enhance our child protection system and, in turn, help protect the interests of young children in these proceedings.

A. Competent Attorneys as the Preferred Type of Representation

A consensus of the participants of the Fordham Conference, as well as numerous scholars, practitioners, and organizations, have expressed the need for children to be represented by attorneys.[207] The reasons emphasized in support of this need are significant. Among some of the considerations highlighted by the Working Group at the Fordham Conference were the inability "to ensure that the best result" will be reached for each and every particular child if a lawyer is not appointed, the importance of "redress[ing] the imbalance of power," and the need to "minimize the risk of harm to the child that flows from contact with the legal system."[208] Others concerned with children receiving legal ***62** representation have stressed notions of fairness and efficacy[209] and the unwillingness of some judges to listen to and take seriously the arguments expressed by lay advocates.[210] One commentator in particular has noted that "[t]he essence of the adversarial system is the idea that an equitable result is best reached through zealous and effective representation of all sides of an issue."[211] Finally, one child advocate emphasized the mediating effect that a legal representative for the child can have on the proceeding.[212] "Good lawyers for children can expedite the resolution of disputes, help minimize unnecessary contentiousness between the adult parties, [and] facilitate the settlement of contested issues . . . ."[213]

Clearly, there are important reasons why all children need to be represented and why this representation should be conducted by attorneys. However, the considerations leading to the conclusion that lawyers would provide the best type of representation presume that the lawyers being appointed are able to provide competent representation. As discussed earlier, many commentators question this assumption in the case of the legal representation of young children, largely due to the potential for unfettered discretion and bias. I already examined why the proposals limiting or eliminating representation for young children either would not substantially reduce discretion and bias or would leave children without a representative to protect and advance their needs and interests. However, if these proposals are not acceptable, what is?

*63 B. The Search for a Less Discretionary Model

The solution lies in our ongoing attempts to answer the question of how lawyers for young children can provide principled and unbiased representation to young children. Any model that is developed must give sufficient guidance and direction so that the representation is less arbitrary, less biased, and hopefully true to the children's lived experiences. Yet, it also must be flexible enough to encompass and reflect the unique needs and circumstances of each child client, leading to representation that is based on each child's perspective as it can be learned from the child and a contextualized, 'deep understanding' of his world.[214]

Any attempt to guide lawyers looking for a more principled and contextual model of representation must first recognize that efforts to develop a paradigm that will always lead to a conclusive determination of what is best for a young child will never succeed completely. It is virtually impossible to definitively determine what is best for a child, for doing so would require predictive capabilities that none of us possess.[245] As Professor Catherine Brooks has stated:

> *64 Knowing, advocating, and adopting the position which addresses the best interests of the child requires a prediction of the future of the child, the child's relationships within the family, and the parents' ability to meet the apparent and hidden needs of the child. All of those pieces which make up a "best interests" analysis cannot be known in any real way.[246]

Moreover, when considering what is best from the child's perspective, it is not clear from what standpoint of time this determination should be made.[247] In other words, should one look to what the child would want at the current time or at the time the child becomes an adult?[248]

It is equally difficult to eliminate all discretion on the part of attorneys.[249] Given the nature of the decisions that often must be made in the course of a child protection proceeding, it is inevitable that lawyers (and judges) will need to exercise some discretion.[250] As has been previously noted, "[d]eciding what is best for a child often poses a question no less ultimate than the purposes and values of life itself."[251] Such determinations could be "elaborated endlessly" and always will involve some discretion, subjectivity, and value judgments.[252]

1. Past Attempts to Offer Guidance

It is possible, however, to limit the amount of discretion and bias involved in the representation of young children[253] and to give guidance as to how to represent young children in a way that is as true as possible to their lives and backgrounds. Some commentators might argue that *65 these efforts already have been made and were ultimately unsuccessful.[254] Yet, a closer look reveals that those efforts were limited and insufficient. As explained above, most scholars have focused on the debate between the traditional attorney model, the best interests approach, and why one should be favored over the other.[255] Moreover, while many writers focused on how to represent young children, or children of any age, in accordance with a best interests approach, these writers tended to merely define the tasks for which a lawyer would be responsible.[256] Although this provided some guidance, it did not assist lawyers in understanding the lives and needs of their young child clients and ultimately what would be best for these young children.

Nonetheless, a few scholars in the past have proposed models that stressed the importance of determining the child's perspective in order to understand the needs and interests of the child, and they have attempted to give some guidance as to how one should proceed in identifying this perspective. These commentators looked to the doctrine of substituted judgment, an approach most often seen in the medical context, and attempted to apply it to the child protection setting.[257] The *66 doctrine of substituted judgment has been utilized for nearly two centuries as an approach by which a court determines decisions for a person who is incapacitated and not able to make decisions for himself.[258]

To determine the intent of a young child, these scholars developed a tiered analysis. They first considered the best source of information to be the child himself and they recommended learning as much as one could from the child.[259] If this was not possible or only led to a limited understanding, then they next suggested that the attorney attempt to learn as much as possible from people involved in the child's life who know the child well.[260] Finally, they recommended that the attorney either look to what others who were in a similar situation as the child wish had been advocated or to what a reasonable child in the client's position would want.[261] In order to determine the latter, these commentators suggested looking to the types of things that a child would value.[262]

*67 Although the substituted judgment approach focused the representative's thinking on the importance of the child's perspective, this model is lacking in the amount of guidance it provides on how to determine the child's perspective. Because of the difficulty in identifying the interests of young children, these scholars tended to ultimately rely on a type of "reasonable child" test, an approach that does not adequately consider the unique and individual realities of each child client's world.[263] Hence, while the substituted judgment model provides some help in guiding the lawyer to more principled or child-centered representation, it still leaves room for too much discretion and the need for a better way to focus the

representation on the unique and individual interests of each child.

2. Paradigm Proposed by Professor Jean Koh Peters

Professor Jean Koh Peters has developed a model of representation that I believe helps us to do this. Her model calls for attorneys to represent the "child-in-context."[261] Professor Peters' approach to lawyering is the most thoughtful and comprehensive model to date on how to provide principled representation to all children, and especially young children.[262] Specifically, she proposes a new model that

attempts to reframe the duality between wishes and best interests representation into a paradigm that unites representation of all children along the age spectrum around the idea of the child-in-context . . . .

In essence, the concept of the child-in-context is the child understood on her own terms in ways that she would be able to understand and endorse.[266]

As part of her new paradigm, Professor Peters advocates for maximizing the participation of the client wherever and however possible.[267] Also, she provides detailed guidance on how to proceed if ***68** the child's ability to participate is limited or if a representative is mandated by state statute to represent the child's best interests.[268]

In representing children too young to fully participate, Professor Peters is very concerned with making certain that all aspects of the representation, including actions that attorneys might take as well as the decisions or positions for which attorneys might advocate, remain true to the children's realities and perspectives.[269] Professor Peters ***69** explicitly states that she is "rejecting and replacing"[270] the GAL model and, accordingly, the best interests approach that permits lawyers to determine what is best primarily based on the discretion of the attorney.[271] Rather, she outlines how attorneys can advocate on behalf of a child based "on a full, efficient, and speedy factual investigation that leads the lawyer to a deep understanding of the child's family system, her history, and her daily life."[272]

In sum, Professor Peters' approach substantially reduces the presence of the attorney's own biases and predilections and provides guidance for how a lawyer can more faithfully identify the interests of the child from the context of the child's life. In doing so, she preserves the critical role of the attorney as advocate, while reducing bias. However, our search for a less discretionary approach to the representation of young children must not end here.

*70 C. Concerns with Professor Peters' Approach - The Need To Go Further

1. The Need to Recognize Differences

There exists a great need to study how Professor Peters' model can be built upon to more explicitly acknowledge and account for the fact that the lives of these child clients are likely to be vastly different from those of their representatives, especially in terms of race, ethnicity, and socioeconomic status.[273] Although Professor Peters' paradigm emphasizes the importance of understanding the child's life, which would include a recognition that the child's experiences, background, and culture may be different from that of the lawyer, she does not explicitly discuss the difficulty on the part of an attorney to fully understand the child's world, particularly how differences in race, ethnicity, and class might impact the child's experiences, including how the child experiences the attorney-child client relationship.[274] Such a recognition of differences has enormous ramifications for all aspects of the lawyering process, including, but not limited to, the attorney-child client relationships that develop, the activities that the lawyer undertakes, and the best interests determinations that the lawyer ***71** makes.[275] These implications rarely have been studied in the context of the attorney-child client relationship.[276]

As was documented above, a disproportionate number of children who enter the child protection system are poor and of color.[277] Moreover, a large majority of the attorneys appointed to represent these children are white and from middle to upper-middle class backgrounds.[278] Scholars in a variety of disciplines, as well as policy-makers, already have begun exploring how race and class impact our child welfare policies and programs.[279] Yet, we have spent little time ***72** studying how these cultural and socioeconomic differences affect the development of our attorney-child client relationships and the lawyering

that ensues, especially how we determine what to advocate for on behalf of our young child clients.[280] Only with a sound understanding of how lawyers should attempt to recognize these differences will we be able to limit attorney discretion to the greatest extent possible, better understand the lives of our child clients, and therefore be in the best position to determine what is in a child's best interests free of our own biases and more consistent with the lived experiences and realities of the young children who we are representing.[281]

Racism pervades every segment of our society and every aspect of a person of color's life experiences, from small to large.[282] For example, Professor Peggy Davis discusses the infinite number of "microaggressions" that a person of color must sustain on a daily basis.[283] Moreover, white persons also are influenced by their own ***73** attitudes and society's attitudes, both conscious and unconscious, toward race.[284] Professor Charles Lawrence explains:

> Americans share a common historical and cultural heritage in which racism has played and still plays a dominant role. Because of this shared experience, we also inevitably share many ideas, attitudes, and beliefs that attach significance to an individual's race and induce negative feelings and opinions about nonwhites.[285]

In other words, it is impossible for people to not have strong perceptions and attitudes about race based upon their own race and background.[286]

The ramifications of living in poverty have been found to be equally devastating and subordinating. Not only are the economic conditions extremely difficult, but persons forced to live in poverty are far more likely to suffer from the ill-effects of poor educational systems, deficient or non-existent health care, inadequate housing or homelessness, hunger, social isolation, police brutality, environmental health hazards, racial discrimination, high crime rates, and substance abuse addiction.[287] How these stressors impact a person's perspective obviously will vary with each person and each situation. Yet, it is apparent that any one of these circumstances, and especially a combination of them, has the capacity to alter one's life in a myriad of ways.

One of the few studies to even look at these issues in the context of child protection proceedings and the attorney-child client relationship found that, when black children were represented by black attorneys, or when white children were represented by white attorneys, the odds that the children would be removed from their home were reduced substantially.[288] The researchers believe that one explanation for this occurrence may "lie in the fact that race remains a substantial social and ***74** communicative barrier and consequently, where no barrier exists among attorney, client, and parents, greater degrees of empathy and cooperation may help to avoid a drastic custodial disposition such as removal."[289]

2. The Applicability of the Theoretics of Practice Movement

Further support for the need to specifically acknowledge and recognize the impact of differences in race, ethnicity, and class on one's lawyering and relationships with clients can be found in a relatively new and developing scholarly literature known as the "theoretics of practice" movement.[290] This new body of literature has begun to apply critical race theory and multi-disciplinary knowledge concerning power, subordination, and marginalization to the study of lawyering.[291] The significance of this literature is its concern regarding prevailing practices of lawyering for "lower income persons"[292] and persons from disadvantaged backgrounds, and its focus on the need to "situate their work in the lives and in the communities of the [clients]."[293] One of the primary goals of this approach to lawyering is the empowerment of the client through the relationship that the attorney and client develop together and the collaborative lawyering efforts in which they work together.[294] "Rebellious lawyers" emphasize the need to work with, not ***75** for, their clients and to constantly be aware of how the dynamics of power shape every aspect of the clients' lives and experiences.[295]

In sum, the theoretics of practice movement aims to critique and improve the attorney-client relationship and the performance of attorneys who work with lower income adult clients by studying how preconceived and unconscious beliefs based on differences in culture and background impact the ability to competently lawyer.[296] For example, one legal scholar looked to social science research and concluded the following:

> Cultural differences may have several effects. They can lead to misunderstandings between counselor and client. They can interfere with the establishment of rapport and trust between counselor and client. Cultural differences may also alienate the client from the source of help. Additionally, if the counselor is

> unaware of cultural differences, the counselor may incorrectly analyze an interaction with the client. Moreover, the counselor may fail to fully appreciate that his/her role is dynamic and impacts on any given interaction with the client.[297]

Another declared that it is necessary to take gender, race, and class into consideration in order to answer the following questions:

> [H]ow are lawyers to understand the 'individual makeup of each client?' How are we to learn 'who she 'really' is?' How are we to establish a 'counseling dialogue?' How are we to 'help clients resolve *76 problems?' How are we to assign 'maximum value' to client decision making? Finally, how is a client to 'hear' what we have to say and 'see' what we have to show?[298]

While the significant issues presented by the age and maturity levels of child clients, as well as the context of child protection proceedings, may have enormous implications for the relevance of this literature to attorney-child client relationships, it does not follow that this literature is irrelevant and unimportant to child advocates. For example, it is an inescapable fact that race is a factor in Andrew and Brenda's lives and in the life of their attorney.[299] It will affect Andrew and Brenda's understanding of and relationship with their attorney, as well as with court officials, child welfare agency personnel, and everyone else who takes part in child protection proceedings.[300] Similarly, race will impact the lawyer's understanding of Andrew and Brenda, her interactions with them, and her ability to communicate with Andrew, Brenda, Ms. Jones, and any other family or community member. Ultimately, what happens between Andrew and Brenda and their lawyer may have both subtle and profound effects on the lives of Andrew and Brenda. Not only will it likely impact the decision made by the lawyer on behalf of Andrew and Brenda, but it will tremendously affect Andrew and Brenda's willingness and ability, both now and in the future, to participate in the proceedings, work with their lawyer, and understand what is occurring.[301]

*77 Professor William Kell has begun to focus on the very important question of how the theoretics of practice movement can inform and aid child advocates.[302] His application, however, is limited to exploring how this literature can guide child advocates in overcoming differences in age.[303] Absent from his analysis is an examination of how differences in race, class, and ethnicity may impact lawyering for children. Yet, knowledge of lawyering for adults of different backgrounds stresses that such an understanding is essential, particularly considering that such differences factor into lawyering activities and the attorney-child client relationships that develop. Consequently, there is a great need for scholars and practitioners, in a variety of disciplines, to begin to broach these questions.

Our ability to understand our child clients' lives and communities, as Professor Peters calls upon us to do, depends on our ability to open ourselves up, to listen, to question when we do not understand, and to recognize that there is not one ideal norm, but rather that differences exist.[304] An analysis of exactly how these principles and approaches are incorporated into our lawyering is beyond the scope of this article. Clearly, there is a great need for more in-depth exploration of why and how differences in race, ethnicity, and class impact our lawyering for children and how we might improve our representation based on our awareness of these differences. Unless we take the time to develop this deeper understanding, our lawyering will be lacking and our assessments of what is best for our young child clients might still be based on our own value systems rather than on a contextual understanding of their lives.

*78 VII. Some Alternative and More Feasible Recommendations

Given that the requisite support for the improvement of lawyering for children has not been forthcoming and is not likely to increase in the foreseeable future,[305] it is important to consider less costly alternatives that can immediately aid in ensuring that children receive adequate representation and that the unique needs and interests of each child is and remains the focus of the proceeding. With the exception of my last recommendation in Section D, which is limited to the representation of young children, the following suggestions concern children of all ages who are involved in child protection proceedings. As I stated above, however, none of these suggestions, either individually or taken together, would protect the interests of young children to the same degree as would a legal representative following the model proposed in Part VI.[306]

A. Training

This article has focused on concerns related to discretion and bias in the representation of children and has discussed ways to reduce such bias and discretion in that representation. The concerns regarding discretion and bias, however, are not limited to lawyers for young children. Judges, representatives of the child welfare agencies, and parents' attorneys also are not immune from bias and operate with discretion.[307] Thus, there is a serious need for mandatory, higher quality, and more comprehensive education of all professionals involved in the child protection system (i.e., representatives for the children, attorneys for the other parties, judges, and caseworkers).[308] Training is a relatively inexpensive undertaking, a proposal that is supported by numerous persons and entities,[309] and, perhaps most ***79** importantly, an activity that has demonstrated significant results.[310] Consequently, the inclusion of more exhaustive and ongoing educational programs should be an important part of any reform package.

Such an educational program would need to not only focus on issues concerning child abuse and neglect, confidentiality, child protection systems, child development, and family systems, but also emphasize the significance of differences in race, class, and culture, and discuss how lawyers and other representatives can work with children and families from different backgrounds.[311] Disciplines other than law have created comprehensive training regimens based on the need for cultural competency.[312] Some concentrations have even gone so far as to integrate cross-cultural training into their general curriculum.[313] While ***80** we must be mindful of differences in approach and purpose, this likely is a good starting place. In sum, I wish to strenuously emphasize the need for thoughtful, comprehensive, and mandatory training programs for all participants in the child protective system.

B. Proposed Changes in State Laws and/or Child Welfare Agency Policies

In addition to the need for increased training, state regulations or child welfare policies should be amended to reflect supplemental requirements on the part of child welfare agency representatives.[314] These proposed mandates would require all non-attorney representatives of child welfare agencies, otherwise known as caseworkers, to express to the court all services and placements which the caseworker believes are necessary and in the best interests of the children and families who are the subject of these proceedings even when agency policy conflicts with the provision of such services or placements.[315] Moreover, when a shortage of resources prevents the child welfare agency from providing what would be in the children's best interests, the caseworker must make this information known to the court as well.[316]

***81** Reviewing the circumstances of Andrew and Brenda helps to illustrate the importance of this new requirement. For example, under my proposed plan, a caseworker assigned to assist Andrew, Brenda, and their mother would be required to alert the court of the existence of Ms. Jones and the suitability of Ms. Jones as a temporary caregiver, despite the agency policy prohibiting placement of children with unlicensed caregivers who are not blood-relatives. Likewise, the caseworker would have to make known to the court the fact that Andrew and Brenda's mother needed drug rehabilitation services even if the child welfare agency was not able to provide the services because of a shortage of appropriate resources.

Whether the above-described alteration in policy will be able to overcome the strong force of internal pressure that caseworkers experience to streamline services and follow agency procedures and policies is unclear; however, it may set a different tone and, hopefully, will result in some caseworkers informing the court when the agency is not able to make decisions or provide services that are consistent with the best interests of the children and their families. In addition, it may inspire some caseworkers, especially those who are relatively new to their positions, to avoid accepting as inevitable certain resource constraints and policies that may negatively impact some children and families. My hope is that this change in policy will encourage caseworkers to be responsible to both the agency and the children and families that have been assigned to them for assistance.[317]

Of course, this new reporting requirement will not guarantee an increase in services and resources for children and families. Judges who become aware of problems or deficiencies will not necessarily order the needed changes, and, even if they do, there is no certainty that the orders will be followed.[318] While my ultimate objective is to be more responsive to the needs of children and families, I understand that, given the serious and long-standing deficiencies that exist in all of the structures that make up our child protection system, additional reporting will not change the system immediately. It is, however, my hope that by mandating caseworkers to report the needs of children and families ***82** notwithstanding shortcomings in policies or resources, all parties, especially our child welfare agencies and juvenile court judges, will become more aware of the limits of our child protection system, be required to confront these issues, and hopefully respond appropriately.[319]

C. Additional Responsibilities of Juvenile Court Judges

My proposal with respect to child welfare agencies likely will have a greater impact when combined with additional responsibilities I propose being placed on juvenile court judges. In addition to increased training, I recommend the development of questionnaires that juvenile court judges would be required to complete at each hearing that occurs in the course of a child protection proceeding. The enactment of such a requirement could be in the form of an advisory or directive from a state's judicial association. Alternatively, and more formally, the requirement could take the form of a legislative amendment to the statute, regulations, or court rules that govern a state's or county's child protection proceedings.

Different questionnaires would need to be developed for each stage of a child protection proceeding. At a minimum, however, questioning at each hearing would cover the issues of where the children are placed, the needs of the children and families, and the services that are being provided to address these needs. The questions also would be tailored to the different phases of a child protection proceeding. For example, at a disposition hearing, in addition to the above issues, a judge would be required to inquire about the need for assessments, such as specific medical and/or psychological evaluations. In addition, if the children have been removed from the care of their parents, and the plan has not been changed from one of reunification, a judge would have to obtain a description of the efforts being made to achieve reunification, including the frequency of visitation between parents and their children and between siblings (if not placed together), and the provision of necessary ***83** ameliorative services to address the cause and effects of the maltreatment.

These questionnaires may be a more formal version of the process some judges already follow in practice. It certainly is what most, if not all, juvenile court judges would want to do if they had the time. However, my own experience, as well as a more general assessment of the current functioning of the juvenile courts, unfortunately indicates that our juvenile court systems are generally forced to rush through child protection proceedings, allotting only a few minutes for each hearing.[128] By requiring judges to seek out this more detailed information at every hearing, I hope to put them in a much better position to more systematically and thoroughly monitor and review the welfare of the children that appear before them and, where appropriate, intervene to protect the children.

A concern about this recommendation is that judges currently do not have the time to devote to in-depth questioning and investigation and, therefore, implementation of this requirement would require greatly increased resources. While this is a valid point in the short term, it is likely that the need for additional judicial resources will lessen over time. Once all of the parties become accustomed to the fact that such questions will be asked by the judge at each hearing, they will begin to gather such information as part of their hearing preparation and practices. Thus, the time it takes for the court to collect and record the information will diminish.

Hopefully, the court's insistence on receiving this information will encourage all of the parties to think comprehensively about the needs of the children and their families and, in turn, the necessity of developing programs and practices to better address the identified needs. When weighed against the fact that this additional requirement likely will increase the probability that the child welfare agencies and the courts will be more responsive to the needs of the children and their families, any minimal increase in resources needed to enable the juvenile court judges to implement this recommendation is not significant.

D. An Alternative Model to Consider for Representing Young Children

My final thoughts have the potential to improve the quality of representation that some young children currently receive, but is not one that I make without a great deal of trepidation. Yet, if a commitment to ***84** dedicate the resources necessary to improve and augment legal representation provided to children is not supported, then inadequate, haphazard, and biased representation likely will persist. In this instance, it would be worth studying whether some form of a CASA program might provide an alternative model for the representation of young children that can ensure that these children are represented adequately and in a less biased manner. In particular, we need to focus on the degree of involvement needed by lawyers, the effectiveness of CASAs, especially in the courtroom, and the ability to recruit a sufficient number of CASAs.[131] Whether any CASA model would ever be capable of providing adequate representation to all young children is unclear. However, in some circumstances, it would appear that such a system might be preferred over the status quo. Yet, without additional information and study, it is impossible to know. Therefore, this final recommendation only calls for additional study.

As was briefly mentioned above, a CASA is a trained, volunteer, lay advocate.[322] Programs that recruit, train, and coordinate the provision of representation by CASAs exist in every state.[323] Some CASA programs are configured so that a CASA is paired with an attorney representative, while in other programs, the CASA volunteer may be on his own or loosely supervised by an attorney.[324] Under any type of ***85** CASA model, the typical caseload of a CASA consists of children from no more than three families, and often a CASA is only responsible for one child or one sibling group at a time.[325] The training of CASAs, their responsibilities, and the point at which they are appointed in a child protection proceeding vary from jurisdiction to jurisdiction.[326] However, all CASA programs provide training.[327] In most programs, this training consists of instruction on the roles and responsibilities of the CASA, confidentiality, child abuse/neglect, permanency planning, the hearing process, the investigation of cases, the interrelationships between various agencies, child development, and cultural awareness.[328] Moreover, most programs mandate that a CASA spend a certain amount of time per week with the children for whom they have been appointed as advocate and that they make a commitment to remain involved with the children and/or with the case for a significant period of time.[329]

The strengths of the CASA programs can be found in the commitment and dedication of the volunteers, the extensive training that CASA programs provide, and the fact that each volunteer pledges to devote a significant amount of time to his work with the children.[330] It is these factors, among others, that put CASAs in the unique position of being able to get to know the children that are assigned to them and of learning about and understanding their lives and needs. Some relatively recent studies on the effectiveness of representation for children in child ***86** protection proceedings suggest that CASAs are able to provide adequate representation.[331] In fact, one study found that "compared to attorneys, the CASA models were clearly superior."[332]

Despite this support, several significant concerns exist. First, it is unclear from the studies that have been conducted to date whether CASAs alone are providing the representation, or if they are working with another representative who may be an attorney. Where the CASAs clearly are functioning as the sole representative, it is unclear if the CASAs are supervised by attorneys or other experienced advocates, and, if so, the degree of the supervisors' involvement.[333] For example, one report declared that trained lay advocates, law students, and trained attorneys performed substantially similar as child advocates, and that all of these types of representatives performed better than untrained attorneys.[334] In actuality, the CASAs that were studied worked under the supervision of an experienced, trained attorney and the supervising attorney "appeared in approximately sixty-five percent of the hearings . . . [and handled all] cases that went to contested adjudication."[335]

Secondly, and related to the previous concern, representation of young children by CASAs alone still leaves us with the question of whether lay advocates will be able to master the legal knowledge, advocacy skills, and expertise necessary to adequately protect the interests of young children, and whether children represented by CASAs will be able to be respected and treated as an equal party by the ***87** judge and other parties in the proceeding.[336] These concerns are supported by at least one study that looked at the different tasks that representatives are called upon to do and concluded that CASAs did not perform very effectively in those tasks involving negotiation and "courtroom activities."[337]

Finally, a question remains as to whether there would ever be an adequate number of dedicated volunteers if a jurisdiction were to expand its use of CASAs, or substitute CASAs for some attorneys. This concern becomes even greater when one considers the time and emotional commitment required of CASAs. It also may be a more serious concern in large, urban settings with high child protection dockets. Most studies of the effectiveness of representation for children involved in child protection proceedings fail to address this concern, and those few that do note that it is "sometimes difficult to recruit volunteers."[338]

Having reviewed the reported strengths and weaknesses of CASA programs, it appears that CASAs are strongest when they receive the training and have the time necessary to appreciate the importance of gaining a deep understanding of the lives and backgrounds of the children they are representing. However, CASAs are lacking in their ability to communicate the interests and needs of the children in the courtroom and other adversarial settings (i.e., pre-trial negotiations) that are part of child protection proceedings. Therefore, it may be worth studying whether we can recruit and appropriately train a sufficient number of CASAs and how CASAs and lawyers can work together so that we maximize the reported strengths of CASAs and use lawyers to help support them where they are weak.

A few commentators before me have suggested models that combine representation by lay advocates and attorneys. Recently, Professor Appell argued that the best model of representation for young children is one where the attorney would represent a

specially trained and well-supported lay advocate instead of the child.[238] Moreover, in 1990, Mr. Davidson maintained that the best model of representation is "both a ***88** lawyer and a CASA."[239] While there is some merit to the suggestion that all children in child protection proceedings should be appointed both lay advocates and attorneys, it is unlikely that legislatures across the country will do so. Convincing states to not only secure counsel for all children, but also well-trained lay advocates, who may even be compensated for their time, like the model proposed in Part VI, presents serious resource issues. Moreover, if such resources are available, a model such as the one described in Part VI likely would be preferable.

Perhaps another combined model worthy of consideration is one where CASAs provide the majority of the representation of young children, but are supported by child advocacy law offices, which are staffed by one or more trained and experienced attorneys.[240] It would not be the duty of the staff of these law offices to serve the representational needs of all children. Rather, these offices would: 1) represent a few children in individual child protection matters, most likely those which are contested, legally complicated, or concern a novel or significant legal issue; 2) assist CASAs, generally, by providing legal information and support; 3) monitor the overall operation of the child protection system; and 4) advocate for positive systemic change. Not only would this structure provide legal assistance to CASAs and legal representation for those children embroiled in difficult child protection proceedings, but the structure also would enable experienced child advocates to obtain a first-hand and ongoing understanding of the problems in the system while still allowing them to have the time to press for systemic change.

Whether this model of dual representation or any other approach other than the one outlined above in Part VI will be able to provide adequate representation to young children remains unclear. Where a jurisdiction currently does not provide any legal representation to children and also does not provide any attorney supervision to its CASA program, the system clearly would be an improvement and should be ***89** considered. Moreover, in those jurisdictions where attorneys are unable to provide competent representation due to a lack of support, it also may be worthwhile to explore alternative models. Those models that combine the strengths of CASAs and the strengths of attorneys may come closest to a more affordable model that provides representation that is both adequate and less biased. Yet, given all of the concerns articulated above about any wide-scale reliance on CASAs and the significance of the changes proposed, a careful and thorough period of study is all that should be taken at this time.[241]

VIII. Conclusion

Professor Guggenheim may be correct in asserting that we have entered "Phase Three" of the overall study of the role of counsel for children in child protection proceedings.[242] However, his characterization of the focus of this new phase is mistaken. Rather than exhausting any further energy on the questions of whether and when children should be appointed representatives, we need to keep our focus on how to best provide such representation.

I hope that the preceding analysis demonstrates why young children involved in child protection proceedings need representation and why any movement to eliminate or lessen such representation will only subject already vulnerable children to great risk of harm. Yet, what unfortunately also is evident is that the representation with which all children have been provided to date has been woefully inadequate. Not only because it has been insufficiently supported, but because representatives have lacked guidance as to their roles and responsibilities. Consequently, representatives, especially representatives of young children, have advocated positions that were not reflective of the lives and experiences of the children, but rather, were reflective of the values and views of the representatives.

The question then becomes how can we provide better representation. Professor Jean Koh Peters' model, which calls for a contextual approach to representation, has taken us several steps forward. Further recognition of differences between the representatives and children in ***90** terms of race, ethnicity, and class, and how these differences impact our representation and the relationships we develop with our child clients will move us even closer to a less biased and more principled form of representation that leads to a solid and deep understanding of the lives of our child clients.

Unfortunately, although I believe it is critical for these children to receive this kind of representation, I also understand that it is not likely to occur given the unwillingness to dedicate resources necessary to provide such representation. I hope that the necessary support will one day soon be provided. Yet, until this occurs, it is worth studying whether less costly alternatives exist which might be able to provide more effective representation that is true to the individual needs of the children and their families. My suggestions in Part VII are aimed at furthering this discussion. However, I must conclude by reemphasizing my

main point. The legal interests of all abused and neglected children will best be protected and advanced by well-supported and well-trained lawyers for all children - lawyers who have the time, understanding, and commitment to provide representation that is faithful to the lives of their child clients.

Footnotes

a1 Visiting Clinical Professor of Law and Acting Director, Child Advocacy Center, The State University of New Jersey, Rutgers University - Newark, School of Law. LL.M. Georgetown University Law Center 1994; J.D. The American University, Washington College of the Law 1988; B.A. Brandeis University 1985. This paper primarily was written while I was an Associate Clinical Professor at the University of California, Hastings College of the Law. I wish to thank Kathy Hessler, Shauna Marshall, and Laura Rovner for their unending encouragement and support, and Mark Aaronson, Kate Bloch, Joshua Davis, Justine Dunlap, Peter Edelman, Bea Moulton, Ascanio Piomelli, Michael Wald, and Kelly Weisberg for their invaluable suggestions and advice. Patricia Brown, Michelle Dicks, Lisa Kearns, David Kiernan, Kristine Kim, and Michelle Miller provided excellent research assistance. The library support rendered by Linda Weir and Carolyn Kinkaid at Hastings College of the Law was essential. Finally, without the continual nurturance, guidance, assistance, and love bestowed upon me by my life partner, David Giles, this paper would not have been possible.

1 Howard A. Davidson, Foreword to Ann M. Haralambie, The Child's Attorney: A Guide to Representing Children in Custody, Adoption, and Protection Cases at xi (1993); see also Robert E. Shepherd, Jr. & Sharon S. England, I Know the Child Is My Client, But Who Am I?, 64 Fordham L. Rev. 1917, 1923 (1996) (referencing Davidson's Foreword in Haralambie, supra, and expressing frustration with their perception that "the nation continues to be ambivalent regarding the provision of quality legal representation to children").

2 See Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (codified at 42 U.S.C. §§ 5101-5107 (1994 and West Supp. 2000)). Throughout this paper, the term "child protection proceeding" will be used to refer to the entire set of hearings that occur in juvenile court pursuant to the filing of a petition, usually by a child welfare agency, alleging child abuse and/or neglect. Typically, a child protection proceeding will consist of four types of hearings. However, depending on what transpires, all may not occur in any given proceeding. While each jurisdiction may give the hearings different names and may structure the child protection proceeding differently, each proceeding usually is comprised of an emergency removal or shelter care hearing, an adjudicatory or fact-finding hearing, a disposition hearing, and any number of review hearings. An emergency removal or shelter care hearing typically is held to determine whether it is safe for the children to remain in the care of their parent(s) pending a more complete determination of whether the children have been abused and/or neglected and what is in their best interests. It is at the adjudicatory hearing that a full evidentiary proceeding occurs and a decision as to whether the children were abused and/or neglected is made. In other words, findings are made as to whether the facts, as portrayed in the petition alleging child abuse and/or neglect, can be proven and whether the statutory definitions of abuse and/or neglect have been met. If a finding of child abuse and/or neglect is made at the adjudicatory hearing, the case proceeds to a disposition hearing. At times, the adjudicatory and disposition hearings may be held simultaneously, or at least on the same day. A disposition hearing is the part of the proceeding where the court renders decisions as to where the children should be placed and what services are needed by the family. These decisions are made in accordance with the children's best interests. See Karen Aileen Howze, Making Differences Work: Cultural Context in Abuse and Neglect Practice For Judges and Attorneys 38-39 (1996). Moreover, the court will make determinations as to the legal status of the children and what are the short- and long-term goals for the children and the family. All of these plans and orders are then periodically reviewed by the court. See id. Such review hearings are mandated by federal law and must occur no less than once every twelve months. See 45 C.F.R. § 1356.21(b)(2)(i) (2000); 45 C.F.R. § 1355.20 (2000). As the proceeding progresses, the court must address and focus on issues concerning the children's need for permanency. See Howze, supra, at 38-39.

3 42 U.S.C.A. § 5106(a)(2)(A)(ix) (West Supp. 2000). The initial objectives of CAPTA were to provide federal financial assistance for the "identif[ication], prevent[ion], and treat[ment]" of child abuse and neglect, primarily through demonstration projects, and to create a National Center for Child Abuse and Neglect. S. Rep. No. 104-117, at 4 (1995), reprinted in 1996 U.S.C.C.A.N. 3490, 3493. Three states, California, Indiana, and Pennsylvania, do not receive CAPTA funds because these states allow the child to be represented by the same attorney who represents the child welfare agency. See Jennifer Walter, Averting Revictimization of Children, 1 J. Ctr. For Children & Courts 45, 47, 59 nn.26-27 (1999).

4 A Court Appointed Special Advocate ("CASA") is a volunteer lay advocate who has received specialized training and made certain time commitments. For a more in-depth analysis of the development of CASA programs throughout the country, and a more complete description on the role of the CASA, see Laurie K. Adams, CASA: A Child's Voice in Court, 29 Creighton L. Rev.

1467 (1996), and Rebecca H. Heartz, Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness, 27 Fam. L.Q. 327 (1993). See also infra notes 72-74, 322-38 and accompanying text (discussing the role of CASA volunteers).

5 CAPTA Amendments of 1996, Sec. 107, § 107(b)(2)(A)(ix)(I)-(II), Pub. L. No. 104-235, 110 Stat. 3063, 3073-74 (1996) (codified as amended at 42 U.S.C.A. § 5106a(b)(2)(A)(ix)(I)-(II) (West Supp. 2000)).

6 The corresponding regulations, both past and current, provide little additional guidance as to the role and purpose of the GAL. The original regulations stated that the GAL's responsibilities include "representing the rights, interests, welfare, and well-being of the child." See Heartz, supra note 4, at 331. The current regulations simply state that "[in] every case involving an abused or neglected child which results in a judicial proceeding, the State must ensure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child." 45 C.F.R. § 1340.14(g) (1999); see also Heartz, supra note 4, at 330-31 (maintaining that CAPTA "did not offer guidance about what the qualifications... or... duties" of the GAL should be); Sarah H. Ramsey, Representation of the Child in Protection Proceedings: The Determination of Decision-Making Capacity, 17 Fam. L.Q. 287, 289 (1983) (concluding that CAPTA never made it clear what role the child's representative was supposed to play). A look at the legislative history of CAPTA does not offer much additional guidance. A brief summary is provided by Rebecca Heartz:

The original version of the law passed by the Senate contained no mention of the need for independent legal representation of the child. It was not until subsequent committee hearings that this issue was addressed in testimony given by Brian Fraser, then staff attorney for the National Center for Prevention of Child Abuse and Neglect. It was Fraser who played the primary role in the inclusion of the guardian ad litem requirement in the final law. Fraser had previously authored an article on the role of guardians ad litem, which broadly defined their duties to include both legal and nonlegal activities. Fraser's view of the guardian ad litem was as a "special guardian" legally obligated to do everything within his power to insure a judgment that is in the child's best interests, including acting as investigator, advocate, counsel, and guardian.

Heartz, supra note 4, at 331 (citations omitted). From a historical standpoint, Professors Robert Kelly and Sarah Ramsey attribute the enactment of this statutory provision to the following factors: a heightened awareness of the issue of child abuse and neglect, especially the harms that can occur to children, the children's rights movement, which had developed in the 1960s, and the Supreme Court's decision in In re Gault, 387 U.S. 1 (1967), concluding that children in delinquency matters have a right to counsel. See Robert Kelly & Sarah Ramsey, Do Attorneys for Children in Protection Proceedings Make a Difference?--A Study of the Impact of Representation Under Conditions of High Judicial Intervention, 21 J. Fam. L. 405, 409-411 (1983).

7 Model Rules of Professional Conduct Rule 1.14 (1992). See infra note 97 for the text of the Model Rule.

8 For exhaustive lists of some of the many articles and papers on the representation of children published in the last twenty-five years, see Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions 711 app. D.2 (1997); Ann M. Haralambie, The Role of the Child's Attorney in Protecting the Child Throughout the Litigation Process, 71 N.D. L. Rev. 939, 941 n.11 (1995); Peter Margulies, The Lawyer as Caregiver: Child Client's Competence in Context, 64 Fordham L. Rev. 1473, 1473 n.1 (1996).

Additionally, Volume 64, Number Four of the Fordham Law Review is devoted entirely to the recommendations, reports, articles, and responses that were generated from the Proceedings of the Conference on Ethical Issues in the Legal Representation of Children. This conference was sponsored not only by the Fordham Law Review but also by the Administration for Children, Youth and Families, U.S. Department of Health and Human Services; the ABA Center on Children and the Law, Young Lawyers Division; the ABA Center for Professional Responsibility; the ABA Section of Criminal Justice, Juvenile Justice Committee; the ABA Section of Family Law; the ABA Section of Individual Rights and Responsibilities; the ABA Section of Litigation, Task Force on Children; the ABA Steering Committee on the Unmet Legal Needs of Children; the Juvenile Law Center; the National Association of Counsel for Children; the National Center for Youth Law; the National Council of Juvenile and Family Court Judges; and the Stein Center for Ethics and Public Interest Law, Fordham University School of Law. See Special Issue, Ethical Issues in the Legal Representation of Children, 64 Fordham L. Rev. 1281 (1996) [[hereinafter Special Issue]. The conference was attended by "more than seventy lawyers, judges, legal scholars, and representatives of other professions" over a three-day period in December 1995. Bruce A. Green & Bernadine Dohrn, Foreword: Children and the Ethical Practice of Law, 64 Fordham L. Rev. 1281, 1283 (1996).

9 See, e.g., Linda Elrod et al., Representing Children Standards of Practice Committee, American Bar Association, Proposed Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, 29 Fam. L.Q. 375 (1995); Special Issue, supra note 8. The latter publication is the written documentation, including recommendations, working group reports, articles, and

responses, from the Proceedings of the Conference on Ethical Issues in the Legal Representation of Children at Fordham Law School from December 1-3, 1995. To review the recommendations or find more information about the conference, see Special Issue, supra note 8, at 1301-23.

10 See infra Part III.A. Unless otherwise noted, when I refer to "young" or "impaired" children, I mean those children unable to direct the objectives of representation. The questions of how one determines who is "young" and what is the appropriate role for attorneys for young children are the subject of much disagreement. The former question is beyond the scope of this paper. The latter will be discussed extensively below.

11 See generally Emily Buss, Confronting Developmental Barriers to the Empowerment of Child Clients, 84 Cornell L. Rev. 895 (1999) [hereinafter Buss, Developmental Barriers]; Martin Guggenheim, Matter of Ethics: Counseling Counsel for Children, 97 Mich. L. Rev. 1488 (1999) [hereinafter Guggenheim, Matter of Ethics] (reviewing Peters, supra note 8); Martin Guggenheim, A Paradigm for Determining the Role of Counsel for Children, 64 Fordham L. Rev. 1399 (1996) [hereinafter Guggenheim, Paradigm]; Martin Guggenheim, Reconsidering the Need for Counsel for Children in Custody, Visitation and Child Protection Proceedings, 29 Loy. U. Chi. L.J. 299 (1998) [hereinafter Guggenheim, Reconsidering the Need]; Martin Guggenheim, The Right to be Represented but Not Heard: Reflections on Legal Representation for Children, 59 N.Y.U. L. Rev. 76 (1984) [hereinafter Guggenheim, Reflections]. For further elaboration on the recommendations of Professors Guggenheim and Buss, see infra Part III.
It is important to note that Professor Buss never calls for the elimination of the role of the attorney for young children. She is primarily concerned with the questions of when and whether children can be empowered. Yet, in concluding that many children cannot be empowered, Professor Buss also voices her concern with the roles that representatives for young children play and accordingly recommends that these representatives be prohibited from taking positions in court proceedings. This paper will only address the latter concern.
Professor Guggenheim, who has voiced his concerns about the role of the attorney for young children since 1984, has, in recent years, devoted much attention to the topic, having written three times on the subject in the last four years and co-authored the American Academy of Matrimonial Lawyers' Representing Children: Standards for Attorneys and Guardians Ad Litem in Custody or Visitation Proceedings. See 13 J. Am. Acad. Matrim. L. 1 (1995) [[hereinafter AAML Standards]. These standards propose that "courts should not routinely assign counsel or guardians ad litem for children in custody or visitation proceedings," and that if a representative is appointed for a child under twelve, that representative should "not advocate a position with regard to the outcome of the proceeding or issues contested during litigation." Id. at 2, 19 (referencing Standards 1.1 and 2.7, respectively).
Both Professors Guggenheim and Buss have authored other works as well. Those writings, however, do not directly or indirectly address the question of whether children in child protection proceedings should be represented. See, e.g., Emily Buss, Getting Beyond Discrimination: A Regulatory Solution to the Problem of Fetal Hazards in the Workplace, 95 Yale L.J. 577 (1986); Emily Buss, Parents' Rights and Parents Wronged, 57 Ohio St. L.J. 431 (1996) [[hereinafter Buss, Parents' Rights]; Emily Buss, Too Young to be Rehabilitated? Comments on Lipsey's "Can Rehabilitative Programs Reduce the Recidivism of Juvenile Offenders?" 6 Va. J. Soc. Pol'y & L. 653 (1999); Emily Buss, What Does Frieda Yoder Believe?, 2 U. Pa. J. Const. L. 53 (1999); Emily Buss, "You're My What? The Problem of Children's Misperceptions of Their Lawyers' Roles, 64 Fordham L. Rev. 1699 (1996) [hereinafter Buss, Children's Misperceptions]; Martin Guggenheim, Considerations in Child Welfare Cases: Duties of the Law Guardian and the Parent's Attorney, 179 PLI/Crim 657 (1998); Martin Guggenheim, The Effects of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care--An Empirical Analysis in Two States, 29 Fam. L. Q. 121 (1995); Martin Guggenheim, Fee-Generating Clinics: Can We Bear the Costs?, 1 Clinical L. Rev. 677 (1995); Martin Guggenheim, The Foster Care Dilemma and What to Do About It: Is the Problem that Too Many Children are Entering Foster Care?, 2 U. Pa. J. Const. L. 141 (1999) [hereinafter Dilemma]; Martin Guggenheim, The Making of Standards for Representing Children in Custody and Visitation Proceedings: The Reporter's Perspective, 13 J. Am. Acad. Matrim. L. 35 (1995); Martin Guggenheim, Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials, 33 Wake Forest L. Rev. 553 (1998); Martin Guggenheim, State Intervention in the Family: Making a Federal Case Out of It, 45 Ohio St. L.J. 399 (1984); Martin Guggenheim, State-Supported Foster Care: The Interplay Between the Prohibition of Establishing Religion and the Free Exercise Rights of Parents and Children: Wilder v. Bernstein, 56 Brook. L. Rev. 603 (1990); Martin Guggenheim & Jeffrey Fagan, Preventive Detention and the Judicial Prediction of Dangerousness for Juveniles: A Natural Experiment, 86 J. Crim. L. & Criminology 415 (1996); Martin Guggenheim & Marc Miller, Pretrial Detention and Punishment, 75 Minn. L. Rev. 335 (1990).

12 Child Abuse Prevention, Adoption and Family Services Act of 1988, Pub. L. No. 100-294, § 104, 102 Stat. 102, 118 (1988). The U.S. Department of Health and Human Services' National Study of Guardian Ad Litem Representation (1990) [hereinafter National Study] and the Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardians Ad Litem (1993) [[hereinafter Final Report], discussed herein, are the embodiment of this Congressional directive. The National Study is viewed as Phase 1 and Appendix A of the Final Report (although it is bound separately). Both the National Study and the Final Report were conducted by CSR, a Washington, D.C. consulting firm.

13 See Shepherd & England, supra note 1, at 1923. These contemplated reductions in spending and eliminations of statutory mandates never came to pass due to disagreements between the House and Senate. See id. at 1923-24. However, the issue of whether to provide representation to children in child protection proceedings, especially representation by attorneys, is still an issue in many states. See infra notes 67-80 and accompanying text (describing how the states have not adequately met their obligation to provide appropriate representation); see also Cheryl Romo, In Court Alone, L.A. Daily Journal, Feb. 29, 2000, at 1 (quoting Adam B. Schiff, chair of the California State Senate Select Committee on Juvenile Justice as stating that providing legal representation to all children involved in child protection proceedings is a "tough sell" in the legislature and describing the public as not "convinced [that] kids need attorneys.").

14 While issues concerning custody and visitation occur in child protection proceedings, the reference here and throughout this article to custody and visitation matters refers to those cases where custody and/or visitation is in dispute, and where allegations of child abuse or neglect are not at issue, or at least are not central to the proceeding. A typical example is a divorce proceeding where there are conflicts over the custody of the children.

15 See AAML Standards, supra note 11; A.B.A. & Nat'l Council of Juv. & Fam. Ct. Judges, Principles for Appointment of Representatives for Children in Custody and Visitation Proceedings (1997) (cited in Guggenheim, Reconsidering the Need, supra note 11, at 302 n.10). For a contrary view of whether children in custody and visitation proceedings should be represented, see Patricia S. Curley & Gregg Herman, Representing the Best Interests of Children: The Wisconsin Experience,13 J. Am. Acad. Matrim. L. 123 (1995) (describing the practice in Wisconsin, one of only two states that mandates the legal representation of children in custody disputes, and calling for such mandatory representation in all states). See also Ann M. Haralambie & Deborah L. Glaser, Practical and Theoretical Problems with the AAML Standards for Representing "Impaired" Children, 13 J. Am. Acad. Matrim. L. 57 (1995)

16 By emphasizing that all children need legal representation, I do not mean to ignore the fact that other parties in child protection proceedings, especially the parents, also need representation. Rather, like children, parents need competent, well-supported, and committed legal representation as well.

17 See infra Part II.

18 See infra Part II.

19 See infra notes 28-37 and accompanying text.

20 See infra Part III.

21 See infra Parts IV, V & VI.

22 See infra Part IV.

23 See infra Part V.

24 See infra Part VI.

25 See id.

26 See infra Part VII.

27 See id.

28 The following fictionalized fact pattern is based upon a compilation of many cases in which I was appointed the child's legal representative. From March 1989 until May 1992, I was a staff attorney at the Child Advocacy Unit of the Legal Aid Bureau, Inc., in Baltimore, Maryland. As such, I represented hundreds of children in child protection proceedings. This hypothetical example is also intended to highlight some of the prevalent characteristics of abused or neglected children. Moreover, the story is told from the perspective of a white, middle-class attorney, as that is the only reliable account I could write. Throughout this narrative, as well as the entire article, I will use the terms "lawyer," "attorney," "counsel," and "legal representative" interchangeably to refer to a child's representative who is a member of a state bar. Where the term "representative" or "advocate" is used, it will refer to a representative for a child who may be an attorney or a lay advocate.

29 Children of color, especially African American and Native American children, are disproportionately represented in the child protection system as compared to their representation in the national child population. In 1997, "two-thirds (66.7 percent) of all victims were white, 29.5 percent were African American, 2.5 percent were American Indian/Alaska Native, and 1.3 percent were Asian Pacific Islander." U.S. Dep't of Health and Human Services, Child Maltreatment 1997: Reports From the States to the National Child Abuse and Neglect Data System 4-5 (1999) [hereinafter Child Maltreatment 1997]. Moreover, "[i]n 35 states, 13.3 percent of victims were Hispanic, compared to 18.8 percent of the population of these states." Id. The Child Maltreatment 1997 Report summarized that the "proportions of victims who were African American or American Indian/Alaska Native were two times greater than the proportions of those children in the general population. The proportions of victims who were white or Asian Pacific Islander were lower than the proportions of those children in the general population." Id. (citations omitted).
Children of color also are disproportionately represented in foster care. See S. Rep. No. 104-117, at 3 (1995), reprinted in 1996 U.S.C.C.A.N. 3490, 3492 (finding that "minority children enter the child protection system in disproportionately large numbers and are far more likely to remain in substitute care for long periods of time - even years"); Child Welfare League of America, Child Abuse and Neglect: A Look at the States (1999 CWLA Stat Book) 95 (1999) [hereinafter 1999 CWLA Stat Book] (reporting that "African American and American Indian children are highly overrepresented in... out-of-home care"); Annie Woodley Brown & Barbara Bailey-Etta, An Out-of-Home Care System in Crisis: Implications for African American Children in the Child Welfare System, 76 Child Welfare 65, 74-75 (1997) (reporting that African American children make up 42.4 percent of all children in foster care, a figure that is grossly disproportionate to their 15 percent representation in the general population); Mark E. Courtney et al., Race and Child Welfare Services: Past Research and Future Directions, 75 Child Welfare 99, 100-01 (1996) (analyzing a study of five states and concluding that the proportion of African American children in care ranged from three times as high to over ten times as high as the proportion of Caucasian children in care); Guggenheim, Dilemma, supra note 11, at 144 (citing New York City Administration for Children's Services, Selected Child Welfare Trends (noting that a report on New York City found that out of 42,000 children in foster care in New York City in December 1997, only 3.1% were white)); Dorothy E. Roberts, Is There Justice in Children's Rights?: The Critique of Federal Family Preservation Policy, 2 U. Pa. J. Const. L. 112, 125 (1999) (citing statistics to support the fact that 45% of the foster care population in 1998 was black, while black children only comprised 15% of the general population under the age of eighteen).
These figures are quite shocking when one learns that there is not any correlation between race and rates of child maltreatment. See U.S. Dep't of Health and Human Services, The Third National Incidence Study of Child Abuse and Neglect (NIS-3) 8-7 (1996) [hereinafter NIS-3]. These "findings suggest that the different races receive differential attention somewhere during the process of referral, investigation, and service allocation and that the differential representation of minorities in the child welfare population does not derive from inherent differences in the rates at which they are abused or neglected." Id. The 1999 CWLA Stat Book states that the disproportionate number of substantiated reports of abuse or neglect for children of color may be due to biases related to race and ethnicity as well as to the high correlation between race and poverty. See 1999 CWLA Stat Book, supra, at 21, 95; see also Howze, supra note 2, at 13 (reviewing census data and concluding that more than half of all African American children under the age of eighteen live in poverty compared to approximately seven percent of white children).

30 Frequently, the parents in child protection proceedings are single mothers. See Howze, supra note 2, at 11; see also Annette R. Appell, Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System, 48 S.C. L. Rev. 577, 584 (1997) (maintaining that the "vast majority" of parents involved in child welfare matters are mothers).

31 The fact that Andrew and Brenda are forced to live in poverty, unfortunately, is also very common among abused and neglected children. "Children from families with annual incomes below $15,000, as compared to children from families with annual incomes above $30,000 per year, were over 22 times more likely to experience some form of maltreatment that fit the Harm Standard [actual harm] and over 25 times more likely to suffer some form of maltreatment as defined by the Endangerment Standard [risk of

harm]." NIS-3, supra note 29, at xviii. The disparities are even greater when the incidence of neglect (as contrasted with abuse and neglect combined) is studied (44 times more likely by either definition). Id. at 5-6 to 5-8, 8-10. For a statistical and more in-depth analysis of the correlation between the incidence of child abuse and/or neglect and family income, see id. at 5-2 to 5-10. See also 1999 CWLA Stat Book, supra note 29, at 223 (reporting that "declining family support and increasing poverty and substance abuse have accompanied the steady growth in the numbers of U.S. children placed in out-of-home care--from 280,000 in 1986 to 530,496 in 1996") (citations omitted)); Howze, supra note 2, at 11 (noting that the majority of cases involve people at or below the poverty line); Appell, supra note 30, at 584 (finding that the families involved in the child protective system are "overwhelmingly poor and disproportionately of color"); Buss, Parents' Rights, supra note 11, at 432 (declaring that "[t]he child welfare system is a system that, in dramatic disproportion to their numbers, affects poor people"); Courtney et al., supra note 29, at 129 (reviewing studies and concluding that there is a high correlation between poverty and child maltreatment, particularly neglect); Roberts, supra note 29, at 118 (maintaining that "[m]ost children in foster care were removed from their homes because of parental neglect related to poverty) (footnote omitted). Professor Emily Buss discusses why this is so:

There are some very sensible reasons for this overrepresentation: To the extent poverty can be linked to drug addiction, violence, a hazardous living environment, and, most of all, stress, being poor will increase the likelihood that a child will be abused or neglected. But the poor are not overrepresented in the child welfare system simply because their child-rearing problems are greater or more widespread. Even in factually similar circumstances, a poor family is much more likely than a middle or upper income family to be suspected of, and reported for, abuse or neglect. Poor families live in close quarters with thin walls that expose them to the scrutiny of neighbors. Their welfare checks bring with them the surveillance of income maintenance workers; their visits to public health clinics expose them to the subset of medical professionals most trained and oriented toward looking for abuse and neglect. Moreover, poor families lack the resources to buy private help... that can get them through the difficult times by helping them to reduce their abusive conduct or by keeping the abusive conduct out of the public eye.

Buss, Parents' Rights, supra note 11, at 432-33.

The likelihood that poverty will lead to state intervention into the lives of poor families may only get greater with the limitations imposed by welfare reform in 1996. See Naomi R. Cahn, Children's Interests in a Familial Context: Poverty, Foster Care and Adoption, 60 Ohio St. L.J. 1189, 1200 (1999); Katherine Hunt Federle, Child Welfare and the Juvenile Court, 60 Ohio St. L.J. 1225, 1245-48 (1999); Catherine J. Ross, Families Without Paradigms: Child Poverty and Out of Home Placement in Historical Perspective, 60 Ohio St. L.J. 1249 (1999).

The correlation between poverty and child abuse has been noted for at least the last three decades. See 1999 CWLA Stat Book, supra note 29, at 223 (noting that "[c]hild maltreatment is often part of the sad cycle of cause and effect that poverty may help set in motion"); Robert H. Mnookin & D. Kelly Weisberg, Child, Family and State: Problems and Materials on Children and the Law 440 (3d ed. 1995) (maintaining that "the foster care system has long been criticized as being class biased"); Judith Areen, Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases, 63 Geo. L.J. 887, 888 (1975) (finding that "the most prevalent characteristic of families charged with neglect is poverty"); Shirley Jenkins, Child Welfare as a Class System, in Children and Decent People 3 (Alvin L. Schorr ed., 1974) (maintaining that "poverty is often the antecedent condition" of neglect and that the child welfare system has always predominantly served poor children and their families, and because the system has always served children so poorly, it also can be seen as a perpetrator of poverty); Leroy Phelton, Ph.D., Child Abuse and Neglect: The Myth of Classlessness, 48 Amer. J. of Orthopsychiatry 608, 609-11 (1978) (concluding that there is a "strong relationship between poverty and child abuse and neglect," that "the highest incidence of neglect occurred in families living in the most extreme poverty," and that "the most severe injuries occurred within the poorest families"). For a historical analysis of the relationship between socioeconomic status and the child welfare system, see Jacobus tenBroek, California's Dual System of Family Law: Its Origin, Development, and Present Status (pt. 1-3), 16 Stan. L. Rev. 257 (1964), 16 Stan. L. Rev. 900 (1964), 17 Stan. L. Rev. 614 (1965).

32 The prevalence of substance abuse problems in child abuse or neglect cases is quite high. "By some estimates, 70 to 90 percent of child abuse and neglect cases known to CPS agencies involve parents with alcohol or drug abuse problems." Howard Davidson, Child Protection Policy and Practice at Century's End, 33 Fam. L.Q. 765, 777 (1999); see also Howze, supra note 2, at 11 (noting that "drug addiction is a common finding in neglect cases"); Cahn, supra note 31, at 1200 (citing to studies that "indicate that between 1/3 and 2/3 of all substantiated reports [of child abuse and neglect] involve some form of parental substance abuse"); John Needham, One Day in a World of Hard Cases and Harder Decisions Juvenile Court: 'Dependency' Hearings Weigh the Fates of Children, Parents and Would-Be Parents. Sometimes There is No Right Answer, L.A. Times, Apr. 5, 1993, § A at 22 (quoting a judge as stating that more than eighty percent of the cases he sees involve parents using illegal substances).

33 A shelter care hearing is an emergency hearing that, in most jurisdictions, must occur within 24 to 48 hours after children are involuntarily removed from the care of their parents.

34 Andrew and Brenda's legal representative also represents common characteristics of advocates who represent children in child protection proceedings. Not only are the representatives typically white and from middle-class backgrounds, but the judges and

child welfare agency social workers are as well. See Appell, supra note 30, at 585 (noting that in contrast to the recipients of child welfare services, "the judges, caseworkers, and attorneys are mostly middle-class and white"); Buss, Developmental Barriers, supra note 11, at 925 (briefly describing a hypothetical situation between an attorney and a child client where the race and socio-economic status between the two are different); Louise Kiernan, Children on Trial; Juvenile Court, An Ongoing Struggle to Mend Broken Lives, Chi. Trib., Jan. 19, 1997, § C (magazine), at 3 (describing a juvenile court in Chicago as "a place where mostly white, middle-class lawyers and judges make decisions about the lives of families and children who are mostly black, Hispanic and poor"); see also Howze, supra note 2, at 1-2 (describing an incident where a courtroom clerk was surprised that an African-American woman came to the juvenile court, not as a mother, but as an attorney). However, according to a national study of 432 jurisdictions, the majority of attorneys acting as child representatives are male, not female. See National Study, supra note 12, at 33.

35 See Randi Mandelbaum, Trying to Fit Square Pegs into Round Holes: The Need For a New Funding Scheme For Kinship Caregivers, 22 Fordham Urb. L.J. 907, 922-23 (1995) (describing the problems of licensing kinship caregivers).

36 See Child Maltreatment 1997, supra note 29, at 4-1. Due to collection and analysis lags, at the time of writing, the most recent year for which data is available is 1997.

In actuality, approximately three million children were alleged to be abused or neglected in 1997. See id. at 3-2. After investigation, approximately one million were "substantiated" or "indicated" victims of abuse or neglect. See id. at 4-1. It is significant to note that the number of reports of abused or neglected children has increased from the previous year. In 1996, a little over two million children were reported as abused or neglected. See U.S. Dep't of Health and Human Servs., Child Maltreatment 1996: Reports from the States to the National Child Abuse and Neglect Data System 2-1 (1998). By 1997, this number had risen to three million. See Child Maltreatment 1997, supra note 29, at 3-2.

Reports of child maltreatment come from various persons and sources based on data from 42 states:

[P]rofessional reporters, including educators, law enforcement officials, social services personnel, medical personnel, mental health personnel, child day care providers, and substitute care providers, accounted for 777,637 reports (53.6 percent) of alleged maltreatment that were referred for investigation. Other relatives, friends and neighbors, parents, and alleged victims contributed 382,239 reports (16.4 percent). Another 290,523 reports (20.0 percent) originated from anonymous or unknown sources, other sources, and alleged perpetrators. Educators initiated 236,719 reports (16.3 percent) and were the largest single source.... Law enforcement personnel constituted the second largest source, contributing 193,007 reports (13.3 percent). The distribution of sources of reports has remained virtually constant since 1990.

See id. at 3-1.

37 See Child Maltreatment 1997, supra note 29, at 4-2. The remainder of the maltreatment consisted of psychological or emotional abuse or neglect, medical neglect, and other types of abuse, such as "'abandonment,' 'congenital drug addiction,' and 'threats to harm the child.'" Id. at 4-2, D-13.

Of the children who were the subject of substantiated abuse or neglect findings in 1997, 6.9 percent were less than one year old, 30.9 percent were one to five years old, 39.7 percent were six to 12 years old, and 19.3 percent were 13 to 17 years old. See id. at 4-3, fig. 4-3. Of these same children, 52.3 percent were female. See id. The National Incidence Study of Child Abuse and Neglect looked at gender differences and found that girls are three times more likely than boys to be sexually abused. See NIS-3, supra note 29, at 8-6. However, boys are more at risk for emotional neglect and serious injury than girls. See id.

The perpetrators of the abuse were predominantly the parents of the children. See Child Maltreatment 1997, supra note 29, at 7-1 (reporting that in 1997 approximately seventy-five percent of the perpetrators were biological, adoptive, or step parents).

In the last decade, the annual number of children "seriously injured by abuse... has quadrupled, to 572,000 from 143,000." Robert Pear, Many States Fail to Meet Mandates on Child Welfare, N.Y. Times, Mar. 17, 1996, at A1. Accounting for approximately 2,000 fatalities a year among children of all ages, child abuse is the leading cause of death among children under the age of four. See id.; see also Child Maltreatment 1997, supra note 29, at 6-1 (reporting that children three and younger accounted for seventy-seven percent of child maltreatment fatalities).

38 See Pear, supra note 37, at A1; see, e.g., Angela R. v. Clinton, 999 F.2d 320 (8th Cir. 1993) (summary of case from the perspective of the attorneys representing the class of children is available at <http:// www.youthlaw.org/docket.htm>); David C. v. Leavitt, 13 F. Supp. 2d 1206 (D. Utah 1998) (summary of case from the perspective of the attorneys representing the class of children can be found at <http://www.youthlaw.org/docket.htm>); L.J. v. Massinga, 778 F. Supp. 253 (D. Md. 1991) (for modification of consent decree); LaShawn v. Dixon, 762 F. Supp. 959 (D. D.C. 1991), aff'd in part LaShawn A. by Moore v. Kelly, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied 510 U.S. 1044 (1994); L.J. v. Massinga, 699 F. Supp. 508 (D. Md. 1988) (discussing consent decree proposed by parties).

39 See Pear, supra note 37, at A1; see also Appell, supra note 30, at 593 & n.86 (lamenting the many problems found in the child welfare system).

40 S. Rep. No. 104-117, at 3 (1995), reprinted in 1996 U.S.C.C.A.N. 3490, 3492; see also Buss, Parents' Rights, supra note 11, at 439 (declaring that the child welfare system "plays out abysmally for children" and that children's treatment in this system "often constitutes abuse and neglect of its own"); Tracy Weber, Twice Abused: Inside Orange County's Child Welfare System, L.A. Times, May 5, 1998, at A1 (describing the child welfare system as "antiquated" and "struggling under the weight of too many children and too little oversight").
It also is significant to note that poor children and families of color are treated worse and receive even fewer services than their white counterparts. See Courtney et al., supra note 29, at 108-25 (reviewing various studies of how children of color fare in our child welfare systems). "The overall picture... is that families and children of color experience poorer outcomes and are provided fewer services than Caucasian families and children." Id. at 125. However, most studies reviewed did not factor in class; those few that did "showed a reduced or nonexistent effect of race or ethnicity." Id. at 125-26; see also Roberts, supra note 29, at 126 (concluding that "once black children enter foster care, they remain there longer, are moved more often, and receive less desirable placements than white children") (footnote omitted).

41 See Pear, supra note 37, at A1. In 1996, a committee report that accompanied the 1996 legislative amendments to CAPTA declared the following: "No matter which element of the system that it [the Advisory Board] examined - prevention, investigation, treatment, training, or research - it found a system in disarray, a societal response ill-suited in form or scope to respond to the profound problems facing it." S. Rep. No. 104-117, at 3-4 (1995), reprinted in 1996 U.S.C.C.A.N. 3490, 3492-93.

42 It is important to stress that investigations must be performed responsibly, not only so that children are protected from serious abuse and neglect but also so that children are not unnecessarily removed and traumatized when allegations are unfounded or not sufficiently serious as to warrant the children being removed from their family and home.

43 S. Rep. No. 104-117, at 2 (1995), reprinted in 1996 U.S.C.C.A.N. 3490, 3491; see also Buss, Parents' Rights, supra note 11, at 433 ("Investigations of abuse and neglect reports are routinely done by case workers with little or no specialized training in how to approach the families, how to conduct an effective and appropriate investigation, and how to assess the information uncovered."); Pear, supra note 37, at A1 (stating that "[c]hild welfare officials in many states, swamped with work, are slow to investigate reports of child abuse and neglect"). It is significant to note that the 24-48 hour rule is not required in all circumstances and in all jurisdictions.

44 See Appell, supra note 30, at 593 & n.86 (explaining that "one of the weaknesses of the child protection system is its failure to treat the children once it removes them from a dangerous situation").

45 See Pear, supra note 37, at A1. As with the fictional Andrew and Brenda, it is significant to note that the medical and psychological needs of children being placed in foster care have been found to be extensive. "91.5% of children were found to have at least one abnormality in at least one body system and more than half of the children's health problems warranted the need for referrals for medical services." ABA, A Judge's Guide to Improving Legal Representation of Children 60 (Kathi L. Grasso ed., 1998) [hereinafter A Judge's Guide]. Additionally, "22% of children aged 3 to 6, 63% of children aged 7 to 12, and 77% of teenagers were found to be in need of a mental health referral." Id.; see also Appell, supra note 30, at 593 n.86 (citing M. Graziano & Joseph R. Mills, Treatment for Abused Children: When is a Partial Solution Acceptable?, 16 Child Abuse and Neglect 217 (1992)), and concluding that psychological services are not provided in a timely fashion, if at all); Walter, supra note 3, at 52 (noting that "foster children are not routinely assessed for medical, psychological, or developmental conditions") (footnote omitted).

46 S. Rep. No. 104-117, at 3 (1995), reprinted in 1996 U.S.C.C.A.N. 3490, 3492 (testimony of Professor Richard Wexler). Many of the children placed in non-kinship foster care are forced to frequently move from one foster home to another. Over a six-year period, 34% of children in non-kinship foster care had five or more placements. See Richard P. Barth, The Juvenile Court and Dependency Cases, 6 Juv. Ct. 100, 105 (1996). Kinship foster care is a term used when children who are removed by a juvenile court from the care of their parents and placed in the custody of the state are placed by the child welfare agency with relatives.

47 In California, "more than 60 percent of foster children are part of a sibling group and 41 percent of those are not placed with their siblings." Walter, supra note 3, at 61 nn.89 & 90 (citing to California Dept. of Soc. Servs., Foster Care Info. Sys. Data).

48 See 45 C.F.R. § 1356.21(b) (2000).
The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured [and] to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child)....
Id. However, with the passage of the Adoptions and Safe Families Act of 1997 ("ASFA"), reasonable efforts are no longer required in all circumstances. See 45 C.F.R. § 1356.21(b)(3) (2000).
Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because
(i) a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
(ii) a court of competent jurisdiction has determined that the parent has been convicted of
A) Murder... of another child of the parent;
B) Voluntary manslaughter... of another child of the parent;
C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or
D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,
(iii) the parental rights of the parent with respect to a sibling have been terminated involuntarily.
Id. Given the fact that abandonment can be considered an "aggravated circumstance," it is possible that a determination that reasonable efforts were not required might be made with regard to the case of Andrew and Brenda. Moreover, ASFA also codified the concept of "concurrent planning," which gives state child welfare agencies permission to make efforts toward an alternate permanency plan at the same time that it makes efforts to reunify the child and family. See 45 C.F.R. § 1356.21(b)(4) (2000). For two very different analyses of ASFA, compare Richard J. Gelles & Ira Schwartz, Children and the Child Welfare System, 2 U. Pa. J. Const. L. 95 (1999), with Roberts, supra note 29.

49 See Pear, supra note 37, at A1 (maintaining that few child welfare agencies provide the necessary services to keep families together or to reunite them once separated); see also Appell, supra note 30, at 595-602 (discussing many of the problems with the child welfare system and documenting a lack of necessary services to help prevent initial placements into foster care and to assist in reunifying families).
The Child Welfare League recommends that caseworkers carry no more than 15 cases each, although caseworkers often are responsible for 50 to 70 cases. See Pear, supra note 37, at A1 (citing to statements by David S. Liederman, Executive Director of the Child Welfare League of America); see also Walter, supra note 3, at 51 (describing the caseloads of child welfare caseworkers as "heavy" and exceeding established standards).

50 Tracy Weber, Twice Abused: Inside Orange County's Child Welfare System, L.A. Times, May 22, 1998, at A1; see also Howze, supra note 2, at 17 (describing the provision of services by child welfare agencies as "cookie-cutter remedies" that are unhelpful and unreflective of cultural and sub-cultural realities); Appell, supra note 30, at 601 (maintaining that "instead of offering meaningful assistance, caseworkers too often take a cookie-cutter approach to the families and their problems"); Buss, Parents' Rights, supra note 11, at 438 (claiming that "overwhelmed, underfunded, and highly bureaucratic child welfare agencies provide little if any, useful assistance" and calling for state agencies to provide parents with the means to be good parents).

51 While some child welfare agencies have improved recently, many problems persist, especially in those states where there are large urban centers. Of those children who are removed from their family homes, "the vast majority of them (in excess of two-thirds) will return home, although more than half will remain in care for at least 18 months in California, 35 months in Illinois, 12 months in Michigan, 25 months in New York, and 9 months in Texas." Barth, supra note 46, at 105.

52 Under ASFA, if 12 months of reunification services are unsuccessful, the agency is to move forward in its efforts to develop an alternative permanent plan and find an alternative permanent placement, which can include the termination of parental rights, a step that then permits the child to be adopted. See 45 C.F.R. § 1356.21(b)(2)(i)-(ii) (2000). In fact, also under ASFA, a child welfare agency can pursue both reunification and an alternative permanency plan at the same time. See 45 C.F.R. § 1356.21(b)(4) (2000). This is known as "concurrent planning." Significantly, it is more difficult to find permanent and/or adoptive homes for older children, children of color, and children with special needs. See Roberts, supra note 29, at 119-20 (maintaining that there are insufficient adoptive homes for the number of children who need them, and that black children are less likely than white children to be adopted).

53 See Walter, supra note 3, at 51 (explaining that "courts have not been given the resources they need to adequately perform [their parens patriae responsibilities]").

54 See Barth, supra note 46, at 102 (explaining that the current national data systems do not include information on the likelihood that a child abuse report will be presented to the juvenile court).

55 See id. (describing how, in one study, petitions were filed in twenty-one percent of the substantiated cases, while in other jurisdictions the percentages were as low as three to four percent).

56 See, e.g., M. Hardin, Judicial Implementation of Permanency Planning Reform: One Court That Works 12 (1992) ("a study of judicial caseloads in six states that found a 120 percent increase in child victim cases, but only a seven percent increase in family and juvenile court judges from 1984 to 1990"); see also Buss, Parents' Rights, supra note 11, at 434-35 (maintaining that in many jurisdictions "courts are overwhelmed by the size of their caseloads").

57 See Buss, Parents' Rights, supra note 11, at 434-35; see also Appell, supra note 30, at 602 (lamenting the high caseloads of judges and concluding that "ineffective gatekeeping creates a vicious circle - by keeping caseloads high, the system forecloses its ability to provide meaningful assessment and review of whether families should be in or out").

58 Buss, Parents' Rights, supra note 11, at 439.

59 See generally Walter, supra note 3, at 51 (stating, for example, that "[a] recent study concluded that California's juvenile courts do not comply with the national resource guidelines on judicial caseloads articulated by the National Center for State Courts") (footnote omitted) (quoting Center for Children & the Courts, Judicial Council of California, Court Profiles, prepared for Beyond the Bench IX (1998)). Moreover, "California juvenile court case-processing times do not adhere to statutory timelines." Id. (footnote omitted) (quoting National Center for State Courts, California Court Improvement Project 23-25 (1997)).

60 John Sullivan, Chief Judge Announces Plans to Streamline Family Court, N.Y. Times, Feb. 25, 1998, at 7 (quoting report by the Fund for Modern Courts). As an example, the report looked to Brooklyn, New York, where it found that a case received four minutes of the judge's attention on the first appearance and eleven minutes on subsequent occasions. See id; see also Jennifer Warren, System Overload: Rise in Abuse, Neglect Results in a Sputtering Juvenile Court, L.A. Times, Dec. 27, 1987, at A1 (quoting a deputy district attorney explaining why there is very little time that can be allocated to each case); Weber, supra note 40, at A1 (describing one juvenile court in the Los Angeles area as chaotic and disorderly and quoting a judge who acknowledged that he often has just minutes to decide a case). These problems are long-standing. In his 1975 article, Professor Mnookin described a study conducted by himself and Professor Michael Wald whereby they reviewed juvenile court cases in two counties. In approximately two-thirds of the cases, hearings took two minutes or less. See Robert H. Mnookin, Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy, 39 Law & Contemp. Probs. 226, 274 (Summer 1975).

61 Among the problems cited were the poor condition of the courthouse, backlogs in cases, scheduling problems, antiquated rules, too few judges and support staff, insufficient court security, and outmoded phone and communication systems. See Massachusetts Bar Ass'n, Report of the Family Law Section Committee on the Crisis in the Probate and Family Court 2 (1997); Family Court's Troubles Shock Authors of Study, AP, June 5, 1997, available at LEXIS, Nexis Library, AP File (discussing Report of the Family Law Section Council).

62 See Walter, supra note 3, at 51.

63 See supra notes 3-5 and accompanying text (explaining the requirement for GAL representation of each child and the role of the GAL by 45 C.F.R. § 5103).

64 See, e.g., Administration for Children, Youth and Families, U.S. Dep't of Health & Human Servs., National Evaluation of the Impact of Guardians Ad Litem in Child Abuse or Neglect Judicial Proceedings: Executive Summary (1988) [hereinafter National

Evaluation]; Final Report, supra note 12; National Study, supra note 12; Shepherd & England, supra note 1, at 1919-32; Special Issue, supra note 8.

65 See Shepherd & England, supra note 1, at 1925. These commentators explain that "[r]esearchers have identified both systemic and individual attorney problems that have contributed to the poor representation of children." Id. While there is little doubt that problems concerning individual attorneys occur, many of these concerns are similar to those regarding poor representation in any context, and are therefore beyond the scope of this article. To the extent that the problems of individual attorneys reflect larger systemic concerns (i.e., lack of time to conduct adequate investigations, including contacting the child client, and lack of specialized training), they will be addressed as part of my discussion of systemic problems.

66 See infra Part II.D.1-2; see also Heartz, supra note 4, at 328 (finding that "[t]he funding and definitional deficiencies that plagued the early implementation of the CAPTA guardian ad litem requirement still exist, and independent representation for abused and neglected children remains inconsistent and inadequate").

67 See Final Report, supra note 12, at xix (calling for additional resources to implement the GAL requirement in CAPTA).

68 National Study, supra note 12, at 9. Specifically, in Texas, Indiana, and Delaware, the appointment of a representative is at the discretion of the court. See id. In Colorado, the appointment of a representative is required in abuse, but not neglect, matters. See id. Georgia, Louisiana, and Wisconsin require appointment only in termination of parental rights cases. See id. Finally, in Arkansas, appointment is mandated only when custody is at issue. See id.; see also Shepherd & England, supra note 1, at 1921 (discussing the National Study).

69 See National Study, supra note 12, at 9-16, 41 (1990). "All abused and neglected children are not being represented in 26 states. In nine of these states, more than 90 percent of children are represented and the children who do not receive representation are concentrated in small rural areas that have small caseloads." Id. at 14. However,

> [e]ight states have more widespread difficulties in providing representation.... Florida where only 49 percent of children receive a GAL, Nevada with 32 percent representation, and Delaware with 22 percent were the lowest in the nation on this measure.... In the five remaining states where representation is low - California, Idaho, Indiana, Louisiana, and Oregon - lack of representation is widespread throughout the state.

Id.

70 See National Study, supra note 12, at 17 (concluding that 23 states mandate representation by an attorney); Peters, supra note 8, app. B at 253 (finding that 26 states require legal representation). Differences in findings may be attributable to the different time periods in which the studies were conducted or to variations between actual practice and statutory mandates. Findings from the National Study also revealed that in another 23 states, whether the representation was provided by an attorney or a lay advocate was left to the discretion of the presiding judge. See National Study, supra note 12, at 17.

71 See National Study, supra note 12, at 18-23.

72 See Heartz, supra note 4, at 328. Most of these programs are members of the National Court Appointed Special Advocates Association, a national organization that provides training and technical assistance. See id. The first CASA program began in Seattle, Washington in 1977. Following its success, programs were developed in Arizona, California, Florida, New York, and Rhode Island. See id. at 337. The National Court Appointed Special Advocates Association was created in 1982 and incorporated in 1984. See id. For a full exploration of the history of the CASA program, see Adams, supra note 4, at 1467; Heartz, supra note 4, at 336-47. For a more detailed discussion of the use of CASAs as representatives, see infra Part VII.D.

73 See National Evaluation, supra note 64, at 13-19; Donald N. Duquette & Sarah H. Ramsey, Representation of Children in Child Abuse and Neglect Cases: An Empirical Look at What Constitutes Effective Representation, 20 U. Mich. J.L. Reform 341, 389 (1987). For a fuller discussion of the strengths of CASA programs, see infra Part VII.D.

74 See Final Report, supra note 12, at xviii, 6-2, 6-11, 6-15. For an analysis of the effectiveness of representation by CASAs, as well as a critique of some of the national studies reviewing the effectiveness of various forms of representation, see infra Part VII.D.

75 See Heartz, supra note 4, at 328; Shepherd & England, supra note 1, at 1925. While a severe lack of resources and training are largely responsible for the poor representation of children, other factors also play a role. These variables may include the appointment of different attorneys for the same child at different hearings, delays in the appointment of a representative, unrealistic expectations of what is entailed in the representation of a child in an abuse or neglect matter, and a sense of passivity on the part of the representatives. See Shepherd & England, supra note 1, at 1925.

76 See Final Report, supra note 12, at xviii-xix (calling for the need for more focused training); National Evaluation, supra note 64, at 19-20 (remarking that "law school does little to prepare attorneys for the GAL role"); National Study, supra note 12, at xviii (calling for the need for more training); A Judge's Guide, supra note 45, at 1 (maintaining that many lawyers have not had any formal or adequate training); Duquette & Ramsey, supra note 73, at 351 (explaining that "few lawyers have had any special training or expertise in representing children"); William A. Kell, Voices Lost and Found: Training Ethical Lawyers for Children, 73 Ind. L.J. 635, 640 (1998) (remarking that law schools do not "adequately prepare" law students to handle cases involving children); Kelly & Ramsey, supra note 6, at 451, 454 (finding that most attorneys do not receive any specialized training and remarking on the need for increased training); Janet Weinstein, And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System, 52 U. Miami L. Rev. 79, 105-06 (1997) (analogizing juvenile court to a "training ground for public sector attorneys" (footnote omitted)).

77 See National Study, supra note 12, at 14 (reviewing the low levels of compensation of representatives for children); A Judge's Guide, supra note 45, at 1 (documenting the fact that attorneys for children receive low levels of compensation as well as delays in receiving such compensation); Peters, supra note 8, at 32 n.18 (discussing the problem of inadequate compensation); Kelly & Ramsey, supra note 6, at 452 (surveying lawyers and finding that 68% of those surveyed did not feel that they were adequately paid for the time spent on their cases); William Wesley Patton, California Dependency Cases or The Answer to the Riddle of the Dependency Sphinx, 1 J. Ctr. for Children & Cts. 21, 31 (1999) (concluding that "in California, most children's attorneys receive neither adequate compensation nor any payment for work accomplished outside the courtroom" (footnote omitted)).

78 See Final Report, supra note 12, at 4-7 (studying and reporting on workloads of representatives for children); A Judge's Guide, supra note 45, at 1, 67-68 (finding some jurisdictions to have "inordinately high" caseloads); National Evaluation, supra note 64, at 7 (surveying judges and state attorneys and reporting that these respondents felt that caseloads of some attorneys were too high and that this situation interfered with attorneys' "ability to spend sufficient time on the case[s]"); National Study, supra note 12, at 35 (reporting on the high caseload levels of different representatives); see also Shepherd & England, supra note 1, at 1924-25 (discussing the findings of the National Evaluation, the National Study, the Final Report, and a study conducted by Professors Kelly and Ramsey).

79 Those localities that appoint legal representatives tend to do so in accordance with one of two models. Some adhere to a staff attorney model where a state or county contracts with a local legal aid or public defender's office to provide representation. Others appoint private attorneys and pay them on a per case basis. See A Judge's Guide, supra note 45, at 66. The former model is often characterized by high caseloads, while attorneys in the latter model complain of low pay, delays in payment, and caps on the amount of compensation that can be received on any given case. Both models, in different ways, create great disincentives, if not outright obstacles, to a lawyer's ability to provide ethical and competent representation.

80 See supra notes 67-79 and accompanying text. A recent essay by a member of California Youth Connection ("CYC"), a foster youth advocacy organization comprised of foster youth throughout California, summarized the "top five desires" of a group of CYC members for their court appointed attorneys as:

1. foster youth want to be treated as paying clients rather than as another number
2. foster youth want attorneys to explain what the judges are saying during court
3. foster youth want to be contacted a week before their court appointments
4. foster youth want more face-to-face and telephone communication with their attorneys
5. foster youth want to be involved in training attorneys about the foster care system

Johnny Madrid, My Court Experience, 1 J. Ctr. For Children & Cts. at 3, 4-5 (1999).

Unfortunately, deficiencies in the legal representation of children have been longstanding. A study conducted in the early 1980s in North Carolina of the legal representation of children "concluded that the attorneys were not only ineffective but even tended to substantially delay a child's return home." Shepherd & England, supra note 1, at 1925 (citing to Kelly & Ramsey, supra note 6, at

407); see also Robert F. Kelly & Sarah H. Ramsey, Monitoring Attorney Performance and Evaluating Program Outcomes: A Case Study of Attorneys for Abused and Neglected Children, 40 Rutgers L. Rev. 1217, 1240-44 (1988) (reviewing a study of the representation of children in New York from the early 1980s and finding the performance of attorneys and the systems that provide the attorneys to be "flawed" and the lawyers who represent children to not be very effective).

81 Many scholars have written on the past and current confusion concerning the role of the child's representative. However, I am especially grateful to Professor Jean Koh Peters for her clear and extensive analysis of the current situation, most notably her statutory analysis of all United States jurisdictions. See Peters, supra note 8, at 24-33, app. B, at 253. While my discussion reviews various writings, I have opted to loosely follow Professor Peters' outline found on pages 23-39 of her book, see id., as it is the clearest and most logical way to understand current and past thinking on the role of the child's representative.

82 See Working Group on the Allocation of Decision Making, Report of the Working Group on the Allocation of Decision Making, 64 Fordham L. Rev. 1325, 1331 (1996); see also Buss, Developmental Barriers, supra note 11, at 900 (explaining that there is no "clear consensus about the role that lawyers should assume"); Green & Dohrn, supra note 8, at 1282 (analyzing a hypothetical child protection case and describing seven different ways that a lawyer in the hypothetical scenario might act); Haralambie, supra note 8, at 944 (noting that "[t]he duties of attorneys representing children are not adequately addressed by existing ethical rules, standards, statutes, and case law"); Ramsey, supra note 6, at 289-90 (finding that there are no clear expectations for a GAL); Shepherd & England, supra note 1, at 1925, 1933 (maintaining that there is a "lack of clarity concerning the lawyer's role" and that neither CAPTA nor state statutes have helped to define the role of the GAL).

83 See supra notes 6, 8, 9, 11 and accompanying text (listing references to literature concerning the role of the attorney representing children).

84 See Shepherd & England, supra note 1, at 1925-26 (maintaining that a "lack of clarity concerning the lawyer's role" was partially responsible for unfavorable evaluations of legal representatives for children) (citing to Kelly & Ramsey, supra note 6, at 415-16, 451 for their conclusion that confusion over one's role was a significant contributor to poor representation).

85 See Haralambie, supra note 1, at 25-26 (finding that lawyers are left on their own to determine how to represent children); Peters, supra note 8, at 38 (describing the decision of what role to play as "confus[ing]"); Buss, Children's Misperceptions, supra note 11, at 1719 (explaining that lawyers bring their own "predilections to bear" on the determination of what role to assume); Guggenheim, Matter of Ethics, supra note 11, at 1488 (reviewing Peters, supra note 8) (lamenting that lawyers have been "remarkably free--or remarkably burdened--to figure... out for themselves" how to represent children in child protective proceedings).

86 See supra notes 2, 3, 5 and accompanying text (introducing and describing the history of CAPTA).

87 A recent and comprehensive survey of the fifty states and other U.S. jurisdictions by Professor Jean Koh Peters "revealed fifty-six [different] state systems for representing children in child-protective proceedings." Peters, supra note 8, at 26; see also id. at 24-33, app. B at 253 (presenting the comprehensive survey); Guggenheim, Reconsidering the Need, supra note 11, at 305-07 (expressing concern about the lack of meaningful guidance from legislatures and courts in determining the role of the child's representative); Heartz, supra note 4, at 333 (discussing the "variation among the fifty states in the implementation of the GAL requirement"); Ramsey, supra note 6, at 289-90 (maintaining that most state statutes do not assist in defining the role of the child's representative); Angela D. Lurie, Note, Representing The Child-Client: Kids Are People Too: An Analysis of the Role of Legal Counsel to a Minor, 11 N.Y. L. Sch. J. Hum. Rts. 205, 216-20 (1994) (reviewing state statutes in New York and Montana and finding them to be unclear).

88 See Peters, supra note 8, at 26 (describing lawyering for children as being in a state of "chaos," "def[ying] routinization," and "actively breed [[ing] disorder and confusion); Catherine M. Brooks, When a Child Needs a Lawyer, 23 Creighton L. Rev. 757, 759 (1990) (maintaining that questions concerning the role of the lawyer are answered by looking to "the philosophy of the local forum, the appointing judge, the guardian ad litem, the maturity, verbal and social skills and confidence of the child-client and the alleged facts which bring the case to court"); Marvin R. Ventrell, Rights & Duties: An Overview of the Attorney-Child Client Relationship, 26 Loy. U. Chi. L.J. 259, 278 (1995) (explaining that deciding how to represent a child is a complex process which often depends on "the jurisdiction; the type of proceeding; the particular appointment; and the maturity of the client").

89 See Peters, supra note 8, at 30 (attributing "individual state's practice and politics" as a reason why the states' models differ from one another).

90 See id. at 32 (concluding that the high cost of providing lawyers leads some states to favor programs that provide alternative means of representation).

91 See id. at 31.
A central cause of the confusion and inability to make meaningful generalizations about the national trends in representation of children is the problem of terminology. Lawyers for children in the various states are called counsel, guardians ad litem, attorneys guardian ad litem, law guardians, attorneys ad litem, and a number of other terms.... The central term, guardian ad litem appears to have no commonly accepted definition.
Id. at 31 n.17.

92 For example, "[d]espite the pervasive appearance of the words 'interest' and 'best interests' both the statutes and our interviews showed absolutely no consensus about what it means to represent a child's best interests or interest." Id. at 32.

93 See id. app. B at 253 (individual discussion sections for each state).
[E]ven though forty-six states use the term guardian ad litem, the essence of the role of the guardian ad litem is unclear. Nothing guarantees that a guardian ad litem in one state would play the same role as a guardian ad litem in the next state or even that two guardians ad litem in the same state but different counties would play the roles similarly. Frankly, there is not even a guarantee that the same guardian ad litem would represent two similarly situated children similarly!
Id. at 32 n.17.
In a similar vein, it is significant to note that even literal readings of some state statutes can cause confusion. See id. at 31 n.17 (explaining that some state statutes use contradictory terminology within the same statute when defining the role of the representative (i.e., describing the obligation to "advocate" as well as to "protect the best interest of the child")); Haralambie, supra note 8, at 941 (concluding that "courts and legislatures... have often required attorneys to assume dual and potentially inconsistent roles").
As a further example, recent amendments to California's Welfare and Institutions Code §317(e) mandate that:
in any case in which the minor is four years of age or older, counsel shall interview the minor to determine the minor's wishes and to assess the minor's well-being, and shall advise the court of the minor's wishes. Counsel for the minor shall not advocate for the return of the minor if, to the best of his or her knowledge, that return conflicts with the protection and safety of the minor.
Cal. Welf. & Inst. Code § 317(e) (West 2000). Not only does this statute confuse the role of advocate and protector but it likely violates an attorney's obligations under Model Rules 1.2 and 1.14. For a critique of section 317(e) and a full exploration of its problems, see Patton, supra note 77, at 21, and William Wesley Patton, Children's Counsel as Advocates and Guardians Ad Litem, 2 U.C. Davis J. of Juv. L. & Pol'y 16 (1997).

94 See individual discussion sections for each state in Appendix B of Peters, supra note 8, app. B at 253; see also Heartz, supra note 4, at 333 (discussing the National Study and noting wide variations in how the role of the GAL is determined "even within a single state, with adjoining counties often having different methods of representation").

95 See Annette R. Appell, Decontextualizing the Child Client: The Efficacy of the Attorney-Client Model for Very Young Children, 64 Fordham L. Rev. 1955, 1959-60 (1996) (maintaining that our ethical regulations fail to provide guidance); Buss, Children's Misperceptions, supra note 11, at 1718-19 (concluding that Model Rule 1.14 raises more questions than it answers); Green & Dohrn, supra note 8, at 1288-89 (stating that current ethical guidelines may provide "incomplete or inappropriate answers to important questions about how lawyers properly should serve children"); see also Peters, supra note 8, at 36 n.21 (containing a list of additional articles finding Model Rule 1.14 to be inadequate).

96 See Green & Dohrn, supra note 8, at 1289 (explaining that "[o]ne difficulty in applying the general principles is that representing children differs from representing other clients"); Guggenheim, Paradigm, supra note 11, at 1400-01 (finding that our ethical rules primarily concern the representation of adult clients); Haralambie, supra note 8, at 944 (maintaining that "[t]he existing ethical rules were not drafted with child advocacy in mind").

97 Model Rules of Professional Conduct Rule 1.14 (1992). Model Rule 1.14, Client with a Disability, provides:
(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired whether because of minority, mental disability or for some other reason, the lawyer shall as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
(b) A lawyer make seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot act in the client's own interest.
Id.

98 See Buss, Children's Misperceptions, supra note 11, at 1718-19 (asserting that Model Rule 1.14 does not answer the question of "[w]hen and how is a child's decision-making capacity 'impaired' by minority?"). Rather than refer to young children as "impaired," Professor Appell uses the term "precapacitated" to acknowledge the fact that children, unlike many incapacitated adult clients, never had capacity, but hopefully will in the future. See Appell, supra note 95, at 1957 & n.6. I agree with Professor Appell's concerns and prefer the term she uses. However, because the Model Rules and most commentators refer to young children as "impaired," for ease of reference, I will continue to use this notation.

99 See Model Code of Professional Responsibility EC 7-12 (1980), which provides:
Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions that are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of his client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make either acting for himself if competent or by a duly constituted representative if legally incompetent.
Id. Because the Model Rule has been adopted in a majority of states, I will limit my analysis to Model Rule 1.14. However, it is significant to note that like Model Rule 1.14, EC 7-12 allows an attorney for a client with a disability to make decisions on behalf of the client. See Peters, supra note 8, at 37; Appell, supra note 95, at 1960. In fact, EC 7-12 more directly authorizes such actions. See Peters, supra note 8, at 37 (discussing EC 7-12). However, unlike Model Rule 1.14, EC 7-12 recommends that the attorney "obtain all possible aid from the client." Id. For a more in-depth comparison of Model Rule 1.14 and EC 7-12, see id.

100 Model Rules of Professional Conduct Rule 1.14(a) (1992).

101 Id. at Rule 1.14(b).

102 See Ramsey, supra note 6, at 304-05 (describing the ethical rules as "silent about what standard should be used to judge the client's decision-making abilities").

103 See Robyn-Marie Lyon, Comment, Speaking for a Child: The Role of Independent Counsel for Minors, 75 Cal. L. Rev. 681, 693 (1987) (concluding that the Model Rules fail to "provide any useful guidance for what is to be done when it is not possible to maintain a normal lawyer-client relationship").
It has even been suggested by one commentator that where a lawyer takes on a full GAL role, the lawyer could be found to have violated Model Rule 1.14. See Jean Koh Peters, The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings, 64 Fordham L. Rev. 1505, 1522-23 (1996) (questioning whether Model Rule 1.14(b), which permits a lawyer to "seek appointment of a guardian or take 'other protective action,' "was meant to be interpreted so broadly that it included determining a client's best interests and advocating for the same).

104 See Peters, supra note 8, at 41-43. "Although many commentators have attempted to prescribe the role of the child's representative, little consensus exists regarding the responsibilities and duties of the child's representative or regarding what constitutes effective representation of children." Duquette & Ramsey, supra note 73, at 347-48.
As a way of explaining the role of the representative, several commentators have focused on the potential duties that a representative may be required to perform. For example, in 1976, Brian G. Fraser, in one of the first, if not the first, explanation of

the purposes and goals of the GAL, described four roles: (1) investigator; (2) advocate; (3) counsel; and (4) guardian. See Brian G. Fraser, Independent Representation for the Abused and Neglected Child: The Guardian Ad Litem, 13 Cal. W. L. Rev. 16, 33-34 (1976). In 1980, a conference was sponsored by the National Legal Resource Center for Child Advocacy. See Howard A. Davidson, Foreword to National Guardian Ad Litem Policy Conference Manual (ABA rev. ed. 1981) (on file with author). A summary of this conference contains a "partial" list of 26 different duties for which the GAL is responsible. See Howard A. Davidson, Final Report: National Guardian Ad Litem Policy Conference, in National Guardian Ad Litem Policy Conference Manual (ABA rev. ed. 1981) (on file with author). In 1990, an expert in the field of child advocacy described the following five major roles: (1) fact finder-investigator; (2) legal representative; (3) case monitor; (4) mediator-conciliator; and (5) information and resource broker. See Donald Duquette, Advocating for the Child in Protection Proceedings: A Handbook for Lawyers and Court Appointed Special Advocates 35 (1990). The Final Report adopted these five roles. See Final Report, supra note 12. Also in 1990, Tara Lea Muhlhauser characterized the role of the representative as that of investigator, champion, and monitor and stressed the importance of the representative simultaneously pursuing all three roles. See Tara Lea Muhlhauser, From "Best" To "Better": The Interests of Children and the Role of a Guardian Ad Litem, 66 N.D. L. Rev. 633, 638 (1990).

However, a mere description of the various responsibilities of a representative does not provide much, if any, guidance as to how one interacts with one's clients and with the other parties in the proceeding, what positions, if any, the representative should take, and how one resolves several difficult ethical dilemmas. In fact, such a listing of duties tends to exacerbate the confusion rather than alleviate it.

105 See Peters, supra note 8, at 41 (declaring that the debate has become polarizing); Buss, Children's Misperceptions, supra note 11, at 1700-02 (describing the disagreement about the "proper role for a lawyer to assume" as a struggle that classically comes down to a choice between 'best interest' and 'expressed interest' representation); Shepherd & England, supra note 1, at 1933 (citing to an "ongoing debate" in the legal profession); Weinstein, supra note 76, at 134 (finding that "[l]awyers and academicians have spent a great deal of time debating the role of the child's attorney" at the expense of the needs of the children).

It also is important to acknowledge that some scholars advocate for a hybrid role. See, e.g., Duquette & Ramsey, supra note 73, at 352-53; Haralambie, supra note 8, at 953-54. But see Buss, Children's Misperceptions, supra note 11, at 1702 & n.6 (contending that the hybrid model is really the GAL model because it allows for substitution of judgment).

106 Commentators who support the best interests model, which at times is viewed synonymously with the term GAL and called the GAL approach, believe that most children are without the requisite maturity, capacity, or judgment to be able to make important decisions on their own behalf. See Duquette, supra note 104, at 150 (proposing that for children under fourteen years of age, the representative should "make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child"); Fraser, supra note 104, at 30 (describing one of the roles of the GAL as a protector of the child's interests); Muhlhauser, supra note 104, at 642 (maintaining that one of the roles of the GAL is to examine the "better interests" of the child, acknowledging that there may be more than one good option); Weinstein, supra note 76, at 135 (citing to a moral obligation to protect children); Albert E. Hartmann, Note, Crafting an Advocate for a Child: In Support of Legislation Redefining the Role of the Guardian Ad Litem in Michigan Child Abuse and Neglect Cases, 31 U. Mich. J.L. Reform 237, 239 (1997) (recommending a legislative proposal that calls for representatives to utilize the best interests approach, but to also state the child's wishes if the child has articulated any). While not advocating for such an approach, Professor Buss has clearly explained and summarized this approach:

Those who advocate the GAL approach argue that children lack the maturity of judgment, even the cognitive capacity for decision making, necessary to assess appropriately their own interests, particularly their long-term interests. Even to the extent children's judgment is no worse than that of adults, proponents of the GAL approach would argue that society has a greater obligation to protect children from their own bad judgments. Moreover, children are under tremendous pressure to misidentify and/or misarticulate their own interests - pressure from their families, from the court process, and from the circumstances leading to the court process.

Buss, Children's Misperceptions, supra note 11, at 1702-03 (footnotes omitted). Most proponents of this model also consider it important - and part of the representative's role - to ensure that the court has all available and relevant information before any decision is rendered. See Fraser, supra note 104, at 33 (explaining that along with the responsibility to protect the child's interest, the GAL must "ferret out all of the relevant facts... [and] insure that all the relevant facts... [and] available options" are before the court); Muhlhauser, supra note 104, at 641-42 (describing the GAL's role as someone who "provide[s] information to the court, explore[s] options or alternatives, and... negotiate[s] with and among the systems or institutions having an interest in the case").

107 Practitioners and scholars preferring the traditional attorney or expressed wishes model assert that the child either has a right to have her position heard and represented to the judge like any other party, or at the very least, that important issues are better decided if the child's wishes are made known to the court. See Buss, Children's Misperceptions, supra note 11, at 1703-05 (describing the traditional attorney approach); see also Ventrell, supra note 88, at 260 (asserting that "the law supports a modern concept of zealous child advocacy" where attorneys advocate for "the interests of child clients, just as they would the interests of

adult clients"); Shannan L. Wilber, Independent Counsel for Children, 27 Fam. L.Q. 349, 354-57 (1993) (arguing for the child's representative to advocate for the child's wishes and point of view if the client is able to articulate a reasoned preference).
Expressed wishes advocates argue that not only is giving the child a voice empowering to the child, but "lawyers who practice under the traditional attorney model are inspired by the considerable wisdom of children, whose judgment about their best interests often proves at least as sound as that of the adults who have substituted their own judgment." Buss, Children's Misperceptions, supra note 11, at 1704 (articulating one of the justifications for the expressed wishes model); see also Ramsey, supra note 6, at 297 (arguing that representing a child's wishes "might result in wiser decisions"); Catherine Ross, From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation, 64 Fordham L. Rev. 1571, 1583 (1996) (noting that "[m]ore is at stake than simply communicating the child's preference").
Additionally, these advocates believe that a child will more readily go along with a decision, even if he does not agree with it, if he feels that he had a say in how it was determined. See Ross, supra at 1619; see also Wilber, supra, at 355 (proclaiming that "[i]f the child perceives that someone is on his side and the court has considered his views, even an unsatisfactory result will be easier to accept").

108 See Green & Dohrn, supra note 8, at 1295; Marvin Ventrell, The Child's Attorney: Understanding the Role of Zealous Advocate, 17 Fam. Advoc. 73, 74 (1995) (discussing the need for attorneys to represent their child clients just as they would represent an adult client).

109 See Green & Dohrn, supra note 8, at 1294-95; Ventrell, supra note 108, at 74-75. Although one's ethical obligations may be clearer under the traditional attorney model, they are by no means easily discernible. As a thorough reading of the Fordham recommendations and ensuing articles and responses reveals, many ethical dilemmas remain. For example, questions regarding the attorney's obligations to preserve the child's confidences may be difficult, especially when not revealing the confidences may mean that the child is likely to be in danger.

110 See Green & Dohrn, supra note 8, at 1294-95 (1996); Proceedings of the Conference on Ethical Issues in the Legal Representation of Children, Recommendation of the Conference, 64 Fordham L. Rev. 1301 (1996) [hereinafter Recommendation].

111 See Peters, supra note 8, at 40 (explaining that "the line between these two positions is in no way hard and fast"); Buss, Children's Misperceptions, supra note 11, at 1705; Buss, Developmental Barriers, supra note 11, at 903 (noting here as in her earlier work that few take an "absolutist" position).

112 See Peters, supra note 8, at 40 (concluding that "[a]lmost all those who focus on wishes acknowledge that children below a certain age or competence must be represented in a way that differs from the traditional representation of an adult"); Buss, Children's Misperceptions, supra note 11, at 1705 (explaining "that those advocating the traditional attorney approach necessarily exclude children too young to speak, and most require that the children be old enough to engage in a rationale decision-making process about the particular issue in question"); Buss, Developmental Barriers, supra note 11, at 903 (remarking that the "traditional attorney model assumes... that the child is old enough to communicate a position"); Lyon, supra note 103, at 692 (arguing that "[t]he possibility that the child may not be able to express a clear, uninfluenced and competent opinion complicates the task of representing the child-client wishes").

113 See Peters, supra note 8, at 40 (stating that "[c]urrently, I would be hard-pressed to identify anyone who still advocates the 'pure best interests point of view' or the 'pure wishes point of view' "); Buss, Children's Misperceptions, supra note 11, at 1705 (explaining that even "[t]hose advocating the guardian ad litem role... generally still concede that at some age... children should be able to direct their counsel...."); Buss, Developmental Barriers, supra note 11, at 903 (noting that "proponents of the GAL model generally recognize that, at some age, children become developmentally indistinguishable from adults in all relevant respects").

114 Professor Katherine Hunt Federle would not agree with this statement. As one of the most prominent spokespersons for the importance of empowering children, Professor Federle believes one should not analyze the role of the attorney in terms of the capacity of the child. See Katherine Hunt Federle, The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client, 64 Fordham L. Rev. 1655, 1696 (1996); see also Katherine Hunt Federle, The Abolition of the Juvenile Court: A Proposal for the Preservation of Children's Legal Rights, 16 J. Contemp. L. 23 (1990); Katherine Hunt Federle, The Child As a Client, 15 GP Solo & Small Firm Law. 22 (Oct./Nov. 1998); Katherine Hunt Federle, Constructing Rights for Children: An Introduction, 27 Fam. L.Q. 301 (1993); Katherine Hunt Federle, Looking Ahead: An Empowerment Perspective on the Rights of Children, 68 Temple L. Rev. 1585 (1995); Katherine Hunt Federle, Looking For Rights in All the Wrong Places:

Resolving Custody Disputes in Divorce Proceedings, 15 Cardozo L. Rev. 1523 (1994); Katherine Hunt Federle, On the Road to Reconceiving Rights for Children: A Postfeminist Analysis of the Capacity Principle, 42 DePaul L. Rev. 983 (1993); Katherine Hunt Federle, Overcoming the Adult-Child Dyad: A Methodology for Interviewing and Counseling the Juvenile Client in Delinquency Cases, 26 J. Fam. L. 545 (1987-88); Katherine Hunt Federle, Rights Flow Downhill, 2 Int'l J. Children's Rights 343 (1994).

115 It is significant to note that many state statutes require that representatives follow the best interests approach in their representation of all children. For analyses of the roles of representatives for children in every state, the District of Columbia, and U.S. territories see Peters, supra note 8, app. B at 255-479 (excerpting statutes and providing discussion explaining the practice in each jurisdiction).

116 Recommendation, supra note 110, at 1309.

117 Green & Dohrn, supra note 8, at 1286-90; see also Guggenheim, Paradigm, supra note 11, at 1414-15; Guggenheim, Reconsidering the Need, supra note 11, at 312-19; Peters, supra note 103, at 1527.

118 See Green & Dohrn, supra note 8, at 1290.
With a young child, no lifetime footprints guide the lawyer about the person's intent or wishes or nature. Consequently, the discretion accorded the lawyer or guardian ad litem for a preverbal child is unparalleled in scope. The opportunity, indeed inevitability, of bias and personal value-determined judgments in such a situation, including the class, race, ethnic, and religious assumptions that underlie notions of child rearing and family life is vast and undisclosed.
Id.

119 See supra notes 82-114 and accompanying text (discussing the lack of guidance regarding the role of the child's representative).

120 See Peters, supra note 103, at 1525-27.

121 See id.

122 See id. at 1525-26; see also Green & Dohrn, supra note 8, at 1286-87; supra note 76 and accompanying text (explaining how lawyers for children are often not well-trained); infra notes 307-13 and accompanying text (recommending comprehensive and mandatory training programs for all participants in the child protective system).

123 See Peters, supra note 103, at 1525; see also Earlene Boggett, Cross-Cultural Legal Counseling, 18 Creighton L. Rev. 1475, 1497 (1985) (arguing that law schools need to enhance their curricular offerings to include courses in cross-cultural legal counseling); Gerald P. Lopez, Training Future Lawyers to Work With the Politically and Socially Subordinated: Anti-Generic Legal Education, 91 W. Va. L. Rev. 305, 343, 305-58 (1989) (asserting that legal education teaches law students to "approach practice as if all people and all social life are homogeneous").

124 See Peters, supra note 103, at 1525. But see infra Part VII.D for a discussion of the mandatory training requirements imposed upon CASA representatives by many CASA programs, including training on cultural awareness.

125 See supra note 34 (discussing the common ethnic, class and race distinctions between the child clients and the legal representatives).

126 See Recommendation, supra note 110, at 1309 ("References to the lawyer's own childhood, stereotypical views of clients whose backgrounds differ from the lawyer's and the lawyer's lay understanding of child development and children's needs should be considered highly suspect."); see also Guggenheim, Paradigm, supra note 11, at 1415 (declaring that "[s]imilar cases will be

decided differently merely because assignment of a different lawyer").

127 See Inger J. Sagatun & Leonard P. Edwards, Child Abuse and the Legal System 50-52 (1995); Peters, supra note 103, at 1523.

128 See Final Report, supra note 12, at xv (stating that "[a]lmost 30 percent of private attorneys had no type of contact with their [child] clients, followed by 17.4 percent of staff attorneys and 8.9 percent of CASAs. One possible explanation for these high percentages is the perception among GALs that contact with abused/neglected infants and toddlers is not applicable to investigating and preparing for their cases."); Peters, supra note 103, at 1523 (describing some "extreme" situations where lawyers have represented children without meeting them) (footnote omitted); Shepherd & England, supra note 1, at 1929 (finding that many attorneys have "no contact or limited contact with their child clients"). Many states now specifically require by statute that representatives meet with the children they are appointed to represent. See Peters, supra note 8, app. B at 253. According to Professor Peters' statutory excerpts and statutory analyses, those states are California (four years of age or older), Colorado, Hawaii, Illinois, Iowa, Kansas, Maine, Minnesota, Montana, Nebraska, Texas (four years of age or older), Utah, and Wisconsin.

129 See Buss, Children's Misperceptions, supra note 11, at 1712 (discussing the importance of children understanding the legal processes and the attorney's and child's roles in those processes).

130 See generally supra note 11 (discussing Professor Guggenheim's work).

131 See Guggenheim, Paradigm, supra note 11, at 1431; Guggenheim, Reconsidering the Need, supra note 11, at 351; Guggenheim, Reflections, supra note 11, at 77.

132 Buss, Developmental Barriers, supra note 11, at 955-60 (discussing "the lawyer as teacher").

133 Guggenheim, Paradigm, supra note 11, at 1408-09, 1412-17.

134 See id. at 1405-06; Guggenheim, Reconsidering the Need, supra note 11, at 321 (explaining that "[t]he ethic of self-determination remains the touchstone of most forms of lawyer-client relationships") (quoting Frank P. Cervone & Linda M. Mauro, Ethics, Cultures and Professions in the Representation of Children, 64 Fordham L. Rev. 1975, 1985 (1996)).

135 Guggenheim, Paradigm, supra note 11, at 1405.

136 Id. (quoting Model Rules of Professional Conduct Rule 1.14 (1992)).

137 See id. at 1405-21.

138 Id. at 1407-08.

139 Id. at 1408.

140 See id. In order to more easily understand Professor Guggenheim's analysis, he has devised a two-part inquiry. First, one should question if the child is:

> of sufficient age, intelligence, and maturity to be 'unimpaired' as defined by the Model Rules[.] If the answer is 'yes,' the inquiry should cease. In these circumstances, children are empowered by established principles to set the objectives of the litigation. If the answer is 'no,' then it is necessary to continue the inquiry by examining whether and to what degree children are supposed to have autonomy rights in the particular subject matter under consideration.

Id. at 1409.
Professor Guggenheim acknowledges that this inquiry is a departure from his earlier analysis. See id. at 1421 n.69. In 1984, Professor Guggenheim concluded that, because attorneys for seven-year-old children in delinquency matters must abide by their child clients' wishes, they must do the same in child protection proceedings. See Guggenheim, Reflections, supra note 11, at 90-91. In reaching this conclusion, Professor Guggenheim compared delinquency cases to child protection matters and found many similarities, most notably the fact that both types of proceedings can result in a child being removed from the care of his parents. See id. at 92. Interestingly, he also found support for the assertion that the causes of delinquency and child maltreatment, and thus the need for a child to be removed from his home, were often identical. Hence, he argued that it would not be proper to base the determination of whether a child is given the right to direct counsel on the arbitrary decision by the state of whether to proceed with the prosecution of a delinquency or a neglect petition. See id.

141 See Guggenheim, Paradigm, supra note 11, at 1399. Professor Guggenheim finds that unimpaired "children enjoy the identical right to the kind of counsel as adults." Id. at 1408.

142 See id. at 1402 n.14.

143 Id. at 1399.

144 See id. at 1402 n.14, 1412 n.43.

145 See AAML Standards, supra note 11, at 9 (Principle 2.2 states that "[t]here is a rebuttable presumption that children age twelve and above are unimpaired. There is a rebuttable presumption that children below the age of twelve are impaired.").

146 Guggenheim, Paradigm, supra note 11, at 1421.

147 See id. at 1412 (stating that "[w]here the legislature wants a child's own views to be an important factor in the decision-making process, the child's views should become prominent.").

148 Id. at 1416. Professor Guggenheim acknowledges that the Model Rules do not limit an attorney who has been appointed to represent an impaired child in this way. See id. at 1414. In fact, he notes that the Model Rules explicitly allow lawyers to assume the role of guardian, and as such, to choose the best position for the child. See id. However, Professor Guggenheim calls upon all lawyers for young children to "eschew this alternative." See id. His views are based upon his concerns regarding the lack of uniformity in the role of the lawyer and his fears that the choices lawyers will make will be based on their own values and backgrounds, rather than those of the children. See id. at 1414-15 (arguing that our system works best when the instances of a randomly chosen adult making decisions for another person are limited). Professor Guggenheim states that "[s]imilar cases will be decided differently merely because of assignment of a different lawyer. Some lawyers will end up seeking diametrically opposed results in indistinguishable cases. The only differences in these cases frequently will be the personalities, values, and opinions of the randomly chosen lawyers." Id. at 1415.

149 See id. at 1417-20.

150 See id. at 1417.

151 Id.

152 See id. at 1418.

153 Professor Guggenheim states that, "[t]he substantive law of abortion is that all pregnant minors - both 'impaired' and 'unimpaired' - have the right to ask a judge to allow them to abort the fetus they are carrying." Id. at 1418-19.

154 Id. at 1428. Professor Guggenheim asserts that, "[c]hildren have no more right to insist that the state intervene to protect them from inadequate parents than to insist that the state stay out of their lives." Id.

155 Id. at 1431. It is significant to note that Professor Guggenheim's analysis in 1996 was limited to adjudicatory hearings. However, Professor Guggenheim does suggest, in some of his other writings, that once a child is found to be in need of the court's assistance (i.e., there has been a positive determination of parental unfitness), there may be some justification for the appointment of counsel. For example, in his article in the Loyola University Chicago Law Journal, he mentions that "some situations may still justify the appointment of an attorney" and elaborates in a footnote that one of these situations would be where a child becomes a ward of the state and enters the foster care system. Guggenheim, Reconsidering the Need, supra note 11, at 351 & n.200. Similarly, in 1984, he briefly noted that the role of counsel is altered once a finding of neglect against the parents is made. See Guggenheim, Reflections, supra note 11, at 142-43.

156 Guggenheim, Paradigm, supra note 11, at 1431. Professor Guggenheim finds support for this assertion in the writings of Joseph Goldstein, Anna Freud, and Albert Solnit. See id. at 1407. These authors defer to parental autonomy and do not advocate appointing a legal representative for the child until a "ground for intervention" has been established at an adjudicatory hearing. See Joseph Goldstein, et al., Beyond the Best Interests of the Child 111-12 (1973); see also Guggenheim, Reconsidering the Need, supra note 11, at 344.

157 See Guggenheim, Reconsidering the Need, supra note 11, at 351 ("Once attorneys for impaired children stop advocating an outcome, they become a type of procedural grease, principally concerned with making sure that the child receives all the appropriate procedural protection.").

158 Guggenheim, Reflections, supra note 11, at 138 (italics omitted).

159 See Guggenheim, Paradigm, supra note 11, at 1431.

160 See id.

161 Guggenheim, Reconsidering the Need, supra note 11, at 351. In 1998, Professor Guggenheim also asserted that the lawyer should ensure that the court has all the information it needs to make a well-informed decision. See id. at 348. However, he does not explain whether an attorney appointed to represent an impaired child should conduct her own factual investigation, and if so, whether she should include an inquiry as to the child's wishes as part of this investigation. Moreover, it is not evident from Professor Guggenheim's writings whether he would include a reporting of the child's wishes as part of any neutral report that an attorney might make or give to the court in a child protection proceeding. To the extent that Professor Guggenheim finds it appropriate or necessary for a lawyer for an impaired child to conduct a factual investigation, it is difficult to comprehend how a lawyer could not help but get involved in advocacy. Likewise, it is difficult to envision how one enforces statutory mandates in an objective fashion. For further analysis of these problematic aspects of Professor Guggenheim's analysis, see infra Part III.B. (discussing the inevitability that lawyers will exercise some discretion).

162 The fact that Professor Guggenheim argues for such a limited role at the adjudicatory stage takes on an even greater significance when one considers that only a small percentage of cases filed with the juvenile court are actually dismissed at the adjudicatory phase. See Buss, Developmental Barriers, supra note 11, at 902 (concluding that decisions at adjudicatory hearings often "mark the first in a long series" of court decisions). As is stated above, in most substantiated reports of abuse or neglect, it is not necessary to seek the assistance of the court system. See supra notes 54-55 and accompanying text. In my experience, in those cases where the agency has found it necessary to seek the aid of the judicial system, there is often little doubt that the family is in need of some form of assistance (although I do not mean to imply that in order to provide assistance, the children always need to be removed from the care of their parents and family). Rather, the cases that are brought to the court's attention are usually those where the child is thought to be in danger or where the child welfare agency finds the parents to be uncooperative and acting against the

interests of the children. Given the likelihood of cases moving onto the dispositional phase, it is not fair to the child, nor is it efficient, to wait until the disposition hearing to appoint counsel for the child.
Moreover, because the interests and facts of each stage in a child protection proceeding are so closely related, it is often impossible to view the proceeding as comprised of separate and distinct phases. What occurs in one stage can directly affect what occurs in subsequent hearings. For example, a parent might agree to a finding that she has had difficulty caring for her children in the past, if all of the parties also agree that the disposition will be to return the children to her care and for the child welfare agency to provide services to the family. In practice, because the issues at adjudicatory and disposition hearings are so closely connected, many jurisdictions actually allow for the two hearings to be merged. For similar reasons, many courts and judges may be "preoccupied throughout all phases of all proceedings with the 'best interests of the child,' even when, at a given phase of the proceedings, another standard such as parental fault is controlling." Peters, supra note 103, at 1515. Finally, Professor Guggenheim's focus on adjudicatory hearings ignores the fact that emergency removal hearings, where issues of temporary placement are decided, occur prior to adjudicatory hearings.

163 See Buss, Developmental Barriers, supra note 11, at 960-61. Professor Buss refers to a representative of a young child as a Guardian Ad Litem or "GAL." This is her way of distinguishing them from representatives who approach their role as traditional attorneys would.
A GAL generally lacks expertise in assessing how to choose the best among generally unattractive options for children. The socio-economic gulf between lawyer and client further undermines the lawyer's ability to make good, generic judgments on her clients' behalf, and the limited contact she has with any particular client prevents her from developing any child-specific insights into which plan will best serve her client's interests.
Id. at 960 (footnotes omitted).

164 See id. at 958-60.

165 See id. at 956.

166 Professor Buss envisions that representatives would "approach their representation as a teaching opportunity--an opportunity to begin to expose a child to what it means to engage in the decision-making process and take some control...." Id. at 956. Professor Buss acknowledges that her suggestion that legal representatives should educate their clients is not significantly different from any lawyer's current obligation to keep his clients informed, to take the time to develop relationships with his clients based on trust and rapport, and to explain the law, legal processes, and the purposes and outcomes of all legal proceedings and significant occurrences. See id. at 956-57. In fact, she states that the primary difference between her recommendation and existing professional responsibilities of attorneys is that the process of education that she is contemplating "could take years." See id. at 957.

167 See id. at 959.

168 See id. at 896-99. Professor Buss chooses to focus on children's ability to be empowered because she finds there to be "a growing call for child 'empowerment' among those concerned with the legal representation of children." Id. at 896. In fact, she states that she used to be "a long-time advocate of child empowerment." Id. at 897. However, she now fears that those advocating for child empowerment have failed to consider whether children's immaturity and lack of familiarity with court processes and lawyers create situations where empowerment is difficult, if not impossible, for all but older children. See id. at 896-99.
Professor Buss states that her "definition of empowerment derives from [her] interpretation of both the adult and child empowerment literature...." Id. at 918. Specifically, Professor Buss defines empowerment with respect to child clients as:
[T]he transformation of the child client's perception of his influence in the litigation process and the creation of an appetite for the exercise of that influence. The influence in question has two targets: (1) the process and outcomes of litigation and (2) the perceptions of the client held by the client and others.
Id. at 917-18.

169 Id. at 921. Professor Buss contrasts this developmental study with previous analyses that have "focuse[d] almost exclusively on the development of logical reasoning skills - often generically described as cognitive development - and more specifically on the capacity to engage in a rational decision-making process." Id. at 904-05.

170 See id. at 921-26.

171 See id. at 951-52.

172 Id. at 951.

173 See id. at 920, 955.

174 See id. at 951.

175 See id. at 918-19, 918 nn.76-77, 929 & nn.109-10.

176 See supra notes 144-45, 173-75 and accompanying text.

177 Buss, Children's Misperceptions, supra note 11, at 1719.

178 Several scholars have posited the age of seven as a significant developmental threshold and the point at which a child is capable of making decisions and rational thought. See, e.g., Ramsey, supra note 6, at 310-19. "Many-seven year-old children can consider cause and effect, can use information, can reason about alternatives, and can communicate the decision reached." Id. at 314; see also Haralambie & Glaser, supra note 15, at 60-61 (citing Lois Weithorn, Involving Children in Decisions Affecting Their Own Welfare, in Children's Competence to Consent 246 (1983) (concluding that many seven-year-olds "may have reasonable preferences and ideas about what happens to them")). Some legislatures have even determined that four-year-olds are sufficiently mature as to warrant mandating their lawyers to interview them. See Patton, supra note 77, at 29 (reporting that in California "4-year-old children are presumptively determined capable of expressing their desires because both attorneys and social workers are mandated to interview them").

179 It is likely that none of the other parties will bring the existence of Ms. Jones to the judge's attention as placement with her is against the rules and policies of the child welfare agency and Ms. Smith is not present.

180 See, e.g., Md. Code Ann., Cts. & Jud. Proc. § 3-815(b)(1)(iii) (1999). "If the child is alleged to be in need of assistance..., he may be placed in shelter care facilities maintained or approved by the Social Services Administration, or the Department of Juvenile Justice, or in a private home or shelter care facility approved by the court." Id.
Some lawyers might interpret statutory mandates or fidelities more broadly or loosely to encompass either advocating for a particular placement or, at least, bringing information about a particular placement to the court's attention. If this occurs, it is not clear how this would be different than advocating a position or how it would substantially reduce discretion. For further analysis of the difficulty of determining statutory mandates or fidelities and distinguishing between enforcing statutory mandates or fidelities and advocating for a position, see infra Part IV.B.

181 While there is little, if any, research that analyzes the significance of these early emergency removal hearings, it is unquestionably a critical and traumatic time for the children involved. Given children's different sense of time (e.g., three weeks for a child can seem like an eternity), as well as the fact that, like Andrew and Brenda, many of these children likely just experienced an episode of abuse or neglect, the decision of where they should spend the next few weeks, if not months, is of the utmost importance and has the potential to have long-standing ramifications for them, their families, and even the course of the court proceeding. For an analysis of children's sense of time see Goldstein, supra note 156, at 40-43.
Until such a point that the case is dismissed or the court has found that the children are in need of the court's assistance (a finding that is made at the conclusion of the adjudicatory hearing) and has made a formal disposition, there will continue to be a need to determine the temporary custody and placement of the children. Accordingly, if the adjudicatory hearing is continued, if it is begun, but cannot be completed in one day or in one sitting, or if the disposition hearing takes place at a separate and different time

from the adjudicatory hearing, there will be a need for subsequent shelter care hearings. See Kiernan, supra note 34, at 10 (observing juvenile court practice and declaring that "[t]he decision made during a temporary custody hearing is crucial because it can mark the beginning of a long, painful odyssey. For the first of what may be many times, the judge must predict whether a child will be safe."). Moreover, judges are more likely to continue early custodial decisions than they are to change them. See Peggy Cooper Davis & Gautam Barua, Custodial Choices for Children at Risk: Bias, Sequentiality, and the Law, 2 Roundtable 139, 148-55 (1995) (discussing empirical evidence and research that suggests that "status quo bias" leads judges to favor maintaining placements made at emergency removal hearings).

182 Guggenheim, Paradigm, supra note 11, at 1431.

183 Buss, Developmental Barriers, supra note 11, at 959.

184 Many have agreed that a lawyer for a young child should attempt to limit the scope of her representation to the legal interests at hand. See Proposed Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, 29 Fam. L. Q. 375, 381 (1995) (examining Standard B-4(2) which declares that "[t]o the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests"); Recommendation, supra note 110, at 1310 (stating that a lawyer must "narrow the area of inquiry by determining the legal interests of the child"). However, it is not at all clear that everyone would agree on what constitutes a legal interest. See Appell, supra note 95, at 1963 (concluding that children's legal rights may conflict); Roberts, supra note 29, at 117 (concluding that "there is no fixed meaning of children's rights in any particular context involving children's welfare"); Walter, supra note 3, at 47 (describing the "child's interests that are affected by governmental intrusion in an abuse and neglect case" as the following: "being free from abuse," "growing up with their families," obtaining a "swift and legally permanent plan," and "being informed and having a voice").

185 See Guggenheim, Paradigm, supra note 11, at 1429.

186 Id. at 1429-30.

187 Id. at 1430.

188 Id.

189 Id.

190 See Appell, supra note 95, at 1963. Professor Appell discusses the legal interests of a child to remain with his parents and of a child to be protected from harmful parents. See id. In some situations, especially those where it seems clear that the child has suffered harm in the care of his parents, she believes these interests may be in conflict. See id. Thus, in her view, a paradigm that directs a lawyer to exclusively represent a child's legal interests may be ambiguous, if not subject to differing, and at times conflicting, interpretations. See id. at 1963-65. Specifically, she concludes that "a child has the right to remain a part of his or her family of origin, yet a child also has an interest in being protected from abusive or neglectful parents." Id. at 1963 (footnotes omitted). Professor Appell also cites to possible confusion when a lawyer determines that the "child's substantive legal rights may violate the child's less defined constitutional rights." Id. In this instance, she maintains that Professor Guggenheim's paradigm could lessen the likelihood that a lawyer will pursue constitutional challenges of state or federal law. See id.

191 See id. at 1963-65.

192 See id. at 1955 (offering a similar illustration concerning two children, both under the age of two years).

193 See id. at 1958.

194 See infra notes 245-52 and accompanying text.

195 Howze, supra note 2, at 38.

196 See id.

197 See, e.g., 705 Ill. Comp. Stat. 405/2-27 (West 1998 and Supp. 1998). For an example of how extensive and difficult a best interests determination can be, see 705 Ill. Comp. Stat. 405/1-3(4.05) (West 1998), which lists an exhaustive set of factors to be considered when making a best interests determination. See also Tex. Fam. Code Ann. § 263.307 (West 1996) (outlining a similar type of assessment); infra notes 245-52 and accompanying text (explaining the difficulty, if not impossibility, of determining what is best for a child).

198 See 45 C.F.R. § 1356.21(b)(3) (2000) (outlining circumstances where reasonable efforts to prevent a child's removal or to reunify a child with his family are not required); see also supra note 48.

199 See id. § 1356.21(b).

200 See id. § 1356.21(d)(4). Professor William Patton explains how the requirements of concurrent planning may cause the potential of conflict for a child's representative:

Under concurrent planning, the child's attorney will now be forced at the disposition hearing and at all future review hearings not only to argue what reunification services should be provided, but also to advocate his or her client's desire for alternative permanent placement should parental severance take place. Concurrent planning changes the context and the tactics of the child's advocate because it functionally presents a balance of competing parental universes.

Patton, supra note 77, at 34. See also Roberts, supra note 29, at 114 (concluding that the requirement of concurrent planning creates "conflicting incentives").

201 See 45 C.F.R. § 1356.21(b).

202 See id. § 1356.21(b)(2)(i)-(ii); § 1355.20.

203 Professor Buss recognizes that a distinction between asserting that a statutory obligation has not been fulfilled and taking a position may be very difficult to make and "will prove elusive" at times. Yet, her only advice on how to distinguish the two is that attorneys should "make clear to the court when they are acting without the client's direction." Buss, Developmental Barriers, supra note 11, at 959 n.202.

204 See Guggenheim, Reconsidering the Need, supra note 11, at 351; see also Duquette & Ramsey, supra note 73, at 347 (noting that in the 1980s "some debate still exist[ed] regarding whether a child need[ed] independent representation" and that "[s]ome writers view[ed] the child's representative as an extraneous figure" because the other parties or the judge could adequately protect the child's interests) (footnote omitted).

205 The literal translation of the term parens patriae is "parent of the country." Black's Law Dictionary 1137 (7th ed. 1999). The term traditionally refers to the role of the state as sovereign and guardian of persons under legal disabilities. See id. While the role of the state as parens patriae is an important and controversial function, a full exploration of this duty is beyond the scope of this article. For a historical analysis of the state's parens patriae function, see Areen, supra note 31, at 896-917 and Susan B. Hershkowitz, Due Process and the Termination of Parental Rights, 19 Fam. L.Q. 245, 249-52 (1985). For an understanding of the doctrine's origin, see Lawrence B. Custer, The Origins of the Doctrine of Parens Patriae, 27 Emory L.J. 195 (1978).

206 See Wilber, supra note 107, at 350 (stating that "the traditional role of the court as parens patriae... has been widely discredited"); see also Walter, supra note 3, at 49 (maintaining that juvenile courts have not been able to protect the interests of children).

207 Wilber, supra note 107, at 350; see also Haralambie & Glaser, supra note 15, at 92 (explaining that the judge in matrimonial matters is not an investigator and cannot protect the child); Walter, supra note 3, at 49 (stating that "[a] court's decisions can only be as good as the information it has before it" and asserting that the information that juvenile court judges typically receive is incomplete because the flow of information is controlled by the attorneys).

208 See supra notes 2, 197 and accompanying text; infra notes 245-52 and accompanying text.

209 See Peters, supra note 8, at 3-9 (setting forth the proposition that one can always learn information from a child, even from an infant); Peters, supra note 103, at 1515;.

210 "One can question how often, if ever, any judge will have the necessary information." Mnookin, supra note 60, at 257.

211 It also can put a treating therapist or other professional in awkward positions - positions that ultimately could damage the treatment process itself. See Peters, supra note 103, at 1529-32.

212 See Walter, supra note 3, at 49 .

213 In addition, if a child is placed outside of his home, the parent may not know of the status of the child's well-being. See id.

214 One of the more comprehensive approaches that a judge can take is to order that the children and/or the parents receive psychological evaluations. However, at least one scholar has noted some serious concerns regarding these assessments. See Peters, supra note 103, at 1535.

215 Interviews with judges reveal that they "rel[y] heavily on social workers' reports." Terry Pristin, Child Courts Struggle in Harsh Environment, L.A. Times, Feb. 2, 1998, at 1. Yet, the quality of these reports "range from the barely adequate to the comprehensive." Id.

216 See Walter, supra note 3, at 49.

217 See infra note 307-13 and accompanying text.

218 See Haralambie, supra note 8, at 985 ("It is only when all parties are represented by independent and competent counsel that the court can have access to all of the relevant information and alternatives.").

219 See Sagatun & Edwards, supra note 127, at 68-70 (maintaining that the other parties in the matter cannot be relied upon to assert the perspective of the child); Duquette & Ramsey, supra note 73, at 346 (recognizing that children need independent legal representation because neither the state's nor the parents' interest can "be assumed to coincide entirely with the child's"); Ramsey, supra note 6, at 292 (concluding that a "lawyer's advocacy for the child's interests is needed because the traditional representatives and protectors of the child are unable or unwilling to put the child's interests first"); Ross, supra note 107, at 1585 (finding that "parents and state guardians do not and cannot always speak for their children"); Wilber, supra note 107, at 350 (discussing how the state, the courts, and the parents do not satisfactorily represent the children's interests).

220 Lyon, supra note 103, at 686 (quoting In re Clark, 185 N.E.2d 128, 130 (Ohio Misc. 1962)); see also Ross, supra note 107, at 1582-84 (maintaining that the interests of parents and children are not always the same); Walter, s upra note 3, at 49 (declaring that "in terms of protecting the child's best interests, it would be folly to rely on the attorney for the parent").

221 See Wilber, supra note 107, at 351 ("Parents engaged in a... protracted child abuse proceeding... are often blind to the child's need for a prompt, harmonious resolution. Counsel for the child can oppose unnecessary continuances, move to quash frivolous motions, or request a court order providing counseling or other supportive services for the child.").

222 As explained above, many abused or neglected children and their families are living in impoverished and hostile environments. Stress as a result of these unfortunate living situations, and not ill-will or malice on the part of the parents, often leads to or causes the maltreatment of the children. It is therefore worth noting that the interests of the parents and the children may not conflict to as great an extent as may initially be assumed.

223 Wilber, supra note 107, at 350; see also Buss, Parents' Rights, supra note 11, at 438 (describing child welfare agencies as "[o]verwhelmed, underfunded, [and] highly bureaucratic"); Haralambie, supra note 8, at 951 (finding that the positions of the child and the state are not "necessarily identical"); Walter, supra note 3, at 50 (explaining that there are "many conflicting interests" preventing the agency from safeguarding each child's interest); Lyon, supra note 103, at 686-87 (maintaining that the state is "unlikely to present an uncompromised view of the child's interest that is free of institutional or professional biases and interests"); Stacy Robinson, Comment, Remedying our Foster Care System: Recognizing Children's Voices, 27 Fam. L.Q. 395, 398 (1993) (discussing how budgetary constraints have caused state child welfare agencies to be understaffed and unqualified).
For a description of the consequences of this lack of resources and staffing, see supra notes 38-52 and accompanying text.

224 Wendy Anton Fitzgerald, Maturity, Difference, and Mystery: Children's Perspectives and the Law, 36 Ariz. L. Rev. 11, 48 (1994) [[hereinafter Fitzgerald, Maturity, Difference, and Mystery]. An example of these conflicting interests can be seen in the ASFA, which provides financial incentives to states that increase the number of children that are adopted, but not for states that improve their ability to reunify families. See Walter, s upra note 3, at 50; see also Romo, supra note 13, at 8 (quoting Terry Friedman, presiding judge of Los Angeles juvenile court, as saying that "[i]t's not likely that an attorney is going to advocate zealously for a child when that counsel is advocating for an agency that could lose federal money").

225 See Fitzgerald, Maturity, Difference, and Mystery, supra note 224, at 47-48.

226 Id. (citing to Children's Defense Fund, The State of America's Children 1992, 28, 61-67 (1993)).

227 See Duquette & Ramsey, supra note 73, at 355 (concluding that because of high caseloads, the state agency "may be unwilling or unable to meet each child's individual needs"); Jinanne S.J. Elder, The Role of Counsel for Children: A Proposal for Addressing a Troubling Question, B. B. J., Feb. 1991, at 6, 9 (1991) (stating that "placement decisions are often based on institutional constraints and personal biases rather than on a true perception of the needs of the child"). One national study found that caseworkers had less contact with children than with the children's representatives. See Final Report, supra note 12, at 5-7. For example, representatives reported "talking with the child to assess placement needs in 59.8 percent of the cases, while caseworkers reported such contacts in only 45.5 percent of cases." Id. Moreover, "[t]he percentages for contacts to assess service needs were 53.5 and 41.2 percent, respectively." Id.

228 My assertion that the state child welfare agency is required to provide services to Andrew and Brenda's mother presumes that at least one of the permanency plans for the children is for them to be reunified with their mother.

229 See Walter, s upra note 3, at 50 (noting services are more likely to be provided if the child's attorney is advocating).

230 For example, see study conducted by Michael Wald et al., Protecting Abused and Neglected Children 181-200 (1988) (examining the effects of foster care versus home placement and finding that abused and neglected children are at serious risk in both settings). See also Areen, supra note 31, at 889 (remarking that there is "little agreement on when intervention in a particular family is

justified [and]... about what forms of intervention are constructive"), 893 n.26 (citing B. Russell for the proposition that administrative agencies like uniformity, but it can create problems of pigeonholing and persecution of those who can't conform); Courtney et al., supra note 29, at 130-31 (reviewing various studies and exhorting policy makers to question the efficacy of 'one size fits all' services, and especially to consider the role of race and ethnicity in the provision of services); Kiernan, supra note 34, at 10 (quoting a judge as saying that "[w]hat we need to do is create many different approaches. We need to understand that kids rely upon their family structure and create a more comprehensive approach to dealing with the families.").

231 See James Q. Wilson, Bureaucracy: What Government Agencies Do and Why They Do It 334-35 (discussing the use of rules as a means of reducing agency discretion and "making the actions of government fair and predictable" (citing Max Weber, 3 Economy & Society, 958, 973-75, 979 (1968))).

232 See Michael Lipsky, Street Level Bureaucracy: Dilemmas of the Individual in Public Services 39 (1980) (describing the financial situation of "street-level bureaucracies" as "chronically inadequate").

233 See supra notes 204-18 and accompanying text (discussing the inability of judges to adequately protect the children's interests).

234 See Sagatun & Edwards, supra note 127, at 67-68, 72, 84-85 (concluding that the other participants in the proceeding cannot be counted on to listen to and represent the needs of the child) (footnotes omitted); Margulies, supra note 8, at 1499 n.94 (maintaining that "reducing the power of an advocate for children just gives the other advocates more authority"); Walter, s upra note 3, at 51-53.

235 Ramsey, supra note 6, at 292 (footnote omitted).

236 See Wilber, supra note 107, at 351.

237 See Final Report, supra note 12, at xv; A Judge's Guide, supra note 45, at 4-5; Green & Dohrn, supra note 8, at 1294-95; Recommendation, supra note 110, 1301-02, 1328; Ross, supra note 107, at 1572-73; Walter, supra note 3, at 51; Wilber, supra note 107, at 350-52.

238 The Working Group on the Allocation of Decision Making, Report of the Working Group on the Allocation of Decision Making, 64 Fordham L. Rev. 1325, 1327 (1996).

239 See Final Report, supra note 12, at xv (stating that "TEG [[Technical Expert Group] members maintained that, in their opinion, it was unacceptable for any child to appear before the court without being represented by either an attorney or another person equally qualified to fulfill the role, and the study recommends that an attorney be present at all hearings."); Romo, supra note 13, at 8 (quoting Terry Friedman, presiding judge of Los Angeles juvenile court as saying "Children must have counsel. They must be independent and must be viewed as equal with all other counsel."); Walter, supra note 3, at 58 (exhorting that "[d]ue process and fundamental fairness cry out for a child's right to independent representation in dependency proceedings.").
Some of the unique and important skills of an attorney include: the ability to recognize and research legal issues, analytically apply facts to law, take testimony of witnesses, cross-examine witnesses, prepare and submit written pleadings, bring matters to the court's attention through motions, creatively challenge and advance substantive law, and argue appeals.

240 See Margulies, supra note 8, at 1499 n.94 (discussing court appointed advocates, and stating that "reducing the power of an advocate for children just gives the other advocate more authority"); Ross, supra note 107, at 1572-73 (quoting Justice Powell's concurrence in Argersinger v. Hamlin, 407 U.S. 25, 65 (1972) ("'[T]he adversary system functions best and most fairly only when all parties are represented by competent counsel.' Indeed the absence of counsel in an adversary system severely diminishes the odds of justice being served.").

241 Wilber, supra note 107, at 354.

242 See A Judge's Guide, supra note 45, at 1.

243 Id.

244 See Peters, supra note 8, at 1 (proposing contextual approach); Peters, supranote 103, at 1512, n.12. See infra Part V.B.2 (discussing the need for an advocate to assure that a child's unique needs are met).
My support for a contextual approach to representation runs contrary to an earlier assertion of mine that there is a need for a "bright line" test, at least with regard to the ethical rules of confidentiality and potentially for other aspects of representation as well. See Randi Mandelbaum, Rules of Confidentiality When Representing Children: The Need for a "Bright Line" Test, 64 Fordham L. Rev. 2053 (1996). My earlier suggestions were based on my desire to both give guidance to practitioners and to acknowledge the realities of practice. Yet, after further thought, I have come to the conclusion that we cannot accept the current state of practice. There are no "easy answers" to these very tough questions about proper models of practice and what constitutes the ethical representation of children. As explained above, the lack of answers is in part responsible for the poor state of representation for children. However, if we are ever to improve practice, we must struggle with the hard questions and develop models of representation, like that of Professor Peters, that attempt to understand each child's individual world with all its unique and idiosyncratic features. See Peters, supra note 8, at 1-2.

245 See Brooks, supra note 88, at 770-71 (declaring it impossible to ever know what is in the child's best interests); David L. Chambers, Rethinking the Substantive Rules for Custody Disputes in Divorce, 83 Mich. L. Rev. 477, 478 (1984) (concluding that in custody cases the best interests standard "is both too broad and too narrow to be acceptable"); Lurie, supra note 87, at 235 (questioning whether it is possible to predict what a particular child would want); Guggenheim, Reconsidering the Need, supra note 11, at 307 (quoting Hillary Clinton, "[the] best interests standard... is not properly a standard. Instead, it is a rationalization by decision-makers justifying their judgments about a child's future, like an empty vessel into which adult perceptions and prejudices are poured."); Mnookin, supra note 60, at 255-62 (maintaining that what is "best" for a particular child is "usually indeterminate and speculative"); Twila L. Perry, Race and Child Placement: The Best Interests Test and the Cost of Discretion, 29 J. Fam. L. 51, 58 & n.23 (1990) (explaining that "[t]here... is no general agreement as to what a child's best interests are" and that "[t]he standard has long been criticized as being overly vague and subjective"); Weinstein, supra note 76, at 81, 108-12 (discussing how vague the best interests standard is and how there often is no one correct answer).

246 Brooks, supra note 88, at 771.

247 See Mnookin, supra note 60, at 260.

248 See id.; see also Chambers, supra note 245, at 488-89.

249 See Peters, supra note 103, at 1512 n.12 (remarking that discretion in the determination of a child's best interests cannot be eliminated).

250 See Carl E. Schneider, Discretion, Rules, and Law: Child Custody and the UMDA's Best-Interest Standard, 89 Mich. L. Rev. 2215, 2218-19, 2247-49, 2261-64 (1991) (arguing "that no easy choices are available in thinking about custody disputes, that wholeheartedly rejecting discretion is certainly not such a choice, and that a motley mix of discretion, guidelines, and rules may be the best we can do").

251 Mnookin, supra note 60, at 260; see also Fitzgerald, Maturity, Difference, and Mystery, supra note 224, at 53-64 (analyzing the difficulties and the numerous problematic aspects of best interests determinations in custody disputes); Herma Hill Kay & Irving Phillips, Poverty and the Law of Child Custody, 54 Cal. L. Rev. 717, 720 (1966) (discussing the difficulty of determining what is in a child's best interest).

252 See Mnookin, supra note 60, at 260.

253 See Mary Ann Glendon, Fixed Rules and Discretion in Contemporary Family Law and Succession Law, 60 Tul. L. Rev. 1165, 1170-71 (1986) (finding that in divorce matters "discretion need not be uncontrolled and that significant predictability can be introduced").

254 See supra notes 116-29 and accompanying text (discussing problems with the "best interests" approach).

255 See supra notes 104-14 and accompanying text (discussing debate over "best interests" or "traditional" approaches).

256 See supra note 104 (listing the duties that a representative may be required to perform).

257 See Elder, supra note 227, at 6; Wilber, supra note 107, at 349; Lyon, supra note 103, at 681.
It is significant to note that several other well-respected scholars have also written on the importance of recognizing children's perspectives as different and distinct from all other individuals. See Fitzgerald, Maturity, Difference, and Mystery, supra note 224, at 11; Wendy Anton Fitzgerald, Stories of Child Outlaws: On Child Heroism and Adult Power in Juvenile Justice, 1996 Wis. L. Rev. 495 (1996) [hereinafter Fitzgerald, Stories of Child Outlaws]; Martha Minow, Rights for the Next Generation: A Feminist Approach to Children's Rights, 9 Harv. Women's L.J. 1 (1986); Barbara Bennett Woodhouse, Hatching the Egg: A Child-Centered Perspective on Parents' Rights, 14 Cardozo L. Rev. 1747 (1993) [hereinafter Woodhouse, Hatching the Egg]; Barbara Bennett Woodhouse, Out of Children's Needs, Children's Rights: The Child's Voice in Defining the Family, 8 BYU J. Pub. L. 321 (1994). Although these scholars do not necessarily focus on child protection proceedings or attorney-child client relationships, they do stress the importance of understanding children's unique perspectives in all spheres. Moreover, they emphasize how policies and laws would be different if they were enacted in accordance with children's viewpoints. For example, Professor Woodhouse examines the unique right of children to receive basic nutrition, support and protection not only from their parents, but from society at large. See Woodhouse, Hatching the Egg, supra, at 1755-56. Accordingly, she argues that "parental rights should be reconceptualized as flowing from parents' responsibilities" and that parenthood should not be considered a form of ownership, but rather a "stewardship." Id. Similarly, Professor Fitzgerald calls for including the perspectives of children in our efforts to reform our juvenile justice systems and to amend our laws and policies governing family disputes. See Fitzgerald, Maturity, Difference, and Mystery, supra note 224, at 11; Fitzgerald, Stories of Child Outlaws, supra, at 495. Although at times it may be difficult to determine the actual perspectives of very young children, the recommendations and theoretical interpretations of these noteworthy scholars serve to illustrate that children's interests are unique and in need of expression and protection.

258 See Wilber, supra note 107, at 359-60 (citing Louise Harmon, Falling Off the Vine: Legal Fictions and the Doctrine of Substituted Judgment, 100 Yale L.J. 1, 16 (1990)). Currently, the doctrine of substituted judgment is most common in the area of medical treatment consent (i.e., informed consent). The doctrine has been the subject of much controversy based on its uneven application by various courts and the difficulty of inferring intent where there is little, if any, evidence on which to base such a conclusion (i.e., for a person who has always been incapacitated). See id. at 361. Yet, despite these limitations, scholars still found it useful to explore its relevance to the legal representation of young children. Acknowledging that it was difficult to discern the needs and desires of a young child, they found significant differences between the way in which the doctrine was applied in the medical treatment context and the way in which it could be employed when representing a young child. See id. at 362; see also Lyon, supra note 103, at 702.

259 See Elder, supra note 227, at 8-9; Lyon, supra note 103, at 702-03.

260 See Elder, supra note 227, at 9; Wilber, supra note 107, at 362; Lyon, supra note 103, at 703-04.

261 See Elder, supra note 227, at 9; Wilber, supra note 107, at 362; Lyon, supra note 103, at 704-05.

262 For example, one commentator defined such values as "the protection of the child's physical and emotional safety, preservation of

the child's family of origin whenever possible, placement in the least restrictive alternative--preferring family, relatives, or a family-like setting over institutionalization--and minimizing disruption and exposure to prolonged or intense conflict." Wilber, supra note 107, at 363. While another writer defined these necessities as: (1) the provision of basic needs; (2) provision and maintenance of nurturance, stability, and continuity; (3) freedom from abuse and neglect; and (4) maintenance of the family. See Elder, supra note 227, at 8-9.

A variation of this approach has been proposed by Professor Margulies, who advocates that, in making decisions on behalf of the child client, the representative look to three important factors as guidelines: (1) continuity of caregiving; (2) parents' commitment of time to their child's education; and (3) the presence of exploitation or violence against the child or other family members. See Margulies, supra note 8, at 1502; see also Chambers, supra note 245, at 493-95 (acknowledging the difficulty of defining "elemental qualities of life or personal characteristics that most children would want," but attempting to do so nonetheless).

263 See Lurie, supra note 87, at 235 (noting that the substituted judgment approach has been criticized because, in actuality, it simply gives an attorney the ability to rationalize doing whatever she wants to do (citing Kevin W. Bates, Live or Let Die: Who Decides an Incompetent's Fate? In re Storar and In re Eichner, 1982 BYU L. Rev. 387, 392 (1982))).

264 Professor Peters adheres to the views of the participants of the Fordham Conference, the ABA, and other scholars in her insistence that children of all ages be represented by attorneys. See Peters, supra note 8, at 1.

265 See Peters, supra note 103, at 1505.

266 Peters, supra note 8, at 2.

267 In order to emphasize and illustrate the importance of the child's participation, but also the difficulty when a child is very young, Professor Peters posits that "[a] useful image for thinking about the child's competence to contribute to his representation is the concept of 'dimmer switch,' " where the "child's potential contribution... should be seen as covering a point across a broad spectrum." Id. at 53. She adds that even a newborn child can contribute some amount to his lawyer's representation and "the lawyer must strive to incorporate every percentage of the client's contribution into the representation." Id. at 53-54. Furthermore, Professor Peters recommends that lawyers for children should conduct their representation according to the following three default practices: (1) Relationship default: "A lawyer should begin her representation as she would any other lawyer-client relationship, by meeting the client and trying to ascertain the client's goals." (2) Competency default: Presume the child "can understand the legal issues" in the case and express subjective perspective or offer critical information about them. (3) Advocacy default: "All lawyers whose child clients can express a view relevant to the legal representation should proceed in the first instance as if the stated view is the goal of the representation." Id. at 49-54. Professor Peters believes that these defaults outline a model of practice that is consistent with Model Rule 1.14. Id. at 49. "Rule 1.14's admonition that the lawyer maintain a traditional lawyer-client relationship dictates that lawyers for children must observe three default practices with respect to their clients from day one of the representation." Id.

268 For example, in a supplement to the text, Professor Peters describes a creative mapping process - stellar cartography - to assist the lawyer in making sense of both the child's daily life and the child's history. See id. at 6.

In addition, in her earlier work, she presents a framework for assessing and determining the best interests of a young child. See Peters, supra note 103, at 1554-55. First, if the child is able to converse, she insists that the representative attempt to communicate with the child and engage in counseling sessions with the child. See id. Second, she advises the representative to conduct an investigation to uncover as much as possible about the child's world. See id. at 1555. Next, she recommends "evaluat[ing] the actual alternative options in terms" of two existing developmental theories that she discusses - "the psychological parent and family network paradigms." Id. Finally, she suggests "consult[ing] experts for guidance." Id. at 1557.

Interestingly, when representing young children, Professor Peters, like the drafters of the Fordham Conference Report, recommends informing the court of all potential solutions if no one option is clearly the best option. See id. at 1558; Recommendation, supra note 110, at 1311. To a certain extent, this can be viewed as analogous to Professors Guggenheim and Buss' proposal of declining to take a position and enforcing statutory mandates. However, on closer analysis, such a comparison is inaccurate for Professor Peters anticipates that a representative would be involved in advocacy. Specifically, Professor Peters recommends that an attorney conduct a full investigation and perform all tasks necessary to advocate for a position. See Peters, supra note 103, at 1554-63. Only if there is no definitively preferable option does she propose presenting more than one position to the court. See id. at 1558. Moreover, she recommends that the representative argue against all options that the representative finds to be inappropriate. See id. Such actions seem to reflect a different role for the representative than that proposed by Professors

Guggenheim and Buss.

269 For example, Professor Peters discusses ten "principles of good communication with clients." Peters, supra note 8, at 84-89. She gives pointers for how to do a thorough, but quick, investigation. See id. at 92-110. In addition, Professor Peters emphasizes the importance of interdisciplinary meetings. See id. at 153-91. She also lists and describes seven questions to keep the lawyer honest with herself and suggests that the lawyer write a letter to the child explaining why she is making a particularly significant decision. See id. at 65-69.

270 See Peters, supra note 103, at 1507.

271 See id. at 1523. It is "useful and necessary to abandon the guardian ad litem role for the following reason: Lawyers playing the role of guardian ad litem often have felt unconstrained by traditional lawyering duties." Id.

272 Id. at 1554-55. Not surprisingly, Professor Guggenheim is critical of Professor Peters' paradigm. See Guggenheim, Matter of Ethics, supra note 11, at 1489 (reviewing Peters, supra note 8). In a recent book review of her text, Professor Guggenheim praises her attempts to reduce attorney discretion and bias, but is critical of how she advises attorneys to do so. See id. Specifically, he dislikes "the method by which she recommends that lawyers determine what they should advocate when representing very young children in child protection proceedings" and again asserts that lawyers should define their role based on substantive law. Id. at 1505. However, in his criticism, Professor Guggenheim fails to acknowledge the depth of Professor Peters' analysis as well as the totality of what her model presents. His critique condenses her proposals into a simple recommendation that lawyers adhere to Professor Peters' blending of child development theories. See id. at 1509-11. Accordingly, he is fearful that representatives will just disagree with her developmental theory and choose alternative ones, thus perpetuating a discretionary approach. See id. at 1511. What is problematic with Professor Guggenheim's critique is not his disagreement with Professor Peters' approach, but his failure to appreciate that the central focus of Professor Peters' paradigm is not child developmental theory, but the child and the development of a thorough and contextual understanding of the child's world. See Peters, supra note 103, at 1554-63. In helping the lawyer to understand the child's perspective, she encourages representatives to look to various developmental theories (and does discuss two popular developmental theories) and to consult with experts. See id. at 1556-59. However, a reliance on any one theory of child development, or even a blending of theories, is not an accurate portrayal of Professor Peters' model. In fact, Professor Peters encourages lawyers to "continue to deepen their understanding of the rich and complex debates about child development that continue in other disciplines." Id. at 1556. Moreover, she cautions lawyers to "be aware that the understandings of child development and placement issues in other disciplines are dynamic and constantly changing" and that the two theories that she discusses "will certainly shift, evolve, and probably be replaced in the coming years." Id. at 1556 n.148.

273 Other significant differences (i.e., age and possibly gender or sexual orientation) will exist as well. However, at this time, my analysis is limited to differences in race, ethnicity, and socioeconomic status. Professor Peters and others have done an excellent job of illustrating how differences in age may affect many aspects of lawyering. It is difficult to determine how often differences in gender and sexual orientation are likely to occur and the extent of the impact of these potential differences on the lawyering process and developing attorney-client relationships. Further study and examination is necessary, but is beyond the scope of this paper.
It also is critical to explore how the implications of race and class are intertwined. However, once again, the complexities of this interrelationship justify a much more thorough analysis than is possible in this writing.

274 While I was in the final stages of the preparation of this piece, I learned that the 2000 Supplement of Professor Peters' book, currently unpublished, will provide a prescription as to how a lawyer should take into account the many differences that likely will exist between herself and her client. It is my hope that my writing supports the great need for such guidance and that Professor Peters' supplement will move lawyers to re-examine the way in which they are lawyering and encourage persons from all disciplines to continue to study why and how it is so important to recognize differences.

275 See Boggett, supra note 123, at 1477-79 (discussing from a multi-disciplinary perspective the many barriers to cross-cultural counseling that exist); Bill Ong Hing, Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses, 45 Stan. L. Rev. 1807, 1809 (1993) (explaining that differences in class, race, and gender between an attorney and a client greatly impact an attorney's ability to build rapport).

276 But see Howze, supra note 2, at 74; Janet Chaplan, Youth Perspectives on Lawyers' Ethics: A Report on Seven Interviews, 64 Fordham L. Rev. 1763 (1996); Recommendation, supra note 110, at 1301. Ms. Howze thoughtfully enunciates why it is so important to consider the impact of differences in cultures and backgrounds:

Central to the ability of lawyers and judges to answer these questions is a willingness to look beyond what we know, what our life experiences have been. We must develop a method of interacting with families that assumes there is validity in examining the total family environment - including cultural and sub-cultural context.

Howze, supra note 2, at 13.

In her short article, part of the Fordham Symposium, Ms. Chaplan briefly discusses the need to "learn from clients' narratives of their experiences" and its derivation in postmodern theory. She then interviews seven youths - six young men, ages seventeen to twenty, and one young woman, age eighteen - who all had been involved in child protection proceedings and the foster care system. In her interviews, she questions the youths as to their perceptions about their attorneys and the attorney-client relationships. "All of these youths valued the opportunity to have their attorneys get to know them" and listen to them. Chaplan, supra, at 1775. However, they differed somewhat on their perceptions of the lawyer's role and ethical obligations. See id. at 1768-84.

Listed in the recommendations of the Fordham conference are references to the importance of recognizing differences in race, class, and culture. For example, when discussing recommendations for improving the interviewing and counseling skills of representatives, the participants recommended that the lawyer's techniques should be "culturally competent." See Recommendation, supra note 110, at 1303. Likewise, when determining whether a verbal child is capable of directing the representation, the conferees cautioned that "[a] lawyer should be aware of the risks that biases based on cultural, race, ethnicity, or class differences between the lawyer and child client may inappropriately influence the lawyer's perception of the child's capacity to direct the representation." Id. at 1313. The participants recommended that lawyers for children should receive specialized training on how "competing paradigms address the needs of children of diverse ethnic, racial, and class backgrounds." Id. at 1312. Finally, they proposed that "[f] urther study should be made of how differences in race, ethnicity, culture, or class may affect children's decision making with respect to legal representation, and of how lawyers may properly take that into account in determining a child's capacity to direct the representation." Id. at 1314.

277 See supra notes 29 & 31.

278 See supra note 34.

279 See, e.g., Brown & Bailey-Fitta, supra note 29; Gilbert A. Holmes, The Extended Family System in the Black Community: A Child-Centered Model for Adoption Policy, 68 Temp. L. Rev. 1649, 1658-69 (1995) (documenting and discussing the prevalence of extended family systems in African American communities); Perry, supra note 245, at 57 (arguing "for more specific rules for the treatment of race" in child placement decisions); Symposium, Helping Families in Crisis: The Intersection of Law and Psychology, 22 N.Y.U. Rev. L. & Soc. Change 295 (1996-97); Symposium, The Impact of Psychological Parenting on Child Welfare Decision Making, 12 N.Y.U. Rev. L. & Soc. Change 485 (1983-84).

280 But see Howze, supra note 2, at 7-14, 72-76 (explaining that assumptions and perceptions about race and ethnicity influence all aspects of child protection proceedings and emphasizing the importance of understanding the numerous ways that culture and subculture can affect decisions central to a determination of what is in a child's best interests).

281 See id. at 7 (calling for a new methodology that emphasizes cultural differences and context, encourages continuous questioning, and "requires that the scope of relevant facts be expanded to include the total life experiences of adults and children before the court").

282 See Leslie G. Espinoza, Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender, 95 Mich. L. Rev. 901, 933 n.168 (maintaining that "'being Black or White affects every element of individual existence including access to jobs, education, housing, food, and even life or death'" (citing Robert Staples, Introduction to Black Sociology 250 (1976))). See generally Peggy Davis, Law as Microaggression, 98 Yale L.J. 1559 (1989); Charles Lawrence, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987); Ian F. Haney Lopez, Social Construction of Race: Some Observation on Illusion, Fabrication, and Choice, 29 Harv. C.R-C.L. L. Rev. 1 (1994); Chester M. Pierce, Psychiatric Problems of the Black Minority, in American Handbook of Psychiatry 512 (S. Arieti ed., 1974). Obviously, a full exploration of the rich body of literature that constitutes critical race theory is well beyond the scope of this article. However for a good introduction to the literature see Critical Race Theory: The Cutting Edge (Richard Delgado & Jean Stefancic eds., 2d ed. 2000).

283 See generally Davis, supra note 282, at 1565-76. Professor Davis defines microaggressions as "subtle, stunning, often automatic, and non-verbal exchanges which are 'put downs' of blacks by offenders." Id. at 1565 (footnotes omitted). These microaggressions "simultaneously sustain defensive-deferential thinking and erode self-confidence in Blacks." Id. at 1565-66 (citing to Chester M. Pierce, Unity in Diversity: Thirty Years of Stress 17 (1986) (unpublished manuscript) (on file with author)). Moreover, "[b]y monopolizing perception and action through regularly irregular disruptions, they contribute to relative paralysis of action, planning and self-esteem. They seem to be the principal foundation for the verification of Black inferiority for both whites and Blacks." Id.; see also Pierce, supra note 282, at 515 (defining microaggressions as "white putdowns, done in automatic or unconscious fashion").

284 See Lawrence, supra note 282, at 321-30 (describing racism as both a crime and disease and examining unconscious racial motivations).

285 Id. at 322 (footnote omitted); see also Pierce, supra note 282, at 513.

286 See Pierce, supra note 282, at 513 (concluding that "[i]n almost any instance of black-white negotiation, the black sees things one way, while the white see them differently").

287 See generally Herbert J. Gans, The War Against the Poor: The Underclass and Antipoverty Policy 5 (1995); Joel F. Handler, The Poverty of Welfare Reform 32-39 (1995); Federle, supra note 31, at 1237-43; Paul A. Jargowsky & Mary Jo Bane, Ghetto Poverty in the United States 1970-1980, in The Urban Underclass 235, 249-50 (Christopher Jencks & Paul E. Peterson eds., 1991); Charles N. Oberg et al., A Portrait of America's Children: The Impact of Poverty and A Call to Action, 4 J. of Soc. Distress & Homeless 43, 45-53 (1995).

288 See Kelly & Ramsey, supra note 6, at 438.

289 Id.

290 See, e.g., Symposium, Theoretics of Practice: The Integration of Progressive Thought and Action, 43 Hastings L.J. 717 (1992). Depending on one's focus this new literature also has been called "rebellious lawyering," see Gerald P. Lopez, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice (1992) [hereinafter Rebellious Lawyering], "collaborative lawyering," see Ascanio Piomelli, Appreciating Collaborative Lawyering, 6 Clinical L. Rev. 427 (2000), or "community lawyering," see, e.g., Shauna Marshall, Mission Impossible: Ethical Community Lawyering, Clinical L. Rev. (forthcoming Jan. 2001).

291 Some of the leading proponents of this movement are Professors Anthony V. Alfieri, Gerald P. Lopez, and Lucie E. White. For complete lists of their works, see Piomelli, supra note 290, at 432 nn.27, 25, and 26 respectively. Clearly, a full analysis of this new theoretical approach to lawyering far exceeds the thesis of this paper. For an excellent and recent synopsis of the literature, as well as a discussion of those who critique it, see id. at 427.

292 Professor Piomelli explains why it is preferable to use the term "lower-income" rather than "poor." He finds that the latter term connotes "pitifulness." Moreover, he maintains that "some of the authors of this new scholarship do not limit their focus to representing those with the very lowest incomes." Id. at 423 n.23.

293 Gerald P. Lopez, Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration, 77 Geo. L.J. 1603, 1608 (1989) [[hereinafter Lopez, Reconceiving Civil Rights Practice].

294 "At the level of practice, the most significant common theme of this literature is its commitment to more active client participation in the framing and resolution of disputes.... What is different about the new scholarship is its call to involve clients in the actual

implementation of remedial strategies." Piomelli, supra note 290, at 440; see also Rebellious Lawyering, supra note 290, at 38-82; Lopez, Reconceiving Civil Rights Practice, supra note 293, at 1608-57; Lucie E. White, Collaborative Lawyering in the Field? On Mapping Paths from Rhetoric to Practice, 1 Clinical L. Rev. 157, 157-61 (1994).

295 See Anthony V. Alfieri, Speaking Out of Turn: The Story of Josephine V., 4 Geo. J. Legal Ethics 619, 629 (1991) (imploring advocates to "listen [] to and giv[e] voice to client stories" as a way of beginning to overcome some of the power imbalances between clients and attorneys); Peter Gabel & Paul Harris, Building Power and Breaking Images: Critical Legal Theory and the Practice of Law, 11 Rev. L. & Soc. Change 369, 375, 375-79 (1982-83) (describing a "power-oriented" approach to law practice); Piomelli, supra note 290, at 439-40 (summarizing how collaborative lawyering scholars conceptualize power); Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 Buff. L. Rev. 1, 21-58 (1990) (examining how a client's subordination affects her ability and willingness to participate in attorney-client relationships and formal legal proceedings).

296 See Michelle S. Jacobs, People from the Footnotes: The Missing Element in Client-Centered Counseling, 27 Golden Gate U. L. Rev. 345, 377 (1997) (studying "(1) how the lawyer's unconscious racism and cultural bias may impact the attorney-client relationship; and (2) how the client's cultural experiences and internalization of microaggressions impact the client's view of the relationship with not only the lawyer, but, also, the law"); see also Anthony V. Alfieri, Disabled Clients, Disabling Lawyers, 43 Hastings L.J. 769, 791-92 (1992) (discussing how lawyers' depiction of clients as "dependent," "incompetent," or "deviant" serve to maintain clients in these roles).

297 Jacobs, supra note 296, at 377; see also id. app. at 413 tbl. 1 (containing examples of some possible verbal and non-verbal sources of miscommunication between cultural groups).

298 Anthony V. Alfieri, The Politics of Clinical Knowledge, 35 N.Y. L. Sch. L. Rev. 7, 18-19 (1990); see also Hing, supra note 275, at 1810 (acknowledging that "by knowing more about [the client's] race and culture and by being cognizant of our differences, I may avoid making inappropriate assumptions and establishing false expectations and thereby improve my ability to communicate with her"); Robert Rubinson, Constructions of Client Competence and Theories of Practice, 31 Ariz. St. L.J. 121, 134 (1999) (noting how "attorney perceptions of clients are influenced by stereotypes"); White, supra note 295, at 21-58 (illustrating through a case example how and why the recognition of race and class differences is so important).

299 "Cognitive development around three years of age permits a child to become aware of racial difference and it is here that he or she can first directly experience the effects of racism.... The effects of racism begin to impact children more directly after eight or nine years of age." James P. Comer, Racism and the Education of Young Children, 90 Tchrs. College Rec. 352, 354-55 (1989).

300 "Somewhere between eight and twelve children begin to 'place' themselves and their families in the social status structure that they have begun to observe. They begin to internalize the attitudes about themselves held by powerful individuals in their environment--parents, teachers, others-- and they often act on or react to these expectations in a self-fulfilling manner." Id. at 355.

301 See Jeanne B. Robinson, Clinical Treatment of Black Families: Issues and Strategies, Soc. Work 323, 325 (1989) (finding that differences in race significantly impact on the relationship that is developed between a clinical social worker and her client and on the effectiveness of counseling); Chalmer E. Thompson et al., Counselor Content Orientation, Counselor Race, and Black Women's Cultural Mistrust and Self-Disclosures, 41 J. of Couns. Psychol. 155, 155 (1994) (maintaining that "[s]tudies have shown that Black clients report lower levels of rapport with White counselors than with Black counselors, prefer Black counselors to White counselors, and report greater counseling satisfaction with racially similar counselors than with racially dissimilar counselors").

302 See Kell, supra note 76, at 636, 642-45. Specifically, he finds that this literature "demonstrate[s] the need for child advocates to re-examine how they approach client relationships." Id. at 636.
It is important to recognize that to a certain extent Professor Buss, through her analysis of whether children can be empowered, also has begun to apply this literature to lawyering for children. However, my emphasis is somewhat different and broader. I believe we need to consider and build upon this literature because it contributes greatly to our general understanding of how our clients' diverse backgrounds will impact our attorney-child client relationships, the child clients' experiences in the legal proceeding, and the outcomes of the proceedings. It is the latter focus that I believe likely will be important to our efforts at

improving the representation of children.

303 Differences in race and class are only mentioned as one of many factors to consider in trying to understand a child's view of the world. See id. at 644.

304 Martha Minow, Foreword: Justice Engendered, 101 Harv. L. Rev. 10, 31-33, 70-81 (1987).

305 Numerous commentators have called for an increased level of support for attorneys representing children in child protection proceedings. However, these pleas have not been heeded. See, e.g., Walter, supra note 3, at 58.

306 It is important to note that the recommendations outlined in Sections A, B, and C could be implemented in conjunction with the approach to lawyering outlined in Part VI. The needs of children forced to participate in our child protection system would be best met if this were to occur.

307 See Elaine Pinderhughes, Developing Diversity Competence in Child Welfare and Permanency Planning, in The Challenge of Permanency Planning in a Multicultural Society (Gary R. Anderson et al. eds., 1997) (highlighting the need to train child welfare caseworkers on how to work with diverse populations).

308 See Appell, supra note 30, at 602 (concluding that the "[i]mproved training of caseworkers, lawyers, and judges could help ameliorate many... problems").

309 See supra notes 76, 122 and accompanying text; infra note 311 and accompanying text.

310 See Duquette & Ramsey, supra note 73, at 342-91 (demonstrating through a study the benefits of training in improving the quality of representation).

311 See Espinoza, supra note 282, at 910 (calling for race-conscious education); Hing, supra note 275, at 1810-11 (explaining that "common sense, without training, is dangerously fashioned by our own class, race, ethnicity/culture, gender and sexual background"); Jacobs, supra note 296, at 348 (maintaining that race neutral training of interviewing and counseling skills may actually lead to continued marginalization of clients of color); Ann Shalleck, Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused, 64 Tenn. L. Rev. 1019, 1041 (1997) (exhorting legal academics to develop teaching mechanisms that train law students to be attentive to the context of their clients' lives); Hartmann, supra note 106, at 247 (concluding that "training will help make the 'best interests' decision less subjective").

312 See Sharon-Ann Gopaul-McNicol, A Theoretical Framework for Training Monolingual School Psychologists to Work with Multilingual/Multicultural Children: An Exploration of the Major Competencies, 34 Psych. in Schs. 17, 17 (1997) (focusing on the necessity of cross-cultural training for school psychologists so that they can address the psycho-educational needs of a culturally and linguistically diverse student body and proposing "major competency skills... needed by all school psychologists"); Derald Wing Sue et al., Multicultural Counseling Competencies and Standards: A Call to the Profession, 20 J. Multicultural Couns. & Dev. 64, 74-80 (1992) (describing 31 multicultural counseling competencies and explaining the need for such competencies); see also APA Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations (last modified Jan. 29, 2000) <http://www.apa.org/pguide.html>; Psychological Testing of Language Minority and Culturally Different Children (last modified Jan. 29, 2000) < http://www.apa.org/pi/psych.html>.

313 See Shirley Jenkins, Ethnicity and Race: Critical Concepts in Social Work (Jacobs & Bowles eds., 1988) (stressing the need to integrate ethnic studies into the social work curriculum); Celia Jaes Falicov, Training to Think Culturally: A Multidimensional Comparative Framework, 34 Fam. Process 373, 377 (1995) (presenting a multi-dimensional framework that "takes culture into the mainstream of all thinking, teaching, and learning in family therapy"); Gopaul-McNicol, supra note 312, at 26 (emphasizing that in the training of school psychologists the "[i]nclusion of cultural and ethnic content should be infused in each course, not taught as a single course only" and that there should be "aggressive recruitment of faculty members and students of various cultural

backgrounds"); Robert-Jay Green, Training Programs: Guidelines for Multicultural Transformation, in Re-Visioning Family Therapy: Race Culture and Gender in Clinical Practice (McGoldrick ed., 1998) (advocating for changes in the educational institutions and programs that train family therapists).

314 The representative of a child welfare agency may be an attorney or a caseworker (who may or may not be a licensed social worker) or both. However, with respect to my proposal, I am only referring to non-attorney representatives. Mandating attorneys to follow these proposals might interfere with their ethical obligations as legal representatives for the agency.

315 This recommendation could be implemented in a variety of ways. First, state regulations governing the responsibilities and conduct of employees of child welfare agencies could be amended. Second, formal guidance could be provided by the federal child welfare agency (the Federal Department of Health and Human Services). It is common for this federal agency to issue policy memoranda to the state child welfare agencies. Third, internal policies of state or county child welfare agencies could be supplemented with new provisions. Given the likelihood that caseworkers will have a difficult time complying with this new requirement, the first option, which is the only one that is legally binding, might be preferable.
This policy change would be buttressed if recommendations made by Howard Davidson, Executive Director of the ABA Center on Children and the Law, also were followed. Mr. Davidson cites the need for all caseworkers to have at least college degrees in social work, counseling, or a directly related field and for them to "be legally required to attend a pre-service academy similar to the intensive professional skills education that police, firefighter, and emergency medical technician trainees typically receive, with rigorous tests of competencies mandated at the completion of the training." Davidson, supra note 32, at 773. Moreover, Mr. Davidson recommends that "children ombudsmen" agencies be established, "well-publicized places where parents, other concerned adults, or children can register complaints about infringement of rights, lack of services, improper care, etc." Id. Finally, he proposes that child welfare agencies and juvenile courts be required "to make specific findings on the relationship of family poverty to children's entry or continuation in the child welfare system." Id. at 775.

316 Such a change in law and agency policy also might need to include protections for the caseworkers who will be forced to make such disclosures.

317 By emphasizing the need for this dual allegiance, I do not mean to imply that caseworkers currently do not feel a sense of responsibility to the children and families assigned to their caseloads. Rather, I aim to stress the impossible situation that many caseworkers find themselves in of having to balance the desire to meet the needs of children and their families with the incredible pressures that come from bureaucratic constraints which unfortunately limit the services and resources available to these same children and families.

318 See Buss, Parents' Rights, supra note 11, at 435 (noting that juvenile court orders are often not followed).

319 The suggestion that our judicial system has a role to play in the development or reform of public policy may be viewed as controversial. However, upon closer examination, significant precedent exists. Partnerships between juvenile court judges and child welfare officials, attorneys, and other interested persons aimed at improving the child protection system have occurred and are still taking place in most, if not all, jurisdictions. Many of these are being supported by federal funds. On a related note, juvenile court judges in California voted to oppose Proposition 21, a state initiative on the March 7, 2000 ballot that called for the enactment of harsher penalties for various juvenile crimes and changes in state laws concerning juvenile delinquency. See Catherine Bridge, Lining Up Against Prop 21, The Recorder, Feb. 17, 2000, at 1; Bob Egelko, Judges Oppose Initiatives on Teens, San Diego Union-Tribune, Jan. 29, 2000, at A-3.

320 See supra notes 53-63 and accompanying text (explaining some of the shortcomings of many juvenile courts).

321 As is stated above, this recommendation is the only one that is limited to young children. Given that there is little, if any, controversy over the provision of legal representation to older children who are competent, I limit this discussion of proposed changes to the type of representation that is provided to young children only. It is my hope that, at least for older children, those able to voice their interests and direct the scope of representation, my preference, as well as the preference of many others, for the provision of legal representation will be followed.
As for guidance on how to determine a young child, I, like others, am reluctant to pinpoint an exact age. See Buss, Developmental

Barriers, supra note 11, at 920, 955. However, given the significance of this distinction, as well as literature that points to the age of seven as a critical turning point, I would err on the side of designating a child as an older child so that more children will receive representation by lawyers.

322 Some jurisdictions use trained volunteers, but do not describe them as CASAs. See National Study, supra note 12, at 6. For purposes of this discussion, I will refer to all trained volunteers, including those organized outside of the formal CASA program, as CASAs.

323 See supra notes 4, 72-74 and accompanying text. For more details about the recruiting and screening process for CASAs, see Adams, supra note 4, at 1468-69.

324 National Standards of the National CASA Associations require that each program recognized by the Association operate with access to legal counsel. See Howard Davidson, Collaborative Advocacy on Behalf of Children: Effective Partnerships Between CASA and the Child's Attorney, in Lawyers for Children 17, 25 (ABA Center for Children and the Law ed., 1990). However, not every lay advocacy program is recognized by the National CASA Association. Moreover, having access to an attorney does not guarantee that the attorney has the necessary expertise, nor does it ensure that CASAs have adequate support. See Duquette & Ramsey, supra note 73, at 349 (explaining that in some communities, "the volunteer may be paired with an attorney and become the 'eyes and ears' of the child's lawyer," while in other areas, the volunteer may be on his own); Heartz, supra note 4, at 332-33 (remarking that models of representation that include volunteers vary). A survey conducted by the National Court Appointed Special Advocate Association in 1992 found that in approximately 60 percent of CASA programs, volunteers served as the child's sole representative. See id. at 337.

325 See Adams, supra note 4, at 1470.

326 However, the National Court Appointed Special Advocates Association has developed national standards. See id. at 1468.

327 See National Study, supra note 12, at 42 (concluding that "all CASA and volunteer programs require training"); Adams, supra note 4, at 1468-69 (discussing mandatory training program).

328 See Adams, supra note 4, at 1468-69. Most training programs for CASAs include an initial training program lasting from nineteen to forty hours combined with ongoing training. For example, in San Francisco, CASAs are required to make an eighteen-month commitment. However, it is significant to note that despite these requirements the average tenure of a CASA is only 1.5 years, compared to 2 years for staff attorneys and 5 years for private attorneys. See National Evaluation, supra note 64, at 20.

329 See Final Report, supra note 12, at xiv (finding that CASAs have been very effective in the tasks of investigation and monitoring); see also Heartz, supra note 4, at 340-41.

330 See National Evaluation, supra note 64, at 18 (concluding that the two reasons for the effectiveness of CASAs is their "personal motivation" and their "low caseloads"); see also Heartz, supra note 4, at 340-41 (recounting the results from evaluations of the effectiveness of the lay volunteers).

331 See National Evaluation, supra note 64, at 20; Duquette & Ramsey, supra note 73, at 389. But see Final Report, supra note 12, at xix (suggesting that no single GAL model is superior to others and that an "optimal approach" would involve the combined resources of "attorneys, lay volunteers, and caseworkers to perform the broad range of functions and services").

332 National Evaluation, supra note 64, at 20. "The CASA's success appeared to be due to their intimate knowledge of the case. They conducted extensive investigations, monitored the case closely for its duration and developed good relationships with their child clients. CASAs were most effective in ensuring the family was receiving services that would lead to family reunification." Id. at 18. This study also found that representation by private attorneys was ineffective and the weakest form of representation, and that, while the staff attorney model showed evidence of effectiveness, it was affected by caseloads that were too high. See id. at 15-21.

333 For example, the characterization of the lay volunteer model in the National Evaluation is vague as to the degree to which the CASAs are supervised by attorneys. When defining representation by CASAs, it merely states that "[l]ay volunteers serve as the GALs under the supervision of a staff attorney, panel attorneys, or the public defender. Volunteers receive training, conduct all investigations and follow-up and appear in court." National Evaluation, supra note 64, at 2. The extent and manner of supervision is never explained.

334 See Duquette & Ramsey, supra note 73, at 389-90.

335 Id. at 360.

336 See Buss, Developmental Barriers, supra note 11, at 954-55; see also supra Part V and notes 237-43 and accompanying text.

337 See Final Report, supra note 12, at 6-15 (concluding that CASAs should be accompanied by and represented by an attorney in all courtroom proceedings and negotiations and that attorneys were more effective than CASAs in having their recommendations adopted as part of the court proceedings).

338 National Evaluation, supra note 64, at 20.

339 See Appell, supra note 95, at 1971-73.

340 Davidson, supra note 324, at 21-41; see also Duquette, supra note 104.

341 For example, in New York City and Baltimore, the cities' legal aid offices maintain specialty units, comprised of attorneys, social workers, and support staff, devoted entirely to the representation of children in child protection proceedings. A major difference, however, between these offices and my proposal is that these offices represent many, if not most, of the children that are brought before juvenile courts due to allegations of child abuse and/or neglect. For an analysis of the effectiveness of having legal services represent children in child protection proceedings, see William Grimm, Child Advocacy in a Legal Services Program, in ABA Center on Children and the Law, Lawyers for Children 98 (1990). A different type of children's law office can be found in San Francisco, where some children are served by a non-profit law office known as Legal Services for Children. This office handles a variety of legal matters affecting children, including a small caseload of child protection matters.

342 Even the director of the National Court Appointed Advocates Association contends that more study is needed. See Heartz, supra note 4, at 340 (asserting that "additional large scale and longitudinal evaluations of volunteer models are needed to determine if volunteer effectiveness is universal").

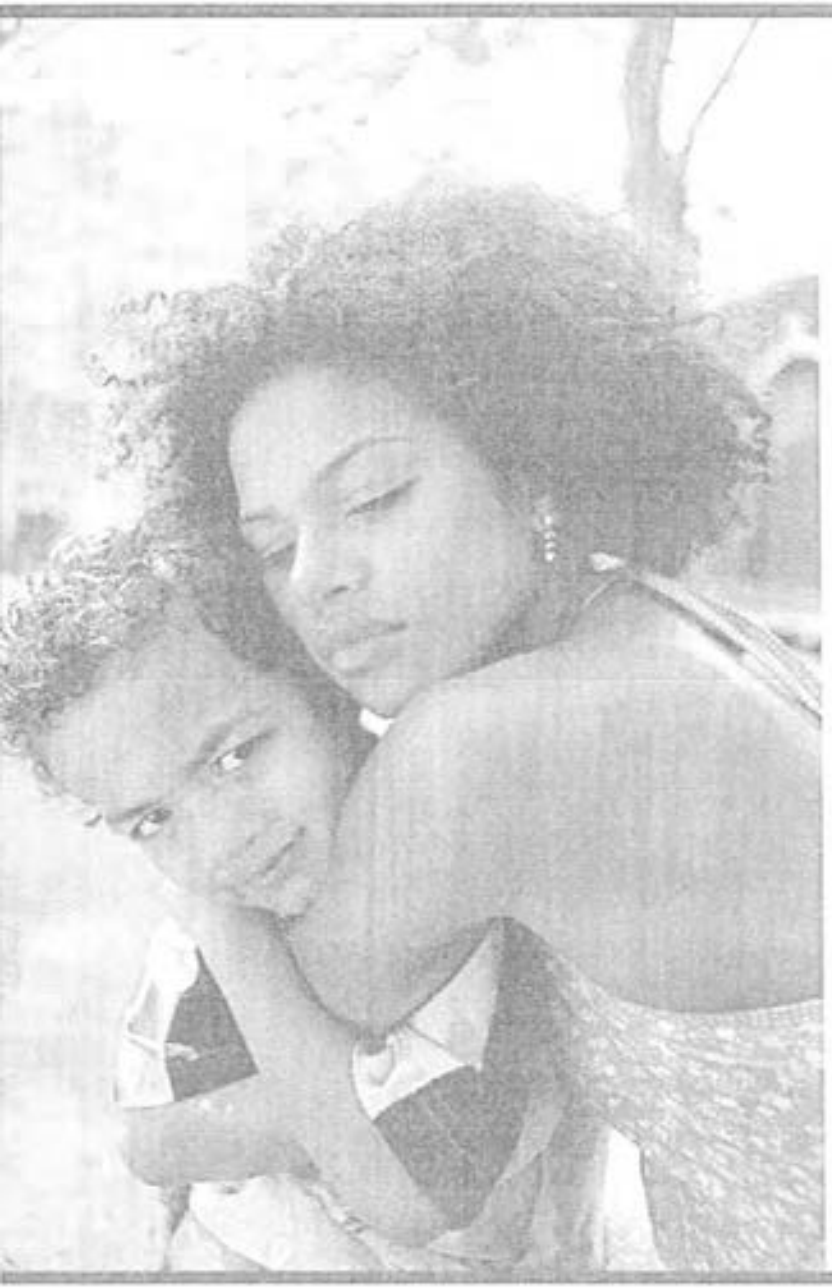
343 See Guggenheim, Reconsidering the Need, supra note 11, at 304. Professor Guggenheim refers to Phase 3 as a re-evaluation of whether and when lawyers should be appointed to represent children.

32 LYUCHILJ 1

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

CHAPIN HALL
CENTER FOR CHILDREN
AT THE UNIVERSITY OF CHICAGO



Expediting Permanency: Legal Representation for Foster Children in Palm Beach County

Andrew E. Zinn
Jack Slowriver

2008

EXHIBIT D

Recommended Citation

Zinn, A. E. & Slowriver, J. (2008) *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chicago: Chapin Hall Center for Children at the University of Chicago

©2008 Chapin Hall Center for Children at the University of Chicago

1313 East 60th Street

Chicago, IL 60637

773-753-5900 (phone) 773-753-5940 (fax)

www.chapinhall.org

CS-155 ISSN: 1097-3125

ACKNOWLEDGEMENTS

This evaluation of the Legal Aid Society of Palm Beach County's Foster Children's Project would not have been possible without the gracious assistance of a number of different organizations and individuals in Palm Beach County.

We are grateful for the generous support of the Children's Services Council of Palm Beach County and Florida Bar Foundation. We would like to acknowledge the invaluable assistance provided by Laura Fleischman and Jennifer Estrada of the Children's Services Council, who helped to plan and implement the evaluation. We also appreciate the assistance provided by Lynda Brown and the staff at the Juvenile Division of the Palm Beach County Clerk and Comptroller's office, without whom the review of juvenile courts records would not have been possible. We would like to thank the staff of the Florida Department of Children and Families and Child and Family Connections, and in particular Myra Macleod and Fran Smith, who devoted long hours to helping us access children's administrative data records.

We would like to acknowledge the many individuals who volunteered to be interviewed for this project and, in particular, express our gratitude to the parents and youth who agreed to speak with us about their juvenile court experiences. Finally, we would like to recognize John and Jim Walsh, and the rest of the staff at the Foster Children's Project for their ongoing assistance and their willingness to subject their organization to a third-party evaluation.

We also thank the following Chapin Hall staff for their contributions: Elizabeth Dick, Diana Sinesterra, and Srijana Nepal for data collection for the qualitative interviews of parents and youth; Thomas Haywood for data assistance; Anne Clary for her invaluable editorial insight; and Mark Courtney and Fred Wulczyn for their thoughtful review and advice.

Finally, we are grateful to the Children's Services Council of Palm Beach County and the Florida Bar Association for their commitment to learning from research and their generous support of the evaluation.

TABLE OF CONTENTS

Introduction 1
Findings in Brief 1
Impact on Permanency 1
Descriptions of Program Operation 2
Perceptions of Court Experiences 2
FCP Program Description 2
Expected Impact on Permanency Outcomes 3
Prior Court Improvement Project Research 3
Anatomy of the Permanency Process 3
Sample and Data Sources 4
Program Eligibility 4
Comparison Groups 4
Data Sources 6
Findings 9
Operative Strategies 9
Filing of Legal Motions and Status Checks 9
Termination of Parental Rights and Adoptive Home Recruitment 10
Attendance at Staffings and Case Plan Meetings 11
Service Advocacy 11
Organizational Resources and Operational Autonomy 12
Program Impact 13
Permanency 13
Impact of FCP Representation 14
Impact of Other Predictors 15
Timing of Legal Milestones 19
Re-entry into Care 20
Fiscal Implications 22
Cost Elements 22
Estimation of Aggregate Costs 23
Qualitative Interviews of Youth and Parents 26
Youth Interviews 26
Parent Interviews 29

TABLE OF CONTENTS (cont.)

Conclusion 31
Impact on Permanency 31
FCP Program Elements and Permanency 31
Cautionary Note 32
Limitations of the Current Study 32
Extension of FCP Representation to Children Placed in Relative Foster Homes 32
Appendices 34
Appendix A. Informed Participant Interview Protocol 35
Appendix B. Youth Qualitative Interview Protocol 37
Appendix C. Parent Qualitative Interview Protocol 39
Appendix D. References 40

TABLES

Table 1. Samples and Comparison Groups 4
Table 2. Sample Characteristics of FCP and Comparison Children 5
Table 3. Exit Destinations by Sub-sample and Data Source 13
Table 4. Multivariate Hazard Models of Permanency: FCP Participation 15
Table 5. Multivariate Hazard Models of Permanency: Other Predictors 16
Table 6. Youth Interview Subjects 26

FIGURES

Figure 1. Hazard of Adoption/Long-Term Custody by Age Group 18
Figure 2. FCP Hazard Ratios for Transitions Between Legal Milestones and Permanency 21
Figure 3. Estimated Aggregate Pre- and Post-Permanency Days 23
Figure 4. Estimated Aggregate Cost of Pre- and Post-Permanency Care and FCP Representation 24

INTRODUCTION

The Children's Services Council of Palm Beach County contracted with the Legal Aid Society of Palm Beach County (henceforth, Legal Aid) in July 2001 to provide legal representation to children 3 years of age and younger entering shelter care in Palm Beach County. The primary purpose for establishing this grant was to help expedite children's exit to permanency (i.e., reunification or adoption). Since its inception in 2001, Legal Aid's Foster Children's Project (FCP) has expanded twice, revising its eligibility criteria to include children 12 years old and younger. In fiscal year (FY) 2007, FCP had an operating budget of $1.7 million and provided legal representation to a continuous caseload of approximately 350 children.

In April 2006, the Children's Services Council and Legal Aid contracted with Chapin Hall Center for Children at the University of Chicago to conduct a third-party evaluation of FCP. The primary purpose of this study was to examine the impact that FCP has had on the nature and timing of children's permanency outcomes. However, efforts were also made to identify and describe the program elements or practices that serve to define FCP, and to explore the broader impact that FCP has had on the child protective service system in Palm Beach County.

The current report is divided into four sections. The first section contains a summary of the study findings, a brief program description, and a discussion of the authors' expectations regarding the impact of FCP representation on children's permanency outcomes. The second section contains a description of the study sample and data sources. The third section, which details the study findings, is itself divided into four subsections. The first of these describes the activities that constitute the vanguard of FCP's efforts on behalf of the children it represents. The second describes the impact of FCP representation on the timing and disposition of children's permanency outcomes and legal milestones. The fiscal implications of these findings are then discussed in the next section, followed by a presentation of the findings concerning the juvenile court experiences of youth and parents. In the final section of the report, the cumulative implications of the study findings are discussed.

Findings in Brief

Impact on Permanency

- Children represented by FCP were found to have a significantly higher rate of exit to permanency than children not served by FCP. In the main, this difference appears to be a function of much higher rates of adoption and long-term custody among FCP children.
- The higher rates of adoption and long-term custody experienced by FCP children were not found to be offset by significantly lower rates of reunification.
- Taking into consideration the estimated costs of substitute care, ongoing adoption subsidies, and FCP representation, the net cost of FCP associated with each additional day of permanency was estimated to be as low as $32.

Descriptions of Program Operation

- Four different program activities constitute the core of FCP's advocacy: (1) the filing of legal motions, (2) the filing of termination of parental rights petitions and recruitment of adoptive homes, (3) attendance at staffings and case plan meetings, and (4) service advocacy.
- Although there appears to be broad agreement within the child welfare and legal communities that FCP reduces the time children spend in substitute care, perceptions about the appropriateness of FCP program activities seem to be sharply divided along professional lines.
  - Although attorneys and judges viewed the filing of motions, including those for termination of parental rights (TPR), as a natural part of the fact-finding process, social service providers tended to characterize them as distracting or time-consuming.
  - Social service providers tended to characterize FCP's efforts to file TPR petitions and recruit adoptive homes as precipitous. As summarized by one provider: "Social work is about believing that people can change. [But,] it doesn't seem like Foster Children's Project really believes that people can change."

Perceptions of Court Experiences

- In interviews, both FCP and non-FCP youth reported a mix of anxiety, anger, and frustration associated with their experiences in juvenile court, with many reporting feeling that they had little control over the disposition of their juvenile court cases. However, many youth also reported that having an adult advocate with them in court seemed to alleviate the mystery and anxiety associated with the court process.
- Parents of both FCP and non-FCP youth tended to characterize their experiences with the juvenile court negatively, viewing it primarily as an instrument to thwart their efforts at reunification.

FCP Program Description

FCP is currently staffed with ten attorneys, two permanency planners, and a number of other support personnel, with each attorney carrying a caseload of approximately thirty-five children. FCP serves in the capacity of an *attorney ad litem* for the children it represents, which means that FCP's activities are governed by the "expressed interests" of their minor clients (versus an assessment of their "best interests," as is the case with the more common *guardian ad litem*). Practically speaking, it also means that FCP assumes the role of a traditional legal advocate, for whom the provision of assertive legal representation is a matter of professional principle.

The operative tactics used by FCP, which are described more fully in the findings section, include the filing of legal motions for discovery and to compel action of another party,

efforts to define prescriptive case plans, the filing of TPR petitions, and efforts to identify pre-adoptive homes.

Expected Impact on Permanency Outcomes

In brief, programs intended to expedite juvenile court decision-making are probably more likely to increase the rate of adoption than the rate of reunification. Indeed, for reasons that will be described below, the rate of reunification may be expected to be lower where court improvement activities effect a significant increase in adoptions. It should be noted, however, that there has been little, if any, substantive research concerning the impact of juvenile court improvement efforts on children's permanency outcomes. Thus, our *a priori* expectations concerning the nature of the impact of FCP were, in general, speculative.

Prior Court Improvement Project Research

Although federally funded juvenile court improvement projects have been in operation for almost 15 years, the efforts to evaluate these are still in their infancy (U.S. Department of Health and Human Services, 2007). To date, only two studies have examined the impact of court improvement efforts on children's permanency, and neither of these has examined programs providing legal representation to children. In one study by Courtney and Blakey (2003), cases randomly assigned to an accelerated permanency review process appeared to experience faster adoptions than cases subject to the standard review schedule. The rate of reunification, however, remained unchanged. In a second study by Festinger and Pratt (2002), post-TPR cases randomly assigned to a program intended to ensure that each case was heard by a single judge (i.e., one-case-one-judge model) appeared to experience faster adoption finalizations. However, these cases also received a suite of additional case management services, which made it impossible to determine the specific effect of the judicial reform.

Anatomy of the Permanency Process

To a large extent, the timeliness of adoptions depends on how quickly the court can establish that the requisite conditions for TPR have been met. This process is, essentially, a finding of fact and, as a result, can likely be expedited by efforts to increase judicial review or bring additional information before the court. Reunification, on the other hand, is generally impossible without substantive changes in parents' behavior. Although some judicial activity (e.g., filing of a TPR petition) may help to motivate parents, in general, expedited reviews and related efforts do not seem likely to effect significant changes in parental behavior. Also, it is important to note that, because adoption and reunification are mutually exclusive, an increase in the rate of adoption could very well lead to a reduction in the rate of reunification.

SAMPLE AND DATA SOURCES

Program Eligibility

The population of interest for this evaluation is composed of those children who have been deemed eligible and referred to FCP by the juvenile court. In principle, to have been considered eligible for FCP representation, a child must have met all of the following conditions:

(1) Child was removed from the home under a protective order on or after July 1, 2001.

(2) Child was *not* placed with a relative caregiver prior to the disposition of the dependency petition.[1]

(3) Child or sibling was 12 years of age or younger at the time of removal.[2, 3]

According to FCP client rolls, 1,496 children met these criteria and were referred to FCP between July 1, 2001, and June 30, 2006 (Table 1).

Comparison Groups

The primary method used to examine the impact of FCP was to compare the outcomes experienced by children represented by FCP with those of children who, after referral to

Table 1. Samples and Comparison Groups

Group	Children			Cases[4]		
	Freq.	(% of Sample)	(% of Sub-Sample)	Freq.	(% of Sample)	(% of Sub-Sample)
On FCP list	1,496	–	–	905	–	–
In DCF data	1,333	(89.1)	–	808	(89.3)	–
FCP served	1,201	(80.3)	(90.1)	736	(91.1)	(81.3)
Comparison children	132	(0.8)	(9.9)	72	(8.9)	(8.0)
Court record reviewed	804	(60.3)	–	429	(53.1)	–
FCP served	711	(53.3)	(88.4)	373	(86.9)	(46.2)
Comparison children	93	(7.0)	(11.6)	56	(13.1)	(6.9)

1 At disposition the permanency plan goal is established by the court.

2 The pool of children eligible for FCP representation has expanded twice since FCP's inception. Between July 1, 2001, and March 31, 2002, eligibility was limited to children 3 years of age or younger. In April 2002, eligibility was extended to children 5 years old or younger, and in December 2003, eligibility was extended to children 12 years old or younger.

3 According to FCP program staff, *all* children in a sibling set were considered eligible as long as at least one sibling met the above criteria.

4 Cases, which are analogous to families, are defined in relation to a casehead (i.e., guardian and primary caregiver).

FCP, were determined to be ineligible for FCP representation because of a legal conflict. In brief, if a family member of a child has been represented by FCP or by any other program operated by FCP's parent organization, Palm Beach Legal Aid Society, the FCP is ethically prohibited from representing that child.[5] The logic of using this exclusion as a method of comparison is based on the presumption that the factors leading to this conflict are unrelated to those affecting the outcomes under consideration in this evaluation, including those concerning the timing of permanency. If this presumption holds, then the observed differences in outcomes between FCP children and children excluded because of a prior legal conflict (henceforth referred to as *comparison children*) will serve as valid estimates of program impacts. A comparison of the characteristics of FCP and comparison children (Table 2) suggests that these groups are approximately equivalent, with child age being the only characteristic for which a significant difference was observed.

Table 2. Sample Characteristics of FCP and Comparison Children

Characteristic	Total (N = 1,333) Freq. (%) / Mean (SD)		FCP (N = 1,201) Freq. (%) / Mean (SD)		Comparison (N = 132) Freq. (%) / Mean (SD)		Sig.
Age (in years)	4.12	(4.29)	4.20	(4.23)	5.89	(4.62)	***
Gender							
Female	622	(46.66)	562	(45.65)	60	(45.65)	
Male	711	(53.34)	639	(54.35)	72	(54.35)	
Race/ethnicity							
Afric. Amer./Black	524	(39.31)	462	(38.47)	62	(46.97)	
Haitian	80	(6.00)	77	(6.41)	3	(2.27)	
Hispanic-White	170	(12.75)	154	(12.82)	16	(12.12)	
Hispanic-non-White	26	(1.95)	25	(2.08)	1	(0.76)	
White	440	(33.01)	393	(32.72)	47	(35.61)	
Other	93	(6.98)	90	(7.49)	3	(2.27)	
1+ Siblings in care	999	(74.94)	891	(74.19)	108	(81.82)	
Prior care spell†	111	(8.33)	99	(8.24)	12	(9.09)	

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$. † Child was placed in substitute care one or more times before the current removal. SD, standard deviation.

[5] According to Chapter 4 (Rules of Professional Conduct), Rule 4-1.9 (Conflict of Interest: Former Client) of the Rules Regulating the Florida Bar, FCP is prohibited from representing a child if (a) an adverse party (e.g., parent) in the legal action is a prior client of the Palm Beach Legal Aid Society and (b) the interests of the child and the former client in the current action are materially adverse. Examples of situations that would lead to a conflict include prior representation of a parent for a divorce, domestic violence, or other action by another unit of Palm Beach Legal Aid. Prior representation of the child, however, would not typically lead to a conflict.

Data Sources

Data for this evaluation came from four primary sources: (1) the Florida Department of Children and Families' HomeSafeNet administrative database, (2) physical court files from the Palm Beach County Juvenile Court, (3) qualitative interviews of twenty-one informed participants, including judges, attorneys, and DCF and social service agency staff, and (4) qualitative interviews of twenty-one youth and seventeen parents.

DCF Administrative Data. Data extracts obtained from DCF and the lead private child welfare agency in Palm Beach County, Child and Family Connections, contained demographic and substitute care history information for children who had entered substitute care between July 1, 2001, and June 30, 2006. Specific data elements included children's race/ethnicity, age, date of removal, and date and destination of exit from care. DCF administrative data records of removal and substitute care placement were available for 1,333 (89.1%) of the 1,496 children referred to FCP (Table 1).[6] Of these, 1,201 (90.1%) were represented by FCP and 132 (9.9%) were excluded due to legal conflicts.

Juvenile Court Files. A review of written juvenile court records was conducted on a sub-sample of 804 children who had entered care for the first time on or before December 31, 2004 (711 [88.4%] FCP children and 93 [11.6%] comparison), which was based on a random sampling of children from each of the two groups.[7, 8] This review yielded data concerning the timing of the following legal events and changes in legal status:

- *Shelter hearing and determination of probable cause.* Initial determination that probable cause exists to keep a child in shelter status pending further investigation of the case.
- *Adjudication of dependency.* Court finds that a child is "dependent" pursuant to Chapter 39 of the Florida Statutes.
- *Disposition and case plan approval.* Primary permanency goal and conditions required for return of the child are established.
- *Termination of parental rights.* Order to terminate parental rights is issued, usually with the intent of transferring custody to DCF for subsequent adoption.

---

6 The reasons for this discrepancy are unclear. It may be the case that differences in data entry practices, or data errors, prevented the successful matching of some cases across these systems. Another possibility is that differences across these systems concerning what constitutes a child protective case may lead to slightly different definitions of the population of children for which records are kept. Finally, some written DCF records may not have been entered into HomeSafeNet.

7 The roster of children referred to FCP (for whom DCF data were available) was randomly ordered. Clerical searches for corresponding court records were conducted based on child's name and date of birth (DOB). Of the 836 children for whom records were sought, we were able to locate records for 804 (96.2%).

8 Eligibility was limited to children who had entered care on or before December 31, 2004, in order to ensure that the majority had exited care at the time the record review was conducted.

– *Motion filings.* Written application for a court order, including those for discovery and to compel action on the part of service providers.

– *Status checks.* Hearings (typically) used to prompt an appraisal of the progress of a case or bring an issue to the attention of the court without filing a formal motion.

– *Termination of protective supervision.* Dependency order is terminated, resulting in the closing of the case.

Informed Participant Interviews. Semi-structured phone or in-person interviews were conducted with twenty-one individuals who had had substantial prior experience working with FCP, including three Palm Beach County juvenile court judges, five non-FCP attorneys,[9] seven child welfare or other social service provider staff,[10] and six FCP staff members. Interview subjects were asked to describe their understanding of the (1) intended and actual impact of FCP on permanency, child well being, and safety, (2) types of activities in which FCP is engaged and the specific impact of each, and (3) the broader impact of FCP, especially regarding the work performance of other involved parties and the general functioning of the juvenile court and child welfare system (see Appendix A for informed participant interview protocol).

Qualitative Interviews of Youth and Parents. Semi-structured qualitative interviews were conducted with twenty-one youth and seventeen parents or guardians.[11] Youth ranged in age from 10 to 17, and had all been in substitute care for at least 2 months at the time of the interview. Interview subjects were drawn from a convenience sample based on the availability of valid parent addresses (from whom permission to interview youth needed to be obtained).[12] Seven of the twenty-one youth and five of the seventeen parents or guardians had some experience with FCP.

The interview protocol for youth contained questions regarding youths' experiences in court, their understanding of the legal process, the extent to which they felt able to voice their own concerns, and their ability to maintain connections with siblings and parents (when appropriate). The parent interview protocol, which was shorter and more

---

9 Attorneys representing parents, DCF, and the guardian *ad litem* (GAL).

10 Staff from Child Family Connections, Family Preservation, Children's Home Society, and nonlegal staff from the GAL office.

11 Children of five of the seventeen parents or guardians could not be interviewed. Three were on runaway status, two were housed in distant juvenile detention centers, and one was unable to be located.

12 Our original intent was to interview fifty youth and parents based on a random sample drawn from the DCF administrative data. However, address data were available in the DCF administrative data for only 154 (58.6%) of the 236 youth in care as of the sampling date (November 2006). Further, based on returned mailings and follow-up visits to alleged parent addresses, we ascertained that 64 (41.6%) of these addresses were incorrect or out of date. Exacerbating these difficulties was the fact that, while Chapin Hall was attempting to locate parents, an unknown proportion of children changed placements. Attempts to obtain new placement information for these children from the lead child welfare agency (Child and Family Connections) were not successful until the last weekend of interviewing. As a result, in addition to containing less than half the number of intended subjects, there can be no expectation that this interview pool is representative of FCP-eligible youth.

structured than the youth interview, contained questions concerning parents' experiences and perceptions of child protective services, their understanding of their dependency case plans, their ability and willingness to complete the conditions of their case plan, and their understanding of the Foster Children's Project (see Appendices B and C for youth and parent interview protocols).

FINDINGS

Findings from the evaluation are presented in four sections. The first, which draws primarily from the informed participant interviews, attempts to articulate the perceptions of the child welfare service and legal communities regarding FCP's operative goals and tactics. The second section describes the results from several different analyses of the impact of FCP representation, including those pertaining to the timing of permanency. The third section explores the fiscal implications of the impact findings. Finally, the findings from the qualitative interviews of youth and parents are described in the last section.

Operative Strategies

Informed participant interview subjects cited several activities as forming the vanguard of FCP's efforts on behalf of the children it represents, including (1) the filing of legal motions, (2) the filing of termination of parental rights petitions and recruitment of adoptive homes, (3) attendance at staffings and case plan meetings, and (4) service advocacy. The level of resources available to FCP and its ability to operate autonomously, free of the strictures of larger bureaucracies, were also often cited as defining attributes of FCP.

Filing of Legal Motions and Status Checks

The filing of legal motions to compel action on the part of another party, or for the purposes of discovery, was the most frequently cited tactic used by FCP. The majority of interview subjects recognized this as an attempt to move cases forward, and approximately a third noted some systemic problem that made such tactics necessary, including a lack of service resources, communication problems between opposing parties, and high social service provider staff turnover.

Opinions about the broader ramifications of filing motions seemed to fall along professional lines. While judges and attorneys viewed them as an appropriate method for "keep[ing] things on track," social service providers tended to characterize them as distracting or disruptive, with one provider characterizing the filing of motions as, "an extreme waste of resources because now we have to deal with that instead of spending our time focusing on the kids."

Using the court record review data, we compared the number of motions filed, the proportion granted, and the number of status checks for FCP and comparison children. After controlling for the amount of time a case had been open, we found that the number of motions filed in cases in which FCP was involved was 46.5 percent higher than in cases involving comparison children. The higher number of motions filed did not, however, lead to a greater proportion of motions being denied, which is what would have been expected were the additional motions without merit. Finally, the number of status

checks (after controlling for time in care) was found to be 49.6 percent higher for FCP children than for comparison children.[13]

Termination of Parental Rights and Adoptive Home Recruitment

Nearly half of the informed participant interview subjects cited the filing of termination of parental rights (TPR) petitions as a primary method used by FCP to initiate progress in children's legal cases. Interestingly, several subjects attributed FCP's perceived focus on TPR to a reduction in DCF legal staff in 2002-2003.

As with the case of the filing of motions, opinions were sharply divided along professional lines. Some subjects expressed the view that FCP used TPR filings appropriately and based decisions to proceed on a case-by-case basis, while others believed that TPR appeared to be FCP's default strategy, especially for younger children. The objections of the latter group of respondents concerning the use of TPR often appeared to flow from broader reservations about what these respondents saw as FCP's concerted pursuit of adoption. In the words of one social service provider:

> The dad's side of the family is seriously neglected. They just want to rush to get the kid adopted. If it's a little one and they're in a foster home, then you can pretty much guarantee that the child will be adopted.

FCP' efforts to identify adoptive homes also elicited sharp responses and appeared to cast into sharp relief divergent views about the merits of concurrent planning. On one hand, several respondents saw FCP's efforts to identify adoptive homes prior to TPR as helpful and appropriate. In the words of one attorney:

> People are focusing more on concurrent planning. There's kids in care for two and a half years but agencies won't start recruiting an adoptive home until the appeal of TPR is settled. There is more inquiry about relatives now, visitations, early referrals, and better definitions of material breach [of the conditions required for reunification].

Conversely, social service providers were more reticent about pre-TPR adoptive home recruitment:

> [FCP is] very aggressive in pursuing TPR and getting kids adopted. They try to identify families who are willing to take children, families interested in adoption. I feel they do this often way too early in the life of a case, before TPR is even on the table, they try to identify families.

Underscoring the role of professional orientation in opinions about moving quickly to adoption, one social service provider used parental substance abuse as an example:

---

[13] Negative binomial regression models were used to test the significance of differences in the number of motions and status checks. A two-sample test of proportions was used to test differences in the percentage of motions granted.

> The person isn't going to get clean in 60 days. They don't have the ability to change that quickly. But that is what social work is about, believing that people can change. It doesn't seem like Foster Children's Project really believes that people can change. If I were a parent coming in with a nice young baby, I'd be scared. If they don't do the program 100 percent, they take the baby.

Regardless of the respondents' general views about the merits of moving to adoption earlier in the life of case, many acknowledged that, where they thought adoption appropriate, FCP could be instrumental in both the filing of TPR and the identification of adoptive homes. Reflecting some ambivalence about the personal ramifications of these efforts, one social service provider stated:

> They can be a wonderful resource. It's a workload issue. We just can't do things as fast as they can. Filing TPR and finding homes also. If they want a family to become licensed as foster family, then we have to check it out. Sometimes this creates more work and we get into conflict when we don't move fast enough for them.

As described in detail below, informed participants' perceptions of FCP as an effective advocate of more timely adoptions appears to be grounded in real differences in the rates of TPR and adoption, both of which were found to be higher for children represented by FCP than for comparison children.

Attendance at Staffings and Case Plan Meetings

A number of informed participants observed that the point of departure for FCP's attempts to expedite permanency was their efforts to influence the nature of case plans and, in particular, the conditions required for reunification. To this end, FCP permanency planners regularly attend staffings and case plan meetings.

There was broad agreement among informed participants that FCP advocates for case plans with shorter time frames and well-defined conditions for material breach. Further, a majority of respondents tied these efforts to one of several specific consequences for FCP children and their parents, including earlier formal assessment of case progress, creation of higher stakes for noncompliance, and the circumscription of grounds on which the termination of parental rights can be contested.

Service Advocacy

Most informed participants acknowledged that FCP was an aggressive advocate for services for the children it represented, with several respondents invoking the example of services intended to ensure placement stability. A number of respondents also described efforts on the part of FCP to advocate for services for parents. The intent of this advocacy, however, was perceived more narrowly, with several respondents emphasizing its probative nature:

> [FCP] ends up making a lot of referrals for services. [They] hire a lot of experts. [They] usually do this when [they] are going for TPR. [They] don't want to wait for a psychological evaluation of the parents so [they] hire experts. The system won't approve psychological evaluations right away. [FCP] can't file TPR until the opinion comes through. If [they] do it, it will take at least 2 months off the case time.[14]

Of note was the trepidation with which some respondents accepted FCP's assistance in accessing services for their clients. One attorney stated:

> FCP can assist me in getting services faster for my clients. In some instances, it requires more work on my part because once FCP has decided which way they want it to go, I have to work doubly hard to keep the steam roller (meaning TPR) from rolling them [parents] over.

Organizational Resources and Operational Autonomy

Many respondents attributed FCP's effectiveness to the level of resources at its disposal, including the expertise and dedication of its staff, and its ability to cultivate connections with community organizations and the judiciary. Several respondents took note of FCP's operational autonomy, which one respondent contrasted to the "bureaucratic and political" hierarchy under which DCF must operate. A juvenile court judge stated:

> [FCP] can find creative solutions [because] they are not given a handbook that says, for this problem you have to do this procedure. They can look more globally at an issue.

[14] The wording of this statement has been changed in order to conceal the identity of the respondent.

Program Impact

In the following section, findings regarding the impact of FCP with respect to the timing of permanency and legal milestones are described. In brief, children represented by FCP were found to exit to permanency faster than comparison children.[15] The balance of this effect appears to be attributable to much higher rates of adoption and long-term custody among FCP children. In turn, higher rates of adoption among FCP children appear to be a function of much higher rates of TPR, with no difference observed in the timing of adoption finalization.

Permanency

Analyses. Separate analyses were conducted based on the DCF and court record review samples. This was done for several reasons. First, although the sample based on the DCF administrative data is larger (N = 1,333), a broader array of data elements are available for the subjects in the court record review sample. Second, as described above, the selection criteria were slightly different for each sample, and as a result, there were some differences in the distribution of exit types across samples. For instance, according to the

Table 3. Exit Destinations by Sub-Sample and Data Source

Exit Type	DCF Admin. Data Sample		Court Record Sample			
	(N = 1,333)		(N = 804)			
	Exit per DCF data		Exit per DCF data		Exit per court record data	
	Freq.	(%)	Freq.	(%)	Freq.	(%)
Permanency	827	(62.0)	672	(83.6)	585	(72.8)
Reunification	458	(34.4)	412	(51.2)	277	(34.5)
Adoption	270	(20.3)	137	(17.0)	135	(16.8)
Long-term custody/ guardianship	99	(7.4)	123	(15.3)	201	(25.0)
Emancipation	2	(0.2)	19	(2.4)	22	(2.7)
Pre-adjudication					21	(2.6)
Unexplained/other	4	(0.3)	2	(0.2)	1	(1.6)
Censored†	500	(37.5)	111	(13.8)	132	(16.4)
Total	**1,333**	**(100.0)**	**804**	**(100.0)**	**804**	**(100.0)**

† Still in care at the time the data were obtained.

[15] The impact of FCP representation was based on a comparison of FCP children with children precluded from receiving FCP assistance because of a legal conflict (see "Sample and Data Sources" section above).

discharge codes in the DCF administrative data, approximately two-thirds (62.0%) of the 1,333 children in the DCF administrative data sample exited to permanency, with more than half of them exiting via reunification (Table 3). Among the 804 children in the juvenile court record review sample, however, 83.6 percent exited to permanency, according to the discharge codes in the DCF administrative data (Table 3).

The most important reason for conducting separate analyses, however, was that the DCF discharge codes differed, in many cases, from the exit type classifications derived from the court record review. For example, a larger percentage of children appear to have exited to reunification (51.2%), and a lower percentage to long-term custody or guardianship (15.3%) (Table 3), according to the DCF data, when compared with the percentages of children coded similarly in the juvenile court records (reunification, 34.5%; long-term custody or guardianship, 25.0%) (see Table 3).[16] Overall, exit types for 75.2 percent (605) of the juvenile court record review sample were coded similarly in the DCF data and juvenile court records.

Statistical Methodology. In the following analyses, we have employed a class of statistical models known as *hazard models*, which have been developed for the specific purpose of analyzing event rates over time. The parameter of interest in the models presented here is the *hazard ratio*, which describes the proportional increase or decrease in the rate of each permanency type associated with a unit shift in the variable of interest, net of the effects of all other included variables.[17] For nonnumeric variables such as race, the estimated effect describes the difference in the permanency rate in relation to a reference category, and for numeric variables such as age, the estimated effect describes the change in the permanency rate associated with a 1-unit increase in the variable of interest. Values greater than 1 denote an increase, and values less than 1 denote a decrease.[18]

Impact of FCP Representation

In general, children represented by FCP were found to have a significantly higher rate of exit to permanency than comparison children (i.e., children not served by FCP because of a legal conflict [see above]). Specifically, in the analyses based on DCF administrative data and court record reviews, respectively, FCP children exited to permanency at rates 1.38 and 1.59 times higher than comparison children (Table 4). Most of this difference, however, appears to be a function of much higher rates of adoption[19] and long-term

---

16 These differences are likely due to a combination of factors, including data entry errors and differences in how specific outcomes are defined. For instance, a transfer of custody to a noncustodial parent might be classified as a reunification by a child welfare agency, while the juvenile court might classify it as a transfer of long-term custody.

17 In these models, the rate of exit is measured from the point in time a child is removed and placed in care (i.e., shelter).

18 In addition to a variable indicating whether or not a child was represented by FCP, a number of other control variables were included in the models described below (see Table 5).

19 Adoption or guardianship.

custody among FCP children, with FCP children experiencing these exits at rates between 1.73 and 3.53 times as great as comparison children (Table 4).

Interestingly, the higher rates of adoption and long-term custody experienced by FCP children were not found to be offset by significantly lower rates of reunification. This is of note because, were it the case that FCP was pursuing adoption or long-term custody *in lieu of* reunification, we would expect to see significantly lower rates of reunification among FCP children. In these analyses, however, no significant differences in reunification rates were found.

Table 4. Multivariate Hazard Models of Permanency: FCP Participation

Outcome	Admin. Data Sample		Court Record Review Sample	
	Hazard Ratio	Sig.	Hazard Ratio	Sig.
Permanency (any)	1.38	**	1.59	**
Adoption or guardianship	2.77	***	2.94	**
Long-term custody	3.53	**	1.73	*
Reunification	1.02		1.23	

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$.

The finding that FCP representation was not associated with an *increase* in the rate of reunification is not surprising. In brief, the realization of reunification requires a mitigation of the risk that originally led to a child's removal. Although FCP can ask the court to reevaluate whether this risk persists, and to order the provision of services, the extent to which FCP is able to work directly with parents is often circumscribed by prohibitions on contact with parents by their attorneys. Thus, in many cases, FCP's efforts may be limited to informing and expediting the legal decision-making process. However, as found elsewhere (Courtney & Blakey, 2003), these types of efforts may be less effective with regard to reunification than with adoption and related outcomes.

Impact of Other Predictors

Child Age. Although not affecting the timing of permanency generally, age does appear to predict the type of exit that children experience. For instance, with each additional year of age, the rate of exit to adoption or long-term custody for children in the court record review sample decreased by 22 percent (hazard ratio = 0.78 times) (Table 5). Conversely, with each additional year of age, the rate reunification increased by 12 percent (hazard ratio = 1.10) (Table 5).

Several informed participant interview subjects expressed a belief that FCP was particularly effective with older children, especially with respect to adoption and long-term custody. To test this hypothesis, separate estimates of the relationship between FCP representation and the rate of adoption or long-term custody were obtained for four

Table 5. Multivariate Hazard Models of Permanency: Other Predictors

	Permanency (Any)				Adoption/ Guardianship				Long-term Custody				Reunification			
	DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review	
	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.
Age	0.98		1.04		0.86***		0.78***		1.05		0.92		1.03*		1.12***	
Female (vs. male)	1.09		1.07		1.12		0.87		0.83		3.12**		1.12		0.86	
Race/ethnicity																
Afric. Amer./Black	0.92		0.80		0.53***		0.33***		2.47***		0.75		1.04		0.94	
Hispanic	0.98		0.56		1.00		1.90		1.30		0.34		0.91		0.34*	
Other																
Sibling status																
Siblings in care	1.01		1.56		0.74*		0.47*		0.33*		0.53*		1.25		2.78*	
Co-placement																
Placed w/some	0.73		0.43		0.51		0.83		1.35		0.53		0.73		0.43	
Placed w/all	1.21		1.36		1.37		1.19		1.04		1.52		1.17		1.52	
Care history																
Subsequent care spell	0.47***		0.29**		0.68		0.76		0.25*		0.22		0.51**		0.18**	
1+ Prior placements	0.78**		0.67*		0.85		0.67		0.61*		1.12		0.75**		0.54*	

***$p < 0.001$, **$p < 0.01$, * $p < 0.05$. H.R., hazard ratio.

(*Note:* Table continued on next page.)

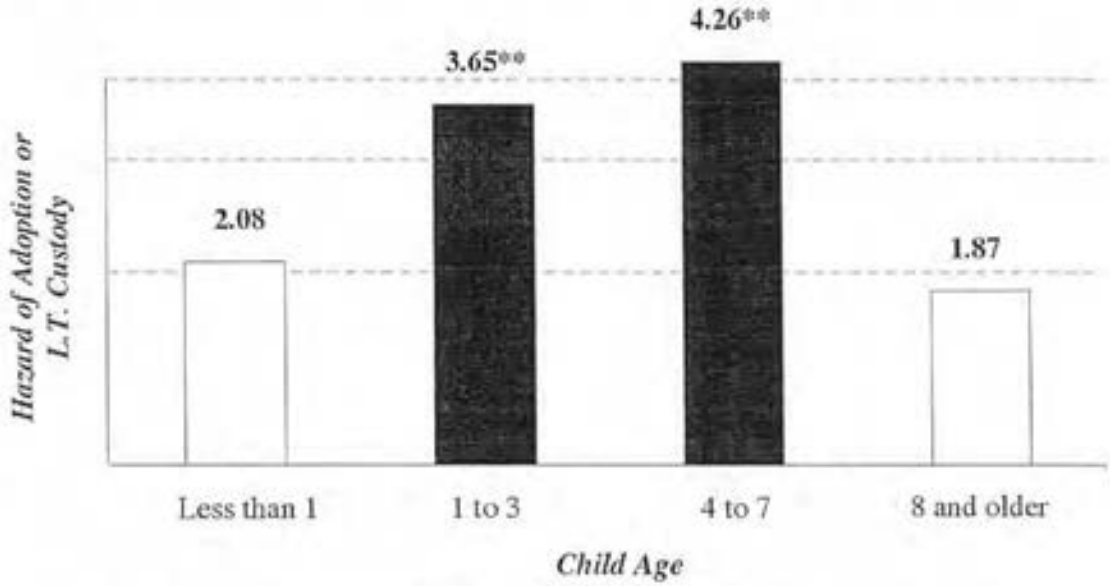
Table 5 (cont'd). Multivariate Hazard Models of Permanency: Other Predictors

	Permanence (Any)				Adoption/ Guardianship				Long-term Custody				Reunification			
	DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review		DCF Admin.		Ct. Rec. Review	
	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.	H.R.	Sig.
Guardian *ad litem* appointment	–		0.88		–		0.80		–		1.17		–		1.04	
Entry cohort (vs. 2003)																
2001	0.68***		0.68		0.78		0.13***		1.43		0.16*		0.49***		0.82	
2002	1.07		1.13		0.67*		0.17***		2.04		0.20**		1.18		2.44*	
2004	0.70**		0.46**		0.65*		0.67		2.20*		0.45		0.58***		0.41*	
2005	0.58***		–		0.39***		–		1.52		–		0.62**		–	

***$p < 0.001$, **$p < 0.01$, * $p < 0.05$. H.R., hazard ratio.

different age groups.[20] Interestingly, the relative *difference* in the rate of adoption or long-term custody between FCP and comparison children was found to be higher for children between the ages of 4 and 7 (4.25), and for children between 1 and 3 years old (3.65), than it was for infants (2.08) (Figure 1).

Figure 1. Hazard of Adoption/Long-Term Custody by Age Group



Note: Shaded bars represent significant results. *** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$.

Child Race/Ethnicity. The rate of adoption or long-term custody was found to be between 47 and 67 percent lower for African American than white children (Table 5). Conversely, the rate of reunification was not found to be significantly different for African American children (Table 5). Results concerning children categorized as Hispanic or other were mixed, however.

Sibling Status. The findings regarding the presence of siblings in care and the effects of co-placement with siblings were mixed. Children with one or more siblings in care were found to have lower rates of adoption or long-term custody (0.33 to 0.74) than children who did not have siblings in care (Table 5). Contrary to expectations (e.g., Shlonsky et al., 2005), children with siblings exited to reunification at a higher rate than children without siblings, according to the analyses conducted on the court record review sample (Table 5); however, no significant association was found with the DCF data sample. As a result, the presence of siblings in care did not significantly affect the rate of overall

[20] The model was stratified by age group, and separate estimates of the effect of FCP were estimated for each stratum. Other predictors in the model were constrained to be equal across strata.

permanence. Finally, co-placement with some or all of a child's siblings was not found to significantly affect the rate of reunification, adoption, or long-term custody.

Substitute Care Experience. Children who had a substitute care spell prior to their current stay in care had significantly lower rates of reunification and overall permanence than children who were in their first care spell (Table 5). Similarly, children who had had one or more prior placements were found to have a lower rate of reunification (0.54 to 0.75), and as a result, a lower rate of exit to permanency (0.67 to 0.78).

Controls. In general, the timing of permanency was not found to differ significantly for cases appearing before different juvenile court judges, save for a higher rate of adoption associated with one judge in particular (results not shown).[21] Assignment of a guardian *ad litem* (as recorded in the juvenile court record) did not portend significant differences in the rate of likelihood of any outcomes considered here (Table 5). Finally, there appear to have been significant changes in the rate of permanency since July 2001, with the rates of exit significantly higher for children entering care in 2002 and 2003 than children entering in 2001 or in 2004 and 2005 (Table 5). In the main, this rise and fall in the rate of permanency appears to reflect a rise and fall in the rate of reunification (Table 5).

Timing of Legal Milestones

The transition to permanency requires the achievement of one or more intermediate legal milestones. For instance, after a child is adjudicated as dependent, the court must approve a case plan, and for those children moving toward adoption, parental rights must be terminated before finalization. The timing of these milestones is important, not only because they can inform our understanding of the differences in permanency rates described above, but also because they can signify important changes of status in their own right. For example, the duration between termination of parental rights and finalization, while contributing to the overall timing of adoption, is also important because it is during that period that a child is, effectively, a ward of the state.

Using the same methodological approach used to examine differences in the rates of permanency (described above), we estimated hazard models for several different transitions. In particular, using data obtained for the review of court records, we were able to examine the association between FCP representation and the time between (1) adjudication of the dependency petition and case plan approval, (2) case plan approval and permanency, (3) case plan approval and TPR, and (4) TPR and adoption finalization.

Initial Removal to Permanency. When the transition from initial removal to permanency is disaggregated into transitions between initial removal, adjudication, case plan approval, and permanency, it becomes clear that the higher rate of permanency observed for FCP children (described above) was a function of differences in timing *subsequent to* case plan approval. Specifically, although there were no statistically significant

[21] Although earlier specifications of these models included presiding judge in a set of indicator variables, models *stratified* by presiding judge provided a much better fit to the data. This specification allowed us to account for the similarities (i.e., dependence) in hazards that likely exist for children appearing before the same judge, without explicitly estimating the difference in hazards.

differences in the timing between removal and adjudication, and adjudication and case plan approval, FCP children were found to have moved from case plan approval to permanency at approximately twice the rate (2.01) of comparison children (top panel of Figure 2).

Case Plan Approval to Competing Permanency Exits. Consistent with the findings described earlier, FCP children were found to transition between case plan approval and adoption and long-term custody at higher rates (adoption, 3.72; long-term custody, 2.73) than comparison children. However, when we consider the timing between case plan approval and permanency, versus the timing between removal and reunification (as was done in the analyses described earlier), we also find that FCP children transition to reunification at a higher rate (1.72) than comparison children (middle panel of Figure 2). The reason that this does not also serve to significantly shorten the time between removal and return home is probably the fact that, because reunifications tend to occur earlier in children's care spells, the period subsequent to case plan approval constitutes a significantly smaller share of the overall time in care for these children than it does for children who exit to adoption. Thus, although FCP representation is associated with a faster completion of this specific leg of the overall transition to reunification, it is not pronounced enough to effect a significant difference in the rate of reunification from the point in time a child enters care.

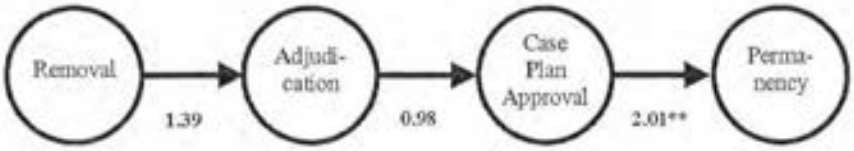
Case Plan Approval to TPR and Adoption. The observed difference in the rates of adoption for FCP and comparison children appears to be primarily a function of a significant difference in the timing between case plan approval and termination of parental rights. Specifically, FCP children were found to transition between case plan approval and TPR at almost 4 times (3.97) the rate of comparison children, but they were not found to move from TPR to adoption finalization at a rate significantly different than that observed for comparison children (bottom panel of Figure 2). The latter finding may represent the confluence of two distinct phenomena. In brief, according to several informed participant interview subjects, child welfare agencies in Palm Beach do not pursue "legal risk" adoptive placements, that is, placements in pre-adoptive homes prior to TPR. As a result, the time between TPR and finalization likely reflects the time required to locate adoptive placements. Thus, the fact that FCP yields faster transitions between case plan approval and TPR but does not affect the timing between TPR and finalization suggests that adoptive home recruitment may be an area in which FCP has only limited impact.

Re-entry into Care

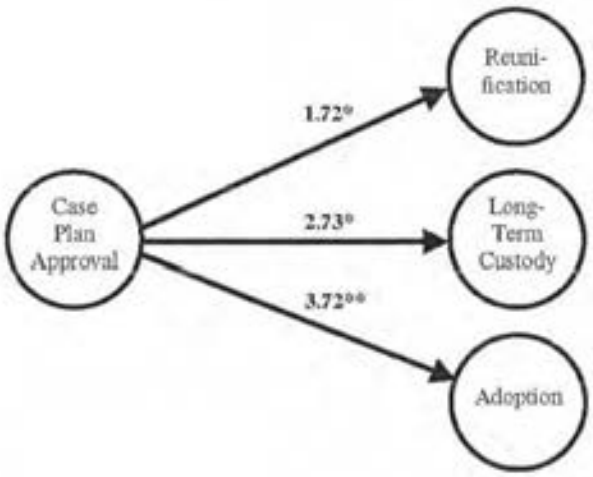
Several informed participant interview subjects expressed the view that FCP's efforts to move children toward adoption produced tenuous adoption matches that were more prone to disruption or dissolution. Unfortunately, the number ($n = 5$) of adoption dissolutions (i.e., post-finalization removals) and limitations in the DCF data precluded analysis of either type of event. Sufficient data were available, however, to allow for the estimation of hazard models of post-*reunification* reentry. No differences in rates of reentry between FCP and comparison children were found.

Figure 2. FCP Hazard Ratios for Transitions Between Legal Milestones and Permanency

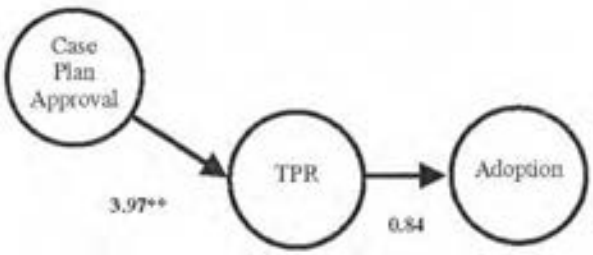
A. Physical Custody to (Any) Permanency



B. Case Plan Approval to Competing Permanency Exits



C. Case Plan Approval to TPR to Adoption



*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$.

Fiscal Implications

Using the results from the statistical models discussed above, we can estimate how the observed differences in permanency rates between FCP and comparison children translate into differences in the level of several identifiable costs, including those associated with the provision of children's basic care and FCP representation.

At the outset, it is important to acknowledge that our estimates pertain only to a subset of costs and, as a result, do not allow us to draw conclusions about the overall fiscal impact of FCP. Indeed, data pertaining to the costs of several potentially important items, including the provision of nonplacement services, as well as any differences in the level of effort on the part of case managers and DCF legal staff associated with FCP involvement, were not available.

As described in detail following, the estimated program costs for FCP are not entirely offset by the estimated reduction in costs of substitute care and case management that accrue from the shorter care spells experienced by FCP children. Nevertheless, the *net* cost of FCP associated with each additional day of permanency was estimated to be as low as $32 per day.

Cost Elements

Children's Basic Care. The cost of providing for children's basic care was calculated by summing the estimated costs of (1) providing substitute care and (2) maintaining subsidy-eligible post-permanency placements (i.e., adoptions and long-term custody arrangements). In calculating the former (i.e., *pre-permanency care*), we included estimates of the (1) average substitute care board rate for children in this sample ($31.10 per day)[22] and (2) per-child monthly rate paid to case management agencies by the lead child welfare agency in Palm Beach, Child and Family Connections ($15 per day for children 12 and younger, $17 per day for children 13 and older). In calculating the cost of subsidy-eligible post-permanency placements (i.e., *post-permanency care*), no case management costs were included. Subsidy rates for adoption and long-term custody were assumed to equal, respectively, 80 and 70 percent of the state average foster home board rate ($9.20 per day for adoptions and $8.05 per day for custody arrangements).[23] Finally, an additional one-time subsidy of $1,000 was assumed for children exiting to adoption.

FCP Representation. The cost of FCP representation was calculated by dividing FCP's FY 2007 budget ($1.7 million) by aggregate staff attorney caseloads. Those caseloads were calculated by multiplying the number of FCP staff attorneys (10) by the FCP target caseload of 35 children per attorney and then multiplying this number by 365. The resulting figure ($13.31) represents an estimate of the daily per-child cost associated with FCP representation.

---

[22] Daily per-child average based on a combination of DCF administrative placement data and board rate estimates provided by CFC.

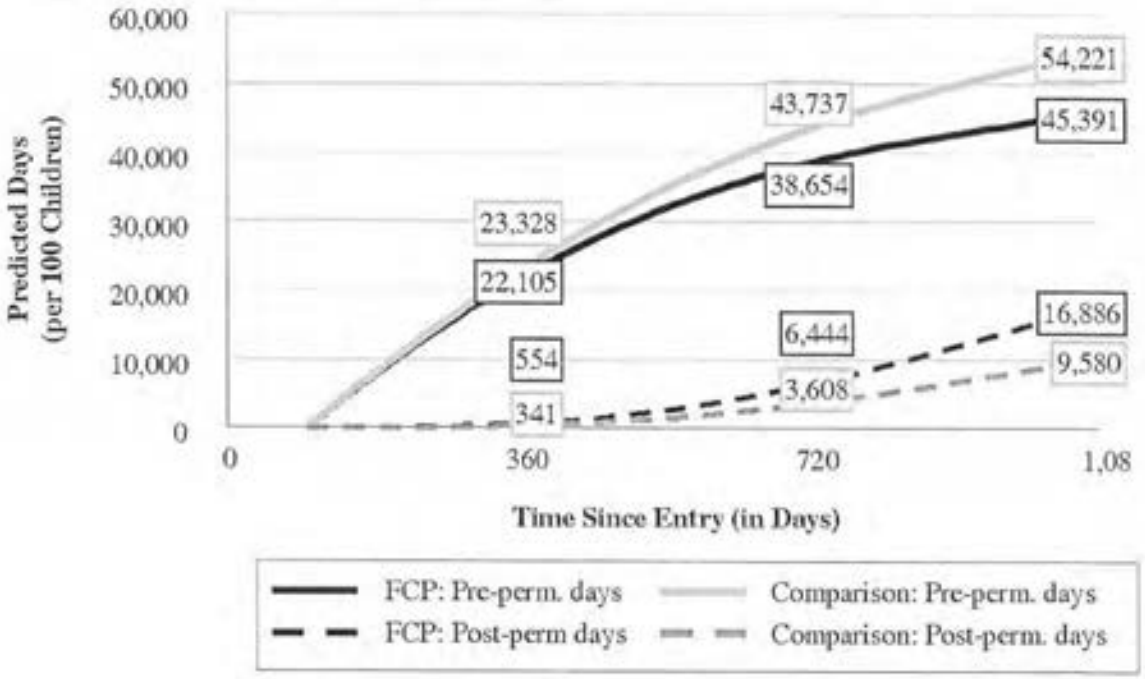
[23] Florida Administrative Codes 65C-16.013(7) and 65C-24.012(4).

Estimation of Aggregate Costs

Aggregate cost estimates for FCP and comparison children were calculated by multiplying the estimates of the daily costs of children's basic care and FCP representation (described above) by the accumulated number of substitute care and post-permanency days for FCP and comparison children.

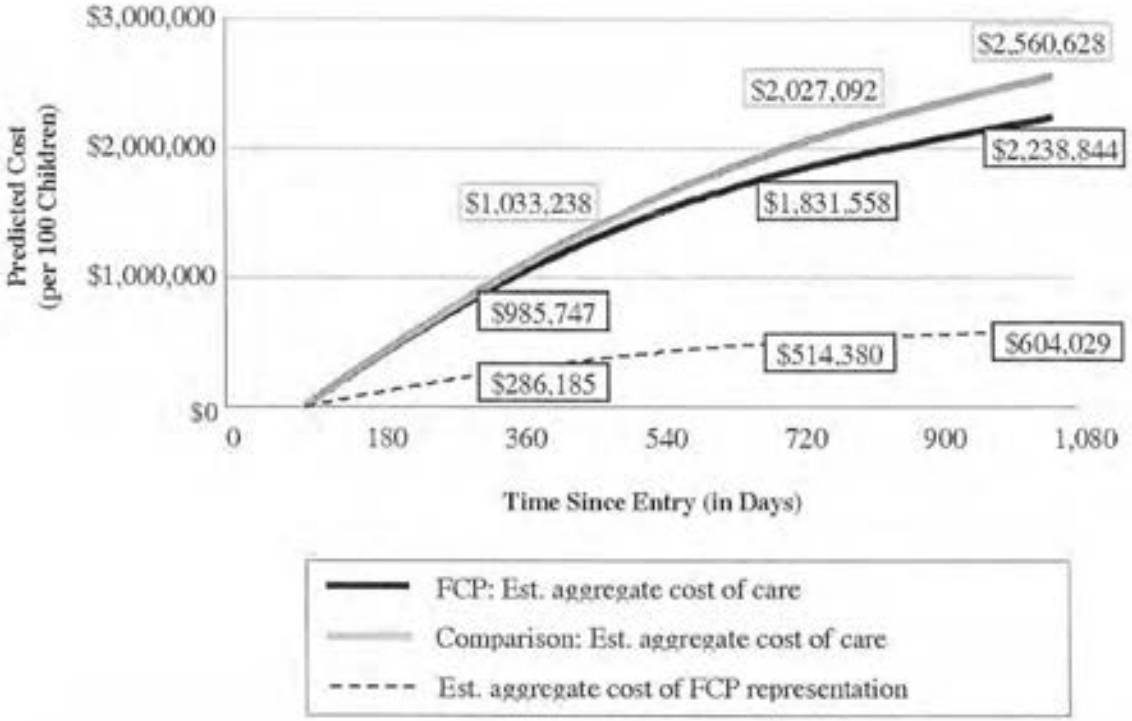
Number of Care and Post-Permanency Days. Using the model-based estimates of the proportion of children exiting to permanency, we calculated the accumulated number of pre-permanency days per 100 children. For example, among an average cohort of 100 FCP children, the estimated accumulated number of pre-permanency days within 3 years of entry equaled 45,391, whereas for an average cohort of 100 comparison children, estimated pre-permanency days equaled 54,221 (Figure 3). The fact that the total number of estimated pre-permanency days for comparison children exceeds that for FCP children reflects the finding that comparison children exited to permanency more slowly. Similarly, we calculated the accumulated number of post-permanency days, defined here as the accumulated number of subsidy-eligible post-permanency (e.g., adoption, long-term custody) placement days. Reflecting the finding that FCP children exited to adoption and long-term custody at a higher rate than comparison children, the estimated aggregate number of post-permanency days per 100 children was also larger for FCP (13,381) than for comparison children (7,125) (Figure 3).

Figure 3. Estimated Aggregate Pre- and Post-Permanency Days



Aggregate Cost of Children's Basic Care. The last step in calculating the aggregate cost of providing for children's basic care was to multiply the accumulated number of pre-permanency and post-permanency days by the estimated daily costs of each. As would be expected, the estimated cost of pre-permanency care is lower, and the cost of post-permanency is higher, for FCP children than for comparison children. For instance, 3 years after entry to care, the estimated cost of care ($2,059,390) for 100 FCP children was 83.7 percent of the estimated cost for 100 comparison children ($2,460,024), while the cost of post-permanency ($179,453) was 78.4 percent higher than that for comparison children ($100,605). Of course, for both FCP and comparison children, the estimated cost of substitute care far exceeded that of post-permanency and, as a result, the overall estimated cost of care (both pre- and post-permanency) was higher for comparison children than for FCP children (Figure 4).

Figure 4. Estimated Aggregate Cost of Pre- and Post-Permanency Care and FCP Representation



Cost of an Extra Day of Permanency. As a final exercise, we can obtain an estimate of the *net* cost of FCP associated with each additional day of permanency by dividing aggregate cost of FCP by the difference in the number of pre-permanency days for FCP and comparison children. For instance, by 3 years after entry to care, the total accumulated cost of FCP for 100 children is estimated to equal $604,029. Dividing this by the estimated difference in accumulated pre-permanency days (8,830 = 54,221 – 45,391), we obtain a *gross* "price" for each additional day of permanency of $68.41. If we take into consideration the lower accumulated cost of care associated with FCP

($321,814 = $2,560,628 – $2,238,844), the cost for each additional day of permanency decreases to about $32 per day ($31.96 = ($604,029 – $321,814)/8,830.

Qualitative Interviews of Youth and Parents

Semi-structured qualitative interviews were conducted with twenty-one youth and seventeen parents or guardians. Interview content focused on respondents' understanding and interpretation of court events and decisions. Copies of the youth and parent interview protocols can be found in Appendices B and C, respectively.

One of the original goals of these interviews was to develop an understanding of how the experiences and perceptions of FCP and comparison children may have differed. However, because of difficulties in obtaining current addresses for study subjects, including children, we do not believe that the final sample is representative of FCP and comparison cases. As a result, we also do not believe that a comparison of interview responses would lead to valid inferences about the relationship between FCP representation and the experiences and perceptions of children and parents.

Consequently, in the interview analyses no attempt was made to differentiate between FCP and comparison cases. Thus, all of the results presented should be understood as a reflection of the experiences and perceptions of both FCP and comparison children and parents.

Youth Interviews

The sample of youth interview respondents consisted of a mix of FCP ($n = 7$) and non-FCP ($n = 14$) clients (Table 2). Most youth were male (81.0%), and either African

Table 6. Youth Interview Subjects

Characteristic	(N = 21) Freq. (%)/Mean (SD)	
FCP	7	(33.3)
Age (in years)	14.7	(2.1)
Gender		
Female	4	(19.0)
Male	17	(81.0)
Race/ethnicity		
Afric. Amer./black	12	(57.1)
White	8	(38.1)
Other	1	(4.8)
Time in care (in months)	7.1	(5.2)
Care status		
Still in care	12	(57.1)
Exited	9	(42.9)
Reunified	4	(19.0)
Adopted/long-term custody	1	(4.8)
Emancipated	4	(19.0)

S.D., standard deviation.

American (57.1%) or white (38.1%). The average time youth had spent in care was 7.1 months, with about half (57%) still in care at the time of the interview. Of those who had left care, most had been emancipated ($n = 4$) or returned home ($n = 4$).

Emotions Elicited by Court Attendance. Youth who had recently attended a court hearing ($n = 16$) tended to recall feelings of anxiety during the time leading up to their hearing. For example, when asked about how he felt before his last appearance, one youth responded:

> Kind of nervous … 'cause I didn't know where I was going or what I was doing … just anxious to see what he [judge] was going to say. I was just hoping they was going to let me go home, that's all.

Several youth also described feelings of anger elicited by the occurrence of specific events during their last hearing. As a potent reminder of the exposure children face while witnessing court proceedings, one youth described how she felt during a hearing in which her father testified about her mother:

> I feel … I just felt bad. 'Cause, I don't know, just listening to those lies that my dad was saying. Knowing that my mamma do for me … and do right by me.

Frustrations about the perceived capriciousness of court decisions were also evident in the responses of a number of youth. For instance, when asked about how she felt about the "court process," one youth explained:

> Court process? A lot of pain. 'Cause one moment they say you going home and the next they say you're going somewhere else. And maybe the next you might never see your family again. It's a drag, a drag.

Sense of Exclusion and Lack of Control. Most youth reported that they felt that they had little control over the disposition of their juvenile court cases. Remarking about a recent court decision, a hint of fatalism was evident in the statement of one young man:

> I don't know. I just…. I don't know. I try not to think about it that much 'cause, like … what can I do? I just live day by day.

This is not to say, however, that youth were not interested in having a voice in the decisions about their juvenile court cases. Indeed, a number of youth expressed the belief that they had the right to do so. In the following exchange with an interviewer, one youth expressed this sentiment in no uncertain terms:

> *Youth:* I don't know but, if they trying to find out what's best for me, they should ask me what I think and then go on and do what they think.
>
> *Interviewer:* So … your opinion is that you should be deciding what is best for you?

Youth: No, my opinion is that they should ask me and then go on from there.

Court Attendance and Understanding of Legal and Permanency Status. Youth who had recently attended a court hearing were generally, but not always, able to provide fuller descriptions of their legal status and the decisions that had been made on their behalf. Indeed, as the following exchange illustrates, legal proceedings may often seem abstruse, even to youth who participate.

Interviewer: What did they talk about [in court]?

Youth: They used a lot of big words.

Interviewer: You didn't understand?

Youth: Yeah, I wasn't really paying attention to what they were saying 'cause ... well I was, but I couldn't really understand what they was talking about. They were saying something about what's happening or something like that. About what's going on.

Someone to Help Understand. For many youth, having an adult advocate with them in court seemed to alleviate the mystery and anxiety associated with the court process. As one youth described, the simple act of explaining the purpose of a court hearing can be very helpful:

Youth: I told him that I don't like going to court and he was like, "It's nothing to be nervous about. You ain't going to jail or nothing like that. You're just going to get put in a foster home or whatever." And then he was like, "Just go in there. Just act normal, like act yourself." Stuff like that.

Interviewer: Did he help you relax a little bit?

Youth: Yeah, 'cause I was like, real tense when he told me I was going to court. But, he helped me with that.

When asked to identify the adults who had helped them the most in court, youth cited a variety of individuals, including their attorneys, guardians *ad litem,* or the juvenile judge. The majority of youth, however, identified their child welfare agency caseworker as the person who had "helped them the most." When asked why he had chosen his caseworker, one youth replied, "'Cause, she's like the main person stressing, like really, really stressing."

Also, it was striking how often youth expressed the belief that most of the adults associated with their child welfare and juvenile court cases were making a genuine attempt to try to ascertain what was in youth's best interest. One youth who had been in care for several years said:

> Who tried to help me? Everybody, even though their opinion is not the same as mine. I mean that's their opinion of what they think is best and I got my opinion of what I think is best but basically, I think they all trying to find out what's best ... for me, I mean.

Finally, for many youth, being able to talk about the experiences they had in court with their siblings helped youth to understand, and reconcile themselves to, their experiences in court. As one youth explained, the absence of siblings was acutely felt after court appearances:

> *Youth:* Well, at first … when we first got there we were in the same house, and I went to court with them. But then after that I moved … they moved me to another house after that and I ain't seen them.
>
> *Interviewer:* Was that hard, I mean difficult for you?
>
> *Youth:* Yeah. I got to talk to them on the phone sometimes, when they would call, but I ain't got to see them. I was by myself. You know, I wasn't … couldn't talk to no one after I talked to the judge.

Parent Interviews

Enormity of the Task at Hand. A theme to which many parents returned to repeatedly during their interview was the enormity of the task confronting them. Evidence to this effect was provided in the form of lists of disparate requirements for the return of their children that many parents provided. One typical response included requirements for drug testing, employment, and participation in a domestic violence program.

> I had to give fifteen consecutive negative drug tests. I had to complete parenting class. I had no money, my car was in the pound, my house was about to get foreclosed on. I had to get a job and work full-time, have verifiable income, enroll in the Safety Net program for domestic violence with me and my children. I was arrested for a DUI, so I had to be to court almost once a week for the first 5 months.

A number of parents also described perceived obstacles created by their caseworker, the juvenile court, and (most often) children's substitute caregivers. A particularly sore point for parents was when they perceived that caregivers were attempting to meter their contact with their children. One parent stated:

> I mean I was fighting everybody the whole way. I was fighting with DCF. I was fighting the foster mother who took care of my children. She told my caseworker that, "I'll do anything to help L---." Well, once my kids went to her house in -------, she wouldn't bring them to see me, even with supervised visits I had. I would call my caseworker and say, "I don't care if I have to meet my children at a DCF office." She would call and cancel the appointment she made with me because it was going to rain or something on her car broke. She made a million excuses.

Case Plans as "Trap Doors." There was also a common perception that the case plans adopted by the juvenile court were designed to thwart parents' efforts to be reunified with their children. Recounting a conversation she had with her child's father, one mother characterized this effort as rather overt:

> They make it almost impossible. I did everything they asked. I spoke to my daughter's father yesterday and he said to me, "Well, DCF told me you'll never be able to do any of this stuff anyway." And I said, "Well, why not?" And DCF, one of the caseworkers, told him, "Because nobody ever completes it. They always end up getting high or drunk." Well, it's because they make it almost impossible to complete.

Even where parents did not perceive deliberate attempts to undermine them, several complained that case plans were irrelevant or immutable. One parent who had successfully regained custody of her child said:

> But instead for them to agree that they do wrong they let you go, like, step by step. Follow their own rules, just to make themselves look better.

For some parents, these perceptions translated into a sense of resignation and bitterness. In the words of a mother of a youth who had been in care for several years:

> He's there until he's 18, whether or not I complete that b---- or not. In a way, it's beyond unreasonable. Because why should I keep working knowing I'll never be able to bring my son home? Why bother? I made the choice when they told me, and that should be the end of it. Why keep going through this s--- with my kid? I like seeing my kid, which is why they did terminate my rights.

Finally, a number of parents expressed disappointment in the level and effectiveness of the support they or their children had received while in care. One parent of two troubled adolescents put it this way:

> They've been in the system now for close to 4 years and neither kid is any better than they were before. There's no improvement in 4 years with either kid. Now there's got to be something wrong with the system. Psychiatrists, with the pills and the psychologists and all of this nonsense, no improvement with either kid at all.

CONCLUSION

Impact on Permanency

Representation by FCP appears to affect the timing of permanency in a fairly specific manner, with the lion's share of the impact occurring subsequent to case plan approval. In the case of adoption and long-term custody, this translates into faster overall transitions between initial removal and exit to permanency. In the case of reunification, however, the acceleration experienced subsequent to case plan approval does not serve to significantly shorten the time between removal and return home. Perhaps more important, however, is that FCP representation was *not* found to be associated with a commensurate reduction in the rate of reunification. This is of note because it suggests that FCP's success with regard to adoption is not dependent upon lower rates of reunification.

FCP Program Elements and Permanency

Several operational activities—including filing motions and status checks, making service referrals, initiating TPR proceedings, and careful attention to the content of case plans—were cited by informed participant interview subjects as defining elements of FCP. Although, given the available data, we cannot determine the particular relationship that each of these has with the increased rate of permanency observed among FCP children, one insight in particular can be inferred from the nature of the impact findings themselves.

In brief, that the effect associated with FCP representation appears to manifest after case plan approval suggests that it is FCP's attempts to influence the content of case plans that serve as the linchpin for all their other efforts. For instance, although legal motions and service referrals may help to establish whether or not parents have met the conditions required for reunification and ensure that reasonable efforts have been made, it is the case plan itself that effectively defines these return conditions and serves as the benchmark against which reasonable efforts are measured. Indeed, according to a number of informed participant interview subjects, it is the individualized nature of FCP-influenced case plans that affords leverage to these other activities.

Perhaps more than any other finding, it is our belief that the apparent impact of case plan design on the timing of permanency merits further inquiry. Exactly how FCP-influenced case plans differ from the case plans of other children, and how these differences affect permanency, were not discoverable from the data collected for this study. However, data obtained from a systematic review of case plans could be easily linked to the outcome data collected for the present study. This particular follow-on project could not only be readily implemented, but could also yield actionable information for child welfare agencies, county corporation counsels, and juvenile courts seeking to expedite permanency.

More broadly, another unanswered question is whether the successes of FCP are a function of the particular constellation of program activities identified here, or just a reflection of what any well-resourced child welfare legal agency could accomplish. Also

an open question is the extent to which FCP's status as an attorney *ad litem* affects its program performance. For instance, beyond the matter of resources and tactics, how instrumental are the autonomy and assertive advocacy that characterize attorneys *ad litem* in achieving the higher rates of permanency observed among FCP children? Although these questions cannot be answered based on the data obtained for this evaluation, they will be important to consider before trying to replicate the FCP experience elsewhere.

Cautionary Note

In the main, the findings from this evaluation suggest that FCP produces a net benefit for the children it represents. They are more likely to be adopted than other children, but no less likely to return home. The activities of FCP do, however, appear to impose a significant burden on social service providers and, in particular, ongoing caseworkers. Whether this burden is the result of additional time spent in court, or additional time complying with service-related court orders, is a matter of dispute. To the extent to which it is the former, however, it is a concern because it could potentially leave workers with less time to work with parents and children, which, in principle, could decrease the likelihood of reunification. Unfortunately, this sort of "systemic" effect is next to impossible to detect in a service environment such as Palm Beach County, in which there have been several concomitant shifts in policy and organizational leadership. Even in the absence of any hard evidence, however, it is probably worth considering whether there are ways that this burden could be lessened without adversely affecting permanency.

Limitations of the Current Study

Natural Experimental Condition. The validity of the impact findings of this evaluation rests on the integrity of the natural experimental condition that determined children's participation in FCP. In other words, the impact analyses rest on the assumption that FCP and comparison children are essentially equivalent, after controlling for all of the other variables included in the impact models. Although a comparison of the characteristics of FCP and comparison children suggests that these groups are approximately equivalent, it is important to keep in mind that, in the absence of a truly random or systematic assignment mechanism, there is no way to be sure that these groups are equivalent.

Qualitative Interview Sample. Difficulties in obtaining accurate contact information for parents and youth required us to resort to a nonprobabilistic sampling strategy that ultimately yielded approximately a third as many interviews as were originally planned. Although our original intent had been to use these interviews to explore the impact of FCP representation on the experiences of children and parents, the ambiguous nature of the sample, and its diminished size, led us to conclude that this type of comparison was not possible.

Extension of FCP Representation to Children Placed in Relative Foster Homes

To date, FCP has limited its purview to children placed with nonrelative substitute care providers. However, given that children placed with relative caregivers have been found to exit to permanency more slowly than children placed with nonrelatives (e.g., Barth,

Courtney, Berrick, & Albert, 1994; Courtney & Wong, 1996; Goerge, 1990; Goerge & Mackey-Bilaver, 2003; Harris & Courtney, 2003; Wulczyn, 2003), an argument could be made that these children are in greater need of FCP representation than other children. Also, the experiences of several states experimenting with subsidized guardianship programs (e.g., Illinois) seem to suggest that efforts directed at expediting adoptions among relative placements can yield significant results. Finally, given that children of color are generally more likely than white children to be placed with relatives, not extending FCP representation to children placed with relatives may create unintended inequities.

APPENDICES

Appendix A. Informed Participant Interview Protocol

1. Please state your job title and briefly describe your responsibilities.

2. Could you describe your understanding of the *intended* effect of the FCP (FCP services)?

   Specifically, (a) what types of outcomes (e.g., permanency, child well-being, and safety) do you think the FCP is supposed to help achieve and (b) how are FCP services/activities supposed to help achieve these goals?

   Examples/definitions of outcomes (if needed):

   Permanency:
   - Disposition and timing of exit from care
   - Pre-exit outcomes: Placement w/relatives, placement stability

   Child well-being:
   - Children's understanding of court process
   - Parental visitation; sibling visitation/co-placement; proximity to parent(s)

   Safety:
   - Needed assessments

   For instance, our understanding is that FCP services are thought to help children exit care more quickly, in part, because FCP involvement helps to leverage needed services that, in turn, help establish reasonable efforts.

   Other examples (if needed):

   FPC helps to improve the timeliness of court milestones (e.g., filings and rulings) and reduce the number of continuances, which helps to expedite permanency.
   FCP helps to ensure contact with family (e.g., placement with relatives/siblings, frequent visitation).

3. What are your thoughts about the *actual* impact of the FCP (FCP services)?
   If different than intended effect just described:
   How is the impact different (i.e., is effect greater/ leser, different, unintended)?

4. Besides the FCP services/activities just described, what other types of services/activities does FCP routinely provide/engage in?

5. Is FCP more effective in some types of cases than in others? If so, what types of cases are most influenced by FCP involvement?

6. [To FCP staff only] Are there specific aspects of FCP operations, either formal or informal, that contribute to (lack of) FCP success (in achieving intended outcomes)?

   Examples (if needed):

   Staffing (e.g., caseload distribution), support/resources (e.g., availability/quality of para-professionals and investigators)
   Philosophy, culture, work environment
   Representational approach (i.e., extent to which it is adversarial)

7. How do FCP services impact the work or performance of other parties?

   For instance, in what ways does FCP involvement affect the work or performance of:

   (a) Child welfare staff (e.g., DCF, CFC, subcontractors)
   (b) Other attorneys
   (c) CASA, mediators, etc.
   (d) Parents, adoptive parents, foster parents

8. Are you aware of other important initiatives, reforms, etc., besides the FCP, that may have also affected the disposition/timing of children's outcomes and experience?

Appendix B. Youth Qualitative Interview Protocol

I'm here to ask you questions about your experiences in court and what you think about things that are going on right now where a lot of adults are trying to figure out the safest place for you to live. I am interested in what this process is like for you. I know that it might be hard to remember things so I have these cards here to help. [There are four cards that prompt for participants, setting, actions, and conversation/affective state.] When something happens, there are people, actions, feelings, conversation and a place where it happens. Take this interview for example. Let's start with the people who are here. There's [list people present]. This card is a reminder to think about the people who were there when something happened [interviewer shows child people card]. Now let's talk about the action, or what is going on. What are you and I doing right now? [Pause to allow child to answer. If s/he does not, proceed without waiting too long.] We're sitting and talking. This card is a reminder to think about what happened or what people did. [Interviewer presents card.] Another important thing is the setting, or where we're at. Right now we're at [describe setting]. This card is a reminder to think about the place where something happened. [Again, interviewer shows appropriate card]. Then there are the feelings that people express. Other people's feelings can be hard to figure out but there are ways that let us know how they feel. The sound of their voice and their body language can say a lot about how they're feeling. For example, when someone smiles, it usually means they are feeling happy. This card is a reminder to share what you think about how people, including yourself, might have been feeling. [Interviewer shows final card.] Do you have any questions so far?

Okay, now I'm going to ask you about what has happened in court in the last couple of months.

1. Have you been to court? When?

Please tell me about the last time you went to court.

Interviewer allows child to speak freely. When child finishes, interviewer prompts for any of the elements that may be missing.

Participants – Who was there?

Actions – What did they do? What did you do? What did people talk about?

Conversation/Affective state – What did they say? What did you say? How did you feel in the courtroom?

2. Right now there are a lot of adults trying to figure out what is best for you. What are they trying to decide?

3. Who are some of the people that are trying to figure out what is best for you?

For every person mentioned, follow up with questions regarding that person's role. For example, if youth provides only a first name, ask what that person has said or done.

4. What has been decided so far? Follow up to gauge the extent to which the child understands what the stated decision means.

Example: Was there a decision about where you will live? What was it?

Was there a decision about who you will live with? Prompt for impact on visitation and services.

If the child comes back with "they decided my mom has a drug problem" or something similar, follow up with questions that return focus to the child. What does that mean for you? What effect will it have on you?

5. What do you think will happen next? What are some of the things that could happen?

6. Do you think you will need to move again? If so, prompt for why child believes placement is unstable.

7. How many times have you moved so far (since you were removed from your home, i.e., your parent(s)' home)?

8. I want to talk now about where you're living now and whom you live with, okay? Where do you live right now?

9. Who lives with you?

Do you have brothers or sisters?

Are they living with you now?

If not, where are they?

How often do you see them?

10. How often do you see your mom? How about dad?

11. A forever home is someplace that you live for the rest of your childhood, a place where you will stay after all of the court process is over. Where would you like your forever home to be? Who would you live with?

12. Have you told anyone where you'd like your forever home to be?

If yes, then ask: Who have you told?

If no, ask: Why haven't you told anyone?

13. Do you have questions about stuff you don't understand?

14. Who do you talk to about your questions? Is there anybody else you might talk to about your questions?

15. Why do you have an attorney?

16. What does your attorney do? What is s/he supposed to do? What kinds of things can you ask her/him to do?

17. Who is going to decide where you live and who your forever family will be?

Appendix C. Parent Qualitative Interview Protocol

FCP cases	non-FCP cases
Your child is/was represented in court by an attorney from the Foster Children's Project. Do you happen to remember who this person was?	n.a.
Did you have any contact with this attorney, or other people from the FCP, *outside* of court (proceedings)?	n.a.
What is your understanding of the role of the FCP project? What type of things (??) How is what FCP does different from what DCF does?	n.a.
Could you describe, based on your case plan and what your social worker told you, what were the changes you need/needed to make before your child could come home? Prompts: Are/were these required changes or tasks clear, understandable? Are/were these required changes or tasks reasonable and achievable?	
What type of help did you receive from your social worker or other professionals, including those from FCP (to help you make the required changes)? Prompts: Examples include services, honest advice, etc.	
How much say did you have in deciding what type of changes or tasks were needed before your child could come home? In other words, how much say did you have in defining your case plan?	

Appendix D. References

Barth, R. P., Courtney, M. E., Berrick, J. D., & Albert, V. (1994). *From Child Abuse to Permanency Planning: Child Welfare Services Pathways and Placements.* New York: Aldine de Gruyer.

Courtney, M. E., & Blakey, J. (2003). Examination of the impact of increased court review on permanency outcomes for abused and neglected children. *Family Court Review, 41*(4), 471-479.

Courtney, M. E., & Wong, Y. I. (1996). Comparing the timing of exits from substitute care. *Children and Youth Services Review, 18*, 307-334.

Festinger, T., & Pratt, R. (2002). Speeding adoptions: Evaluating the effects of judicial continuity. *Social Work Research, 26*(4), 217-224.

Goerge, R. M. (1990). The reunification process in substitute care. *Social Service Review, 64*, 422-457.

Goerge, R. M., & Mackey-Bilaver, L. (2003). *The effect of race on reunification from substitute care in Illinois.* Unpublished manuscript.

Harris, M.S. & Courtney, M. E. (2003). The interaction of race, ethnicity, and family structure with respect to the timing of family reunification. *Children and Youth Services Review, 25*(5/6), 409-429.

Shlonsky, A. E., Bellamy, J., Elkins, J., & Ashare, C. (2005). The other kin: Setting the course for research, policy, and practice with siblings in foster care. *Children and Youth Services Review, 27*, 693-695.

U.S. Department of Health and Human Services (2007). *The national evaluation of the court improvement program (CIP), synthesis of 2005 court improvement program reforms and activities, final report.* Washington, DC: U.S. Department of Health and Human Services, Administration for Children, Youth and Families.

Wulczyn, F. H. (2003). Closing the gap: Are changing exit patterns reducing the time African American children spend in foster care relative to Caucasian children? *Children and Youth Services Review, 25*(5/6), 431-462.

CHAPIN HALL
CENTER FOR CHILDREN
AT THE UNIVERSITY OF CHICAGO

Chapin Hall Center for Children
at the University of Chicago
1313 East 60th Street
Chicago, Illinois 60637

www.chapinhall.org
phone: 773/753-5900
fax: 773/753-5940

FILED
16 AUG 25 PM 12:34

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

Commissioner Kahan
Date: 09/01/2016
Time: 8:30 am

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

In Re The Dependency Of: [redacted] DOB: [redacted] Minor Child	No. 14-7-01413-7 SEA CASA'S RESPONSE TO MOTHER'S MOTION FOR COUNSEL FOR CHILD

TO: ASSISTANT ATTORNEY GENERAL
DCFS SOCIAL WORKER
MOTHER'S ATTORNEY
FATHERS'S ATTORNEY

COMES NOW Laura Clough, the Court Appointed Special Advocate for the above-named minor, by and through April Rivera, Dependency CASA Program Attorney, and responds to the Mother's Motion for Counsel for the Child as follows.

I. RELIEF REQUESTED

The CASA respectfully requests that the court deny the mother's motion at this time.

II. STATEMENT OF FACTS

[redacted] is eight years old and lives in licensed foster care. He has five older siblings and two younger ones. He is placed without any of his siblings. He has two siblings who are adults.

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

115

His three teenage siblings who are also dependent have had difficulty being maintained in placements and two are involved with the juvenile justice system. [redacted] and his two closest in age siblings share the same Court Appointed Special Advocate who advocates for their best interest.

III. STATEMENT OF ISSUES

Should the court appoint counsel for eight year old [redacted].

IV. ARGUMENT

RCW 13.34.100 addresses representation for children. Subsection (1) provides:

> The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem *may* be deemed satisfied if the child is represented by independent counsel in the proceedings. [Emphasis added.]

[redacted]'s interests in this matter are ably represented by CASA Laura Clough. It is no surprise that Ms. Clough's opinions of how matters should be resolved differ sometimes from that of the mother, but no allegation of misconduct or failure to perform her duties has been made against Ms. Clough. Disagreement over how the matter should proceed is not indicative of a need for counsel for the child. Ms. Clough believes and represents to the Court that this eight year old child needs the adults to make decisions in this matter. This issue appears to have arisen as a result of the CASA supporting a primary plan of adoption for [redacted] at the last Permanency Planning Hearing in February 2016. [1] The CASA agrees with Ms. [redacted] that [redacted] would like to live with his mother right now, today. However, Ms. [redacted] remains incarcerated at Dublin Federal Correctional Institution in California as she has since June 2013

[1] The CASA asks the Court to note that she recommended Guardianship be added as a permanent plan for [redacted] in her May 2016 Dependency Review Hearing Report. Ms. [redacted] does not reference this recommendation which was made out of respect for [redacted]'s wishes to be reunited with his mother. It is true the CASA did not motion the court for this addition (as permanency plans are not typically addressed at the Dependency Review Hearings) but it was included out of deference to [redacted]'s stated desire.

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

and is not available for placement. To the best of the CASA's knowledge, Ms. [redacted]'s anticipated release date is July 2019.

[redacted] has a right to representation of his best interest through appointment of a GAL or CASA. In this instance [redacted] and his younger siblings were appointed a CASA through the King County Superior Court Dependency CASA Program. The Dependency Petition was filed on March 28, 2014 and CASA appointments for all three of the younger children were ordered at the June 3, 2014 Shelter Care Hearing. The case was initially assigned to CASA Crystal Kilmer. On April 16, 2015 Ms. Kilmer withdrew as the CASA and Laura Clough was assigned to advocate for this sibling group on July 1, 2015. Ms. Clough is still assigned to [redacted] and his younger siblings and both CASAs have been represented by counsel throughout the dependency.

The Supreme Court ruled in *In re Dependency of M.S.R.,* 174 Wn.2d 1, 271 P.3d 234 (2012) that under the due process clause, appointment of an attorney for children involved with the dependency system is discretionary and that lower courts should employ the factors elucidated in *Mathews v. Eldridge,* 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). [2] While *MSR* dealt with termination proceedings, the mother offers no authority to support that in this particular case, there is any authority to support her argument that appointment of counsel is required for all children in all dependency actions. The *MSR* decision should not be viewed as a "bare minimum standard," but as a practical recognition that in some cases, the particular circumstances of a child require the traditional approach to children in legal proceedings. They are provided a guardian *ad litem,* or CASA, and in this case, the CASA was represented by counsel, "[b]ecause a child cannot represent his own interests." *State v. Santos,* 104 Wn.2d 142, 147, 702 P.2d 1179 (1085); *Bellevue School District v. E.S.,* 148 Wn.App. 205, 214, 199 P.3d

---

[2] The Mathews factors were adopted by the United States Supreme Court in an analysis of whether the federal constitution requires the State to provide counsel to all parents facing termination proceedings in *Lassiter v. Dep't of Social Services,* 452 U.S. 18, 31-32, 101 S. Ct.2153, 68 L. Ed.2d 640 (1981). *Lassiter* found that parents were not constitutionally entitled to counsel in termination cases by applying the 3-part test under *Mathews v. Eldridge,* 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed.2d 18 (1976);. Under *Mathews,* the court considers "the private interests at stake, the government's interest and the risk that the procedures used will lead to erroneous decisions." *MSR* 174 Wash. 2d 14, 271 P.3d 241

King County Dependency CASA Program Attorney
1401 E Jefferson, #500
Seattle, WA 98122
(206) 296-1120

1010(2009) (*rev'd on other grounds,)* 171 Wn.2d 695, 257 P.3d 570 (2011). "A child is neither independent nor capable, in fact or in law. Children "lack the experience, judgment, knowledge and resources to effectively assert their rights." Children cannot sign legally binding contracts, or bring lawsuits, or otherwise involve themselves in legal proceedings. *DeYoung v. Providence Medical Center,* 136 Wash.2d 136 960 P.2d 919(1998) The *Bellevue* Court appointed counsel for a child in truancy proceedings as the child is the respondent, who without counsel, is not entitled to an advocate, and would have to speak for itself in proceedings brought by governmental entities. The respondent child in a truancy action can also find itself subject to a finding of contempt, with consequences as severe as incarceration, a clear loss of physical liberty.

The legislature has recognized what the *DeYoung* Court found, that "children are neither independent nor capable, in fact or in law," and provided for their representation through RCW 13.34.105.[3] Every child in a dependency is entitled under the statute to representation by a guardian *ad litem* or CASA to advocate for the child whose liberties have been put at risk by the actions of the parent. While it is true that the state intervened in the R./H. family in an official capacity, it did so to protect the children from harm after the mother's actions, which left the children without a safe and protective home.

Applying the Mathews factors in this case, the court should first address the private interests at stake. *MSR* discusses this prong in terms of a liberty interest belonging to a child. "Children should be free from the risk of undue harm, especially when the State has inserted itself in the child's life and the harm flows from that insertion. *Braam,* 150 Wash 2d at 700, 81 P.3d 851. However, a child, unlike a parent, who is the subject of a dependency or termination

---

[3] RCW 13.34.105
(a) To investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child; (b) To meet with, interview, or observe the child, depending on the child's age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court; (c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order. . . (e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

proceeding is at risk of being returned by the State to an abusive or neglectful home. *MSR* 174 Wash. 2d 16-17, 71 P.3d 243.

Due to his minority status, [redacted]'s physical liberty is impacted in a dependency proceeding. It is unfortunate for him that an able parent is not available to parent him. Mother has not put forth any evidence that [redacted]'s liberty interests will be changed by appointment of an attorney. The Court has ordered him a dependent of the State of Washington. We disagree with mother's assertion that "the State interfered with the family unit, separated him from his biological family and community, and continues to restrict [redacted]s contact with his family members."

The mother's motion ignores the circumstances that brought her children to the attention of DSHS. If Ms. [redacted] were incarcerated and had no children we would likely not know her name. However, here, where she engaged in illegal activities and was incarcerated and her six children were left with unsuitable and unsafe caregivers, under these latter circumstances are we aware of her and their existence and her inability to provide a safe and nurturing home for her children. The Department has now been notified that Ms. [redacted]'s furloughs have been stopped by the Bureau of Prisons and she will not be eligible for furloughs again until July 2017. No numbers of additional attorneys in this case can change the consequences of the mother's criminal choices.

The CASA writes in her declaration, "Unfortunately, records are not clear on [redacted]'s exact placement. His first dependency court placement was with family friend Tina Terry (over the objection of the Department). He was removed from that home on December 30, 2014. He has been in his current placement since January 30, 2015. He spent a very crazy month in respite placements (3 total) until he landed in his current placement. So a total of 5 placements, but one particularly chaotic, sad month for him. He has been separated from [redacted] and [redacted] since being removed from the Terry's.

---

child, which the court may consider and weigh in conjunction with the recommendations of all of the parties; (f) To

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

When their mother left for prison, all the minor siblings lived with family friend Vatieka Murray. [redacted] was separated from [redacted] [redacted] and [redacted] when Ms. Murray decided she could no longer care for the teens in October 2013. The teens went to live with the Terry's and sometime later the younger children followed. By the time of the dependency mediation in August 2014 the three teens were living with family friend Katie Higgins and the three younger remained with the Terry's. The separation from the older siblings occurred prior to the establishment of Dependency." Clearly, [redacted]'s life is impacted by his mother's judgment, activities and incarceration that led to him living in foster care. It is informative that Mother writes on page eleven of her brief that the CASA report recording [redacted]s wish to stay where he currently lives is "uninformative." CASA disagrees, believing that his strong desire to remain in his current placement after having been abused and displaced multiple times since his mother's incarceration began is very relevant to his well-being.

The second *Mathews* factor to be applied is the interest of the State. *MSR* appropriately found that the State has a compelling interest in the well-being of children who are the subject of dependency proceedings. *MSR* The mother's argument that every child in foster care is required to have legal counsel appointed to them is not equally distributed even among her own children. As mother's brief attributes to [redacted], the CASA asserts that all of Ms. [redacted]'s children are "thoughtful, articulate, and aware child [ren]." This begs the question of why not appoint attorneys for all of the children including the five and four year old. Their express wishes have been to discontinue phone calls with their mother. Their teenage siblings are allowed to visit with their mother at their discretion. Following the logic of express wishes representation, all three of the younger children should be asked before every telephone or in person visit if they want to visit with Ms. [redacted]; and if they decline, they should not be persuaded or forced to attend. The CASA believes that it is more helpful to the Court to know about the issues the children are having in their relationship with their mother and what is being done to address it.

---

represent and be an advocate for the best interests of the child;

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

The CASA believes this is in the *best interests of the children*. This is what has kept her from bringing a motion to stop the younger children's phone calls with their mother despite the emotional turmoil it causes for them. As an adult, the CASA knows that restricting contact further (than already caused by incarceration) could diminish the relationship between the children and their mother and is a step that is not appropriate at this time. The children should not bear the burden of advocating for their own best interests, but as the legislature clearly contemplates, that should rest with the adults.[4]

"The third factor looks to the risk of erroneous deprivation and the value of additional procedures sought." *MSR* at 18. "Whether there is a constitutionally significant risk of an erroneous deprivation of rights may also turn on whether there is someone in the case who is able to represent the child's interests or whose interests align with the child's. " Id. The Motion to Appoint Counsel does not point to any erroneous decisions made to date in this case nor how [redacted]'s desire to be placed with his mother, who is unavailable, would be impacted by appointment of an attorney.[5] While there are many unique qualities to [redacted]'s life, his mother fails to demonstrate how he has been or will be deprived of any rights, let alone erroneously. Instead, in this individual case, the court has a child whose CASA volunteer has spent an enormous amount of time making sure that [redacted]'s wishes are being respected and that his best interest is being protected.[6] Ms. [redacted]'s arguments on page eleven of her brief are

---

[4] The Dependency statute RCW 13.34 is replete with references to decisions being made in the child's "best interest." This includes placement preference, sibling contact during a dependency and post-adoption, school attendance, parent child visits, and regarding permanency. (RCW 13.34.130, RCW 13.34.136, RCW 13.34.138, RCW 13.34.145, RCW 13.34.190)

[5] Ultimately, while a child's wishes are certainly part of the equation, the child's **best interests** are the overriding consideration in all placement decisions. *In re Dependency of J.B.S.*, 123 Wash.2d 1, 10, 863 P.2d 1344 (1993)(emphasis added).

[6] King County is unique in Washington State and throughout the country in providing dedicated legal counsel to the CASAs who advocate on behalf of children. RCW 13.34.105 allows the CASA to act as a party by participating in hearings and trials. CASAs are represented by attorneys who are bound by the same ethics code as all attorneys and overseen by the WSBA. This Response, [redacted]'s rights, well-being and desires are shared with the court and ably advocated for by his CASA Laura Clough. The CASA has diligently investigated, monitored and reported on the child's best interest as required by statute to assist the court in making informed decisions regarding this child.

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

arguments against termination of parental rights, not for counsel for this eight year old. As evidenced in the CASA reports attached to this Response, [redacted]'s best interests are being advocated for and his position on issues before the court are recorded.

V. CONCLUSION

Eight year old [redacted] is growing up the best he is able in the custody of the State of Washington. There is no evidence that his opinions regarding, for instance, placement have not been presented to the court. At this time, there is no extra ordinary need for [redacted] to have legal counsel when his interests are ably represented by his CASA.

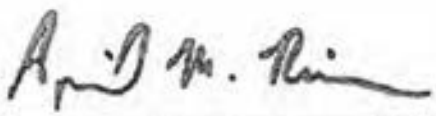
VI. EVIDENCE RELIED UPON

Exhibit A: Prior CASA reports filed on behalf of [redacted].

Exhibit B: Mother's Agreed Order of Dependency dated 9/5/2014.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of August, 2016.



April M. Rivera WSB# 21841
Program Attorney
King County Dependency CASA Program

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

COPIES TO:

Zachary Brown, AAG

Ryan Bennett, DCFS

Jennifer Garber, Attorney for Mother

Court – working papers

King County Dependency CASA Program Attorney
1401 E. Jefferson, #500
Seattle, WA 98122
(206) 296-1120

CASA APPENDIX

DSHS office: White Center
CASA file no:

Court location: Seattle Downtown Courthouse
Comm/Judge/Courtroom: Comm. Kahan, E-201
Hearing date: 9/1/16
Hearing time: 8:30 AM

Superior Court of Washington for King County Juvenile Court	
Dependency of E' H' D.O.B 12/06/07	Dep. legal no. EA **CASA Report to Court** **Motion hearing Mother's motion for appointment of counsel for child**

Comes now the Dependency CASA Program and submits the attached report to court prepared by the CASA for the above hearing.

I declare that I circulated the report to the parties who are opted in to E-Service as of today's date and swear under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge	Stephanie Richards
Date report circulated and sworn	8/25/2016

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #3081 Kent, WA 98032 (206) 477-2768

CASA Court Report

PHOTOGRAPHS REDACTED

This report contains confidential information for the benefit of the court and may only be distributed to parties to the legal case

Child:

Name, age	E 8 years 6 months
Mother's name	R R
Status re dependency	Agreed 9/5/14
Father's name	E
Status re dependency	Established 8/22/14
Paternity status	Adjudicated
If Native American, name of tribe/band	Does Not Apply
Does ICWA apply?	
Total no. of placements to date	5 placements
Total months out of home to date	28 months
Who is child currently placed with?	Licensed Foster Care
Other court placement conditions?	None
Date CASA assigned	7/1/15
Date CASA last visited child	5/19/16
Child's expressed wishes on matter before court	E did not express a preference for an attorney. He was able to clarify that he wants to be reunited with his mother as soon as possible, and wants to make sure that CASA tells the Court that he strongly desires to stay in his current placement until his mother can return to him.

CASA

Dependency CASA Program
401 E Jefferson #600 Seattle, WA 98122 (206) 477-4246
401 4th Ave N #3001 Kent, WA 98032 (206) 477-2758

Contested issues

Contested issues noted for this hearing	The mother's motion asks the Court to appoint an attorney for 8 year old E ı at public expense.

Recommendations for findings and court order

1. CASA respectfully requests the Court deny the mother's motion to appoint an attorney for eight year old E , and would like the following to be considered:

I am over the age of eighteen and competent to testify.

I became a court appointed special advocate in October 2014 after completing a 28 hour training course and being sworn in by Commissioner Jennie Laird. Since then I have been appointed to advocate for eighteen children involved in the dependency system. I am currently advocating for fourteen children including E ı H ı and his two younger siblings. Due to his age and his memories of residing with his mother, E ı does have a bond with his mother that differs from E ı and J ınd he is able to express that. His older siblings, D and K eside with suitable adults, D is on the run, and his two oldest siblings are not the subject of this dependency.

Ms. R is incarcerated until 2019 and is not available for placement. Her furloughs have recently been revoked by the Bureau of Prison-not for specific poor behavior on her part, but due to it being a mistake to have allowed it initially. E last lived with Ms. R in 2013.

Unfortunately, records are not clear on E 's exact placement history. His first placement was with family friend Ti ı T (over the objection of the Department). He was removed from that home on December 30, 2014. He has been in his current placement since January 30, 2015. He spent a very crazy month in respite placements (3 total) until he landed in his current placement. So a total of 5 placements, but one particularly chaotic, sad month for him. He has been separated from E e and J since being removed from the

When their mother left for prison in 2013, all the minor siblings lived with family friend V Mt In October 2013, E was separated from D , K and L when Ms. y decided she could no longer care for the teens. The teens went to live with the T and sometime later the younger children followed. By the time of the dependency mediation in August 2014 the three teens were living with family friend K ı Hi and the three younger children remained with the T s. The separation from the older siblings occurred prior to the establishment of Dependency.

E ı does not trust easily. He is very self-conscious of being "called out" as a foster child and adding an additional professional party to his life would be unsettling. He has had at least 5 different social workers since the commencement of this dependency and does not like being visited at school or at his after school program because it singles him out. It has often not been possible for professional parties to visit him at his caregivers' home because he arrives home at 6 PM. This CASA and E have developed a trusting relationship, but it has taken time for him to open up. E does not mind this CASA visiting at his after school program because I am known to program staff and many of the kids there due to a long-standing involvement in their basketball program; it has given us something in common.

As noted in previous reports, E ı therapist states he becomes sad and tries to change the subject when discussion of his mother and siblings comes up. Three days prior to the writing of this report, I

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #3081 Kent, WA 98032 (206) 477-2768

visited with E' t some length and told him I couldn't tell the Court what he wanted unless he told me. Through tears, E' told me that he wants to be reunited with his mother as soon as possible, and wants to make sure that CASA tells the Court that he strongly desires to stay in his current placement until his mother can return to him. In my May 2016 Report to Court I recommended that Guardianship be added as a permanent plan for E' based on his representations to me that he would like to live with his mother when she is available again. I made this recommendation even though I do not know if that scenario will come to pass. I want to make sure that the option of reunification is not entirely removed.

E is sad that his brother D didn't come to the sibling visit during his mother's most recent visit, or last month when he was due to show up at the visit with his younger siblings (special arrangements were made to accommodate the teenager). I offered to assist in them talking on the telephone and E declined. As his CASA, I believe he is hurt by his brother's lack of follow through and actually wants to speak/visit with him and will I revisit this sibling contact with E periodically.

Information sources

Records reviewed	CASA Records, Court Files, Arrest Reports
Date last received discovery/case file updates	8/6/16

Names of people contacted	Relationship to child
L	Mental Health Counselor
E'	Child

I declare that I prepared this report and under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge

Name	Laura Clough
Date signed	8/22/16
Where signed	Seattle
Reviewed by CASA Supervisor	Reyana Ugás

Report distribution

Parties who are opted in for E-Service as of today's date:

Legal party's name	Relationship to case
--	Court bailiff/coordinator, via hard copy
Ryan Bennet	DSHS social worker
Zach Brown	AAG
Jennifer Garber	Mother's attorney
unrepresented	Father's attorney

CASA
Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #3081 Kent, WA 98032 (206) 477-2768

Legal party's name	Relationship to case
April Rivera	CASA's attorney
Reyana Ugás	CASA's supervisor
N/A	Child's attorney

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #3081 Kent, WA 98032 (206) 477-2768

26970209

FILED
15 OCT 01 PM 2:31
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

DSHS office: White Center
CASA file no: (Program use only)

Court location: Seattle Downtown Courthouse
Comm/Judge/Courtroom: E201
Hearing date: 10/8/15
Hearing time: 3PM

Superior Court of Washington for King County
Juvenile Court

Dependency of	Dep. legal no. SEA
E H E A J R	**CASA Report to Court** **Dependency Review** hearing
D.O.B 1	

Comes now the Dependency CASA Program and submits the attached report to court prepared by the CASA for the above hearing.

I declare that I circulated the report to the parties listed and swear under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge

KE Hassinger

Date report circulated and sworn 10/1/2015

CASA
Dependency CASA Program
1401 E Jefferson #600 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

26970205

CASA Court Report

PHOTOGRAPHS REDACTED

E B Jr

This report contains confidential information for the benefit of the court and may only be distributed to parties to the legal case.

Child

Name, age	E H 7 years, 10 months	E A 4 years, 8 months	Jr 3 years, 9 months
Mother's name	R R		
Status re dependency	Established 9/5/14		
Father's name	E	B & Jr	
Status re dependency	Established 8/22/14	Established 1/8/15	
Paternity status	Established	Established	
If Native American, name of tribe/band	Does Not Apply		
Does ICWA apply?			
Total no. of placements to date	E 7	E 2	
Total months out of home to date	16 months	16 months	
Who is child currently placed with?	Licensed Foster Care (E	& Jr id together)	
Other court placement conditions?	None		
Date CASA assigned	7/1/15		
Date CASA last visited child	E 8/26/15; E J 13/15		

Permanent Plan as currently court-ordered

Return home to mother

Dependency CASA Program
(206) 477-4245 (206) 477 2768

Compliance with Dispositional Plan and subsequent court orders

	Currently ordered by court	Parties' compliance
Child: Placement	Licensed Foster Care	Yes
E Services	Counseling	Yes
	Educational Evaluation	Yes
E & J Services	Medical and Dental Evaluation and care	Yes
	Assessment for Early Childhood Development service	Yes
Mother: Services	Drug and Alcohol Evaluation – follow recommendations	Unknown
	Evidence based, age appropriate parenting class	Unknown
	Parenting assessment- follow recommendations	Unknown
	Cooperate with establishing paternity as to [redacted]	Yes
Visitation	Phone calls 1X week If the mother is able to visit on a furlough: liberal, supervised by DSHS or designee, coordinated by caretakers and DSHS.	Yes, when possible
Father F I Services	Drug and Alcohol Evaluation- follow recommendations	No
	Random UA's 2X per week for 90 days	Nd
	Psychological Evaluation with parenting component- follow recommendations	No
Visitation	2 hours per week, 1X, supervised, once father comes forward	No
Father E Services	Domestic Violence Batterer's Assessment-follow recommendations. Department to provide collateral information for assessment	No
	Drug and Alcohol assessment-follow recommendations. Department to provide collateral information.	No
	Psychological Evaluation if indicated by either of the other 2 assessments	No
Visitation	Once weekly skype or phone calls	No

Child's status

Child's name	E J
Overall well-being	Stable, mostly happy.
Provide basis for above **Compliance** section recommendations re child's ordered services	E continues counseling 1 X per week a

CASA
Dependency CASA Program
101 E Jefferson 3000 401 Th Ave N #4234
Seattle WA 98122 Kent WA 98032
206) 477-4245 (206) 477 3743

Medical and dental update	E' ; regular with medical and dental appointments.
Prescribed psychotropic medications and purpose	No medication is consistently prescribed.
Developmental/academic update	School has just begun; developmentally on track.
Response to visitation	Upset, withdrawn, traumatized per caregivers and Social Worker after most recent visit in June.
Contact with siblings	Yes, with younger siblings 2X per month.
Child's expressed wishes on matter before court	None – seems agitated and avoids topic.

E' has been through a lot. He is 7 years old and has lived in several chaotic homes prior to the Department's becoming involved. He came to the attention of DCFS in December, 2013. He is currently in a stable, supportive placement where he has been for 9 months and his anxiety has lessened (per counselor) and his trust in, and enjoyment of, current caregivers has grown. E is in a very supportive and uplifting environment. There are clear boundaries surrounding behavior; the structure and consistency make him feel safe.

He has just begun the 2nd grade and CASA has no updates since school has just started. He reports liking his teacher. His current placement supports his academic curiosity (particularly in math) and encourages his reading, where he was somewhat remedial during his 1st grade year.

E is a gifted athlete and is currently playing soccer on a Community Youth Soccer Team. This CASA attended his soccer game on 9/26/15 and was impressed at his leadership and enjoyment of being a teammate. E is a head taller than any of his other teammates; he is also far more advanced athletically. At his recent game he exhibited remarkable empathy on the field. In situations where he could clearly have scored on a much smaller opponent, he chose to kick it to the opponent softly. He told this CASA he wanted everyone to feel good. E attends after school programming at the Boys and Girls Club, where he receives after school assistance and opportunities to interact with other children in athletic pursuits.

Caregivers report that E has noticeable issues around physical privacy. They are very sensitive about this issue, particularly surrounding bath time. There was a 911 report involving E on 4/27/13 in which E' allegedly was sexually inappropriate with another 5 year old child in his Pre K / Kindergarten setting. Caregivers report that E' does not want anyone to touch his bottom and recently became very upset when, while being pushed on a swing that went very high, caregiver had to reach up and push him on the bottom to keep the swing going. Prior to the mother's incarceration, she placed her children with a friend, V: M: Ms. M ported in 2013 that E' was "sexually acting out" both with children and adults. He reportedly said at the time that his then 13 year old brother would push him face down on the bed and "messes with him".

E' has a good relationship with his counselor, Mr. L: W: at Atlantic Street where he is seen once per week for 20 minutes. CASA spoke with Mr. W on 9/29/15 and Mr. Y reported he saw E' in his school setting last week. E' eportedly did share that he doesn't believe it is okay for him to be happy. Counselor believes this has come up now in anticipation of his mother's upcoming visit. He relates that E' has a fear of expecting or deserving any joy or happiness because he has been disappointed so much in his life. CASA recommends continuing this counseling and concurrently screening for Trauma Counseling due to information about his sexually acting out, as well as his own statement regarding his older brother "messing" with him.

CASA
Dependency CASA Program
1401 E Jefferson #500 | 401 4th Ave N #A2229
Seattle, WA 98122 | Kent, WA 98032
(206) 477-4245 | (206) 477-2768

Child's name	E A J R
Overall well-being	Both children are doing very well
Provide basis for above **Compliance** section recommendations re child's ordered services	Both children have been assessed for Early Child Development and are engaged in Early Head Start, as well as Toddler Play therapy.
Medical and dental update	Both children are current with medical and dental appointments.
Prescribed psychotropic medications and purpose	
Developmental/academic update	Children are in Early Head Start every weekday 8:30 – 4:30. Though emotionally vulnerable, they are making great strides.
Response to visitation	Caregivers report they are confused by phone calls with mother and frequently hand off the phone to each other and ask caregivers "why is calling?"
Contact with siblings	and E see their 7 year old brother E who is placed separately in licensed care. They have not had contact with their older siblings.
Child's expressed wishes on matter before court	No expressed wishes.

E is a very smart little boy. He is currently in Early Head Start each weekday from 8:30 – 4:30. CASA visited at school on 9/23 and observed the children. E s very respectful of teachers and engages fully in all activities. Teachers report that E does not nap when the other children lie down, but is not disruptive. He loves books and is eager to learn. E teacher had him demonstrate his reading skills to CASA. He can read many 3 letter words (cat, rat, sat, mat) and read short phrases involving those words.

He had dental surgery in June that required anesthesia due to severe tooth decay. At the time, it was noted that he has enlarged tonsils and adenoids and that surgery is scheduled for 10/24.

J is also in Early Head Start. She has made friends and responds enthusiastically to all activities she is asked to participate in. Caregivers say J does not sleep well and is often tired which they suspect is the reason for some negative behavior, though earlier reports of tantrums have waned. J is scheduled for a sleep study evaluation on 10/4/15.

Like her brother, J loves books. The children have been supported with play therapy through Sound Mental Health which has given both of them tools for safer play. Prior to CASA being assigned in July, it was reported that both children had frequent tantrums that lasted for extended periods. These tantrums are far less frequent and resolve much more quickly than in the past.

E and caregivers worked with a counselor who came into the home. Caregivers report that advice from the counselor that if they remain consistent with attention, boundaries, discipline and love, E and anxiety will be lessened and their happiness increased. CASA has observed this to be true during our 3 visits since being assigned.

CASA

Dependency CASA Program
1401 E Jefferson #600 | 401 4th Ave N #A2239
Seattle, WA 98122 | Kent, WA 98032
(206) 477-4945 | (206) 477-2768

E , and J lk about their different home(s) when something unpleasant reminds them of a different placement and will look down. They still scream and run to hide when they hear sirens, though while both used to be inconsolable at the sound; their distress resolves more quickly than in the past.

Mother's status

CASA is unaware of mother's participation in ordered services; they may not be available at the Federal Prison where she is currently incarcerated.

Father's status

Mr. H had not come forward until the last week of July, 2015 when he made contact with Social Worker to ask where his son was placed. He does not believe he requires services; there has been no subsequent contact.

Mr. H has significant criminal history including several charges of felony and misdemeanor violations of a No-Contact order, Assault IV, numerous controlled substance violations, exposing children to domestic violence, obstruction and disorderly conduct.

Mr. A does not believe he needs services, has not had regular contact with Department and has not had phone or skype visits with children since the end of February.

Recommendations for court's findings and court order

	Overall compliance with ordered services	Overall progress made
Mother	Unknown	Reserved
Father E	No	No
Father E	No	No

CASA's Permanency Planning recommendation for this hearing?	CASA recommends the permanent plan be changed as follows: Primary plan: Adoption/ Guardianship Alternate plan: Return home to mother
If the child has been out of home for 15 months, does filing of Petition for Termination of Parental Rights promote the child's best interests?	Yes

E is nearly 8 years old. His telephone visits with his mother are challenging (per caregivers) and he is often silent and isolated following these calls. He exhibited severe anxiety and sadness after the Mother's visit at the end of June. Mother has told E that she will "probably be home" by his birthday (in December). The reality is, she is not scheduled to be released until July, 2019. These comments are very confusing to E . Adding to the statement of an early release, mother has promised E gifts (an Xbox with lots of games) that she likely can't deliver.

CASA

Dependency CASA Program
1101 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

E and . ave been in 2 placements since the dependency commenced 16 months ago. However, prior to that they spent 1 year in several chaotic placements beginning with their mother placing them in the care of a friend prior to her incarceration. As such, the children have not resided with their mother for approximately 27 months. They have now been in the same placement for 9 months and their behaviors have improved.

E and J lk to their mother on the phone one a week. Caregivers report they are not engaged during phone calls and this CASA asked them if they enjoyed calls with their mother; E said "you mean "? J said is not my Mom." While they seem to enjoy the packages she sends with letters and artwork, they really don't remember her or feel attached to her.

The mother is incarcerated with a release date of July 2019. CASA is concerned regarding the likelihood that the mother will be granted a compassionate release and even so, it will take time for her to engage in services and reestablish a bond with her children. E , E nd . deserve permanency and cannot wait 4 years for that to be achieved. The siblings enjoy visiting and CASA recommends trying to place these three children together, if possible.

Information sources

Records reviewed	Court Records, CASA Records
Date last received discovery/case file updates	6/30/15

Names of people contacted	Relationship to child
Lindsey Green	DSHS social worker
Ingrid Buchan	DSHS social worker
I	Atlantic Street Counselor
	E Caregivers
	E & Caregivers
F S n and	Teachers

This report was prepared by assigned CASA	Laura Clough
Date report was prepared	9/28/15
Reviewed by CASA Supervisor	Reyana Ugás

Report distribution

Unless noted below, all parties received this report via email.

Legal party's name	Relationship to case
--	Court bailiff/coordinator, via hard copy
Ingrid Buchan	DSHS social worker
Zach Brown	AAG
Jennifer Garber	Mother's attorney

Dependency CASA Program
401 E Jefferson #600 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

Legal party's name	Relationship to case
Not represented	Father H ' attorney
Anne Wakefield	Father A ttorney
April Rivera	CASA's attorney
Reyana Ugás	CASA's supervisor
N/A	Child's attorney

Dependency CASA Program
1401 E Jefferson #500 | 401 4th Ave N #A2229
Seattle, WA 98122 | Kent, WA 98032
(206) 477-4245 | (206) 477-2708

FILED
16 JAN 19 PM 1:39
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

DSHS office: White Center
CASA file no: (Program use only)

Court location: Seattle Downtown Courthouse
Comm/Judge/Courtroom: E201
Hearing date: 1/27/16
Hearing time: 8:30 a.m.

Superior Court of Washington for King County
Juvenile Court

Dependency of	Dep. legal no. SEA
E H E ie A J	**CASA Report to Court** **Motion hearing Mother's motion re: overnight visits**
D.O.B	

Comes now the Dependency CASA Program and submits the attached report to court prepared by the CASA for the above hearing.

I declare that I circulated the report to the parties listed and swear under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge

Stephanie R. Chandler

Date report circulated and sworn 1/19/2016

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

27460217

CASA Court Report

PHOTOGRAPHS
REDACTED

E E
This report contains confidential information for the benefit of the court and may only be distributed to parties to the legal case

Child

Name, age	E L. . 4 E A . J 0. .
Mother's name	R
Status re dependency	Established by agreed order on 9/5/14
Father's name	E E H E . . E /
Status re dependency	Established 8/22/14 , Established 1/18/16
Paternity status	Alleged Alleged
If Native American, name of tribe/band	Does Not Apply
Does ICWA apply?	
Total no. of placements to date	E : 7 placements E , & : 2
Total months out of home to date	20 months 20 months
Who is child currently placed with?	Licensed Foster Care (I , &. faced together)
Other court placement conditions?	None
Date CASA assigned	7/1/15
Date CASA last visited child	E 1/7/16; E , & 1/4/16
Child's expressed wishes on matter before court	No expressed wishes

Dependency CASA Program
1101 E Jefferson #500 401 4th Ave N #A2238
Seattle, WA 98122 Kent, WA 98032
(206) 477-4245 (206) 477-2768

Contested Issues

Contested issues noted for this hearing	Mother is requesting overnight visits with all of her children when she is scheduled to be in Washington State on furlough from 2/3/16 to 2/10/16. Mother is requesting the overnight visit occur the weekend of 2/5/16.

Recommendations for findings and court order

1. CASA does not support overnight visits between the mother and E , E and due to the significant risks to the young children.

While CASA supports the Mother visiting with her children when she is in Washington State, CASA does not feel that overnight visits are currently in the children's best interest. E has demonstrated sexually acting out behaviors and also made allegations of sexual abuse against an older brother, presumed to be K a. Per the case file, on 4/27/14 police were called to r 5 year old E n pulled down his pants and put his penis in another 5 year old's mouth. In April of 2014, CPS received a referral from arten that E had pulled down the pants of his female cousin. At that time, the then suitable adult placement reported to the Renton School Counselor that E was sexually acting out and that he seemed "overly protective of his private parts". At that time E reported that his older brother (then 13) sometimes "messed with him", pinning him to the bed, poking him and it felt like a "pin in his bottom."

E 's older brother K is currently at JRA, however, the mother's motion asks that K be able to participate in the overnight visit if he is released. D 's current whereabouts are unknown. There have reportedly been allegations of sexual assault against both older siblings. On 12/23/09, law enforcement was called after a young girl reported that during a sleepover party she awoke to find 9 year old K utting his hands in her pants and groping her. Per discovery, Middle School reported incidents of sexual assault by D that reportedly occurred during the spring of 2014. Because it is not known with certainty which brother may have sexually assaulted E n, CASA does not feel that overnights visits would be safe situation. Furthermore, based on some of the behavior E has demonstrated, CASA is also concerned about overnight visits between E , and his younger siblings.

CASA is also concerned about a prior incident on 9/18/14, where during a furlough visit, the Mother called the suitable adult with whom the children were placed and said she would like to visit the children. The suitable adult received permission from Social Worker (SW) to allow the Mother to visit as long as the suitable adult supervised the visit. Mother took children to her car; she was told this wasn't allowed, to which she reportedly replied "What are you going to do about it?" The Mother's sister reportedly told the suitable adult she would "kick her ass." The police were called (case # 14-313048 with the Seattle Police Department) and the Mother was cited for Custodial Interference.

When the Mother visits Washington State on during her furlough, her visits are to be liberal, supervised by DSHS or its designee. CASA does not feel it is realistic to expand visits from supervised visits every 90 days to unsupervised, overnight visits without any progression first to longer supervised visits, then

CASA

Dependency CASA Program
1401 E Jefferson #500 401 4th Ave N #A2238
Seattle, WA 98122 Kent, WA 98032
(206) 477-4245 (206) 477-2768

monitored visits in an effort to assess the mother's parenting skills as well as the children's response to visits and determine next steps accordingly.

E n and J are now in a stable and supportive placement where they have been since 12/21/15 and they are responding well to the structure and support. All three children have experienced and expressed great periods of grief and loss. They are doing well with clear and loving limits. Prior to the current dependency, E n, E and J pent 1 year in several chaotic placements beginning with their mother placing them in the care of a friend prior to her incarceration. As such, the children have not resided with their mother for approximately 27 months. CASA has previously asked the children about if they enjoyed calls with their mother; E said "you mean ? J said " is not my Mom."

CASA feels it is in the children's best interest for the focus of visits to be helping the children reconnect with their mother and that this be done through a gradual progression of visits upon agreement of the Department and CASA.

Information sources

Records reviewed	Court Records, Police Reports, CASA records
Date last received discovery/case file updates	9/2/15

Names of people contacted	Relationship to child
Ingrid Buchan	DSHS social worker
Ryan Bennet	DSHS social worker

I declare that I prepared this report and under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge

	Laura Clough
Date signed	1/16/16
Where signed	Seattle
Reviewed by CASA Supervisor	Reyana Ugás

Report distribution

Unless noted below, all parties received this report via email.

Legal party's name	Relationship to case
--	Court bailiff/coordinator, via hard copy
Ryan Bennet	DSHS social worker
Zach Brown	AAG

Dependency CASA Program
1401 E Jefferson #500 401 4th Ave N #A2239
Seattle, WA 98122 Kent, WA 98032
(206) 477-4245 (206) 477-2768

Legal party's name	Relationship to case
Jennifer Garber	Mother's attorney
Anne Wakefield	Father F s attorney
April Rivera	CASA's attorney
Reyana Ugás	CASA's supervisor
N/A	Child's attorney

Dependency CASA Program
1401 E Jefferson #500 · 401 4th Ave N #A2239
Seattle, WA 98122 · Kent, WA 98032
(206) 477-4245 · (206) 477-2768

27430776

FILED
16 JAN 26 PM 12:16
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

DSHS office: White Center
CASA file no: 11537 *(Program use only)*

Court location: Seattle Downtown Courthouse
Comm/Judge/Courtroom: E201
Hearing date: 2/4/16
Hearing time: 1:30PM

Superior Court of Washington for King County
Juvenile Court

Dependency of	Dep. legal no.	SEA
E E J f	**CASA Report to Court** **Permanency Planning Review hearing**	
D.O.B		

Comes now the Dependency CASA Program and submits the attached report to court prepared by the CASA for the above hearing.

I declare that I circulated the report to the parties listed and swear under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge

KE Hasselinger

Date report circulated and sworn 1/26/2016

CASA
Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

27430776

CASA Court Report

PHOTOGRAPHS
REDACTED

This report contains confidential information for the benefit of the court and may only be distributed to parties to the legal case

Child

Name, age	E H E	
Mother's name	F . F	
Status re dependency	Established 9/5/14	
Father's name	E	E
Status re dependency	Established 8/22/14	Established 1/18/15
Paternity status	Established	Alleged
If Native American, name of tribe/band	Does Not Apply	
Does ICWA apply?		
Total no. of placements to date	E 7 placements	
Total months out of home to date	20 months	20 months
Who is child currently placed with?	Licensed Foster Care ([redacted] placed together)	
Other court placement conditions?	None	
Date CASA assigned	7/1/15	
Date CASA last visited child	E 1/7/16	1/19/16

CASA
Dependency CASA Program
1401 E Jefferson #600 Seattle, WA 98122 (206) 477-4265
201 4th Ave N #A2236 Kent, WA 98032 (206) 477-2766

Permanent Plan as currently court-ordered

Primary: Return home to mother
Alternate: Adoption

Compliance with Dispositional Plan and subsequent court orders

	Currently ordered by court	Parties' compliance
Child: Placement	Licensed Foster Care	Yes
Services: E	Medical and Dental Evaluation	Yes
	Assessment for Early Childhood Development	Yes
	Individual Counseling	Yes
Services: F	Medical and Dental Evaluation	Yes
	Assessment for Early Childhood Development	Yes
	Play Therapy	Yes - new referral pending
	In home Therapy	Yes - new referral pending
Mother: Services	Evidence-based age appropriate parenting classes at provider approved by Department	All unclear due to her incarceration
	Drug and Alcohol Evaluation and follow treatment recommendations	
	Parenting Assessment and follow all recommendations	
	Cooperate with Establishment of paternity for J and K	Yes
Visitation	Once weekly phone calls	Yes
	If the mother is able to visit on a furlough: liberal, supervised by DSHS or designee, coordinated by caretakers and DSHS.	
Father: Services	Drug and Alcohol Evaluation – follow treatment recommendations	No
	Random UA's 2 times per week for 90 days	No
	Psychological Evaluation with parenting component	No
Visitation	1 time per week, supervised when father comes forward	No
Father: Services	Domestic Violence Batterer's Assessment and follow recommendations. Department to provide collateral information for assessment	No
	Substance Abuse assessment and follow recommendations. Department to provide collateral information.	No
	Psychological Evaluation if indicated by either of the other 2 assessments	No

CASA
Cowlitz County CASA Program

	Currently ordered by court	Parties' compliance
Visitation	Once weekly Skype or phone calls	No

Child's status

Child's name	E H
Overall well-being	E s overall attitude is much more positive since the last report. He is doing very well.
Provide basis for above Compliance section recommendations re child's ordered services	E continues to see the counselor he has had for the last year and good progress is reported.
Medical and dental update	All current – no medications.
Developmental/academic update	E is in Advanced math and is doing well in school. He is developmentally on track.
Response to visitation	Mostly neutral; caregivers report telephone conversations seem very "robotic" and he is anxious to hang up.
Contact with siblings	E had a recent visit with J and E D and 1 older (non-dependent) brother. He was especially happy to see D just before Christmas.
Child's Expressed Wishes to CASA	Avoids the topic, but speaks highly of current caregivers.
Child's name	E
Overall well-being	E is adjusting quite well to the structure, love and consistency of his new placement, though is sometimes confused about how long he will stay there.
Provide basis for above Compliance section recommendations re child's ordered services	E is current with ordered services and awaiting the start of in-home counseling in his new placement.
Medical and dental update	E had his tonsils removed at the end of October and is doing well. He is current with dental after surgery last summer – no medications.
Developmental/academic update	E VERY smart; he will be moving next week to an older classroom that may provide greater academic challenges in his Early Head Start Program. He is emotionally fragile, but developmentally on track.
Response to visitation	Visits have not occurred since placement disruption. All parties are working with the prison to resume this ASAP.
Contact with siblings	E had a visit just before Christmas at his Maternal Grandfather's. His oldest sibling was present, as were E and L He was very happy to see E
Child's Expressed wishes to CASA	No expressed wishes.
Child's name	J B

CASA

Dependency CASA Program
1101 E Jefferson St #500 Seattle, WA 98122 (206) 517-4248
401 4th Ave N #A229 Kent, WA 98032 (206) 477-2768

Overall well-being	J doing remarkably well since transitioning to her new placement.
Provide basis for above Compliance section recommendations re child's ordered services	current with ordered services and waiting for Play Therapy and In-home counseling to begin in her new placement.
Medical and dental update	All current – no medications
Prescribed psychotropic medications and purpose	
Developmental/academic update	J in Early Head Start from 8-4 daily and seems to enjoy it. Though emotionally vulnerable, she is making great strides in her new placement and is generally happy.
Response to visitation	Visits have not occurred since placement disruption. All parties are working with the parent to resume this ASAP.
Contact with siblings	J joined E at a visit on December 23rd at her Maternal Grandfather's with E and two older siblings. She said it was fun.
Child's expressed wishes on matter before court	No expressed wishes.

F

E d a very successful fall soccer season that ended just before Thanksgiving. He is a great teammate and very well-liked. He is doing very well a lementary and is in an after-school program a s and Girls Club. CASA met with E recently at the Boys and Girls Club and he has lots of friends and the structure suits him well with support around academics, structured reading and homework time, followed by athletic games. F would like to play basketball and CASA is working with caregivers to enroll him at the s and Girls Club in their in-house league. He is a remarkably precocious athlete.

E continues with the same counselor he has seen for the last year; the counselor visits him at his school. Counselor reports that there is a new optimism and brightness in his disposition further, that the behavioral issues that were observed when counselor began working with him are fewer and much farther in between. The counselor reports that E avoids conversations involving his mother, but speaks very highly of his Foster Parents.

E

E s very sensitive and temper tantrums are common. CASA has visited E at school on many occasions and he excels at every task. His behavior at school has improved and his teachers say that since moving to his new placement he is now napping for the first time since being enrolled last March. They have observed a reduction in anxiety since his recent move.

E will turn on 1/26 and celebrated his birthday over this past weekend. He had quite a few temper tantrums during the weekend and became very territorial of "his" things and very fearful of them being taken away by anyone. Current caregivers are working patiently with E to control tantrums when he can't do something "immediately." He still expresses that he thinks he is a "bad boy" when he has anger and frustration. Caregivers are working hard to reframe how he sees himself and are looking forward to beginning in-home counseling.

When CASA last saw E he had been told that his mother was going to call that evening (it didn't work out due to some technical difficulties we are resolving). E said: "I know why she can't call or

CASA
Dependency CASA Program
1401 E Jefferson #550 1401 4th Ave N #42230
Seattle, WA 98122 Kent, WA 98032
(206) 477-4345 (206) 477-2768

see me, she's in a long timeout in California, that's why." Caregivers report that when his mother's name does come up E tends to talk about violence, being a policeman, shooting his foster mother and putting her in jail. They report having never said that his mother is in jail, but he must have some notion that's where she is. He also talks about guns and points a pretend gun at caregivers only when his mother's name is mentioned.

During his recent placement disruption, he was confused. CASA saw him twice during this period of flux and has seen him 3 times since being placed with current caregivers. E seems to think upheaval is the norm and he shared with CASA that he really likes his new home, but is not sure he's "good enough" to stay.

J
Routines are very helpful for . as reported by teachers and caregivers and as witnessed by CASA. She is an eager learner and her Early Head Start sets limits that she understands and seem fair to her. When J transitioned to her current placement, she was obsessed with "husbands" and kept telling caregivers and CASA that they were "disgusting". We sat down with her and asked her why and she said "Mommy h. " said no one should have husbands. She now seems to see that if two people love each other and get along, it's OK to be husband/wife.

J. talked excitedly about visiting with her Grandpa and E D and E B (her sister D.). J. as recently been asking her caregivers if they want her and E to leave their home; she asks this multiple times each day. Caregivers are hopeful that in-home therapy will help with this because both J and E have a lot of anxiety/insecurity and confusion around where they live.

Mother's status

It is unclear if the mother has been able to engage in ordered services at her place of incarceration. She does have twice weekly phone calls with E' and phone calls with E and J will resume once a third party servicer, telephone provider issue is ironed out.

Father's status

E) has not come forward

E 1 II reportedly does not believe he needs services, has not had regular contact with Department and has not had phone or Skype visits with children since the end of February. Mr. F has reportedly said he would like to relinquish his parental rights, though this seems to change depending on the day.

Recommendations for court's findings and court order

	Overall compliance with ordered services	Overall progress made
Mother	Unknown	Reserved
Father E	No	No
Father	No	No

CASA's Permanency Planning recommendation for this hearing?	Adoption
If the child has been out of home for 15 months, does filing of Petition for Termination of Parental Rights promote the child's best interests?	Yes

F n, E and . ave had chaotic young lives. They have been part of a dependency action for the last 20 months, however they were "out of home" for 12 months prior to coming to the attention of the Department when their mother placed them with friends prior to beginning her incarceration. During this 12 month period, police were called twice with regard to E reportedly sexually acting out and forcing himself on another 5 year old, and reportedly pulling down the pants of a young cousin. At the same time, F reported having been sexually abused by an older brother.

At the last hearing, CASA recommended Trauma Counseling to help E n confront these issues. While he continues to see his Counselor, trauma-specific counseling has not begun. E' portedly goes through the motions when speaking to his mother on the telephone and seems to understand that she might not be returning anytime soon; he has expressed sadness over this issue to CASA in the past, but has avoided the topic in the last few months. E has become much more engaged with his school, has friends and is a much sought-after teammate in pick-up games.

All three children have a visceral response to sirens and behave very fearfully. Because E and . placement is new in the last 5 weeks, they are still not quite sure they "deserve" to stay there. In their prior placement the caregivers struggled with their tantrums and unpredictable, sometimes violent behavior (physically kicking and hitting caregivers), and told them they were bad. Their school teachers, school counselor and current caregivers are helping them to understand that slip-ups in behavior do not make them "bad children" and they can re-set their behavior and change the day. They seem to be trusting this.

These 3 children deserve permanency and should not be forced to wait 3 ½ years until their Mother's first early release date.

Information sources

Records reviewed	CASA records, Court records, police reports, school records
Date last received discovery/case file updates	12/9/15

Names of people contacted	Relationship to child
Ryan Bennett	DSHS social worker
Ingrid Buchan	DSHS social worker
	Caregivers
	Teachers
	Head Start Counselor
	Counselor

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

This report was prepared by assigned CASA	Laura Clough
Date report was prepared	1/25/16
Reviewed by CASA Supervisor	Reyana Ugás

Report distribution

Parties that are opted in for E-Service as of today's date.

Legal party's name	Relationship to case
–	Court bailiff/coordinator, via hard copy
Ryan Bennett	DSHS social worker
Zach Brown	AAG
Jennifer Garber	Mother's attorney
Anne Wakefield	Father A 's attorney
April Rivera	CASA's attorney
Reyana Ugás	CASA's supervisor
N/A	Child's attorney

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2229 Kent, WA 98032 (206) 477-2768

28199923

FILED
16 JUL 27 AM 11:54
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

DSHS office: White Center
CASA file no: (Program use only)

Court location: Seattle Downtown Courthouse
Comm/Judge/Courtroom: E201
Hearing date: 8/3/16
Hearing time: 8:30 AM

Superior Court of Washington for King County
Juvenile Court

Dependency of	Dep. legal no. 3A
E E J D.O.B	**CASA Report to Court** **Motion** hearing **Mother's motion for unsupervised & overnight visitation**

Comes now the Dependency CASA Program and submits the attached report to court prepared by the CASA for the above hearing.

I declare that I circulated the report to the parties listed and swear under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge

Stephanie Richards

Date report circulated and sworn 7/27/2016

CASA
Dependency CASA Program
1401 E Jefferson #500 | 401 4th Ave N #A2239
Seattle, WA 98122 | Kent, WA 98032
(206) 477-4245 | (206) 477-2768

2819992)

CASA Court Report

PHOTOGRAPHS
REDACTED

This report contains confidential information for the benefit of the court and may only be distributed to parties to the legal case

Child

Name, age	E 4r	
Name, age	E A	
Name, age	J. R	
Mother's name	F. R	
Status re dependency	Agreed, 8/2/14	
Father's name	E & E J A	E I, E r
Status re dependency	Established 1/16/15	Established 8/22/14
Paternity status	Adjudicated	Adjudicated
If Native American, name of tribe/band	Does Not Apply	
Does ICWA apply?		
Total no. of placements to date	E placements	I & 3 placements
Total months out of home to date	25 months	25 months
Who is child currently placed with?	Licensed foster care (E & Asced together)	
Other court placement conditions?	None	
Date CASA assigned	7/1/15	
Date CASA last visited child	CASA visited and on 7/22 CASA visited I on 6/7/16	
Child's expressed wishes on matter before court	CASA cautious about asking direct question regarding unsupervised in-person visits to children due to age and emotional intelligence.	

Dependency CASA Program
1401 E Jefferson 9000 | 401 4th Ave N 6A2239
Seattle, WA 98122 | Kent WA 98032
(206) 477-4245 | (206) 477-2769

Contested Issues

Contested issues noted for this hearing	1) Mother asks the Court to grant unsupervised visits with her children. 2) Mother asks the Court to grant overnight visits with her children.

Recommendations for findings and court order

1. CASA does not support unsupervised or overnight visits between the mother and F E d J to the significant risks to the young children.

While CASA supports the mother visiting with her children when she is in Washington State, CASA does not feel that overnight visits are currently in the childrens' best interest. E as demonstrated sexually acting out behaviors and also made allegations of sexual abuse against an older brother, presumed to be K . Per the case file, on 4/27/14 police were called to Preschool after 5 year old E pulled down his pants and put his penis in another 5 year old's mouth. In April of 2014, CPS received a referral from that E had pulled down the pants of his female cousin. At that time, the then suitable adult placement reported to the School Counselor that E was sexually acting out and that he seemed "overly protective of his private parts." At that time E reported that his older brother (then 13) sometimes "messed with him", pinning him to the bed, poking him and it felt like a "pin in his bottom."

E older brother K as recently released from JRA, and the mother's motion asks that I be able to participate in the overnight visit. C a current whereabouts are unknown. There have reportedly been allegations of sexual assault against both older siblings. On 12/23/09, law enforcement was called after a young girl reported that during a sleepover party she awoke to find 9 year old putting his hands in her pants and groping her. Per discovery, e School reported incidents of sexual assault by C that reportedly occurred during the spring of 2014. Because it is not known with certainty which brother may have sexually assaulted E CASA does not feel that overnights visits would be safe situation.

E E and J currently have scheduled telephone calls with their mother twice a week, in addition to monitored visits when their mother is able to travel to Washington State for furlough. Prior to the last in-person visit in May, J and F s therapists together recommended that there be a designated "safe person" at the visit who J and E ould go to if they felt unsafe or simply needed a break. Both of the younger children were very concerned that they wouldn't be picked up after their last visit. This is certainly not the fault of their mother; when their last placement disrupted, the children were dropped off at school and never picked up, requiring the social worker to transport them to her office where they met a new after hour's social worker with whom they spent the night in a motel.

Both J nd E have had serious acting out behaviors in anticipation of, and following telephone visits with their mother. J is very conflicted and asks her mother and her caregiver the same questions: "Am I your only baby? Are you going to only love me? Tell me I'm your only baby, etc." She has also been repeatedly saying to her caregivers: "You are never going to leave me? I will live here forever. You still love me even when I... do you still love me? Are you going to take care of me forever? You won't lie to me? I don't love you; I love you." The caregivers have been in conversation with J therapist to see what tools they can use to support her through this very confusing time.

CASA
Dependency CASA Program
1401 E Jefferson #500 | 401 4th Ave N #A2239
Seattle, WA 98122 | Kent, WA 98032
(206) 477-4245 | (206) 477-2766

The last two phone calls have gone much better now that the kids are speaking to their mother separately. They were able to focus better and they like that the call time is much shorter for each of them – they aren't "stuck" there the whole time. C has commented that the calls feel "fast" now and this makes him happy. C engages with his mother, but seems to withdraw when she gets personal or says "You know I love you... I'm your mommy, you are my baby, etc." He gets quiet and will then tell her he doesn't want to talk anymore and passes the phone to J J has been more interactive than in previous calls, but she does let her mother know when she's done. She's been much more respectful and less rude toward her. C continues to have tantrums, but has been making better choices, using his words and walking away from a potentially explosive situation, rather than using his fists and feet (please see attached documents from teacher and school).

C nd J a caregivers and CASA were notified that J eceived 10 referrals for unsafe behavior in the last week (please see attached school referral) that put her and her classmates at risk. J therapist reports that L has great difficulty self-regulating. She states that while L s a very bright and precocious 4 year old, she is emotionally "stuck" as a 20 month old because her toddler years were so chaotic. She further reports that L is challenging and provocative and is very easily triggered, then withdraws and isn't safe for herself or others in her path. This therapist is able to keep her composure with J a, but is concerned that others may not be able to stay balanced and composed when L tests limits and becomes fixated on what she is told she cannot do. CASA does believe it is important for these young children to rebuild a relationship with their mother without it being forced upon them.

CASA believes it is important to recognize how difficult change is for these young children and is hopeful that the mother, with the help of the children's therapists can develop strategies for responding to the triggers that create unsafe, provocative, defiant and often violent behavior. Both children's therapists have agreed to engage in a telephone call with Ms. F / (in the presence of their supervisor) and are willing to discuss strategies she might employ to make the calls less stressful for them. Unsupervised overnight visits cannot guarantee the emotional safety of these children at this time. CASA feels it is in the children's best interest for the focus of visits to be helping the children reconnect with their mother and that this be done through a gradual progression of visits upon agreement of the Department and CASA.

Information sources

Records reviewed	Court Records, Police Reports, CASA records, Mother's Motion
Date last received discovery/case file updates	7/21/16

Names of people contacted	**Relationship to child**
Laura L.	Therapist
Ryan Bennett	DSHS social worker
Lashon W.	Counselor
T ny E.	
J	E a Head Start Teacher

CASA

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

I declare that I prepared this report and under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge	L. Clough
	Laura Clough
Date signed	7/27/16
Where signed	Seattle
Reviewed by CASA Supervisor	Reyana Ugás

Report distribution

Unless noted below, all parties received this report via email.

Legal party's name	Relationship to case
--	Court bailiff/coordinator, via hard copy
Ryan Bennett	DSHS social worker
Zach Brown	AAG
Jennifer Garber	Mother's attorney
None	Father's attorney
April Rivera	CASA's attorney
Reyana Ugás	CASA's supervisor
N/A	Child's attorney

Dependency CASA Program
1401 E Jefferson #500 | 401 4th Ave N #A2239
Seattle, WA 98122 | Kent, WA 98032
(206) 477-4245 | (206) 477-2788

27857785

FILED
16 MAY 05 PM 3:42

DSHS office: White Center
CASA file no: * (Program use only)

Court location: Seattle Downtown Courthouse
Comm/Judge/Courtroom: E201
Hearing date: 5/12/16
Hearing time: 3 PM

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

Superior Court of Washington for King County
Juvenile Court

Dependency of

Dep. legal no.

CASA Report to Court

Dependency Review hearing

D.O.B

Comes now the Dependency CASA Program and submits the attached report to court prepared by the CASA for the above hearing.

I declare that I circulated the report to the parties listed and swear under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge

K E Hasselinger

Date report circulated and sworn 5/5/2016

CASA

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2234 Kent, WA 98032 (206) 477-2768

27857785

CASA Court Report

PHOTOGRAPHS
Redacted

This report contains confidential information for the benefit of the court and may only be distributed to parties to the legal case.

Child

Name, age	E K E A J K	
Mother's name	R	
Status re dependency	Established 9/9/14	
Father's name	E & J E	E E
Status re dependency	Established 1/18/16	Established 8/22/14
Paternity status	Adjudicated	Adjudicated
If Native American, name of tribe/band	Does Not Apply	
Does ICWA apply?		
Total no. of placements to date	E 7 placements	E 3 placements
Total months out of home to date	23 months	23 months
Who is child currently placed with?	Licensed foster care (E & 1 placed together)	
Other court placement conditions?	None.	
Date CASA assigned	7/1/15	
Date CASA last visited child	E 4/30/16; E & 1/26/16	

CASA
Dependency CASA Program
1401 E Jefferson #100 Seattle, WA 98122 (206) 477-4245
101 4th Ave N #2230 Kent, WA 98032 (206) 477-2766

Permanent Plan as currently court-ordered

Adoption primary; return home to mother alternate

Compliance with Dispositional Plan and subsequent court orders

	Currently ordered by court	Parties' compliance
Child:		
Placement	Licensed Foster Care	Yes
Services	Medical and Dental Evaluation	Yes
E	Assessment for Early Childhood Development	Yes
	Individual Counseling	Yes
Child:	E	
Placement	Licensed Foster Care	Yes
Services	Medical and Dental Evaluation	Yes
E &	Assessment for Early Childhood Development	Yes
J	Play Therapy	Yes
	In home Therapy	Yes -- new referral pending
	Therapeutic Trauma-Informed Counseling	Yes
	FCAP evaluation re: E	Yes – referred
Mother: Services	1. Evidence-based age appropriate parenting classes at provider approved by Department	1. All unclear due to her incarceration
	2. Drug and Alcohol Evaluation and follow treatment recommendations	2. All unclear due to her incarceration
	3. Parenting Assessment and follow all recommendations	3. Referred and will take place during upcoming furlough
	4. Cooperate with establishment of paternity for [redacted] and [redacted]	4. Yes
Visitation	Once weekly phone calls.	Yes
	If the mother is able to visit on a furlough: liberal, supervised by DSHS or designee, coordinated by caretakers and DSHS.	
Father:	E	
Services	Drug and Alcohol Evaluation -- follow treatment recommendations	No
	Random UA's 2 times per week for 90 days	No
	Psychological Evaluation with parenting component	No
Visitation	1 time per week, supervised when father comes forward.	No
Father:	E	N/A: parental rights relinquished
Services	N/A: parental rights relinquished	
Visitation	N/A: parental rights relinquished	N/A: parental rights relinquished

CASA
Dependency CASA Program

Child's status

Child's name	E' H
Overall well-being	E' verall attitude is much more positive since the last report. He is doing very well.
Provide basis for above Compliance section recommendations re child's ordered services	E continues to see the counselor he has had for the last year and good progress is reported.
Medical and dental update	All current –no medications
Developmental/academic update	E is in advanced math and is doing well in school. He is developmentally on track.
Response to visitation	E response continues to be mostly neutral; caregivers report telephone conversations seem very robotic and he is anxious to hang up.
Contact with siblings	E ad a recent visit with J ng , D and 1 older (non-dependent) brother. E has been visiting every two weeks with J and E ince the beginning of February and he seems to enjoy his time with them.
Child's Expressed Wishes to CASA	He does not want to move; he feels very safe in the home of current caregivers.
Child's name	E A
Overall well-being	E s extremely up and down. He feels safe and loved in his current placement and often worries he will not be able to stay.
Provide basis for above Compliance section recommendations re child's ordered services	I urrent with ordered services and began trauma counseling 5 weeks ago.
Medical and dental update	E ad his tonsils removed at the end of October and is doing well. Current with dental after surgery last summer – no medications.
Developmental/academic update	E . is VERY smart; he moved to an advanced classroom in the Early Head Start program. He is developmentally on track, though fragile.
Response to visitation	See below.
Contact with siblings	E J placed with his sister J and has had regular visits with his brother E
Child's Expressed wishes to CASA	No expressed wishes.
Child's name	J R
Overall well-being	J doing so well. She is very happy in her current placement

CASA

Dependency CASA Program
1101 E Jefferson #500 401 4th Ave N #A2235
Seattle, WA 98122 Kent, WA 98032
(206) 477-4245 (206) 477-2768

Provide basis for above **Compliance** section recommendations re child's ordered services	J is current with ordered services and began trauma counseling at the end of March 2016.
Medical and dental update	All current – no medications
Prescribed psychotropic medications and purpose	
Developmental/academic update	J . in Early Head Start from 8-4 daily and seems to enjoy it. Though emotionally vulnerable, she has come to feel secure in her current placement and is a much happier child.
Response to visitation	Twice weekly telephone visits resumed during the 3rd week of February. J usually does not talk and frequently walks out of the room during the calls.
Contact with siblings	J and E visit every couple of weeks with F
Child's expressed wishes on matter before court	No expressed wishes.

E continues with the same therapist he has seen for the last year; his therapist sees him at his school, and has stepped up the visits during this reporting period. Therapist reports that there is a new optimism and brightness in E 's disposition, and that the behavioral issues that were observed when he began working with E are now fewer and much farther in between. As part of his ongoing counseling referral, the provider completed a new assessment which was shared with CASA in March. This new assessment noted that E suffers with Anxiety Disorder and Adjustment Disorder. Therapist reports that E worries about being separated from family and has concerns about being separated from his current caregivers and finding himself alone. When therapist attempts to engage E in conversations about visits or his relationship with his mother; he shuts down, stating he doesn't remember and asks to change the subject. He does report being sad when he thinks of the "bad places" he has lived (prior to the current placement). E reported being physically abused in 2 of the homes he was placed in (specifically reporting he had been beaten with a belt by his mother's friend and subsequently being assaulted by the son of his mother's friend). He states he hated living in the homes of his mother's two friends. He went on to say that he is sad when he thinks of his Grandmother, having been told recently by his sister that his Grandmother is dead after being shot (timeframe is uncertain).

Therapist reports that E is obsessed with money; wanting to sell toys he is not using, almost as though he is preparing to take care of himself. He further reports that spending direct time with E works best. E likes having consistency in his life; being able to look forward to routine works well for him; confrontation is not helpful.

CASA agrees that E should continue in trauma-focused cognitive behavioral therapy. E is a member of the Boys and Girls Club and takes a bus from Elementary there each afternoon. He appreciates the academic routine and the opportunity for athletic participation provided at the Boys and Girls Club. E is a gifted and empathetic teammate who is much sought after in pickup games. is a terrific community resource for E and CASA is hopeful that there is a possibility for him to participate in a mentoring program there to encourage African-American male and female role models. He reached out to CASA to inquire about summer camp and is now registered to go to Camp this summer.

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2748

E
E or ' .' as he requests to be called, is very sensitive and has frequent temper tantrums. He started trauma-focused therapy 5 weeks ago and sees his treatment provider on Wednesdays and Fridays. He tells CASA, "I like the talking doctor." CASA has talked with therapist on two recent occasions; she reports that G .s completely engaged. They are working on anxiety regulation and anger management. Two weeks ago, the therapist reported that the calls between C and his mother were not helping him with emotion regulation and were very distressing to him: she asked if the calls could be halted. Because the calls are court ordered, CASA suggested G could listen and politely say he didn't want to talk. G therapist asked that CASA communicate this to G , which I did. This was reportedly not well received by his mother and when he saw the therapist the next day he expressed sadness that his mother did not "hear my polite words."

The following are examples of calls that were distressing to G as transcribed by the caregivers:
1/26/16:

"E When are you getting out of timeout?

R . Very soon, I am working on it.

E Are you going to beat me up?

R No I'm not going to beat you up.

E ; That's what you said at Grandpa's. When I call you a, you are going to beat me up.

R ; I would never beat you up; my friends call me , but I am your Mommy."

2/25/16:

"E ; Why do you keep calling? I don't want you to call.

R ; You don't want to talk to me? Where are you getting this?

E You just called the other night. I'm tired of talking.

R I only call because I love you; I only get 15 minutes – it's not forever, just 15 minutes."

The caregivers continue to report that when his mother's name does come up, ends to talk about violence, being a policeman, shooting his foster mother and putting her in "jail." He also reportedly talks about guns and points a pretend gun at the caregivers when his mother's name is mentioned. They report having never said that his mother is in jail, but seems to be aware of his mother's whereabouts. CASA has been present to support during two recent phone calls with his mother. On 4 separate occasions during the call, there was an interruption and a voice stating "this call has originated from a Federal Penitentiary."

CASA and caregivers have also shared with therapist a recent overt and inappropriate sexual comment made by 2 weeks ago while driving with his foster mother in the car. They pulled up next to another car at a stoplight and an attractive woman waved at them; said, "I'm going to marry her so she can lick my pee-pee; I like that". Less overt comments were reported to CASA by the last licensed placement. Therapist has noted this and will attempt to give an opportunity to discuss and understand.

has had some wonderfully notable moments, paired with equally notable tantrums that seem to come out of nowhere. Each time has had outbursts, the level has escalated, even with the support of counseling. According to the caregivers, had his worst outburst to date on Friday, 4/29/16. teacher has remarked that during a previous incident, would not stop kicking her and she had to take off his boots because he was starting to hurt her. This is a troubling pattern; eels very

CASA
Dependency CASA Program
1401 E Jefferson #500 | 401 4th Ave N #A2239
Seattle, WA 98122 | Kent, WA 98032
(206) 477-4245 | (206) 477-2766

remorseful afterwards and certainly has deep empathy, but in the moment, he is unable to stop. ι has been working really hard on anger tools, but he can't seem to employ them yet in the moment of his anger. His foster mother has asked if he can feel it in his body when he gets angry and he said yes: he feels "fire coming out of his head." They talked about trying to use his tools when his body starts to feel that way. They talked about how theirs is a safe home and they need everyone in the house to have a safe body, head and heart. G s scheduled to continue twice weekly trauma counseling throughout the spring and summer. Hopefully, he will continue to grow in his awareness of the build up to tantrums and employ the tools he is learning and working on in therapy.

is very well supported in his current placement. He is far more stable than he was one month ago. He feels empowered to use his words during the phone calls with his mother. While he continues to have extreme bouts of sadness accompanied by crying and hitting himself (saying "my heart hurts"), he is beginning to understand that others feel sadness too; he is not alone and he has happy feelings as well.

ι s registered for kindergarten in the fall, has an upcoming readiness assessment and is a very intellectually precocious 5 year old. During this reporting period ι has moved to an advanced classroom in his Early Head Start Program. While initially being somewhat reluctant to leave the classroom he shared with his sister, he is showing good signs of leadership and is proud when frequently asked to be a "line leader." He is also showing great signs of empathy. A current classmate who advanced with him to the new classroom has had some serious behavioral aggression issues with fellow classmates and is receiving special attention at school. was present when this same classmate bit CASA last October. During a visit last week, E shared with CASA that this particular classmate's behavior is "a little better, but he's trying so hard and I'm proud of him."

J
Routines are very helpful for J s reported by teachers and caregivers and as witnessed by CASA. She is an eager learner and her Early Head Start sets limits that she understands and seem fair to her. During the prior reporting period, J ι and ι experienced a placement disruption and, despite the kindness and consistency of the new placement, both children expressed serious anxiety about "not being good enough to stay" or asking when they had to leave. This has waned some. CASA sees these two younger kids weekly and J in particular, seems less frightened about suddenly being uprooted. J. ι teacher reports great signs of leadership from her and she now reads short phrases and can identify all letters in the alphabet, and is very keen with numbers. She loves books and music and has a beautiful singing voice. J s also receiving trauma counseling and her once frequent tantrums, have waned.

During the previous reporting period, J had some rather unsettling behavior regression; specifically, she wanted to be treated like a baby, be carried everywhere and speak and be spoken to in "baby talk." J s therapist reports that this is not uncommon in children who experience serious neglect as infants and toddlers. was 17 months old when her mother began her incarceration and that began a 13 month period of serious chaos in her life: she lived with 3 different friends of her mother's and experienced very real deprivation. J. s becoming more independent, enjoys her chores and needs far less redirection.

Mother's status

The Mother has a scheduled parenting assessment during her upcoming furlough. To the extent that mandated services are provided at the Dublin Penitentiary, she has engaged.

Father's status

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
101 4th Ave N #A2236 Kent, WA 98032 (206) 477-2768

E H , (father of E H has not come forward.

E J (father of E: ! and J F does not believe he needs services, has not had regular contact with Department and has not had phone or Skype visits with children since the end of February. During a hearing on April 25th, parties signed an order whereby Mr. A linquished his parental rights.

Recommendations for court's findings and court order

	Overall compliance with ordered services	Overall progress made
Mother	Reserved	No
Father	No	No
Father	N/A- parental rights relinquished	N/A- parental rights relinquished

CASA's Permanency Planning recommendation for this hearing?	Adoption for . nd E. Guardianship for E
If the child has been out of home for 15 months, does filing of Petition for Termination of Parental Rights promote the child's best interests?	Yes

E E nd J ve had chaotic young lives. They have been part of a dependency action for the last 23 months, however they were "out of home" for 12 months prior to coming to the attention of the Department when their mother placed them with friends prior to beginning her incarceration. During this 12 month period, police were called twice with regard to E. reportedly sexually acting out and forcing himself on another 5 year old, and reportedly pulling down the pants of a young cousin. E has been in the same stable placement for 15 months where he flourishes with routine and is quite bonded to his caregivers. E n does feel a bond with his mother and has, until this reporting period, expressed distress at her absence. His current caregivers are willing to support E as long term guardians. At the last Permanency Planning hearing in February, the Department was Court ordered to file a termination petition for these three children; it is unclear to CASA if this has occurred at the writing of this report.

J nd G have been in their current placement for over 4 months. They love their home, their 2 dogs and they are less fearful that they will be forced to leave their home. They have expressed a feeling of powerlessness and not being worthy to stay in their current placement. Consistent routines and a feeling of being able to express themselves in their home has had the positive effect of boosting their confidence. J nd G n placement is willing to be a long term, permanent placement.

These 3 children deserve permanency and should not be forced to wait 3 ½ years until their Mother's first early release date.

Information sources

Records reviewed	CASA records, Court records, police reports, school records

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2239 Kent, WA 98032 (206) 477-2768

Date last received discovery/case file updates	12/9/15

Names of people contacted	Relationship to child
Ryan Bennett	DSHS social worker
Tiffany E.	Trauma Counselor
Laura L.	Trauma Counselor
Rosa S. and Dina C.	Head Start Teachers
Dana Y.	Head Start Counselor
Lashon W.	t Therapist

This report was prepared by assigned CASA	Laura Clough
Date report was prepared	5/1/16
Reviewed by CASA Supervisor	Reyana Ugás

Report distribution

Parties that are opted in for E-Service as of today's date.

Legal party's name	Relationship to case
--	Court bailiff/coordinator, via hard copy
Ryan Bennett	DSHS social worker
Zach Brown	AAG
Jennifer Garber	Mother's attorney
Craig McDonald	Father's attorney
April Rivera	CASA's attorney
Reyana Ugás	CASA's supervisor
N/A	Child's attorney

Dependency CASA Program
1401 E Jefferson #500 Seattle, WA 98122 (206) 477-4245
401 4th Ave N #A2238 Kent, WA 98032 (206) 477-2766

FILED
16 AUG 26 AM 9:00
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 14-7-01413-7 SEA

King West

Commissioner Kahan
9/1/16
8:30 a.m.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

IN RE DEPENDENCY OF:	NO. 14-7-01413-7 SEA
E.H. DOB: Minor Child.	DEPARTMENT'S RESPONSE TO THE MOTHER'S MOTION TO APPOINT COUNSEL FOR THE CHILD AT PUBLIC EXPENSE

COMES NOW the Department of Social and Health Services, State of Washington, by Zachary Brown, Assistant Attorney General, and responds to the contested hearing noted by mother as stated below.

I. RELIEF REQUESTED

The Department respectfully requests the court deny the mother's motion to appoint public counsel for her eight-year old child.

II. STATEMENT OF FACTS

E.H. is an eight year old child. He has been dependent since September of 2014. His father, [redacted], is not participating in the dependency case. E.H. is currently in licensed foster care and has been stable with the same family since August 2015 (over a year). E.H. has been engaged in counseling for over a year and continues

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

to be engaged in extra circular activities (the CASA notes in her last report that E. H. is a member of the Rainier Vista Boys and Girls club).

E. H. has had two different CASA's throughout the life of this case. His initial CASA was assigned in June of 2014, and then withdrew in April of 2015. The current CASA, Laura Clough, entered her appearance in this case in February 2016. Since coming on to the case, Ms. Clough has been extremely active on behalf of E. H. as well as his two younger siblings (J. R. & E. A.). Ms. Clough sees E. H. on a regular basis, communicates with and provides support for his foster parents, and has a direct line to his current providers. While Ms. Clough is not an attorney herself, she does have an attorney through the CASA program, and effectively advocates for E. H's best interests in front of this court.

III. STATEMENT OF ISSUES

Should the court appoint an attorney for an eight-year old boy?

IV. EVIDENCE RELIED UPON

The CASA reports attached to the CASA's Response to the mother's Motion.

V. ARGUMENT

A. RCW 13.34.100 does not require that E. H. be appointed legal counsel in this dependency action; rather the State legislature has determined that, except in unusual cases, children under 12 will be represented by a guardian ad litem (GAL) / court appointed special advocate (CASA)

RCW 13.34.100 governs the appointment of a guardian ad litem and legal counsel for children in dependency actions. It states:

> The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be

> deemed satisfied if the child is represented by independent counsel in the proceedings.

RCW 13.34.100(1).

The statute further declares:

> (7)(a) The court ***may*** appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department.

RCW 13.34.100(7)(a) (emphasis added).

Statutes are to be interpreted as they are plainly written, unless a literal reading would contravene legislative intent by leading to a strained or absurd result. *Marine Power & Equipment Co., Inc. v. Industrial Indemnity Co.*, 102 Wn.2d 457, 461, 687 P.2d 202 (1984). It is a cardinal principle of statutory construction that when the language of a statute is plain and unambiguous the legislature is presumed to mean "exactly what it says." *Davis v. Department of Licensing*, 137 Wn.2d 957, 964, 977 P.2d 554 (1999).

RCW 13.34.100(7)(A) is very clear. The court has discretion to appoint an attorney but is not required to do so.

B. E.H.'s CASA has the statutory-mandated duty to report to the Court any views or positions expressed by the child

By statute, the CASA has the obligation to report to the Court any views or positions expressed by the child on issues pending before the Court. See RCW 13.34.105(1)(b). Therefore, in addition to expressing factual information about the child's best interest, the CASA has the duty to report the child's opinions and position. The mother's argument fails to recognize this. There is no allegation or documentation indicating E.H.'s prior or current CASA has failed or will fail in this role. Rather, as

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

the court can see from prior reports to this court, the CASA routinely reports the child's position to the court.

C. E.H.'s CASA is represented by counsel

Unlike in other counties in Washington, CASAs in King County are represented by counsel. Therefore, CASAs have access to legal advisors to ensure they fully understand the legal implications of issues that arise in dependency cases. They are legally represented by competent attorneys who specialize in child welfare law and juvenile litigation. E.H.'s CASA is no exception.

D. There are rational reasons the State legislature has determined children under the age of twelve are generally too young to have formal representation and are not parties to dependency actions

The legislature has made an important policy decision regarding children under the age of 12 – except in unusual situations, they will not be placed in the emotionally challenging position of directing an attorney regarding difficult decisions such as whether they should be placed with a parent, a favorite relative, or in a foster home, whether their parent needs various services to alleviate parental deficiencies, or whether their visitations with a parent should be supervised. These decisions would place young children in emotionally untenable roles. It is one of the duties of the CASAs to provide the Court factual information regarding what placement, visitation, and services for parents are in the best interests of the children. The CASAs, pursuant to statute, receive training to serve the children and the Court in this manner. See RCW 13.34.100. As discussed above, CASAs advocate for children, yet also inform the Court of the

children's position, if they have one, regarding issues pending before the Court. See RCW 13.34.105(1)(b). In contrast, the attorney's role is quite different as there is an obligation to meet with and to inform and to counsel a client about what is happening at every stage of a proceeding. This places children in the exact position that the legislature was attempting to protect them from. It also is duplicative of the CASA's responsibility of informing the Court of a child's position. Finally, in this case, because of E.H.'s young age, it puts him in the challenging position of accepting or rejecting his attorney's advice. As addressed above, the CASA has an obligation to report the child's opinions and position, as well as any factual information about the child's best interest. Therefore, E.H.'s position is already being represented by him CASA.

The legislative decision to have the Court appoint CASAs for children under the age of 12 is a legitimate exercise of legislative decision-making. As discussed, there are strong policy arguments underlying the decision of the legislature and they are intended to protect the emotional well-being of children who are already involved in difficult cases. The legislature has decided that a CASA will represent their position in court, in addition to articulating their best interest.

The statute is replete with references which support the legislature's general conclusion that children under twelve are not parties and are too young to have counsel. A summons requiring personal appearance in court is directed to the child, "if the child is twelve or more years of age," and to the "parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings." RCW

13.34.070(1). A child under twelve is not expected to personally appear for the dependency proceedings. The summons advises the "parties" of the right to counsel. RCW 13.34.070(3). The notice and summons is not directed to a child under twelve, indicating the child is not considered a party.

In criminal cases, children under the age of eight are deemed incapable of committing crime. RCW 9A.04.050. The statute states that children between eight and eleven are presumed to be incapable of committing crime, but the presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. *Id.* According to case law, the purpose of the statute codifying the "infancy defense" (a child under 12 years of age is presumed incapable of committing any crime) is to protect from the criminal justice system those individuals of tender years who are less capable then adults of appreciating the wrongfulness of their behavior. *State v. Ramer*, 151 Wash. 2d. 106, 114, 86 P.3d 132 (2004), *State v. Q.D.*, 102 Wash. 2d 19, 23, 685 P.2d 557 (1984). A child's capacity to commit crime requires the actor to understand the nature or illegality of his acts, that is, he must be able to entertain criminal intent; a sense of moral guilt alone, in the absence of knowledge of legal responsibility, is not sufficient, although actual knowledge of the legal consequences is not necessary. *Ramer*, 151 Wash. 2d at 115, 86 P.3d 132 *citing* 43 C.J.S. INFANTS § 197 (1978). In order to overcome the presumption that a child lacks capacity to commit crime, the State must provide clear and convincing evidence that the child had sufficient capacity to understand the act and to know it was wrong. *Ramer*, 151 Wash. 2d at 114,

86 P.3d 132 citing *State v. J.P.S.*, 135 Wash. 2d 34, 38, 954 P.2d 894 (1998); *Q.D.*, 102 Wash.2d at 26, 685 P.2d 557. Likewise in dependency cases, young children are incapable of appreciating the full impact and gravity of their statements and actions, and should be protected from having to make decisions impacting their case.

There is legitimate concern that E. H. is not capable of directing a lawyer's actions, as children do not fully understand the circumstances of the dependency case and what is in their best interest moving forward. The legislature codified this reasoning in RCW 13.34.100 by requiring appointment of a guardian ad litem for all children under twelve unless there is good cause not to do so.

E. The Washington Supreme Court has held that in termination of parental rights cases the appointment of counsel for children should be made on a case-by-case basis using the *Mathews* Analysis

In *In re Dependency of M.S.R.*, the Washington Supreme Court examined the constitutionality of the statute governing appointment of counsel for children and addressed whether there was a constitutional requirement of appointment of counsel for all children in every termination action. 174 Wn.2d 1, 271 P.3d 234 (2012). The Court held that:

> [T]he due process right of children who are subjects of dependency or termination proceedings *to counsel is not universal*. The constitutional protections, RCW 13.34.100(6), and our court rules give trial judges the *discretion* to decide whether to appoint counsel to children who are subjects of dependency or termination proceedings.
> *M.S.R.* at 22. (emphasis added).

In *M.S.R.* the Department filed a petition to terminate the parents' parental rights and the children, who were under twelve years old at the time, did not have appointed counsel. *Id.* at 7. There was a CASA appointed for the twins who supported the termination of

parental rights petition. *Id.* The twins' position was that they did not want to "lose their mom." *Id.* at 8. The CASA stipulated that this would be their position. *Id.* The Court noted that the CASA is statutorily required to report the viewpoints of the child. *Id.* One of the many obligations and duties of the CASA is to "report to the court any views or positions expressed by the child on issues pending before the court." RCW 13.34.105(1)(b). The CASA also has obligations to investigate, meet with the child, monitor compliance with court orders and "represent and be an advocate for the best interests of the child." RCW 13.34.105(1)(f).

The Court found that the statute regarding appointment of CASA and counsel for children is constitutional and that the discretion a trial court could exercise regarding appointment of counsel for a child provided adequate process to protect children's fundamental liberty interests.

The Court endorsed an examination, on a case-by-case basis, of the need for appointment of counsel using the *Mathews v. Eldridge* factors when necessary. *See Mathews v. Eldridge*, 424 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976). The factors are: "the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure." *Mathews v. Eldridge*, 424 U.S. at 335. The court examined the first two *Mathews* factors and recognized the important liberty interest that a child has in maintaining a relationship with family, and that the state has a strong interest in the welfare of the child and an "accurate and just decision." *M.S.R.*, 174 Wn.2d at 15-18.

Regarding the third factor – the risk of an erroneous decision – the court acknowledged that there are significant procedural protections in place to ensure an accurate decision. Ultimately, the Court held that each case must be decided on its individual facts and, that in *M.S.R.*, there was no constitutional violation of the children's rights because there was no evidence in the record to show that appointment of counsel was necessary. *Dependency of M.S.R.*, 174 Wn.2d at 22.

F. It is unnecessary to appoint an attorney for M[redacted] when she has a CASA assigned to represent her interests in this dependency action

Unlike in *M.S.R.*, in E. H.'s case there is no termination of parental rights action pending against either parent. This case involves a dependency action, the child is merely eight years old, and he has a CASA who is represented by an attorney.

The *M.S.R.* Court held that in a termination case, there was no universal right to the appointment of counsel for a child, RCW 13.34.100 was constitutional, every case would be different, and the *Mathews* factors and the unique circumstances of a case should determine whether appointment of counsel is necessary for a particular child. *Id. at* 22.

While the holding of *M.S.R.* is confined to termination cases, the analysis, especially the analysis of the child's liberty interest, is replete with references to changes in placement and separation from parents and siblings – issues that are common in dependency cases. *M.S.R.*, 174 Wn.2d at 15-18. The liberty interest of an individual child will vary with the specific facts of a case. In every case there are innumerable factors, not just visitation, which may affect a child's private interest. In this case, E. H. has a liberty interest regarding his placement, and contact with his mother and siblings, just like nearly

every other child in the dependency system. There is nothing unique about his situation. The State also has a powerful interest in the welfare of the child and in ensuring accurate and just decisions in dependency proceedings. Moreover, the State has an economic interest in preventing separate expenditures for an attorney for a child when the attorney will primarily be duplicating work already performed by the CASA and the CASA's attorney.

The third factor revolves around whether appointment of counsel will minimize the "risk of erroneous deprivation" of a liberty interest. In *M.S.R.* the court noted the numerous procedural protections in the termination statute that are in place to ensure a well-reasoned decision. *Id.* at 18-19. These protections include "...counsel for the parents, a full evidentiary trial before a superior court judge with discovery, motions practice, heightened burden of proof, and appellate review." *Id.* at 18. The *M.S.R.* court also observed that the trial court had the ability to appoint counsel for a child pursuant to RCW 13.34.100(6) and then held that:

> These procedures are significant and whether an additional lawyer in the proceeding would reduce the likelihood of an erroneous decision is subject to debate and has not been established here. *Id.* at 23.

The court also pointed out the most obvious factor to be considered when evaluating whether another attorney will make a difference:

> ...whether there is a constitutionally significant risk of an erroneous deprivation of rights may also turn on whether there is someone in the case who is able to represent the child's interests or whose interests align with the child's. *Id.* at 18.

In every dependency action there are procedures that are very similar to the procedures designed by the legislature to ensure a fair decision in a case. The parents have

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

counsel, there is an evidentiary hearing to determine whether a dependency should be established, and there are motions hearings and multiple review hearings to ensure that the child is safe and that services are being offered to the parents and child. *See* RCW 13.34.090 (right to counsel and to be heard), RCW 13.34.110 and RCW 13.34.130 (right to fact finding and dispositional hearing), RCW 13.34.138 (review hearings) and RCW 13.34.145 (permanency planning hearings). The mother does not point to any erroneous decisions made in this case other than this court's finding that visitation with his mother should be supervised (which is currently on revision).

E.H.'s case has been reviewed in court multiple times since September of 2014. He has had a CASA appointed to represent his position *and* her best interests for nearly his entire dependency case. Both his former CASA and his current CASA are represented by counsel. In recent pleadings, the CASA has included E.H.'s interest. *See* Reports of CASA attached to CASA Response to mother's motion. It does not appear there will be a lack of advocacy of E.H.'s position and interests. E.H.'s mother is represented by counsel and has filed multiple recent pleadings regarding E.H.'s visitation. There is no indication that appointing independent counsel for E.H. would reduce the risk of error in the court's decisions. The court could certainly appoint an attorney for E.H. in the future, if it deemed necessary. . But, there has been no evidence presented that appointment of counsel for E.H. would reduce the likelihood of an "erroneous deprivation" of his rights. There is no reason that the child needs

appointed counsel at this point in time and there is no showing that his legal position would be affected by not appointing counsel.

G. The Washington Constitution does not require appointment of counsel for M[redacted]

The due process clause of the state constitution does not mandate appointment of counsel for every child in dependency proceedings and the mother's *Gunwall* analysis fails to establish that E. H. should be appointed counsel. The six *Gunwall* factors govern whether a state constitutional provision extends broader rights than its federal analog. *In re Marriage of King*, 162 Wn.2d 378, 392, 174 P.3d 659 (2007).

The first and second *Gunwall* factors consider the text and textual differences between the state and federal provisions. *Id.* at 61. The Washington Supreme Court has repeatedly recognized that the first and second *Gunwall* factors do not support a more expansive interpretation of the state due process clause. "[T]here are no material differences between the 'nearly identical' federal and state provisions. This disposes of the first two *Gunwall* factors." *In re Personal Restraint of Matteson*, 142 Wn.2d 298, 310, 12 P.3d 585 (2000) (footnote omitted) (quoting *State v. Ortiz*, 119 Wn.2d 294, 303, 831 P.2d 1060 (1992)); *In re Marriage of King*, 162 Wn.2d at 392 (language of state and federal provisions is identical).

The third *Gunwall* factor considers whether the state constitutional provision's history reflects "an intention to confer greater protection" than its federal counterpart. *Id.* at 61. What is known is that Washington's State Constitutional Convention adopted the due process clause as proposed, without modification or debate. *Journal of the*

Washington State Constitutional Convention, 1889, at 495–96 (Beverly Paulik Rosenow ed. 1962). Thus, no legislative history "provide[s] a justification for interpreting the identical provisions differently." *State v. Ortiz*, 119 Wn.2d 294, 303, 831 P.2d 1060 (1992) (considering Rosenow at 495–96). The mother cites sections of the Washington constitution that are "protective of children." Ms. Rigney's Motion p. 15. However, these sections are completely unrelated to the appointment of counsel for children. Article IX Section 1 is regarding education, and Article XIII Section 1 is regarding state institutions.

The fourth *Gunwall* factor, preexisting state law, likewise establishes no basis to expand state due process protections for children. It "requires [the court] to consider the degree of protection that Washington State has historically given in similar situations." *Grant Cnty. Fire Prot. Dist. 5 v. City of Moses Lake*, 150 Wn.2d 791, 809, 83 P.3d 419 (2004) (focusing analysis of article I, section 12 on law around the time the provision was adopted). Nineteenth century law and society provided little or no protection when a problem concerned a child's safety within the family. Marvin R. Ventrell, *Rights & Duties: An Overview Of The Attorney-Child Client Relationship*, 26 Loy. U. Chi. L.J. 259, 264 (Winter 1995). Indeed, "[a]lthough numerous private agencies dedicated to protecting children from harm existed throughout the world by the end of the nineteenth century, children still had no established legal right to this protection." *Id.* (footnotes omitted). Thus, at the time the constitution was adopted, the concept of a lawyer representing a child's stated interests in a parental rights termination action, let alone a

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

dependency case, would have been completely foreign.

Instead of focusing on historical legal protections as *Gunwall* directs, the father cites *In re Dependency of Grove*, 127 Wn.2d 221, 897 P.2d 1252 (1995). Father's motion at 20. However, the fourth *Gunwall* factor looks to the law existing when a constitutional provision was adopted, and that is not informed by court decisions issued more than 100 years later. Also, *Grove* relies merely on *In re Welfare of Luscier*, 84 Wn.2d 135, 137, 524 P.2d 906 (1974), and *In re Welfare of Myricks*, 85 Wn.2d 252, 533 P.2d 841 (1975) without analyzing either case. Both of these cases predated the Supreme Court decision in *Lassiter v. Dep't of Soc. Servs of Durham County, N.C.*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981) which analyzed whether the due process clause of the federal constitution entitled an indigent parent to counsel in a termination case. Neither case establishes broader protections under the state due process clause. *Bellevue School District v. E.S.*, 171 Wn.2d 695, 257 P.3d 570 (2011) (noting *Luscier* "did not separately analyze the state and federal constitutional provisions at issue").[1] Similarly, the court observed that *Myricks* and *Luscier* predated the *Gunwall* decision and did not distinguish between what process was due under the federal and state constitution. *In re M.S.R.*, 174 Wn.2d at 13-14.

Indeed, *Luscier* and *Myricks* treat the Washington and federal due process clauses as equivalent. Neither case suggests that the due process clause of the state constitution

[1]*Grove*, which considered when civil appellate counsel would be provided at public expense, recited without further analysis that a constitutional right to legal representation exists "where a fundamental liberty interest, similar to the parent-child relationship, is at risk[.]" *Grove*, 127 Wn.2d at 237 (citing *In re Luscier*, 84 Wn.2d 135 and *In re Myricks*, 85 Wn.2d 252).

offers broader protection than its federal counterpart. *Luscier* was based on both the federal and state constitutions. *In re Luscier*, 84 Wn.2d at 139 ("the right to one's children is a 'liberty' protected by the due process requirements of the Fourteenth Amendment and [Wash.] Const. Art. [I], § 3."). *Myricks* refers generally to "due process," does not cite to a particular constitutional provision, and relies almost exclusively on due process decisions of the United States Supreme Court. *In re Myricks*, 85 Wn.2d at 253-54. Finally, *Grove*, *Myricks* and *Luscier* all addressed the appointment of counsel for parents, not children in the context of dependency proceedings. Thus, there is no basis for concluding that the cases stand for the proposition that article I, section 3 offers broader protection than the Fourteenth Amendment.

The Washington Supreme Court has held that the fifth factor, structural differences between the state and federal constitutions, supports an independent analysis. *In re Marriage of King*, 162 Wn.2d at 393. However, this factor argues for independent analysis in every case, and does not dictate that such an analysis supports broader rights under the state due process clause. Regarding the sixth factor, issues of family relations are generally matters of state or local concern. *In re Custody of R.R.B.*, 108 Wn. App. 602, 620, 31 P.3d 1212 (2001) (citing *Rose v. Rose*, 481 U.S. 619, 625, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987)). As is the case with the fifth factor, the fact that this factor may support an independent analysis does not mean that article I, section 3 provides greater due process protection in this context and the father offers no sound argument to the contrary.

The Washington Supreme Court "traditionally has practiced great restraint in expanding state due process beyond federal perimeters." *City of Bremerton v. Widell*, 146 Wn.2d 561, 579, 51 P.3d 733 (2002). The *Gunwall* analysis offers no reason to abandon that restraint in the context of appointment of counsel for children in dependency proceedings. The due process clause of the state constitution does not mandate appointment of counsel for every child in every dependency case.

H. JuCR 9.2(c) does not require appointment of counsel for M[redacted]

JuCr 9.2(c) addresses the situation when a child in a dependency or termination action does not have a guardian ad litem or CASA. As E. H. has had a CASA for nearly his entire dependency and currently has a CASA, this rule is inapplicable to this case.

I. Conclusion

For the reasons stated, the Department requests this court deny the mother's motion to appoint the child counsel.

VI. PROPOSED ORDER

Attached.

///

///

DATED this 26th day of August, 2016.

ROBERT W. FERGUSON
Attorney General

By /s/ Zachary K. Brown
ZACHARY K. BROWN
Assistant Attorney General
WSBA # 37327
Attorney General's Office
800 Fifth Avenue, Ste. 2000
Seattle, WA 98104-3188
Telephone: (206) 464-7045
Fax: (206) 464-6338
E-mail: ZacharyB@atg.wa.gov

CERTIFICATE OF SERVICE

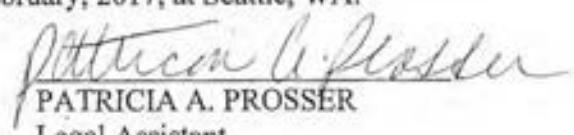
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on the below date, the original documents to which this Declaration is affixed/attached, was filed in the Court of Appeals, Division One, under Case No. 76000-9-I and a true copy was e-mailed or otherwise caused to be delivered to the following attorneys or party/parties of record at the e-mail addresses as listed below:

1. Jan Trasen, Washington Appellant Project; and wapofficemail@washapp.org; and jan@washapp.org; and

2. Kathleen Martin, Dependency CASA Program, casa.group@kingcounty.gov; and kathleen.martin@kingcounty.gov.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 10th day of February, 2017, at Seattle, WA.



PATRICIA A. PROSSER
Legal Assistant
Office Identification #91016

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE E.H. MINOR CHILD	)	
R.R.,	)	NO. 94798-8
PETITIONER.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26TH DAY OF JANUARY, 2018, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER (WITH CORRECTED APPENDIX)** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KELLY TAYLOR, AAG [SHSSeaEF@atg.wa.gov] [kellyt1@atg.wa.gov] OFFICE OF THE ATTORNEY GENERAL DSHS DIVISION 800 FIFTH AVENUE, SUITE 2000 SEATTLE, WA 98104-3188	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X] OFFICE OF THE SOLICITOR GENERAL [sgoolyef@atg.wa.gov]	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X] KATHLEEN MARTIN [casa.group@kingcounty.gov] DEPENDENCY CASA PROGRAM	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X] OFFICE OF THE ATTORNEY GENERAL [shstacappeals@ATG.WA.GOV] TACOMA, WA 98401	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL

SIGNED IN SEATTLE, WASHINGTON THIS 26TH DAY OF JANUARY, 2018.

X_____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711

WASHINGTON APPELLATE PROJECT

January 26, 2018 - 10:26 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	94798-8
Appellate Court Case Title:	In re the Dependency of: E.H.
Superior Court Case Number:	14-7-01413-7

The following documents have been uploaded:

- 947988_Briefs_20180126102220SC497977_4907.pdf
  This File Contains:
  Briefs - Petitioners Supplemental
  The Original File Name was washapp.org_20180126_102523.pdf
- 947988_Letters_Memos_20180126102220SC497977_6815.pdf
  This File Contains:
  Letters/Memos - Comments
  The Original File Name was washapp.org_20180126_102523-a.pdf

A copy of the uploaded files will be sent to:

- Fred@FEThornelaw.com
- ZacharyB@ATG.WA.GOV
- aburton@co.pierce.wa.us
- adrienne.mckelvey@foster.com
- alanc@atg.wa.gov
- andrea.bradford@foster.com
- april.rivera@kingcounty.gov
- bannail@seattleu.edu
- brian.ward@atg.wa.gov
- casa.group@kingcounty.gov
- changro@seattleu.edu
- debip@nwjustice.org
- jessica.levin@gmail.com
- kathleen.martin@kingcounty.gov
- kellyt1@atg.wa.gov
- levinje@seattleu.edu
- litdocket@foster.com
- pcpatvecf@co.pierce.wa.us
- peterg@atg.wa.gov
- sgoolyef@atg.wa.gov
- shsseaef@atg.wa.gov
- shstacappeals@atg.wa.gov
- tacy.hass@foster.com
- tacy.hass@gmail.com
- zydekbe@gmail.com

Comments:

***CORRECTED APPENDIX ONLY; THE BRIEF REMAINS THE SAME.

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Jan Trasen - Email: jan@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 701
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20180126102220SC497977